IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

KEVIN BROTT,

KATHALEEN BONDON,

LOUIS and PHARQUIETTE CHURCHWELL,

Case No. 1:15-CV-38

FREDRICKS CONSTRUCTION CO.,

KAREN FRISCO,

PATRICIA GREEN,

VERONICA HARWELL-SMITH,

RICKEY and CAROLYN HOLDEN,

ROBERT JONES,

JEREMY KEITH,

JOEL F. and SHARON KOWALSKI,

THERESA LOPEZ,

ILEINE MAXIN,

THOMASINE MESHAWBOOSE,

THOMAS NAVARINI,

LUIS and YOLANDA SANTILLANES,

WESTSHORE ENGINEERING & SURVEYING, INC.,

2017 8th, LLC, and

2170 SHERMAN, LLC,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.
_____/

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COMPLAINT AND JURY DEMAND

SUMMARY OF THIS LAWSUIT[1]

This lawsuit is a Fifth Amendment taking case in which Michigan landowners seek to vindicate their right to be justly compensated for property the federal government took from them, and to uphold foundational rights and principles the United States Constitution guarantees all citizens. Twenty individuals, families, and small businesses own land in Muskegon, Michigan. In 1886, the Grand Rapids & Indiana Railroad built a railway across land now owned by these twenty owners. Under the terms of the original 1886 right-of-way easements and Michigan law, when the railroad no longer operated a railroad across the strip of these owners' land, the easement terminated and these owners enjoyed unencumbered title and exclusive possession of their land. But that is not what happened. The federal Surface Transportation Board (STB) issued an order invoking the federal Trails Act.[2] The STB's order nullified these owners' right to their land under Michigan law and encumbered their land with a new easement for a federally established public recreational trail under the perpetual jurisdiction of the STB.

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[1] This summary is not part of the Complaint but is provided for the convenience of the Court and parties.

[2] The *National Trails System Act of 1968* as amended 1983. (Codified at 16 U.S.C. §1241 *et. seq.* (2006)).

The Fifth Amendment allows the federal government to take privately owned land for a public use but requires the government to justly compensate the owners for that property it has taken. In 1990, the United States Supreme Court held that establishing a public recreational trail across privately owned land is a taking of private property for which the federal government must compensate the owner. Because the government has not compensated these Michigan owners, or even offered to compensate them, these owners have been forced to bring this inverse condemnation action to vindicate their Fifth Amendment right to be justly compensated.

This case is different from previous Trails Act taking cases in the following respect: These Michigan owners want their Fifth Amendment claim adjudicated by this federal district court, an Article III Court; and they also want the compensation they are due determined by a jury as the Seventh Amendment guarantees.

Thus, these twenty Michigan landowners ask this Court to award them the full measure of just compensation they are owed for that property the federal government took from them – as guaranteed by the Fifth Amendment. And they request this to be determined in a trial by jury – as guaranteed by the Seventh Amendment.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Fifth Amendment taking claim under the Little Tucker Act, 28 U.S.C. §1346, that provides in relevant part, "(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: *** (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, …" As explained more fully below, because this action is founded upon the Constitution the purported $10,000 jurisdictional limit upon this Court's jurisdiction is invalid as contrary to Article III and the Seventh Amendment.

2. This Court also has subject matter over this case under 28 U.S.C. §1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

3. This Court has jurisdiction over Count Three under the Declaratory Judgment Act, 28 U.S.C. §2201, that provides, in relevant part, "In a case of actual controversy within its jurisdiction, *** any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

PARTIES

4. The Plaintiffs bringing this action are individuals, families, and small businesses that own twenty parcels of land in Muskegon, Michigan.

5. The Defendant is the United States which, acting through the Surface Transportation Board, invoked §1247(d) of the Trails Act and took these Michigan landowners' right to unencumbered title and exclusive possession of their land, but failed to justly compensate these Michigan landowners as the Fifth Amendment requires.

THE LAW AND CONSTITUTIONAL PROVISIONS APPLICABLE TO THIS ACTION

I. The Fifth Amendment guarantees these Michigan landowners "just compensation."

6. These Michigan citizens' right to be secure in ownership of their property is one of the primary objects for which the national government was formed. Recently, in *United States v. Jones*, __ U.S. ___, 132 S.Ct. 945, 949 (2012), the Court recalled Lord Camden's holding in *Entick v. Carrington,* 95 Eng. Rep. 807 (C.P. 1765), "The great end, for which men entered into society, was to secure their property."[3]

7. The Fifth Amendment to our Constitution guarantees these Michigan owners the right to be secure in their property when it provides: "No person shall … be

[3] Madison recognized "Government is instituted to protect property of every sort; . . . This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his own . . ." THE COMPLETE MADISON at 267-68 (Saul K. Padover ed., 1953) remarks published in NATIONAL GAZETTE, Mar. 29, 1792. See James W. Ely, Jr., THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS, 2d ed., Oxford University Press (1998). (See especially Ch. 3, p. 43 noting John Adam's proclamation in 1790 that "property must be secured or liberty cannot exist.").

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." *U.S. Const. amend. V.*

8. The Supreme Court held, "In any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government." *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 324 (1893) (quoted and followed by *Olson v. United States*, 292 U.S. 246, 254 (1934)). *See also Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972) ("[T]he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights….That rights in property are basic civil rights has long been recognized.") (citation omitted). *See also, United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993) ("an essential principle: Individual freedom finds tangible expression in property rights.").

9. "As soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has already suffered a constitutional violation, and '*the self-executing character of the constitutional provision with respect to compensation' is triggered.* [The Supreme Court] has consistently recognized that the just compensation requirement in the Fifth Amendment is not precatory: once there is a 'taking' compensation must be awarded." *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 654 (1981) (internal citations and quotations omitted) (emphasis supplied) (Brennan, J., dissenting on other grounds).

10. Because the Fifth Amendment guarantee of just compensation arises *directly* from the Constitution, it is self-executing.[4] And, because the Just Compensation Clause is self-executing, these Michigan landowners are guaranteed the right to be justly compensated whether or not Congress elects to waive the United States' sovereign immunity by statute.

11. Even before *San Diego Gas* and *First English* the Court held, "But whether the theory ... be that there was a taking under the Fifth Amendment, and that therefore the Tucker Act may be invoked because it is a claim founded upon the Constitution, or that there was an implied promise by the Government to pay for it, is immaterial. In either event, the claim traces back to the prohibition of the Fifth Amendment, 'nor shall private property be taken for public use, without just compensation.' The Constitution is 'intended to preserve practical and substantial rights, not to maintain theories.' " *United States v. Dickinson*, 331 U.S. 745, 748 (1947).

12. Providing recreational opportunities to the public is a wonderful thing. But, as laudable as public recreation may be, it does not excuse the government from paying those owners whose property the government took for this public use. "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a

[4] In *San Diego Gas* (quoted above) Justice Brennan found the Fifth Amendment guarantee of just compensation is "self-executing." 450 U.S. at 654. In *First English Evangelical Lutheran v. Los Angeles*, 482 U.S. 304, 315-16 (1987), the Court affirmed Justice Brennan's view holding the just compensation clause is "self-executing" and the owner's right to be justly compensated does not "depend on the good graces of Congress." See Douglas W. Kmiec, *The Original Understanding of the Takings Clause is Neither Weak Nor Obtuse*, 88 Colum. L. Rev.1630, 1659-1662-(1988).

whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). "The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. … We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415, 416 (1922).

13. Because the right to just compensation is self-executing and arises directly from the text of the Constitution, Congress cannot take away or limit this right by statute. *See Jacobs v. United States*, 290 U.S. 13, 17 (1933) ("the right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest…") (citing and following *Seaboard Air Line R. Co. v. United States*, 261 U.S. 299, 306 (1923), and *Phelps v. United States*, 274 U.S. 341 (1927)).

II. Because these owners' claims are founded directly upon the Constitution, the Seventh Amendment guarantees these Michigan owners the right to trial by jury and Congress has no power to infringe this right to trial by jury.

