

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 from the United States Court of Appeals for the
Thirteenth Circuit
Brief for Respondent**

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QUESTIONS PRESENTED

1. Whether the Court should neglect the longstanding legal doctrine of stare decisis and undermine the predictability of the judiciary by overruling Kelo v. City of New London Conn., 545 U.S. 469 (2005) and the “public use” rule derived from Kelo’s decision?
2. Whether the Fifth Amendment’s Taking Clause, which guarantees just compensation for a taking of private property, requires a plaintiff to set forth a legislative cause of action in order to establish a claim for just compensation?

STATEMENT OF THE CASE

a. Procedural History

Plaintiff, Karl Fischer, Et al., commenced this action in the United States District Court for the District of New Louisiana seeking temporary and permanent injunctive relief under the Fifth and Fourteenth Amendments of the United States Constitution. R. at 3. The State of New Louisiana moved to dismiss both claims under Fed. R. Civ. P. 12(b)(6) because the taking constitutes “public use” under Kelo v. City of New London, which allows for takings for economic development. R. at 3. New Louisiana also moved to dismiss on the grounds that the Fifth Amendment is not self-executing. As such, it does not provide the Plaintiffs with a cause of action for their just compensation claim. R. at 3. Instead, the Tucker Act and 42 U.S.C. § 1983 provide the cause of action for just compensation in takings cases. R. at 3-4. The District Court granted the State of New Louisiana’s motion to dismiss the Plaintiff’s claim to enjoin the taking and for which the relief of just compensation may be granted. R. at 5-8. However, the District Court granted the Plaintiffs’ motion to stay the proceedings pending appeal pursuant to Fed. R. Civ. P. 62(d). R. at 5.

Plaintiffs appealed to the United States Court of Appeals for the Thirteenth Circuit. The Thirteenth Circuit reviewed the District Court’s ruling de novo. R. at 10. On the public use issue, the Thirteenth Circuit affirmed the District Court’s dismissal of the Plaintiffs’ claim on the grounds that Kelo v. City of New London is binding. R. at 10. The Thirteenth Circuit also affirmed the District Court’s dismissal of the Plaintiffs’ claim for just compensation because the Fifth Amendment only provides a right to just compensation when there is a statutory cause of action. R. at 10-11.

b. Statement of Facts

New Louisiana's Economic Development Act designates funds and empowers the governor to contract with businesses in order to expand the state's tourism industry and create jobs for economic development. R. at 1-2. Under the Act, Governor Chase engaged Pinecrest, Inc. to construct a luxury ski resort. R. at 2. This initiative is expected to significantly increase tax revenue in the area, draw affluent tourists, and create 3,470 new jobs. R. at 2. Local business owners will benefit from the increase in property values in the area and the influx of new employees and tourists. R. at 2. Additionally, fifteen percent of the tax revenue generated by the ski resort will be allocated to revitalizing and supporting the surrounding community. R. at 2. These long-term objectives will ensure lasting benefits for all. R. at 2.

The project requires 1,000 acres of land owned by 100 different individuals across three counties. R. at 2. New Louisiana is permitted to condemn property solely for economic development pursuant to its state law. R. at 2; See NL Code § 13:4911. According to NL Code § 13:5109, a waiver of sovereign immunity is necessary for property owners to receive just compensation for a taking. R. at 2. However, New Louisiana has not waived immunity generally or specifically for this project. R. at 2. Without the right to just compensation, ninety landowners agreed to sell their properties to the state at below market value. R. at 2.

This lawsuit is brought by ten holdout property owners. R. at 2. Their property consists of small family farms and single-family homes in a low-income, predominately minority neighborhood. R. at 2. Many plots on the farms are overgrown or struggle to produce marketable crops due to poor soil conditions, thus significantly depleting their value as farmland. R. at 2. Some homes are in relatively poor condition but are not dilapidated or hazardous to the public;

many require substantial repairs, also lowering local market value. R. at 3. The primary holdout owner and lead plaintiff, Karl Fischer, is unwilling to sell his farm as it has been in his family for 150 years. R. at 3.

On March 13, 2023, construction for the project began on the ninety purchased properties. R. at 3. On that same date, New Louisiana initiated eminent domain proceedings against the ten holdout properties. R. at 3. The state notified the owners that New Louisiana state law does not provide the right to compensation. R. at 3.

