NO. 18-1113

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

OSCAR MARTINEZ,

Petitioner,

v.

STATE OF KENSINGTON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit

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BRIEF FOR PETITIONER

TEAM 4

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QUESTIONS PRESENTED

I. Does the "ripeness doctrine" established in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* bar review of takings claims asserting that an Act causes an unconstitutional taking on its face if the claim is focused on the underlying validity of the statute and not on the taking itself or amount of compensation?

II. Does Title VII's protection against sex discrimination encompass and prohibit discrimination based on sexual orientation if sexual orientation discrimination cannot be accomplished until an employer knows an employee's sex?

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The opinion of the United States Court of Appeals for the Thirteenth Circuit, affirming and reversing the district court in part, is reported in *Martinez v. Kensington*, No. 16-2132 (13th Cir. 2017) and appears in the Record at 4–25.

JURISDICTIONAL STATEMENT

The lower courts had jurisdiction under 28 U.S.C. § 1331, 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments to the United States Constitution. The United States Court of Appeals for the Thirteenth Circuit entered final judgment on September 7, 2017. On May 31, 2018, this Court granted the timely cross-petitions for writ of certiorari to the United States Court of Appeals for the Thirteenth Circuit. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth and Fourteenth Amendments to the United States Constitution, which is reproduced in Appendix "A." U.S. Const. amends. V, XIV; s*ee* App. "A." This case also involves statutes 42 U.S.C. § 1983 and 42 U.S.C. § 2000e-2(a)(1), which are reproduced in Appendix "B." *See* App. "B."

Additionally, this case concerns the State of Kensington's Public Act 16-0337, and its eminent domain and inverse condemnation laws, which are codified at Kens. Code Ann. §§ 30-17-101 to 30-17-130 (1970).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Petitioner Oscar Martinez ("Petitioner" or "Oscar") is a homeowner and resident of, and was employed as a school teacher by, the State of Kensington ("Respondent" or "Kensington"). R. at 2. This case involves Petitioner's due process right to live in a state that enacts its laws under the Fifth and Fourteenth Amendments to the United States Constitution. This case additionally involves Petitioner's civil right to be protected from employment discrimination and unfair work practices under Title VII.

The Neighborhood Congestion. Oscar Martinez resides in Chelsea, Kensington, and owns a portion of land near the University of Kensington. R. at 5. Oscar's property contains his residential home and is in a neighborhood directly behind the University's football stadium. *Id*. The stadium's maximum capacity seats 98,501 people. *Id*.

Because of the University football team's popularity, the area around the stadium became very congested on game days. *Id*. Kensington commissioned the University to conduct a study and make recommendations for solutions to alleviate the congestion so the University could provide pedestrians with a safe route to the stadium. *Id*. After the study was completed, Kensington adopted a plan that included shuttle bus routes, a new parking lot, rideshare lanes, and a 20–foot–wide pedestrian path to the stadium. *Id*. Thus, Public Act 16-0337, also known as the "Lions Stadium Congestion Relief Act," was born. *Id*.

The Lions Stadium Congestion Relief Act. Specifically, the Act applies to Section 12 of the Southwest quarter of Windsor County, which contains 60 acres of land on Lots 6 and 7. *Id*. Oscar's land is within Lot 6. R. at 7. The statute provides that the half–mile long pedestrian path will be placed where Lots 6 and 7 adjoin and will use "five feet of the easternmost part of Lot 6 and 15

feet of the westernmost part of Lot 7." R. at 6. Additionally, the Act states that "all affected property owners" will "receive compensation in the amount of $5,000." *Id.* Furthermore, Kensington's eminent domain laws allow property owners to bring inverse condemnation suits to obtain compensation for legislative takings. R. at 3.

Soon after the Act's enactment, Oscar received a check for $5,000 titled "Compensation under Public Act 16-0337." R. at 6. Oscar did not understand what the check was for and cashed it, thinking it was his "lucky day." *Id.* About one week after Oscar cashed the check, city workers mapped out five feet along the eastern side of his property, 15 feet on western side of the other property, and created the cement path. *Id.* Although all owners were paid $5,000, this land is worth at least $500,000. R. at 9.

Oscar's Personal Life and Subsequent Termination. Oscar is a homosexual male and has learned to celebrate that fact rather than hide it. R. at 6. After this Court decided *Obergefell v. Hodges* in 2015, Oscar and his lifelong partner became the first legally recognized same sex marriage in Kensington, and the wedding was featured in one of Kensington's local newspapers. R. at 7. Additionally, when Oscar and his husband are not working, the couple generously dedicates their time to The Kensington Center, a local LGBTQ community-outreach program that provides low-cost health services to women and LGBTQ youth. R. at 7.

Although Oscar has a passion for volunteering with The Kensington Center and helping other LGBTQ members of the community, Oscar has another passion—teaching. *Id.* Oscar taught business accounting at the University of Kensington for six years. *Id.* Oscar was always prepared for class, gave his students very fair exams, and was always available to students via office hours. *Id.* As expected, Oscar consistently received glowing evaluations and praise from his students,

colleagues, and supervisors. *Id*. Oscar's passion for teaching showed. However, Oscar's relationship with his students and colleagues deteriorated shortly after his marriage. *Id*.

In celebration of Pride month and the recent *Obergefell* decision, Oscar rotated pictures of historic LGBTQ figures outside of his classroom. *Id*. Oscar also displayed various pictures of himself and his husband inside his office. R. at 8. One particular photo depicted the couple kissing under the Eiffel Tower on their honeymoon. *Id.*

Oscar began to feel pressure and unacceptance from the University when two students complained to Oscar's department chair about the public display of historic LGBTQ figures outside Oscar's classroom. R. at 7. Because the display made the students feel "uncomfortable" and the students viewed the display as an "open celebration" of Oscar's "homosexual identity," Oscar's complied with his department chair's request to take down the pictures. *Id*. Students attending Oscar's office hours also complained about Oscar's family pictures, stating Oscar's "open display of his homosexuality made them uncomfortable." R. at 8. Additionally, several of Oscar's colleagues complained that Oscar's frequent discussions about his volunteer work and recent honeymoon constituted "unnecessary homosexual activism" which was "detrimental to their work environment." *Id*.