14. The Seventh Amendment to our Constitution guarantees that, "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law." *U.S. Const. amend. VII.*

15. The Supreme Court has repeatedly affirmed the fundamental importance of the right to trial by jury. For example, in *Galloway v. United States*, 319 U.S. 372, 398-99 (1943) (Black, J., dissenting on other grounds),[5] Justice Black noted:

[5] See also *Solem v. Helm*, 463 U.S. 277, 286 (1893) (explaining the fundamental nature of the right to trial by jury and tracing the origin of this right to the Magna Carta).

> [I]n response to widespread demands from the various State Constitutional Conventions, the first Congress adopted the Bill of Rights containing the Sixth and Seventh Amendments, intended to save trial in both criminal and common law cases from legislative or judicial abridgment. The first Congress expected the Seventh Amendment to meet the objections of men like Patrick Henry to the Constitution itself. Henry, speaking in the Virginia Constitutional Convention, had expressed the general conviction of the people of the Thirteen States when he said, 'Trial by jury is the best appendage of freedom. * * * We are told that we are to part with that trial by jury with which our ancestors secured their lives and property. * * * I hope we shall never be induced, by such arguments, to part with that excellent mode of trial. No appeal can now be made as to fact in common law suits. The unanimous verdict of impartial men cannot be reversed.' The first Congress, therefore provided for trial of common law cases by a jury, even when such trials were in the Supreme Court itself.[6] (citation omitted).

16. The Supreme Court's Seventh Amendment jurisprudence preserves the "right of trial by jury" as it existed under English common law in 1791 when the Seventh Amendment was adopted. *See Curtis v. Loether*, 415 U.S. 189, 193 (1974) ("[T]he thrust of the [Seventh] Amendment was to preserve the right to jury trial as it existed in 1791.").[7]

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[6] The Court noted, "One of the strongest objections originally taken against the constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases.' *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 446 (1830). Of the seven States which, in ratifying the Constitution, proposed amendments, six included proposals for the preservation of jury trial in civil cases." *Id.*

[7] "It is ironic that the accepted source of this notion that actual English practice as of 1791 determines what are '[s]uits at common law' is Mr. Justice Story's opinion in *United States v. Wonson*, 28 F. Cas. 745, 750 (C.C.D. Mass. 1812) … In fact, for purposes of the initial clause of the Seventh Amendment, Story, a Republican champion of the jury, rejected a static reference to 'old and settled [English] proceedings' and instead treated the Seventh Amendment common law 'Suits' as a dynamic category extending to all new types of cases provided only that they determine 'legal rights.'" George E. Butler II, *Compensable Liberty: A Historical and Political Model of the Seventh Amendment Public Law Jury*, 1 NOTRE DAME J.L. ETHICS & PUB. POL'Y, 595, 644 n.172 (1985).

17. The Supreme Court's jurisprudence holds the Seventh Amendment's guarantee of a jury trial is based upon the practice in England in 1791 when the Seventh Amendment was ratified. To wit: If a British citizen could obtain a jury trial for a comparable action in England in 1791 than the Seventh Amendment guarantees a modern-day American citizen the right to a civil jury trial today.

18. The Seventh Amendment guarantees "the right of trial by jury" for all suits involving legal rights – as opposed to proceedings in admiralty or equity. *See Parsons v. Bedford*, 28 U.S. 433, 446 (1860) ("By [suits at] *common law*, [the Framers] meant … suits in which *legal* rights were to be ascertained and determined in contradistinction to those where equitable rights alone were regarded, and equitable remedies were administered; or where, as in admiralty, a mixture of public law and of maritime law and equity was often found in the same suit.") (emphasis in original).[8]

19. At common law the type of damages a plaintiff sought as well as the subject matter of the action determined which court would hear the action. Equity and admiralty courts did not have juries while courts of law did. Thus, if the action is one seeking to enforce a legal right that would be heard by the law courts, as opposed to

[8] King George attempted to circumvent American colonists' right to jury trial by assigning disputes over the Stamp Act tax to admiralty courts that sat without a jury. The Founders who drafted our Constitution found this to be a "grievous" offense. "John Adams voiced the American reaction: 'But the most grievous innovation of all, is the alarming extension of the power of the courts of admiralty. In these courts, one judge presides alone! No juries have any concern there! The law and the fact are both to be decided by the same single judge.' Thus, the Stamp Act Congress protested the denial of one of 'the most essential rights and liberties of the colonists,' *** Colonists vehemently denounced admiralty courts because they worked without juries." *** Colonists praised [Blackstone's] remarks [in his *Commentaries*] to the effect that trial by jury was the 'sacred palladium' of English liberties. …" Leonard W. Levy, *ORIGINS OF THE BILL OF RIGHTS*, Yale Univ. Press, 1999 at p. 226. The Declaration of Independence included "depriving us, in many cases, of the benefit of trial by jury" in its list of Britain's offenses against the American colonies.

equity and admiralty, the litigant had the right to trial by jury. *See Parsons*, 28 U.S. at 446.

20. The Supreme Court held, "if the action must be tried under the auspices of an Article III court, then the Seventh Amendment affords the parties a right to a jury trial whenever the cause of action is legal in nature." *Granfinanciera, S.A. v. Norberg*, 492 U.S. 33, 53 (1989).

21. Historically, an owner's action to be justly compensated for land the government took is a "suit at common law" in which the owner has the right to trial by jury. *See, e.g., Boom Co. v. Patterson*, 98 U.S. 403, 404 (1878) (a condemnation proceeding removed to federal district court where the Supreme Court affirmed the procedure was for the court to "'proceed to hear and determine such case in the same manner that other cases are heard and determined in said court.' Issues of fact arising therein are to be tried by a jury, unless a jury be waived. The value of the land being assessed by the jury or the court, as the case may be."); *Pac. R.R. Removal Cases*, 115 U.S. 1, 5 (1885), *superseded by statute on other grounds*, *Marcus. v. Ne. Commuter Servs. Corp.*, 1992 WL 129637 (E.D. Pa. Jun 09, 1992) (involving a case removed to federal district court in which a city condemned a road through property a railroad corporation acquired for a rail yard. As to the manner in which the property the city took from the railroad was to be valued the Court noted, "[a] jury was summoned … to inquire and find the value of the property taken for the street."); *Upshur Cnty. v. Rich*, 135 U.S. 467, 474-76 (1890) (citing *Kohl v. United States*, 91 U.S. 367, 376 (1876) (affirming that a proceeding to take land and determine the compensation due the owner was "the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents" of such

actions including the principle that "[i]ssues of fact were to be tried by a jury unless a jury was waived.").

22. More recently the Supreme Court explained, "The Seventh Amendment thus applies not only to common-law causes of action but also to statutory causes of action "'analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century, as opposed to those customarily heard by courts of equity or admiralty.'" *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 708-09 (1999) (citations omitted).

23. Since King John met the barons on the fields of Runnymede in 1215, the right to trial by jury has been accepted as a fundamental premise of Anglo-American law. The Supreme Court observed, "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded by the courts." *Jacob v. City of New York*, 315 U.S. 752, 752-53 (1942). *See also United States v. Booker*, 543 U.S. 220, 239 (2005) ("[T]he right to a jury trial had been enshrined since the Magna Carta.")

24. In England, before 1791, actions by landowners seeking compensation for property taken by the King were tried to a jury. In *De Keyser's Royal Hotel v. The King*, ch. 2, p. 222 [1919], Swinfen Eady M.R. described English law during three historical periods including the period between 1708 and 1798: "The second period begins in 1708. It appears then to be fully recognized that the land of a subject could not be taken against his will, except under the provisions of an Act of Parliament. Accordingly, in

1708, was passed the first of a series of Acts to enable particular lands to be taken compulsorily.…provision is made for the appointment of Commissioners to survey the lands to be purchased, and in default of agreement with the owners, the true value is to be ascertained by a jury." (Citing Statute 7 Anne c. 26). The English equivalent to an inverse condemnation action, such as this case, was (before and after 1791) a common law action called a "petition of right" for which there was the right to trial by jury. *See Baron de Bode's Case*, 8 Q.B. Rep. 208 (1845).