SUMMARY OF THE ARGUMENT

This Court should affirm the Thirteenth Circuit’s decision to not only maintain the “public use” rule set forth in Kelo v. City of New London Conn., but also to abide by the legal doctrine of stare decisis. Straying from stare decisis would carry detrimental ramifications regarding the judiciary’s consistency and reverence for Supreme Court precedent. Analysis of the factors set out in Janus v. AFSCME, Council 31, which guide the Court in stare decisis inquiries, weigh in favor of maintaining the “public use” rule because: (i) the quality of reasoning in Kelo is sound because the government taking private property for the public welfare is deeply rooted in history; (ii) the “public use” rule set forth in Kelo is a workable standard and its broad applicability considers the varying public needs of different communities; (iii) Kelo is consistent with precedent because prior decisions deferred to the legislature and broadened the concept of public use to serve a public purpose; and (iv) reliance on Kelo has allowed municipalities to mend once blighted communities by way of eminent domain. Nonetheless, if this Court should decide to abandon stare decisis and overturn Kelo, a broad application of the “public use” rule must remain, as not to disturb appropriate deference to the legislature.

The Thirteenth Circuit also correctly determined that there is no direct cause of action under the Takings Clause of the Fifth Amendment without a statutory basis. R. at 7-8. The plaintiffs' claim is fundamentally flawed, as it overlooks the need for statutory sources to pursue just compensation. While the Takings Clause provides a right to compensation upon a taking, it does not create an independent cause of action. The Supreme Court has consistently held that claims for just compensation require statutes, such as the Tucker Act or 42 U.S.C. § 1983, rather than sole Constitutional reliance.

Petitioners incorrectly argue that the Takings Clause is self-executing, citing cases such as Knick v. Township of Scott. Knick involved a statutory claim, reinforcing that the Takings Clause alone does not provide a cause of action. In addition, cases like Dohany v. Rogers and Norwood v. Baker involved equitable claims, not monetary compensation, further illustrating that compensation claims must be pursued through established statutes. In summary, the Court has consistently affirmed that without a statutory claim, Petitioners cannot bring a viable takings claim. Consequently, the Petitioners' reliance on the Takings Clause alone is unsupported by precedent and undermines the separation of powers.

ARGUMENT

I. KELO V. CITY OF NEW LONDON CONN. SHOULD BE UPHELD TO PREVENT A JUDICIARY WHICH DECIDES CASE LAW THROUGH A MERE EXERCISE OF JUDICIAL WILL AND BECAUSE THE STARE DECISIS FACTORS FAVOR MAINTAINING KELO'S "PUBLIC USE" RULE.

If this Court shows no reverence for its own precedent, it cannot expect the state actors who are meant to be bound by the Court's decisions to treat them with any weight. Payne v. Tennessee, 501 U.S. 808, 853 (1991) (Justice Marshall dissenting from the majority's deviation from stare decisis). This Court should affirm the decision of the United States Court of Appeals

for the Thirteenth Circuit and abide by the “public use” rule set out in Kelo v. City of New London Conn.

If this Court diverges from its precedent there will be upheaval in three aspects: (a) the judiciary will create the notion that governing legal standards are open to revision in every case; (b) the factors that help navigate the Court in stare decisis inquiries would be overlooked; and (c) it would be a blatant example of judicial overreach because the legislature should be given deference as to what the public needs when justifying the use of takings powers.

a. The Time-Honored Strong Presumption of Stare Decisis Should Stand in this Case Because of its Ability to Effectively Structure the Judiciary.

Deviation from stare decisis would open the door to uprooting foundational case law set by the Court and squander the Court’s reliability. The “public use” rule’s trickledown effect through the lower courts demonstrates its consistency and adaptability.¹ Revoking the “public use” rule will create an unpredictable application of the Takings Clause, not only in the lower courts, but also in the Supreme Court. A case-by-case approach would be inadvertently highlighted by this Court, instituting the idea that lower courts can do as they please and deviate from concrete case law set forth by the Circuits and Supreme Court. Payne v. Tennessee, 501 U.S. at 855.

