No. 24-386

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

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 PETITIONERS

Counsel for Petitioners – Team 7

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QUESTIONS PRESENTED

I. Whether this Court should overrule *Kelo v. City of New London* to uphold the original intent of the Takings Clause and establish a new framework consistent with the meaning of "public use."

II. Whether the Takings Clause is self-executing, meaning property owners need not rely on statutory authorization to supply a cause of action or abrogate sovereign immunity to secure just compensation directly from a state.

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

Karl Fischer, along with nine other property owners, brought this suit after the State of New Louisiana initiated eminent domain proceedings to seize their land for the construction of a new luxury ski resort. R. at 2–3. Mr. Fischer's farm has been in his family for 150 years and holds significant personal and historical value to him. R. at 3. Similarly, many of his neighbors own small family farms or single-family homes that have been passed down through generations, creating a tight-knit community with deep ties to the land. R. at 2.

The construction of the new luxury ski resort, which spans 1,000 acres across three counties and involves 100 different landowners, was enabled by New Louisiana's Economic Development Act. R. at 2. Governor Anne Chase contracted with Pinecrest, Inc. to develop the resort, rationalizing it would raise tax revenue, create 3,470 new jobs, increase property values, and attract wealthy tourists. R. at 2. Under NL Code § 13:5109, a property owner whose land is taken by the State is left without recourse to secure just compensation unless there is a statutory or executive waiver of sovereign immunity. R. at 2. Because of § 13:5109, and because the State refused to waive its sovereign immunity generally or specifically for this project, the State was able to pressure ninety property owners to sell their land for well below market value. R. at 2.

The petitioners' neighborhood consists primarily of low-income minority families who would struggle to find comparable housing if forced to relocate. R. at 2–3. With an average income of $50,000, the residents cannot easily afford to move or secure equivalent property elsewhere. R. at 2–3. Petitioners therefore refused the State's inadequate offers. R. at 3. The homes, though in need of some repairs, do not create any danger to the public. R. at 3. The State, undeterred, authorized Pinecrest to begin construction on the purchased properties in March

2023 and filed eminent domain proceedings against the Petitioners. R. at 3. Beyond condemning Petitioners' property, the State also declared that under state law they are not entitled to any compensation for the value of their property. R. at 3.

II. PROCEDURAL HISTORY

Mr. Fischer and the other holdout property owners sued New Louisiana in the District Court for the District of New Louisiana arguing that the State's use of eminent domain for a private luxury ski resort violates their rights under the Fifth and Fourteenth Amendments. R. at 3. Specifically, Petitioners contend that the eminent domain proceeding does not satisfy the Takings Clause, which requires takings to be for public use. R. at 3. They further assert that the State's refusal to compensate them violates the self-executing and constitutionally mandated right to just compensation. R. at 3–4.

Petitioners sought temporary and permanent injunctive relief to prevent the takings and, in the alternative, requested just compensation for their properties. R. at 3. The District Court dismissed pursuant to Federal Rules of Civil Procedure 12(b)(6) for failure to state a claim and held that a taking purely for economic development was valid under *Kelo v. City of New London*. R. at 3. The court further held that the Takings Clause is not self-executing under the *Bivens* standard and because the Tucker Act and 42 U.S.C. § 1983 supply a cause of action. R. at 6–8. The Thirteenth Circuit affirmed the lower court's decision to dismiss the case with prejudice. R. at 11. This Court granted Petitioner's Writ of Certiorari and set argument for the 2024 October Term. R. at 20.

SUMMARY OF THE ARGUMENT

This Court should overrule *Kelo v. City of New London* because the decision expanded the interpretation of public use so broadly as to render it nearly meaningless. The Takings Clause

of the Fifth Amendment limits the government's power of eminent domain to takings for "public use." However, *Kelo* permitted a taking for the sole purpose of economic development to qualify as public use. When deciding whether to overturn precedent, this Court weighs the following factors: (1) quality of the reasoning, (2) workability of the rule, (3) consistency with related decisions and recent developments, and (4) reliance. Every factor weighs in favor of overruling *Kelo. Kelo* was poorly reasoned because it departed from the plain text, intent, and purpose of the Takings Clause. *Kelo* provided an unworkably broad rule that other courts admit is difficult to apply. *Kelo* is inconsistent with other cases interpreting the public use requirement under the Takings Clause. Finally, there is little reliance on *Kelo*, as nearly every state has enacted legislation or constitutional amendments to prohibit takings purely for economic development.

In place of *Kelo,* this Court should adopt a three-prong framework that aligns with pre-*Kelo* precedent to restore the original intent of the Fifth Amendment's Takings Clause and provide clarity regarding what constitutes a permissible taking for "public use." The first prong permits takings for direct public ownership, such as roads, schools, or government buildings. The second prong allows for transfers to private entities when the property remains accessible and serves a public function, such as utilities or railroads. The third prong sets boundaries when a taking, through a public program, can be transferred to a private party while still being considered permissible under the public use clause. It applies to situations where property is transferred to private entities to address significant public harm, such as blighted communities or public safety concerns. Under this prong, the public must be the primary beneficiary. Economic development alone is insufficient. By adopting this framework, this Court will prevent government overreach and protect property rights from being compromised for private gain.

Should this Court permit the State to take Petitioners' property, then Petitioners are entitled to just compensation because the Takings Clause is self-executing—it does not rely on statutory authorization to either supply a cause of action or abrogate sovereign immunity. Beginning with the plain language of the Constitution, the Takings Clause is self-executing because the right to just compensation is a unique textually mandated remedy. A century of this Court's precedent dictates that the right to just compensation arises immediately upon a taking and cannot be infringed or restricted by state law. While the plain text of the Takings Clause suffices to resolve this issue, the Tucker Act and § 1983 provide further evidence that it is self-executing because neither statute supplies a cause of action for a takings claim. Additionally, the history and intent of § 1983 show that it only recently became a vehicle to pursue takings claims and was designed to expand constitutional remedies—not limit them. The Nation's historical tradition of protecting property rights and the history of takings cases also support that the right to just compensation does not depend on statutory authorization. Finally, allowing Congress or state legislatures to dictate the availability of just compensation would invite abuse and be patently inconsistent with the Constitutional framework designed to constrain government power.

