No. 24-386

In the

# Supreme Court of the United States

**KARL FISCHER, ET AL.,**

*Petitioners*,

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 21

*Counsel for Petitioner*

Dated October 21, 2024

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## QUESTIONS PRESENTED

I. Under the Fifth Amendment's Takings Clause, should the dangerous precedent of *Kelo v. City of New London* be overruled because it allows takings that go beyond the limits of the Constitution, and thus be reworked to construe the meaning "public use" narrowly?

II. Is the Fifth Amendment's Taking Clause self-executing, thereby allowing Petitioners to bring an action for the constitutional remedy of just compensation against a state when no other remedy, federal or state, is available?

## STATEMENT OF THE CASE

Karl Fisher (Fisher) is a farmer and property owner in the State of New Louisiana. R. at 2. Along with nine other property owners, he has brought suit against the State under the Fifth Amendment's Takings Clause, incorporated against the states by the Fourteenth Amendment's Due Process Clause. *Id.*

The State of New Louisiana has recently passed the Economic Development Act, giving the governor the power to contract with businesses to revitalize the economy by expanding the State's tourism attractions and creating new jobs. *Id.* Subsequently, Governor Anne Chase (Chase), contracted with Pinecrest, Inc. to build a luxury ski resort outside the state's capital to increase tourism in the area. R. at 2. The project is projected to attract wealthy tourists, thereby increasing tax revues, creating jobs, and increasing property values in the surrounding area. *Id.* The completion of the project requires condemning 1,000 acres of family-owned property from 100 different owners in three different counties. *Id.* New Louisiana statute, NL § 13:4911, allows the State to commit a taking purely for economic development, allowing the condemnation of Petitioners homes. *Id.*

Pinecrest was authorized to begin construction on March 13, 2023, on the areas of land that the State has already purchased. R. at 2-3. To acquire that land, the State offered ninety landowners a price well below market value and lower than what the homes are worth, without considering the sentimental value attached to the land. R. at 2. The State has initiated eminent domain proceedings against the ten holdout property owners, Petitioners, who have not received any other compensation and do not want to sell their properties for less than what they are worth. R. at 3. More importantly, they do not want to lose their homes. *Id.* The holdout owners request compensation for the properties that reflect the sentimental value of the land to their families. *Id.*

Petitioners' homes are all family-owned farms or single-family homes in predominantly minority neighborhoods holding extreme sentimental value. R. at 2. These homes have been passed down through generations, creating a tight-knit community among the property owners. *Id.* Specifically, Fisher's home has been in his family for 150 years. R. at 3. While Petitioners' homes are older, the community does not impose a threat of harm to the public, and none of the homes are delipidated. R. at 2-3. Additionally, since the average household income in the neighborhood is $50,000, the displaced families would have a difficult time finding comparable housing if their land was taken from them. R. at 2-3.

A New Louisiana statute, NL Code § 13:5109, requires Petitioners to have an additional statute or waiver of sovereign immunity to bring their takings claims and receive just compensation. R. at 2. The State has not waived their immunity and has left Petitioners with no right to just compensation under New Louisiana law. *Id.*

Petitioners brought suit on March 15, 2023, seeking temporary and permanent injunctive relief or, otherwise, just compensation for the violation of the Takings Clause. *Id.* The State did not file an answer, but instead moved to dismiss the Petitioner's claim for failure to state a claim upon which relief can be granted. *Id.* The District Court, following a precedent which it did not have the power to overrule, granted the motion to dismiss and found that the Fifth Amendment was not self-executing. *Id.*

Petitioners appealed to the Court of Appeals of the Thirteenth Circuit, which affirmed the motion to dismiss. R. at 9. Petitioners then appealed to the Supreme Court of the United States, which has issued an order granting writ of certiorari. R. at 20.

## SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erroneously affirmed the district court of New Louisiana's decision to grant Respondent's motion to dismiss because *Kelo v. City of New London* should be overruled and the meaning of "public use" in the Takings Clause of the Fifth Amendment should be construed narrowly. Even if *Kelo* is not overruled, the Fifth Amendment alone provides a cause of action and Petitioners are entitled to just compensation.

### I. THE THIRTEENTH CIRCUIT ERRONEOUSLY GRANTED RESPONDENT'S MOTION TO DISMISS BECAUSE *KELO* SHOULD BE OVERTURNED AND "PUBLIC USE" SHOULD BE CONSTRUED NARROWLY.

