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 THE RESPONDENT,
STATE OF NEW LOUISIANA

Team Number: 25

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QUESTIONS PRESENTED

1. Under the Takings Clause of the United States Constitution's Fifth Amendment, (1) should this Court overturn the longstanding precedent established in *Kelo v. City of New London*, which upholds state sovereignty in interpreting the Public Use Clause; and (2) should economic development remain a permissible justification for "public use?"

2. Does the Fifth Amendment's Takings Clause create its own cause of action, thereby allowing a private individual, for the first time, to seek just compensation against a state for a taking of private property for public use without a federal or state statute?

STATEMENT OF THE CASE

The State of New Louisiana seeks to revitalize an economically depleted community on the outskirts of its capital by contracting with a private developer to create a ski resort. R. at 1-2. To carry out this plan, the state legislature passed the Economic Development Act, which constitutionally permits a state to contract with private businesses to revitalize its economy. R. at 1. Specifically, New Louisiana Code § 13:4911, "allows takings purely for economic development." R. at 1-2. Thus, a taking which boosts the state's tourism attractions and creates new jobs is constitutionally protected under both the Economic Development Act and State Code. R. at 1-2. New Louisiana's Governor contracted with Pinecrest, Inc., a private developer, to build a ski resort on the depleted territory. *Id.* The ski resort's development is estimated to create 3,470 new jobs, dramatically increase tax revenue for the area and attract tourists nationwide. *Id.* The ski resort will also attract people to the resort's surrounding businesses, benefiting those business owners with new employees and customers, and an increase in property value. *Id.* Lastly, fifteen percent of all tax revenue from the ski resort will be reintroduced to the local community to revitalize the area, ensuring "long-lasting benefits." *Id.*

To ensure a successful execution of this project, New Louisiana requires 1,000 acres of land owned by 100 different owners. *Id.* New Louisiana was able to secure land from ninety owners; however, the remaining ten owners, the Petitioners, have brought this suit against the state, claiming an unconstitutional taking under the Fifth Amendment's Takings Clause because Pinecrest, Inc.'s private ski resort does not satisfy the Public Use Clause. *Id.* Most of Petitioners' properties are overgrown, barren farmland that is rapidly devaluing the local community's property value. R. at 2-3.

The Petitioners seek temporary and permanent injunctive relief against the State for violating the Fifth Amendment's Takings Clause, alleging that this taking is not for public use, or alternatively, not for just compensation. *Id.* The Petitioners concede that neither 28 U.S.C. § 1491 nor 42 U.S.C. §1983 applies to the matter at hand because their claim is against a state. R. at 10. Since New Louisiana has not waived immunity, which is required to bring a state claim under NL Code § 13:4911, the Petitioners seek an unprecedented assertion from this Court that the Takings Clause is self-executing. *Id.* In other words, the Petitioners contend that the Fifth Amendment's Takings Clause creates a cause of action for a petitioner against a state for just compensation when no other federal or state remedy is available. *Id.*

The District Court of New Louisiana concluded that New Louisiana State's taking of the Petitioner's properties is valid, and the Petitioners have no claim for just compensation because the Fifth Amendment is not self-executing. R. at 4. The Court of Appeals for the Thirteenth Circuit affirmed the District Court's decision and found that the District Court correctly held that the Fifth Amendment only provides a right to just compensation if a right to sue is otherwise provided by law. R. at 10-11.

SUMMARY OF THE ARGUMENT

New Louisiana State's taking of the Petitioners' properties abides by decades of precedent in which this Court has upheld deference to state legislatures on issues concerning eminent domain. Should this Court change course and determine that deference to state legislatures is unessential, it will disregard the foundational framework for eminent domain matters established in *Kelo v. City of New London*, 545 U.S. 469 (2005). New Louisiana's taking is constitutional under the Fifth Amendment's Takings Clause because it advances a public purpose. Although New Louisiana plans to contract with Pinecrest, Inc. to create a ski resort, a seemingly local benefit, this Court's precedent has established that a broad taking, such as increasing tax revenue or revitalizing a blighted community, is considered public use because it serves a public purpose. R. at 2. New Louisiana's ski resort will result in increased tax revenue, 3,470 new jobs and provide "long-lasting benefits" to the community. R. at 2. Thus, this Court should defer to *Kelo*, and other long-standing precedent, and continue to interpret the Public Use Clause broadly, deferring to state legislatures to determine what is best for their communities. 545 U.S. at 480.

This Court has asserted that when a taking is "rationally related to some conceivable public purpose," the taking is constitutional. *Haw. Hous. Auth. v. Midkiff,* 467 U.S. 229, 240-41 (1984). In *Payne v. Tennessee*, this Court held that *stare decisis* is at its most favorable with issues concerning state and contract cases. 501 U.S. 808, 827 (1991). Thus, departing from *Kelo*, and the workable framework established to determine the constitutionality of eminent domain, would disrupt this Court's pillar of legal legitimacy—*stare decisis.* Moreover, upholding a broad interpretation of the Public Use Clause also provides a stable framework the lower courts can rely upon. This Court has repeatedly asserted that economic development serving a public

purpose is constitutional under the Fifth Amendment's Takings Clause. This broad interpretation of the Takings Clause has directed lower courts to give deference to state legislatures to decide economic development in their territories and thus, support state autonomy.

