

No. 14-1413

In the Supreme Court of the United States

MINISTERIO ROCA SOLIDA, INC.,
Petitioner,

v.

UNITED STATES,
Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit*

**BRIEF OF AMICUS CURIAE STATE OF
NEVADA IN SUPPORT OF PETITIONER**

JEFFREY F. BARR
Ashcraft & Barr, LLP
2300 W. Sahara Avenue
Suite 800
Las Vegas, NV 89102
(702) 631-7555
barrj@ashcraftbarr.com

ADAM PAUL LAXALT
Attorney General
LAWRENCE VANDYKE*
Solicitor General
100 North Carson Street
Carson City, NV 89701
(775) 684-1100
LVanDyke@ag.nv.gov
** Counsel of Record*

Counsel for Amicus Curiae State of Nevada

QUESTION PRESENTED

Whether Congress may, through jurisdictional statutes, force a plaintiff seeking just compensation for a Fifth Amendment taking to forego non-overlapping remedies for other constitutional violations.

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INTEREST OF *AMICUS CURIAE*¹

The State of Nevada has a vital interest in protecting the constitutional and property rights of its residents from diminution by federal overreach or constitutionally inadequate remedies. By constitutional mandate, the State of Nevada exists “for the protection, security and benefit of the people.” Nev. Const. art. I, § 2. Consistent with those obligations, the State—acting through its Attorney General—is authorized by its citizens to commence, join, or participate in any suit necessary “to protect and secure the interest of the State.” Nev. Rev. Stat. § 228.170; *see also* Nev. Rev. Stat. § 228.190.

Nevada’s interest is particularly acute here. In this case, the unfortunate confluence of three federal procedural statutes threatens to deprive a Nevada citizen of his substantive constitutional right to secure just compensation for a purported taking of his property.

¹ Counsel for Nevada has notified counsel of record for the parties more than ten days before the filing of this *amicus* brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The “unconstitutional conditions” doctrine arose from a reasonable concern about citizens facing a Hobson’s choice when seeking vindication of a constitutional right.² This case presents such a choice.

Because of three procedural statutes, Petitioner Ministerio Roca Solida—a church started by Victor Fuentes, a Cuban political-refugee immigrant—must choose between pursuing its First Amendment rights in one forum or its Fifth Amendment rights in another. The procedural statutes prohibit the church from availing itself of complete judicial relief in either fora. As both the majority and the concurring opinions of the Court of Appeals acknowledge, this case raises a “substantial constitutional question” that only this Court can address. *Solida v. United States*, 778 F.3d 1351, 1360 (Fed. Cir. 2015) (Taranto, J., concurring); *see also id.* at 1357 (majority opinion) (“the considerations and analysis presented in the concurring opinion may have merit”).

It is a sad irony that the pastor of Roca Solida—who swam seven miles of open ocean seeking the freedom to worship and to escape arbitrary deprivations of property in Cuba—must now trade one of those fundamental rights for the other in the United States. The Court should grant the petition to address and resolve this unconstitutional dilemma.

² A “Hobson’s choice” is “the choice of taking either that which is offered or nothing; the absence of a real choice or alternative.” *N.L.R.B. v. CER Inc.*, 762 F.2d 482, 486 n.7 (5th Cir. 1985) (internal quotation marks and citations omitted).

ARGUMENT

The unconstitutional conditions doctrine prohibits legislative schemes that unnecessarily burden citizens' exercise of their federal constitutional rights. This Court has a long and venerable history of invalidating such laws. *See, e.g., Rutan v. Republican Party of Ill.*, 497 U.S. 62, 77 (1990); *Uniformed Sanitation Men Ass'n v. Comm'r of Sanitation of City of New York*, 392 U.S. 280, 284 (1968); *United States v. Jackson*, 390 U.S. 570, 582 (1968); *Aptheker v. Sec'y of State*, 378 U.S. 500, 514 (1964). "Those cases reflect an overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013).

