ARIZONA SUPREME COURT

State of Arizona, et al., Plaintiffs/Appellants, v. Foothills Reserve Master Owners Association, Inc., Defendant/Appellee.	No. CV-23-0292-PR Court of Appeals No. 1 CA-CV 22-0371 Maricopa County Superior Court No. CV2017-010359

STATE'S RESPONSE TO SUPPLEMENTAL AMICUS BRIEF OF GOLDWATER INSTITUTE

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Citing the purpose and historical context of "just compensation," amicus curiae the Goldwater Institute urges this Court to adopt an expansive reading of the phrase "property sough to be condemned" in A.R.S. § 12-1122(A)(2). But like the homeowners, Goldwater advocates for a construction divorced from the plain text and surrounding statutory scheme. On its face, the statute differentiates between "the property sough to be condemned" and "each estate or interest in the property" for compensation purposes. Collapsing the two, as Goldwater urges the Court to do, violates basic canons of construction. Its historical and policy arguments cannot overcome the plain text.

Nor is Goldwater's position borne out by the caselaw. Indeed, like the homeowners, Goldwater fails to identify even a single decision—from Arizona or otherwise—holding that severance damages are available under these circumstances. The Court should affirm.

ARGUMENT

I. No one disputes that an appurtenant easement is compensable property.

Echoing the homeowners, Goldwater repeatedly suggests that the court of appeals determined that easements are not property protected by the Constitution. *See, e.g.*, Supp. Amicus Br. at 3 (arguing that a Utah court "had no difficulty with the proposition that the easement qualified as 'property'"). That's just wrong. The decision explicitly states that easements are a form of private property that "cannot

be taken, destroyed or substantially impaired without just compensation." *State v. Foothills Reserve Master Owners Ass'n*, 256 Ariz. 422, ¶ 12 (App. 2023). That is why the State paid the homeowners millions of dollars in compensation for the loss of their easements. *Id.* ¶ 8 (homeowners were paid $6 million to compensate "for the value of their condemned positive and negative easements").

For that reason, cases analyzing whether easements and restrictive covenants are compensable property interests add little to the discussion. *See, e.g.*, *South Cal. Edison Co. v. Bourgerie*, 507 P.2d 964, 965 (Cal. 1973) ("The sole question at issue is whether a building restriction in a deed constitutes 'property' for purposes of [California's Takings Clause] so that compensation must be made . . . ."). Everyone agrees the homeowners should be paid for the value of the easements lost by virtue of the State taking the land on which they ran. The question at hand is whether A.R.S. § 12-1122(A)(2) permits the homeowners to also recover *additional* compensation for alleged harm to their residential lots, based on the State having extinguished their easements on another's land. It does not.

II. "Property" in A.R.S. § 12-1122 refers to land.

The word "property" can have myriad meanings. As used in § 12-1122, however, it clearly refers to a parcel or parcels of land that are the subject of a condemnation action. That does not mean non-land interests, such as easements, are not compensable. They are, as an interest in property—that is, an interest in land—

under subsection (A)(1). But an interest in land is not a "portion" of a "larger parcel" for severance damages purposes under subsection (A)(2).

A. For purposes of compensation under § 12-1122, "property" means land in which various compensable interests may be held.

In many instances, "property" can be understood to refer collectively to not only the physical land, but also its improvements and interests therein. But that is not how it is used in § 12-1122. Instead, the statute treats the "property" as a distinct element separate from an "interest in the property" for compensation purposes.

A.R.S. § 12-1122(A)(2) sets forth the rules for determining the compensation owed in a condemnation action. It contemplates three different scenarios: (1) the taking of an entire land parcel; (2) the taking of multiple entire land parcels; and (3) the taking of only a portion of a land parcel.

Subsection (A)(1) covers the first two scenarios. It provides that a court or jury must determine:

> The value of the property sought to be condemned and all improvements on the property pertaining to the realty, and of each and every separate estate or interest in the property, and if it consists of different parcels, the value of each parcel and each estate or interest in the parcel separately.

A.R.S. § 12-1122(A)(1). Under this provision, the landowner and everyone with an interest in the land are entitled to recover the value of the rights lost by virtue of the State taking the entire piece of land. It accomplishes this by requiring the value of the property (the parcel(s) + improvements) and the value of each estate or interest

therein to be separately assessed.

Subsection (A)(2) covers the scenario in which the State takes only a portion of a land parcel. It provides:

> If the property sought to be condemned constitutes only a part of a larger parcel, [the court or jury must determine] the damages that will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.