The Thirteenth Circuit erred in affirming the district court's decision that Petitioners claim should be dismissed for failure to state a claim upon which relief could be granted. The leading precedent of the meaning of "public use" allows for any taking of private property by the government that serves some "public purpose" to satisfy the public use requirement in the Fifth Amendment's Takings Clause, even if that use does not remedy a harm or results in the property being given to another private party. This is a dangerous precedent that allows for virtually limitless takings that go against the intent of the Framers of the Constitution and destroys any sense of protection a property owner may have over their property.

*Stare decisis* is an important doctrine that requires the court today to stand by yesterday's decisions. However, *stare decisis* does not bar previous precedent from being overruled when a mistake must be corrected, especially when it comes to an erroneous interpretation of the constitution. The holding in *Kelo* stretched the meaning of "public use" to the utmost degree, allowing for takings that go beyond the intended constitutional protections of property. The result has allowed for unconstitutional takings by the government, thus creating grounds for the decision to be overruled and reworked to implement a narrow construction of "public use."

There are several factors that must be considered when deciding whether precedent should be overruled: the quality of reasoning, the workability of the rule, the decisions consistency with other related decisions, and reliance on the decision. First, the quality of reasoning in *Kelo* is poor because its broad interpretation of "public use" blurs the line between public and private takings and goes against the framer's intent to protect private property. Second, the rule resulting from *Kelo* is unworkable because it denies individuals full protection of a constitutional right. Third, *Kelo* is inconsistent with previous decisions of this court because it goes against the limitations imposed by the Constitution. Finally, reliance on the decision is extremely low, evidenced by the widespread implementation of stricter safeguards on property rights consistent with a narrow interpretation of the Takings Clause following the decision.

The foregoing factors all weigh in favor of *Kelo* being overruled, as failing to do so would result in the continuance of unconstitutional takings by the government. Additionally, the meaning of "public use" in the Takings Clause must be construed narrowly as to allow property to be taken by the government only if, after it is taken, the public has the right to use that property, or the property is owned by the government.

## II. THE LOWER COURT ERRONEOUSLY GRANTED THE MOTION TO DISMISS BECAUSE, EVEN IF THERE WAS A PROPER PUBLIC USE TAKING, PETITIONERS CAN RIGHTFULLY BRING THEIR CLAIM AND ARE ENTITLED TO JUST COMPENSATION DUE TO THE FIFTH AMENDMENT'S SELF-EXECUTING NATURE.

Petitioners have a cause of action solely under the Fifth Amendment. This Court has set precedent that provides the Fifth Amendment is self-executing. First, the Court has determined that certain parts of the Fifth Amendment, provide a cause of action, specifically the Due Process Clause. Second, even when courts have resolved takings claims brought under other cases of law, it has been adjudicated as if the claim was only brought under the Fifth Amendment.

Finally, holding the Fifth Amendment to be self-executing would provide Petitioners and future claimants with the opportunity to litigate their claims on the merits.

Subsequently, Petitioners are entitled to just compensation. The language of the Fifth Amendment expressly provides that when a taking occurs, those affected must be justly compensated. This language creates an obligation by governments, both local and state, to provide such compensation. When drafting the Constitution and the Fifth Amendment, the Framers intended to emphasize the importance of property rights, and that importance and protection should be upheld today. Additionally, to deprive Petitioners equitable compensation would be grossly unfair.

For the foregoing reasons, this Court should deny Respondent's motion to dismiss and provide Petitioners with an opportunity to rightfully bring their claim.

## ARGUMENT

This Court should deny Respondent's motion to dismiss and provide Petitioners with an opportunity adjudicate their claim on the merits. The Fifth Amendment's Taking Clause states "… nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The Fifth Amendment is applicable to the states through the Fourteenth Amendment. U.S. Const. amend. XIV. While the Fifth Amendment clearly gives state and local governments the right to take property via eminent domain, it also creates an obligation to ensure the taking is for public use and to provide the private landowners with just compensation. Brent Nicholson & Sue Ann Mota, *From Public Use to Public Purpose: The Supreme Court Stretches the Takings Clause in Kelo v. City of New London*, 41 Gonz. L. Rev. 81, 81 (2005).

This Court should overrule *Kelo v. City of New London*, 545 U.S. 469 (2005), because its interpretation of "public use" in the Fifth Amendment Takings Clause undermines the constitutional protection of private property by allowing government takings that prioritize private interests over individual property rights. Consequently, this court should construe the meaning of "public use" narrowly to ensure property owners have full constitutional protection over their property.

