Docket No. 24-0386

In the Supreme Court of the United States

KARL FISCHER, ET AL.,

Petitioner,

v.

THE STATE OF NEW LOUISIANA,

Respondent.

On Writ of Certiorari to the Supreme Court of the United States

PETITIONER'S OPENING BRIEF

TEAM NO. 5

Counsels for Petitioner

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QUESTIONS PRESENTED

I. Does the Circuit Court's application of "public use" in *Kelo v. City of New London* to Petitioner's case expand the Fifth Amendment's Taking Clause beyond what the Framers intended?

II. Does the Fifth Amendment's self-executing Takings Clause entitle Petitioners to monetary or equitable relief when no state or federal remedy is available?

STATEMENT OF THE CASE

I. FACTUAL HISTORY

The State of New Louisiana (the "State") adopted the Economic Development Act (the "Act") to strengthen the State's economy. R. at 1–2. The Act delegated authority to the State's governor to execute agreements with private parties to "expand the State's tourism attractions ..." *Id*. Accordingly, the State contracted with Pinecrest, Inc. ("Pinecrest") to build a luxury ski resort (the "Project"). R. at 1–2. Speculatively, the Project is estimated to provide 3,470 new jobs while increasing tax revenue and attracting wealthy tourists. *Id*. at 2. The State contends, without demonstrative support, that the Project will increase tax revenue and will bring long lasting benefits to the surrounding community. *Id*.

The Project requires the State to take 1,000 acres of land from 100 different private owners to be completed. R. at 2. The State was able to convince ninety landowners to sell their properties for well below market value. *Id*. The State achieved this result because its state law, New Louisiana Code § 13:4911, allows the State to take private property purely for economic development. *Id*. Moreover, New Louisiana Code § 13:5109 provides property owners with the right to just compensation under state law only if the State waives immunity. *Id*. Unsurprisingly, the State has not waived immunity pursuant to NLC § 13:5109. *Id*.

Mr. Fischer is one of ten property owners presenting this action (the "Petitioners"). Mr. Fischer owns a small farm in the state of New Louisiana that has been in his family for 150 years. R. at 3. The other nine property owners share similar stories and circumstances. R. at 2. The single-family homes on the Petitioners' property have been passed down for generations and have significant sentimental value that cannot be monetized. *Id*. As such, Petitioners are unwilling to sell their property, let alone for a price below market value. R. at 2–3.

The average income of the Petitioners' neighborhood is $50,000 and relocating would be difficult. R. at 2–3. While the land owned by the Petitioners have been devalued as farmland because of substandard soil conditions, the properties are not dilapidated, nor do they pose any risk to the public. R. at 2–3. On March 13, 2023, the State authorized Pinecrest to begin construction on the land it acquired from the ninety landowners. R. at 3. At the same time, the State initiated eminent domain proceedings against the Petitioners. *Id*.

II. PROCEDURAL HISTORY

On March 15, 2023, Petitioner filed the instant action seeking equitable relief. R. at 3. The State responded by moving to dismiss Petitioner's suit under Federal Rule of Civil Procedure § 12(b)(6). *Id.* The District Court granted the State's motion to dismiss. R. at 8. The Court of Appeals affirmed the District Court's decision with respect to both issues. R. at 10.

III. STANDARD OF REVIEW

A district court's determination of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is reviewed de novo. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015).

SUMMARY OF THE ARGUMENT

The District Court for the District of New Louisiana and the Court of Appeals for the Thirteenth Circuit improperly held that "public use," as defined in *Kelo*, allows for governments to take private property from one private person and give it to another. Moreover, the District Court and the Circuit Court improperly held that the Fifth Amendment is not self-executing, thereby denying Petitioners their constitutionally secured relief.

Kelo should be overruled because its holding encroaches the fundamental right to own property. *Kelo* is flawed because it conflates "public purpose" with "public use," which

contradicts the plain meaning of the Takings Clause. The Founders intended "public use" to be narrowly defined, distinct from broader concepts like "general welfare." Moreover, *Kelo* ignored the original intent and historical context of the Takings Clause by interpreting "public use" too broadly, allowing for excessive legislative discretion. Furthermore, *Kelo* is unworkable because it expands "public use" to include almost any government action that benefits the public, thus weakening the intended constitutional limitation on government power. Such a broad interpretation blatantly obstructs constitutional protection of property, making the rule detrimental to constitutional rights.

Concluding that the Fifth Amendment is not self-executing, both courts relied on *Egbert v. Boule*, 596 U.S. 482 (2022) and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) to support the position that the Constitution does not provide causes of action except in limited circumstances. Petitioners argue that *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180 (2019) and *First English Evangelical Lutheran Church of Glendale v. Los Angeles County,* 482 U.S. 304 (1987) are controlling and provide that the right to just compensation is self-executing irrespective of any state or federal post-taking remedy. Moreover, Petitioners alternatively argue that if they are not entitled to just compensation under the Fifth Amendment, then equitable relief is proper.