A.R.S. § 12-1122(A)(2). Under this provision, the landowner is entitled to recover consequential damages for harm suffered by his remaining land as a result of the construction of a public project on the portion carved out by the State. These so-called "severance damages" recognize that a partial taking presents unique harms that do not exist when the State has taken your land in its entirely.

1. "Property" differs from an "interest in property."

Both the first and second subsection of § 12-1122(A) use the term "property sought to be condemned." Because "[a] word or phrase is presumed to bear the same meaning throughout a text," the court must examine both provisions to determine the meaning of the phrase "property sought to be condemned." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012).

On its face, § 12-1122 differentiates "the property sought to be condemned" from estates or interests in that property. First, subsection (A)(1) separately lists (1) "the property sought to be condemned"; (2) "all improvements on the property

pertaining to the realty" and (3) "each and every separate estate or interest in the property." A.R.S. § 12-1122(A)(1). Second, it directs a court or jury to value the property with reference to its physical improvements, but separately from any estates or interests therein. *Id.* (court or jury must assess "[t]he value of the property sought to be condemned and all improvements on the property pertaining to the realty**, and** of each and every separate estate or interest in the property" (emphasis added)).

When construing the statute, this Court must give effect to "every word and every provision" and avoid an interpretation that would cause any word or phrase "to duplicate another provision or to have no consequence." Scalia & Garner, *supra*, at 174 (describing surplusage canon). Furthermore, the court must eschew a reading that would render any part of the statute superfluous or inoperative. *Id.* These canons (and common sense) confirm that "property sought to be condemned" cannot be understood to refer to an "interest in the property" sought to be condemned because each is specifically identified as a separate item for valuation under the statute.

2. "Property" is described by reference to land.

The statute makes clear that "the property sought to be condemned" is different than the estates or interests in that property. To what, then, does "property" refer? Again, the plain text tells us: it refers to the actual land that is the subject of the condemnation action.

In various places, the statute uses the terms "realty" and "parcel(s)" to

describe "the property." A.R.S. § 12-1122(A)(1) (referencing "improvements . . . related to the realty" and property that "consists of different parcels").[1] Both terms refer to land. *See* Parcel, Realty, Real Estate, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/ (last visited Oct. 15, 2024). Under the associated-word canon (*noscitur a sociis*), words "associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar." Scalia & Garner, *supra*, at 195, 197–98 (citing as an example a statute that repeatedly linked the words "law enforcement" and "prosecutor"). Thus, "property" and "parcel" should be given similar meanings.

The structure of subsection (A)(1) further reinforces that "the property sought to be condemned" refers to land. *See* Scalia & Garner, *supra*, at 167 (whole-text canon requires courts "to consider the entire text, in view of its structure and of the physical and logical relation of its many parts."). The provision contemplates two different scenarios: one in which the property sought to be condemned consists of different parcels, and one in which the property sought to be condemned does *not*

[1] When describing improvements that should be included in the value of "the property," the statute limits it to improvements "pertaining to the realty." A.R.S. § 12-1122(A)(1). "Realty" refers to "property in buildings and land." Realty & Real Estate, *Merriam-Webster Dictionary Online*, https://www.merriam-webster.com/dictionary/ (last visited Oct. 15, 2024). This is consistent with the understanding of property as a parcel of land. In defining the value of a land parcel, it makes sense to include the value of land-related improvements (e.g., pipe fencing), but exclude improvements unrelated to the land (e.g., a non-fixed swing set).

consist of different parcels. A property *not* consisting of different parcels necessarily means a property consisting of a single parcel of land. (It cannot be understood to refer to a property interest like an easement, because that would collapse "the property sought to be condemned" with "each separate estate or interest in that property," contrary to the plain text.)

Meanwhile, subsection (A)(2) uses the identical phrase, "the property sought to be condemned." It provides, "If the property sought to be condemned constitutes only a part of a larger parcel," the court or jury must determine "the damages that will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff." A.R.S. § 12-1122(A)(2). There is no indication in the statute that the phrase should be given a different meaning in (A)(2) as compared to (A)(1). *See* Scalia & Garner, *supra*, at 170 (courts should presume consistent meaning throughout a text absent a material variation in terms).