25. The Seventh Amendment guarantee of a right to jury trial is especially applicable to actions an individual brings against the government. "The basic argument is that civil jury trials were prized by the populace chiefly for their public law implications, that is for their utility in preventing possible oppression in tax suits, *condemnation proceedings*, and other administrative actions and, if necessary, in obtaining redress for consummated governmental wrongs through collateral suits for damages against officials." Butler, *supra* n. 6 (emphasis supplied). (Citing, among other authorities, *Damsky v. Zavatt*, 289 F.2d 46, 49-50 (2d Cir. 1971) (Friendly, J.), and *THE FEDERALIST NO. 83* (A. Hamilton)).

26. These twenty Michigan landowners' right to be justly compensated is an action that, under English and American law since the Magna Carta, recognized the owner's right to vindicate their ownership of property with a trial by jury. This was so even when the party taking the property was the King. *See* Levy, *supra*. at p. 211 ("Under an ordinance of 1164 known as the Constitutions of Clarendon, the sheriff, acting at the instigation of the bishop, could swear twelve men of the countryside to give a verdict – that is, to speak the truth on issues involving property rights. *** No one

could be evicted or disposed of his land without the prior approval of a jury verdict. A verdict in his favor restored him to possession of the land. Thus trial by jury emerged as the legal remedy for a person who had faced dispossession.").[9]

27. An owner's constitutional right to trial by jury when the government takes her property was a clearly established principle of American law before 1791. *Bayard v. Singleton*, 1 N.C. 5 (1787), illustrates the point. In this celebrated case, North Carolina adopted legislation confiscating property owned by British sympathizers including the land of Samuel Cornell, "the richest man in North Carolina." Cornell remained loyal to Britain and deeded thousands of acres of his land to his daughter, Elizabeth Cornell Bayard. North Carolina confiscated Elizabeth Bayard's land and sold it to Spyers Singleton. In 1787, Elizabeth Bayard sued to recover title to her family homestead. Elizabeth Bayard argued North Carolina confiscated her property in violation of North Carolina's constitution guaranteeing a right to jury trial. Elizabeth Bayard prevailed; and the North Carolina Supreme Court declared the legislative act authorizing the confiscation of property without a jury trial unconstitutional.

28. Owners whose property was taken by the federal government likewise enjoyed the right to trial by jury to determine the compensation. *Chappell v. United States*, 160 U.S. 499 (1896), is such a case. The United States took an easement across land to allow a clear field-of-view for a lighthouse on Hawkins Point, Maryland. The

[9] See also Magna Carta, "§39. No free man shall be taken or imprisoned or disseised or exiled or in anyway destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land. *** §52. If any one has been dispossessed or removed by us, without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five-and-twenty barons of whom mention is made below in the clause for securing the peace." James K. Wheaton. "*THE HISTORY OF THE MAGNA CARTA*" Translation, §§39 and 52.

Court noted "the proceeding, instituted and concluded in a [district] court of the United States, was, in substance and effect, and action at law." *Chappell*, 160 U.S. at 513 (citing *Kohl*, 91 U.S. at 376; and *Upshur Co.*, 135 U.S. at 476). The Court held, "[t]he general rule, as expressed in the Revised Statutes of the United States, is that the trial of issues of fact in actions at law, … 'shall be by jury,' by which is evidently meant a trial by an ordinary jury at the bar of the court." *Id.* The court continued noting, "[the landowner] had the benefit of a trial by an ordinary jury at the bar of the district court on the question of the damages sustained by him." *Id* at 514. *See also Custiss v. The Georgetown & Alexandria Tpk. Co.*, 10 U.S. 233, 234 (1810).[10]

29. This lawsuit is an inverse condemnation action. These Michigan landowners ask this Court to vindicate their constitutional right to be justly compensated for that property the federal government took from them. This action is "a suit at common law" for which the Seventh Amendment guarantees the owner a right to trial by jury. *See Kohl*, 91 U.S. at 376 ("The right of eminent domain always was a right at common law. It was not a right in equity, nor was it even the creature of a statute … It is difficult, then, to see why a proceeding to take land in virtue of the government's eminent domain, *and determining the compensation made for it*, is not, within the meaning of the statute, a suit at common law …") (emphasis supplied).

[10] A decision by Chief Justice Marshall arising from land owned by Martha Washington's heirs in the District of Columbia that was condemned for a turnpike. Chief Justice Marshall noted the act of Congress authorizing the turnpike company to take the Custiss property provided, "in case of disagreement, 'on application to one of the judges of the circuit court, he shall issue a warrant directed to the marshal of the district to summon a jury of 24 inhabitants of the district of Columbia, of property and reputation, not related to the parties, nor in any manner interested, to meet on the land to be valued … [and] the said jury, and when met, … shall faithfully, justly and impartially value the lands, and all damages the owner thereof shall sustain, by opening the road through such land."

30. The Supreme Court held a suit for compensation is a legal action, not an equitable action. "We have recognized the 'general rule' that monetary relief is legal.' Just compensation, moreover, differs from equitable restitution and other monetary remedies available in equity, for in determining just compensation, 'the question is what has the owner lost, not what has the taker gained.' As its name suggests, then, just compensation is, like ordinary money damages, a compensatory remedy. The Court has recognized that compensation is a purpose 'traditionally associated with legal relief."' *Del Monte Dunes*, 526 U.S. at 710-11.[11]

31. In *Pernell v. Southall Realty*, 416 U.S. 363, 370 (1974), the Supreme Court held, "[t]his Court has long assumed that actions to recover land, like actions for damages to a person or property, are actions at law triable to a jury. In *Whitehead v. Shattuck*, 138 U.S. 146, 151, (1891), for example, we recognized that '(i)t would be difficult, and perhaps impossible, to state any general rule which would determine in all cases what should be deemed a suit in equity as distinguished from an action at law . . .; but this may be said, that where an action is simply for the recovery and possession of specific, real, or personal property, or for the recovery of a money judgment, the action is one at law.'" (Citing also *Scott v. Neely*, 140 U.S. 106, 110 (1891), and *Ross v. Bernhard*, 396 U.S. 531, 533 (1970)).

32. Actions for money damages against the United States are a legal action, not an equitable action. The Court of Federal Claims has no equitable or admiralty jurisdiction. *See E. Enters. v. Apfel*, 524 U.S. 524, 520 (1998) ("Such equitable relief is

[11] Citing and quoting *Feltner, v. Columbia Pictures Television, Inc.* 523 U.S. 340, 352 (1998); *Teamsters v. Terry*, 494 U.S. 558, 570 (1990); and *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195 (1910).

arguably not within the jurisdiction of the Court of Federal Claims under the Tucker Act.") (citing *United States v. Mitchell*, 463 U.S. 206, 216 (1983) (explaining that, "in order for a claim to be 'cognizable under the Tucker Act,' it 'must be one for money damages against the United States'".)). It thus follows that an award of money damages as just compensation for the government's taking of an owner's property is not an equitable action. For, if damages for a Fifth Amendment taking were an equitable action, it could not be within the Court of Federal Claims delegated non-equity jurisdiction.

III. The Constitution guarantees these Michigan landowners the right to have their Fifth Amendment claim heard by an Article III Court.

33. "Article III, §1, directs that the 'judicial Power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish,' and provides that these federal courts shall be staffed by judges who hold office during good behavior, and whose compensation shall not be diminished during tenure in office." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 847 (1986).

34. The Constitution describes Article III Court's jurisdiction as, "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States *** to Controversies to which the United States shall be a Party . . . ."

35. "The Constitution erects our government on three foundational corner stones – one of which is an independent judiciary. The foundation of that judicial independence is, in turn, a constitutional protection for judicial compensation. The framers of the Constitution protected judicial compensation from political processes because 'a power over a man's subsistence amounts to a power over his will."' *Beer v.*

United States, 696 F.3d 1174, 1176 (Fed. Cir. 2012) (*en banc*) (citing THE FEDERALIST NO. 79, p. 472 (Alexander Hamilton) (Clinton Rossiter ed., 1961)).

36. "A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government." *United States v. Will*, 449 U.S. 200, 217-18 (1980). The Court quoted and affirmed this holding in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 58 (1982).

37. The United States Court of Federal Claims is *not* an Article III Court but is an executive branch tribunal (also called a legislative court). *See Federal Courts Improvement Act of 1983* §171(a) (codified as 28 U.S.C. §171(a)) providing, "The court [of Federal Claims] is declared to be a court established under article I of the Constitution of the United States."