ARGUMENT

I. *KELO* SHOULD BE OVERTURNED BECAUSE THE PROJECT DOES NOT CONSTITUTE A PERMISSIBLE TAKING FOR A "PUBLIC USE" UNDER THE FIFTH AMENDMENT'S TAKINGS CLAUSE.

Alexander Hamilton deemed the "security of Property" as "one of the 'great obj[ects] of Gov[ernment].'" *1 Records of the Federal Convention of 1787*, p. 302 (M. Farrand ed.1991). The Fifth Amendment's Takings Clause imposes two distinct conditions upon the exercise of eminent

domain: takings "must be for a 'public use' and 'just compensation' must be paid to the owner." *Brown v. Legal Foundation of Wash.*, 538 U.S. 216, 231-232 (2003). Together, these conditions "ensure property ownership by providing safeguards against excessive, unpredictable, or unfair use of the government's eminent domain power against those owners who, for whatever reasons, may be unable to protect themselves in the political process against the majority's will." *Kelo v. City of New London*, 545 U.S. 469, 496 (2005). This Court addressed the Fifth Amendment's Takings Clause in *Kelo v. City of New London*. *Id*. at 476. *Kelo*'s sweeping language distorts the history of the Takings Clause and unsettlingly opens the door for a plethora of concerns that far outweigh the benefits it purports.

The Court applies a list of factors when determining whether stare decisis requires adherence to its precedent: the quality of the reasoning, the workability of the rule, the consistency with other related decisions, and reliance on the decision. *Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018). Maintaining precedent in compliance with stare decisis is strongly presumed because it promotes stability and evenhandedness. *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). As such, the Court should overturn past decisions only if there are strong grounds for doing so. *United States v. IBM*, 517 U.S. 843, 855-56 (1996).

A. *Kelo* Should Be Overturned Because of The Widespread Negative Reaction to the Court's Decision and The Resulting Patchwork of States' Legislation Away From the Holding.

Kelo must be overturned because the widespread criticism and swift legislation in response to the 2005 decision demonstrates its futility. "[A] precedent is more likely to be correct and worthy of respect when it reflects the time-tested wisdom of generations than when it sits 'unmoored' from surrounding law." *Loper,* 144 S. Ct. at 2280. Nearly every state has changed its laws in response to *Kelo*. *Looking Back Ten Years After Kelo*, 125 Yale L. J. 82, 84 (2015).

Multiple states took subsequent action towards circumventing *Kelo*'s holding in response to the decision. *Id*. Eleven states amended their constitutions, and forty states enacted statutes to safeguard property rights from *Kelo*-type private use takings. *Id*.

Such an overwhelming backlash indicates that *Kelo* lacks the merit and credibility to justify adherence to stare decisis. Perhaps the most damaging outcome in response to *Kelo* was the fact that no two states adopted the same legal reforms to private takings. *Id*. The resulting patchwork of legislation has resulted in highly miscellaneous and uneven protections that essentially "defeat the purpose of having a federal constitution." *Id*. "It is hard to imagine any other area of law in which the Court would say that federal courts will no longer be protecting a right that is explicitly mentioned in the Federal Constitution but suggest that instead the states are free to provide that protection. *Id*. Such an egregious deviation from the history of our constitutional jurisprudence raises the alarming possibility that the judiciary may permit other rights explicitly mentioned in the Constitution to vary state by state, "with some states providing strong protections and others virtually none." *Id*.

By overturning *Kelo*, the Court would abide by its judiciary duty to eradicate misguided areas of the law that contradict the language and history of the Constitution, causing an "impermissible geographic variation in the meaning of federal law." *Obergefell v. Hodges*, 576 U.S. 644, 678 (2015). In *Obergefell*, this Court mended the fragmented state laws regarding same-sex marriage in the United States, ensuring uniformity by upholding constitutional fundamental rights. *Id*. at 648. Overturning *Kelo* would restore uniformity and bolster private property rights protected by the Constitution, similar to how *Obergefell* unified geographically disparate treatment of a federal constitutional right.

Moreover, Respondent may argue that overturning *Kelo* would destabilize the law and disrupt confidence in the judiciary, but this argument is without merit. Overruling *Kelo* would markedly underscore this Court's deference to the pillars of the Constitution, thus promoting fairness and uniformity of property rights. In fact, this would not be the first time the Court has overruled its precedent that failed to abide by the history of the Takings Clause. *Knick*, 588 U.S. at 192. *Knick* overturned this Court's ruling in *Williamson County* for its comparably misguided precedent regarding the Takings Clause and access to a constitutional right.

B. *Kelo*'s Reasoning is Inherently Flawed Because It Misconstrues the Original Meaning and Intent of "Public Use" As Envisioned by the Framers.

