No. 24-386

In the Supreme Court of the United States

KARL FISCHER ET AL.,
Petitioners,
v.

THE STATE OF NEW LOUSIANA,
Respondent.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

Team 8

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

Constitutional Provisions

QUESTIONS PRESENTED

1. Under the Takings Clause of the Fifth Amendment, (1) should *Kelo v. City of New London* be overruled, blocking states from using eminent domain to revitalize struggling communities by increasing taxes, property values, and creating thousands of jobs? (2) If not, can an economic revitalization project that offers long-term public benefits constitute a permissible "public use"?

2. Whether the Takings Clause of the Fifth Amendment is self-executing, thereby creating a direct cause of action against a state for just compensation when no other federal or state remedy is available.

STATEMENT OF THE CASE

Factual Summary

To revitalize a struggling community, The New Louisiana legislature passed the Economic Development Act ("The Act") to address longstanding economic challenges. These challenges included poor soil conditions and overgrown farmland, leaving farmers without viable income, depressing the local market value. R. at 1-2. Recognizing the urgent need for revitalization, the State, in collaboration with Pinecrest, Inc. ("Pinecrest") launched an economic development project to address these challenges head-on. The project aims to create over 3,000 jobs, revitalize the local economy, and transform the region into a vibrant tourist destination through the construction of a ski resort on the outskirts of the state capital. R. at 1-2. Central to this project is the substantial tax revenue –fifteen percent of which will directly benefit the area. R. at 2. This project is poised to raise the property values of the surrounding community and benefit tourists and local business owners. R. at 2.

The project requires 1,000 acres of land across three counties, impacting 100 different property owners. R. at 2. An overwhelming majority – ninety percent – sold their property to the State. R. at 2. However, a group of ten landowners refused to sell their land.

R. at 2. These farms have failed to produce marketable crops because of poor soil conditions, and many plots have become overgrown, depleting their value as farmland. R. at 2. Due to the numerous depleted homes, the local market value of the area has plummeted, requiring substantial improvements. R. at 2. This negativity affects the entire area, making it an obstacle for the surrounding community. R. at 3. This is reflected in the average income of the neighborhood, which is only $50,000. R. at 3.

The State, sympathetic to the personal ties the owners have to their land, but committed to the larger public good, has initiated eminent domain proceedings to acquire the remaining ten properties. R. at 3. On March 13, 2023, the State began construction on the other ninety properties and notified the ten holdouts that, absent waiver from the State, State law provides no right to just compensation. R. at 1, 3.

Procedural History

On March 15, 2023, the ten holdout property owners filed suit against the State under the Fifth and Fourteenth Amendments in the United States Court of Appeals for the Thirteenth Circuit. R. at 3. In response, the State of New Louisiana moved to dismiss both claims pursuant to Rule 12(b)(6). R. at 3.

The Court of Appeals considered two questions. First, the Court addressed whether the Takings at issue were permissible for economic development, thereby satisfying the Fifth Amendment's "Public Use" requirement. R. at 3. The Court answered affirmatively, holding that the takings were valid under *Kelo v. City of London*. Second, the Court examined whether the Fifth Amendment's taking clause is self-executing, and thus provides a cause of action for just compensation. R. at 3-4. The Court dismissed the claim, finding

that the plaintiffs had no claim for just compensation because the Fifth Amendment is not self-executing. R. at 3-4.

Petitioners' appeal is now before the Supreme Court of the United States of America.

SUMMARY OF ARGUMENT

The root of the issue in the present case is whether the federal government should infringe on the State's sovereign right to govern its citizens when the State of New Louisiana, through its elected legislatures, created a revitalization plan to enhance the economic well-being of the community. In dispute is also a critical issue: whether this Court should uphold its unanimous decisions in *Berman* and *Midkiff*, which serve as the established bedrock principles for interpreting "public use" under the Takings Clause, particularly in the context of economic development. Notably, *Kelo* did not create a new precedent; rather, it served to reaffirm the authority of *Midkiff* and *Berman*. The power lies firmly with these foundational cases, which provide clear standards for evaluating public use in eminent domain.