Therefore, Petitioners respectfully request this Court to reverse the Thirteenth Circuit's decision to dismiss this case because a taking purely for economic development is inconsistent with the text and intent of the Takings Clause. However, even if this Court decides not to overrule *Kelo*, the Thirteenth Circuit's decision should be reversed because Petitioners are entitled to just compensation under the self-executing Takings Clause.

ARGUMENT

I. THIS COURT SHOULD OVERRULE *KELO* AND ADOPT A PRE-*KELO* INTERPRETATION OF PUBLIC USE THAT UPHOLDS THE PLAIN LANGUAGE AND ORIGINAL INTENT OF THE TAKINGS CLAUSE.

The Takings Clause of the Fifth Amendment to the Constitution states, "nor shall private property be taken *for public use*, without just compensation." U.S. Const. amend. V (emphasis added). The Fourteenth Amendment further provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law" and made the Fifth Amendment applicable to the states. U.S. Const. amend. XIV, § 1; *see Chi., Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 235–41 (1897). In *Kelo v. City of New London*, this Court interpreted "public use" to allow a government to transfer taken property to a private entity purely for economic development. 545 U.S. 469, 484–85 (2005).

This Court should overrule *Kelo* because it was poorly reasoned, the test it provided is unworkably overbroad, it is inconsistent with existing Takings Clause precedent, and there is little reliance on it. *Kelo*'s interpretation of "public use" strays far from the original meaning of the Takings Clause. Instead, this Court should adopt a three-prong framework for what constitutes a permissible taking for public use that is consistent with its pre-*Kelo* precedent.

A. *Kelo* Should Be Overruled Because It Was Poorly Reasoned, Is Unworkably Overbroad, Is Inconsistent with Precedent, and There Exists Little Reliance on It.

The *Kelo* decision has blurred the lines between private and public interests, permitting property transfers that benefit private entities under the guise of public use. *See Kelo*, 545 U.S. at 494 (O'Connor, J., dissenting). This is not the purpose of the Fifth Amendment Takings Clause. *Id.* While this Court typically adheres to the doctrine of stare decisis and does not overturn itself lightly, stare decisis "is at its weakest" when this Court reviews its Constitutional interpretations. *See Payne v. Tennessee*, 501 U.S. 808, 827–28 (1991); *Janus v. Am. Fedn. of*

State, Cnty., and Mun. Employees, Council 31, 585 U.S. 878, 917 (2018) (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997)). When deciding whether to overturn precedent, this Court weighs the following factors: (1) the quality of the case's reasoning, (2) the workability of the rule it provided, (3) consistency with related decisions and recent developments, and (4) reliance. *Janus*, 585 U.S. at 917. Here, every factor weighs in great favor of overruling *Kelo*.

1. *Kelo* was poorly reasoned because it improperly interpreted the "public use" requirement of the Takings Clause.

Kelo was poorly reasoned because it departed from the plain text, intent, and purpose of the Takings Clause. Additionally, *Kelo* improperly applied rational basis review to an enumerated right, equated the police power with the eminent domain power, and abdicated judicial responsibility.

In *Kelo v. City of New London*, the city adopted a development plan to improve its economy by building a hotel, office spaces, and other renovations to support a new research facility proposed by Pfizer, Inc. 545 U.S. at 473–74. Because the property required was occupied by owners or their family members, the city executed its plan through eminent domain. *Id.* at 475. However, none of the properties were "blighted or otherwise in poor condition; rather, they were condemned only because they happen to be located in the development area." *Id.* The *Kelo* majority found that the Fifth Amendment prohibits takings "for the purpose of conferring a private benefit on a particular private party," that the condemned land would not be open "to use by the general public," that the subsequent owners or lessees of the condemned land would not "be required to operate like common carriers," and that the city was "not confronted with the need to remove blight." *Id.* at 477–78, 483. Despite this, the Court insisted that the city's goal of economic development was analogous to eradicating blight, breaking up a land oligopoly, or eliminating a barrier to entry in a competitive market. *Id.* at 484–85. The Court relied heavily on

Berman v. Parker, 348 U.S. 26 (1954), and *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), in its reasoning, two prior cases that interpreted "public use." *Kelo*, 545 U.S. at 480–82. The Court concluded that economic development, without more, qualifies as a "public use" because "[p]romoting economic development is a traditional and long-accepted function of government." *Id.* at 484.

Kelo departed from the text and meaning of the Takings Clause, as well as the Founders' intent. Constitutional interpretation must begin with the presumption "that every word in the document has independent meaning, 'that no word was unnecessarily used, or needlessly added.'" *Id.* at 496 (O'Connor, J., dissenting) (quoting *Wright v. United States*, 302 U.S. 583, 588 (1938)). While the Takings Clause permits a state to take private property for public use, it does not permit a taking merely to benefit another private party. *Id.* at 497. By using the limiting language "public use" the Framers evinced their intent that the Takings Clause should not be broadly construed. *Id.* at 509 (Thomas, J., dissenting). For example, the phrase "general Welfare" in Article I, § 8, clause 1 is interpreted broadly by the courts, whereas "public use" is far more specific: there must be a direct benefit to the public. *Id.* The Takings Clause does not authorize the taking of property simply because "the public realizes any conceivable benefit from the taking." *Id.* at 510. If the Framers intended the Takings Clause to be read broadly, they would have used less specific language. *Id.* at 509.

Moreover, *Kelo* undermines the purpose of the Fifth Amendment to protect individual property owners. Seizing property for economic benefits disproportionately harms poor and minority communities, leading to the loss of homes and land under the guise of development. *Id.* at 522. The real beneficiaries are often large corporations and developers. *Id.* at 505 (O'Connor, J., dissenting). For example, shortly after the *Kelo* ruling, Pfizer closed its New London facility,

leaving the promised economic revitalization unrealized. Diana Berliner, *Looking Back Ten Years After Kelo*, 125 Yale L.J. 82, 92 (2015). Private entities prioritize their own best interests, which is why incidental public benefits are not enough to meet the constitutional requirements of the Takings Clause. Before the condemnation, New London was a close-knit, working-class neighborhood. *Id.* at 93. Now, the area is vacant. *Id.* Ultimately, the *Kelo* decision prioritizes corporate interests over individual property rights, transferring property from those with fewer resources to those with more—a result that the Founders never intended. *Kelo,* 545 U.S. at 505 (O'Connor, J., dissenting).