Even if the decision in *Kelo* stands, the Fifth Amendment is self-executing and alone provides plaintiffs with a cause of action. *Davis v. Passman*, 442 U.S. 228, 237 (1979). The precedent set by this court allowed plaintiffs to bring their takings claims under the Fifth Amendment and have their claims adjudicated on the merits. *First Eng. Evangelical Lutheran Church, v. L.A.*, 482 U.S. 304, 321 (1987). Additionally, just compensation is an adequate remedy for takings claims. *Jacobs v. United States*, 290 U.S. 13, 18 (1933). This holding is

supported by the intent of the Constitution's Framers, the importance of property rights, and the specific demands of the Constitution.

Therefore, this Court should reverse the lower court's decision by overturning *Kelo* and construing "public use" narrowly. Even if *Kelo* is not overturned, this Court should find the Fifth Amendment to be self-executing.

## I. THE THIRTEENTH CIRCUIT ERRONEOUSLY GRANTED RESPONDENT'S MOTION TO DISMISS BECAUSE *KELO* SHOULD BE OVERTURNED AND "PUBLIC USE" SHOULD BE CONSTRUED NARROWLY.

Eminent domain is the "power of the government to take property for public use without the consent of the owner." *PennEast Pipeline Co., v. New Jersey*, 594 U.S. 482, 487 (2021). The decision in *Kelo* has expanded the takings power of the government to allow takings that serve a "public purpose" to satisfy the public use requirement of the Fifth Amendment. *Kelo*, 545 U.S. at 484. The decision has resulted in an interpretation of the Takings Clause that has allowed unconstitutional takings and should thus be overruled. It follows that this Court must construe the meaning of "public use" in the Fifth Amendment narrowly, as the current broad view denies property owners full protection of their property under the Takings Clause.

*Stare decisis* is "the idea that today's Court should stand by yesterday's decision." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). The doctrine is a "foundation stone of the rule of law," and is the "preferred course because it promotes evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014); *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). However, *stare decisis* is not an "inexorable command." *Payne*, 501 U.S. at 828. It is indeed at its weakest when it

comes to interpreting the Constitution because "a mistaken judicial interpretation of that supreme law is often 'practicably impossible' to correct through other means." *Ramos v. Louisiana*, 590 U.S. 83, 106-07 (2020).

Adhering to *stare decisis* may mean that decisions are upheld even if they are wrong, as the doctrine rests on the idea that "it is more important that the applicable rule of law be settled than it be settled right." *Burnet v. Coronado Oil & Gas Co.*, 258 U.S. 393, 406 (1932) (Brandeis, J., dissenting). However, when it comes to interpreting the Constitution, the Supreme Court places a high value on having the matter settled right because when constitutional issues are erroneously decided, the country must endure the effects of the flawed decision unless and until it is corrected. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 264 (2022).

In constitutional cases this court has "never felt constrained" to follow precedent when its decisions have been poorly reasoned or are unworkable, as correction through legislative action is "practically impossible." *Payne*, 501 U.S. at 827-28. Since the issue here is inherently a constitutional one, it is critical that this court gets it right. Several factors must be considered when deciding whether precedent should be overruled: the quality of the reasoning, the workability of the rule, its consistency with other related decisions, and the reliance on the decision. *Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018).

Considering all factors weigh heavily in favor of *Kelo* being overturned, it is clear that this Court must overrule the decision of *Kelo* and rework the "public use" requirement to be construed narrowly.

**A. The quality of reasoning in *Kelo* is poor because its broad interpretation of "public use" blurs the line between public and private takings and should be construed narrowly.**

This court has reasoned that under its precedents, “the quality of the reasoning in a prior case has an important bearing on whether it should be reconsidered.” *Dobbs*, 597 U.S. at 269. The quality of reasoning in *Kelo is* poor, as its broad interpretation of the meaning of “public use” in the Takings Clause is a dangerous precedent that blurs the line between public and private takings. Additionally, the rule allows for essentially limitless takings and puts all owners at risk of having their property seized when the government decides there may be a better use for it.

The Takings Clause of the Fifth Amendment provides that private property shall not be “taken for public use, without just compensation.” U.S. Const. amend. V. The Founders of the Constitution recognized that “the protection of private property is indispensable to the promotion of individual freedom.” *Cedar Point Nursery v. Hassid*, 593 U.S. 139, 147 (2021). This Court has agreed, acknowledging that “[p]roperty rights are necessary to preserve freedom” as property ownership “empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.” *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017).