The Project does not constitute a permissible taking for a "public use" within the meaning of the Fifth Amendment because speculative economic benefits are insufficient to justify a taking. *Kelo*'s poorly reasoned decision is at odds with our nation's history and the Framers' construction of the law protecting the fundamental right to own property. In *Loper Bright*, Justice Gorsuch asserted that a Court must recognize "that the primary power of any precedent lies in its power to persuade–and poorly reasoned decisions may not provide reliable evidence of the law's meaning." *Loper Bright*, 144 S. Ct. at 2280 (Gorsuch, J. concurring).

In the instant case, *Kelo*'s reasoning erroneously misconstrues the original meaning of the Public Use Clause by broadly interpreting "public use" in a way the Framers could have never conceived, essentially rendering the Public Use Clause a nullity. As Justice Thomas asserts in his dissent to *Kelo*, "the Public Use Clause, originally understood, is a meaningful limit on the government's eminent domain power." *Kelo*, 545 U.S. at 506. The Framers upheld property rights in the highest regard as demonstrated by the Public Use Clause, which "embodied the Framers' understanding that property is a natural, fundamental right, prohibiting the government from 'tak[ing] *property* from A. and giv[ing] it to B.'" *Id*. at 510-511. Ultimately, "[i]t is against all

reason and justice, for a people to entrust a Legislature with such powers (emphasis added); it cannot be presumed that they have done it." *Calder*, 3 U.S. at 388.

An interpretation of the Constitution calls for "the unremarkable presumption that every word in the document has independent meaning, 'that no word was unnecessarily used, or needlessly added.'" *Kelo*, 545 U.S. at 496. This notion is especially reflected in the Framers' choice to specifically use "public use" in drafting of the Takings Clause, rather than the "general welfare" language articulated in Article I Section 8 of the Constitution. *Kelo*, 545 U.S. at 509; *see also Records of the Federal Convention of 1787* 302 (M. Farrand ed. 1911). Had the Framers intended to utilize a similarly "sweeping scope" as the broader "general welfare" term provides, the Takings Clause would have included such language. *Kelo*, 545 U.S. at 509. Instead, the Takings Clause "explicitly and unambiguously limits the taking of private property for 'public use.'" *See* R. at 14 (Willis, J., dissenting). If economic development takings are executed for a public use, then "any taking is, and [*Kelo*] has erased the Public Use Clause from our Constitution." *Kelo*, 545 U.S. at 506.

Takings that are spearheaded solely for the purpose of economic development ultimately blur the line between public and private use. An eminent domain procedure motivated solely by its benefit-conferring qualities drastically deviates from the Framers' intent in forging the "public use" standard. The original meaning in the Public Use Clause conferred the exercise of eminent domain power to "provide quintessentially public goods" such as public roads, railroads, and parks. *Kelo*, 545 U.S. at 512. It is improbable that the Founders envisioned a system that allows for a private entity's hypothetically more profitable use of land to constitute as a public use. While measures taken to stimulate economic growth are important, these goals cannot be accomplished at the expense of condemning less affluent landowners. The mere incidental possibility that

economic benefits will arise from a private entity's use of land cannot plausibly meet the standard for public use.

Respondent may argue that the Court has construed "public use" broadly, as adopted in *Berman v. Parker*, 348 U.S. 26, 32 (1954). This argument lacks merit, however, given the perverse trend of public works projects in the 1950's and 1960's that destroyed predominantly minority communities across the nation. B. Frieden & L. Sagalyn, Downtown, Inc. How America Rebuilds Cities 28-29 (1989). In the instant case, the Project exacerbates similarly devastating acts of displacement by relying on *Kelo*'s interpretation of "public use." Accordingly, the most troubling consequence of *Kelo* is its tacit approval of grossly affluent entities to victimize low-income, mostly minority communities and displace them from their homes.

While the Project is projected to increase tax revenue and benefit business owners, these conjectures are entirely speculative and cannot justify upending generational land from the farmers under the banner of a "public use." As discussed above, "any lawful use of real private property can be said to generate some incidental benefit to the public." *Kelo*, 545 U.S. at 501 (O'Connor, J. dissenting). As Justice O'Connor further argued, "if predicted (or even guaranteed) positive side effects are enough to render transfer from one private party to another constitutional, then the words 'for public use' do not realistically exclude *any* takings, and thus do not exert any constraint on the eminent domain power." *Id*.

The aftermath in New London alone in the wake of *Kelo* is probative of the decision's futility. No buildings were constructed on the site of the condemned homes, and it remains empty as a "field of weeds, a home for feral cats, and … a dumping ground for storm debris." *Looking Back Ten Years After Kelo*, 125 Yale L. J. 82, 84 (2015).

Accordingly, the State's willingness to uproot generations of hard-working farmers from their land on the speculative grounds of potentially conferring an economic benefit is simply unwarrantable.

