No. 24-386

IN THE

Supreme Court of the United States

KARL FISCHER ET AL.,

Petitioner,

v.

THE STATE OF NEW LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 13
Counsel for Petitioner

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QUESTIONS PRESENTED

1. Under the Fifth Amendment's Takings Clause, (1) should *Kelo v. City of New London* be overruled, and, if so (2) what constitutes a permissible taking for a "public use"?

2. Is the Takings Clause self-executing, thereby creating a cause of action against a state for just compensation when no other federal or state remedy is available?

STATEMENT OF THE CASE

In response to economic challenges, the State of New Louisiana enacted the Economic Development Act, a legislative initiative aimed at revitalizing the state's economy through enhanced tourism and job creation. R. at 1. Following the creation of the Economic Development Act, New Louisiana contracted with Pinecrest, Inc., a prominent private development company, to construct a luxury ski resort. R. at 2. Together Pinecrest Inc. and New Louisiana hoped to revitalize the economy through this project. R. at 2. The luxury ski resort was expansive, requiring approximately 1,000 acres of land spanning three counties. R. at 3. These areas were identified by New Louisiana as optimal for economic growth due to their natural landscapes and potential tourist appeal. R. at 3.

The Landowners

The land acquisition process initiated by New Louisiana involved negotiations with one hundred private landowners. R. at 2. While New Louisiana successfully secured the properties of ninety owners at prices significantly below market value, leveraging the economic urgency outlined in the Development Act, ten landowners ("The Landowners") resisted. R. at 2. The Landowners come from economically disadvantaged and predominantly minority neighborhoods. R. at 2. Because of their generational attachment to the land, they found themselves at the heart of this controversy extending beyond mere financial transactions. R. at 3.

The properties in question were not just parcels of land but represented deep historical and emotional ties within the community. R. at 2. They included small family-owned farms and ancestral homes, many of which had been in families for generations. R. at 2. These lands were integral to the community's identity and social fabric, with owners like Karl Fischer, whose farm had been a family heirloom for over 150 years, embodying the resistance to what they perceived as an unjust takeover of their heritage. R. at 3-4.

The Landowners and Fischer faced a dire situation. The average income in their neighborhood was about $50,000, placing them in a precarious financial position that made it nearly impossible to relocate without significant economic and emotional strain. R. at 2-3. New Louisiana’s offers to The Landowners were far below fair market value for the property. R. at 2. Further these offers were not reflective of the intrinsic value of the lands, nor did they compensate for the disruption of long-standing community bonds. R. at 3-4.

Pinecrest, Inc.’s Luxury Ski Resort

On March 13, 2023, despite the absence of any public safety or health risks that might typically justify such drastic measures, New Louisiana authorized Pinecrest, Inc. to commence construction on the lands already acquired. R. at 3. Simultaneously, it initiated eminent domain proceedings against The Landowners. R. at 3. These proceedings were further frustrated when New Louisiana informed The Landowners that under current state statutes, they were entitled to no compensation beyond the initial insufficient offers. R. at 4.

The initiation of construction and the unexpected eminent domain proceedings have thrown the lives of these ten families into turmoil. R. at 2-3. They have also raised significant legal questions about the limits of eminent domain and the definition of public use as it is applied in the Takings Clause of the Fifth Amendment. This case thus not only challenges the legality of New Louisiana's actions but also poses broader questions about the balance between economic development and individual property rights. It also calls into question the protection of minority communities in redevelopment areas and the ethical considerations of displacing long-established communities for projects that primarily benefit private interests.

SUMMARY OF THE ARGUMENT

The decision in *Kelo v. City of New London* expanded the government's power of eminent domain to unprecedented and unconstitutional lengths, redefining "public use" to encompass economic development projects that primarily benefit private entities. This interpretation strays dangerously far from the Framers' original vision, which held property rights as foundational to individual liberty. *Kelo* compromises those rights, transforming eminent domain into a tool for corporate profiteering. It is imperative that this Court steps in to rectify this profound mistake, restore the true meaning of "public use" and reaffirm the sanctity of private property enshrined in the Fifth Amendment.

The principle of stare decisis, while essential to maintaining stability in the law, must give way when a precedent is egregiously wrong, particularly when it comes to the Constitution's fundamental guarantees. This Court has not hesitated to overturn decisions that misinterpret constitutional protections, and *Kelo* is a prime candidate for correction. The original error in *Kelo*, its poor reasoning, and its unworkable consequences demand reconsideration. By conflating "public use" with vague notions of "public purpose," the decision betrayed the property protections promised by the Constitution. The Framers intended for "public use" to be strictly limited to ensure that governmental overreach could not encroach on the fundamental rights of citizens—an intent that *Kelo* disregarded entirely.

Furthermore, economic development alone is an insufficient justification for the use of eminent domain. The Framers' understanding of "public use" meant tangible and direct public benefit—not speculative gains under the guise of economic growth that ultimately serve private developers. Historical precedents clearly show that the Takings Clause was meant to limit government power, not empower it to redistribute land to wealthier private parties. In this case, New Louisiana's taking of The Landowners' property does not address any public harm, nor does

it provide direct public access or benefit. It is merely a veiled effort to enrich Pinecrest, Inc. at the expense of ordinary citizens—a grave violation of the constitutional protections guaranteed to every property owner.