The poor reasoning in *Kelo* has resulted in a broad interpretation of “public use” that allows for property to be taken if the taking ultimately results in some public advantage or benefit. Charles E. Cohen, *Eminent Domain after Kelo v. City of New London: An Argument for Banning Economic Development Takings,* 29 Harv. L.J. & Pub. Pol’y 491, 494 (2006). Thus, anything that merely inflates the public welfare under this broad view will constitute a public use. *Id. Kelo*’s interpretation of the public use requirement is troubling, as it makes all private property vulnerable to being taken and transferred to another private owner so long as the transferee will use it “in a way that the legislature deems more beneficial to the public.” *Kelo*, 545 U.S. at 494 (O’Connor, J., dissenting). Reasoning that the incidental public benefits resulting

from taking private property "render economic development takings 'for public use' is to wash out any distinction between private and public use of property," which would effectively "delete the words 'for public use' from the Takings Clause of the Fifth Amendment." *Id.*

Allowing for the continuance of the broad interpretation of "public use" construed in *Kelo* is a dangerous precedent that will effectively allow for the taking of any private property that the government deems to be for economic development. This would result in limitless takings of private property by the government, which goes directly against the Framers' view that liberty cannot exist without security of property. *See Discourses on Davila*, in 6 Works of John Adams 280 (C. Adams ed. 1851). The Framers, in fact, embodied the idea of William Blackstone that "the law of the land . . . postpone[s] even public necessity to the sacred and inviolable rights of private property," in the Fifth Amendment of the Constitution, allowing the government to only take property for a "public use," not for a "public necessity." 1 William Blackstone, Commentaries *134-35 (1765); U.S. Const. amend. V. Thus, allowing the government to take for virtually any "public purpose" goes against the intent of the constitution to protect private property.

If this court continues to allow such unscrupulous takings, at what point would the line be drawn between public and private property use? The definition of "public use" in *Kelo* strips property owners of any protection from condemnation and precludes individuals from exercising their constitutional right under the Fifth Amendment. *See* U.S. Const. amend. V. The "public use" requirement should thus be construed narrowly, allowing property to be taken only if the public has the right to use the property, or the property is owned by the government, after it is taken. Charles E. Cohen, *Eminent Domain after Kelo v. City of New London: An Argument for Banning Economic Development Takings,* 29 Harv. L.J. & Pub. Pol'y 491, 493-494 (2006). If it

is not, the court will continue to allow individuals' property rights to succumb to the interests of private developers. *See* Michael J. Coughlin, *Absolute Deference Leads to Unconstitutional Governance: The Need for A New Public Use Rule*, 54 Cath. U.L. Rev. 1001, 1003 (2005). Though the rule in *Kelo* prohibits purely private takings or takings that appear to be for a public purpose but only bestow a private benefit, the line has become dangerously close. *See Kelo*, 545 U.S. at 472.

Thus, the poor quality of reasoning in *Kelo* weighs heavily in favor of overturning the decision and reworking the rule to allow a narrower interpretation of "public use."

### B. **The rule construed in *Kelo* is unworkable because it denies property owners full protection of a constitutional right and has created disagreement regarding protection of property among the states.**

A rule is workable when it can be "understood and applied in a consistent and predictable manner." *Dobbs*, 597 U.S. at 281. It is a traditional ground for overruling a rule that has been proved to be "unworkable." *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009); *See Knick v. Twp. of Scott*, 588 U.S. 180, 204-06 (2019) (holding a state-litigation requirement to be unworkable because it precluded owners access to their full constitutional rights under the Takings Clause). *Kelo* is unworkable because its interpretation of "public use" proves to be detrimental to a constitutional right which is thus grounds for the precedent to be overruled. *See Knick*, 588 U.S at 205. It also ignores the intended limitations on the government's powers, allowing for virtually infinite takings of private property.

*Kelo* effectively allows for the government to take private property if that taking "serves a public purpose." *Kelo*, 545 U.S. at 484. Under this current view, there is no guidance for courts to determine whether a private taking has gone beyond the limits of the Constitution. This lack of guidance has allowed private property to be taken for the purpose of merely upgrading the use of

the land under the justification of economic development. *See Western Seafood Co. v. United States*, 202 Fed. Appx. 670, 675 (5th Cir. 2006) (holding that the city's taking of appellant's private docks and giving them to a private entity for the purpose of building a private marina did not violate the Takings Clause).

Under this theory, virtually any piece of property could be "upgraded" and considered to fall under economic development, such as the creation of a luxury ski resort. This notion puts all property owners at risk of having their property taken. For example, a small business that provides fewer jobs and tax revenues could be condemned and replaced with a large national retail chain that provides for more jobs and tax revenues, as under the current precedent it would be seen as to be economic development that serves a "public purpose." John Dwight Ingram, *Eminent Domain After Kelo*, 36 Cap. U.L. Rev. 55, 57 (2007). This is hardly what the Framer's intended when they implemented the Takings Clause. If *Kelo*'s meaning of "public use" stands, full constitutional protection of property is being denied, and the intended limit on the government's power is being ignored.