Additionally, this Court has asserted that the Fifth Amendment Takings Clause is not self-executing and does not create a cause of action for private litigants to bring a suit against the state. *Me. Cmty. Health Options v. United States*, 590 U.S. 296, 323 n.12 (2020). This history and structure of the U.S. Constitution has established that states are afforded broad protections to create and enforce laws that impact the lives of their citizens, such as providing just compensation for a property taking for public use. Moreover, the Eleventh Amendment and this Court's precedent bars federal courts from forcing states to award monetary damages unless immunity is validly waived or abrogated. *Alden v. Maine*, 527 U.S. 706, 750-51 (1999). States were afforded this right because authorizing private suits for monetary damages would place an unwarranted strain on the state's ability to govern in accordance with the will of its citizens. *Alden*, 527 U.S. at 750-51. Thus, allowing the Petitioners' claims against New Louisiana without a waiver would upend state-created just compensation laws and directly conflict with state sovereignty principles, which are foundational to this Court's jurisprudence.

The U.S. Constitution empowers legislatures to decide how to provide just compensation through either statutory causes of action; special bills; executive tribunals; or legislative courts. Congress has also offered multiple avenues of remedies for individuals deprived of their property by the government or state actors. For example, 28 U.S.C. § 1491 and 42 U.S.C. § 1983 provide individuals with relief against the government or "persons" that deprive them of their constitutional rights. Additionally, Congress has encouraged individuals to utilize private bills to resolve any private land claims.

The Petitioners also assert that the Fifth Amendment Takings Clause establishes a cause of action because of its 'self-executing' character. These assertions, however, are misplaced. According to precedent, the 'self-executing' character of the Takings Clause speaks only to the substantive question of the just compensation right, not the procedural mechanisms used to vindicate those rights. If the Judiciary were to recognize a cause of action and force states to award monetary damages without an authorized statute, it would nullify Congress's exclusive authority to determine claims for money against the United States.

Lastly, states are better equipped than federal courts to create diverse and broad fiscal policy, protect their residents and provide just compensation when property is taken for public use. Should this Court decide in favor of the Petitioners in this matter, it would severely clog the judicial system and upend consistent and predictable principles of just compensation relied upon by lower courts. In light for the foregoing reasons, this Court should affirm the Court of Appeals for the Thirteenth Circuit's judgment and find that the Takings Clause is not self-executing and requires a state or federal statute to create a cause of action.

ARGUMENT

I. UPHOLDING *KELO V. CITY OF NEW LONDON* STRENGTHENS DECADES OF PRECEDENT PROMOTING DEFERENCE TO STATE LEGISLATIVE AUTHORITY TO DETERMINE THE SCOPE OF THE PUBLIC USE CLAUSE.

The Fifth Amendment's Takings Clause permits New Louisiana to rely on eminent domain to achieve a legitimate public purpose. The Takings Clause states, "…nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. This Court's long-standing precedent has established that a broad taking, such as increasing tax revenue or revitalizing a blighted community, is considered public use for purposes of the Takings Clause because it serves a public purpose. *Kelo v. City of New London*, 545 U.S. 469, 475-76 (2005). This Court's particular reasoning in *Kelo* should be upheld because it provides a strong framework for interpreting the Public Use Clause. *Id.* at 481-83. The *Kelo* framework states that "public use jurisprudence has . . . intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power." *Id.* at 483. Moreover, this Court in *Kelo* recognized that societal needs vary in different parts of the nation, so deference to state legislatures to interpret the Public Use Clause was encouraged. *Id.* Thus, if this Court decides to overrule *Kelo*, and not allow New Louisiana to economically develop the property in question under the Takings Clause, it will (1) dismiss decades of precedent; (2) encroach and undermine state governments' legislative authority; and (3) effectively stifle economic development by omitting it as a type of public use.

A. Exercising Eminent Domain over the Petitioners' Property is Rationally Related to New Louisiana's Economic Development Interests.

This Court should uphold *Kelo* because exercising eminent domain over the Petitioners' property is rationally related to New Louisiana's economic interests. Economic regulations are typically reviewed under the rational basis standard because courts must provide deference to

state legislatures who better understand the needs of their communities. *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 235, 240 (1984). This standard of review "echoes the rational-basis test used to review economic regulation under the Due Process and Equal Protection Clauses." *Kelo*, 545 U.S. at 490 (KENNEDY, J., concurring). *See Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483 (1955) (holding that as long as the state law has a rational connection to a legitimate government purpose, it is constitutional). In applying the rational basis standard, this Court has held that "where the exercise of the eminent domain power is rationally related to a conceivable public purpose," then the taking is Constitutional. *Midkiff*, 467 U.S. at 240-41.