Finally, the Takings Clause of the Fifth Amendment is self-executing, ensuring that private property owners are entitled to just compensation when their property is taken by the government for public use. This entitlement stands regardless of the state's invocation of sovereign immunity. The Constitution itself overrides such a defense. Here, New Louisiana cannot use sovereign immunity to evade its constitutional duty to compensate The Landowners. When the state takes property, it must pay for it. The principle that no power on earth has the right to take property without consent or just compensation is embedded in the very core of the Fifth Amendment, and this Court must reaffirm that truth.

This Court must protect property rights from the ever-expanding reach of government power. *Kelo* must be overturned to restore the integrity of the Takings Clause and prevent the abuse of eminent domain for private economic projects. Additionally, this Court must hold that the Takings Clause is self-executing, ensuring that property owners receive the just compensation they are guaranteed under the Constitution. For these reasons, this Court should reverse the Thirteenth Circuit's judgment on both issues.

ARGUMENT

"No power on earth has a right to take our property from us without our consent."[1] These words by John Jay, the first Chief Justice of the United States, capture the unwavering commitment of the Framers to the sanctity of private property.[2] Property rights are integral to the

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[1] John Jay, The Address to the People of Great-Britain (Oct. 21, 1774).
[2] William Treanor, Note, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment.*, 94 Yale L.J. 694, 694(1985).

American constitutional framework, an idea enshrined in the Takings Clause of the Fifth Amendment, which applies to the States through the Fourteenth Amendment: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The Founders recognized that safeguarding private property was not only essential for promoting individual freedom but also for protecting the very fabric of liberty.[3] As John Adams aptly asserted, "[p]roperty must be secured, or liberty cannot exist."[4]

This Court has consistently affirmed that the protection of property rights is fundamental to preserving freedom. Property rights empower individuals to shape their own destinies, free from the intrusion of government, as noted in *Murr v. Wisconsin*. 582 U.S. 383, 394 (2017). Similarly, in *Cedar Point Nursery v. Hassid*, this Court emphasized that "[p]rotection of property rights is necessary to preserve freedom." 594 U.S. 139, 147 (2021). The Framers, having witnessed the unjust taking of private property under British rule, understood that the protection of private property was indispensable for ensuring a free and self-determined society.[5]

The Takings Clause serves as a shield against government overreach, ensuring that any taking of private property for public use is met with just compensation. However, this Court's decision in *Kelo v. City of New London* eroded these protections by conflating "public use" with "public purpose," allowing private property to be seized and transferred to private entities for economic development. 545 U.S. 469, 501 (2005) (O'Connor, J., dissenting). This interpretation deviates from the Framers' original intent, transforming the government's power of eminent domain into a tool that favors corporate greed over individual rights. The expansive

[3] *Id.* at 710.
[4] John Adams, Defense of the Constitutions Vol. III cont'd, Davila, Essays on the Constitution, *in* The Works of John Adams, Second President of the United States: with a Life of the Author 1, 280-281 (Charles F. Adams ed., 1856).
[5] Treanor, *supra* note 2, at 701.

interpretation of "public use" threatens the fundamental property protections that the Constitution sought to secure.

The importance of private property to individual liberty cannot be overstated. The Framers were resolute in their belief that property rights were inextricably linked to personal freedom, and this Court has historically upheld that private property can only be taken for public use, not for speculative benefits such as economic development. *See Berman v. Parker*, 348 U.S. 26, 32 (1954) (holding that the plaintiff's non-blighted property could be taken for a community redevelopment project which addressed a pervasive blight problem in the area); *see also Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 240 (1984) (holding that it was a valid public use for the state to take properties from landlords and transfer title to tenants to decrease the monopolization of land ownership). The *Kelo* decision disregards this crucial distinction, undermining the fundamental rights that the Fifth Amendment guarantees.

Therefore, this Court must protect the rights of The Landowners. It must do so by overturning the *Kelo* decision to restore the original meaning of the Takings Clause and reaffirm that private property cannot be taken for mere economic development. Further, it must reaffirm that the Fifth Amendment is self-executing, as sovereign immunity is inherently waived. Thus, ensuring that The Landowners receive the just compensation guaranteed to them by the Takings Clause when their property is seized for public use.

I. *KELO* MUST BE OVERTURNED BECAUSE OF ITS EGREGIOUS ERROR, ITS POOR REASONING, AND ITS UNWORKABILITY.

This Court's decision in *Kelo* expanded the definition of "public use" under the Fifth Amendment's Takings Clause, allowing the government to take an individual's private property and transfer it to a private entity for the purpose of economic development. 545 U.S. at 469. This interpretation deviates from the Framers' original intent and diminishes constitutional protections

for property rights. Given the significance of this departure, the doctrine of *stare decisis* must be addressed before reconsidering this Court's holding in *Kelo*.

Although *stare decisis* plays an important role in guaranteeing legal stability, it is not an absolute barrier to overturning precedents that are clearly erroneous, particularly when they involve constitutional interpretation. This Court, in cases like *Dobbs v. Jackson Women's Health Org.* and *Janus v. AFSCME, Council 31*, has emphasized that in constitutional cases *stare decisis* carries less weight, as correcting fundamental legal errors outweighs the mere preservation of precedent. 585 U.S. 878 (2018); 597 U.S. 215, 264 (2022). This is especially true when precedent misinterprets constitutional provisions that protect individual liberties. *Id.* at 264. In *Dobbs*, this Court laid out four relevant factors to consider when overturning precedent—(1) the nature of the original error, (2) the quality of the reasoning, (3) the workability of the precedent, and (4) the decision's impact on other areas of law and societal reliance. *Id* at 218. These factors are crucial in evaluating whether a precedent like *Kelo* should stand. This is because the factors provide a structured framework for assessing when a precedent, particularly one involving constitutional rights like property rights, must yield to the Constitution's original meaning. Each of these factors applies directly to *Kelo* and demonstrates why it must be overruled.