Additionally, the lack of consistent recognition among states of a fundamental constitutional right creates a fragmented system that undermines individual's rights to their property. *See Obergefell v. Hodges*, 576 U.S. 644, 680 (2015) (reasoning that the continuance of widespread disagreement regarding same-sex marriage among states would promote instability and uncertainty). Upholding *Kelo* will result in the continuing disparities of the interpretation of the Taking Clause. While a citizen in one state can expect full protection of their property, citizens in another can expect their property to be taken whenever convenient for the government to do so. *See Wolfe v. Reading Blue Mt.*, 320 A.3d 1164, 1179 (Pa. 2024) (holding the taking of land for a railroad served a private company and was thus unlawful because it did not qualify as

a "public use"); *But see Norfolk Southern Ry. Co. v. Intermodal Properties, LLC*, 215 N.J. 142, 155-156 (N.J. 2013) (holding the condemnation of property for a railroad was not incompatible with the public interest and thus satisfied the "public use" requirement).

Just because *Kelo* provides an easy rule to apply does not mean it is a workable one. R. at 15. The current interpretation of "public use" is unworkable, as it precludes access to a full constitutional right and has created widespread disparity of the application of the rule among the states. Thus, the unworkability factor weighs in favor of *Kelo* being overturned.

### C. ***Kelo* is inconsistent with previous cases because the decision has gone beyond the prescribed limitations of the Constitution established by those cases.**

*Kelo* goes beyond the limits established in previous cases regarding takings for "public use" and mandated by the Constitution. R. at 16. Notably, *Berman* and *Midkiff* resulted in takings that directly achieved a public benefit as the elimination of the existing property use was necessary to remedy a public harm. *See Kelo*, 545 U.S. at 500 (O'Connor, J., dissenting); *Berman v. Parker*, 348 U.S. 26, 34 (1954) (allowing the taking of a department store in a blighted and impoverished area as part of an overall development plan to improve the community); *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 241-42 (1984) (holding the taking of property ultimately given to private individuals constitutional because it eradicated an oligopoly that created widespread social and economic harm).

*Berman* and *Midkiff* resulted in takings due to either extreme blight or extreme wealth that inflicted affirmative harm on society. *Kelo*, 545 U.S. at 500, (O'Connor, J., dissenting). In contrast, the taking in *Kelo* was not to remedy any social harm being caused. *Kelo*, 545 U.S. at 475. In *Kelo*, the taken properties were not blighted, nor the product of an oligopoly. *See Id.* Rather, they were condemned because they happened to be in the way of the location for a new

Pfizer facility. *Id.* Similarly, the Petitioner's property is not dilapidated and does not pose any risk or threat to the public. The property would be taken not as a means of ridding a public harm, but for the purpose of building a ski resort, a private entity that will not be put to pure public use. Though New Louisiana argues that the resort will help create jobs and improve the local economy, there is no guarantee the proposed plan will result in enhancing any part of the community. In fact, there is no harm that the plan proposes to remedy, as the community is not blighted nor in dire need of economic rejuvenation.

*Kelo* has gone beyond the mandate of the Takings Clause, which also makes the decision inconsistent with *Knick*. *See Knick*, 588 U.S. at 207. *Knick* made clear that the Takings Clause should be enforced as written, as doing otherwise would go beyond the limitations imposed by the Constitution. *Id.* In contrast, *Kelo* does not adhere to the facial meaning of the Takings Clause and effectively allows for takings that go beyond the limits imposed by the Fifth Amendment.

Thus, the extensive inconsistencies of *Kelo* with landmark decisions of this Court call for the decision to be overruled, and for an interpretation of the meaning of "public use" in the Takings Clause that is consistent with the limitations imposed by the Constitution.

### D. Reliance on the decision in *Kelo* is low because the states have contrasting ideas of what constitutes a "public use" and have imposed stricter safeguards on takings by the government.

Considering the overwhelmingly negative reaction to the decision by the states, it is clear that reliance on *Kelo* is low. Following the decision, a total of forty-four states enacted statutes to further protect citizens' property rights and eleven states changed their constitutions. Dana Berliner, *Looking Back Ten Years After Kelo*, 125 Yale L.J. 82, 84 (2015). Though nearly every state has provided greater protection against private takings, no state has adopted the same legal

changes as another. *See Id.* at 89-90; Nev. Const. art 1, § 22(1) (prohibiting direct or indirect transfer of property from one private party to another private party in an eminent domain proceeding); Mich. Const. art. 10, § 2 (increasing the amount of just compensation for takings of private residencies and prohibiting takings of land for the purpose of economic development by private entities). This disparity among the states shows that there is minimal reliance on the decision made in *Kelo*, as the majority have implemented stricter safeguards on property rights consistent with a narrow interpretation of "public use."