In *Midkiff*, the Hawaii Housing Authority was permitted to take land from property owners under the Land Reform Act of 1997 because the taking would end land oligopoly. 467 U.S. at 245. Similarly, New Louisiana's economic development will revitalize a blighted area where the farmland cannot support marketable crops and the land is overgrown. R. at 2. Should New Louisiana's economic development plan discontinue, this blighted area will continue to undervalue targeted farmland and deteriorate the entire surrounding area physically and economically. *Id.* Under rational basis review, as discussed in *Midkiff*, New Louisiana's exercise of eminent domain should be upheld because its taking is rationally related to economic development. *Midkiff*, 467 U.S. at 241.

In *Kelo*, this Court held that a heightened standard of review for economic redevelopment matters is an unworkable standard. 545 U.S. at 471. In *Kelo*, this Court rejected the Petitioners' argument for a heightened standard of review because it sharply departed from established precedent. *Id*. Additionally, in *Lingle v. Chevron U.S.A. Inc.*, this Court rejected a heightened standard of scrutiny and held that a heightened standard of scrutiny requires courts to "substitute their predictive judgements for those of elected legislatures and expert agencies." 544 U.S. 528,

544 (2005). Thus, if this Court adopted a heightened standard of review for economic redevelopment matters, courts would be forced to scrutinize state and federal regulations, a violation of our government's checks and balances system. *Id.* Thus, *Kelo* should remain upheld because its rational basis review framework effectively governs economic redevelopment matters under the Takings Clause. *Midkiff*, 467 U.S. at 240-41.

B. Adherence to the Doctrine of *Stare Decisis* Compels a Finding in Favor of Eminent Domain.

The Doctrine of *stare decisis* demands consistency and respect for established precedent. Upholding *Kelo,* and approving New Louisiana's economic development plan, would remain in line with the bedrock principles established in the doctrine. This Court has historically held that *stare decisis*, "promotes the 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." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). This Court "frequently decline[s] to overrule cases in appropriate circumstances because '[*stare decisis*] carries persuasive force[,]' so a departure from precedent must be supported by some 'special justification.'" *United States v. IBM*, 517 U.S. 843, 856 (1996) (quoting *Payne*, 501 U.S. at 827) (SOUTER, J., concurring). Specifically, in *Payne*, this Court emphasized that considerations in favor of *stare decisis* are most heightened in cases involving property and contract rights. 501 U.S. at 828. This Court emphasized that adherence to *stare decisis* is crucial in property law because altering established rules can lead to lasting disruptions and widespread "injurious results." *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 486 (1924).

This Court has also emphasized that *stare decisis* is not absolute and there are circumstances where overturning precedent is preferred, but those circumstances are not present here. In *Payne*, this Court determined that overturning past precedent was necessary to terminate

a restrictive and unworkable rule regarding evidence. *Id.* at 827-30. Although the matter at hand involves a constitutional issue, like in *Payne*, this question is not rooted in individual liberties, but focuses more on the scope of governmental power over private property. *Id.* at 828. This distinction is significant because individual liberties require robust constitutional protections where "correction through legislative action is practically impossible." *Id.*, 501 U.S. at 828. On the contrary, New Louisiana's taking of the Petitioners' properties for economic development does not consider individual liberties in property, but must instead strike a delicate balance between personal and public property interests in property as it relates to public use. The framework for determining public use under *Kelo* underscores the importance of *stare decisis*, emphasizing that adherence to precedent maintains consistency and upholds the integrity of the judiciary. 545 U.S. at 484. Therefore, if this Court decides to overrule *Kelo*, it will ignore decades of precedent recognizing the importance of *stare decisis* in property matters.

C. The Factual Similarities Between *Kelo* and New Louisiana's Exercise of Eminent Domain Warrants Upholding *Kelo.*

In *Kelo*, this Court upheld the rule that economic development used for a broader public purpose satisfies the Public Use Clause. *Kelo*, 545 U.S. at 484. The developers in *Kelo* presented a detailed plan that created new jobs and increased tax revenue, which this Court concluded "unquestionably served a public purpose." *Id*. Specifically, the redevelopment plan revitalized New London by creating a marina, office space, retail stores and increased available jobs and tax revenues to revitalize an economically distressed city. *Id.* at 472-74. Similarly, New Louisiana plans to contract with Pinecrest Inc. to build a ski resort to increase tax revenue for the area, attract tourists and provide 3,470 new jobs. R. at 2. Additionally, fifteen percent of the tax revenue generated from the ski resort will be used to "revitalize and support the surrounding community to ensure long-lasting benefits." *Id.* The case at hand and *Kelo* are significantly

analogous in their development plans, efforts to revitalize the community and revenues produced to further support the local areas. Given this case's strong resemblance to *Kelo,* and how that case was decided, this Court should not stray away from precedent and thus, allow New Louisiana's economic plan to take place.

Moreover, in *Kelo*, this Court recognized the possibility of harm with taking property and giving it to a private developer. However, it rejected the potential for harm, emphasizing that New London's plan was comprehensive, carefully deliberated and served a public purpose by creating jobs, generating tax revenue and revitalizing the community. *Kelo*, 545 U.S. at 470, 484. New Louisiana's plan is as comprehensive as New London's was. The similarity in benefits between both plans demonstrates how the plans intend to serve a public purpose through revitalization and development.