Kelo broke with decades of precedent and applied what is essentially rational basis review to an enumerated right: "When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the federal courts." *Id.* at 488 (majority opinion) (quoting *Midkiff*, 467 U.S. at 242–43). Rational basis review applies to unenumerated rights, whereas enumerated rights receive less deferential review. *See United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 & n.4 (1938); Berliner, *supra*, at 91. By applying an extremely deferential standard of review to possible violations of a right explicitly provided by the Bill of Rights, *Kelo* limited the Takings Clause's protection and departed from the longstanding tradition of affording more skepticism where enumerated rights are in question.

Further, *Kelo*'s reasoning is flawed because it incorrectly equates police power with eminent domain power. *Kelo*, 545 U.S. at 501 (O'Connor, J., dissenting). As Justice O'Connor explained in her dissent, *Berman* and *Midkiff* referenced the government's police power because eliminating blight and oligopoly implicated police power; however, this was not why the takings

were valid public uses. *Kelo*, 545 U.S. at 501. The takings in *Berman* and *Midkiff* were valid exercises both of police power and of eminent domain, but one did not cause the other. *Kelo*, 545 U.S. at 501. Therefore, the majority's argument that "economic development is a traditional and long-accepted function of government," *id.* at 484 (majority opinion), was poorly reasoned because it conflated police power with eminent domain power—and such powers remain distinct concepts, *id.* at 501–02 (O'Connor, J., dissenting).

Kelo was also poorly reasoned because it abdicated the judicial responsibility to protect Fifth Amendment rights. This Court is the ultimate arbiter of Constitutional rights. *Id.* at 504. Rather than remaining true to the purpose of the Takings Clause to limit the government's eminent domain power, *Kelo* "suggest[ed] that property owners should turn to the States, who may or may not choose to impose appropriate limits on economic development takings." *Id.* The Takings Clause is thus "unique[] among all the express provisions of the Bill of Rights." *Id.* at 517–18 (Thomas, J., dissenting). It would be nearly unfathomable to defer to legislatures to interpret whether a search is reasonable, yet *Kelo* defers such interpretive authority to the State "when the issue is, instead, whether the government may take the infinitely more intrusive step of tearing down petitioners' homes." *Id.* at 518 (internal citations omitted).

2. *Kelo* is unworkable because it is overbroad.

Kelo is overbroad because it permits virtually any taking so long as the legislature finds that the taking is likely to result in some incidental economic benefit to the public. *Kelo*, 545 U.S. at 501 (O'Connor, J., dissenting). The only work remaining for the courts, in fact, is "ferreting out takings whose sole purpose is to bestow a benefit on the private transferee;" however, *Kelo* provides no guidance for how to do so. *Id.* at 502. This distinction is nearly impossible to draw with any clarity because virtually any private benefit will result in at least incidental economic benefit to the public, typically in the form of increased tax revenue. *Id.* After

Kelo, "[n]othing is to prevent the State from replacing any Motel 6 with a Ritz–Carlton, any home with a shopping mall, or any farm with a factory." *Id.* at 503. Such hypotheticals appear bizarre, yet they have become reality. In *Western Seafood Co. v. United States*, the Fifth Circuit held that the proposed plan to take a small, local business's land and give it to a wealthy landowner to facilitate economic development was a valid "public use," even though the plaintiff presented evidence that the plan "exhibited favoritism" toward the intended recipients of the property. 202 Fed. App'x. 670, 675 (5th Cir. 2006) *Western Seafood* demonstrated that the line between "public use" and private benefit is blurry and ill-defined.

The unworkability of *Kelo* is perhaps best demonstrated by *Eychaner v. City of Chicago*. 141 S. Ct. 2422 (2021). In *Eychaner*, Chicago used eminent domain to take property from a local landowner and give it to a chocolate factory. *Id.* at 2422–23 (2021) (Thomas, J., dissenting from denial of certiorari). Chicago alleged that the taking was to prevent possible future blight. *Id.* at 2423. The lower court found that taking the "valuable parcel of not-yet-blighted-land" from an individual and giving it to a company worth $750 million "is permissible, in part, because '*[r]ecognizing the difference between a valid public use and a sham can be challenging*.'" *Id.* at 2424 (alteration in original) (emphasis added) (quoting *City of Chicago v. Eychaner*, 26 N.E.3d 501, 521 (Ill. App. 1st Dist. 2015)). Thus, as *Eychaner* demonstrates, *Kelo* is unworkable because it blurs the distinction between a public and private benefit.

3. *Kelo* is inconsistent with the very Takings Clause precedents upon which it relies, and with more recent developments.

Kelo is inconsistent with other related decisions because its underlying facts are distinguishable from *Berman* and *Midkiff*. Additionally, *Kelo*'s interpretation of public use departs from this Court's recent holding in *Knick v. Township of Scott*, 588 U.S. 180 (2019).

In *Berman*, Congress identified a severely blighted area in the District of Columbia threatening the safety and health of the public. 348 U.S. at 28–29. To address this public harm, Congress initiated eminent domain proceedings to transfer the land to government agencies for "streets, utilities, recreational facilities, and schools," and the rest would be leased or sold "to a redevelopment company, individual, or partnership" required to comply with Congress' redevelopment plan. *Id.* at 30. Congress's findings that "64.3% of the dwellings were beyond repair, 18.4% needed major repairs, [and] only 17.3% were satisfactory" were essential to justify the takings. *Id.* Therefore, the exercise of eminent domain was only valid because Congress had identified a public harm to remedy. *See* Orlando E. Delogu, Kelo v. City of New London—*Wrongly Decided and a Missed Opportunity for Principled Line Drawing with Respect to Eminent Domain Takings*, 58 Me. L. Rev. 17, 19-21 (2006).

Kelo's facts and legal analysis are inconsistent with *Berman*. In *Kelo*, none of the condemned properties were in need of repair—much less blighted or beyond repair. 545 U.S. at 475. The city of New London identified no public harm in need of a remedy; instead, it exercised eminent domain to further its goal of economic revitalization. *Id.* at 473. This misapplication of *Berman*'s logic renders *Kelo* inconsistent with precedent.

