

From a Texas Ranch to the U.S. Supreme Court

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Early next year, in what could prove to be a landmark takings case, IJ will bring a simple message to the U.S. Supreme Court: You break it, you buy it. It is, famously, the “Pottery Barn rule.” But it’s also a basic rule of fairness and accountability: If you wreck someone else’s property, you should pay for what you’ve done.

It’s also a rule that’s written into the Constitution. The Takings Clause of the Fifth Amendment makes clear that if the government takes private property for a public use, it must pay for that property. Or, at least, that’s what Richie DeVillier thought. Richie is a rancher outside Houston, Texas, where he works land that his grandfather homesteaded back in the 1920s. He bought the land from his father, who was born on that land. His house is on DeVillier Road. It’s that kind of place. And for all that time, it hasn’t flooded. It rains—it’s just east of Houston, and storms hit pretty often—but the water traditionally drained into the Gulf of Mexico. That all changed when the Texas Department of Transportation reworked Highway 10 just south of Richie’s ranch. The state raised the road and added a 3-foot-high watertight concrete wall along the middle—basically a dam. A few years later, when Hurricane Harvey hit, Richie’s ranch flooded for the first time. And not just for a little while. The water stayed for days. Water that would have drained south stopped dead at what is effectively now a dam. Richie’s cows stood, for days, chest deep in water. And so they died. As did other animals, crops, and trees. After that, Richie and his family begged the state to take the dam down. The state said no. As one state engineer explained to Richie, Texas needed the dam to make sure the south side of Highway 10 stayed dry so emergency vehicles could get through in heavy rain. Fair enough, thought Richie, but the price of keeping the south side dry was making the north side very wet. So Richie sued. His lawsuit alleges that if Texas needed to turn his ranch into a lake, Texas has to pay for what it’s done. That is what the Fifth Amendment says—but does the state have to follow the Fifth Amendment? Shockingly, the 5th Circuit said no. According to the federal court of appeals, Congress has never passed a statute saying that Texas has to obey the Fifth Amendment, so Texas can do as it pleases. It’s true that Congress hasn’t passed a law ordering Texas to obey the Constitution. But the Constitution orders Texas to obey the Constitution. That means paying for the property it takes. In September, the Supreme Court announced it would hear Richie’s case. Our message is simple, and we’re confident the Justices will agree: The Constitution means what it says, and that means the government has to respect our rights—whether it wants to or not. u
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