Although New London's plan in *Kelo* involved spaces accessible and usable by the public, this factor was not dispositive of the Court's finding in favor of New London. *Kelo*, 545 U.S. at 574. New London's plan created a shopping center, office space, and a marina—all spaces that are publicly accessible and usable. *Id.* While New Louisiana's plan creates a ski resort that is not seemingly accessible to everyone, specifically those who might not be able to afford the resort's services, it is still made available to the public for an entrance fee. R. at 2. In *Kelo*, this Court emphasized that public purpose does not require the public to have direct access to the property, rather the development must provide some broader economic or social benefit to the community. *Kelo*, 545 U.S. at 479-80. This Court further held that interpreting public purpose as "use by the public" is a difficult test to administer because it is impractical to proportionate who has access to what property and at what price. *Id.* Thus, in *Kelo*, this Court embraced the broader interpretation of public purpose to include any development that served an economic or social

benefit. *Id.* This analysis should weigh in favor of finding that New Louisiana's economic development plan involving eminent domain of the Petitioners' properties is constitutional under the Fifth Amendment's Takings Clause.

D. *Janus v. AFSCME, Council 31*'s Essential Factors Favor Upholding Precedent.

In *Janus v. AFSCME, Council 31,* this Court outlined relevant factors to consider when upholding precedent. *Janus*, 585 U.S. 878 (2018). The factors for determining whether precedent must be upheld, all of which strongly support upholding *Kelo*, include: (1) workability of the rule; (2) reliance on the decision; (3) consistency with other related decisions; and (4) quality of reasoning when determining whether precedent should be overturned. *Id.* at 917. Failing to consider these factors neglects this Court's recent decision on how to determine whether precedent should be overturned or upheld. These factors warrant upholding *Kelo* here because *Kelo's* rule for executing eminent domain for economic development was proven workable, states and local governments rely on the *Kelo* framework to structure development projects based on public use, *Kelo* aligns with other related matters that recognize the importance of economic growth and urban renewal as a legitimate public purpose, and *Kelo* strikes a careful balance between property rights and the need for community advancement. Therefore, these factors warrant upholding *Kelo* to ensure that the interests of local governments are protected and allow for the revitalization of communities and neighborhoods that positively impact the public.

II. A COMPREHENSIVE DEFINITION OF PUBLIC USE INCORPORATING ECONOMIC DEVELOPMENT UPHOLDS PRECEDENT AND PREVENTS ECONOMIC WASTE.

This Court has consistently held that a taking satisfies the Public Use Clause of the Fifth Amendment when it serves a public purpose. In *Fallbrook Irrigation Dist. v. Bradley*, this Court interpreted public use broadly and defined public purpose as a matter of public interest. 164 U.S. 112, 161 (1896). In *Kelo*, this Court upheld this broad definition and encouraged deference to

state and local legislative discretion when defining public use. *Kelo*, 545 U.S. at 480. *See also*, *Berman v. Parker*, 348 U.S. 26 (1954); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984). In *Midkiff*, this Court held that property taken by eminent domain and transferred to a private party can still fall within the gambit of public use . *Midkiff*, 467 U.S. at 243-44. However, this Court also held that a state cannot "take property under the mere pretext of a public purpose, when its actual purpose [is] to bestow a private benefit." *Kelo*, 545 U.S. at 478. Here, New Louisiana is taking the Petitioners' properties and giving it to a private party, Pinecrest Inc., to create a public benefit. R. at 2. New Louisiana is not taking the properties for its own private use. *Id.* This taking still serves a public purpose through economic development because it will create 3,470 new jobs, add fifteen percent in tax revenue to the community, and revitalize a blighted area. *Id.* A broader definition of public use provides flexibility to state legislatures to determine what is best for their communities, while upholding that public purpose must be present when taking property for economic development.

A. This Court Has Consistently Held that Public Use Includes Economic Development.

Over the years, this Court has held that the Public Use Clause must be interpreted broadly to include economic redevelopment. In *Berman v. Parker*, this Court held that the purpose of transforming a blighted area through redevelopment by including "new homes and shopping centers," constituted a broader public purpose protectable under the Fifth Amendment's Takings Clause. 348 U.S. at 34-35. Further, this Court held that the role of the judiciary in reviewing a legislature's judgment of what constitutes a public use is "extremely narrow." *Id.* at 32. Here, the Petitioners' land sits on undervalued farmland struggling to produce marketable crops due to soil conditions, with many plots being overgrown. R. at 2. In light of this inefficiently used, economically wasteful land, New Louisiana seeks to transform Petitioners' land into a ski resort

to revitalize the community and increase property values. *Id.* This transformation will also benefit the greater New Louisiana community because New Louisiana plans to use fifteen percent of the tax revenue generated by the ski resort to support the surrounding community to ensure long-lasting benefits. *Id.* New Louisiana will use economic redevelopment as a vessel to revitalize a blighted area. R. at 2. This interpretation reinforces the need for a broad interpretation of public use, and demonstrates that in allowing *Berman* to govern, New Louisiana's development of a ski resort satisfies a public purpose.