Justice Breyer, Justice Sotomayor, and Justice Kagan recognized these risks when they dissented in Dobbs v. Jackson Women’s Health Organization: “We fear that today’s decision, departing from stare decisis for no legitimate reason, is its own loaded weapon. Weakening stare decisis threatens to upend bedrock legal doctrines, far beyond any single decision. Weakening

¹ See e.g., Goldstein v. Pataki, 516 F.3d 50 (2d Cir. 2008); W. Seafood Co. v. United States, 202 F. App’x 670 (5th Cir. 2006); Carole Media LLC v. New Jersey Transit Corp., 550 F.3d 302 (3d Cir. 2008) (finding economic considerations sufficient under the “public use” rule because of the concepts set out Kelo v. City of New London Conn.).

stare decisis creates profound legal instability.” 597 U.S. 215, 413 (2022). When stare decisis is weakened, so are the public and lower court’s views that the Supreme Court is a source of detached, fair, and reasoned judgments. Payne v. Tennessee, 501 U.S. at 852.

The Court in Kimble v. Marvel declined to overrule the decision in Brulotte v. Thys Co. because the Court recognized that overruling precedent and diverging from stare decisis requires “superspecial justification.” Kimble v. Marvel, 576 U.S. 446, 458 (2015). In Kimble, stare decisis was classified as carrying enhanced force when decisions interpret statutes rather than constitutional provisions because of Congress’s ability to correct statutory mistakes. Id. at 456. Facially the case at hand provides a constitutional issue, but in practice the “public use” rule gives deference to the legislature to correct mistakes, equivalent to if the issue was statutorily based. The legislature has the power to decide how and for what public use takings powers are used for. Kelo v. City of New London Conn., 545 U.S. at 481. Analogous to Kimble v. Marvel, critics of a specific usage of the takings power can convey their objections to the legislature, and the legislature can fix mistakes as they see fit. 576 U.S. at 456. Accordingly, stare decisis should be applied by this Court with the same enhanced force applied by the Kimble Court.

b. Analysis of the Stare Decisis Factors Confirms that the Decision in Kelo and the “Public Use” Rule Should be Sustained.

The Court in Janus v. AFSCME, Council 31 established the following factors to analyze if the Court should adhere to its precedent: (i) the quality of the decision’s reasoning; (ii) the workability of the rule; (iii) the consistency of the decision with other related decisions; and (iv) the reliance on the precedent. 585 U.S. 878, 917 (2018). When applying these factors, the Court must point to special justifications to depart from precedent because there is a strong presumption of stare decisis in every case. U.S. v. International Business Machines Corp., 517 U.S. 843, 856 (1996); Payne v. Tennessee, 501 U.S. at 852. Analysis of the factors advises that

the Court maintains the decision in Kelo v. City of New London Conn. and the current “public use” rule.

i. The Quality of Reasoning in Kelo is Sound.

This Court must observe stare decisis when addressing the issue at hand because the “public use” rule is rooted in constitutional text and history, which supports its quality of reasoning. Stare decisis is a prominent part of the judiciary and is of fundamental importance to the rule of law. Payne v. Tennessee, 501 U.S. at 842. However, in specific and one-off circumstances this Court has opted to utilize judicial power to overrule precedent, but Kelo v. City of New London Conn. does not fit into that narrow caveat of caselaw.

One case that falls into that limited category is Roe v. Wade, 410 U.S. 113 (1973). In Dobbs v. Jackson Women’s Health Organization, the Court overturned the precedent set forth in Roe which established a constitutional protection for abortion because such protection was not grounded in constitutional text, history, or precedent. 597 US at 219.² Here, the concepts derived from Kelo v. City of New London Conn. are grounded in phrasing pulled from the Constitution and the Framers intentions behind the Takings Clause. U.S. CONST. amend. V. Legal scholars have identified that the Framers utilized the words “for public use” as a synonym for the exercise of the power of eminent domain. Paul W. Tschetter, Kelo v. New London: A Divided Court Affirms the Rational Basis Standard of Review in Evaluating Local Determinations of “Public Use”, 51 S.D. L. Rev. 193, 208 (2006). Further, the “public use” rule is distinguishable from the protections set out in Dobbs because the government taking private property for public use dates back English Common Law. Id. Taking private property for public use was in turn practiced

² Due to a lack of grounding in historical sources, the Court in Dobbs accused the previous Court in Roe v. Wade of acting as a legislative body rather than a judiciary. Dobbs v. Jackson Women’s Health Organization, 597 US at 274.

during the American colonial period and further recognized in Early American common law as “a taking that served a ‘public advantage,’ for ‘the necessities of the state,’ and for the ‘public welfare.’” Id. at 209. Ergo, establishing that this practice is the epitome of being rooted in history.