A. The Egregious Error in Kelo Requires that it Must be Overturned.

The first factor in determining whether to overturn a precedent is the nature of the error in the original decision. As this Court emphasized in *Dobbs*, when a decision is "egregiously wrong" in its constitutional interpretation, it undermines the principles of liberty that the Constitution protects. *Id.* at 218. In such instances, adherence to *stare decisis* must give way to necessary corrections. This Court has never hesitated to overturn flawed constitutional rulings, particularly when those rulings misinterpret fundamental rights. *See, e.g.*, *Baker* v. *Nelson*, 409 U. S. 810 (1972), *overruled by Obergefell* v. *Hodges*, 576 U. S. 644 (2015) (right to same-sex

marriage); *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), *overruled by Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310 (2010) (right to campaign-related speech); *Bowers* v. *Hardwick*, 478 U. S. 186, 106 (2002), *overruled by Lawrence* v. *Texas*, 539 U. S. 558 (2003) (right to engage in consensual, same-sex intimacy in one's home).

In *Kelo*, the expansion of the Takings Clause allowing property to be seized for private economic development represents a fundamental misstep. The Takings Clause was designed to limit the government's power of eminent domain, ensuring that private property could only be taken for public use. U.S. Const. amend. V. By allowing private property to be taken and transferred to another private entity for speculative economic gain, *Kelo* erodes the protection of property rights. This shift is akin to pulling the rug out from under property owners, leaving them vulnerable to losing their homes and land for projects that may never deliver the promised public benefits. The protection once guaranteed by the Constitution is now replaced by uncertainty and instability. This misreading of the Constitution is not a minor error, it is a direct violation of the Fifth Amendment's explicit intent.

This Court has previously overturned decisions where the constitutional error was similarly egregious. In *Dobbs*, for example, this Court overruled *Roe v. Wade*, finding that its interpretation of constitutional liberties was unfounded in text and precedent. *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs*, 597 U.S. at 220. Likewise, in *Janus*, this Court overturned *Abood v. Detroit Board of Education*, recognizing that compulsory union fees violated the First Amendment. *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), *overruled by Janus*, 585 U.S. at 884. In both cases, this Court emphasized that when a precedent misinterprets fundamental rights, it must be corrected. *Kelo* falls squarely within this category of erroneous decisions that infringe upon constitutional rights, making *stare decisis* a weak defense.

Here, New Louisiana's attempt to take The Landowners' property to build a luxury ski resort mirrors the overreach permitted by *Kelo*. The Landowners' property, much of which has been in their families for over 150 years, is not being taken for public use, but rather for private gain, benefiting Pinecrest, Inc., a private developer. R. at 2-3. The justification provided by New Louisiana—that the luxury ski resort will revitalize the economy—fails to satisfy the "public use" requirement under the Fifth Amendment. R. at 2. These speculative economic benefits are primarily aimed at enriching Pinecrest, Inc. and do not directly benefit the public in a meaningful way.

Furthermore, the Landowners' property is not blighted, unsafe, and does not pose any public health or safety risks. R. at 4. Unlike the takings in cases such as *Berman v. Parker*, where the government seized blighted property to eliminate public harm, The Landowners' property presents no such justification. 348 U.S. at 26. New Louisiana's sole rationale for the taking rests on the potential for economic development, a justification that runs counter to the historical meaning of "public use." If allowed, this taking would perpetuate *Kelo*'s dangerous precedent where any property is subject to seizure merely because the government speculates that it could generate economic growth in the hands of private developers. This taking threatens to deprive The Landowners of their ancestral land, disrupting their livelihoods, and eroding the very property rights the Constitution was meant to safeguard. If The Landowners' property can be seized under the broad interpretation allowed by *Kelo*, no property owner's rights are secure from similar actions.

B. The Poor Reasoning in Kelo Requires that it Must be Overturned.

The second factor for departing from *stare decisis* is the quality of the reasoning behind the original decision. In *Dobbs*, this Court explained that poor reasoning, unsupported by constitutional text, history, or precedent, weakens the legitimacy of a ruling. 597 U.S. at 280. A

decision that lacks a firm constitutional basis or distorts the original meaning of a constitutional provision is unlikely to withstand scrutiny. In *Kelo*, this Court expanded the definition of "public use" far beyond the Framers' original intent. Historically, the government could only take property for purposes like infrastructure development or public safety, where the public had access to or control over the taken property. *Berman*, 348 U.S. at 32; *Haw. Hou. Auth.*, 467 U.S. at 241. *Kelo*, deviated from this standard by allowing private property to be taken and transferred to another private entity for speculative economic development. 545 U.S. at 485.

Kelo was poorly reasoned because it abandoned the clear textual limit of "public use" and replaced it with a vague and overly broad justification for taking private property. As Justice O'Connor noted in her dissent, this expansion of eminent domain allows nearly any taking to be justified under the guise of economic development, eroding the constitutional protection of property rights. *Id.* at 501 (O'Connor, J., dissenting). The majority's decision in *Kelo* ignores the original purpose of the Takings Clause, which was to prevent precisely this kind of government overreach.

