IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

KARL FISCHER, ET AL.,

Petitioners

v.

THE STATE OF NEW LOUISIANA,

Respondents

ON WRIT OF CERTORARI

TO THE UNITED STATE COURT OF APPEALS

FOR THE THIRTEENTH CIRCUIT

Case NO. 24-386

BRIEF FOR THE RESPONDENT

Team 18

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STATUTORY PROVISIONS INVOLVED

> 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.

U.S. Const. amend. XIV, § 1.

> Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

U.S. Const. amend. XIV, § 2

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. Const. amend. XIV, § 5

> 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. § 1983

> (a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in

cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(3) To afford complete relief on any contract claim brought before the contract is awarded, the court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. In exercising this jurisdiction, the court shall give due regard to the interests of national defense and national security.

(b) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

28 U.S.C. § 1491

<u>Secondary Authority</u>

Kelo v. City of New London, No. 04-108, (Brief of the American Planning Association et al. as Amici Curiae in Support of Respondents).

QUESTIONS PRESENTED

I. Should this Court reaffirm *Kelo v. City of New London*, when precedent explicitly defines that economic development and comprehensive public benefit plans constitute a permissible taking for "public use"?

II. Is the Takings Clause self-executing in a manner that abrogates Sovereign Immunity, allowing for direct suit against a state for just compensation when no other federal or state remedy is available?

STATEMENT OF THE CASE

The State of New Louisiana has initiated an Economic Development Act ("the Act") consisting of a comprehensive plan for the construction of a ski resort. The development projects to create thousands of new jobs (3,470) and promote significant economic growth through increased tourism. The project is anticipated to simultaneously create new business opportunities while benefiting already existing business owners in the area due to an influx of new employees moving to the area, new tourists visiting, and property values increasing in the surrounding areas. Additionally, fifteen percent of the tax revenue generated from the ski resort will be funneled back into the community to ensure long-lasting benefits.

The State, in order to acquire the 1,000 acres of land needed for the resort, purchased 90 properties from willing sellers in accordance with New Louisiana state law and has initiated eminent domain proceedings against the ten holdout property owners. This suit is brought by the ten holdout landowners whose properties are small, unprofitable family-owned farms and single-family homes in poor condition that further depress local market value. The Farmland has all ten of these holdout landowners refuse to sell due to personal attachments or sentimental values associated with the properties.

Following the initiation of eminent domain, Petitioners, the ten landowners, brought suit against the State under the Fifth and Fourteenth Amendments. The landowners sought temporary and permanent injunctive relief for violation of the Takings Clause, alleging that the taking is not for public use, or, alternatively, what they deem just compensation for any taking that occurs. New Louisiana moved to dismiss both claims based on two arguments. First, that *Kelo v. City of New London* allows for takings for economic development, making the project a valid taking for public use. Second, the State argues that the Fifth Amendment is not self-executing in a manner that

provides the landowners with a cause of action that can bypass Sovereign Immunity to directly enforce compensation by State entities in court.

The lower court upheld the State's right to exercise eminent domain for the construction of the ski resort, ruling that the economic development to be sustained by the creation of new jobs and tax implications qualify as a valid public use under *Kelo*. The lower court further held that the compensation offered to the holdout landowners was consistent with the constitutional standards.

Now, Petitioners seek review from this Court, arguing that the lower court erred in its application of *Kelo*. Petitioners now contend that the construction of the ski resort primarily stands to benefit private parties and claim that the Act does not impact the public enough to justify the exercise of eminent domain. Petitioners ask this Court to limit the long-used interpretation of "public use" brought forth by *Kelo*, or alternatively, overturn the deceased-old precedent altogether.

SUMMARY OF THE ARGUMENT

This Court should reaffirm *Kelo v. City of New London* because economic development serves as a legitimate public use under the Fifth Amendment according to long standing precedent. This Court has established that public use encompasses broader public purposes which include economic development. Upholding *Kelo* ensures that state and local governments retain the discretion needed to address the evolving needs of their communities through comprehensive planning that promotes economic growth. Overturning *Kelo* would undermine decades-old precedent and hinder economic growth nationwide.

Further, this Court should find that New Louisiana's Economic Development Act constitutes a valid public purpose under the Fifth Amendment, as it promotes public welfare by driving economic growth. The Act projects to create thousands of new jobs, increased tax revenue,

and countless new business opportunities by repurposing underutilized land. The Act's comprehensive and well-planned structure aligns seamlessly with this Court's intentionally broad interpretation of public use as it ensures long-term benefits to the community.

Moreover, The Takings Clause of the Fifth Amendment, while incorporated, is not self-executing in a manner that allows property owners to bypass the required legislative procedures for direct suit against a state entity. New Louisiana asserts that while the Takings Clause may establish the substantive right to just compensation, enforcing that right against the State requires statutory authorization, which does not exist in this case. Furthermore, there is no alternative Waiver or exception to New Louisiana's sovereign immunity that would allow for the matter at hand to proceed against it.

ARGUMENT

I. THIS COURT SHOULD UPHOLD *KELO* BECAUSE ECONOMIC DEVELOPMENT ALIGNS WITH LONGSTANDING PRECEDENT ON PUBLIC USE.

This Court should reaffirm the decades-long precedent set forth by *Kelo* because economic development serves as a legitimate public use for the exercise of eminent domain under the Fifth Amendment. The Fifth Amendment of the United States Constitution allows takings for "public use." A wide breadth of precedent offers further insight as to what constitutes a "public use." In *Berman v. Parker*, this Court held that a taking for a community redevelopment project aimed at restoring a blighted area was a valid taking for public use. *Berman v. Parker*, 348 U.S. 26 at 32 (1954). 30 years later, this Court ruled in *Hawaii Housing Authority v. Midkiff* that the transfer of land from one private owner to another in order to break up a land oligopoly was a valid public use. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 at 240 (1984). This Court later broadened the scope of "public use" to include takings that serve a public purpose, which included economic

development. *Kelo v. City of New London*, 545 U.S. 469 at 476 (2005). Precedent illustrates a broad interpretation of "public use" to ensure that the legislature, rather than the judiciary, is able to govern what best serves their communities. Maintaining this wide range of what constitutes a public use is essential for the legislature to address the ever changing needs of the public. A bright line rule would strip both the legislature and the state executive branch, the powerhouses of decision making, of the necessary discretion to make such decisions.