38. Judges on the Court of Federal Claims, like the bankruptcy judges in *Northern Pipeline*, "do not enjoy the protections constitutionally afforded to Article III judges." 458 at 60. Judges on the Court of Federal Claims are appointed for fifteen-year terms, can be removed by the Federal Circuit, and their salaries are not immune from diminution by Congress. *See* 28 U.S.C §§ 172, 176. In short, there is no doubt that the Court of Federal Claims judges created by the *Federal Courts Improvement Act* are not Article III judges. *See N. Pipeline*, 458 U.S. at 61.

39. Determining the compensation these Michigan landowners are due is a judicial – *not* a legislative or executive – task. *See Monongahela*, 148 U.S. at 327 ("[b]y this legislation [specifying the amount of compensation landowners were to be paid] congress seems to have assumed the right to determine what shall be the measure of

compensation. But, this is a judicial, and not a legislative, question. The legislature may determine what private property is needed for public purposes; that is a question of political and legislative character. But when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, taking the property, through congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry.")[12]

40. In the Tucker Act and Little Tucker Act, 28 U.S.C. §§1346 and 1491, Congress vested the Court of Federal Claims with exclusive jurisdiction to hear all claims against the United States "founded upon the Constitution" where the amount in controversy exceeds $10,000. To the extent Congress created the Court of Federal Claims as an Article I legislative court free of Article III's requirements and vested the Court of Federal Claims with jurisdiction to hear claims "founded upon the Constitution" these provisions are unconstitutional.

41. Article III prevents Congress from establishing Article I courts with exclusive jurisdiction over claims arising under the Constitution. Doing so violates the general principle of independent adjudication Article III commands. *See N. Pipeline*, 458 U.S. at 76. In other words, the provisions of the Tucker Act and Little Tucker Act

[12] *See also N.*, 458 U.S. at 68 ("The public-rights doctrine is grounded in a historically recognized distinction between matters that could be conclusively determined by the Executive and Legislative Branches and matters that are 'inherently … judicial.'" (quoting *Ex parte Bakelite Corp.*, 279 U.S. 438, 458 (1929)). The Supreme Court in *Monongahela* further held, "The right of the legislature of the state by law to apply the property of the citizen to the public use, and then to constitute itself the judge of its own case, to determine what is the 'just compensation' it ought to pay therefor … cannot for a moment be admitted or tolerated under our constitution." 148 U.S. at 327-28 (quoting *Isom v. Miss. Cent. R. Co.*, 36 Miss. 300 (1858)).

purporting to establish jurisdiction over such claims in the Court of Federal Claims "violate[] the command of Art. III that the judicial power of the United States must be vested in courts whose judges enjoy the protections and safeguards specified in that Article." *Id* at 62.

FACTS COMMON TO ALL COUNTS

I. These Michigan families and businesses own the fee estate in land now encumbered by the federal government's order taking their land for public recreation.

A. Under Michigan law each of these owners held unencumbered title and the exclusive right to use and possess their land.

42. In 1886, the Grand Rapids & Indiana Railroad acquired a railroad right-of-way across land owned by these present-day owners' predecessors-in-title. Grand Rapids & Indiana was acquired by Pennsylvania Railroad, which was acquired by the Grand Trunk & Western Railroad, which, in turn, became Central Michigan Railroad, and then became, RailTex, Inc., which formed the Michigan Shore Railroad that then became RailAmerica, Inc. Grand Rapids & Indiana's ultimate successor was Mid-Michigan Railroad, Inc.[13]

43. Either by the 1886 easements or prescriptive easement, Grand Rapids & Indiana (assigned to its series of successor railroads) held only a right-of-way to operate a railway line across a strip of land. But when a railroad no longer operated across the land, the easements terminated; and, under Michigan law, the present-day owners held title to their land unencumbered by any easement. As such, these owners enjoyed the right under Michigan law to the exclusive use and possession of their land.

[13] *See* **Exhibit 1 (**Combined Environmental and Historic Report, STB Docket No. AB 364 (Sub. No. 16X), p. 27).

44. Chief Justice Roberts explained this principle last Supreme Court term, "The essential features of easements—including, most important here, what happens when they cease to be used—are well settled as a matter of property law. An easement is a 'nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.' 'Unlike most possessory estates, easements ... may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude.' In other words, if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land." *Marvin M. Brandt Revocable Trust v. United States*, ___ U.S. ___, 134 S. Ct. 1257, 1265 (2014) (quoting *Restatement (Third) of Property: Servitudes* § 1.2(1) (1998) § 1.2, Comment *d*; *and* § 7.4, Comments *a*, *f*.).

45. *Brandt* concerned railroad right-of-way easements granted by the United States; but the same common law principle applies to privately-granted railroad rights-of-way under Michigan law. *See Mich. Dep't of Natural Res. v. Carmody-Lahti Real Estate, Inc.*, 699 N.W.2d 272, 289 (2005). ("We find the district court's analysis in *Belka* persuasive. The easement originally granted to [the railroad] …was limited to railroad purposes. Therefore, [the railroad's] decision to seek federal permission to cease all rail operations on the right-of-way, its subsequent cessation of those activities after the 120–day period prescribed by the ICC, and its removal of all railroad tracks on the strip of land constituted an abandonment of the underlying property interest.").[14]

[14] Citing with approval this Court's decision *Belka v. Penn Central Corp.*, 1996 WL 11054 (W.D. Mich., 1996) (unpublished), *aff'd* without opinion, 74 F.3d 1240 (6th Cir. 1996).

B. The twenty owners bringing this case own the fee estate in the land under the abandoned railroad right-of-way.

Kevin Brott

46. Kevin Brott acquired his property in Muskegon Michigan in April 2004. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3596, Page 108 (the Brott Property). A copy of this warranty deed is attached as **Exhibit 2**. Muskegon County identifies the Brott Property as Parcel Tax ID number 26-280-007-0010-00. *See* **Exhibit 3 (**copy of the 2008, 2009, and 2010 tax records for the property).

47. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Brott Property and, under the terms of the original easement and Michigan law, Kevin Brott held unencumbered title and right to exclusive possession and use of the strip of land.

48. Kevin Brott owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Brott Property with easements, denying Kevin Brott unencumbered title to his property, and allowing the public to use the Brott Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Brott Property anytime in the indefinite future without any compensation paid to the owner.

49. Kevin Brott owned his property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

50. Kevin Brott did not know about the STB's 2009 and 2010 orders and the STB did not provide Kevin Brott any notice it issued these orders encumbering the Brott Property. Kevin Brott only recently learned the government took his property.

Kathleen Bondon

51. Kathleen Bondon acquired her property in Muskegon Michigan in August 2001. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3266, Page 164 (the Bondon Property). A copy of this warranty deed is attached as **Exhibit 4**. Muskegon County identifies the Bondon Property as Parcel Tax ID number 24-675-025-0013-00. *See* **Exhibit 5 (**copy of the 2008, 2009, and 2010 tax records for the property).

52. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Bondon Property and, under the terms of the original easement and Michigan law, Kathleen Bondon held unencumbered title and right to exclusive possession and use of the strip of land.

53. Kathleen Bondon owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Bondon Property with easements denying Kathleen Bondon unencumbered title to her property and allowing the public to use the Bondon Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Bondon Property anytime in the indefinite future without any compensation paid to the owner.

54. Kathleen Bondon owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

55. Kathleen Bondon did not know about the STB's 2009 and 2010 orders and the STB did not provide Kathleen Bondon any notice issued these orders encumbering the Bondon Property. Kathleen only recently learned the government took her property.

Louis and Pharquiette Churchwell

56. Louis and Pharquiette Churchwell acquired their property in Muskegon Michigan in December 1996. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 1956, Page 185 (the Churchwell Property). A copy of this warranty deed is attached as **Exhibit 6**. Muskegon County identifies the Churchwell Property as Parcel Tax ID number 24-675-024-0014-00. *See* **Exhibit 7** (copy of the 2008, 2009, and 2010 tax records for the property).

57. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Churchwell Property and, under the terms of the original easement and Michigan law, Louis and Pharquiette Churchwell held unencumbered title and right to exclusive possession and use of the strip of land.