The department chair called Oscar in for a meeting and asked Oscar to take down the pictures of Oscar and his husband and to keep his discussions with faculty limited to work-related topics only. *Id*. Because Oscar felt proud of his marriage and volunteerism, he explained these topics were very important to him. *Id*. Oscar stated that he did not believe he could comply with the University's request to remain silent and never speak of his personal life to anyone. *Id*. Oscar Martinez was then terminated. *Id*.

II. NATURE OF THE PROCEEDINGS

State and District Court Proceedings. Oscar first sued Kensington in state court, seeking declaratory judgment and injunctive relief barring enforcement of Public Act 16-0337. R. at 2. The court denied this relief. *Id.* Subsequently, Oscar filed a two-count § 1983 action against Kensington[1] in the United States District Court for the Northern District of Kensington. R. at 2, 8. In his complaint, Oscar sought declaratory and injunctive relief from the Act because it unconstitutionally violates the Fifth Amendment. R. at 3, 9. Additionally, Oscar sought protection under Title VII of the Civil Rights Act of 1964 because he was unlawfully terminated solely due to his sexual orientation, which is protected under Title VII's term "sex." R. at 2, 8. Kensington filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Oscar's suit, and the district court granted that motion on both grounds. R. at 2–3.

Court of Appeals Proceedings. Oscar appealed to the United States Court of Appeals for the Thirteenth Circuit. R. at 10. A divided panel affirmed the lower court's dismissal of Oscar's eminent domain claim and reversed the lower court's dismissal of the Title VII claim. R. at 10. The panel applied *Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City* to Oscar's eminent domain claim and found the claim unripe for review since Oscar did not seek compensation via an inverse condemnation suit prior to filing the claim. R. at 12. Additionally, the panel looked at Title VII and found that Title VII protects against "sexual orientation" discrimination under the term "sex" and remanded the claim to the district court. R. at 19. Judge Sandberg concurred with the eminent domain claim and dissented on the Title VII claim. R. at 20–25.

[1] Petitioner originally included various University officials in this suit as defendants, who were all indemnified by Respondent.

SUMMARY OF THE ARGUMENT

I.

This Court should reverse the Thirteenth Circuit's dismissal of Petitioner's eminent domain claim. The Thirteenth Circuit erred in applying *Williamson County*'s "ripeness doctrine" to Petitioner's claim because *Williamson County* only applies to as-applied claims asserting a Takings Clause violation. Petitioner asserts a facial challenge to Respondent's Act because the Act arbitrarily violates the Due Process Clause. Because facial challenges implicate the Due Process Clause and challenge the underlying validity of a state law, facial challenges are ripe for review when the challenged law is enacted. Here, the Act exercised a specific piece of land and designated a specific dollar amount for each individual effected without regard to the land's market value or size of land the Act took from each person affected. R. at 5–6. Therefore, Petitioner can effectively demonstrate to this Court that the Act, the moment it was enacted, unconstitutionally violated the rights of every private landowner affected by the law. Because the remedy for facial challenges is declarative relief stating that the law is unconstitutional on its face and requiring the state legislature to correct the unconstitutionality of the law, requiring Petitioner to adhere to an inverse condemnation suit would be futile and not remedy the substance of Petitioner's claim. As such, the lower courts incorrectly applied *Williamson County* to Petitioner's claim.

II.

This Court should affirm the Thirteenth Circuit's holding that Title VII bars discrimination based on sexual orientation. Title VII prohibits discrimination based on "race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a)(1). Title VII bars discrimination against sexual orientation because it falls under Title VII's term "sex." Title VII's text, original purpose, and

Congress's intent when enacting the statute supports this determination. The Equal Employment Opportunity Commission has also recently determined that Title VII protects against sexual orientation discrimination. Additionally, the definition of "sexual orientation" and "homosexuality" shows that sexual orientation is an inextricable function of "sex." A person cannot be homosexual without considering the person's own sex. Using different methods of determining whether Title VII prohibits against specific discrimination shows that sexual orientation falls under the term "sex" and is covered under Title VII. This Court has historically held that an employee of one particular race will be covered under Title VII if an employer discriminates against a person's race in which the employee associates with. Sex is no different. This Court should hold that Petitioner has a cause of action under Title VII because Petitioner was terminated solely based on his sexual orientation.

ARGUMENT AND AUTHORITIES

This appeal implicates legal questions involving the constitutionality of a state statute and the statutory interpretation of federal law. The standard of review involving challenges to the constitutionality of a state statute involves reviewing the conclusions of law de novo. *Utah v. Babbitt*, 53 F.3d 1145, 1150 (10th Cir. 1995). Additionally, the standard of review involving a federal court's statutory interpretation of Title VII is de novo. *Kremer v. Chem. Const. Corp*., 456 U.S. 461, 469–470 (1982); *United States v. Moss*, 872 F.3d 304, 308 (5th Cir. 2017).

I. WILLIAMSON COUNTY'S "RIPENESS DOCTRINE" DOES NOT BAR REVIEW OF PETITIONER'S TAKINGS CLAIM ASSERTING AN ACT CAUSES AN UNCONSTITUTIONAL TAKING ON ITS FACE BECAUSE PETITIONER'S CLAIM ASSERTS A FACIAL CHALLENGE, WHICH IS EXEMPT FROM WILLIAMSON COUNTY'S APPLICATION.

Petitioner's first claim focuses on the Takings Clause of the Fifth Amendment, which provides: "[N]or shall private property be taken for public use, without just compensation." U.S.

Const. amend. V. Through the doctrine of incorporation, the Fifth Amendment applies to all States via Section 1 of the Fourteenth Amendment, which states: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §1.

Because Article III of the Constitution limits judicial power to "cases and controversies" and courts wish to prevent themselves from "entangling [] in abstract disagreements over administrative policies," courts adhere to constitutional and prudential ripeness doctrines before adjudicating a case on the merits. *See Abbott Labs. v. Gardner*, 137 U.S. 136, 148 (1977). Generally, a takings claim ripens when "an administrative decision has been formalized" and the challenging parties feel the decision's effect in a concrete way. *Nat'l Park Hospitality Ass'n v. DOI*, 538 U.S. 803, 807–808 (2003). However, this Court established a special ripeness doctrine to determine when a takings claim alleging a violation of the Takings Clause is ripe for review. *See Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 185–86 (1985). Before these takings claims can be adjudicated on the merits, *Williamson County*'s "ripeness doctrine" requires: 1) a final decision from a government entity on how the challenged regulation will be applied to the claimant's property; and 2) the claimant must seek compensation through state procedures. *Id*. at 186, 194.