A. Economic development qualifies as a public use.

Precedent set forth by *Kelo* clearly established that the definition of "public use" under the Fifth Amendment's Taking Clause is intentionally broad so as to encompass "public purpose," under which economic development serves as a legitimate purpose. In *Kelo*, this Court emphasized that economic projects that benefit the public constitute a public use. *Kelo*, 545 U.S. 469 at 472. *Berman* earlier recognized that eminent domain could be employed to benefit a wide range of factors impacting public welfare, including both aesthetic and economic considerations. *Berman*, 348 U.S. 26 at 33. Such a broad interpretation ensures that projects aimed at economic development fall squarely within the scope of permissible takings. Thus, any attempt at narrowing the deliberately broad scope of "public use" would contradict long standing precedent and inhibit economic development.

The argument that the taking of these properties for the construction of Pinecrest's ski resort is not consistent with the plain meaning and historical understanding of "public use" falls flat. The construction of Pinecrest's ski resort falls squarely under the broad interpretation of "public use" that was established by *Kelo* and *Berman* and has been followed faithfully for over two decades. New Louisiana's Economic Development Act aligns precisely with the economic development goals upheld in Kelo, if not upstaging them. Where the project in *Kelo* aimed to

create 1,000 new jobs, New Louisiana's plan projects to create 3,470 new jobs. *Kelo*, 545 U.S. at 473; R. at 2. In addition to trifold new jobs in comparison to *Kelo*, New Louisiana's plan commits to funnel fifteen percent of the tax revenue from the ski resort back into further revitalization of the community, highlighting the plan's priority: the promotion of public welfare through the rehabilitation of a stagnant economy.

The precedent established by this Court is broad yet consistent, affirming that economic development falls squarely within the scope of "public use" under the Fifth Amendment. This Court should reaffirm that economic development constitutes a valid public use under the deliberately broad interpretation in order to safeguard the legislature's ability to address evolving public needs and foster the welfare of communities nationwide.

B. This Court should defer to legislative judgments on public use.

A broad interpretation of what constitutes a public use reflects a deep-seated principle that courts should refrain from intruding upon legislative judgments as such determinations do not belong to the judiciary. A wealth of jurisprudence backs this practice. In addition to *Kelo*, the Court in *Midkiff* cautioned against second guessing the legislative intent behind public use determinations, stating that "the necessity and wisdom of using eminent domain are matters for legislative—not judicial—determination." *Midkiff*, 467 U.S. 229 at 240-241.

The principle of deference to legislative judgments, specifically on public use, is long-established. This Court has consistently recognized that it is not proper of the judiciary to second-guess legislative decisions on matters concerning public welfare, especially when those decisions are rooted in economic or social policies. This Court in *Berman* stated that the judiciary's role in determining what constitutes a public use is "an extremely narrow one." *Berman*, 348 U.S. 26 at 32-33. This Court further reasoned that once the legislature declares a purpose to be a public use,

the judiciary must respect that choice unless it is without reasonable foundation since there is nothing in the Fifth Amendment that could stand in the way. *Id*.

In *Midkiff*, This Court held strong that it will not substitute its own judgment for that of the legislature unless the action is palpably without reasonable foundation. *Midkiff*, 467 U.S. 229 at 241. Similarly, this Court in *Old Dominion Land Co. v. United States* dictated that the legislature's determination of a public use is entitled to deference until it is shown to be either impossible or entirely irrational. *Old Dominion Land Co. v. United States*, 269 U.S. 55 at 66.

Deference to legislative judgments is not so narrow as to only apply to property rights. In *Clark v. Nash*, this Court highlighted that the circumstances surrounding the exercise of eminent domain vary greatly from case to case, making it wholly inappropriate to impose one bright line rule. *Clark v. Nash*, 198 U.S. 361, 367-368. It was further explained that the different facts that contribute to what constitutes a valid public use are best known to local courts and legislatures. Id.

Most cautionary might be the decision of *United States v. Welch*, where it was warned that any departure from this deference would lead to courts deciding what constitutes a valid governmental function, which is wholly improper of the judiciary. *United States ex rel. TVA v. Welch*, 327 U.S. 546, 551-552. Such overreach would disrupt the balance between the branches and obstruct the legislature's ability to effectively address public needs.

Here, where New Louisiana pursues economic development as a way to promote the general welfare of the community, the principle of deference to legislative judgment is absolutely vital. The proper employment of eminent domain for economic development under the Fifth Amendment is within the discretion of the legislature, absent an obvious showing of impropriety. This Court should continue to exercise such necessary deference towards the New Louisiana legislature so as to not thwart legislative efforts to promote the welfare of the People.

C. Overturning *Kelo* would undermine economic growth.

To dismantle the long-held standard of *Kelo* would be to fundamentally destabilize the legal foundation upon which governmental efforts to promote economic growth depend. Such an act would essentially stifle the very means that drive progress in communities nationwide.

New Louisiana's determination that Pinecrest's ski resort would revitalize the community's dampened economy is the precise judgment that this Court has outspokenly deferred to in landmark cases. If this Court were to overturn *Kelo*, state and local governments would be stripped of their discretion and ability to pursue projects that facilitate the growth and revitalization needed for their own communities. Overturning *Kelo* would essentially replace local decision-making with a blanket rule that disregards the unique needs of each and every community. This would effectively insert judicial review where legislative and local expertise is necessary. *Kelo v. City of New London*, No. 04-108, at 9 (Brief of the American Planning Association et al. as Amici Curiae in Support of Respondents).