The hallmark of an unconstitutional condition is legislation that offers relief for a violation of a constitutional right, but only through the abdication of another right. In *Rutan*, for example, the Court struck down a governor's decisions to hire, fire, promote, transfer, and demote public employees based on their political affiliations as an impermissible infringement on the public employees' rights under the First Amendment. 497 U.S. at 77. Thus, the Court eliminated the Hobson's choice previously forced on the public employees between constitutionally protected public employment or free speech. Similarly, in *Uniformed Sanitation*, the Court invalidated a New York law requiring sanitation workers to choose between keeping their constitutionally protected public employment or their constitutional privilege against self-incrimination. 392 U.S. at 284. Likewise, in

Aptheker, this Court invalidated Section 6 of the Subversive Activities Control Act that denied a passport to members of a Communist organization, holding that the statute impermissibly forced passport-holders to choose between their constitutional right to travel, protected by the Fifth Amendment, and their constitutional right to free association. 378 U.S. at 514. And in *Jackson*, the Court held the penalty provisions of the Federal Kidnapping Act unconstitutional because they required a defendant who demanded a jury trial (implicating the Sixth Amendment) to risk the death penalty while a defendant who pleaded guilty (implicating the Fifth Amendment) faced a lesser penalty. 390 U.S. at 582. In invalidating these provisions, the *Jackson* Court set forth a central principle of the unconstitutional conditions doctrine: “Whatever might be said of Congress’ objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights.” *Id.*

As in *Rutan*, *Uniformed Sanitation*, *Aptheker*, and *Jackson*, Petitioner Roca Solida faces a Hobson’s choice. On one hand, Roca Solida can choose to pursue its free exercise, injunctive, and declaratory relief actions in federal district court; on the other hand, Roca Solida can pursue its takings claim and the attendant monetary damages in the Court of Federal Claims. But it cannot do both. Neither of these avenues provides a complete remedy for the alleged constitutional violations. Instead, Roca Solida must sacrifice the vindication of one constitutional right for another.

Three procedural statutes foist this unconstitutional choice upon Roca Solida: (1) the Tucker Act, 28 U.S.C. § 1500 as interpreted by *United States v. Tohono*

O’Odham Nation, 131 S. Ct. 1723, 1730 (2011); (2) the Tucker Act’s six-year statute of limitations, 28 U.S.C. § 2501; and (3) the Little Tucker Act’s cap on takings claims in federal district courts, 28 U.S.C. § 1346(a)(2). The Tucker Act forces Roca Solida to adjudicate its takings claim in the Court of Federal Claims, while its free exercise, injunctive, and declaratory relief claims must be adjudicated in federal district court. But Section 1500, as interpreted in *Tohono*, bars Roca Solida from bringing suit in the Court of Federal Claims when its district court action is still pending.

This would not necessarily be a problem if Roca Solida could simply bring its takings claim in the Court of Federal Claims *after* its other suit was finished in federal district court. Indeed, that is what Roca Solida wants to do. Pet. 5. But the statute of limitations on Roca Solida’s takings claim will run in August 2016—well before one could reasonably expect the district court litigation to be resolved. The expiration of the statute of limitations then precludes Roca Solida from pursuing its takings claim, and the Little Tucker Act prohibits Roca Solida from seeking monetary redress in the district court for any takings claim above \$10,000. Thus, pursuing a set of constitutional claims in one court forecloses Roca Solida’s opportunity to pursue another set of non-overlapping constitutional claims in another forum. As the *Jackson* Court warned, this chills the exercise of constitutional rights and is the epitome of an unconstitutional condition.

Congress cannot do procedurally what it cannot do substantively. As this Court indicated in *Tohono*, most monetary claims against the United States are permissible “by grace and not by right,” which makes

conditions on such claims palatable. 131 S. Ct. at 1731. But that is not true of a takings claim, where the Constitution itself mandates a “just compensation” remedy. See *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 148–49 (1974); *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles*, 482 U.S. 304, 316 n.9 (1987); Fallon *et al.*, *Hart & Wechsler’s The Federal Courts and the Federal System* 718–19 (Foundation, 6th ed. 2009). The unconstitutional conditions imposed on Roca Solida are thus particularly egregious.

As the Court has done for decades when parties face a Hobson’s choice in adjudicating constitutional claims, the Court should grant review and clarify that the procedural statutes in this case should be interpreted to avoid this constitutional quagmire.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ADAM PAUL LAXALT

Attorney General

LAWRENCE VANDYKE*

Solicitor General

100 North Carson Street

Carson City, NV 89701

(775) 684-1100

LVanDyke@ag.nv.gov

* *Counsel of Record*

JEFFREY F. BARR

Ashcraft & Barr, LLP

2300 W. Sahara Avenue

Suite 800

Las Vegas, NV 89102

(702) 631-7555

barrj@ashcraftbarr.com

Counsel for Amicus Curiae

State of Nevada

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