Similarly, in *Midkiff*, this Court held that when the government's redevelopment plan effectuates some public purpose, a taking is constitutional. *Midkiff*, 467 U.S. at 241. In *Midkiff*, this Court determined that the redistribution of land from large homeowners to lessees was constitutional. *Id.* at 233. This Court further concluded that "it will not substitute its judgment for a legislature's judgment as to what constitutes public use 'unless the use be palpably without reasonable foundation.'" *Id.* at 241. (quoting *United States v. Gettysburg Electric R. Co.*, 160 U.S. 668, 680 (1896)). Here, much of the Petitioners' land is financially depleted. R. at 2. Through revitalization, New Louisiana can create at least 3,470 more jobs, increase tax revenue to support the community and support business owners with increased tourism. *Id.* This plan is constitutional under New Louisiana's state statute, §13:4911, which provides that the state "allows takings purely for economic development." *Id.* Therefore, like in *Midkiff*, this Court should not interfere with New Louisiana's taking because it will ignore long standing precedent upholding deference to state legislatures to define the scope of the Public Use Clause.

1. <u>The First, Second and Third Circuits Interpret Public Use Broadly to Encompass Economic Development.</u>

In *Goldstein v. Pataki*, the Second Circuit relied on *Kelo,* and similar cases, to hold that the Public Use Clause includes economic development. 516 F.3d 50, 61 (2d Cir. 2008). The

Second Circuit specifically found that economic development of a substantially blighted area constituted a public purpose. *Id.* at 53. *See also Brinkmann v. Town of Southold, New York*, 96 F.4th 209, 213-14 (2d Cir. 2024) (emphasizing the longstanding deference to legislative judgements on what constitutes a public use). In *Goldstein*, the government revitalized a blighted area through a private developer and created a sports arena, housing and public spaces. *Id.* at 59. The court relied on *Kelo, Berman,* and *Midkiff*, to justify the taking, determining that the Public Use Clause is satisfied when the taking is rationally related to a conceivable public purpose. *Id.* at 60.

The Third and First Circuits also rely on *Kelo* to interpret the Public Use Clause broadly to include economic development. In *RLR Invs., LLC v. Town of Kearny*, the Third Circuit held that taking RLR's non-blighted property did not violate the Takings Clause because the town's plan served a legitimate public purpose of economic development. 386 Fed. Appx. 84, 88 (3d Cir. 2010). Additionally, in *Fideicomiso de la Tierra del Caño Martin Peña v. Fortuno*, the First Circuit determined that the government's implementation of an Act that caused Fideicomiso's property to be transferred to government control was constitutional. 604 F.3d 7, 18 (1st Cir. 2010). The Third Circuit relied on this Court's determination that interpreting public use broadly to include economic development, provides deference to state legislatures while upholding that a taking must only be rationally related to a "conceivable public purpose." *RLR Invs. LLC*, at 87. (quoting *Midkiff*, 467 U.S. at 241). Similarly, the First Circuit relied heavily on this Court's interpretation that public use is a deferential standard, where "'the legislature's purpose is legitimate, and its means are not irrational . . . empirical debates over the wisdom of takings . . . are not to be carried out in federal court."' *Fortuno*, 604 F.3d at 18 (quoting *Midkiff*, 467 U.S. at 242-43). The Third and First Circuit's reliance on this Court's broad interpretation of the Public

Use Clause in *Kelo* underscores the persuasive authority of this Court's reasoning. This reinforces the importance of providing deference to state legislatures who understand the needs of their communities more than the judiciary.

Although the circuit courts' findings are not binding authority, their holdings demonstrate that a broad interpretation of the Public Use Clause reestablishes the important of the *Janus* factors and further supporting New Louisiana's taking of Petitioners' property. New Louisiana's comprehensive plan to revitalize a blighted community through economic development, serves a public purpose by providing thousands of employment opportunities and increased tax revenue. R. at 2. Thus, ruling against New Louisiana's taking will not only ignore precedent set forth by this Court, but also undervalue the holdings of lower courts. The First, Second, and Third Circuits broad interpretation of the Public Use Clause has provided positive revitalization and necessary reform to communities.

B. Narrowing the Definition of Public Use to Exclude Economic Development Restricts States' Legislative Authority.

Narrowing the definition of public use for the purposes of the Takings Clause strictly diverts from decades of precedent established by this Court. In *Hairston v. Danville & W. R. Co.*, this Court held that providing deference to state legislatures on issues concerning public use allows states to interpret the needs of the state through "resources, the capacity of the soil…and long-established methods and habits of the people." 203 U.S. 598, 606-607 (1908). This Court then reaffirmed the necessity to provide deference to states concerning economic decisions in *United States ex rel. Tennessee Valley Authority v. Welch*, stating that "[a]ny departure from this judicial restraint would result in courts deciding on what is and is not a governmental function . . . invalidating legislation." 327 U.S. 546, 552 (1946). In *Kelo*, this Court used this same reasoning to demonstrate the "great respect [the Court] owe[s] to state legislatures and state courts in

discerning local public needs." *Kelo*, 545 U.S. at 482 (citing *Hairston*, 203 U.S. at 606-607). This reasoning provides state governments with the ability to determine whether interpreting public use broadly or narrowly is best for their communities. Stripping state courts of its autonomy places unyielding power to courts who are not all best equipped to recognize "the needs of society [that] vary between different parts of the Nation…as [states] evolve over time in response to changed circumstances." *Id.*