The issue before the Court is whether *Williamson County*'s "ripeness doctrine" applies to takings claims asserting a law causes an unconstitutional taking on its face. R. at 4, 26. The lower courts erroneously applied *Williamson County*'s "ripeness doctrine" to Petitioner's claim and dismissed it as unripe since Petitioner did not seek compensation through Kensington's inverse condemnation procedures prior to bringing the claim. R. at 3, 14. However, this Court's precedent establishes that facial challenges to the validity of a taking are not subject to *Williamson County*'s "ripeness doctrine" because facial challenges ripen when the challenged law is enacted. *Suitum v.*

Tahoe Reg'l Planning Agency, 520 U.S. 725, 736 n.10 (1997). Petitioner's claim asserts a facial challenge that Respondent's Act violates the Due Process Clause, mandating an unconstitutional taking on its face. R. at 4, 8–9. This questions the validity of the Act itself and does not focus on Petitioner's own property, nor does it focus on the compensation Petitioner received. As such, Petitioner seeks declaratory and injunctive relief to invalidate the Act as it is written. R. at 2. Thus, Petitioner's claim is not subject to *Williamson County*'s "ripeness doctrine" and requiring Petitioner to initiate an inverse condemnation suit before filing this § 1983 action would be futile. This Court should reverse the Thirteenth Circuit's dismissal of Petitioner's eminent domain claim and remand this case to be heard on the merits.

A. *Williamson County*'s "Ripeness Doctrine" Does Not Bar Review of Petitioner's Claim Because This Doctrine Only Applies to As-Applied Takings Claims.

As a threshold matter, *Williamson County*'s "ripeness doctrine" does not bar review of Petitioner's claim because this doctrine solely applies to as-applied takings challenges asserting a violation of the Takings Clause. Petitioner raises a facial challenge, which is not subject to *Williamson County*'s "ripeness doctrine." The distinction between as-applied challenges and facial challenges is critical but often confused. However, "[i]n determining whether a challenge is facial or as-applied, '[t]he label is not what matters.'" *Int'l Union of Operating Eng'rs Local 139 v. Schimel*, 863 F.3d 674, 678 (7th Cir. 2017) (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010)). Rather, the focus is on the claim's substance and requested relief. *Schimel*, 863 F.3d at 678.

1. An as-applied challenge asserting a Takings Clause violation focuses solely on a state law or decision as applied to the claimant and does not focus on the underlying validity of the taking itself.

A claimant raising an as-applied challenge under the Fifth Amendment's Takings Clause objects to a state's valid exercise of eminent domain by asserting that a state law or decision has unconstitutionally affected the particular claimant. *See Williamson County*, 473 U.S. at 191 n.12. Specifically, an as-applied challenge implicating the Takings Clause involves "the particular impact of government action on a *specific* piece of property" and seeks relief in "the payment of just compensation" or an injunction to stop the government from validly taking the claimant's property. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 494 (1987) (emphasis added). An as-applied challenge focuses on the impact of a state law, regulation, or decision as it applies to the *particular* claimant and does not object to the constitutionality, or the validity, of the underlying state action or law. *E. Enters v. Apfel*, 524 U.S. 498, 538 (1998). Said differently, because the claimant does not object to the government law instituting the taking, the claimant objects to the way the law or decision applies to the claimant.

This Court, in *Williamson County*, dealt solely with an as-applied challenge and crafted its ripeness rule around that claim. The issue in front of the Court was whether the government should compensate a landowner for a temporary regulatory taking. *Williamson County*, 473 U.S. at 175. Specifically, respondent applied to the Commission for an approval to develop a tract of land. *Id*. at 179. Due to zoning ordinances, the Commission denied the approval. *Id*. at 181-82. Although respondent could have applied for a variance that might have allowed for the development, respondent refused to do so and sued the Commission for compensation under the Fifth Amendment's Takings Clause. *Id*. at 175, 188. Rather than deciding the issue on the merits, the Court found respondent's claim unripe because respondent had "not yet obtained a final decision

regarding how it [would] be allowed to develop its property." *Id*. at 190. The Court also found respondent's claim unripe because it did not "seek compensation through the procedures the State ha[d] provided for doing so." *Id*. at 194. In formulating this second prong, the Court reasoned that "[i]f the government has provided an adequate process for obtaining compensation, and if resort to that process '[yields] just compensation,' then the property owner 'has no claim against the Government' for a taking." Id. at 194–95 (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1013, 1018, n. 21 (1984)).

The Takings Clause of the Fifth Amendment does not bar the government from taking private property for public use. *Lingle v. Chevron*, 544 U.S. 528, 536 (2005). Rather, it places a condition on exercising the government's power by securing compensation for taking private property. *Id*. at 537. An unconstitutional taking occurs when government action constitutes an invalid exercise of eminent domain or the government denies an individual just compensation when taking his property. *See Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 123–24 (1978). An as-applied claim or challenge implicates the latter.

Williamson County strictly applies to as-applied challenges sounding under the Takings Clause, a view entirely consistent with this Court's precedent. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) (applying *Williamson County*'s "ripeness doctrine" to an as-applied challenge); *see generally First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 308 (1987) (deciding an as-applied taking challenge on the merits after noting that the landowner initiated an inverse condemnation action prior to suing); *Yee v. City of Escondido*, 503 U.S. 519, 533–34 (1992) ("While . . . a claim that the [Act] effects a [] taking *as applied* to petitioners' property would be unripe [under *Williamson County*'s "ripeness doctrine"] . . . petitioners mount a *facial* challenge to the [Act].").