Similarly, *Midkiff*'s facts are dramatically different from *Kelo*'s. In *Midkiff*, Hawaii's legislature faced the rather unique problem of a land oligopoly because nearly half the State's land was owned by 72 private landowners. 467 U.S. at 232. The Hawaii legislature enacted a comprehensive land distribution plan that used the state's eminent domain power to break up the oligopoly. *Id.* at 233–34. The *Midkiff* Court found that the use of eminent domain was justified because it directly addressed a public harm. *Id.* at 244–45. Economic development programs are hardly comparable to a land oligopoly. *Midkiff* is further distinct from *Kelo* because the Hawaii

legislature identified a harm to remedy and chose eminent domain to carry out that remedy, whereas in *Kelo*, there was no existing harm to remedy—only a goal of increased community employment and tax revenue. *Kelo*, 545 U.S. at 474–75.

In both *Berman* and *Midkiff*, the condemned properties inflicted harm on society, and the takings were permissible because they directly remedied that harm. *Kelo*, 545 U.S. at 500 (O'Connor, J., dissenting). *Kelo* expanded the permissible use of eminent domain far beyond its precedents, allowing takings when there is no harm to remedy and when the only benefit to the public is speculative and incidental. *Kelo* was not a logical extension of *Berman* and *Midkiff*; it was an untenable leap in logic that produced inconsistent results.

Additionally, *Kelo* is inconsistent with this Court's recent ruling in *Knick*. In *Knick*, this Court examined the text and history of the "just compensation" requirement of the Takings Clause and ultimately adhered to its facial meaning. 588 U.S. at 189. This analysis starkly contrasts with *Kelo*, in which the Court largely ignored the historical emphasis on the protection of property rights as well as the plain meaning of the words "public use," instead rendering the words nearly powerless, if not meaningless. *See Kelo*, 545 U.S. at 505–06 (Thomas, J., dissenting). *Knick* signifies a return to the textualism and historical analysis that this Court used in pre-*Kelo* takings cases.

4. Developments since *Kelo* show that there exists little to no reliance on the errant and unpopular decision.

There is little reliance on *Kelo* because due to its widespread unpopularity, the majority of states have rejected takings for purely economic development. Justice Stevens, who authored *Kelo*, readily admitted that it is "the most unpopular opinion I ever wrote, no doubt about it." Scott G. Bullock & Joshua A. House, *Nor Is Kelo a Red Herring: A Response to Horton and Levesque*, 48 Conn. L. Rev. 1443, 1445 (2016). It drew backlash from all sides of the political

spectrum: libertarians excoriated the Court's "invitation to the government to trample private property rights," while liberals decried the disproportionate impact on the poor, racial and ethnic minorities, and the elderly. Abraham Bell & Gideon Parchomovsky, *The Uselessness of Public Use*, 106 Colum. L. Rev. 1412, 1423–24 (2006). Further, there is no reliance on *Kelo*'s standard because it did not provide clear guidance. *See South Dakota v. Wayfair*, 585 U.S. 162, 186 (2018) (reasoning that reliance based on clarity is absent where there is no "clear or easily applicable standard").

Nearly every state acted on the *Kelo* majority's suggestion that states may restrict their use of eminent domain to a greater degree than the Court did. Berliner, *supra*, at 84. Eleven states—Florida, Georgia, Louisiana, Michigan, Mississippi, Nevada, New Hampshire, North Dakota, South Carolina, Texas, and Virginia—changed their constitutions after *Kelo* to give their constituents greater property rights. *Id.* Forty states enacted statutes for the same purpose. *Id.* For example, Pennsylvania's General Assembly passed the Property Rights Protection Act, limiting eminent domain for economic development unless blight is found, addressing concerns raised by *Kelo*. *Wolfe v. Reading Blue Mountain*, 320 A.3d 1164, 1171 n.6 (Pa. 2024). Congress also addressed this issue in the Affordable Housing Allocations statute, which prohibits using funds for property taken by eminent domain unless the taking is for public use, explicitly excluding economic development that primarily benefits private entities. 12 U.S.C. § 4567. In *Norwood v. Horney*, the Supreme Court of Ohio ruled that private property cannot be taken for redevelopment based solely on economic value, as such takings are impermissible under the Ohio Constitution. 853 N.E.2d 1115, 1123 (Ohio 2006). This explicit and widespread disapproval of *Kelo* demonstrates that little, if any, reliance on it exists among the states.

In a concurrence to the Thirteenth Circuit's opinion in the present case, Judge Hayes expressed concern that "reversing precedent… destabilizes the law and undermines confidence in the judiciary." R. at 11. This concern, while valid in other contexts, is unnecessary when it comes to overruling *Kelo* because by reversing it and adopting a new, clearer test, this Court would bring the federal interpretation of "public use" into much greater alignment with the majority of the states, thereby *stabilizing* the law.

B. Petitioners' Three-Part Framework Offers Clear Constitutional Limits and Upholds the Intent of the Public Use Clause.

By overturning *Kelo*, this Court can clarify what constitutes a permissible taking for "public use." The question of what constitutes a "public use is a judicial one." *City of Cincinnati v. Vester*, 281 U.S. 439, 446 (1930). Petitioners propose a precise, three-part framework, rooted in pre-*Kelo* precedent, that ensures takings for public use align with the original intent of the Takings Clause. This framework provides clarity and consistency in defining a permissible taking, which can be applied uniformly across jurisdictions because it sets clear boundaries while allowing flexibility for case-specific circumstances. Moreover, it guarantees the public remains the primary beneficiary of any taking and rejects takings based solely on economic benefits.

The three-prong proposed framework builds on Justice O'Connor's dissent in *Kelo*. *See Kelo*, 545 U.S. at 497–98 (O'Connor, J., dissenting). A taking must satisfy one of the prongs to constitute a permissible taking for public use. The three prongs are: (1) direct public ownership, (2) transfer to private entities for publicly accessible use, or (3) transfer to a private party under a public program addressing significant public issues or harm. *See id.*

1. The first prong permits takings for direct public ownership.

The first prong permits takings when the property is transferred to public ownership by providing physical access or benefits to the public. This includes traditional public projects, such

as roads, bridges, hospitals, or government buildings. *Id.* Takings in this category are straightforward and widely accepted, as they involve direct public benefits or access, aligning with traditional views of public use. *Id.* at 497. For example, in *Rindge Co. v. Los Angeles County*, this Court confirmed that taking the ranch owners' property for highways was lawful public use and constituted a permissible taking. 262 U.S. 700, 707–08 (1923); *see also Old Dominion Land Co. v. United States*, 269 U.S. 55, 66 (1925) (upholding the permissible taking of private property for a military base as a public use).