Further, the large archive of post-*Berman* decisions clearly displays that local governments have exercised proper discretion where employing eminent domain for economic development. In 2004, at the height of *Kelo*, there were 31 post-*Berman* federal appellate decisions. Of those 31 federal decisions, only one taking was held to be invalid, and even in that case the decision was based largely on state law, not the constitutional principles at issue here. *Id* at 12. Of the combined state and federal decisions at the time, only seventeen percent held that a challenged taking was not for a valid public use, with most of these decisions relying predominantly on state law. *Id* at 13.

Overturning *Kelo* would not only disrupt decades of legal precedent with no justifiable reason, but it would also undermine the prosperity of communities nationwide by stripping the

state and local governments of the means to facilitate such prosperity. To strike down this precedent would be to impose a an unsupported limitation on local legislatures.

II. A PERMISSIBLE TAKING FOR PUBLIC USE IS ONE THAT YIELDS TANGIBLE BENEFITS.

A permissible taking for public use is one that addresses broader public purposes like economic development. This Court has held steadfast that, under the Fifth Amendment, "public use" includes all tangible benefits that advance the welfare of a community. *Kelo*, *Berman*, and *Midkiff* all confirm that promoting economic revitalization justifies the use of eminent domain, even when benefits reaped are indirect or delayed. New Louisiana's economic development plan perfectly exemplifies these principles, making the exercise of eminent domain here not only justified, but essential to advance public interests.

A. Economic development and job creation are core public purposes recognized by This Court.

This Court in *Kelo* established that the term "public use" under the Fifth Amendment's Takings Clause is not limited to the literal use of the land by the public, but rather includes broader public purposes such as economic development. *Kelo*, 545 U.S. 469 at 484. This Court further held that a taking may still constitute a public use so long as it serves a valid public purpose, such as job creation, even if the initial transfer was made to a private party. *Id.* at 480-483. This Court simply stated that "promoting economic development is a traditional and long-accepted function of government." *Id.* at 484.

Kelo recognizes the promotion of job creation and increased tax revenue as a valid reason to exercise eminent domain, even when these ends are achieved through private developers or entities. This Court reasoned therein that benefits gained by the public through economic revitalization and increased employment opportunities justified the exercise of eminent domain,

recognizing that public use should not be interpreted so narrowly as to mean that the public has direct access to or use of the land. *Id.* at 486.

Similarly, under *Berman*, takings can be justified when they are for projects that improve either the economic or social conditions of a community. *Berman*, 348 U.S. 26 at 33. The Court therein highlighted that the concept of public welfare is broad as well as inclusive, encompassing not only tangible economic improvement but the overall health of a community. *Id*. This decision exemplifies the longstanding notion that eminent domain can be used to promote a range of public interests.

This Court has repeatedly recognized economic development as a valid public use. Both *Kelo* and *Berman* affirm that public use under the Fifth Amendment should not be construed to mean literal access or use of the land by the public but should consider the broader perspective of public welfare. Thus, it is clear that economic development efforts, even when executed through private parties, serve as valid public purposes.

B. Broader public needs justify takings even when benefits are indirect.

This Court in *Midkiff* dictated that a taking serves as a legitimate public use, even if the benefits are indirect or reaped over time, so long as the taking is rationally related to a public purpose. *Midkiff*, 467 U.S. 229 at 241-242. However, Petitioners seek a significant departure from settled constitutional understandings, urging the adoption of offbeat constitutional limitations on the exercise of eminent domain that have never existed—and should not exist—under federal constitutional law. *Kelo v. City of New London*, No. 04-108, at 4 (Brief of the American Planning Association et al. as Amici Curiae in Support of Respondents).

New Louisiana's comprehensive economic plan further reflects the rationale in *Midkiff*. While public benefits from Pinecrest's ski resort may not be immediate, the public stands to gain

immensely in the future through increased employment, tourism, and tax revenue, all projected to result from the same project. New Louisiana is addressing broader public needs in line with those in *Midkiff* through repurposing underutilized land. Ultimately, the benefits to the community, however long-term, justify the taking.

C. New Louisiana's comprehensive economic plan satisfies public use requirements.

Precedent has illustrated that a comprehensive and well-considered development plan supports the legitimacy of a public use under the Takings Clause. This Court established in *Kelo* a taking satisfies the public use requirement if it is part of a well-planned economic development effort. *Kelo*, 545 U.S. at 483-484. The construction of Pinecrest is supported by a carefully considered, comprehensive economic development plan comparable to that in *Kelo*. The plan aims to create 3,470 new jobs while benefiting already existing business owners through increased tourism in addition to funneling 15% of its increased tax revenue back into the community. R. at 1-2. The comprehensive structure of New Louisiana's plan focuses on the continuing economic benefits to the community through its trickle-down effects and mirrors the vital considerations of *Kelo*. New Louisiana's plan aims to increase new jobs more than threefold when compared to the mere 1,000 jobs that were proposed by *Kelo*. New Louisiana's plan would sustain economic growth through increased tourism and countless new business opportunities.

New Louisiana's plan is comprehensive as well as proactive, demonstrated by the plan's focus on long-term benefits to the community. The trickle-down effects of Pinecrest's ski resort will stimulate economic growth far beyond the initial 3,470 jobs. The influx of tourism will drive demand for other goods and services, such as dining, retail, lodging, and more. This type of economic development is precisely the kind that this Court has found to be a valid reason to exercise eminent domain.

Applying this reasoning, New Louisiana's promotion of economic development through its comprehensive plan constitutes a public use. Both *Kelo* and *Berman* recognize that public use is not limited to direct public use or access but looks to a broader public purpose. New Louisiana's economic plan serves a legitimate public purpose of economic growth and overall revitalization of an underserved community. Therefore, the exercise of eminent domain for the construction of Pinecrest's ski resort satisfies public use requirements under the Fifth Amendment.