The Court in Kelo v. City of New London Conn. reviewed the evolution of eminent domain law and concluded that the doctrinal progression of eminent domain demonstrated judicial flexibility in the “public use” rule, rather than bright-line rule, because of varied community needs. Michael A. Rosenhouse, Application of Kelo v. City of New London, Conn., 125 S. Ct. 2655, 162 L. Ed. 2d 439, 60 Env't. Rep. Cas. (BNA) 1769, 35 Envtl. L. Rep. 20134, 10 A.L.R. Fed. 2d 733 (U.S. 2005), to "Public Use" Restrictions in Federal and State Constitutions Takings Clauses and Eminent Domain Statutes, 21 A.L.R. 6th 261, 272 (2007); Kelo v. City of New London Conn. 545 U.S. at 482. These community needs undoubtedly include various economic considerations. Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 241-242 (1984) (holding in part that dismantling economic evils, such as land oligopoly, was public use). Thus, even considering the Dobbs Court’s constitutional justifications for deviating from stare decisis, Kelo’s “public use” rule still prevails because it is rooted in constitutional text and history. Ignoring these concrete constitutional considerations will not only foster the concept that courts do not need to abide by precedent, but also that courts do not need to abide by law specifically derived from the Constitution.

ii. The “Public Use” Rule is Workable and Easily Understood.

The “public use” rule set out in Kelo is easily applied and maintains flexibility, which is an essential trait when determining the needs of constantly evolving communities. In Dobbs v. Jackson Women’s Health Organization, the Court identified that the “undue burden” test, which

was to be applied to restrictions on abortion, was unworkable because of its ambiguous and debatable nature. 597 US at 218. The “public use” rule is discernable from the “undue burden” test because it is a broad, inclusive rule, rather than a subjective test. The broad nature of the “public use” rule is why it is workable.

The Court in Berman v. Parker identified that public safety, public health, morality, peace and quiet, and law and order are categorical examples of sufficient community needs. 348 U.S. 26, 32 (1954). The Court went on to say that this list of staple needs solely scopes police power in terms of public use but does not limit it. Id. The Kelo Court took this sentiment and advanced it to include economic development in public use. Kelo v. City of New London Conn., 545 U.S. at 484. This action was specifically done to create an unambiguous application of the rule because the Kelo Court recognized that it would create inconsistent judicial decisions if courts were required to distinguish economic development from the other recognized public purposes.³ Id. The Court directly addressed the concern of inconsistency, and the concerns raised by the Court in Dobbs v. Jackson Women’s Health Organization, by allowing all legislatively implemented economic development plans to be considered public use. Id. Thus, this Court should deem the “public use” rule workable and distinguishable from the “undue burden” test.

iii. Kelo Does not Conflict with Precedent.

Kelo’s “public use” rule built upon decisions from cases such as Fallbrook Irrigation Dist. v. Bradley, Berman v. Parker, and Hawaii Hous. Auth. v. Midkiff. While there are slight differences regarding the expansiveness of the “public use” rule in each respective case, the

³ The Kelo Court specifically declined to include requirements such as “a ‘reasonable certainty’ that the expected public benefits will “actually accrue” from the takings for economic development. Kelo v. City of New London Conn., 545 U.S. at 487.

decisions represent a trend by the Court that the definition of “public use” should lean towards inclusivity.

Fallbrook Irrigation Dist. v. Bradley was the catalyst to progressing the “public use” rule to fit modern community needs when the Court determined that public use should extend to takings that ultimately serve a public purpose. 164 U.S. 122, 164 (1896); See also Strickley v. Highland Boy Gold Mining Co., 200 U.S. 527, 527 (1906)(holding in part that “public use” includes government action that serves a public purpose). Berman v. Parker went a step further when the Court reasoned that public welfare is a broad and inclusive concept. 348 U.S. at 33. This reasoning led to the Court’s decision to allow takings power to be used for a redevelopment plan. Id. The Court in Hawaii Hous. Auth. v. Midkiff, in a unanimous decision, deferred to the legislature’s determination that distribution of land to negate oligopoly was necessary and deemed it a sufficient public purpose. 467 U.S. at 242. Using these three cases as building blocks, the Court in Kelo united these decisions into one simple rule: that utilizing the Takings Power for economic development is permissible.