2. The second prong permits transferring property to private entities for publicly accessible use.

The second prong permits takings when the property is transferred to private entities and the property remains available for public use. *Kelo*, 545 U.S. at 498 (O'Connor, J., dissenting). This includes common carriers such as public utilities, railroads, and stadiums where the utility is operated by a private entity but serves a public function. *Id.* Takings under this prong are widely uncontroversial as they involve tangible public access or use, aligning with traditional views of public use. *Id.* at 497. For example, in *National Railroad Passenger Corp. v. Boston & Maine Corp.*, this Court recognized that a railroad operated by a private entity could still serve a significant public use because of its public accessibility and utility. 503 U.S. 407, 422–24 (1992); s*ee also Mt. Vernon-Woodberry Cotton Duck Co. v. Ala. Interstate Power Co.*, 240 U.S. 30, 33 (1916) (affirming that taking property for a power company is a permissible public use).

3. The third prong permits transferring property to private parties for public programs addressing significant public issues or harm.

The third prong permits takings when property is transferred to private entities to address a significant public issue or harm. However, the transfer must serve a public program with substantial, measurable benefits, where the public is the primary beneficiary. Private gains

should be minimal and regulated, and economic benefits alone cannot justify the taking. This includes, for example, the renovation of a blighted community with the specific purpose of addressing public harm and safety. *See Berman*, 348 U.S. at 33–34. This Court should adopt this prong, which is rooted in pre-*Kelo* precedent, because it offers flexibility while setting clear constitutional boundaries for transferring property to private entities under the Public Use Clause. *Kelo*, 545 U.S. at 498 (O'Connor, J., dissenting).

This Court has already identified takings that fit under the third prong in *Berman* and *Midkiff*. *See generally Berman*, 348 U.S. at 33–34; *Midkiff*, 467 U.S. at 243–45. While these cases broadened the definition of public use, this expansion should not extend to ordinary economic development. The evolution of the concept of public use does not erode the longstanding protection against taking private property for private use. *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, 464 (Mich. 1981) (Fitzgerald, J., dissenting). The *Berman* Court reasoned that "public purpose" was included in the meaning of "public use" therefore justifying the renovation of a blighted area. *Berman*, 348 U.S. at 34–35. This interpretation was foundational to *Midkiff*, where the taking eliminated an oligopoly. 467 U.S. at 239, 243–45. However, the *Kelo* Court illogically extended public use to include economic development, a step that does not align with the Public Use Clause. *Kelo*, 545 U.S. 469 at 504 (O'Connor, J., dissenting). *Berman* and *Midkiff* provided a direct benefit to the public by addressing significant public harm. *Id.* Under this prong, if a taking does not address a direct public issue or harm, it does not constitute a valid public use.

Additionally, this prong prevents projects primarily serving private interests, like luxury resorts or shopping centers, from being misclassified as public use. Takings must meet a direct and concrete public need; speculative benefits like economic development are insufficient.

Michigan provides an example of a well-reasoned framework for determining permissible takings for public use. Recognizing that a taking with incidental economic effects on the public exposed all property owners to condemnation, the Michigan Supreme Court rightly overruled an interpretation of public use permitting takings for economic development. *See County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004) (overruling *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981)). After *Hathcock*, Michigan amended its Constitution to explicitly exclude takings for economic development or increased tax revenue from the definition of "public use," reflecting pre-*Poletown* precedent. Mich. Const. art. 10, § 2. The government must show, by clear and convincing evidence, that a taking is for true public use, especially in cases of blight. *Id.* As noted above, the majority of states have followed suit in rejecting takings based purely on economic development. *See supra* Section I.A.4.

Here, if this Court adopts Petitioners proposed three-part framework, New Louisiana's use of eminent domain for a luxury ski resort under its Economic Development Plan would fall under the third prong and would fail. The primary beneficiary of the luxury ski resort is the private entity, Pinecrest, Inc., not the public. The public would only benefit tangentially through projected economic stimulus, increased property values, expanded tourism, and new jobs. R. at 2. Unlike in *Berman* and *Midkiff*, where the government's plans directly addressed public harm, this luxury ski resort would, at best, have potential incidental positive economic impacts for public use. This is too attenuated and does not satisfy the constitutional requirement of a permissible taking for public use. As Justice Thomas and Justice O'Connor argued in their *Kelo* dissents, the Takings Clause does not permit transfers to private entities simply because they promise better economic use. Mr. Fischer's property and those of nine other holdout families have been in their families for generations and pose no public harm or risk. R. at 2–3. The Court

should not allow the construction of a new luxury ski resort in New Louisiana at the expense of this poor, predominately minority neighborhood. R. at 2.

As Justice Thomas recently reasserted, "[t]his Court should not stand by as lower courts further dismantle constitutional safeguards." *Eychaner*, 141 S. Ct. at 2423 (Thomas, J., dissenting from denial of certiorari). Therefore, this Court should overrule *Kelo* and adopt the proposed precise three-part framework that upholds the original intent of takings for public use.

II. THE TAKINGS CLAUSE IS SELF-EXECUTING BECAUSE THE RIGHT TO JUST COMPENSATION ARISES FROM THE CONSTITUTION ITSELF.

Should this Court decide not to overrule *Kelo*, Petitioners are otherwise entitled to just compensation for the value of their property because the Takings Clause is self-executing. Self-executing means that upon a taking a property owner has an immediate right to just compensation arising under the Constitution itself, without need for statutory authorization to either provide a cause of action or to abrogate state sovereign immunity. The purpose of the Takings Clause, like every amendment in the Bill of Rights, is to limit government power. As such, it defies the text of the Fifth Amendment, the historical protection of property rights, and the Constitutional design and policy, to allow states to bar claims for just compensation as New Louisiana attempts to do here.