III. THE FIFTH AMENDMENT'S TAKINGS CLAUSE IS NOT SELF-EXECUTING AGAINST THE STATES.

The Takings Clause of the Fifth Amendment, while incorporated, is not self-executing in a manner that allows property owners to bypass the required legislative procedures for direct suit against a state entity. The State of New Louisiana asserts that while the Takings Clause establishes the substantive right to just compensation, enforcing that right against the State requires statutory authorization, which has not been provided in this case.

A. The takings clause requires legislative action for enforcement against states.

1. The Fourteenth Amendment and Incorporation.

The Fourteenth Amendment, when ratified in 1868, fundamentally altered the relationship between the Federal Government and the States. Through the Due Process Clause, it provided a mechanism for the incorporation of certain individual rights from the Bill of Rights—including the Fifth Amendment's Takings Clause—against the States. *U.S. Const*. amend. XIV, § 1. Through Section 5, it was Granted the power to "enforce" those incorporated rights against the States via legislation. *U.S. Const*. amend. XIV, § 5. Before the ratification of the Fourteenth Amendment, the Bill of Rights could be applied only to the federal government. States were free to develop their own laws regarding property and compensation for takings, free from the constraints of

federal law. *Barron v. Baltimore*, 32 U.S. 243, 249 (1833). For these reasons no aggrieved citizen could hold the Sovereign States directly accountable for violating those rights in a courtroom.

"The terms of the Amendment speak only to enforcement by Congress, which enjoys power to enforce the Amendment through legislation pursuant to Section 5. This can hardly come as a surprise, given that the substantive provisions of the Amendment "embody significant limitations on state authority." *Trump v. Anderson*, 601 U.S. 100, 112 (2024) (quoting *Fitzpatrick v. Bitzer*, 427 U. S. 445, 456 (1976).

Under the Amendment, States cannot abridge privileges or immunities, deprive persons of life, liberty, or property without due process, deny equal protection, or deny male inhabitants the right to vote. *U.S. Const*. amend. XIV, § 1, 2. The Fourteenth Amendment also granted an entirely new power to Congress to enforce the provisions of the Amendment against the States. *Id. at* 112. The opinion of this Court in *The Slaughter-House Cases*, with regards to the then recent Reconstruction Amendments, and about Section 5 of the Fourteenth Amendment:

> In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden. If, however, the States did not conform their laws to its requirements, then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation.

Slaughterhouse Cases, 83 U.S. 36 (1872).

In the same case, the Court held that the Privileges or Immunities Clause did not extend to basic civil liberties like the right to work or property rights, which were considered rights of State citizenship. *Id*. at 79. This made the privileges and immunities clause essentially useless for

protecting most individual rights from state infringement. It also made it so that virtually all individual rights had to be incorporated against States through the Due Process Clause instead.

To clarify, the 14th Amendment essentially allowed for Congress to now pass laws against the States, pursuant to their Section 5 power, in order to enforce any other provisions which were deemed incorporated through the Due Process Clause against the States. This will be discussed *infra*, but further evidence of this condition precedent of an act pursuant to Section 5, is the fact that 42 U.S.C. § 1983, originally part of the Civil Rights Act of 1871, was passed only three years after the 14th Amendment, in order to try and provide a much-needed mechanism for enforcement of the incorporated rights being violated during Reconstruction. It should be noted however, that *Section 1983* doesn't actually provide a cause of action against a State as an entity.

And so, this Court gradually developed the doctrine of selective incorporation through a series of cases, individually taking up each right that was to be incorporated, and therefore applying the Bill of Rights to the States.

In *Mapp v. Ohio*, 367 U.S. 643 (1961), this Court incorporated the 4th Amendment's protections- which made it so improperly seized evidence was inadmissible in court, applying the exclusionary rule to the states as remedy. *Robinson v. California*, 370 U.S. 660 (1962) incorporated the Eighth Amendment's prohibition on cruel and unusual punishment against the states. 42 U.S.C. § 1983 became a tool for individuals to challenge prison conditions or sentences that violated the Eighth Amendment, Individuals could also seek both injunctive relief to stop inhumane practices and damages for harm caused. See *Estelle v. Gamble*, 429 U.S. 97 (1976); *Smith v. Wade*, 461 U.S. 30 (1983). In *Gideon v. Wainwright*, 372 U.S. 335 (1963), this Court applied the Sixth Amendment's right to counsel to the States. Individuals who were denied the right to counsel could

challenge their convictions on the grounds of a Sixth Amendment violation. The right against self-incrimination was incorporated in *Malloy v. Hogan*, 378 U.S. 1 (1964), where this Court held that the Fifth Amendment's protection applies to the states, ensuring that individuals could not be compelled to testify against themselves in state courts. In *McDonald v. Chicago*, 561 U.S. 742 (2010) the court incorporated the Second Amendment right to bear arms against the states.

The list goes on but what these incorporated rights all have in common is that their violations are not remedied through direct suits against the State, or in the alternative, can be remedied through Section 1983, whether the relief be injunctive or monetary. But what makes them all so different from the enforcement of the also incorporated Fifth Amendment, is that Section 1983 does not provide a cause of action against the state as an entity. Therefore, there simply exists no enforcing legislation passed pursuant to Congress's Section 5 power, that would bind a State to direct lawsuit over a violation of the 5th amendment's taking clause.

In *Chicago, Burlington & Quincy R.R. Co. v. Chicago*, 166 U.S. 226 (1897), the Court incorporated the Takings Clause of the Fifth Amendment through the Fourteenth Amendment's Due Process Clause, requiring states to provide just compensation when taking private property for public use. *Chicago, Burlington*, 166 U.S. at 236.