C. *Kelo*'s Reasoning is Unworkable Because it Abandons Long-Held Limitations to the Government's Power.

The sanctity of the Constitution, as the highest law of the land, requires its subsequent interpreting courts to acknowledge every word as a portrayal of the Framers' overall intentions. *Marbury v. Madison*, 5 U.S. 137, 179 (1803). Thus, no words or clauses can be considered as surplusage, as each is intended to convey the meaning and original purpose of the text. *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

Under *Kelo*'s flawed reasoning, the "public use" requirement of the Fifth Amendment's Takings Clause is rendered virtually meaningless. *Kelo*, 545 U.S. at 507. *Kelo*'s reasoning weakens the intended constitutional limit to governmental power and threatens private property owners' rights from sweeping eminent domain procedures spearheaded by a banner of economic development. *Id*. at 494. Any incidental public benefit that the Government can conceive thus becomes the driving force to seize private property and permits capricious and overbroad takings. *Id*. (O'Connor, J. dissenting).

"[A] court owes no deference to a legislature's judgment concerning the quintessentially legal question of whether the government owns, or the public has a legal right to use, the taken property." *Id*. at 517. The government, thus, cannot take property from one individual in order to confer a benefit upon another private person. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 326 (2002). Regarding the "public purpose" interpretation, it is improbable that "the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provisions of the Bill of Rights. *Kelo*, 545 U.S. at 517-

518 (Thomas, J. dissenting). Moreover, it is inconceivable that the Framers would have permitted such government overreach as to facilitate condemnation of one's property at the expense of another more powerful entity under the banner that it would vaguely provide an economic benefit. Such an abuse of power based upon arbitrary and broad reliance on a future benefit dismantles confidence in property rights, leaving property owners vulnerable to the volatility of governmental priorities. *Kelo* thus is unworkable because any purported economic benefit could justify a taking at the expense of less affluent landowners.

Furthermore, it is impossible to ignore the disproportionately negative impact *Kelo*'s reasoning imposes upon poor communities. Absent a lack of a clear limiting principle of governmental power, *Kelo* improperly invests full faith in vague benefit-conferring takings at the expense of economically-disadvantaged communities. Conversely, the beneficiaries are "likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. *Kelo*, 545 U.S. at 505. Ultimately, the Framers could not have intended such a scenario that is patently at odds with our nation's deeply rooted deference towards protecting property rights. *Id*.

In order to make the reasoning behind *Kelo* workable, there must be a more rigid standard that prevents abuse. For one, a blighted property does not per se constitute a public harm so long as the conditions are not hazardous to the surrounding environment. Outside the traditional public uses such as building roads, bridges, etc., takings from one private owner to another can only be justified to prevent some harm to the public. *Id*. at 500. Respondent may argue that overruling *Kelo* risks causing communities to suffer if one property owner refuses to sell. R. at 13. But this is unpersuasive because eminent domain law can still exercise its power if an owner's refusal to sell causally poses a risk to the public. In the instant case, the public would not be harmed by the

property owners holding onto their properties. The only conceivable harm would fall upon Petitioners' property. The Petitioners have been long-domiciled in small, family-owned farms and single-family homes in a poor, mostly minority neighborhood. R. at 2. Finding housing elsewhere will be an extremely difficult task, and would essentially displace the farmers who have established deep roots into the land. R. at 2-3. *Kelo* essentially permits such a draconian system to take place, and this unimaginable abuse of government power must be vanquished.

Respondent may further argue that overturning *Kelo* will obstruct how communities develop and grow via eminent domain. Garreth Cooksey, *Takings Care of Business: Using Eminent Domain for Solely Economic Development Purposes*, 79 Mo. L. Rev. 715, 726 (2014). But this argument lacks merit because it overlooks other viable alternatives the Court has considered to stimulate their economies. While New Louisiana's efforts to revitalize and support the surrounding community to confer long-lasting benefits are commendable, the State is not limited to achieving its goal through eminent domain. As this Court has held before in a string of cases, states have broad authority to enact policies that stimulate economic benefits. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976).

D. *Kelo* Should be Overturned Because its Holding is Patently Inconsistent With Other Decisions Held by the Court.

Another factor that weighs against *Kelo*'s reliability is its deviation from other decisions held by the Court. "An external, judicial check on how the public use requirement is interpreted, however limited, is necessary if this constraint on government power is to retain any meaning. *Kelo*, 545 U.S. at 497; *see also Cincinnati v. Vester*, 281 U.S. 439, 446 (1930) (reasoning that "[i]t is well established that … the question [of] what is a public use is a judicial one"). This Court has often found that stare decisis is "not an 'inexorable command'" and has "found it necessary to

correct its past mistakes" in effort to preserve the notion of "judicial humility." *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2279 (2024).

The Court of Appeals erred in finding that *Kelo* binding and cannot be overturned. This Court in *Knick*, 588 U.S. at 204-05 overruled its precedent in *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985) for precluding access to a full constitutional right. R. at 15. *Knick* adhered to a clear facial meaning of the Takings Clause. *Knick*, 588 U.S. at 189. This is distinguishable from *Kelo*. Accordingly, overturning *Kelo* would echo this Court's deference to preserving the sanctity of the Constitution's language.