A. The Plain Text of the Takings Clause Mandates the Remedy of Just Compensation.

It is the sole province of this Court to interpret the Constitution. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803) (establishing judicial review). The first step in constitutional interpretation is to give the words their plain meaning. *See Wright*, 302 U.S. at 588 (reasoning the courts must not disregard the Constitution's deliberate choice of words and their natural meaning). The plain meaning of the Takings Clause suffices to resolve that it is self-executing

because just compensation is a textually mandated remedy. Moreover, holding that the Fifth Amendment is self-executing is consistent with over a century of this Court's precedent interpreting the Takings Clause.

The plain text of the Takings Clause provides "nor shall private property be taken for public use, *without just compensation*." U.S. Const. amend. V (emphasis added). The Takings Clause is unique because it provides a textually mandated remedy, distinguishing it from other constitutional rights that simply curtail government power. *See* Eric Berger, *The Collision of the Takings and State Sovereign Immunity Doctrines*, 63 Wash. & Lee L. Rev. 493, 518 n.122 (2006) ("The Constitution refers explicitly to remedies only in the Fifth Amendment's Just Compensation Clause and in safeguarding the remedy of habeas corpus . . . ."). Additionally, by virtue of incorporation through the Fourteenth Amendment, the right to just compensation applies identically and with equal force to the States. *Chi., Burlington & Quincy R.R. Co.*, 166 U.S. at 241; *McDonald v. City of Chicago*, 561 U.S. 742, 766 n.14 (2010) (providing it is a "well-established rule that incorporated Bill of Rights protections apply identically to the States and the Federal Government").The textually mandated remedy of just compensation must carry force because just compensation is the only relief that protects a claimant's property rights in the event of a taking. Just compensation "rests on equitable principles" and requires that the owner "shall be put in as good position pecuniarily as he would have been if his property had not been taken." *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1923). Therefore, the right to just compensation does not depend on statutory authorization because the text of the Takings Clause commands the compensatory remedy.[1]

[1] The issue presented for review does not squarely address whether "self-executing" also bars raising state sovereign immunity as a defense. Nevertheless, Petitioner's maintain that the self-

In addition to the plain text of the Takings Clause, the overwhelming weight of Supreme Court precedent tracing back over a century supports that the Takings Clause is self-executing. *See id.* ("Just Compensation is provided for by the Constitution and the right to it cannot be taken away by statute."); *Jacobs v. United States*, 290 U.S. 13, 16 (1933). In *Jacobs*, this Court held:

> The form of the remedy did not qualify the right. *It rested upon the Fifth amendment. Statutory recognition was not necessary.* A promise to pay was not necessary. Such a promise was implied because of the duty to pay imposed by the amendment. The suits were thus founded upon the Constitution of the United States.

Jacobs, 290 U.S. at 16 (emphasis added). Thus, applying *Jacobs* reasoning here, the duty to pay just compensation and a court's ability to enforce the right does not depend on statutory authorization because it arises directly from the Takings Clause of the Constitution.

Additionally, this Court described the Fifth Amendment as "self-executing" and held the just compensation remedy is required by the Constitution itself immediately upon a taking. *First Eng. Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315 (1987). The *First English* Court began its analysis with the text of the Takings Clause, reasoning that it is conditional, as opposed to prohibitory, because it is designed to "*secure* compensation." *Id.* at 314–15. Moreover, Respondents attempt to make the same argument the Solicitor General in *First English* made: that due to sovereign immunity and the "prohibitory nature" of the Fifth Amendment "the Constitution does not, of its own force, furnish a basis for a court to award money damages." *Id.* at 316 n.9 (citation omitted). This Court flatly rejected that argument—and should do so again here—because it is the Constitution itself that "dictates the remedy" for a taking. *Id.*

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executing Takings Clause necessarily creates a cause of action *and* waives state sovereign immunity.

In *Knick,* this Court held that property owners have a takings claim they may bring in federal court as soon as a government takes property without paying just compensation. 588 U.S. at 185. The *Knick* Court reasoned that the "Catch-22" preclusion trap imposed by the state-litigation requirement in a prior decision, "hand[ed] authority over federal takings claims to state courts," and "relegate[d] the Takings Clause 'to the status of a poor relation' among the provisions of the Bill of Rights." *Id.* at 184–89 (citations omitted). The *Knick* Court reaffirmed the just compensation remedy rests on the Fifth Amendment itself, and "[t]he availability of any particular compensation remedy, such as an inverse condemnation claim under state law, cannot infringe or restrict the property owner's federal constitutional claim." *Id.* at 191. Moreover, in reaching its decision, the *Knick* Court reiterated that "a taking without compensation violates the self-executing Fifth Amendment." *Id.* at 194.

Applying *Knick*'s reasoning here, if the existence and availability of a state law claim "cannot infringe or restrict the property owner's federal constitutional claim" then the *absence* of a state law claim also cannot infringe the property owner's right to just compensation. *Id.* at 191. To hold otherwise would create a preclusion trap even more insidious than the state-litigation requirement overruled by *Knick* because it allows the states to bar takings claims entirely.

While this Court declined to definitively decide whether the Fifth Amendment was self-executing in *DeVillier v. Texas*, 601 U.S. 285 (2024), all of the reasons this Court gave to forego ruling on the issue are absent here. In *DeVillier*, it was not necessary to decide whether the Takings Clause supplied a cause of action because Texas' inverse-condemnation law provided the property owner's an avenue to seek redress under Texas' Constitution and the Takings Clause. *Id.* at 292–93. In reaching its decision, the *DeVillier* Court reasoned that it should not "assume the States will refuse to honor the Constitution." *Id.* at 293 (quoting *Alden v. Maine*, 527

U.S. 706, 755 (1999)). Whereas here, New Louisiana has failed to honor the Constitution because it has not provided a vehicle for Petitioners to seek just compensation from the state, has declared it can take Petitioner's property without any compensation—much less just compensation, and has already forced ninety property owners to sell for well below market-value. R. at 2–3.