To the contrary, consistent with the prior subsection, (A)(2) describes "the property sought to be condemned" by reference to land; namely, "a larger parcel." And unlike subsection (A)(1), which expressly references both "the property sought to be condemned" and "each estate or interest" therein, subsection (A)(2) refers only to "the property sought to be condemned." The use of the "estate or interest" phrase in (A)(1) but not in (A)(2) underscores that a person with an estate or interest in a

condemned property is not entitled to severance damages.

3. The statutory scheme confirms that "property sought to be condemned" refers to the land subject to condemnation action.

The Court must also interpret § 12-1122(A) in light of related statutes. Scalia & Garner, *supra*, at 252 (describing related-statutes canon). Here, the surrounding statutes mirror § 12-1122(A) in using "property" to refer to the land subject to a condemnation action, while separately addressing interests in that property. For example, A.R.S. § 12-1117(5) instructs that a complaint for condemnation should include "[a] description of *each piece of land* sought to be taken, and whether *the land* includes the *whole or only a part of an entire parcel or tract*." (Emphases added).

This focus on land makes sense. In condemnation proceedings, the property subject to the action (the land) and the interest sought to be taken are two different things. For example, the government can file a suit to seek fee simple ownership, or it can seek to take an easement interest. In both cases, the government exercising the power of eminent domain against private land; the only difference is the form of the interest taken. That's why a condemnation complaint must contain both a legal description of the property and of the interest sought to be taken. *See* 27 Am. Jur. 2d Eminent Domain § 421 ("In condemnation proceedings, the complaint must contain a legal description of the property and of the interest sought to be taken."); *see also*

A.R.S. §§ 12-1113 (specifying the "interests, estates and rights in lands subject to be taken for public use"), 12-1117(5) (condemnation complaint must set forth "[a] description of each piece of land sought to be taken").

For purposes of compensation, however, Arizona's statute consistently distinguishes between the property (land) itself and interests in that property. *See* A.R.S. §§ 12-1113, 12-1117(5). Consider A.R.S. § 12-1116(A), which requires a pre-condemnation purchase offer. The statute requires a written offer to purchase "property or any interest in property," thereby distinguishing the two. And it makes clear that "property" means real property because the "property owner" must be identified "according to the records of the county recorder in the county in which the property is located." Similarly, A.R.S. § 12-1116(H) uses the terms "property" and "parcel of land" interchangeably, while specifically differentiating between landowners and "person[s] having an interest" in the land sought to be condemned for damages purposes.

* * *

In sum, the plain text of the statutory scheme confirms that the phrase "property sought to be condemned" means, in this context, the land subject to a condemnation action. Under subsection (A)(1), any person with a property interest in the land subject to a condemnation action is entitled to payment for the value of that interest—whether it be a fee simple, easement, or otherwise. Under subsection

(A)(2), if the State subjects only a part of a landowner's larger property to a condemnation action, then the landowner can recover for consequential damages caused to his remaining land.

B. Goldwater fails to read the provision in context.

Latching onto the court of appeals' discussion of the negative-implication canon (*exclusio alterus*), Goldwater urges (at 2) that the court of appeals got it wrong and "[t]he better reading of the statute is" "to conclude that it applies to the taking of *any* 'property' whether it comes in parcels or not, if that property happens to be 'part of a larger parcel.'" But regardless of whether the court of appeals properly applied the negative-implication canon,[2] Goldwater's reading cannot be reconciled with the plain text of A.R.S. § 12-1122 and surrounding statutes.

First, Goldwater's reading would eliminate any distinction between "property" and an "estate or interest in the property." On its face, § 12-1122(A) clearly differentiates "the property sought to be condemned" from "each estate or interest in the property." *See* **Arg. § I.A**. Reading the former as subsuming the latter violates basic constructions canons. *See* footnote 2, *supra*. In contrast, reading "the property sought to be condemned" to refer to the land sought to be condemned

[2] As discussed throughout this brief, numerous other canons support the same result. *See, e.g.*, Scalia & Garner, *supra*, at 56 (Supremacy-of-Text Principle); *id.* at 170 (Presumption of Consistent Usage); *id.* at 174 (Surplusage Canon); *id.* at 195 (Associated-Words Canon); *id.* at 252 (Related-Statutes Canon).

comports with § 12-1122(A)'s plain text and the rest of the eminent domain scheme, which consistently uses "property" to refer to land. *See* A.R.S. § 12-1111 *et seq.*

Nevertheless, Goldwater posits (at 2) that if the legislature meant to refer to land, it could have said, "when the *parcel* sought to be condemned is part of a larger parcel." As an initial matter, that substitution arguably changes the provision's scope by limiting severance damages to those situations in which the condemnor takes a full parcel out of multiple parcels belonging to one owner, rather than just a smaller portion of a single parcel. More importantly, however, the words the legislature actually used indisputably differentiate "the property sought to be condemned" from "each estate or interest in that property." The Court should reject a construction that collapses the meaning of the two distinct phrases.