The Court has generally identified three categories of takings that comply with the public use requirement. *Id*. at 497. Firstly, "the sovereign may transfer private property to public ownership–such as for a road, a hospital, or a military base." *Id*.; *see also Old Dominion Land Co. v. United States*, 269 U.S. 55 (1925); *Rindge Co. v. County of Los Angeles*, 262 U.S. 700 (1923). Next, "the sovereign may transfer private property to private parties, often common carriers, who make the property available for the public's use–such as with a railroad, a public utility, or a stadium." *Kelo*, 545 U.S. at 498. Lastly, the Court has permitted that, "in certain circumstances and to meet certain exigencies, takings that serve a public purpose also satisfy the Constitution even if the property is destined for subsequent private use. *Id*.; *see also Berman v. Parker*, 348 U.S. 26, 33 (1954); *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

Kelo's reasoning is at odds with the manner in which this Court has previously defined what constitutes a public use, and whether a supposedly "public purpose" taking meets the public use requirement. In *Berman*, the Court held that public purpose takings are only authorized to prevent public harm. *Berman*, 348 U.S. at 32. Additionally, the *Berman* Court emphasized that "the role of the judiciary in determining whether that [eminent domain] power is being exercised

for a public purpose is an extremely narrow one." *Midkiff*, 467 U.S. at 240. *Berman*'s decision aligned with the traditional purpose of eminent domain law as a vehicle to transfer property to another in furtherance of a valid public purpose, such as remedying blighted properties that are injurious to public safety, health, morality, peace and quiet, and law and order. *Berman*, 348 U.S. at 32. *Berman* was motivated by the incentive of preventing properties from depreciating into blight to such a degree that imperils health and safety. *Id*. at 34. Moreover in *Midkiff*, the Court upheld a land condemnation scheme that was "skewing the State's residential fee simple market, inflating land prices, and injuring the public tranquility and welfare." *Midkiff*, 467 U.S. at 232.

The *Berman* and *Midkiff* decisions materially highlight the importance of deferring to legislative judgments with respect to the question of what constitutes a public use. *Kelo*, 545 U.S. at 499. Both *Berman* and *Midkiff* heeded to a core principle that fortified our public use jurisprudence, where "[a] purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void." *Midkiff*, 467 U.S. at 245. The Court's findings in both *Berman* and *Midkiff* "were true to the principle underlying the Public Use Clause" because "a public purpose was realized when the harmful use was eliminated." *Id*. at 500. "Because each taking directly achieved a public benefit, it did not matter that the property was turned over to private use." *Id.*

Kelo, however, operates in stark contrast to this Court's holdings in *Berman* and *Midkiff* because it eliminates the historical and foundational core of the Takings Clause. The federal government's power of eminent domain has been long utilized to facilitate transportation, water supply, construction of public buildings, aid for defense readiness, "establishing parks and setting aside open space for future generations, preserving places of historic interest and remarkable natural beauty, and protecting environmentally sensitive areas." *History of the Federal Use of*

Eminent Domain, U.S. Department of Justice, (Jan. 30, 2024), https://www.justice.gov/enrd/condemnation/land-acquisition-section/history-federal-use-eminent-domain.

In the instant case, none of Petitioners' homes pose any risk of harm to the public. R. at 3. Petitioners' homes have been passed down for several generations of hardworking farmers who have created a tight-knit community and developed a deeply sentimental attachment to their land. R. at 2. *Kelo*'s reasoning essentially allows wealthy private entities to take over land with deep familial roots on the grounds that the public may accrue an economic benefit. Such an attenuated inference, ultimately, cannot be perceived in alignment with the underlying principle of the "public use" standard.

Kelo must be overruled because a balancing of the factors considered for overturning stare decisis precedent weighs in favor of doing so. Under *Kelo*'s flawed reasoning, the government is enabled to prioritize private economic development at the expense of the rights and lives of vulnerable property owners who have invested their livelihoods into their land for multiple generations. Reversing *Kelo* is not only congruent with our nation's deeply rooted deference to protecting the fundamental right to own property, but it also revitalizes core values of equity by protecting communities who face economic and social challenges.

II. PETITIONERS ARE ENTITLED TO MONETARY OR EQUITABLE RELIEF UNDER THE FIFTH AMENDMENT THE VERY MOMENT WHEN THE GOVERNMENT INITIATED EMINENT DOMAIN PROCEEDINGS REGARDLESS OF WHETHER A STATE OR FEDERAL REMEDY IS AVAILABLE.

Every United States citizen has the right to relief when a constitutional right has been violated by their government. This section argues that the Fifth Amendment is self-executing and entitles an injured party to monetary relief, or in the alternative, equitable relief, when a state government adopts a legislative carveout preventing it from providing relief when taking private

property. Subsection A argues that Petitioners became entitled to monetary or equitable relief as the very moment the State initiated eminent domain proceedings. Subsection B takes the alternative position that Petitioners do not have an adequate legal remedy because the State has legislated their Constitutional right away by not waiving their sovereign immunity.

A. Petitioners are entitled to monetary or equitable relief under the self-executing Fifth Amendment because the State of New Louisiana initiated eminent domain proceedings without providing compensation.