Additionally, since the Takings Clause furnishes a damages remedy in the form of just compensation, it was inappropriate for the lower court to extend the *Bivens* rationale to this case. R. at 6. In *Bivens* cases, the courts consider whether to judicially create a damages remedy where Congress has not already done so. *Egbert v. Boule*, 596 U.S. 482, 492 (2022) (reasoning the "single question" asked in a *Bivens* analysis is "whether there is any reason to think that Congress might be better equipped to create a damages remedy"). For example, in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, because the Fourth Amendment does not contemplate damages, this Court judicially created a damages remedy for violations of a claimant's right to be free from unreasonable searches and seizures. 403 U.S. 388, 389 (1971). Attempting to apply that logic here shows why the *Bivens* rationale is inapposite because the Takings Clause itself furnishes the remedy. Moreover, it defies separation of powers principles to suggest that Congress is better equipped to supply a damages remedy because doing so would essentially render a key provision of the Constitution's text meaningless.

Therefore, the text of the Fifth Amendment and the overwhelming number of cases out of this Court suggest that the Takings Clause is self-executing—it does not depend on legislative action to provide a cause of action or abrogate state sovereign immunity.

B. The Tucker Act and § 1983 Do Not Provide a Cause of Action in Takings Cases.

Both the Tucker Act and 42 U.S.C. § 1983 support that the Takings Clause is self-executing because neither statute provides substantive rights. Rather, the Tucker Act merely waives sovereign immunity, and § 1983 both waives immunity and provides relief for constitutional violations that don't otherwise contemplate monetary relief.

This Court has repeatedly reaffirmed that the Tucker Act does not create substantive rights but is merely a "jurisdictional provision[] that operate[s] to waive sovereign immunity for claims premised on other sources of law" that are money-mandating. *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009) (citations omitted). It is well-settled that the Takings Clause satisfies the money-mandating requirement in Tucker Act claims, and thus supplies the cause of action. *See, e.g.*, *Knick*, 588 U.S. at 189–90. As this Court stated in *Knick*, "[a] claim for just compensation brought under the Tucker Act is not a prerequisite to a Fifth Amendment takings claim—it *is* a Fifth Amendment takings claim." *Id.* at 196. Therefore, the use of the Tucker Act to bring a takings action against the United States shows that it is the Fifth Amendment itself that supplies a cause of action for damages. Any other conclusion would call into question decades of precedent interpreting the Tucker Act.

Similarly, Petitioners need not rely on § 1983 to seek just compensation because § 1983 does not supply substantive rights but merely waives immunity and authorizes redress, in the form of money damages, for federal statutory or constitutional violations that *do not otherwise supply relief. See Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). Whereas here, the Just Compensation Clause *does supply* monetary relief. The First Circuit recently distinguished the monetary relief provided by the Just Compensation Clause from the monetary relief supplied by § 1983. *In re Fin. Oversight & Mgmt. Board*, 41 F.4th 29, 44–45 (1st Cir. 2022). The *Financial Oversight* Court held the just compensation due to property owners in the event of a taking

cannot be adjusted in bankruptcy because it is a remedy expressly provided by the Constitution. *Id.* at 45. In so holding, the First Circuit reasoned the monetary relief provided by the Just Compensation Clause "is different in kind" from monetary relief claimed under § 1983 for other constitutional violations—which *can* be adjusted in bankruptcy. *Id.* at 44–45.

Additionally, it was not until relatively recently, after this Court held claimants could sue municipalities under § 1983, that claimants began pursuing takings cases through that vehicle. *See Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658 (1978). Post-incorporation and prior to *Monell*, takings cases were generally pursued under diversity jurisdiction or as a federal question under 28 U.S.C. § 1331. Ann Woolhandler & Julia D. Mahoney, *Federal Courts and Takings Litigation*, 97 Notre Dame L. Rev. 679, 681 (2022). Justice Rehnquist's dissenting opinion in *Monell* demonstrates the Takings Clause itself, not § 1983, was used to seek relief:

> It has not been generally thought, before today, that § 1983 provided an avenue of relief from unconstitutional takings. Those federal courts which have granted compensation against state and local governments have resorted to an implied right of action under the Fifth and Fourteenth Amendments . . . it is indeed anomalous that § 1983 will provide relief only when a local government, not the State itself, seizes private property.

Monell, 436 U.S. at 721 n.4 (Rehnquist, J., dissenting). And it comes as no surprise that since *Monell* was decided claimants have utilized § 1983 because it allows them to seek attorney's fees. *See* 42 U.S.C. § 1988. This does not mean, however, that a takings claim *must* be pursued through § 1983. In fact, the legislative history and purpose of § 1983 undermines the State's argument because the statute was designed to *supply* damages for constitutional violations—not to foreclose them. *Monell*, 436 U.S. at 700–01.

Therefore, contrary to New Louisiana's argument, the Tucker Act and § 1983 do not provide the cause of action for a takings claim and the legislative history and purpose of § 1983 support that the Fifth Amendment is self-executing.

C. A Self-Executing Fifth Amendment Is Consistent With this Nation's Historical Tradition of Protecting the Right to Just Compensation.

The Nation's historical tradition of protecting property rights and the right to just compensation, as well as the history of takings cases support that the Takings Clause is self-executing.

The special importance given to property rights and just compensation is evident in our Nation's history and can be traced back over 800 years to Magna Carta. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 358 (2015) ("The colonists brought the principles of Magna Carta with them to the New World, including the charter's protection against uncompensated takings . . . ."). As the nation grew to distrust the legislatures, particularly regarding property rights, the first just compensation requirements appeared in the Vermont Constitution of 1777 and the Massachusetts Constitution of 1780. William M. Treanor, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment*, 94 Yale L.J. 694, 701 (1985); Vt. Const. Ch. 1, art. 2 (providing "whenever any person's property is taken for the use of the public, the owner ought to receive and equivalent in money"); Mass. Const. pt. 1, art. 10 (providing whenever property is taken for public use, "he shall receive a reasonable compensation"). The growing distrust in legislative bodies and the enshrinement of just compensation clauses demonstrate that enforcing the remedy of just compensation was not designed to be dependent on legislative action.

Additionally, the framer's intent in drafting the Takings Clause also supports that it is self-executing. James Madison, in proposing the Fifth Amendment, expressed his intent for federal courts to enforce the Takings Clause directly when he said, "independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights." *DeVillier v. Texas*, 63 F.4th 416, 434 (5th Cir. 2023) (per curiam) (Oldham, J., dissenting from the denial of

rehearing en banc) (quoting James Madison, *Amendments to the Constitution* (June 8, 1789), *in* 12 The Papers of James Madison 197, 207 (Charles F. Hobson et al. eds., 1979)). In his essay, *Property*, Madison emphasized the self-executing nature of the Fifth Amendment:

> If there be a government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken *directly* even for public use without indemnification to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which *indirectly* violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues . . . such a government is not a pattern for the United States.