This view is consistently applied by the lower circuits. For example, the Thirteenth Circuit noted that "the First, Seventh, and Tenth Circuits all adhere to *Williamson County*'s state court exhaustion requirement. . ." R. at 13. After looking at the substance of the claim and the relief always requested, each case involves an as-applied takings claim that does not object to the validity of a state law. Rather, these claims involve a suit for property or just compensation, regardless of how the claimant labeled its claim. *See Downing/Salt Pond Partners, L.P. v. Rhode Island and Providence Plantations*, 643 F.3d 16, 17-18 (1st Cir. 2011) (as-applied challenge to a land use regulation's effect on claimant's land where claimant took no issue with the validity of the law on its face and sued for just compensation damages); *Forseth v. Vill. Of Sussex*, 199 F.3d 363, 366–68 (7th Cir. 2000) (as-applied challenge regarding government's decision as per landowner's property where claimant took no issue with the validity of the law on its face and sought just compensation damages); *River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 165–66 (7th Cir. 1994) (as-applied challenge regarding a zoning application for claimant's property where claimant took no issue with the validity of the zoning law on its face); *J.B. Ranch, Inc. v. Grand Cnty*, 958 F.2d 306, 308 (10th Cir. 1992) (as-applied challenge to a law's effect on claimant's property where claimant took no issue with the validity of the law itself and the requested relief was pure title to property); *Cnty Concrete Corp. v. Twp. Of Roxbury*, 442 F.3d 159, 168 (3rd Cir. 2006) (as-applied challenge to a zoning ordinance where claimant took no issue with the validity of the particular ordinance and sued for just compensation.).

2. Regardless of how a claim is characterized, a claim asserting a violation of the Takings Clause is an as-applied claim subject to *Williamson County's* "ripeness doctrine".

A "facial taking" claim is not a facial constitutional challenge. Rather, this claim asserts that a law, on its face, constitutes a taking of property either physically or regulatorily but has no issue

with the validity of the law other than the fact that the law took the claimant's property on its face.[2] Because the law effectuates a taking on its face, many plaintiffs challenge the law's "validity" under the Takings Clause by attempting to sue directly in federal court for just compensation or the return of their particular property. This is not a true facial challenge, and courts consistently hold that *Williamson County* applies to these claims. *See E. Enters v. Apfel*, 524 U.S. at 545 ("The Takings Clause . . . operates as a conditional limitation, permitting the government to do what it wants so long as it pays the charge. The Clause presupposes what the government intends to do is otherwise constitutional.").

Although a claimant asserts that a state law takes property on its face, the relief requested in a "facial taking" claim is either the return of property or just compensation, which solely affects the individual claimant—not others also affected by the law. Additionally, this requested relief does not remedy the law on its face. The remedy does not seek to have the law changed, nor does it require the law to be rewritten in a constitutional manner. This is because these "facial taking" claims do not relate to the underlying validity of the state law. Aside from the state law merely implicating the Takings Clause by authorizing a valid exercise of its eminent domain power, this claim does not assert that the taking would otherwise be invalid. The rationale is simple—*these claims are as-applied challenges*. And as stated above and held by this Court, *Williamson County* applies to as-applied takings challenges.

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[2] *Lingle*, 544 U.S. at 543 (Noting that facial challenges to a "regulation's underlying validity . . . [are] . . . distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose. The Clause expressly requires compensation where government takes private property '*for public use*.' It does not bar government from interfering with property rights, but rather requires compensation 'in the event of *otherwise proper inference* amounting to a taking.'"); *see also Knick v. Township of Scott*, 862 F.3d 310, 324 (2017).

This Court has already noted that the Fifth Amendment "does not require that just compensation be paid in advance of or even contemporaneously with the taking." *Preseault v. ICC*, 494 U.S. 1, 11 (1990). A taking is not unconstitutional so long as the government provides a reasonable, adequate method for obtaining compensation. *See Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 297 n.40 (1981); *Williamson County*, 473 U.S. at 194–95; *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2432 (2015) (stating that the U.S. Government did not effectuate a taking unless it denied the claimant just compensation, and the claimant could seek just compensation under the Tucker Act in the Federal Court of Claims.). Therefore, a "facial taking" claim asserts no *unconstitutional* taking. It merely asserts the right of an individual to be justly compensated, which may be obtained from an inverse condemnation procedure. *Williamson County*, 473 U.S. at 196–97. This rationale is clear—a court cannot determine whether the enforcement of a law unconstitutionally violates the Takings Clause in relation to a *particular individual* without knowing how much compensation the state will pay an individual for the taking. Regardless of how a claimant characterizes its claim, a claim that requires showing discretionary application to a particular individual's case is an as-applied challenge subject to *Williamson County* because courts cannot adequately determine whether the state itself effectuated an unconstitutional taking until the state denies the claimant just compensation.

The Thirteenth Circuit incorrectly noted a circuit split on *Williamson County*'s application to substantive and procedural due process challenges. R. at 13. There is not. Rather, these circuits—and the every other circuit—apply *Williamson County* to as-applied takings challenges *only*. This Court has never allowed *Williamson County* to apply to facial challenges. Rather, in each of these cases, petitioners simply "recasted" their takings claims under a different label, but the claim's substance and the relief requested sounded under the Fifth Amendment's Takings

Clause. *See Deniz v. Mun'y of Guaynabo*, 285 F.3d 142 (1st Cir. 2002) (as-applied challenge not based on law's validity and court stated that claimant could not recast a mere Takings Clause claim under due process); *Wilkins v. Daniels*, 744 F.3d 409, 417 (6th Cir. 2014) (applying *Williamson County* to Takings Clause challenge and rejecting plaintiffs' attempt to recharacterize the claim as a facial challenge); *Ventura Mobilehome Communities Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046, 1053 (9th Cir. 2004) (applying *Williamson County* to a facial takings claim because the plaintiff sought a claim for damages and not to invalidate the law or adjudicate its constitutionality); *but also see Cnty Concrete Corp. v. Twp. Of Roxbury*, 442 F.3d at 168–69 (holding facial substantive due process challenge based on arbitrary and capricious state action not subject to *Williamson County*'s "ripeness doctrine" because it implicated the Due Process Clause.). Facial challenges arising under the Due Process Clause are claims based on arbitrary, irrational governmental action when enacting or enforcing a law, not claims for just compensation or property due to a valid exercise of eminent domain . *See Pennell v. San Jose*, 485 U.S. 1, 12 (1988).