Furthermore, the reasoning behind New Louisiana's decision to take The Landowners' property exemplifies the dangers of *Kelo*'s expansion of the Takings Clause. Their land is not being taken to serve the public in any immediate, tangible way. R. at 3. Instead, New Louisiana argues that the development of a luxury ski resort will benefit the economy indirectly. R. at 2. However, not only are these supposed benefits merely speculative but they will also primarily benefit Pinecrest, Inc., not the broader public. The public will not have free access to the land, nor will the development remedy any public harm. By allowing such a taking, the reasoning in *Kelo* undermines the Fifth Amendment's protections and transforms private property into a tool

for corporate greed. The public interest is not served by enabling private developers to reap the rewards of property seizures at the expense of individual property owners like The Landowners.

C. The Unworkability of Kelo Requires that it Must be Overturned.

Having established the poor quality of reasoning in *Kelo*, it is also important to consider the unworkability of the decision in practice. This is evidenced by the widespread legislative backlash and inconsistent applications of the ruling across the states.[6] Another factor for overturning precedent, emphasized in *Dobbs* and *Janus*, is the workability of the decision. 585 U.S. at 918; 597 U.S. at 269. A ruling that proves difficult to apply consistently or that leads to widespread confusion undermines the stability that stare decisis is meant to protect. *Id.* at 288. In *Kelo*, the broad and vague interpretation of "public use" has resulted in significant unworkability.

Following *Kelo*, more than forty states enacted legislation to limit the use of eminent domain for private economic development, reflecting the widespread public rejection of the decision.[7] This legislative backlash is a clear indicator that the decision is unworkable in practice. When a Supreme Court ruling provokes such a significant response, it signals that the decision is out of step with both constitutional principles and societal values. Additionally, *Kelo* has led to inconsistent application of eminent domain laws across the country, with some states adopting strict limitations and others following *Kelo*'s broad interpretation.[8] This inconsistent framework of laws undermines the predictability and consistency that *stare decisis* is supposed to promote. Showcasing that the fractured response from states shows that *Kelo* has created more confusion than clarity. This inconsistency leaves property owners, like The Landowners,

[6] Stephen F. Broadus, *Ten Years after: Kelo v. City of New London and the Not So Probable Consequences*, 34 Miss. C. L. Rev. 323, 332-43 (2015).
[7] *Looking Back Ten Years After Kelo*, 125 Yale L. J. 82, 84 (2015).
[8] Broadus, *supra* note 6 at 332-43.

vulnerable to unpredictable applications of the law, further underscoring the unworkability of the *Kelo* decision.

In light of the constitutional error in *Kelo*, its poor reasoning, and its unworkability, this Court must overrule the decision. Upholding *Kelo* would continue to weaken the fundamental right to property, whereas overturning it would reaffirm the principle that the government cannot take private property simply to serve private interests. It is imperative to correct this significant misstep and restore the original protections guaranteed by the Takings Clause.

II. *KELO*'S INTERPRETATION OF PUBLIC USE IS TOO BROAD BECAUSE IT DEVIATES FROM THE FRAMERS' INTENT.

The Takings Clause of the Fifth Amendment was designed to ensure that private property could only be taken for purposes that directly benefit the public, not for the speculative promise of economic gain. Historically, this Court has interpreted "public use" to mean either direct public access or control over the taken property, or the remediation of a public harm. *Haw. Hou. Auth.,* 467 U.S. at 229 (upholding a land redistribution scheme as a valid public use under the Takings Clause because it was meant to reduce the concentration of land ownership); *Berman*, 348 U.S. at 26 (holding that the use of eminent domain to eliminate blighted areas constitutes a valid public use). *Kelo*, however, expanded this definition to include takings for private economic development, a departure from the original understanding of the Framers. 545 U.S. at 486. Economic development alone does not meet the constitutional standard of "public use" and should not justify the use of eminent domain.

A. The Framers' Intended for Public Use to Requires Direct Public Access, Control, or Benefit.

The original meaning of "public use" required that the public either have direct access to the taken property or control over its use. *Clark v. Nash*, 198 U.S. 361 (1905); *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30, 32 (1916). This

principle was reinforced in *United States v. Gettysburg Electric Railway Co.*, where this Court approved the taking of land to preserve the Gettysburg battlefield, a site of national significance. 160 U.S. 668 (1896). The preservation of the battlefield served a clear public interest, and the public had direct access to the land, meeting the original standard of "public use." *Id.*

This Court then expanded the definition of “public use” to takings that directly benefited the public. This is first seen in *Berman*, where this Court upheld the taking of blighted property for redevelopment because the blight posed a clear threat to public health and safety. 348 U.S. at 26. The public directly benefited from the improved safety and living conditions that resulted from the taking. Similarly, in *Hawaii Housing Authority v. Midkiff*, this Court upheld a land redistribution program designed to break up a land monopoly that was distorting the housing market. 467 U.S. at 229. In both cases, the takings were necessary to remedy public harm, and the public had direct benefits from the taking. All of which are permissible under the Takings Clause.

In contrast, New Louisiana’s plan to take The Landowners’ property for a luxury ski resort fails to meet this standard. The Landowners’ property is neither blighted nor harmful, and the public will not have access to, nor control over, nor direct benefit from property once it is transferred to Pinecrest, Inc. by New Louisiana. R. at 3. The luxury ski resort is intended to serve wealthy tourists, and the incidental economic benefits projected by New Louisiana do not satisfy the public use requirement under the Fifth Amendment. Allowing this taking is like building a house on shifting sand—without a firm foundation of true public benefit, the entire justification crumbles. The speculative promises of economic growth fail to secure the solid ground necessary to meet the constitutional requirement of “public use.”