In the Thirteenth Circuit’s decision, Judge Willis argues that because Kelo extends the definition of “public use,” through condensing precedent decisions, it is inconsistent with Knick v. Twp. of Scott, Pennsylvania. R. at 16. However, the Knick Court does not address the “public use” rule. The entirety of the decision is focused on the just compensation portion of the Takings Clause. Knick v. Twp. of Scott, Pennsylvania, 588 U.S. 180, 180-224 (2019). Thus, the Court’s reasoning in Knick, can only be appropriately addressed in discussing just compensation.

The Court in Fallbrook Irrigation Dist. v. Bradley, Berman v. Parker, and Hawaii Hous. Auth. v. Midkiff harmoniously underscored the importance of deference to the legislature. The Court in each case identified that the legislature is the proper body to look to when deciding

community needs and that the legislature’s determinations should be given deference in all cases that are not blatantly unconstitutional. Fallbrook Irrigation Dist. v. Bradley, 164 U.S. at 177; Berman v. Parker, 348 U.S. at 33; Hawaii Hous. Auth. v. Midkiff, 467 U.S. at 241; Kelo v. City of New London Conn., 545 U.S. at 519. As such, Kelo does not deviate from well-established precedent.

iv. Reliance on Kelo is Widespread and Overturning Kelo will Cause Local Legislatures to Suffer.

The Supreme Court refused to diverge from Kelo when denying a petition for a writ of certiorari to review Eychaner v. City of Chicago, Illinois, 141 S. Ct. 2422, (2021). The lower court’s decision in Eychaner v. City of Chicago, Illinois, relied on Kelo. 141 S. Ct. 2422, 2423 (2021). Therefore, the Court’s denial of writ further supports that this Court, as recent as three years ago, intended the judiciary to rely on and be bound by the decision in Kelo.

Kelo’s “public use” rule has allowed communities to enhance tax revenue and create new jobs because of economic development plans that were facilitated by the takings power. Garreth Cooksey, Takings Care of Business: Using Eminent Domain for Solely Economic Development Purposes, 79 Mo. L. Rev. 715, 726 (2014) (discussing how eminent domain was instrumental in improving the economic state of Village West in Kansas City, Kansas). Dismantling the decision in Kelo would bar these municipalities from creating programs and plans to make their communities flourish.

In W. Seafood Co. v. United States, the Fifth Circuit recognized that the City of Freeport’s plan to develop its waterfront to revitalize its weakening economy was sufficient to satisfy public use. 202 F. App’x 670, 675 (5th Cir. 2006). The City of Freeport had an economically depressed downtown area, and the Court relied on the decision in Kelo to accept the City’s suggested strategies for the downtown area’s revival. Id. In Goldstein v. Pataki, the

Second Circuit found that a plan to construct a sports arena, high-rise apartment towers, and several office towers in Brooklyn, New York, was sufficiently related to bettering the community. 516 F.3d 50, 58 (2d Cir. 2008). Neither of the economic growth objectives identified in W. Seafood Co. v. United States and Goldstein v. Pataki would be able to satisfy the public use requirement without the Kelo decision and those needs of the community would have gone unmet.

The legislature’s reliance on the “public use” rule differs from the legal doctrine of Chevron Deference that was overruled by the Supreme Court in Loper Bright Enterprises v. Raimondo.⁴ The Court identified that Chevron Deference was not able to be relied upon because of its inconsistent application in the lower courts. Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244, 2287 (2024). The Loper Court held in part that Chevron Deference generated “anti-reliance” and instability because of agency executives’ ability to rescind and replace rules with every new term. Id. at 2288.

Kelo’s “public use” rule is discernable from Chevron Deference because the “public use” rule does not give the legislature power to set and rescind rules. The “public use” rule only creates a scope of acceptable justifications to implement takings powers. Kelo v. City of New London Conn., 545 U.S. at 491. Consequently, the only deference the legislature is given is to identify community needs within judicially set scope. Id.

c. If This Court Does Overturn Kelo, the New “Public Use” Rule Should Remain Broad and Inclusive.

The Court should maintain the “public use” rule that the judiciary is currently bound by. In the alternative, if this Court decides to overturn Kelo, then the “public use” rule must

⁴ See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 838 (1984) (setting the Chevron Deference rule which established that agencies are to be given deference to interpret ambiguous statutes).

remain broad enough to allow adequate deference to the legislature. New Louisiana’s Economic Development Act enacted by the legislature should be given deference when determining public concerns that fall into the category of public use.