The Fifth Amendment to the United States Constitution provides: "private property [shall not] be taken for public use, without just compensation." U.S. CONST. amend. V. In *Marbury v. Madison*, Chief Justice Marshall proclaimed that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Commensurate with Chief Justice Marshall's assertion, an injured party is entitled to present a claim under the Fifth Amendment at the moment the government has taken their property for public use without providing compensation regardless of any remedies provided by such government. *Knick*, 588 U.S. at 190–191.

In *Knick*, the Supreme Court ruled that a petitioner in whose property was taken by the local government could sue the government under the "self-executing" Fifth Amendment and be entitled to full compensation. *Id*. at 194. Here, the local government passed an ordinance that condemned petitioner's land. R at 2. The Supreme Court granted certiorari specifically to "reconsider the holding of *Williamson County* [citations omitted] that property owners must seek just compensation under state law in state court before bringing a federal takings claim under § 1983." *Knick,* 588 U.S. at 187.

In overruling the holding in *Williamson*, the Court noted that it intended to return takings

claims under the Fifth Amendment to the "full-fledged constitutional status" so intended by the Framers. *Id*. at 189. Indeed, the Court held that the petitioner could sue the government for "deprivation of a right secured by the Constitution" and is entitled to "full compensation at the time of the taking, regardless of [any] post-taking remedies." *Id*. at 190. *See Jacobs v. United States*, 290 U.S. 13, 16 (1933) (reasoning that a takings claim for just compensation under the Fifth Amendment is an inherent constitutional right that is not incumbent on statutory recognition); *See also United States v. Dow*, 357 U.S. 17, 22 (1958) (ruling the federal government acquiring an easement through eminent domain is "the act of taking" that "gives rise to the claim for compensation").

Knick builds on prior caselaw supporting an injured party's right to just compensation upon a taking. In *First English*, the Court overruled the California Supreme Court's decision that a remedy for a Fifth Amendment taking is limited to nonmonetary relief. *First English*, 482 U.S. at 311–313. The Court expressly asserted that the Fifth Amendment secures "compensation" when the government takes a private citizen's property, and that the government has a "constitutional obligation to pay just compensation." *Id*. at 315.

1. The Fifth Amendment Entitles an Injured Party to Receive the Fair Market Value of Their Property Upon the Government Taking Their Property Rendering It Self-Executing.

Part One asserts that Petitioners are entitled to the market value of their property because the self-executing Fifth Amendment entitles them to this remedy regardless of any post-taking remedies provided by the State. Part One also contends that this position is supported by well-established caselaw. Sub-part (a) claims that Constitution required the State to compensate Petitioners immediately upon initiating eminent domain proceedings. Sub-part (b) emphasizes this Petitioners' position is sound and based in decades-old caselaw.

a. Petitioners' Fifth Amendment Takings Claim is Self-Executing Because Their Injury Occurred as Soon as State Initiated Eminent Domain Proceedings Without Providing Compensation.

"A property owner acquires a right to compensation immediately upon an uncompensated taking because the taking itself violates the Fifth Amendment." *Knick*, 588 U.S. at 181 (2019); *see also Baker v. City of McKinney, Texas*, 84 F.4th 378, 384 (2023) (intimating that Fifth Amendment interpretations should rely on history, tradition, or historical precedent); *First English Evangelical Lutheran Church v. County of L.A.*, 482 U.S. 304, 305 (1987) (overruling *Williamson* and asserting that an injured party whose property was taken through an inverse condemnation was entitled to compensation under the self-executing nature of the Fifth Amendment); *Jacobs v. United States*, 290 U.S. 13, 16 (1933) (holding that the right to compensation for eminent domain takings is an inherent right within the constitution); *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 395 (1971) (reasoning that the "inevitable consequence" of the government violating an individual's Fourth Amendment right is the ability of the injured party to bring a claim vindicating their constitutional rights).

The issue in *Knick* closely resembles Petitioners' issue here. Here, the State contends that Petitioners must seek relief in accordance with the State's statutory scheme, NLS § 13:5109. R. at 2. However, because the State has not waived its sovereign immunity, Petitioners are precluded from bringing an action in state court. R. at 2. In fact, because NLS § 13:5109, the State claims that the petitioners have not suffered an injury that a court may provide relief. R. at 3-4. The State's position relies on a similar argument made by the government in *Williamson*. There, Court agreed with the government that the plaintiff was barred from brining their case before a federal court because they did not pursue relief in state court. *Knick*, 588 U.S. at 187. However, the Court in

Knick expressly rejected this position. In *Knick*, the Court overturned the holding in *Williamson*, expressing that it was decided on "poor reasoning." *Id*. at 181. Moreover, consistent with the Court's holding in *Knick*, Petitioners' constitutional injury occurred when the State initiated eminent domain proceedings. Additionally, consistent with the opinion in *Knick*, Petitioners may bring a claim for "just compensation" notwithstanding any post-taking remedy because they have suffered a harm that the constitution is supposed to protect.