Goldwater's construction faces another hurdle: if severance damages are available whenever *any* property interest relating to land is taken, then severance damages are always available to every appurtenant easement holder whether or not the land actually condemned is taken in full or in part, because these claimants can always assert that their easement interest is part of a larger parcel comprised of the dominant estate. Consider Goldwater's reasoning (at 5) that "the easement [in this case] was unified with the real property before the taking." That approach eliminates the concept of a "larger parcel" entirely and renders any land subject to condemnation a "larger parcel" with respect to all interest holders in that land.

III. Like the homeowners, Goldwater mischaracterizes the relevant law.

A. The cases Goldwater cites involve a condemnation action against a smaller part of a larger area of land.

Goldwater repeatedly asserts that courts have regularly held that severance and proximity damages are available for the taking of an appurtenant easement. It fails to cite a single case, however, in which a court permitted a homeowner to recover severance damages when the only thing taken from the homeowner was a non-access easement on someone else's land.

For example, Goldwater points to a 1933 case out of Utah as evidence that severance damages are available in connection with the taking of an easement. But in *Wasatch Gas Co. v. Bouwhuis*, 26 P.2d 548 (Utah 1933), the condemnor took a small piece out of a larger piece of land to place an easement. *Id.* at 549 ("This action was brought by the plaintiff and appellant to condemn a strip of land 20 feet wide over separate tracts of land owned by the defendants in Weber county, to lay a pipe line underground to convey and transport gas for sale and service to consumers and customers of the plaintiff."). In other words, the landowner had a larger parcel of land, and the condemnor took only a piece of that land, so the landowner could seek damages for harm to his remaining land resulting from the severance. That is the definitional scenario for severance damages. *Wasatch* thus underscores the State's reading of A.R.S. § 12-1122(A)(2). *See also* *Santa Clara Cnty. v. Curtner*, 54 Cal. Rptr. 257, 260 (App. 1966) (county took smaller piece of land out of a larger piece

of land consisting of two lots; parties disputed whether one lot, or both lots together, constituted the "larger parcel" for purposes of calculating severance damages).

Nor does *Childers v. United States*, 116 Fed. Cl. 486 (2013) establish that the incidental extinguishment of an appurtenant easement on someone else's land triggers severance damages. *See* Supp. Amicus Br. at 4. To the contrary, *Childers* reinforces that the government must be exercising its powers of eminent domain against one's own land before severance damages are proper.

In *Childers*, the federal government took a 50-foot-wide strip of the plaintiffs' private land to establish a recreational trail easement under the National Trails Systems Act. *Id.* at 495. That Act authorizes the government to utilized unused railroad right-of-ways to create public trails. *Id.* at 496. In these so-called "rails-to-trails" cases, "the imposition of a recreational trail creates a new easement for a new purpose across the landowner's property, which constitutes a taking entitling the landowners to just compensation." *Id.* at 496–97.

For the thirteen properties at issue in *Childers*, this meant that instead of an unused railroad track on their land, the landowners now had a paved trail with public restrooms, benches and public access trailheads visited by over 125,000 people each year. *Id.* at 495. Thus, for each landowner, the court recited the amount of land taken out of their larger parcel by the easement. *See, e.g.*, *id.* at 531 ("After the taking, 4.322 acres of Stoneybrook are occupied by the trail corridor."). In an appeal

addressing the proper measure of damages, the court awarded varying amounts to the landowners to compensate them for the value of the land taken by the easement and, in some cases, severance damages for harm to their remaining land. *See id.* at 524 (awarding landowner who had 2.386 acres taken out of larger property for trail easement "$413,374.50 for the land taken and $139,250.12 in severance damages").

Thus, *Childers* does not suggest that severance damages are available for the mere "incorporeal . . . conversion of an existing easement to another use," as Goldwater suggests (at 4). There was nothing incorporeal about the government's action in that case—to the contrary, the government affirmatively imposed a new publicly accessible easement that did not previously exist on a portion of the landowners' real estate, thus reducing the value of their remaining portions of land. Again, that is the quintessential case for severance damages.