The Court has also recently overturned *Williamson County* in *Knick*, a similarly misguided precedent relating to the Takings Clause. R. at 16. The Court in *Knick* explained that the force of adhering to precedent is reduced when the rules at issue do not act as a standard of lawful conduct, which is precisely what has resulted from the rule in *Kelo*. *Knick*, 588 U.S. at 205. The *Kelo* interpretation of "public use" has acted as a guide to allow takings that are outside the scope of the meaning of the Takings Clause, thus resulting in unlawful takings of private property.

Therefore, because there is a widespread disparity among states regarding how they choose to regulate takings and *Kelo* supports a standard of unlawful conduct, reliance on the decision is low and weighs in favor of overturning the decision.

For the foregoing reasons, *Kelo*'s quality of reasoning is poor, the rule is unworkable, the decision is inconsistent with previous cases, and there is low reliance on the decision. Thus, each factor weighs heavily in favor of *Kelo* being overruled. Moreover, the court should construe "public use" narrowly and forego its current broad interpretation of the term that allows for unconstitutional takings of private property.

## II. THE LOWER COURT ERRONEOUSLY GRANTED THE MOTION TO DISMISS BECAUSE, IF THERE WAS A PROPER PUBLIC USE TAKING, PETITIONERS CAN RIGHTFULLY BRING THEIR CLAIM AND ARE ENTITLED TO JUST COMPENSATION DUE TO THE FIFTH AMENDMENT'S SELF-EXECUTING NATURE.

Even if *Kelo* is not overruled, this Court should reverse the lower court's decision to grant Respondent's motion to dismiss because the Fifth Amendment provides Petitioners with a cause of action, therefore entitling them to just compensation when a constitutional taking occurs.

A "cause of action" refers to an "alleged invasion of a recognized legal right upon which a litigant bases his claim." *Davis*, 442 U.S. at 237 (1979) (citing *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 693 (1949)). An invasion of the right to property, a taking, occurs when the government physically obtains private property for public use. *Cedar Point Nursery*, 594 U.S. at 139. If a taking has occurred, the government must remedy the issue, typically by exercising eminent domain and subsequently providing just compensation. *First Eng. Evangelical Lutheran Church.*, 482 U.S. at 321. In considering the possibility of the future use of eminent domain, the Constitution's Framers wanted to protect and emphasize the importance of the right to property and subsequently created the Fifth Amendment. *Armstrong v. United States*, 364 U.S. 40, 49 (1960). While the general rule supposes that constitutional rules do not create causes of action, this Court has previously held that the Fifth Amendment can provide that basis in certain circumstances. *See Davis*, 442 U.S. at 228 (holding a cause of action was created under the Due Process Clause of the Fifth Amendment). The ability to bring a takings claim is paramount to protecting property rights, and the previously established causes of action created by the Fifth Amendment should extend to those claims.

Additionally, just compensation is the adequate remedy when landowners are subject to a taking. The right to compensation naturally flows from the occurrence of a taking and the exercise of eminent domain. *Chi., Burlington, & Quincy R.R. v. Chi.*, 166 U.S. 226, 238 (1897). Traditionally, damages are the typical remedy for "an invasion of a person interests in liberty." *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 399 (1971). While just compensation is a unique type of remedy, the government is under an obligation, created by the Bill of Rights, to provide such compensation. *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 324 (1893).

Considering the intent of the Constitution's Framers and the direct language of the Amendment, if this Court finds there to be a constitutional taking, it should also hold the Fifth Amendment to be self-executing and just compensation an adequate remedy, therefore denying Respondent's motion to dismiss.

### A. This Court's precedent provides the holding that the Fifth Amendment is self-executing, and therefore no other statutory basis is required.

In *United States v. Causby*, property owners brought suit against the United States under the Fifth Amendment's Takings Clause and a state eminent domain statute. *United States v. Causby*, 328 U.S. 256, 258 (1946). The property owners in *Causby* operated a commercial chicken farm on their property and were forced to close because of the interfering use of a nearby airport by United States aircrafts. *Id.* at 259. The aircrafts flew extremely close to the property's trees, frequently cast lights across the property, and were loud enough to frighten the livestock, which resulted in the deaths of approximately 150 chickens. *Id.* In deciding the case, the Court did not consider whether the property owners had a valid cause of action under either the Fifth Amendment or the state statute but determined the case solely based on the lack of a

taking. *Id.* at 266. The Court did determine that if it were to find a taking, that claim is "founded upon the Constitution." *Id*.