While there is a factual distinction between the Fifth Amendment injury faced by Petitioners' and the Fourth Amendment injury suffered by the petitioners in *Bivens*, the reasoning is analogous. When the petitioner in *Bivens* was unlawfully arrested by federal law enforcement agents after they entered his home without a warrant, the Court proclaimed that "damages… obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials should hardly seem a surprising proposition." *Bivens*, 403 U.S. at 395. Subsequently, the rejected the government's claim that the Fourth Amendment may only be used to defend tort claims and do not present causes of action; asserting that this view is "unduly restrictive." *Id*. at 391. In reaching its conclusion, the court reasoned that "damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty." *Id*. at 395.

It is undoubtedly an invasion of Petitioners' personal liberties when the State initiates eminent domain proceedings without providing just compensation. Comparable to the federal government's claim in *Bivens*, the State asserts that the Constitution provides only defenses to injurious actions committed by the government. R. at 6. But, as the *Bivens* Court maintains, this position is unnecessarily limiting. Quite simply put, Petitioners will lose their property to the State through eminent domain and, in return, will receive nothing. This directly invades the personal liberties of the Petitioners and as the Court in *Bivens* posited, it is hardly surprising that the

Petitioners would be entitled to monetary relief for such an unconstitutional invasion.

The State initiated eminent domain proceedings with the knowledge that Petitioners would not be able to seek recourse in any state or federal court. By enacting legislation granting the discretion to the State to avail itself to legal liability the State has weaponized its eminent domain powers. Just because the State found an innovative mechanism to render the Tucker Act useless, does not mean the Fifth Amendment's protections do not apply. Accordingly, the Fifth Amendment is self-executing, and Petitioners are entitled to monetary relief.

b. The Fifth Amendment's Self-Executing Nature is Supported by History, Tradition, and Historical Precedence.

A party injured by the government taking their property without providing compensation can bring a federal suit regardless of any post-taking remedy provided by the government. *Knick*, 588 U.S. at 190. *See Jacobs v. United States*, 290 U.S. 13, 16 (1933) (holding that lawsuits asserting claims under the Fifth Amendment are founded upon the Constitution); *but see Williamson County Reg'l Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194–195 (1985) (holding that a plaintiff does not have claim for relief for a taking under the Fifth Amendment if the government has provided a process providing post-taking relief); *Egbert v. Boule*, 596 U.S. 482, 491 (2022) (explaining that Court does not create constitutional causes of action because that is the role of Congress); *Deviller et al., v. Texas*, 601 U.S. 285, 291 (2024) (asserting that constitutional rights are defenses to claims brought under the color of law and not causes of action).

Petitioners' claim is another case in the long string of caselaw where the Fifth Amendment's taking clause is triggered immediately when a government initiates eminent domain proceedings. Similar to the plaintiff's journey to monetary relief in *Knick*, Petitioners claim to just compensation is not conditioned on a procedure to seek relief established by the State. Although

the State and the government in the string of cases take contrary positions, the Supreme Court has expressly rejected the notion that a state government may adopt its own superseding procedures for an injured party to seek relief under the federal Fifth Amendment. In the instant case, Petitioners suffered a constitutional harm for which they are entitled to relief as soon as the State initiated eminent domain, making the Fifth Amendment self-executing. This is made clear in *Knick*, *First English*, and *Jacobs*. In all of these cases, the Court expressed that the injured plaintiffs were entitled to just compensation immediately upon suffering their injury, relying on the self-executing nature of the Fifth Amendment. Petitioners' injury is no different. The loss of their property through eminent domain automatically triggers their right to compensation secured by the Constitution. Because of this automatic trigger, Petitioners' claim for relief under the Fifth Amendment is self-executing.

A significant body of caselaw supports the notion that an injured party's claim for just compensation is not precluded by a government's post-taking remedy. Instead, an injured party may vindicate their constitutional right to just compensation as soon as the government takes their property. This position is rooted in the history behind of the Fifth Amendment. It is also supported by traditional understandings of remedies available for violations of constitutional rights. And it is cemented by consistently held historical precedence. For these reasons, the Fifth Amendment is self-executing, and Petitioners are entitled to just compensation for their injury.

2. Petitioners are Entitled to Just Compensation For Their Property at the Very Moment the State Initiated Eminent Domain Proceedings Because Their Rights are Secured by the Fifth Amendment.

A rudimentary interpretation of the Fifth Amendment understands that its powers do not limit a government's ability to exercise its powers of eminent domain, rather, it secures a private citizen's constitutional right to "just compensation." *First English*, 482 U.S. at 315. *See Armstrong*

v. U.S., 364 U.S. 40, 49 (1960) (explaining that the Fifth Amendment's just compensation language was intended to limit the government from burdening the few for the benefit of the masses).