Petitioner raises a facial challenge to Public Act 16-0337 about the underlying validity and constitutionality of the Act itself, not an as-applied challenge. Petitioner's claim implicates the Takings Clause solely because Respondent's Act *unconstitutionally* effectuated an exercise of its eminent domain power. The substance of Petitioner's claim is a facial challenge to the validity of Respondent's Act on its face. Respondent's Act effectuated an unconstitutional taking because the face of the Act arbitrarily violates the Due Process Clause and, through the Due Process Clause, violates the Takings Clause because it allows an unconstitutional taking of property. Petitioner's takings claim is not specific to his particular property, and his requested relief is not "just" compensation or the return of his property. R. at 2. Rather, Petitioner filed this § 1983 suit seeking declaratory and injunctive relief to invalidate Public Act 16-0337 as it is written, not compensation

or a return of Petitioner's property. R. at 2. Petitioner's takings claim is not an as-applied claim, and Petitioner is not raising an as-applied challenge to Respondent's Act. Thus, *Williamson County* does not bar Petitioner's eminent domain claim from proceeding on the merits. *Williamson County* should not be applied to Petitioner's eminent domain claim because Petitioner's claim is not an as-applied takings claim. Therefore, this Court should reverse the Thirteenth Circuit's holding and remand Petitioner's § 1983 claim to be heard on the merits without applying *Williamson County* to this claim.

B. *Williamson County*'s "Ripeness Doctrine" Does Not Bar Review of Petitioner's Claim Because Facial Challenges Are Ripe For Review When a Law is Enacted.

The lower courts erred in applying *Williamson County*'s "ripeness doctrine" to Petitioner's claim, and their dismissals contradict this Court's precedent. *Williamson* County's "ripeness doctrine" does not bar review of Petitioner's takings claim because Petitioner raised a facial challenge as to the Act's validity. Petitioner challenged the validity of Public Act 16-0337 because it caused an unconstitutional taking on its face in violation of the Due Process Clause. Respondent's Act effectuated an unconstitutional taking the moment it was enacted because the law, on its face, arbitrarily violates the Fifth Amendment's Due Process Clause.

1. Facial challenges are ripe for review when the challenged law is enacted because facial challenges focus on the underlying validity of a state law that effectuated a taking.

Facial challenges involve the unconstitutionality of a law as it is written or enforced, asserting the unconstitutionality of a state law regarding every person the law affects, not just the particular claimant. *United States v. Salerno*, 481 U.S. 739, 745 (1987). By asserting a true facial challenge, one also asserts that "no set of circumstances exists under which the Act would be valid." *Id.* In other words, a facial challenge to the validity of a state law argues that the law is void

on its face because it violates the Constitution in any application. *Id.* Thus, facial takings challenges are ripe for review when the challenged law is enacted because courts can look at the law on its face to determine whether it violates the Due Process Clause. *Lingle*, 544 U.S. at 543 (stating that whether a law is constitutionally valid is answered by invoking the Due Process Clause and Public Use Clause, not the Just Compensation Clause); *see also Suitum*, 520 U.S. at 736 n.10; *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 338 (2005).

Petitioner's argument that facial challenges are ripe for review when the challenged law is enacted entirely follows this Court's prior holdings. This Court's precedent follows allowing petitioners to directly assert takings claims involving facial challenges in federal court. *See e.g.*, *Hodel*, 452 U.S. at 264 (facial challenge regarding whether a governmental action constitutes a taking raised directly in federal court); *Lingle*, 544 U.S. at 543 (stating *Williamson County*'s state compensation requirement would not apply to determining whether a governmental action fails to meet the "public use" requirement); *San Remo*, 545 U.S. at 344–45 (stating that petitioner could always assert a facial challenge directly in federal court); *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 318, 320 (2002) (reviewing a facial challenge on the merits without applying *Williamson County*). In *Yee v. City of Escondido*, this Court also held that petitioner's claim was ripe for review because it involved a facial challenge to the ordinance. 503 U.S. at 534 ("As this allegation does not depend on the extent to which petitioners are deprived of the economic use of their particular pieces of property or to the extent to which these particular petitioners are compensated, petitioners' facial challenge is ripe."). Additionally, *Nollan* and *Dolan* involved facial challenges relating to land-use exactions that implicated the Due Process Clause, were not based on compensation, and were able to asserted directly in federal court. *See*

Nollan v. Cal. Coastal Com., 483 U.S. 828 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 379–380 (1994).

Looking at the substance and requested relief of Petitioner's claim shows why Petitioner's, and other correctly asserted facial challenges, are not subject to *Williamson County*'s "ripeness doctrine." First, Respondent made a final decision regarding the property used for the sidewalk. Respondent's Act states the specific property affected by the Act, and Respondent made a final decision about the project by bulldozing the land and paving the sidewalk. R. at 6. *Williamson County*'s first prong is met. Second, Petitioner is not requesting relief in just compensation or property. R. at 2. Petitioner is challenging the constitutionality of the Act on its face under the Due Process Clause and seeking declaratory and injunctive relief. R. at 2; *Lingle*, 544 U.S. at 544 ("[Petitioner] plainly does not seek compensation for a taking of its property… but rather an injunction against the enforcement of a regulation that it alleges to be fundamentally arbitrary and irrational.") If an Act or law is impermissible because it is "so arbitrary as to violate due process—that is the end of the inquiry. No amount of compensation can authorize such action." *Id*. at 543. Requiring Petitioner to adhere to *Williamson County*'s "ripeness doctrine" and file an inverse condemnation suit before hearing his case would be futile. Additionally, an inverse condemnation suit would not remedy Petitioner's facial challenge. An inverse condemnation suit would only remedy Petitioner financially and not every person the Act affects. Furthermore, an inverse condemnation suit would not require the state legislature to correct the law as it is written, on its face. Thus, this Court should declare *Williamson County*'s "ripeness doctrine" inapplicable to facial challenges and explain the applicability of *Williamson County* to Takings Clause claims.

2. Petitioner's claim adequately asserts a facial challenge under the Fifth Amendment's Due Process Clause because Petitioner's claim focuses on the validity of the Act and not taking Petitioner's property or the compensation Petitioner received.