B. The Framers' Intended for Public Use to be More Than Economic Development Alone.

Although economic development may provide incidental benefits to the public, it does not meet the constitutional threshold for "public use." The Takings Clause was intended to limit the government's power of eminent domain and ensure that takings serve the public good. *Id.* Permitting takings solely for economic development undermines these protections and risks turning private property into a resource for corporate interests.

In *Kelo*, this Court allowed private property to be taken and transferred to another private entity for the purpose of economic development. 545 U.S. at 472. However, as Justice Thomas observed in his dissent, this expansion of eminent domain disproportionately benefits powerful corporations while placing ordinary citizens at a disadvantage. *Id.* at 518 (Thomas, J., dissenting). Under this standard, property can be taken based on speculative promises of economic growth, rather than any direct public use. *Id.* This broad interpretation of the Takings Clause renders its protections meaningless, allowing the government to justify nearly any taking under the guise of economic development.

To understand the flaw in this reasoning, one need only imagine a home being seized by the government to build a private shopping mall in the hopes that it will increase tax revenue. The public, in this scenario, gains little while a private corporation reaps the rewards. The Landowners' case presents the same issue: New Louisiana's argument that the luxury ski resort will revitalize the economy is speculative at best. Pinecrest, Inc., the private developer, stands to gain far more from this development than The Landowners. This imbalance undermines the very purpose of the Takings Clause, which is meant to ensure that the government can only take property when the public will directly benefit from its use.

C. The Framers' Intended for Property Rights to be Equal Amongst All.

The broader public policy implications of allowing economic development takings are also troubling. Permitting takings for private economic projects disproportionately harms individuals and communities with fewer resources. *Kelo*, 545 U.S. at 505 (O'Connor, J., dissenting). Wealthy corporations and developers are far better equipped to influence government decision-making, leading to a system where those with economic power can use eminent domain to displace smaller property owners. *Id.* This is evident in The Landowners' case, where a longstanding, deeply interconnected community is being taken not for a genuine public use but for a luxury ski resort intended to serve private, affluent tourists. The Landowners, with ancestral ties to the land, are being asked to sacrifice their property for the uncertain promise of economic gain for New Louisiana.

Just as a sturdy house cannot stand on an unstable foundation, property rights cannot survive if they rest on the uncertain future of economic development projects. Failed projects, including the one in *Kelo*, have shown that they fail to deliver on their promises of job creation and increased tax revenue, leaving communities worse off than before.[9] In the case of Pinecrest, Inc.'s luxury ski resort, the alleged public benefits are highly uncertain, while the loss to The Landowners is immediate and irreversible.

Moreover, the insecurity caused by economic development takings undermines public trust in the fairness of government decisions. When the government takes private property to hand it over to private developers, it creates a perception that those with wealth and influence are being given special treatment, while ordinary citizens bear the burden.[10] This erodes the public's

[9] David Collins, *Feral Cats Ignore Eminent Domain*, The Day (Dec. 10, 2008); Katie Nelson, Conn. *Land Vacant 4 Years After Court OK'd Seizure*, Associated Press (Sep. 25, 2009).
[10] Daniel C. Orlaskey, *The Robin Hood Antithesis – Robbing from the Poor to Give to the Rich: How Eminent Domain is Used to Take Property in Violation of the Fifth Amendment*, 6 U. Md. L.J. R 515, 532-533 (2006).

confidence in the rule of law and undermines the fundamental fairness that the Takings Clause was meant to protect. Property rights are essential to individual liberty and community stability, and the Takings Clause ensures that those rights are not casually dismissed in the pursuit of speculative profits.

Finally, economic development takings discourage long-term investment in communities. When property owners fear that their land can be seized at any moment for speculative projects, they are less likely to invest in improvements or plan for the future.[11] This stifles local growth and destabilizes communities. In The Landowners' case, New Louisiana's plan disrupts their ability to maintain and improve their familial property, a legacy that has sustained their families for generations. R. at 3. The Landowners here are largely minorities and low-income, making the impact of this taking even more egregious. R. at 3. The uncertainty created by such takings undermines the very purpose of property ownership, which is to provide individuals with security and stability. Thus, the public policy consequences of allowing takings for economic development alone are dire. Property rights cannot be collateral damage in the pursuit of hypothetical profits. This Court should reaffirm the original meaning of the Takings Clause and hold that economic development alone cannot justify the use of eminent domain.

III. THE LANDOWNERS MUST RECEIVE JUST COMPENSATION BECAUSE THE TAKINGS CLAUSE OF THE IS SELF-EXECUTING AND NEW LOUISIANA'S SOVEREIGN IMMUNITY IS WAIVED.