The Supreme Court has already addressed the limitations of the courts when determining community needs in Berman v. Parker. The Berman Court concluded that Congress’s use of takings powers, partially to create low-rent housing, was proper and should be given deference. Berman v. Parker, 348 U.S. at 30. The Court held in part that: “Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation...” Id. at 32; Kelo v. City of New London Conn., 545 U.S. at 518.

The New Louisiana legislature, analogous to Congress in Berman v. Parker, identified economic concerns to fulfill the “public use” requirement of the Takings Clause. R. at 2; U.S. CONST. amend. V. Hence, this Court must conclude, in line with Berman v. Parker, that the New Louisiana legislature is entitled to deference in this matter. Any decision to the contrary would be a prime example of judicial overreach. Berman v. Parker, 348 U.S. at 33.

II. THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT’S GUARANTEE OF JUST COMPENSATION IS NOT SELF-EXECUTING

The Appellate Court’s decision that the taking clause is not self-executing should be upheld because Petitioners failed to establish a right to sue otherwise provided by law which would trigger Fifth Amendment protection. The Takings Clause of the Fifth Amendment states: “...nor shall private property be taken for public use, without just compensation.” U.S CONST. amend. V. A property owner obtains a right to just compensation immediately upon a taking. Knick v.

Twp. of Scott, Pennsylvania, 588 U.S., at 192. However, a property owner must first pursue a state claim before bringing a federal lawsuit. Id. at 194.

Petitioners' claim that they are entitled to compensation for any taking that occurs disregards the established legal system that requires a plaintiff to establish a right to sue under a separate source of law. In Knick v. Twp. of Scott, Pennsylvania, the Court found that the plaintiffs were entitled to compensation for their property. 588 U.S. at 192. Unlike the plaintiffs in Knick, who brought a claim under 42 U.S.C § 1983, Petitioners did not bring their claim under another basis of law. Petitioners' reliance on the Takings Clause alone is misplaced, and their argument, if accepted, would undermine the clear separation of powers between the judiciary and the legislature.

Furthermore, Petitioners do not dispute the nature of the substantive right to just compensation. R. at 6. The only issue at hand is whether a property owner may procedurally assert the right to just compensation without support from a source of law. Petitioners may not assert the right to just compensation and cannot support their claim that the Takings Clause is self-executing. Thus, the Thirteenth Circuit's decision should be upheld.

a. The Takings Clause Requires a Statutory Basis for a Cause of Action.

Petitioners' assertion that they are entitled to compensation for any takings is baseless because they failed to set forth a right to sue otherwise provided by a statute. The Supreme Court in Egbert v. Boule explained that constitutional provisions do not inherently create a cause of action. 596 U.S. 482, 490-91 (2022).

Constitutional rights, including those in the Fifth Amendment, require a plaintiff to establish a statutory mechanism or judicially recognized cause of action to substantiate a claim for enforcement. Id. In particular, the Court refused to extend the application of Bivens claims, which allows a plaintiff to bring an implied cause of action not authorized by a statute, to the

Fifth Amendment Takings Clause. Id. Specifically, the Court limited the application of Bivens claims to scenarios involving excessive force, sex discrimination in employment, or inadequate prison care. Id. at 497-500.

Petitioners here cannot establish a cause of action under the Takings Clause without similar statutory support, particularly as their claims are against the State, not federal agents. Petitioners further argue that the Takings Clause should be self-executing based on Knick v. Twp. of Scott, Pennsylvania, where the Court held that property owners do not need to exhaust state remedies before pursuing just compensation claims. 588 U.S. at 192. However, Knick does not support Petitioners' argument that the Takings Clause itself creates a self-executing cause of action because the Petitioners in Knick brought their claim under 42 U.S.C. § 1983, which specifically provides a statutory remedy for constitutional violations by state actors. Id. at 180. The Petitioner's here have no comparable statutory remedy.

Moreover, in First Eng. Evangelical Lutheran Church v. County of Los Angeles, the plaintiffs pursued a claim for just compensation under state inverse condemnation law, and the court found a right for just compensation. 482 U.S. 304, 308 (1987). The Court explained that the Takings Clause does not prohibit the taking of private property, but rather places conditions on exercising that power. Id. at 314.