More important however, is that the incorporation of the Takings Clause against the states in *Chicago*, did not alter the fundamental requirement for legislative processes to be established before such compensation claims could be enforced. The case established that States must adhere to the substantive requirements of the Fifth Amendment, but did not in any way suggest that property owners could bypass state legal frameworks or directly sue the state without statutory authorization. *Id*. at 234. While the Fifth Amendment guarantees compensation, and it is also

incorporated, its enforcement against the States through judicial means *still depends on the existence of statutory mechanisms*. Without the needed mechanism, the only power obtained from the Fifth Amendment's incorporation, is Congress's power to now legislate mechanisms that *could* bind the States.

The same incorporation of this substantive right does not in any regard imply that the Fifth Amendment itself provides the mechanism needed here to overcome sovereign immunity and directly sue a State. Its incorporation simply allows Congress to now make legislation, that it normally would not have the power to pass, that would abrogate that immunity, in order to provide the needed mechanism for enforcement. The Takings Clause may guarantee compensation, but its incorporation does not prescribe nor create the process by which property owners can sue the state. That process *must* come through legislative action. This is a distinction rooted in the historical development of sovereign immunity and the state's autonomy to establish its own procedures for handling takings claims.

2. *Incorporation does not equal execution.*

One key piece of evidence that the enforcement of these protections against the State in suit requires additional legislative acts, is the abundance of legislative acts enforcing incorporated provisions. There exists Title VII of the Civil Rights Act (1964), which abrogates state sovereign immunity for claims of employment discrimination on the basis of race, color, religion, sex, or national origin. There exists the Americans with Disabilities Act (ADA), under which Congress abrogated sovereign immunity for cases involving access to courts under Title II of the ADA. *Tennessee v. Lane*, 541 U.S. 509 (2004). But the two most important today are The Tucker Act and Section 1983.

These two key statutes—The Tucker Act (28 U.S.C. § 1491) and 42 U.S.C. § 1983—serve as models for how federal constitutional rights, specifically in takings contexts, are enforced through legislative mechanisms- showing why a similar statute is necessary for the enforcement of takings claims against states. The Tucker Act, passed in 1887, provides the procedural mechanism for enforcing the Fifth Amendment's Takings Clause against the federal government. 28 U.S.C. § 1491. The act allows property owners to bring claims for just compensation in the U.S. Court of Federal Claims, but it does not create new substantive rights. *United States v. Mitchell*, 463 U.S. 206, 207 (1983). Rather, it provides a remedy for property owners whose rights under the Takings Clause have been violated by the federal government. *United States v. Testan*, 424 U.S. 392, 398 (1976). Without the Tucker Act property owners would have no legal avenue to enforce their Fifth Amendment rights against the Federal government, who like the States, also enjoys similar immunity from suit. The Tucker Act serves to demonstrate that the Fifth Amendment, while guaranteeing substantive rights, requires statutory mechanisms for enforcement just like any other amendment would.

Similarly, 42 U.S.C. § 1983, passed as part of the Civil Rights Act of 1871, "provides a federal remedy against state officials who deprive individuals of rights guaranteed by the Constitution or federal law." *Monroe v. Pape*, 365 U.S. 167, 172 (1961). Section 1983 allows individuals to bring lawsuits against state officials for damages and injunctive relief, in federal court, for violations of their constitutional rights- but it only applies to *actors*, not the state entity. 42 U.S.C. § 1983. As mentioned *supra*, when Congress passed Section 1983 (then called the Ku Klux Klan Act), its primary aim was to provide a remedy for individuals whose civil rights were violated by state officials, particularly in the aftermath of the Civil War and during Reconstruction. The main worries were injustices like those in the famous Mississippi Burning Case. That case

involved the murder of three civil rights workers by law enforcement officials and members of the Ku Klux Klan working together in Mississippi in 1964. *United States v. Price*, 383 U.S. 787, 789 (1966). After local Officials were found to be involved in the cover-up and refused to prosecute the murderers, the federal government intervened and 42 U.S.C. § 1983 was used to bring charges against the officials for violating the civil rights of the three workers under color of state law. *Id.*

While the Fourteenth Amendment had just been passed, giving Congress the power to enforce civil rights protections against the State as an entity, the notion of state sovereignty remained strong, and Congress may have been cautious about pushing too hard against this doctrine. Along these same lines there was also limited judicial interpretation of Congress's power under Section 5 of the Fourteenth Amendment to abrogate state sovereign immunity. The legal landscape was still developing, and it couldn't have been clear at the time just how far Congress could go in using its enforcement powers.

What's important about Section 1983 is that while it does not directly abrogate; it allows for relief that is relevant and applicable in virtually all cases except State takings, which by definition must be redressed vis-à-vis in suit against the state as an entity unlike most individual rights violations that can be addressed by suit against the violating officer, official, or township.

The Takings Clause as applied to state takings, by virtue of its sought relief against the state as an entity, does not create a self-executing remedy; instead, it requires a statute like Section 1983 or the Tucker Act, to provide an actionable mechanism. The plaintiff's argument that the Takings Clause alone creates a right to immediate compensation entirely fails to consider the role of state legislative frameworks. It fails to understand the fact that incorporation by itself, does

nothing more than allow legislation that could enforce it, to be written. Congress must act to abrogate state immunity for such claims as we have at hand today to be directly enforced in court.

B. The state should not have to waive its sovereignty for the failures of the legislature to provide adequate remedy to its people.

1. *The Doctrine of Sovereign Immunity Precludes Automatic Waiver by States.*

"The founding generation thought it 'neither becoming nor convenient that the several States... should be summoned as defendants to answer the complaints of private persons.'" *Alden v. Maine*, 527 U.S. at 748(1999). At the heart of the issue at hand is the Eleventh Amendment, which ensures that states cannot be subjected to suits in federal court without their consent.