58. Louis and Pharquiette Churchwell owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Churchwell Property with easements denying Louis and Pharquiette Churchwell unencumbered title to their property and allowing the public to use the Churchwell Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Churchwell Property anytime in the indefinite future without any compensation paid to the owner.

59. Louis and Pharquiette Churchwell owned their property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

60. Louis and Pharquiette Churchwell did not know about the STB's 2009 and 2010 orders and the STB did not provide Churchwell any notice it issued these orders

encumbering the Churchwell Property. Louis and Pharquiette Churchwell only recently learned the government took their property.

Fredricks Construction Company

61. Fredricks Construction Company acquired its property in Muskegon Michigan in November 1975. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 976, Page 209 (the Fredricks Property). A copy of this warranty deed is attached as **Exhibit 8**. Muskegon County identifies the Fredricks Property as Parcel Tax ID number 24-232-010-0012-00. *See* **Exhibit 9** (copy of the 2008, 2009, and 2010 tax records for the property).

62. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Fredricks Property and, under the terms of the original easement and Michigan law, Fredricks Construction Company held unencumbered title and right to exclusive possession and use of the strip of land.

63. Fredricks Construction Company owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Fredricks Property with easements denying Fredricks Construction Company unencumbered title to its property and allowing the public to use the Fredricks Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Fredricks Property anytime in the indefinite future without any compensation paid to the owner.

64. Fredricks Construction Company owned its property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

65. Fredricks Construction Company did not know about the STB's 2009 and 2010 orders and the STB did not provide Fredricks Construction Company any notice it issued these orders encumbering the Fredricks Property. Fredricks Construction Company only recently learned the government took its property.

Karen Frisco

66. Karen Frisco acquired her property in Muskegon Michigan in June 1998. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 2111, Page 284 (the Frisco Property). A copy of this warranty deed is attached as **Exhibit 10**. Muskegon County identifies the Frisco Property as Parcel Tax ID number 26-280-011-0001-30. *See* **Exhibit 11** (copy of the 2008, 2009, and 2010 tax records for the property).

67. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Frisco Property and, under the terms of the original easement and Michigan law, Karen Frisco held unencumbered title and right to exclusive possession and use of the strip of land.

68. Karen Frisco owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Frisco Property with easements denying Karen Frisco unencumbered title to her property and allowing the public to use the Frisco Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Frisco Property anytime in the indefinite future without any compensation paid to the owner.

69. Karen Frisco owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

70. Karen Frisco did not know about the STB's 2009 and 2010 orders and the STB did not provide Karen Frisco any notice it issued these orders encumbering the Frisco Property. Karen Frisco only recently learned the government took her property.

Patricia Green

71. Patricia Green acquired her property in Muskegon Michigan (the Green Property). Muskegon County identifies the Green Property as Parcel Tax ID number 24-165-000-0055-00. *See* **Exhibit 12** (copy of the 2008, 2009, and 2010 tax records for the property).

72. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Green Property and, under the terms of the original easement and Michigan law, Patricia Green held unencumbered title and right to exclusive possession and use of the strip of land.

73. Patricia Green owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Green Property with easements denying Patricia Green unencumbered title to her property and allowing the public to use the Green Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Green Property anytime in the indefinite future without any compensation paid to the owner.

74. Patricia Green owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

75. Patricia Green did not know about the STB's 2009 and 2010 orders and the STB did not provide Patricia Green any notice it issued these orders encumbering the Green Property. Patricia Green only recently learned the government took her property.

Veronica Harwell-Smith

76. Veronica Harwell-Smith acquired her property in Muskegon Michigan in March 2006. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3691, Page 457 (the Harwell-Smith Property). A copy of this warranty deed is attached as **Exhibit 13**. Muskegon County identifies the Harwell-Smith Property as Parcel Tax ID number 24-675-026-0011-00. *See* **Exhibit 14** (copy of the 2008, 2009, and 2010 tax records for the property).

77. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Harwell-Smith Property and, under the terms of the original easement and Michigan law, Veronica Harwell-Smith held unencumbered title and right to exclusive possession and use of the strip of land.

78. Veronica Harwell-Smith owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Harwell-Smith Property with easements denying Veronica-Harwell Smith unencumbered title to her property and allowing the public to use the Harwell-Smith Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Harwell-Smith Property anytime in the indefinite future without any compensation paid to the owner.

79. Veronica Harwell-Smith owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

80. Veronica Harwell-Smith did not know about the STB's 2009 and 2010 orders and the STB did not provide Veronica Harwell-Smith any notice it issued these

orders encumbering the Harwell-Smith Property. Veronica Harwell-Smith only recently learned the government took her property.

Rickey and Carolyn Holden

81. Rickey and Carolyn Holden acquired their property in Muskegon Michigan (the Holden Property). Muskegon County identifies the Holden Property as Parcel Tax ID number 24-26-280-905-0001-00. *See* **Exhibit 15** (copy of the 2008, 2009, and 2010 tax records for the property).

82. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Holden Property and, under the terms of the original easement and Michigan law, Rickey and Carolyn Holden held unencumbered title and right to exclusive possession and use of the strip of land.

83. Rickey and Carolyn Holden owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Holden Property with easements denying Rickey and Carolyn Holden unencumbered title to their property and allowing the public to use the Holden Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Holden Property anytime in the indefinite future without any compensation paid to the owner.

84. Rickey and Carolyn Holden owned their property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

85. Rickey and Carolyn Holden did not know about the STB's 2009 and 2010 orders and the STB did not provide Rickey and Carolyn Holden any notice it issued these orders encumbering the Holden Property. Rickey and Carolyn Holden only recently learned the government took their property.

Robert Jones

86. Robert Jones acquired his property in Muskegon Michigan in November 1980. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 1205, Page 838 (the Jones Property). A copy of this warranty deed is attached as **Exhibit 16**. Muskegon County identifies the Jones Property as Parcel Tax ID number 24-255-009-0016-00. *See* **Exhibit 17** (copy of the 2008, 2009, and 2010 tax records for the property).

87. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Jones Property and, under the terms of the original easement and Michigan law, Robert Jones held unencumbered title and right to exclusive possession and use of the strip of land.

88. Robert Jones owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Jones Property with easements denying Robert Jones unencumbered title to his property and allowing the public to use the Jones Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Jones Property anytime in the indefinite future without any compensation paid to the owner.

89. Robert Jones owned his property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

90. Robert Jones did not know about the STB's 2009 and 2010 orders and the STB did not provide Robert Jones any notice it issued these orders encumbering the Jones Property. Robert Jones only recently learned the government took his property.

Jeremy Keith

91. Jeremy Keith acquired his property in Muskegon Michigan in May 2002. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 1527, Page 268 (the Keith Property). A copy of this warranty deed is attached as **Exhibit 18**. Muskegon County identifies the Keith Property as Parcel Tax ID number 26-280-011-0011-00. *See* **Exhibit 19** (copy of the 2008, 2009, and 2010 tax records for the property).

92. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Keith Property and, under the terms of the original easement and Michigan law, Jeremy Keith held unencumbered title and right to exclusive possession and use of the strip of land.

93. Jeremy Keith owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Jeremy Keith Property with easements denying Jeremy Keith unencumbered title to his property and allowing the public to use the Keith Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Keith Property anytime in the indefinite future without any compensation paid to the owner.

94. Jeremy Keith owned his property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

95. Jeremy Keith did not know about the STB's 2009 and 2010 orders and the STB did not provide Jeremy Keith any notice it issued these orders encumbering the Keith Property. Jeremy Keith only recently learned the government took his property.

Joel F. and Sharon Kowalski

96. Joel F. and Sharon Kowalski acquired their property in Muskegon Michigan in May 1987. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 1393, Page 650 (the Kowalski Property). A copy of this warranty deed is attached as **Exhibit 20**. Muskegon County identifies the Kowalski Property as Parcel Tax ID number 26-185-079-0001-00. *See* **Exhibit 21** (copy of the 2008, 2009, and 2010 tax records for the property).

97. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Kowalski Property and, under the terms of the original easement and Michigan law, Joel F. and Sharon Kowalski held unencumbered title and right to exclusive possession and use of the strip of land.