Unlike the plaintiffs in Knick, who sued under an applicable statute, Petitioners here, failed to provide applicable law to support their claim for just compensation. Knick v. Twp. of Scott, Pennsylvania, 588 at 187. In Knick, the Court held that a plaintiff may bring a claim for just compensation under the Tucker Act. Id. at 194. The Supreme Court has consistently held that an applicable statutory vehicle is essential for such claims, and First Eng. Evangelical Lutheran Church and Knick only emphasize limits on the judiciary creating causes of action

where none exist. Knick v. Twp. of Scott, Pennsylvania, 588 U.S. at 201; First Eng. Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. at 317. Ultimately, the Courts relied on external law, rather than the Taking Clause itself, reaffirming the requirement of statutory support for claims under the Taking Clause. Knick v. Twp. of Scott, Pennsylvania, 588 U.S. at 201; First Eng. Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. at 317. Petitioners' contention that the Takings Clause is applicable, without providing appropriate law to seek just compensation, is contradictory to Knick's decision.

Furthermore, Petitioners' reliance on DeVillier v. Texas to support their claim that the Takings Clause is self-executing is meritless because the Court did not make such a finding. In DeVillier, the Court did not hold that the Takings Clause itself is self-executing but suggested that the nature of relief sought could indicate whether there is a self-executing cause of action. DeVillier v. Texas, 601 U.S. 285, 292 (2024). The DeVillier Court simply postponed reconciliation of the self-executing issue to a future case where no statutory remedy exists, as is presently alleged. Id. at 292. In DeVillier the Court explained that whether the relief is equitable or monetary is relevant to the analysis of whether a constitutional provision is self-executing. Id. Petitioners' claim is inherently meritless because the Supreme Court has already affirmed that in cases involving monetary compensation, such as ours, must be brought under another source of law.

b. Precedent Establishes That the Takings Clause Does Not Independently Provide a Cause of Action.

i. Dohany and Norwood Involved Equitable Claims, Not Just Compensation.

Petitioners' attempt to rely on Dohany v. Rogers and Norwood v. Baker as authority for equitable relief for a taking without establishing a separate source of law is fundamentally flawed. See, e.g., Dohany v. Rogers, 281 U.S. 362, 364 (1930); Norwood v. Baker, 172 U.S.

269, 276 (1898). Both Dohany and Norwood are distinguishable from the present matter because neither involves a claim for monetary relief, which is an essential requirement in a takings claim.

In Dohany, the plaintiffs sought to prevent the government from acquiring their land by challenging the procedure used for condemnation, and here Petitioners did not seek monetary relief for a completed taking. Dohany v. Rogers, 281 U.S. at 364. Similarly, the plaintiffs in Norwood pursued an equitable remedy to prevent a special assessment levied by a municipality, rather than seeking compensation for the alleged taking of property. Norwood v. Baker, 172 U.S. at 276. Since both Dohany and Norwood are limited to situations where equitable relief was at issue, and neither of these cases establish that the Takings Clause is self-executing for monetary claims, the Petitioners' reliance on these cases is improper.

The Supreme Court has expressly recognized that claims for just compensation are distinct from equitable claims and must be pursued through statutory means. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1016 (1984). Equitable remedies are only appropriate where monetary relief is unavailable and, in respect to the Takings Clause, monetary relief is the exclusive available remedy. Id. at 1016. Thus, Petitioners' conflation of equitable relief with monetary relief in attempt to support their argument that the Takings Clause is self-executing is inconsistent with established caselaw. Based on Ruckelshaus, monetary relief is the only available remedy in a Takings Clause case, thus Petitioners' use of this case is incorrect as this case involves a claim for an equitable remedy.

The court in United States v. Miller, explicitly held that "just compensation" must be measured by the fair market value of the property taken. 317 U.S. 369, 374 (1943). Miller decisively distinguishes cases where plaintiffs sought equitable relief from cases where the

remedy sought is monetary. Id. at 378. Where equitable claims may sometimes proceed without statutory authority, the pursuit of compensation under the Takings Clause has consistently been conditioned on the existence of a statutory source, such as the Tucker Act or 42 U.S.C. § 1983.

The Supreme Court has adhered to this principle in subsequent decisions, further limiting the self-executing scope of the Takings Clause to cases where a proper statutory claim exists. In First Eng. Evangelical Lutheran Church v. County of Los Angeles, the Court emphasized that although the Takings Clause allows property owners to receive compensation, the enforcement of that right must be pursued through legislative means. 482 U.S. at 317. In First Eng. Evangelical Lutheran Church, the plaintiff pursued compensation under state inverse condemnation laws, highlighting the importance of a statutory cause of action to obtain monetary relief. Id. at 305. The Court did not suggest that the Takings Clause independently provides a cause of action, but rather underscored the necessity of statutory mechanisms to bring a claim for compensation. Id.