Generally speaking, "the States entered the federal system with their sovereignty," including their sovereign immunity, "intact." *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, 779, 111 S. Ct. 2578, 115 L. Ed. 2d 686 (1991). Basic tenets of sovereign immunity teach that courts may not ordinarily hear a suit brought by any person against a nonconsenting State. *Torres v. Tex. Dep't of Pub. Safety*, 597 U.S. 580, 587 (2022). But States still remain subject to suit by citizens in two circumstances. First, States may consent to suit. *Sossamon* v. *Texas*, 563 U. S. 277, 284 (2011). Second, Congress may also enact laws abrogating their immunity under the Fourteenth Amendment's section 5 power. *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456 (1976).

The concept, first observed over a century ago in *Hans* v. *Louisiana*, 134 U.S. 1, 33 (1890), has two parts: first, that each State is a sovereign entity in our federal system; and second, that "'it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent,'" *Id.* at 13 (emphasis deleted), quoting The Federalist No. 81, p. 487 (C. Rossiter ed. 1961) (A. Hamilton). In order to determine whether Congress has abrogated the States' immunity, there are two questions: first, whether Congress has "unequivocally expressed its intent to abrogate the

immunity," *Green* v. *Mansour*, 474 U.S. 64, 68, 88 (1985); and second, whether Congress has acted "pursuant to a valid exercise of power," *Id*.

The main question as to the validity of non-waiver abrogation, as put by the *Seminole Tribe* court, is "Was the Act in question passed pursuant to a constitutional provision granting Congress the power to abrogate?" As explained:

> Previously, in conducting that inquiry, we have found authority to abrogate under only two provisions of the Constitution. In *Fitzpatrick*, we recognized that the Fourteenth Amendment, by expanding federal power at the expense of state autonomy, had fundamentally altered the balance of state and federal power struck by the Constitution. *Id.*, at 455. We noted that § 1 of the Fourteenth Amendment contained prohibitions expressly directed at the States and that § 5 of the Amendment expressly provided that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." See *id.*, at 453. We held that through the Fourteenth Amendment, federal power extended to intrude upon the province of the Eleventh Amendment and therefore that § 5 of the Fourteenth Amendment allowed Congress to abrogate the immunity from suit guaranteed by that Amendment.

Seminole Tribe v. Florida, 517 U.S. 44, 59 (1996).

In *Seminole Tribe*, this Court reaffirmed the long-standing principle that "federal jurisdiction over suits against non-consenting states was not contemplated by the Constitution when establishing the judicial power of the United States" *Id.* at 54. But it also emphasized the tenet that in order to enforce individual liberties protected by the Due Process Clause, Congress must legislate mechanisms to do so, and further, it must be done under the power granted to them by Section 5.

The Appellees cannot rely on the self-executing nature of the Takings Clause to abrogate New Louisiana's sovereign immunity absent a clear piece of legislation indicating abrogation. As this Court made perfectly clear in *Seminole Tribe* and reaffirmed in its progeny, Congress's intent to abrogate must be "*unmistakably clear* in the language of the statute" *Id*. at 56 (emphasis added).

The Fifth Amendment, standing alone, does not include such a waiver, nor does the Fourteenth Amendment automatically provide a remedy in the absence of such legislative language.

This concept was further expanded in the subsequent case of *Alden v. Maine*, 527 U.S. 706 (1999), where the Court held that Sovereign Immunity protects States from private lawsuits, even in their own courts, unless they have expressly consented to such suits. *Id*. at 713. The Court in *Alden* emphasized that "[t]he Constitution specifically recognizes the states as sovereign entities" and that the Eleventh Amendment bars any unconsented suits. *Id*. This means that while property owners may have a right to compensation under the Takings Clause, that right does not automatically grant them access to the courts to sue the state for enforcement of that right. Instead, it is incumbent upon the federal, and even the state, legislature to enact statutes that clearly provide the means to enforce such claims. In this court's own words, "Congress must show a clear legislative intent when attempting to abrogate state sovereign immunity under the Fourteenth Amendment, and even then, the power is limited." *Id*. at 732.

As stated *supra* in detail, Congress's power to abrogate state immunity through legislation passed under Section 5 of the Fourteenth Amendment has been used whenever needed to enforce individual rights protections, such as allowing lawsuits against state employers under Title VII of the Civil Rights Act of 1964. *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976).

But it is also a *strict* concept. For example, In *Kimel* this Court held that Congress could not abrogate state immunity through the Age Discrimination in Employment Act (ADEA), as it was not a valid exercise of Fourteenth Amendment enforcement powers because Age was a non-suspect class. *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91 (2000). This case reinforces the principle that Congress's power to abrogate is limited to legislation enforcing the Fourteenth

Amendment, not other areas of federal law. This is also consistent with the rule established in *Allen*, where the Court invalidated Congress's attempt to abrogate state immunity through the Copyright Remedy Clarification Act, holding that even when Congress has a valid constitutional purpose, it *must still follow* strict procedural requirements to abrogate immunity. *Allen v. Cooper*, 589 U.S. 248 (2020). The abrogation there was deemed invalid because Congress cannot use Article I powers, such as the Copyright Clause, to abrogate state immunity and Congress did not demonstrate that the CRCA addressed Fourteenth Amendment violations, meaning it could not invoke Section 5 to abrogate. *Id*. at 266- 271.

In the case before us, the state legislature has not waived the state's sovereign immunity nor enacted a statutory framework that authorizes private citizens to sue the state for takings claims. This is first and foremost, New Louisiana's absolute right to do so, and further, Congress may at any time legislate a cause of action in such a scenario, as they have done in other scenarios, namely the Tucker Act and Section 1983. As a result, the state's sovereign immunity remains intact, and no court may compel the state to pay compensation absent a waiver or legislative authorization.

2. *Judicial Interference in Legislative Functions Undermines the Foundation of Federalism.*

Federalism, as enshrined in the structure of the Constitution, protects the rights of states to manage their own affairs, including how they handle compensation for takings. This Court has repeatedly emphasized the importance of respecting state sovereignty and legislative discretion in takings claims cases.