98. Joel F. and Sharon Kowalski owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Kowalski Property with easements denying Joel F. and Sharon Kowalski unencumbered title to their property and allowing the public to use the Kowaslksi Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Kowaslki Property anytime in the indefinite future without any compensation paid to the owner.

99. Joel F. and Sharon Kowalski owned their property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

100. Joel F. and Sharon Kowalski did not know about the STB's 2009 and 2010 orders and the STB did not provide Joel F. and Sharon Kowalski any notice it issued

these orders encumbering the Kowalski Property. Joel F. and Sharon Kowalski only recently learned the government took their property.

Theresa Lopez

101. Theresa Lopez acquired her property in Muskegon Michigan in March 2001. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3175, Page 950 (the Lopez Property). A copy of this warranty deed is attached as **Exhibit 22**. Muskegon County identifies the Lopez Property as Parcel Tax ID number 24-255-002-0016-00. *See* **Exhibit 23** (copy of the 2008, 2009, and 2010 tax records for the property).

102. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Lopez Property and, under the terms of the original easement and Michigan law, Theresa Lopez held unencumbered title and right to exclusive possession and use of the strip of land.

103. Theresa Lopez owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Lopez Property with easements denying Theresa Lopez unencumbered title to her property and allowing the public to use the Lopez Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Lopez Property anytime in the indefinite future without any compensation paid to the owner.

104. Theresa Lopez owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

105. Theresa Lopez did not know about the STB's 2009 and 2010 orders and the STB did not provide Theresa Lopez any notice it issued these orders encumbering the Lopez Property. Theresa Lopez only recently learned the government took her property.

Ileine Maxin

106. Ileine Maxin acquired her property in Muskegon Michigan in September 1997. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 2035, Page 255 (the Maxin Property). A copy of this warranty deed is attached as **Exhibit 24.** Muskegon County identifies the Maxin Property as Parcel Tax ID number 24-255-009-0018-00. *See* **Exhibit 25** (copy of the 2008, 2009, and 2010 tax records for the property).

107. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Maxin Property and, under the terms of the original easement and Michigan law, Ileine Maxin held unencumbered title and right to exclusive possession and use of the strip of land.

108. Ileine Maxin owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Maxin Property with easements denying Ileine Maxin unencumbered title to her property and allowing the public to use the Maxin Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Maxin Property anytime in the indefinite future without any compensation paid to the owner.

109. Ileine Maxin owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

110. Ileine Maxin did not know about the STB's 2009 and 2010 orders and the STB did not provide Ileine Maxin any notice it issued these orders encumbering the Maxin Property. Ileine Maxin only recently learned the government took her property.

Thomasine MeShawboose

111. Thomasine MeShawboose acquired property in Muskegon Michigan in September 2007. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3767, Page 630 (the MeShawboose Property). A copy of this warranty deed is attached as **Exhibit 26**. Muskegon County identifies the MeShawboose Property as Parcel Tax ID numbers 26-280-011-0001-00 and 26-280-011-0001-20. *See* **Exhibit 27** (copy of the 2008, 2009, and 2010 tax records for the property).

112. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the MeShawboose Property and, under the terms of the original easement and Michigan law, Thomasine MeShawboose held unencumbered title and right to exclusive possession and use of the strip of land.

113. Thomasine MeShawboose owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the MeShawboose Property with easements denying Thomasine MeShawboose unencumbered title to her property and allowing the public to use the MeShawboose Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the MeShawboose Property anytime in the indefinite future without any compensation paid to the owner.

114. Thomasine MeShawboose owned her property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

115. Thomasine MeShawboose did not know about the STB's 2009 and 2010 orders and the STB did not provide Thomasine MeShawboose any notice it issued these orders encumbering the MeShawboose Property. Thomasine MeShawboose only recently learned the government took her property.

Thomas Navarini

116. Thomas Navarini acquired his property in Muskegon Michigan (the Navarini Property). Muskegon County identifies the Navarini Property as Parcel Tax ID number 24-675-026-0014-00. *See* **Exhibit 28** (copy of the 2008, 2009, and 2010 tax records for the property).

117. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Navarini Property and, under the terms of the original easement and Michigan law, Thomas Navarini held unencumbered title and right to exclusive possession and use of the strip of land.

118. Thomas Navarini owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Thomas Navarini Property with easements denying Thomas Navarini unencumbered title to his property and allowing the public to use the Navarini Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Navarini Property anytime in the indefinite future without any compensation paid to the owner.

119. Thomas Navarini owned his property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

120. Thomas Navarini did not know about the STB's 2009 and 2010 orders and the STB did not provide Thomas Navarini any notice it issued these orders encumbering the Navarini Property. Thomas Navarini only recently learned the government took his property.

Luis and Yolanda Santillanes

121. Luis and Yolanda Santillanes acquired their property in Muskegon Michigan in June 2010. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3851, Page 633 (the Santillanes Property). A copy of this warranty deed is attached as **Exhibit 29**. Muskegon County identifies the Santillanes Property as Parcel Tax ID number 24-165-000-0052-00. *See* **Exhibit 30** (copy of the 2008, 2009, and 2010 tax records for the property).

122. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Santillanes Property and, under the terms of the original easement and Michigan law, Luis and Yolanda Santillanes held unencumbered title and right to exclusive possession and use of the strip of land.

123. Luis and Yolanda Santillanes owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Santillanes Property with easements denying Luis and Yolanda Santillanes unencumbered title to their property and allowing the public to use the Santillanes Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation

corridor to be built across the Santillanes Property anytime in the indefinite future without any compensation paid to the owner.

124. Luis and Yolanda Santillanes owned their property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

125. Luis and Yolanda Santillanes did not know about the STB's 2009 and 2010 orders and the STB did not provide Luis and Yolanda Santillanes any notice it issued these orders encumbering the Luis and Yolanda Santillanes Property. Luis and Yolanda Santillanes only recently learned the government took their property.

Westshore Engineering & Surveying, Inc.

126. Westshore Engineering & Surveying, Inc. acquired its property in Muskegon Michigan in May 1990 and in October 1989. *See* deeds recorded in the Muskegon County Register of Deeds Office in Book 1520, Page 413 and Book 1469, Page 799 (the Westshore Property). A copy of this warranty deed is attached as **Exhibit 31**. Muskegon County identifies the Westshore Property as Parcel Tax ID numbers 24-900-251-6750-00 and 24-695-000-0055-00. *See* **Exhibit 32** (copy of the 2008, 2009, and 2010 tax records for the property).

127. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Westshore Property and, under the terms of the original easement and Michigan law, Westshore held unencumbered title and right to exclusive possession and use of the strip of land.

128. Westshore owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Westshore Property with easements denying Westshore unencumbered title to its property and allowing the

public to use the Westshore Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Westshore Property anytime in the indefinite future without any compensation paid to the owner.

129. Westshore owned its property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

130. Westshore did not know about the STB's 2009 and 2010 orders and the STB did not provide Westshore any notice it issued these orders encumbering the Westshore Property. Westshore only recently learned the government took their property.

2017 8th, LLC

131. 2017 8th, LLC (LLC) acquired its property in Muskegon Michigan in May 2007. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 3746, Page 637 (the LLC Property). A copy of this warranty deed is attached as **Exhibit 33**. Muskegon County identifies the 2017 8th Property as Parcel Tax ID number 26-280-006-0009-00. *See* **Exhibit 34** (copy of the 2008, 2009, and 2010 tax records for the property).

132. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the LLC Property and, under the terms of the original easement and Michigan law, the LLC held unencumbered title and right to exclusive possession and use of the strip of land.

133. 2017 8th, LLC owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the 2017 8th Property with

easements denying the LLC unencumbered title to its property and allowing the public to use the the LLC's Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the 2017 8th Property anytime in the indefinite future without any compensation paid to the owner.

134. The LLC owned its property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

135. The LLC did not know about the STB's 2009 and 2010 orders and the STB did not provide the LLC any notice it issued these orders encumbering the LLC's property. The LLC only recently learned the government took its property.