Petitioner's takings claim, that the Act caused an unconstitutional taking on its face, asserts an adequate facial challenge under the Due Process Clause. This challenge focuses on the underlying validity of the Act and effectively claims that the taking itself cannot be constitutional under any circumstances. *Lingle*, 544 U.S. at 543. For a taking to unconstitutionally violate the Due Process Clause, it must be "clearly arbitrary." *Vill. Of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926). The Act caused an unconstitutional taking on its face in violation of the Due Process Clause and the Takings Clause because it authorizes land to be taken and assigns an arbitrary, standard dollar amount to the property owners' land without regard to the market value or size of the plots of each individual the Act affected. R. at 6.

Specifically, the Act states, "all affected property owners [will] receive compensation in the amount of $5,000." R. at 6. However, the path's land was worth around $500,000, and the path was only half a mile long. *Id*. at 6, 9. Additionally, the Act "will utilize five feet of the easternmost part of Lot 6 and 15 feet of the westernmost part of Lot 7." R. at 6. The Act is "unjust" in the sense it arbitrarily takes less of one owner's land but pays him the same dollar amount as another. The Act assigns an arbitrary dollar amount to each individual and does not consider the market value, size of the land it is taking from the individual, etc. Thus, Petitioner objects to the Act on its face and asserts that the Act invalidly effectuated an unconstitutional taking of Petitioner's property without "just" compensation. This facial challenge implicates the Due Process Clause, and the Takings Clause. As such, Petitioner's facial challenge was ripe the moment the Act was enacted. *See Knick v. Twp. Of Scott*, 862 F.3d 310, 325 (3rd Cir. 2017) ("When a party challenges the

fundamental validity of a law . . . there is no reason to wait for compensation to be denied; the constitutional violation would occur at the moment the invalid statute or regulation becomes effective."); *see also San Remo*, 545 U.S. at 338 (stating petitioners were never required to ripen their facial challenges via *Williamson County* and could have brought them directly in federal court.).

Because of the argument above, Petitioner's claim solely asserts a facial challenge to the validity of the Act. As such, the lower courts erred in applying *Williamson County* to Petitioner's claim. This Court should reverse the lower court's judgment of Petitioner's eminent domain claim and remand the claim to be heard on the merits.

II. TITLE VII BARS DISCRIMINATION BASED ON A PERSON'S SEXUAL ORIENTATION BECAUSE "SEXUAL ORIENTATION" IS ENCOMPASSED IN THE TERM "SEX."

Petitioner's second claim focuses on Title VII of the Civil Rights Act of 1964, which provides: "It shall be an unlawful employment practice for an employer to . . . discharge any individual, or otherwise discriminate against any individual[,] . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Respondent terminated and discriminated against Petitioner based on his sexual orientation. R. at 2, 8. Specifically, Respondent maintains that Title VII permits discrimination based on sexual orientation. R. at 9–10. It does not.

The issue before this Court is whether Title VII's protection against sexual discrimination extends to discrimination based on an individual's sexual orientation so Petitioner may maintain a cause of action under Title VII. This Court should hold Title VII prohibits discrimination based on sexual orientation for three reasons: First, Title VII's plain language, its statutory purpose, and this country's legislative and judicial history support Petitioner's position that Title VII prohibits

discrimination based on sexual orientation. Second, sexual orientation is an inextricable subset and function of sex, which Title VII undoubtedly protects. Third, Title VII bars discrimination against an employee based on the gender of an individual the employee associates with.

A. Title VII's Plain Language, Its Statutory Purpose, and This Country's Legislative and Judicial History Support a Broad Interpretation That Title VII Bars Discrimination Against Sexual Orientation.

Similar to the once radical view of same-sex marriage, there is a clear divide among states regarding sexual orientation discrimination, which requires intervention by the judiciary to ensure that fundamental rights and civil liberties are afforded to all American citizens—not just select classes.[3] This Court now can remedy this divide and declare this form of discrimination protected under Title VII. If this Court so chooses, its act would follow Congress's intent when enacting Title VII.

In 1964, Congress enacted Title VII to create an inclusive and equal employment environment for all. Congress's main objective for Title VII was to dismantle discriminatory barriers favoring one group of employees over another.[4] Congress's intent was not to create an exhaustive list that excluded minority individuals from protection simply because an individual did not conform to a subtle, semantical definition of one of Title VII's terms. Rather, Congress indicated that a "broad approach" to the definition of "equal employment opportunity" is essential in overcoming and undoing the effects of past discrimination. S. Rep. No. 867 (1964); *McDonnell*

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[3] Currently, states afford inadequate protection against sexual orientation discrimination. *See Hively v. Ivy Tech Cmty. Coll.*, 830 F.3d 698, 714–15 (7th Cir. 2016). (Alabama, Alaska, Arkansas, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming.).

[4] *See* H.R. Rep. No. 914 (1963), *reprinted in* 1964 U.S.C.C.A.N. 2391, 2401; *Griggs v. Duke Power Co.*, 401 U.S. 424, 429–30 (1971); *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 768 n.28 (1976).

Douglas Corp. v. Green, 411 U.S. 972, 800 (1973). In the 1964 Congressional Record, "the very purpose of Title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race. . ." sex, or other classes. 110 Cong. Rec. 7247 (1964). An employer's actions should remain consistently correlated with an employee's job qualifications and performance, and if an employer should otherwise deviate from those standards and engage in discriminatory practices, it should be held accountable.

As often the case with statutory interpretation, the outcome hinges on interpreting one word—"sex." Congress has clarified that a broad approach to statutory interpretation is necessary. *Washington v. Gunther*, 452 U.S. 161, 178 (1981). This Court and the Equal Employment Opportunity Commission ("EEOC") have historically expanded Title VII's interpretation to conform with societal changes. This Court's long history of broadening Title VII, paired with Congress's original purpose and the EEOC's recent determination that "sex" encompasses the term "sexual orientation," provides clear guidance that Title VII bars discrimination based on sexual orientation. This Court should so hold.

1. The Equal Employment Opportunity Commission's interpretation of Title VII to include sexual orientation discrimination should be given substantial deference.