The Takings Clause of the Fifth Amendment is fundamentally self-executing, ensuring that property owners such as The Landowners are entitled to just compensation directly under the Constitution, without the need for additional legislative measures. Embedded within the Constitution, it states, "nor shall private property be taken for public use, without just

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[11] Kenneth A. Stahl, *Reliance in Land Use Law*, 2013 BYU L. Rev. 949, 958 (2014) (referring to the zoning of new property).

compensation." U.S. Const. amend. V. This Clause is a critical safeguard, designed to provide a direct cause of action that protects citizens from governmental overreach and ensures fairness when property is appropriated for public use. *Id.*

The origins of the Takings Clause trace back to the experiences of the American colonists, who faced property seizures under British governance.[12] These experiences significantly influenced the Framers' commitment to protect private property rights, a cornerstone for individual liberty and economic development. The Takings Clause was intentionally crafted as part of the Bill of Rights to serve a dual purpose: to act as a check against the excesses of governmental power and to ensure a tangible measure of fairness when the state must infringe upon private property rights for public benefit.[13] By making just compensation a constitutional mandate, the Framers ensured that the government could not circumvent the fundamental rights of property owners.

This constitutional provision is comprehensive and self-contained, engineered to be both self-executing and self-abrogating. Its self-executing nature ensures it operates independent of additional legislative support, allowing property owners to rely directly on this constitutional guarantee without the interference of more cumbersome legal processes. Its self-abrogating feature overrides any state claims of sovereign immunity in instances of property takings, ensuring that the government cannot evade its obligation to compensate property owners. Moreover, the Takings Clause specifies the mechanism for assessing damages, thereby mandating that compensation be genuinely compensatory, reflecting the fair market value of the appropriated property.

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[12] Treanor, *supra* note 2, at 694.
[13] *Id.* at 710.

Given this background, the Takings Clause ensures that when the government exercises its power of eminent domain, it does so with due respect for the rights it infringes upon. Thus, the Clause not only supports the rights of individuals like The Landowners to seek redress but also reinforces the foundational American principle that the government must be both just and accountable. Therefore, the Takings Clause is self-executing, it overcomes the barrier of sovereign immunity, and The Landowners must receive just compensation.

A. The Takings Clause of the Fifth Amendment is Self-Executing.

To understand why The Landowners are entitled to bring their claim directly under the Fifth Amendment, it is essential to consider precedent and historical understanding of the Takings Clause. The Court in *United States v. Great Falls Mfg. Co.* recognized an "implied obligation, created by the Constitution, to pay for the property." 112 U.S. 645, 657 (1884). More recently, in *Knick v. Twp. of Scott*, this Court reaffirmed that "a taking without compensation violates the self-executing Fifth Amendment." 588 U.S. 180, 194 (2019). Accordingly, The Landowners are not required to bring this suit under any separate statutory authority.

New Louisiana contends that The Landowners lack a viable claim because they did not pursue their action under Section 1983 or the Tucker Act. R. at 4. However, this argument is unavailing in light of the self-executing nature of the Fifth Amendment. Throughout American history, private landowners have successfully brought claims solely under the Takings Clause, without relying on additional statutes. This Court has consistently recognized such claims, where plaintiffs pursued their claims exclusively under the Fifth Amendment, and no additional legislative authority was required. *Great Falls Mfg. Co.*, 112 U.S. at 658 (allowing the plaintiff to bring a suit against the United States solely under the Fifth Amendment); *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 324 (1893) (allowing the plaintiff to bring a suit

against the United States solely under the Fifth Amendment); *Norwood v. Baker*, 172 U.S. 269, 271 (1898) (allowing the plaintiff to bring a suit against the defendant solely under the Fifth Amendment).

In the present case, The Landowners brought their suit against New Louisiana solely under the Fifth Amendment, and neither the text of the Amendment nor established jurisprudence requires them to seek relief through any other statutory mechanism. The Tucker Act, moreover, provides relief only against federal agencies. 28 U.S.C.S. § 1491. Here, because The Landowners are pursuing claims against a state actor they cannot seek relief under the Tucker Act. R. at 3. Although Section 1983 could have been an available route, the self-executing nature of the Fifth Amendment obviates the need to take that additional step. The Fifth Amendment itself provides a direct and sufficient basis for seeking just compensation. Using an additional statutory route like Section 1983 is much like taking a detour when the main road is clear and direct. While Section 1983 may be a valid pathway for some claims, the Fifth Amendment offers a straightforward, unobstructed path that leads directly to just compensation. There is no need to take the longer route when the Constitution itself provides a direct and effective means of redress.

Thus, the Takings Clause ensures that when the government exercises its eminent domain power, it does so with full respect for the rights it infringes upon. This constitutional safeguard not only enables individuals like The Landowners to pursue redress but also reinforces the foundational American principle that government must act justly and remain accountable to the citizens it serves. Therefore, the Takings Clause is self-executing, it overcomes the shield of sovereign immunity, and The Landowners are entitled to receive just compensation for their property.

B. New Louisiana is Not Afforded Protection Under Sovereign Immunity.

New Louisiana cannot shield itself from liability for taking The Landowners' property by invoking sovereign immunity. The Eleventh Amendment generally prevents suits against state governments, but immunity must be explicitly waived for a suit to proceed against a state. Sovereign immunity can be waived in a variety of ways, including by consent or abrogation. *Zito v. N.C. Coastal Res. Comm'n*, 8 F.4th 281, 285 (4th Cir. 2021). New Louisiana asserts that a statutory or executive waiver is required to permit The Landowners to sue. NL Code § 13:5109. Furthermore, New Louisiana argues that because it has not explicitly waived its immunity in this case, The Landowners' claim cannot proceed. R. at 2. This argument, however, is flawed. Sovereign immunity is waived here because (1) The Landowners lack a viable remedy in state court, and (2) the Takings Clause is self-abrogating, providing a constitutional basis to bypass immunity.