2170 Sherman, LLC

136. 2170 Sherman, LLC (Sherman) acquired its property in Muskegon Michigan in July 1990. *See* deed recorded in the Muskegon County Register of Deeds Office in Book 1529, Page 754 (the Sherman Property). A copy of this warranty deed is attached as **Exhibit 35**. Muskegon County identifies the Sherman Property as Parcel Tax ID number 24-695-000-0057-00. *See* **Exhibit 36** (copy of the 2008, 2009, and 2010 tax records for the property).

137. The now-abandoned Grand Rapids & Indiana railroad right-of-way easement once crossed the Sherman Property and, under the terms of the original easement and Michigan law, Sherman held unencumbered title and right to exclusive possession and use of the strip of land.

138. Sherman owned this land in May 2009 and July 2010 when the STB issued orders invoking §1247(d) of the Trails Act encumbering the Sherman Property

with easements denying Sherman unencumbered title to its property and allowing the public to use the Sherman Property for recreation. The STB's orders also indefinitely perpetuated the STB's jurisdiction over the property allowing the STB to authorize a new public transportation corridor to be built across the Sherman Property anytime in the indefinite future without any compensation paid to the owner.

139. Sherman owned its property in May 2009 and July 2010 when the STB issued its orders invoking §1247(d) of the Trails Act.

140. Sherman did not know about the STB's 2009 and 2010 orders and the STB did not provide Sherman any notice it issued these orders encumbering the Sherman Property. Sherman only recently learned the government took its property.

II. The federal government took these Michigan landowners' property when the STB issued an order invoking §1247(d) of the Trails Act.

A. The Railroad abandoned the right-of-way and the easement terminated, or would have terminated, but for the STB's orders.

141. In March 2009, Grand Rapids & Indiana's successor railroad, Mid-Michigan, asked the STB for permission to abandon the right-of-way.[15]

142. In April 2009, the Michigan Department of Natural Resources (MDNR) requested the STB to issue an order invoking §1247(d) of the Trails Act. MDNR said it was willing to assume responsibility for the right-of-way between mileposts 191.4 and 191.9.[16]

[15] **Exhibit 37** at p. 1 (Verified Notice of Exemption, STB Docket No. AB 364 (Sub. No. 16X)).

[16] **Exhibit 38** (Request for Interim Trail Use, STB Docket No. AB 364 (Sub. No. 16X)).

143. In May 2009, Mid-Michigan Railroad told the STB it would negotiate with the MDNR for Conversion of the abandoned right-of-way into a public recreational trail.[17]

144. On May 19, 2009, the STB issued an order (called a "Notice of Interim Trail Use or Abandonment") invoking §1247(d) and authorizing the railroad to negotiate with MDNR and convert the section of the abandoned right-of-way between mileposts 191.4 and 191.9 into a public trail.[18]

145. In May 2010, MDNR filed another request for interim trail use, requesting the STB issue an order invoking §1247(d) for the remainder of the 3.35-mile corridor.[19]

146. On July 12, 2010, the STB issued another Notice of Interim Trail Use or Abandonment invoking §1247(d) and authorizing the railroad to negotiate with MDNR and convert the remainder of the railway corridor (between mileposts 191.4 and 194.75) into a public recreational trail.[20]

147. The Michigan Department of Natural Resources is not a railroad and possesses no legal authority to operate a railroad.

B. The Supreme Court and the Circuit Courts of Appeal have repeatedly ruled that the STB order invoking §1247(d) of the Trails Act gives rise to a compensable taking for which the Fifth Amendment compels the federal government to compensate the owner.

148. Section 1247(d) provides, "in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner

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[17] **Exhibit 40** (Railroad's replies filed May 1, 2009, and May 20, 2010, STB Docket No. AB 364 (Sub. No. 16X)).

[18] *See* **Exhibit 41** (May 19, 2009, NITU, STB Docket No. AB 364 (Sub. No. 16X)).

[19] **Exhibit 39** (MDNR request for expansion, STB Docket No. AB 364 (Sub. No. 16X)).

[20] **Exhibit 42** (July 12, 2010, NITU, STB Docket No. AB 364 (Sub. No. 16X)).

consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." In other words, as held by those cases we reference below, §1247(d) "destroys" and "effectively eliminates" an owner's state-law right to her property.

149. Congress adopted this amendment to the Trails Act in 1983 for the explicit purpose of taking a landowner's state-law right to unencumbered title and possession of her land. Congress intended this provision, when invoked, to impose new and different easements across the land and to perpetuate the STB's jurisdiction over the land. *See Citizens Against Rails-to-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1149 (D.C. Cir. 2001); and *Nat'l Wildlife Found. v. Interstate Commerce Comm'n*, 850 F.2d 694, 697-98 (D.C. Cir. 1988).

150. But for the STB invoking §1247(d) of the Trails Act, these Michigan landowners would have unencumbered title and the exclusive right to physical ownership, possession, and use of their property free of any easement for recreational trail use or future transportation use.

151. The United States Supreme Court, in *Preseault v. Interstate Commerce Commission*, 494 U.S. 1 (1990) (*Preseault I*), agreed Congress possessed the eminent domain authority to enact §1247(d) and take private property for a public-access recreational trail and a possible future railroad corridor.

152. But, the Supreme Court continued, the Fifth Amendment requires the United States to pay the property owners for the value of that property taken when §1247(d) is invoked. Justice Brennan wrote for a unanimous Court:

> This language [§1247(d)] gives rise to a takings question in the typical rails-to-trails case because many railroads do not own their rights-of-way outright but rather hold them under easements or similar property interests. While the terms of these easements and applicable state law vary, frequently the easements provide that the property reverts to the abutting landowner upon abandonment of rail operations. State law generally governs the disposition of reversionary interests, … By deeming interim trail use to be like discontinuance rather than abandonment, Congress prevented property interests from reverting under state law.

Preseault I, at 8 (citations omitted).

153. The Federal Circuit sitting *en banc* in *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996) (*Preseault II*), following *Preseault I*, held:

> [W]e conclude that the taking that resulted from the establishment of the recreational trail is properly laid at the doorstep of the Federal Government…In the case before us there was a similar physical entry upon the private lands of the [property owners], acting under the Federal Government's authority pursuant to the ICC's [now STB's] Order. That it was for a valued public use is not the issue. We have here a straightforward taking of private property for a public use for which just compensation must be paid.

Preseault II, 100 F.3d at 1531, 1551.

154. In *Caldwell v. United States*, 391 F.3d 1226 (Fed. Cir. 2004), and *Barclay v. United States*, 443 F.3d 1368 (2006), the Federal Circuit held that claims for compensation arise when the STB issues the order invoking §1247(d). Specifically, Judge Dyk of the Federal Circuit wrote:

> The taking, if any, when a railroad right-of-way is converted to interim trail use under the Trails Act occurs when state law reversionary property interests that would otherwise vest in the adjacent landowners are blocked from so vesting. Abandonment is suspended and the reversionary interest is blocked "when the railroad and trail operator communicate to the STB their intention to negotiate a trail use agreement and the agency issues an NITU that operates to preclude abandonment under section 8(d)" of the Trails Act. We concluded that "[t]he issuance of the NITU is the only government action in the railbanking process that operates to prevent abandonment of the corridor and to preclude the vesting of state law reversionary interests in the right of way. Thus, a Trails Act taking begins and a takings claim accrues, if at all, on issuance of the NITU.

Barclay, 443 F.3d at 1373 (Judge Dyk citing his own prior decision in *Caldwell*, 391 F3d. at 1223, as authority). *See also Ladd v. United States*, 630 F.3d 1015, 1020 (Fed. Cir, 2010) (*Ladd I*) (*rehearing denied*, 646 F.3d 910 (Fed. Cir. 2011)); and *Ladd v. United States*, 713 F.3d 648, 652 (Fed. Cir. 2013) (*Ladd II*).

155. Creating a public recreational trail across these Michigan owners' land and appropriating a new easement for possible future railroad use took these owners' property for which the federal government must justly compensate them.

156. The fair market value of the property the government took from these owners is substantial and exceeds $10,000.

157. The Constitution requires the federal government to justly compensate those property owners whose property is taken when the STB invokes §1247(d).

158. The United States, not the State of Michigan, owes these owners compensation. *See Preseault, II*, 100 F.3d at 1531 ("Finally, we conclude that the taking that resulted from the establishment of the recreational trail is properly laid at the doorstep of the Federal Government.").