In *Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226 (1897), while the Court ruled that due process under the Fourteenth Amendment requires states to provide just

compensation, it *also stressed* the role of state legislatures in establishing procedures for calculating and delivering compensation. "The power of eminent domain is a vital prerogative of the state, a necessary instrument for its progress and development, but it is one that is regulated by the constitutional mandate to provide just compensation to the property owner." *Id*. at 240. This precedent underscores the notion that states are obligated to provide compensation, but the procedural mechanism for doing so should lie within the state's legislative authority. It is further emphasized by the same court that "While it is true that the Fourteenth Amendment protects property owners by requiring just compensation, the procedural mechanisms by which that compensation is determined fall within the purview of state law, provided they offer a fair process." *Id*. at 234.

The recent and most on point case to the matter at hand now, the case of *Deviller v Texas*, dealt with the very same problem we have today. Only in *Deviller*, there was a State statute remedy available for the Plaintiffs there, and so this Court declined to make a formal ruling on our main issue, since the State had its own fair remedy. *DeVillier v. Texas*, 601 U.S. 285, 293 (2024). This was due to the fact that "Texas' state-law inverse-condemnation cause of action provided a vehicle for takings claims based on both the Texas Constitution and the Takings Clause." *Id*. While the case did not answer the question before us, it is important to highlight the logic surrounding this area of the law. This Court is reluctant to take up abrogation of a state's right, especially when the state has its own method in place to provide relief. This emphasizes the strong presence of Federalism in our legal landscape and is simply another point in favor of the weight given to our States' Sovereignty and their power to control their own procedures.

Interfering with State legislative functions by allowing direct suits against the State would disrupt this balance and violate the fundamental principle of federalism. It is crucial to respect the

role of state legislatures in establishing procedures for compensation claims, rather than imposing judicial mandates that bypass state sovereignty. More importantly, the State should not have to waive its sovereignty for the failures of the legislature to provide adequate remedy for its people. If it was their intent, they know better to have done so. They have not.

C. Federal market value standards do not automatically apply to state governments, even when sovereign immunity is abrogated.

Even when Congress validly abrogates a state's sovereign immunity for specific claims, such as takings claims under the Fifth Amendment, the federal market value definition of "just compensation" does not necessarily bind state governments. Federal takings cases, such as *United States v. Miller*, 317 U.S. 369 (1943), and *Kirby Forest Indus. v. United States*, 467 U.S. 1 (1984), established that just compensation in federal cases is measured by the market value of the property at the time of the taking.

However, these standards were developed in the context of Federal takings and do not necessarily apply to States. States retain significant flexibility in defining compensation mechanisms, even when their sovereign immunity has been abrogated. This again comes from the strong Sovereignty that our States enjoy under Federalism and has been addressed as early as *Chicago Burlington* in the context of Takings Claims. "The legislature may prescribe a form of procedure to be observed in the taking of private property for public use, but it is not due process of law if provision be not made for compensation." *Chi., Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226, 236 (1897) If a State has its own compensation mechanism and as long as the mechanism provides proper compensation, then by the words of the Court that incorporated the 5th amendment, there is due process.

In *Williamson County*, the Court underscored that states have the flexibility to design their own processes for determining compensation, stating that "all that is required is that a 'reasonable, certain, and adequate provision for obtaining compensation' exist at the time of the taking." *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-195 (1985). This plainly means that states are not bound to the federal government's market value standard, so long as their procedures ensure fair and reasonable compensation. Not only that, but by this Court's own definition, the compensation given in this instant case as discussed *supra*, meets the level of compensation constitutionally required of New Louisiana.

But *Williamson* aside, other Cases also emphasize the idea that the federal definition for just compensation is neither directly binding, nor a catch all definition for all takings claims. For example, in *United States v. Miller*, the Court recognized that there are circumstances where market value is not even an appropriate measure for compensation, such as when the property has no active market. *United States v. Miller*, 317 U.S. 369, 374 (1943). This plainly leaves room for states to employ different standards, particularly in unique takings situations where market value would not result in fair compensation. Likewise in *United States v. Reynolds*, 397 U.S. 14 (1970), the Court noted that "just compensation" may exclude market value distortions caused by a government project itself. The Court explained that compensation should be based on the property's value "independent of the project," indicating that market value can sometimes be inappropriate in specific contexts. *Reynolds*, 397 U.S. at 16-17. States can, therefore, develop compensation standards that may differ from federal market value definitions, provided they are equitable and satisfy the constitutional requirement for just compensation.

The Court's ruling in *City of Monterey v. Del Monte Dunes*, 526 U.S. 687 (1999), reaffirmed the principle that the states have significant discretion in handling takings claims,

particularly when those claims involve complex public projects, like the one in the instant case. The Court emphasized the need for judicial deference to state processes, noting that "takings jurisprudence allows for a degree of flexibility in the determination of compensation, provided that the process adheres to the principles of due process and equity" *Id*. at 708. This flexibility allows states to implement procedures tailored to their specific circumstances, balancing public needs and private property rights.

This principle was further supported in the previously mentioned case of *DeVillier v. Texas*, where the Court affirmed the principle that although property owners have a constitutional right to compensation under the Fifth Amendment, the enforcement of that right must adhere to state-provided mechanisms for compensation. *DeVillier*, 601 U.S. at 291. "We do not question the legitimacy of state procedural mechanisms by which property owners pursue claims for compensation. The existence of such mechanisms underscores the principle that enforcement of constitutional rights may proceed through state-provided remedies." *Id.* at 294.This clarifies that states are entitled to manage the procedures by which this compensation is assessed and paid.

Thus, even where sovereign immunity is abrogated, states are not compelled to adopt the federal market value standard. States may develop their own standards based on local circumstances, economic considerations, and state policies, as long as they meet the constitutional requirement of fairness. The State of New Louisiana has done precisely so here.