The EEOC is charged by Congress with interpreting, administering, and enforcing Title VII. 42 U.S.C. §§ 2000e. Recently, in *Baldwin v. Foxx*, the EEOC determined that the term "sex" encompasses "sexual orientation" under Title VII. EEOC Appeal No. 0120133080, 2015 WL 4397641 (July 15, 2015) ("Sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex."). In *Baldwin*, an air traffic controller was denied permanent employment due to his sexual orientation. *Id*. at *2. During the selection process, Baldwin's supervisor "made several negative comments

about [Baldwin's] sexual orientation." *Id.* at *3. The EEOC stated in its opinion, "Title VII's prohibition of sex discrimination means that employers may not 'rel[y] upon sex-based considerations' or take gender into account when making employment decisions.'" *Id.* at *11 (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239, 241–42 (1989)). Additionally, the EEOC stated that sexual discrimination is "premised on sex-based preferences, assumptions, expectations, stereotypes, or norms" and, conceptually, sexual orientation "cannot be defined or understood without reference to sex. *Id.* at *13.

The EEOC further explained how it determined whether sex discrimination encompassed sexual orientation discrimination:

> When an employee raises a claim of sexual orientation discrimination as sex discrimination under Title VII, the question is not whether sexual orientation is explicitly listed in Title VII as a prohibited basis for employment actions. It is not. Rather, the question for purposes of Title VII coverage of a sexual orientation claim is the same as any other Title VII case involving allegations of sex discrimination—whether the agency has 'relied on sex-based considerations' or 'take[n] gender into account' when taking the challenged employment action.

Id. The EEOC concluded that "sexual orientation is inherently a 'sex-based consideration,' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII." *Id.* at *13. Therefore, just as discrimination based on gender, gender stereotypes, or any other term held to be included under the term "sex," sexual orientation is now another "sex-based consideration." *Id.*

This Court held that the EEOC's interpretation of Title VII is to be afforded great deference. *Griggs*, 401 U.S. at 434 (1971). Congress charged the EEOC with the task of interpreting Title VII, and, as a result, this Court should acknowledge the EEOC's determination regarding the inclusion of sexual orientation under the term "sex."

2. This Court has historically broadened Title VII's terms to include subsets and variations of discrimination based on those terms.

This Court has acknowledged Congress's intent to interpret the term "sex" in Title VII broadly. *City of L.A. Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978) ("In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."). Since this acknowledgement, this Court has continued to broaden Title VII. In the years following Title VII's enactment, this Court has expanded the statutory interpretation of sex multiple times to prevent discrimination.[5] This Court has also recognized, when extending Title VII protection to certain discriminatory practices, these practices were not necessarily the "principal evil" Congress had in mind when enacting Title VII but has extended Title VII protection because "statutory provisions often go beyond the principal evil to cover reasonably comparable evils." *Oncale v. Sundowner*, 523 U.S. 75, 79 (1998). In interpreting a statute, the "provisions of our laws rather than the principal concerns of our legislators" act as the guidepost for what governs the Court's deference. *Id*; *Price Waterhouse*, 490 U.S. at 241 ("We need not leave our common sense at the doorstep when we interpret a statute.").

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[5] Title VII protects individuals from sex discrimination based on: sex-differentiated employment plan contributions, *Manhart*, 435 U.S. at 704, 722 (holding a city requirement that forced female employees to make 14.84% higher contributions to their retirement plans than males as discriminatory under Title VII); unequal gender-based pay, *Gunther*, 452 U.S. at 163–64, 181 (holding female workers not precluded under Title VII from suing an employer to protest discriminatory compensation practices); unequal medical coverage, *Newport News Shipbuilding Dry Dock Co. v. EEOC*, 462 U.S. 669, 679 (1983) (holding that providing unequal insurance coverage to male and female employees violates Title VII even if it benefits women); sexual harassment, *Meritor v. Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 73 (1986) (holding Title VII prohibits sexual harassment); good faith desire to protect a certain gender, *Abbott v. Johnson Controls*, 499 U.S. 187, 191 (1991) (holding a policy preventing all female employees, except unfertile employees, from working in jobs that exposed them to lead was facially discriminatory on the basis of sex); gender stereotypes, *Price Waterhouse*, 490 U.S. at 231, 258 (holding that Title VII barred considering gender in employment decisions); same-sex sexual harassment, *Oncale v. Sundowner*, 523 U.S. 75, 82 (1998) (holding Title VII bars same-sex sexual harassment).

Because this Court interprets Title VII's specific terms under a broad scope, it has diminished discrimination in the workplace for many types, classes, and characteristics of people. This Court has also instructed other courts to "avoid interpretations of Title VII that deprive victims of discrimination of a remedy, without clear congressional mandate." *Gunther*, 452 U.S. at 178. This case simply represents the next logical step in the progression of "sex-based considerations" that should be repudiated from the workplace. As Justice Harlan stated, the law "neither knows nor tolerates classes among citizens." *Romer v. Evans*, 517 U.S. 620, 623 (1996) (citing *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896)). The opinions by this Court, coupled with statements from Congress and the EEOC, provide a clear rationale to expand "sex" to include "sexual orientation" under Title VII. To reject "sexual orientation" from being encompassed under the term "sex" would affirm the discriminatory treatment of an entire class of individuals in the workplace. However, providing individuals with an equal opportunity to pursue employment is a noble endeavor and one that, today, requires affirmation.

B. Title VII Bars Discrimination Against Sexual Orientation Because Sexual Orientation is an Inescapable Function of "Sex"—But For Petitioner's Sex, Discrimination Would Not Have Taken Place.

Title VII bars discrimination based on sexual orientation because sexual orientation is an inextricable function of sex. "The term 'sexual orientation' refers to '[a] person's predisposition or inclination toward sexual activity or behavior with other males or females' and is commonly categorized as 'heterosexuality, homosexuality, or bisexuality.'" *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 113 (2nd Cir. 2018) (citing *Sexual Orientation*, Black's Law Dictionary (10th ed. 2014)). Additionally, "homosexuality' is 'characterized by sexual desire for a person of the same sex.'" *Id*. Thus, one cannot consider an individual's "homosexuality" without also accounting for their sex. *Hively*, 853 F.3d at 358 (Flaum, J., concurring). Therefore, because a person cannot

determine another's sexual orientation without identifying his or her sex, "sexual orientation is a function of sex." *Zarda*, 883 F.3d at 113.