Ruckelshaus v. Monsanto Co., United States v. Miller, and First Eng. Evangelical Lutheran Church v. County of Los Angeles collectively demonstrate that the Supreme Court has consistently refrained from finding that the Takings Clause alone provides a self-executing cause of action for compensation. The claims Dohany and Norwood are not analogous to Petitioners' claims for monetary compensation because, as established by precedent, claims for monetary compensation must be supported by statutes and Dohany and Norwood involved claims for equitable relief. Without a statutory foundation, the Petitioners' claims for just compensation cannot proceed. Therefore, judicial implication of a cause of action is inappropriate in cases seeking monetary relief, such as the present matter.

ii. All Federal Takings Claims Have Been Pursued Under Statutes Resembling the Tucker Act or §1983.

In every significant Supreme Court case addressing the Takings Clause and monetary relief, plaintiffs have pursued their claims through statutory means. This further reinforces the principle that the Takings Clause, on its own, does not create a self-executing cause of action for compensation.

The Tucker Act, 28 U.S.C. § 1491, explicitly permits claims against the federal government for takings, providing a statutory mechanism where none previously existed. Prior to the enactment of the Tucker Act, compensation for takings was sought only through private acts of Congress. In Knick, the Court explained that until the 1870s, there was no route to obtain compensation for takings in the common law. Knick v. Twp. of Scott, Pennsylvania, 588 U.S. at 199.

In United States v. Great Falls Mfg. Co., the Supreme Court explained that the Tucker Act was designed as a vehicle to bring a cause of action for just compensation, recognizing that without legislative action, no such right exists. 112 U.S. 645, 657 (1884). This demonstrates that Congress saw the need to create a statutory remedy where constitutional provisions do not provide one, further establishing the requirement for separate law to bring a claim under the Takings Clause.

Similarly, 42 U.S.C. § 1983 provides a federal cause of action for constitutional violations by state actors, including takings claims. Thus, offering a statutory basis for pursuing compensation claims when state actors are involved. In Knick, the Court allowed the plaintiff to bring a takings claim directly to federal court without exhausting state remedies, but crucially, the claim was brought under § 1983, not the Takings Clause alone. Knick v. Twp. of Scott, Pennsylvania, 588 U.S. at 201. Ultimately, while property owners have a right to just

compensation, property owners must rely on statutory remedies such as § 1983 to enforce those rights. Further, the decision in Knick did not suggest that the Takings Clause itself provides an independent cause of action, but rather that § 1983 serves as the appropriate procedural mechanism to bring such claims against state officials. Knick v. Twp. of Scott, Pennsylvania, 588 U.S. at 201.

Moreover, both the Tucker Act and § 1983 provide clear statutory means for enforcing the right to just compensation under the Takings Clause. The existence of the Tucker Act and § 1983 illustrates Congress's understanding that the Takings Clause does not independently grant a cause of action for monetary compensation. Without applicable legislative acts, Petitioners cannot bring a viable claim under the Takings Clause alone, as has been consistently affirmed by the Supreme Court across a range of cases involving takings claims. Therefore, the Petitioners' attempt to pursue their claim without relying on these statutory remedies is unsupported by precedent and contrary to the structure of constitutional enforcement in the United States.

CONCLUSION

It is imperative this Court uphold the decision in Kelo v. City of New London Conn. and abide by stare decisis to avoid the ramifications overruling the decision would have on the judiciary and the abilities of municipalities. In the alternative, this Court must at the very least maintain a broad and inclusive "public use" rule to ensure proper deference is given to the legislature.

Considering the Supreme Court's consistent requirement for statutory basis to enforce the rights under the Takings Clause and the clear limitations on extending judicially created causes of action, the State respectfully requests that the court uphold the Appellate Court's decision. Precedent cases showcase that the Takings Clause is not self-executing and does not

independently create a cause of action for monetary compensation. Without a statutory remedy, such as those provided by the Tucker Act or 42 U.S.C. § 1983, Petitioners have no basis for seeking just compensation from the State.

Therefore, the State of New Louisiana urges this court to affirm the dismissal of Petitioners' claims for just compensation with prejudice, as no other law provides a remedy in this case.

Dated: October 20, 2024.

Respectfully submitted,
Counsel for Respondent
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