The other authorities Goldwater cites are similarly distinguishable (e.g., *Mosher v. City of Phoenix*, 39 Ariz. 470 (1932) (discussing damages available for destruction of easement for ingress and egress; no mention of severance or proximity damages)), wholly irrelevant (e.g., *State ex rel. State Highway Dep't of N.M. v. Strosnider*, 747 P.2d 254, 256 (N.M. App. 1987) (dispute over propriety of jury instructions in a case where the "[l]andowner claimed no severance damages to the remaining property as a result of the condemnation")), or contrary to their position (e.g., *Probasco v. City of Reno*, 459 P.2d 772, 773 (Nev. 1969) (rejecting claim that

an abutting property owner could recover for interference with an "implied negative easement of light, air and view by an overpass placed on a street in circumstances where none of the owner's real property is taken.")).

Like the homeowners, Goldwater fails to identify even one case holding that severance damages are available to the owner of a dominant estate when the State extinguishes a non-access easement on a servient estate owned by another. If this rule were really as established as Goldwater and the homeowners claim, surely there would be at least one decision expressly saying so. There is not, because the opposite is true: a person who has no land taken by the government cannot recover severance damages under § 12-1122(A)(2). As the Kansas Supreme Court neatly summarized, "[t]he theory of compensation in eminent domain cases is that the owner is to be compensated fully *for all land* taken from him, including the diminution in value of that *remaining owned by him*, but full compensation *does not include diminution in the value of the remainder caused by the acquisition of adjoining lands of others* for the same undertaking." *McIntyre v. Bd. of Cnty. Comm'rs of Doniphan Cnty.,* 211 P.2d 59, 64 (Kan. 1949*)* (emphases added).

Goldwater also criticizes the State (at 6) for relying on *City of Scottsdale v. Eller Outdoor Advert. Co.*, 119 Ariz. 86, 93 (App. 1978), noting that the case involved the taking of personal property and asserting that "the reason severance damages weren't available was because the billboards, being personal instead of real

property, weren't covered by the severance-damages statute." But under Goldwater's reading of § 12-1122, that would make no difference. Indeed, Goldwater urges the Court "to conclude that [§ 12-1122(A)(2)] applies to the taking of *any* 'property,' whether it comes in parcels or not, if that property happens to be 'part of a larger parcel.'" Supp. Amicus Br. at 2. That broad reading would certainly encompass even billboards like those at issue in *Eller*.

Furthermore, Goldwater makes too much of the State's citation. The State offered *Eller* simply to illustrate that Arizona courts have consistently tied the concept of partial takings and severance damages therefore back to land and real estate. Not even Goldwater can dispute that.

B. Goldwater's historical discussion is largely irrelevant.

Finally, the Court need not and should not consider secondary interpretive methods to resolve this case. Even if it were to consider historical context, however, it does not warrant reversal here.

Goldwater urges (at 6) that history shows Arizona's severance damages rule "was intended to compensate for situations such as this." First, it discusses (at 7-9) concerns noted by the framers of the California constitution, various access cases from the turn of the century in Illinois, and the development of state constitutional clauses permitting recovery for governmental damage to private property.

None of this is in dispute. The State agrees that damages are appropriate when

the government "cut[s] up a property owner's untaken land into inconvenient shapes," or when the taking cuts off access to one's land. Supp. Amicus Br. at 7. The former situation is (again) the quintessential severance damages case. Meanwhile, the latter situation does not involve "severance" damages at all, but compensation for the taking of a property right—namely, the right to access one's land. *See, e.g.*, *City of Phoenix v. Garretson*, 234 Ariz. 332, 334 ¶ ¶ 5, 7 (2014) (explaining government must compensate an owner if it completely removes or substantially impairs a property's existing access, but when the impairment is not caused by the taking of the owner's *land*, the "case does not involve a 'taking' or 'severance damages' as traditionally understood" in the eminent domain" context). Thus, "access" cases are not relevant to the interpretation of the severance damages statute.

Goldwater next asserts (at 9-10) that A.R.S. § 12-1122(A)(2) "comes from" California law, and claims that California courts "have regularly held that the taking of an appurtenant easement gives rise to severance damages under the statute." Although Arizona's statute mirrors the text of California's, Arizona takes a narrower approach to damages. For example, California courts permit recovery for the loss of business goodwill; Arizona courts do not. *See* Blake, et al., The Law of Eminent Domain: Fifty-State Survey 37–38 (2012). Thus, it is inaccurate to suggest that Arizona categorically follows California law in this area. *Id.* at 37 (noting "areas of marked difference between Arizona and California eminent domain law").