The Supreme Court rejected Los Angeles County's claim that a property owner may not bring an action for inverse condemnation for a regulatory taking until the regulation becomes excessive. *First English*, 482 U.S. at 308-309. If this were to be proper, Los Angeles County could adopt laws and regulations that deprive a property owner use of their land so long as it does not become excessive. A comparable approach is adopted by the State. Here, the State has adopted legislation that requires itself to waive sovereign immunity before an injured party can bring a just compensation claim. Like Los Angeles County, the State urges that it may deprive private citizens of their property without providing just compensation. This directly contravenes the Fifth Amendment. Certainly, the State's claim here, like Los Angeles County's claim, relies on a "compensation question [decided] inconsistently with the requirements of the Fifth Amendment." *Id*. at 310. Although the plaintiffs in *First English* sought relief for a temporary taking, the temporal nature of the taking is not dispositive to determine whether an injured party is entitled to relief. Properly, Petitioners' claim for just compensation arises the moment government initiates eminent domain.

The United States Constitution was adopted to outline the scope of the federal government's authority. The Framers were intentional about granting the federal government with powers that supersede state powers. However, the Framers recognized that when the government infringes on the constitutional right of a private citizen, that citizen should be able to vindicate such right in a court of law. But, because the State has found a way to circumvent federal statutes allowing an aggrieved party to seek relief, it has prevented Petitioners from constitutional protections. Thus, it is clear the Framers intended for the Fifth Amendment's taking clause to

provide just compensation when the government takes a private citizens property, superseding any alternative post-taking remedy provided by the government.

B. When Monetary Relief is Unavailable to an Injured Party Under the Fifth Amendment, Equitable Relief May be Granted.

"The absence of a complete and adequate remedy at law, is the only test of equity jurisdiction…" *Payne v. Hook*, 74 U.S. 425, 430 (1868). A court lacks jurisdiction to hear a plaintiff's claim for equitable relief when that plaintiff has an adequate legal remedy. *Guzman v. Polaris Industries Inc.*, 49 F.4th 1308, 1313 (2022); *see also Guthrie v. Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869, 875 (2021) (holding that because the plaintiff did not allege an inadequate legal remedy the district court did not have equitable jurisdiction); *Ruckelshaus v. Monsanto Co*., 467 U.S. 986, 1016 (1984) (providing that equitable relief is not available when a party whose property has been taken under the takings clause can bring a suit in a court of law). Nearly all governments from the local level to the federal level provide just compensation when a taking occurs. *Knick*, 588 U.S. at 201. As a result, equitable relief is usually unavailable. *Id*.

This issue here is a matter of first impression to the Court. The Petitioners do not have an available legal remedy under state or federal law because the State has not waived its sovereign immunity. R. at 2. By not waiving its sovereign immunity the State prevents Petitioners from bringing an action in state court. *Id*. Under State of New Louisiana law, Petitioners have not suffered an injury even though their property is being taken. This also prevents Petitioners from seeking recourse in federal court under the Tucker Act. As such, Petitioners are unable to bring an action under state or federal law, leaving them without an adequate legal remedy. The State has effectively undermined the United States Constitution by refusing to waive its sovereign immunity. Consistent with the Court's holding in *Payne* and *Monsanto Co.*, Petitioners are set to lose their property through the State's use of eminent domain and have no recourse under the law. As a

result, Petitioners have no choice but to pursue equitable relief.

Petitioners are precluded from seeking relief under the color of state and federal law. Yet, the State will receive Petitioners property. Under NLS 13:5109, the State can make offers for private property at any price they deem knowing that if private party rejects the State's offer, then the state can use its eminent domain powers to take the land and pay nothing. Thus, leaving any private party, including the Petitioners with an available legal remedy. For this reason, this Court has equitable jurisdiction, and Petitioners are entitled to equitable relief.

CONCLUSION

Kelo v. City of New London permits arbitrary and unjust exercises of eminent domain power as exemplified by the State's taking of Petitioner's property. By reversing *Kelo*, this Court would eliminate troubling precedent that infringes the property rights of vulnerable communities and allows governmental overreach to an extent unimaginable by the Framers. A balancing of factors considered for overturning stare decisis precedent overwhelmingly demonstrates *Kelo*'s futility. Thus, by overturning *Kelo*, this Court would fulfill its judicial duty to correct erroneous areas of the law that are patently at odds with the Constitution.

Moreover, the Framers adopted the Fifth Amendment's Takings Clause not to limit a legislature's ability to make property available when it has determined it needs to, but to ensure that the minority is not burdened for the benefit of the majority. The Fifth Amendment's Takings Clause ensures that the minority is compensated when the government--representing the interests of the majority--takes their property. The State's legislative scheme severely disrupts this relationship by attempting to take Petitioners' property without compensating them, while the public enjoys the benefit of their land without having paid their dues. Put simply, the State deprives Petitioners of their constitutional right to compensation, thus undermining the

Constitution.

For these reasons, this Court should **REVERSE** the district court's decision and **REMAND** for further proceedings.

Team Number 5
Date: October 16, 2024

By: Counsels for Petitioner