To determine whether sex discrimination should encompass sexual orientation, courts use the "comparative method." *Hively*, 853 F.3d at 345. Using this method, courts isolate the significance of the employee's sex and ask: would the employee, all things being equal and changing only the employee's sex, have been treated the same way? *Id*. Thus, if Petitioner were a woman, would Respondent have treated Petitioner differently? Not in this instance. But for Petitioner's sex, Petitioner would not have been terminated. Petitioner was terminated because he is homosexual, despite positive reviews from students, despite his "superior work ethic," and despite his "depth of knowledge about the subject matter" he taught. R. at 7. Respondent asked Petitioner to remove the pictures of his spouse from his office because students complained about his "unnecessary homosexuality." R. at 8. Respondent terminated Petitioner after he expressed that he did not believe he could not engage in conversation with his colleagues about his husband and volunteer work. *Id*. If Petitioner was a woman, his students and faculty would not have complained about his "unnecessary homosexuality," or the pictures in his office, or the conversations about his honeymoon with his husband. Respondent would not have asked him to take down the photographs in his office. And Respondent would not have asked him to not talk about his marriage or volunteer work. Petitioner was terminated because he was a male married to another male. *Hively*, 853 F.3d at 349 ("No matter which category is involved, the essence of the claim is that the *plaintiff* would not be suffering the adverse action had his or her sex, race, color, national origin, or religion been different."). In making the choice to terminate Petitioner, Respondent made the very discriminatory "sex-based consideration" that Title VII forbids. Title VII bars discrimination based on sexual orientation under the term "sex" because it is an inextricable function of sex.

C. Title VII Bars Discrimination Against Sexual Orientation Because Sex Discrimination Against Individuals an Employee Associates With Imputes Sex Discrimination Onto an Employee in Violation of Title VII.

Many courts have held that Title VII protects an employee from discrimination based on the employee's association with a person of another race, such as an interracial marriage or friendship.[6] This is associational discrimination. For example, in *Parr*, a white male married an African-American women and was denied employment because of his interracial marriage. *Parr*, 791 F.2d at 889. The court held this action violated Title VII. *Id*.

However, the associational doctrine should apply to sex-based associational claims just as equally as it applies to race-based associational claims because Title VII "treats each of the enumerated categories exactly the same." *Price Waterhouse*, 490 U.S. at 243 n.9; *see Hively*, 830 F.3d at 347–49. Any "references to gender" or "principles [the court] announce[s], apply with equal force to discrimination based on race, religion, or national origin." *Price Waterhouse*, 490 U.S. at 243 n.9. Additionally, in following this Court to treat these protected classes equally, the lower circuits have recognized this equality standard in relation to sex. *See Whidbee v. Garzarelli Food Specialties, Inc.*, 223 F.3d 62, 69 n.6 (2nd Cir. 2000) ("[T]he same standards apply to both race-based and sex-based hostile environment claims."); *Williams v. Owens-Ill., Inc.*, 665 F.2d 918, 929 (9th Cir. 1982) ("[T]he standard for proving sex discrimination and race discrimination is the same."); *Horace v. City of Pontiac*, 624 F.2d 765, 768 (6th Cir. 1980) ("Both cases concern Title VII cases of race discrimination, but the same standards and order of proof are generally

[6] *See Holcomb v. Iona Coll.*, 521 F.3d 130, 139 (2nd Cir. 2008) (holding where an employee is subjected to adverse action because an employer disapproves of an interracial association, the employee suffers discrimination based on the employee's own race); *Deffenbaugh-Williams v. Wal-Mart Stores*, 156 F.3d 581, 589 (5th Cir. 1998) (holding same); *Parr v. Woodmen of World Life Ins. Co.*, 791 F.2d 888, 892 (11th Cir. 1986) (holding same); *Alizadeh v. Safeway Stores, Inc.*, 802 F.2d 111, 114 (5th Cir. 1986) (holding same); *Fielder v. Marumsco Christian Schl.*, 631 F.2d 1144, 1149 (4th Cir. 1980) (prohibiting private school from terminating a contractual relationship with a white student because of her association with a black schoolmate).

applicable to sex discrimination."). Therefore, the associational doctrine should be recognized as being on the same footing as race since all classes under Title VII are created equally.

Here, Respondent discriminated against Petitioner and terminated Petitioner based on his sexual-orientation, a fact Respondent doesn't deny. Instead, Respondent argues that Title VII does not afford Petitioner any protection. R. at 9–10. However, this Court, and many other courts, have recognized associational discrimination in the form of race, and Petitioner asks this Court today to affirm its previous statement in *Price Waterhouse*—the statement that all principles apply equally to all protected classes under Title VII. But for Petitioner marrying his husband, Respondent would not have terminated him. An employer who terminates a white man for marrying an African-American woman does not differ from Respondent terminating Oscar Martinez for marrying another man. "Choices about marriage shape an individual's destiny. [. . .] The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015).

In conclusion, Title VII bars discrimination against sexual orientation. Respondent would not have terminated Petitioner had Petitioner been a woman married to a man. Respondent would also not have terminated Petitioner if Petitioner's husband were a woman. Sexual orientation is subsumed in a person's sex because a person would not be homosexual if the person was a member of the opposite sex. Title VII bars discrimination based on sexual orientation because it is encompassed in the term "sex."

CONCLUSION

This Court should AFFIRM the judgment of the United States Court of Appeals for the Thirteenth Circuit, denying Respondent's Motion for Dismiss Petitioner's Title VII claim. Additionally, this Court should REVERSE the Thirteenth Circuit's judgment granting Respondent's Motion to Dismiss Petitioner's eminent domain claim and REMAND Petitioner's claim to be heard on the merits.

Respectfully submitted,

_____
ATTORNEYS FOR PETITIONER

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the Petitioner's Brief complies with the word limitation specified in Rule C(3)(d) of the ALA Moot Court Competition Rules.

Total word count: 9,168

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APPENDIX "A"

UNITED STATES CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be 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. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "B"

STATUTORY PROVISIONS

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 2000e-2. Unlawful Employment Practices

(a) Employer practices. It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.