In light of this Court's long-standing precedent that a broad definition of public use provides necessary deference to state legislatures, New Louisiana's taking of Petitioners' land should be considered constitutional under the Fifth Amendment's Takings Clause. Under New Louisiana's state code, § 13:4911, economic development satisfies a public use, making it proper for New Louisiana to condemn property for a redevelopment project. R. at 2. New Louisiana's exercise of eminent domain for economic development is reflective of this Court's ruling that public use must be defined broadly to provide state legislatures with necessary autonomy and freedom to decide on property matters that are in the best interest of their communities. *Kelo*, 545 U.S. at 479-80; *Midkiff*, 467 U.S. at 243; *Berman*, 348 U.S. at 36-35. As this Court has traditionally held, economic development is constitutional when it serves a broader public purpose. *Kelo*, 545 U.S. at 479-80, 484. Thus, ruling in favor of New Louisiana's taking allows this court to adhere to decades long precedent concerning how public use is defined.

III. THE FIFTH AMENDMENT'S TAKINGS CLAUSE DOES NOT CREATE ITS OWN CAUSE OF ACTION.

The Takings Clause of the Fifth Amendment is not self-executing and does not provide a cause of action in the absence of federal or state statute. The Takings Clause states that "[n]o person shall be…deprived of…property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. While the text of the

Fifth Amendment requires just compensation, this Court in *Main Community Health Options v. United States* stated that "there is no express cause of action under the Takings Clause." 590 U.S. 296, 323 n.12 (2020). This Court has consistently held that the proper forum against states for monetary damages is the states' own courts as sovereign immunity bars federal courts from forcing states to award damages unless the immunity is waived or abrogated. *Alden v. Maine*, 527 U.S. at 750-51 (1999) (recognizing that "[a] general federal power to authorize private suits for money damages would place unwarranted strain on the States' ability to govern in accordance with the will of their citizens."). If this Court were to recognize a cause of action for money damages under the Fifth or the Fourteenth Amendment, it will overturn an unbroken line of case law, undermining this Court's jurisprudence that rightfully recognizes and respects states' status as separate sovereigns. *See Id.*

A. *Maine Community Health Options v. United States* and the Constitution's Structure Denies an Express Cause of Action Under the Takings Clause

1. This Court Has Asserted That There is No Self Executing Cause of Action Under the Takings Clause.

In *Main Community Health Options v. United States*, this Court stated that "there is no express cause of action under the Takings Clause." 590 U.S. at 323 n.12. The Court interpreted the language of a Congressional amendment to the Patient Protection and Affordable Care Act and found that it did not repeal the government's obligation to pay insurers. *Id*. . There, the Court found that the insurers properly relied on the Tucker Act to bring a claim against the Government for damages in the Court of Federal Claims. *Id.* at 298. While here, the Tucker Act is not applicable because the Petitioners' claim is against the State, the principle from *Maine Community* still applies; where no state or federal statute enables a private cause of action, the

Court cannot engage in judicial lawmaking to establish a private cause of action for a constitutional act or congressional statute. *See Id*.

2. The Constitution's Structure is Incompatible with an Implied Takings Cause of Action.

The structure of the Constitution also supports the principle that the framers intended for the Legislative branch to exclusively control whether individuals have a right to seek monetary relief against the states and federal government. *Off. Of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990) (arguing that "[m]oney may be paid out only through an appropriation made by law; in other words, the payment of money from the Treasury must be authorized by a statute."). The Constitution expresses in Article I, §8 and §9 that the Legislature, not the Judiciary, is in control of the "purse," and Congress alone can draw money to be paid out through an appropriation authorized by statute. U.S. Const. art. I, §9, cl. 7; §8, cl. 1; *see also Off. Of Pers. Mgmt*, 496 U.S. at 424. James Madison explained this "power over the purse" as allowing the government to provide "a redress of every grievance," which therefore made it "the most complete and effectual weapon with which any constitution can arm." THE FEDERALIST NO. 58, at 357 (Clinton Rossiter ed., 1961). As the Constitution delegated this power to Congress, and as the framer's reinforced the exclusivity of this role, this Court has consistently held that the "judiciary cannot provide compensation even for a taking where Congress made 'no provision by any general law for ascertaining and paying just compensation.'" *Langford v. United States*, 101 U.S. 341, 343 (1879). (holding that "in cases where it is proper for the nation to furnish a remedy, Congress has wisely reserved the matter for its own determination.").

In addition, Petitioner's claim to litigate a federal takings issue without a federal takings statute would defy constitutional text and history. *See Id*. at 345. During the ratification of the Constitution, the founders assuaged the concern of a strong central government by assuring that

states would retain the rights of sovereignty they had prior to ratification. THE FEDERALIST AND OTHER CONSTITUTIONAL PAPERS, NO. 45, p. 258 (E.H. Scott ed. 1898) ("[r]ecognizing the powers retained by the States as 'numerous and indefinite,' including 'all the objects which, in the ordinary course of affairs concern the lives, liberties, and properties of the people.'"). This Court has upheld these principles by continuously and appropriately holding state sovereignty to be central to the constitutional design. *See*, e.g., *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 237 (2019) (acknowledging that "the States considered themselves fully sovereign nations" at the founding). Petitioner's assertion that the Fifth Amendment creates its own cause of action would require this Court, for the first time, to disregard the framer's intent, decades of case law, and principles of separation of powers and federalism foundational to this Court's jurisprudence. *See Alden v. Maine*, 527 U.S. at 750.