Like the Court in *Causby*, this Court should adjudicate Petitioner's claim based on the merits, and not whether there is a cause of action. This Court should provide Petitioners with the opportunity to bring their claim under the Fifth Amendment. Just because there has not been a claim brought exclusively under the Fifth Amendment, does not mean that it is not possible. *Id.* The Court should follow the reasoning in *Causby*, that the claim is "founded on the Constitution," to determine that the Fifth Amendment is self-executing, and that the right to bring a claim is created by the Constitution. *Id.*

In *First English Evangelical Lutheran Church*, the county government responded to a major flooding by adopting an ordinance which restricted property owners from constructing any structure within the boundaries placed in the Canyon. *First Eng. Evangelical Lutheran Church*, 482 U.S. at 306. Similarly, Petitioners have been subject to a taking through the passage of the Economic Development Act by the New Louisiana legislature. In *First English Evangelical Lutheran Church*, the plaintiff sued the county claiming a regulatory taking under the Fifth and Fourteenth Amendments and a state inverse condemnation law. *Id.* at 308. The county government did not provide the affected landowners with compensation, like the New Louisiana legislature has not provided the Petitioners. *Id.* at 316; R. at 2. While the plaintiff initially brought the claim under the state statute, the Court in *First English Evangelical Lutheran Church* relied on the direct language of the Constitution and indirectly held that the claim could arise under the Fifth Amendment through the Fourteenth Amendment. *Id.* at 321. The Court found that statutory recognition was not required and that the county government was required to provide the plaintiffs with just compensation for the period the taking occurred. *Id*. at 314, 319. By

following its precedent, this Court should now hold that the Fifth Amendment alone provides the Petitioners with a cause of action and, in turn, relief in the form of just compensation.

In *Maine Community Health Options v. United States*, Justice Alito, in his dissent, stated that the Tucker Act is only a jurisdictional statute and does not provide the plaintiffs with any cause of action. *Me. Cmty. Health Options v. United States*, 590 U.S. 296, 330 (2020) (Alito, J., dissenting). *See* 28 U.S.C. § 1491 (2024). Here, Respondents argue that there is no cause of action because the Petitioner's claim was not brought under an additional statute, like the Tucker Act. While Justice Alito's dissent is not binding, his logic is sound. The Tucker Act only provides a jurisdictional basis, waiving sovereign immunity, for claims to be brought against federal agents and to be heard by The United States Court of Federal Claims. R. at 17; *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003). The Tucker Act itself does not provide the plaintiff with a cause of action even though courts have read it to create one. *See Hatzlachh Supply Co. v. United States*, 444 U.S. 460 (1980). In the current case, Petitioners do not need an additional basis to be able to bring an action against the State of New Louisiana in federal court concerning a federal question and, therefore, do not need to bring their claim under an additional jurisdictional statute.

The Court in *Knick* also found that, even in a claim brought under other sources of law, the "self-executing nature" of the Fifth Amendment's Taking's Clause sustains the claim for just compensation. *Knick*, 588 U.S. at 192. Here, Petitioners do not need an additional basis to bring their claim for just compensation and should be able to rely on the Fifth Amendment as self-executing, like the *Knick* Court determined.

When the Courts' decisions are considered aggregately, there is a clear holding that the Fifth Amendment is self-executing, and Petitioners do not need an additional statute to bring

their claim. Therefore, following precedent, this Court should reverse the lower court's judgment and deny the motion to dismiss.

### B. <u>Petitioners are entitled to the specific remedy of just compensation for takings claims because the Constitution expressly commands it.</u>

In *Jacobs v. United States*, the Supreme Court reversed the lower court's judgment and held that landowners were entitled to interest in addition to their just compensation for a taking committed by the government. *Jacobs*, 290 U.S. at 18. The government had constructed a dam which resulted in the flooding of the landowner's farms. *Id.* at 15. The Court found that, even though condemnation suits were not filed, when there is a taking, the "Government is bound to make just compensation under the Fifth Amendment" and that right is "guaranteed by the Constitution." *Id.* at 16.

Like the Court in *Jacobs*, this Court should reverse the lower court's judgment. Petitioner's claim is based on the Fifth Amendment, which plainly states the remedy to a governmental taking is just compensation. As the Court reasoned in *Jacobs*, this Court should consider why the Constitution is so explicit in this rule: to ensure that when questions arise, the right to just compensation for those affected by takings is secure.