1. New Louisiana's Sovereign Immunity is Waived Because The Landowners Lack Relief in State Court.

Sovereign immunity is waived where the state fails to provide an adequate remedy in state court. Although this Court has not directly addressed sovereign immunity in this precise context, many circuit courts have concluded that the availability of state remedies is crucial in determining whether sovereign immunity applies to Takings Clause claims. Notably, circuit courts have consistently barred federal claims when state court relief was available to plaintiffs under the Takings Clause. *DLX, Inc. v. Kentucky*, 381 F.3d 511, 526-28 (6th Cir. 2004) (holding that the state court "would have had to hear that federal claim" because the Eleventh Amendment barred suit under the Takings Clause); *Jachetta v. United States*, 653 F.3d 898, 909-10 (9th Cir. 2011) (holding that the Eleventh Amendment bars suit in federal courts under the Takings Clause, as long as relief is available in state courts); *Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 552

(4th Cir. 2014) (holding that when relief is available for violations of the Takings Clause in state courts the Eleventh Amendment bars relief in federal courts); *Williams v. Utah Dep't of Corr.*, 928 F.3d 1209, 1214 (10th Cir. 2019) (holding that because relief was available in state court for an action under the Takings Clause, the Eleventh Amendment barred a federal action).

Here, The Landowners have no recourse in New Louisiana's state courts, making federal relief necessary. R. at 2. This lack of state remedy inherently waives New Louisiana's immunity, as the fundamental purpose of the Takings Clause—to provide just compensation—would be thwarted without an available forum for adjudication. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, while concerning federal officials, provides a persuasive analogy. 403 U.S. 388 (1971). The *Bivens* decision held that a constitutional violation inherently gives rise to a cause of action. *Id.* Although *Bivens* directly applied to federal officials, the reasoning supports the notion that constitutional rights must be enforceable, particularly when no other remedy is available. The Landowners brought their claim solely under the Takings Clause because New Louisiana state courts could not provide the necessary relief. Therefore, consistent with the logic in *Bivens*, The Landowners must be allowed to proceed in federal court to vindicate their constitutional rights.

2. New Louisiana's Sovereign Immunity is Waived Because Sovereign Immunity is Abrogated by the Takings Clause.

Sovereign immunity is further waived because the Takings Clause is inherently self-abrogating. In *Reich v. Collins*, this Court held that the Due Process Clause was self-abrogating, allowing plaintiffs to pursue claims in federal court without requiring explicit legislative action to waive immunity. 513 U.S. 106, 108 (1994). So too here. Although this Court has not fully addressed whether the Takings Clause similarly abrogates sovereign immunity, there are strong indications that it does. In *First English Evangelical Lutheran Church of Glendale v. County of*

Los Angeles, the Court suggested that the Takings Clause could override sovereign immunity. 482 U.S. 304, 316 (1987). A detailed examination of both the text and structure of the Clause support that the Takings Clause is self-abrogating.

a. The Takings Clause is Self-Abrogating Based on its Text.

The plain language of the Takings Clause indicates that it is self-abrogating. The Clause explicitly provides for a cause of action for landowners whose property has been taken by the government: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. This language provides both the basis for a claim and the mechanism for damages—just compensation. The Clause was intended to operate independently, providing an enforceable right to compensation without further legislative intervention or consent from the government.[14] The Framers of the Constitution were clear in their intent that government power to take private property be limited by an inherent obligation to compensate landowners, establishing a direct, self-executing safeguard for property rights.

Moreover, the Takings Clause uses mandatory language, such as "shall not," which imposes a direct duty on the government. U.S. Const. amend. V. Unlike other constitutional provisions that may depend on a state's direct waiver of its sovereign immunity, the Takings Clause does not require that—it directly waives the need for the government to do so. The specific inclusion of both a prohibition against taking property and the requirement for compensation demonstrates the completeness of the Takings Clause and underscores that it was intended to be both a sword and a shield for landowners. This ensures that citizens can seek redress against states that might otherwise evade their duty to provide just compensation.

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[14] Eric Berger, Article, *The Collision of the Takings and State Sovereign Immunity Doctrines*, 63 Wash & Lee L. Rev. 493, 519 (2006).

Further, the plain text of the Eleventh Amendment grants states sovereign immunity from lawsuits filed by citizens of other states. U.S. Const. amend. XI. Under a strict textual interpretation, this would suggest that New Louisiana cannot claim immunity against lawsuits initiated by its own citizens, such as The Landowners in this case. New Louisiana might deviate from the strict textual interpretation of the Eleventh Amendment and argue that this Court has broadened the scope of the Amendment to extend these immunity protections to suits filed by a state's own citizens. *Hans v. Louisiana*, 134 U.S. 1, 21 (1890) (holding that because Louisiana had not waived its sovereign immunity, the suit could not proceed even though the plaintiff was a citizen of Louisiana). Thereby barring The Landowners suit, as sovereign immunity has not explicitly been waived by New Louisiana. However, a structural analysis of the Takings Clause further supports that sovereign immunity is waived here.

b. The Takings Clause is Self-Abrogating Based on its Structure.

A structural analysis of the Takings Clause underscores its self-abrogating nature. When constitutional amendments appear to be in conflict, it is essential to evaluate the protections each amendment aims to provide.[15] The Fifth Amendment's Takings Clause is designed to protect the rights of citizens by ensuring just compensation for the governmental taking of private property.[16] Conversely, the Eleventh Amendment shields federal and state governments from lawsuits, providing them with sovereign immunity. U.S. Const. amend. XI.