Id. at 435 (citation omitted). If property rights are truly inviolable as Madison intended, then neither legislative action nor inaction can interfere with the right.

The history of takings cases also refutes the State's argument that § 1983 and the Tucker Act provide the only vehicle to pursue a takings claim in federal court. Throughout history, the federal courts have heard takings claims through a variety of methods. At the Founding and before the Fourteenth Amendment, federal courts utilized the Contracts Clause, treaties, and the common-law to hear takings claims against states and local governments. Woolhandler & Mahoney, *supra*, at 684; *DeVillier*, 63 F.4th at 435 (Oldham, J., dissenting) (explaining how federal courts adopted state common-law causes of action for uncompensated takings-related claims) (citations omitted). For example, in *United States v. Great Falls Manufacturing Co.*, this Court used the Contracts Clause to provide just compensation, reasoning "the United States, having . . . taken the property of the claimant for public use, [is] under an obligation, imposed by the constitution, to make compensation. The law will imply a promise to make the required compensation." 112 U.S. 645, 657–58 (1884). Additionally, in the late nineteenth century state courts began recognizing implied actions for damages directly under the state equivalents of the Takings Clause. *See Knick*, 588 U.S. at 200 (citations omitted); Robert Brauneis, *The First*

Constitutional Tort: The Remedial Revolution in Nineteenth-Century State Just Compensation Law, 52 Vand. L. Rev. 57, 109 (1999) (finding by 1890 that "[m]any state courts had begun to hold that just compensation provisions were themselves the source of property owners' rights of action for damages.").

Post-incorporation, takings claims were brought in federal court directly under the Constitution, without mention of § 1983. *See Norwood v. Baker*, 172 U.S. 269, 277 (1898) (bringing suit under the Due Process Clause of the Fourteenth Amendment); *Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency*, 561 F.2d 1327, 1333–34 (9th Cir. 1977) (denying litigation expenses in a suit brought under the Fifth Amendment because such expenses are not included within the meaning of just compensation); *Foster v. City of Detroit*, 405 F.2d 138, 140 (6th Cir. 1968) (holding the federal court properly exercised federal question jurisdiction in an action against city for damages for unlawful taking in violation of Fifth and Fourteenth Amendment). Moreover, this is consistent with Justice Rehnquists' statement in *Monell* that courts implied a right of action under the Fifth and Fourteenth Amendment to grant just compensation.

Therefore, this Court should hold that the Takings Clause is self-executing because it is consistent with the historical tradition of protecting property rights and the right to just compensation.

D. The Very Nature of the Constitutional Design Supports that the Takings Clause Is Self-Executing.

Finally, this Court should hold that the Takings Clause is self-executing because it is consistent with the Constitution's purpose and prevents abuse by the states.

The Takings Clause is self-executing because relying on statutory authorization to provide a cause of action and abrogate sovereign immunity would render the Fifth Amendment

"entirely malleable by the legislature," and offends the very fabric of our constitutional design. *See* Douglas W. Kmiec, *The Original Understanding of the Takings Clause is Neither Weak Nor Obtuse*, 88 Colum. L. Rev. 1630, 1640 (1988). The Just Compensation Clause is premised on a distrust of government power and is designed to limit that power. Berger, *supra*, at 527. As Justice Marshall said in *Marbury v. Madison*:

> To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? . . . The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

5 U.S. at 176–77. Permitting states to circumvent the just compensation requirement by refusing to provide a mechanism to vindicate the right thus offends the very purpose of our Constitution and its supreme hierarchy over all other law. Neither Congress nor the state legislatures can nullify the requirement of just compensation through inaction.

Policy also supports holding that the Takings Clause is self-executing because relying on state legislatures or Congress to provide a vehicle for property owners to seek just compensation invites abuse. Two recent cases demonstrate that where the state is given the opportunity to bar a takings remedy, it will do so. *See DeVillier v. Texas,* No. 3:20-CV-00223, 2021 WL 3889487, at *1 (S.D. Texas July 30, 2021), *vacated*, 53 F.4th 904 (5th Cir. 2023), *vacated*, 601 U.S. 285 (2024); *Ariyan, Inc. v. Sewerage & Water Bd.*, 29 F.4th 226, 228–29 (5th Cir. 2022). In *DeVillier*, the State of Texas used the procedural maneuver of removal in an attempt to dismiss the federal takings claim against it, and in *Ariyan*, the State of Louisiana was able to essentially immunize itself from judgment. *DeVillier,* 2021 WL 3889487, at *1, *5 (asserting that Texas' argument that § 1983 is the only mechanism to pursue a takings claim against a state and that § 1983 claims can never be brought against a state was "pretzel logic"); *Ariyan*, 29 F.4th at 228–29 (holding

appellants had no means of enforcing a $10.5 million judgement they were awarded for a taking because there is no judicial mechanism that can compel the state to pay; instead, property owners are forced to rely on "the grace of the [Louisiana legislature] to appropriate funds").

Here, worse than forcing property owners to jump through procedural hoops or delaying payment of just compensation, the State of New Louisiana has failed to provide *any* mechanism for Petitioners to seek just compensation from the state. R. at 2–3. Additionally, New Louisiana has not supplied any means of relief to the ninety property owners already forced to sell their property for less than it's worth. R. at 2. This violates the fundamental principle that where there is a right, there is a remedy. *See Marbury*, 5 U.S. at 163. And if a right as esteemed in our Nation as the right to just compensation is not worthy of a remedy, then it is difficult to imagine what right is.

Therefore, this Court should hold that the Takings Clause is self-executing because relying on Congress or the state legislatures to provide a cause of action and abrogate sovereign immunity thwarts the Constitutional design and invites abuse.

CONCLUSION

This Court should reverse the Thirteenth Circuit's decision to dismiss this case because Petitioners have stated a valid claim entitling them to relief.

Respectfully submitted,

Team 7
Counsel for Petitioner