It is also not true that California courts "have regularly held that the taking of an appurtenant easement gives rise to severance damages under the statute." The case Goldwater cites, *People by & through Dep't of Pub. Works v. Renaud*, 17 Cal. Rptr. 674, 676–77 (App. 1961), observes that "[t]he taking of an *easement of access to public highways* is compensable measured in terms of severance damages, that is, in terms of the diminution in the value of the property which formerly had the easement of access." (Emphasis added).

Several aspects of this assertion make it irrelevant here. First, access cases are analytically distinct from the incidental extinguishment of a non-access easement. Condemnation law has long recognized that access is fundamental to the use and enjoyment of real property. *See, e.g.*, Ashley Mas, *Eminent Domain Law and "Just" Compensation for Diminution of Access*, 36 Cardozo L. Rev. 369, 370–71 (2014) (beginning in the 20th century, courts began to recognize access as a right "incident to property ownership that would trigger the just compensation requirement in the event of harm caused by state action"); *see also State ex rel. BSW Dev. Grp. v. City of Dayton*, 699 N.E.2d 1271, 1275 (Ohio 1998) (describing "the right to access public streets or highways on which the land abuts" as "a fundamental attribute of [] ownership"). That's why even private parties can exercise condemnation powers against others' land when necessary for access. *See* A.R.S. § 12-1202. It makes sense, then, that the government must pay for destroying or impairing access whether

or not any land is taken. But that rationale is unique to, and does not extend beyond, the right of access. *See, e.g.*, *Garretson*, 234 Ariz. at 337 ¶ 22 ("The City completely eliminated Garretson's preexisting access . . . , leaving him with no means of ingress or egress to that street or any replacement . . . . *Under these circumstances*, he has a claim for compensation under the Arizona Constitution." (emphasis added)).

Second, Arizona courts do not conceive of such takings in terms of severance damages under § 12-1122(A)(2). *Garretson*, 234 Ariz. at 334 ¶ 7 (destruction of access easement that is not caused by the taking of the owner's land "does not involve a 'taking' or 'severance damages' as traditionally understood in eminent domain" context). To be sure, the homeowners could bring an inverse condemnation action for damages if the State destroyed or impaired an appurtenant easement on abutting land that provided them access to their homes. But that does not suggest, much less establish, a right to recover severance damages for the destruction of a non-access easement under A.R.S. § 12-1122(A)(2).

Third, and relatedly, it appears the *Renaud* court was in fact referencing the valuation calculation, not severance damages. As explained in prior briefing, courts often conflate the "before and after" test used to determine an easement's value with the "before and after" severance damages test. The former looks only at the easement's worth, measured by the dominant estate's value with and without the easement—i.e., before the taking and after the taking. The latter looks at the

incidental effects of the public project—i.e., before the project and after the project.

Goldwater's reliance on *Hughes v. State*, 328 P.2d 397 (Idaho 1958) is similarly misplaced. Like *Renaud*, that case involved the destruction of an access easement. The court concluded that the destruction of the appurtenant easement for access required compensation under a statute that provided for severance damages. *Hughes* is distinguishable for the same reasons as *Renaud*. In addition, subsequent decisions call into question the expansive language used by *Hughes* to describe what qualifies as a taking under Idaho's statute. *See Moon v. N. Idaho Farmers Ass'n*, 96 P.3d 637, 643 (Idaho 2004) (noting the subsequent overruling of cases cited by *Hughes* when clarifying that "destruction of access and deprivation of the use of property may be compensable," but lesser deprivations are not); *see also State ex rel. Symms v. City of Mountain Home*, 493 P.2d 387, 391 (Idaho 1972) ("parcel," as used in Idaho's severance damages statute, "means a consolidated body of land").

In short, there is no dispute that destroying an appurtenant *access* easement may entitle a landowner to compensation under Arizona's Takings Clause. *See, e.g.*, *Garretson*, 234 Ariz. at 337 ¶ 22. But Goldwater offers no authority supporting its asserting that extinguishing a non-access easement on someone else's land qualifies the dominant estate owner for severance damages under A.R.S. § 12-1122(A)(2).

CONCLUSION

The Court should affirm.

RESPECTFULLY SUBMITTED this 15th day of October, 2024.

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