These principles dictate that the Constitution precludes courts from granting monetary remedies not authorized by Congressional statute as it would intrude into the Legislative branch's exclusive responsibility. *Langford v. United States*, 101 U.S. at 343. Accordingly, Petitioner's construction of an implied cause of action under the Takings Clause is incompatible with the framer's construction of the Constitution, as well as this Court's precedent. *See Id*. at 343.

B. <u>There are Robust State and Federal Remedies for Eminent Domain Proceedings.</u>

Importantly, the Petitioners are not without recourse; the Constitution empowers legislatures – both state and federal – to choose how to provide just compensation, whether through statutory causes of actions, special bills, executive tribunals, or legislative courts. *Off. Of Pers. Mgmt.*, 496 U.S. at 430 (1990). However, because Congress has never created a federal takings cause of action, nor has it authorized takings claims to proceed against a sovereign

anywhere but in their own courts, this Court should not impose one. *See Alden*, 527 U.S. at 724. Instead, this Court should continue to follow historical tradition, precedent, and the intent of the framers to find that the Takings Clause is not self-executing and does not provide a cause of action absent a federal or state statute. *See Id*. (noting that the "handful of state statutory and constitutional provisions authorizing suits or petitions of rights against States only confirms the prevalence of the traditional understanding that a State could not be sued in the absence of an express waiver.").

1. Private Bills Have Historically Been Used to Award Remedies Against Private Land Claims.

One avenue where private litigants have been awarded just compensation during public takings is through the enactment of private bills. Prior to the creation of the Tucker Act in 1887, Congress either delegated authority to resolve takings claims to the Treasury Department or individually resolved claims for just compensation through private bills. W. Cowen, P. Nichols, & M. Bennett, The United States Court of Claims, A History, 216 Ct. Cl. 1, 5 (1978). As more than 500,000 private takings claims were brought before Congress between 1789 and 1909, the Legislature consistently resolved issues of providing just compensation, even so far as creating standing committees dedicated to "Private Land Claims." Charles E. Schamel, *Untapped Resources: Private Claims and Private Legislation in the Records of the U.S. Congress*, PROLOGUE, (1995). With numerous framers of the Constitution engaged in the enactment of such bills, it would be unreasonable to justify why Congress would spend countless hours resolving taking bills if the Takings Clause had created a cause of action. *See* e.g., *An Act for the relief of Thomas Jenkins and Company*, ch. 20, 6 Stat. 2 (1790); *An Act for the relief of William Robinson, and others*, ch. 26, 6 Stat. 146 (1815) (providing examples of private land claims

where Congress during the Madison Administration compensated a group of property owners for public takings).

While pursuing private bills remains available to litigants today, there are also newer, alternative remedies available to such litigants; modernly, states often provide even more comprehensive property protections than the federal constitution. Robert J Will et al., *Fifty-State Survey: Law of Eminent Domain* (2012). This historical context gives immense doubt to Petitioner's idea that the Takings Clause has always been self-executing and requires no state or federal statute to create a cause of action. *See Id.* The extensive history of private legislative bills illustrates the Takings Clause was not intended to create a cause of action and this Court should not overrule case law, historical text, and tradition to recognize one. *Id.*

2. Congressional Statutes Further Demonstrate that the Takings Clause Does Not Provide an Implied Cause of Action.

Congressionally authorized statutes such as 42 U.S.C § 1983 and 28 U.S.C. § 1491 ("The Tucker Act") are another form of remedy individuals can invoke if they have been deprived of their constitutional right remedies through certain forums. *See* 42 U.S.C. § 1983; 28 U.S.C. § 1491. Although Petitioners concede that these statutes cannot apply here because they are bringing a case against the state, these statutes demonstrate Congress's engagement with offering private litigants an additional path toward receiving just compensation when deprived of their property by the government or certain "persons." *See Id*; R. at 10. Under 42 U.S.C § 1983, Congress expressed a private right of action for individuals deprived of their constitutional rights against "persons." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989). This Court in *Will* limited the language of § 1983 to not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties because "Congress, in passing § 1983, had no intention to disturb the State's Eleventh Amendment immunity and so to alter the federal-

state balance." 491 U.S. at 66. Congress's passage of this act, in addition to the Tucker Act, illustrates that the Takings Clause, on its own, does not create a cause of action. *Id*. at 65. Therefore, unless and until Congress creates a federal takings cause of action against the States, there is none.

C. This Court's Longstanding Recognition That States are Immune from Damages Claims in Federal Court Will Be Upended If This Claim is Permitted.