Additionally, *Knick* provides more sound reasoning regarding the just compensation requirement. *Knick*, 588 U.S. at 180. The Court in *Knick* found that the right to constitutional compensation arises when a taking has occurred, notwithstanding whether the federal or state government was the cause. *Id.* at 190. Here, the taking occurred when the New Louisianna Governor contracted with Pinecrest, Inc. and construction began on the ski resort. Overall, *Knick* stands for the proposition that in the event of a taking, just compensation is required by the Constitution. *Id.* at 202. Additionally, the lower court reasoned that equitable relief is only permitted when compensation is not appropriate. R. at 7. When a taking has occurred, as it has

here, compensation is appropriate. R. at 18. It simply does not make sense to provide equitable relief when the Constitution expressly provides the remedy of just compensation. *Id.*

In *Maine Community Health Options*, the Court provides indirect insight on the just compensation requirement of the Amendment. *Me. Cmty. Health Options v. United States*, 590 U.S. at 331. In that case, several insured insurance plans, sought reimbursements under the Affordable Care Act's risk-mitigation provisions. *Id.* at 305. The relevant provision specifically states that the Secretary "shall pay" the insured plans when certain conditions regarding their profitability are met. *Id.* at 302. The Court found that the commanding nature of the language of the Act made it binding on the federal government and the plans were entitled to payment. *Id.* at 332.

The Constitution has similar commanding language to the Affordable Care Act. The wording of the Fifth Amendment lends itself to the proposition that the Framers intended for just compensation to be the only acceptable remedy, as seen through of their use of the word "shall" rather than a discretionary term. If the court in *Maine Community Health Options* can find the Affordable Care Act, an act created recently by Congress, to be binding on the government, this Court should hold that the Constitution, created by the Framers and ratified by the states almost 250 years ago, is as binding well.

Therefore, because the Constitution directly states that those subject to a taking should be provided with just compensation, the Court should find that to be an adequate remedy for Petitioners.

### C. The Court should deny the motion to dismiss to maintain fairness and give deference to the intent of the Amendment's drafters.

The importance of property rights has been prevalent throughout the construction of the United States. When adopting the Fifth Amendment, the Framers of the Constitution relied

heavily on the writings of William Blackstone. *D.C. v. Heller*, 554 U.S. 570, 582 (2008). Blackstone referred to the right to property as an "absolute right". 1 William Blackstone, Commentaries *134 (1765). Blackstone also argues that even if a road, placed through an owner's property, has beneficial use to society, it should not be placed without the full consent of the owner. *Id.* at *135. Petitioners do not argue that, when the taking is for public use, the State of New Louisiana lacks the power of eminent domain. However, there is a limit to that power: providing just compensation to those affected.

The Framers of the Constitution revealed their opinions on property rights in other avenues as well. Specifically, James Madison, a drafter of the Fifth Amendment, had strong opinions regarding property rights in the Constitution which he described in a collection of essays. *See generally* James Madison, *Property*, Nat'l Gazette, Mar. 27, 1792. To follow his ideals, the Court should maintain that importance by allowing the Petitioners to bring their claim. In one of his famous essays, *Property*, Madison connects the right to property with the important rights of freedom of religion and opinion. *Id.* He argues that government is created to protect this important right, which he describes as "natural and unalienable . . . ." *Id.* This significance, and the importance of compensation, are also reflected in the fact that the Fifth Amendment was the first of the constitutional amendments to be incorporated against the states. *Chi., Burlington, & Quincy R.R.*, 166 U.S. at 238. Following Madison's reasoning, this Court should maintain that a proper government would only allow for what is fair. Here, the protection of Petitioner's property and their rights associated is what is fair.

In *First English Evangelical Lutheran Church*, the Court recognizes the pressure that this decision will have on future land-use. *First Eng. Evangelical Lutheran Church*, 482 U.S. at 321. However, the Court argues that the possible effect on future land-use is simply a necessary

consequence of upholding a constitutional right. *Id.* at 321. The risk that governments and other land users may have to put more time and effort into their land-use plans does not give the judiciary the right to deny what is constitutionally mandated. Several of the Constitution's provisions are "designed to limit the flexibility and freedom of governmental authorities." *Id.* The Fifth Amendment, in all of its requirements, is the perfect example. It then follows the constitutional limitation would be applied to land-use planners serving governmental functions, like Pinecrest, Inc. Otherwise, Petitioners have no other means to absolve their claims.

Therefore, the Petitioner asks this Court to make a fair decision, follow the long-held beliefs and opinions of the Constitution's Framers, and deny Respondent's motion to dismiss.

## CONCLUSION

For the foregoing reasons, the Appellate Court erroneously granted Respondent's Motion to Dismiss. The Petitioner respectfully requests this court to REVERSE the Appellate Court’s decision.

This the 21st day of October 2024.

Respectfully Submitted,

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Counsel for Petitioner
Team 21