The Framers' intent was clear: to safeguard citizens from potential governmental abuse.[17] The juxtaposition of these amendments highlights a fundamental legal paradox. On one hand, the Eleventh Amendment aims to protect governmental sovereignty, yet on the other, the Fifth

[15] Id. at 526-27.
[16] Treanor*, supra* note 2, at 710.
[17] *Id.* at 701.

Amendment ensures that individual property rights are not overridden by that very sovereignty. To uphold both principles simultaneously — protecting private property rights while also allowing states to avoid accountability — would be contradictory and untenable. As this Court eloquently stated in *Railroad Company v. Tennessee*, "[a]djudication is of no value as a remedy unless enforcement follows." 101 U.S. 337, 339 (1879). This principle is critical in understanding the necessity of enforceable rights within the constitutional framework.

Furthermore, the inherent distrust of governmental power embedded within the Takings Clause implies a strong protective measure for private individuals.[18] The Clause was specifically crafted to curtail government overreach by mandating compensation for property takings.[19] To restrict citizens to only pursue claims through acts or statutes that the government itself enacts would render this constitutional protection ineffective. Such a requirement would paradoxically grant the legislature the very power the Constitution intends to restrict, undermining the fundamental rights the Takings Clause aims to protect.

Therefore, insisting on formal congressional abrogation to waive sovereign immunity contradicts the very essence of the Takings Clause. It would shift the balance of power from the people to the government, contradicting the Framers' intent to embed a mechanism within the Constitution that directly empowers individuals against governmental actions. The Takings Clause, therefore, must be recognized as self-abrogating, allowing citizens like The Landowners to pursue just compensation claims against New Louisiana directly in federal court, bypassing any immunity. This interpretation not only aligns with the textual and structural analysis of the Constitution but also faithfully adheres to the principles of justice and governmental accountability espoused by the Framers.

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[18] Berger, *supra* note 15, at 526-27.
[19] *Id.*

C. The Landowners Must Be Justly Compensated When Their Land is Taken.

A historical perspective, combined with the text of the Takings Clause, mandates that The Landowners receive compensation that is just if their land is appropriated by New Louisiana. Historically, it was common before the founding of the United States for the government to take private property for public use without compensating the landowner.[20] The Framers, understanding the paramount importance of property rights, enshrined protections within the Constitution.[21] This was made evident when James Madison, the creator of the Takings Clause, articulated that property shall not be "taken directly even for public use without indemnification to the owner."[22] The concept of compensation was also reaffirmed in the early 1800s in *Gardner v. Trustees of Newburgh*. 2 Johns. Ch. 162, 168 (N.Y. 1816). The court in *Gardner* stated, "a provision for compensation is an indispensable attendant on the due and constitutional exercise of the power of depriving an individual of his property." *Id.* Here, New Louisiana urges this Court to reject these foundational principles, even though this Court has consistently reaffirmed the constitutional guarantee for compensation.

Further, not only did the Framer's intend for private landowners to receive compensation, but they also intended for the compensation to be just. This is made clear because when drafting the Taking Clause, Madison wanted to ensure that any compensation received because of a taking was just, making the landowner entirely whole again. *Monongahela*, 148 U.S. at 326. Although without the word just, the meaning of the Clause does not operatively change. James Madison chose the language of the Takings Clause carefully because he wanted to ensure that citizens whose property is taken are left whole. *Id.* Compensation that is truly just ensures that

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[20] Paul Makey, Comment, *Ensuring Just Compensation: Imposing a Reasonable Time Limit on Payment of Money Judgments Under the Fifth Amendment*, 128 Dick. L. Rev. 803, 806 (2024).
[21] *Id.* at 807.
[22] James Madison, Property, *in* The Papers of James Madison 266, 267 (William Hutchinson et al. ed., 1977).

citizens are treated fairly and equitably by their governments, especially when those same governments seize private property. Fair market value stands as the appropriate measure of compensation, that is just. This Court, in *United States v. 564.54 Acres of Land*, emphasized that "the fair market value of [respondent's] property is thus consistent with the 'basic equitable principles of fairness.'" 441 U.S. 506, 517 (quoting *United States v. Fuller*, 409 U.S. 488, 490 (1973)). This level of compensation ensures that landowners are placed in the same financial position they would have been in had their property not been taken. *United States v. Reynolds*, 397 U.S. 14, 16 (1970).

In this instance, The Landowners declined to sell their property to New Louisiana for the proposed ski resort project, insisting on not accepting any offer below the fair market value. R. at 3. For many among them, these lands have not only been in their families for generations but also represent their primary source of livelihood. R. at 2-3. This scenario precisely embodies the circumstances the Framers, including James Madison, envisioned when formulating the Takings Clause. They aimed to shield such honest, hardworking individuals from governmental and corporate overreach by ensuring equitable compensation for the compulsory acquisition of private property. Thus, the history and jurisprudence surrounding the Takings Clause firmly support the right of The Landowners to receive not only compensation but that the compensation be just. Here, the just compensation guaranteed by the Takings clause, would be satisfied if The Landowners received the fair market value of their land.

CONCLUSION

For these reasons, this Court should reverse the judgement of the United States Court of Appeals for the Thirteenth Circuit.

/s/ *Team 13*

Team 13

Counsel for Petitioner