COUNT ONE
A Fifth Amendment Claim for Just Compensation
Brought under the "Little Tucker Act" – 28 U.S.C. §1346

These Michigan landowners state the following as Count One of their Complaint:

159. The landowners incorporate all factual allegations and points of law stated above.

160. The "Little Tucker Act", 28 U.S.C §1346, provides in relevant part, "(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: *** (2) Any other civil action or claim against the United

States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States …"

161. The companion Tucker Act, 28 U.S.C. §1491(a)(1), grants jurisdiction of such claims – including claims "founded…upon the Constitution" – to the United States Court of Federal Claims regardless of the monetary amount of the claim.

162. The Court of Federal Claims is not an Article III court; it is an executive branch tribunal, also called a legislative court. The Court of Federal Claims does not possess the authority to provide any claimant the "right to trial by jury" guaranteed by the Seventh Amendment.

163. 28 U.S.C. §2402 provides in relevant part, "any action against the United States under section 1346 shall be tried by the court without a jury, … "

164. There is no dispute that, "[t]he government cannot be sued, except with its own consent. It can declare in what court it may be sued, and prescribe the forms of pleading and the rules of practice to be observed in such suits." *McElrath v. United States,* 102 U.S. 426, 440 (1880). But this holding does *not* extend to suits against the federal government that arise directly from the Constitution (such as Fifth Amendment claims for "just compensation").

165. Claims arising directly under the United States Constitution (especially claims brought under the Fifth Amendment's self-executing guarantee of "just compensation") do not depend upon Congress waiving the United State's sovereign immunity; and the Fifth Amendment's guarantee of just compensation is not a

congressionally created benefit. As such, Congress lacks authority to limit these constitutional guarantees.

166. To the extent 28 U.S.C. §§ 1346, 1491, and 2402 deny an owner the ability to vindicate their Fifth Amendment right to be justly compensated in an Article III Court with a trial by jury, these statutes violate the Fifth and Seventh Amendments and are unconstitutional.

167. Apart from the $10,000 monetary limitation upon this Court's jurisdiction and §2402's denial of a right to trial by jury for those claims arising directly from the Constitution, the Tucker Act and Little Tucker Act are otherwise valid. "[U]nconstitutionality of a part of an act does not necessarily defeat or affect the validity of its remaining provisions. Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." *Champlin Refining Co. v. Corp. Comm'n of Okla*., 286 U.S. 210, 234 (1932) (citations omitted) (emphasis added).

These Michigan landowners ask this Court to grant the following relief: (1) To proceed to hear these owner's claims on the merits including a "right to trial by jury" and to determine and award that amount of "just compensation" each owner is guaranteed for the property the United States took from each owner when the STB invoked §1247(d) of the Trails Act. (2) Order the United States to reimburse these owners for their litigation costs and attorneys' fees incurred in this proceeding as provided in the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, 42 U.S.C. §4654(c), which says this court shall award, "reasonable costs, disbursements and

expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of [the] proceeding."

COUNT TWO
A Fifth Amendment Claim for Just Compensation
Brought under This Court's Original Jurisdiction – 28 U.S.C. §1331

Alternatively, for Count Two of their lawsuit, these Michigan landowners state the following:

168. The landowners incorporate all of the factual allegations and points of law made above, including those made in Count One.

169. Should this Court conclude it does not possess jurisdiction over this action under the Little Tucker Act, this Court has jurisdiction under 28 U.S.C. §1331 that provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

170. As we plead above, Congress does not possess constitutional authority to deny these Michigan owners the "right to trial by jury" and access to an Article III Court for claims founded directly upon the Constitution. Such claims do not depend upon a waiver of sovereign immunity by Congress and are not based upon any congressionally-created benefit. The Fifth Amendment's guarantee of "just compensation" is a right founded directly upon a self-executing provision of the Constitution.

171. The $10,000 monetary limitation in 28 U.S.C. §1346 of the Little Tucker Act (purportedly denying this Court jurisdiction over these Michigan owners' claims greater than $10,000) and 28 U.S.C. §2402 (purportedly denying these Michigan owners a right to trial by jury despite the Seventh Amendment's guarantee of a jury trial) cannot

limit this Court's original jurisdiction, nor can Congress limit this Court's inherent authority under Article III of the Constitution.

172. In *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 742 (2012), the Supreme Court held, "Section 1331 is not swept away so easily. The principle that district courts possess federal-question jurisdiction under §1331 when federal law creates a private right of action and furnishes the substantive rules of decision endures unless Congress divests federal courts of their §1331 adjudicatory authority."

173. Accordingly, this Court possesses jurisdiction to hear these Michigan landowners claims for just compensation and this Court can (indeed must) have jurisdiction to afford the owners' right to trial by jury and award the full just compensation they are owed under the Fifth Amendment.

These Michigan landowners thus request this Court to grant these owners the following relief: (1) To proceed and hear these Michigan owner's claims on the merits including a "right to trial by jury" to determine and award that amount of "just compensation" each owner is guaranteed for that property the United States took from each owner when the STB invoked §1247(d) of the Trails Act. (2) Order the United States to reimburse these owners for their litigation costs and attorneys' fees incurred in this proceeding as provided in the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, 42 U.S.C. §4654(c), which says this court shall award, "reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of [the] proceeding."

COUNT THREE
Declaratory Judgment Act 28 – U.S.C. §2201

For Count Three of their lawsuit these Michigan landowners state the following:

174. The landowners incorporate all of the factual allegations and points of law made above, including those made in Count One and Two.

175. *The Declaratory Judgment Act*, 28 U.S.C. §2201, provides in relevant part, "In a case of actual controversy within its jurisdiction, *** any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

176. A declaratory judgment of this Court will serve a useful purpose in clarifying or settling the important constitutional issues involved in these owners' Fifth Amendment claim against the United States.

177. A declaratory judgment of this Court would finalize the controversy and offer relief from uncertainty.

178. The declaratory judgment sought will not increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court.

179. There is no better or more effective remedy to resolve and remedy these Michigan landowners' right to be secure in their property as guaranteed by the Fifth and Seventh Amendments.

180. Because 28 U.S.C. §2402 abrogates and denies these Michigan owners "right to trial by jury" guaranteed by the Seventh Amendment, it is unconstitutional to the

extent it applies to these owners' action founded upon and arising directly from the Fifth Amendment guarantee of just compensation.

181. Because Chapter Seven of the *Federal Courts Improvement Act*, 28 U.S.C. §171 *et. seq.* (which established the current Court of Federal Claims), does not afford judges on the Court of Federal Claims "the essential attributes of the judicial power from the Article III Court" and because the Tucker Act and Little Tucker Act grant exclusive jurisdiction over claims founded upon the Constitution to the Court of Federal Claims, the Tucker Act and Little Tucker Act have unconstitutionally "vested those attributes in a non-Article III adjunct" and, to this extent, the relevant provisions of the Tucker Act and Little Tucker Act are unconstitutional.

These Michigan landowners request this Court to declare:

(1) This Court has the jurisdiction to hear their claim for "just compensation" arising under the Fifth Amendment without being subject to a $10,000 monetary limit.

(2) To the extent the Little Tucker Act, 28 U.S.C. §1346, purports to deny these Michigan owners the right to have their Fifth Amendment taking claims heard by this Article III Court, §1346 is unconstitutional.

(3) To the extent 28 U.S.C. §2402 purports to deny or abrogate these Michigan owners' "right to trial by jury" for their Fifth Amendment taking claim, §2402 is an unconstitutional abrogation of these owners' Seventh Amendment right to a jury trial.

(4) Congress's broad grant of exclusive jurisdiction for all claims against the United States arising under the Constitution where the amount in controversy exceeds $10,000 to the Court of Federal Claims (an Article I Court) is unconstitutional.

In addition these landowners request this Court to order the United States to reimburse these owners for their litigation costs and attorneys' fees incurred in this proceeding and for such other relief this Court deems just and proper.

JURY DEMAND

As the Seventh Amendment to the United States Constitution guarantees, these Michigan landowners demand a trial by jury.

Date: January 14, 2015

Respectfully submitted,

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