Moreover, New Louisiana does not concede that there is inadequate compensation given here. Despite the fact that the compensation offered here is not offered through statute or legal procedure, it is still offered all the same. While the default federal standard for determining just compensation might be fair market value, by plain meaning it considers what a willing buyer would

pay a willing seller of the property, taking into account all possible uses to which the property might be put other than the use contemplated by the taker.

The ten holdout property owners here, possess properties that are small, family-owned farms and single-family homes in a poor neighborhood. The same farms have been struggling to produce marketable crops because of soil conditions, and many plots have become overgrown, totally depleting their value as farmland. R. at 2. Even more, many homes are in relatively poor condition and many homes require substantial improvements, depressing local market value. R. at 3. The holdout owners' actions result in nothing but prevention of the community's revival for self-serving purposes. This starkly contrasts with New Louisiana's proposed plan that would skyrocket property prices, and boost the economy for the entire population at large, not just nine individuals.

While it can be understandable that the owners here are not satisfied with the offered compensation, just because we believe our land is worth more, does not make it so. The land in question is mainly farmland, and with very poor soil conditions, it provides little to no other use. Simply put, a willing buyer would pay much less than whatever fanciful amount the buyers here deem adequate. The most obvious shortfall is the subjective value that these individual owners attach to their properties. Subjective value has many sources. Owners may have made modifications to the property to suit their individual needs and preferences; they may treasure friendships they have formed in the neighborhood; they may simply enjoy the security that comes from being in familiar surroundings. These values, while only human in nature, are ignored under the fair market value test and have no place in the calculation of compensation. For these reasons New Louisiana contends that their original offered sum, when taking into account all of the considerations supra, is more than adequate just compensation here; and any argument that compensation was not offered via statute or that the property owners subjectively wish that their

land is worth more than it actually is- has absolutely zero weight on the fact that just compensation was offered nonetheless. Finally, if the holdout owners here would be less concerned with self-serving requests for overcompensation, they would find that New Louisiana's proposed plan would replace their unprofitable farmland with dollars in their pockets and an entirely revitalized community.

D. The Type of Claim Brought Has Zero Effect On Sovereign Immunity and Equitable Relief Claims are Inapplicable in the Context of Takings Claims Against States.

The Argument raised in the court below that a claim for just compensation is not a claim at law for damages, but rather a claim that is *sui generis*, is totally misguided and has no place here. The contention that the type of claim brought against the State here, would in any way have an affect on the ability to bypass sovereign immunity is ludicrous. In the words of this very court in *Seminole*:

> [W]e have often made it clear that the relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment. See, *e. g., Cory* v. *White*, 457 U.S. 85, 90, 72 L. Ed. 2d 694, 102 S. Ct. 2325 (1982) ("It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money judgment is sought"). We think it follows *a fortiori* [***268] from this proposition that the type of relief sought is irrelevant to whether Congress has power to abrogate States' immunity. The Eleventh Amendment does not exist solely in order to "preven[t] federal-court judgments that must be paid out of a State's treasury," *Hess* v. *Port Authority Trans-Hudson Corporation*, 513 [****25] U.S. 30, 48, 130 L. Ed. 2d 245, 115 S. Ct. 394 (1994); it also serves to avoid "the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties," *Puerto Rico Aqueduct and Sewer Authority*, 506 U.S. at 146 (internal quotation marks omitted).

Seminole Tribe v. Florida, 517 U.S. 44, 58 (1996).

Even if we were to entertain such an unfounded argument as "The plaintiff seeks only to obtain what the text provides to hold the government to its word—not to get damages for a wrongful act," this logic is patently flawed. The plaintiff's "seeking what the government should provide" is nothing more than a sly means of rewording "money damages." The thing the government is obligated to "provide" is money. R. at 18.

What is however important to note about the type of relief being sought, is its uniqueness in the context of takings claims. Injunctive and equitable relief, or Section 1983, which are the usual remedies for virtually all other incorporated rights, are all obtainable against States or the officials/townships responsible in those violations. In a takings claim context however, the relief being sought, despite wishful arguments to the contrary, is always monetary damages, which requires direct suit against the taker, the State entity. Direct suits for damages against a state are forbidden by the Eleventh Amendment. Again, the only constitutionally given means of bypassing this immunity to money damages against a state are Legislative abrogation of the immunity through an act or waiver by the state. There is no such act in existence. There is no such waiver.

Furthermore, the Appellees' reliance on *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), is misguided. The *Bivens* decision created a narrow cause of action against federal officials for violations of constitutional rights, but it did not extend this remedy to state officials, nor did it create a general cause of action against states for constitutional violations. *Id.* at 389-392. More recently, this Court has significantly limited the application of *Bivens*, warning against extending its reach beyond the specific context of federal officers. In *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017), the Court cautioned that "extending *Bivens* to new contexts is a disfavored judicial activity," especially where there are alternative remedies or the case involves sensitive governmental functions. *Id*. at 1857.

Finally, the doctrine of equitable relief under *Ex parte Young*, 209 U.S. 123 (1908), does not apply to takings claims. The *Young* doctrine carves out a separate exception to Sovereign immunity and permits suits against state officials for prospective relief to prevent ongoing violations of federal law, but it *cannot* be used to force the state to provide compensation for past actions. As the Court noted in *Seminole Tribe*, equitable relief cannot be used as an end-run around

sovereign immunity when a comprehensive remedial scheme exists or when the remedy sought is damages (517 U.S. at 75). Since takings claims are fundamentally about obtaining compensation for past actions, *Ex parte Young* and any other claim for equitable relief offer no viable path for the Appellees' monetary compensation.

Conclusion

For the foregoing reasons, this Court should affirm the lower court's decision, reaffirming Kelo and holding that the Fifth Amendment is not Self Executing to permit direct suit against a State.

Respectfully Submitted,

/s/ Team 18

Counsel for the Respondent

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