This Court has long recognized that the Eleventh Amendment bars private litigants from bringing suits for monetary damages against states. *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). As states have historically been given the freedom to develop their own civil commitment standards, if this Court were to recognize a proposal for a self-executing direction, state established frameworks would be completely upended. *See Will*, 491 U.S. at 65. In *Will*, this Court held that "it is an 'established principle of jurisprudence' that the sovereign cannot be sued in its own courts without its consent." 491 U.S. at 67. In addition, this Court in *Alden v. Maine* reaffirmed this principle and found that "the Constitution's structure, and its history, and the authoritative interpretations by this Court make clear [that] the States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today." 527 U.S. at 713. As authorizing private suits for monetary damages would place an unwarranted strain on state's ability to govern in accordance with the will of their citizens, finding the Takings Clause to be self-executing would directly conflict with this Court's precedent and the Eleventh Amendment. *See Id*. at 750.

1. Recent Case Law Expresses that the 'Self Executing' Character of the Takings Clause Speaks Only to the Completeness of the Duty, Not the Forum for How a Sovereign State Will Fulfill that Obligation.

One of the central points to Petitioners' argument is interpreting this Court's holdings in *First English Evangelical Lutheran Church v. County of Los Angeles* and *Knick v. Township of*

Scott as establishing that the Takings Clause is self-executing and creates a cause of action for individuals without any federal or state statue. However, Petitioners are mistaken about the holdings of these cases.

The "self-executing" character of the Fifth Amendment, as used in *First English* and *Knick*, speaks only to the substantive question of the just compensation right, not the procedural mechanisms used to vindicate those rights. *See Knick v. Twp. of Scott*, 588 U.S. 180, 192 (2019) (emphasizing the holding in *First English* that "a landowner is entitled to bring an action in inverse condemnation as a result of the self-executing character of the constitutional provision with respect to compensation."). In mapping the development of the Takings Clause, this Court in *First English Evangelical Lutheran Church v. County of Los Angeles* found that the state's decision to allow for "temporary takings" without providing just compensation is unconstitutional under the Fifth and Fourteenth Amendment. 482 U.S. 304, 315 (1987). There, the petitioners asserted a state inverse condemnation claim and brought a suit against a municipality as opposed to a state, thereby not affording the county Eleventh Amendment protections that provide states with sovereign immunity. *First Eng.*, 482 U.S. at 306. The Court's focus in *First English* was to establish that the right to compensation accrues as soon as the government takes property. *Id*. This Court did not answer, nor emphasize, the procedural question of when the government's conduct triggers the right to compensation. *See Id*. Since the petitioner's there also relied on a state provision that explicitly allowed for a cause of action to be brought, this case is distinguishable from the claim that Petitioner's bring here, where they do not assert a state or federal statute. *See Id*.; R. at 4.

Though the Takings Clause creates a constitutional duty to pay just compensation, it does not specify the method or forum for how a sovereign state will fulfill that obligation. *See Knick*,

588 U.S. at 192. Rather, in examining the Constitutional text, structure, and history of the Fifth Amendment, Congress has the responsibility and authority to "determine claims for money against the United States." *See Williams v. United States* 289 U.S. 553, 569 (1933). Since the Takings Clause creates a duty of just compensation but is silent about how Congress must satisfy that duty, the Court should not "search for its meaning beyond the instrument." *See Lake County v. Rollins*, 130 U.S. 662, 670 (1889).

The Court in *Knick* looked to the self-executing character of the Takings Clause to find that individuals do not need to exhaust state litigation first before pursuing an action through 42 U.S.C. § 1983 when they have been deprived of their property. *Knick*, 588 U.S. at 184-85. The Court reasoned that "it [would] defeat the purpose of § 1983 if it were held that [an] assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court." *Knick*, 588 U.S. at 180. The Petitioners in *Knick,* however, did not introduce the Fifth Amendment without asserting § 1983, which serves as a vehicle for bringing a cause of action against "persons" that deprived individuals of their constitutional rights. *Id.* at 185. In addition, the Petitioner in *Knick* brought a suit against a municipality as compared to a sovereign state which relies on different Constitutional protections. *Id* at 188; *see also Will*, 491 U.S. at 70 (holding that "states are protected by the Eleventh Amendment while municipalities are not."). Here, the Petitioners concede that § 1983 is inapplicable because the suit is brought against a state, which is outside the scope of § 1983 and subject to sovereign immunity under the Eleventh Amendment. R. at 10.

Because of this Court's interest in upholding precedent, the Constitutional structure, and the diversity of the states' property protections that strengthen property rights, this Court would severely undermine state sovereignty and decades of case law if the Takings Clause by itself

were to create a cause of action against states. *See Alden*, 527 U.S. at 750. The Petitioners provide no sufficient reason to depart from this long line of precedent and to find, for the first time, that the Takings Clause is self-executing and provides a cause of action absent a state or federal statute. *See Id.* This Court should therefore affirm the decision of the Thirteenth Circuit and find the Takings Clause is not self-executing and requires Congressional action in order to bring a cause of action against the State.

CONCLUSION

For the foregoing reasons, this Court should uphold the District Court and Thirteenth Circuit's ruling, as New Louisiana's taking is constitutional, and the Fifth Amendment's Takings Clause is not self-executing.

Respectfully Submitted,

s/ Team 25
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