The State urges this Court to rule that the Fifth Amendment is not self-executing and should uphold *Kelo*, as these decisions will reinforce the well-established notion that property law is best governed at the local level, where the unique characteristics and needs of each community can be effectively addressed.

First, the interpretation of "public use" should remain broad, as affirmed in *Berman* and *Midkiff*, to encompass a wide range of initiatives that serve the public good, such as economic revitalization. Overruling *Kelo*, which relies on *Berman* and *Midkiff*, would undermine *stare decisis* and destabilize established precedents in takings law. In destabilizing established

jurisprudence, this Court would tie the hands of the legislatures, preventing them from addressing their local community needs. Lastly, the Fifth Amendment's Taking Clause does not create a direct cause of action against States, because States have sovereign immunity from suits from private citizens. To deem the Fifth Amendment as self-executing would undermine principles of federalism and State sovereign immunity, which have traditionally been protected by the Constitution and the Courts.

STANDARD OF REVIEW

Constitutional interpretations are conducted *de novo*. *See United States v. Morrison*, 529 U.S. 598, 607 (2000) (constitutional questions are reviewed *de novo*).

ARGUMENT

I. THE COURT SHOULD NOT OVERRULE *KELO* BECAUSE ECONOMIC DEVELOPMENT CONSTITUTES A PERMISSIBLE TAKING FOR A "PUBLIC USE," IT UPHOLDS *STARE DECISIS*, AND IT PRESERVES LEGISLATURES' ABILITY TO ADDRESS LOCAL COMMUNITY NEEDS.

A. An Economic Revitalization Plan That Boosts Tax Revenue, Property Values, Tourism, and Creates Thousands of Jobs Serves a Public Purpose.

A permissible taking for "public use" under the Takings Clause of the Fifth Amendment, serves a public purpose, even if the property is used by private entities. "Public purpose" is to be interpreted broadly, encompassing initiatives such as economic development, public health, recreation, and infrastructure improvements. *See Berman v. Parker*, 348 U.S. 26, 33 (1954) ("The concept of the public welfare is broad and inclusive."); *see also, e.g.*, *Haw. Hous. Auth. v. Midkiff,* 467 U.S. 229, 240 (1984) (upholding the government's use of eminent domain to transfer land from private landlords to tenants to decrease the monopolization of land ownership).

Berman and *Midkiff*, rather than *Kelo,* serve as the pillars for understanding "public use" under the Takings Clause, particularly in the context of economic development. This is why *Kelo* should not be overturned. Long before *Kelo*, this Court explicitly stated in *Berman* and *Midkiff* that not only is the economic health of a city subject to the police power vested in the states, but this ". . .police power. . .is an extremely narrow one." *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 240 (1984) (quoting *Berman v. Parke*r, 348 U.S. 26, 32 (1954)). The Public Use Clause employs a rational-basis test. *Midkiff*, 467 U.S. at 241. If the exercise of eminent domain "is rationally related to a conceivable purpose," it satisfies the public use requirement. *Id.* at 240. A court should only "strike down a taking, that, by clearly showing, is intended to favor a particular party, with only incidental or pretextual public benefits." *Kelo v. City of New London*, 545 U.S. 469, 491 (2005). The legislature's determination of what constitutes "public use" is afforded considerable deference unless it is shown to be an "impossibility." *Midkiff*, 467 U.S. at 240. Unless it is obvious that the government's rationale is completely unreasonable, the court will not determine what constitutes a "public use." *Id.* at 241; *Ruckleshaus v. Monsanto Co*., 467 U.S. 986, 1015 (1984) ("Our review is limited to determining that the purpose is legitimate and that Congress rationally could have believed that the provisions would promote that objective.").

While it is true it has been impractical to define "public use," courts have applied its broad meaning in many situations. *Brown v. Gerald*, 100 Me. 351, 61 A. 785 (1905) ("The term 'public use' is difficult of exact definition, and most courts have avoided giving one …. In an inevitability changing world an attempt to do so would be unwise, if not futile."). This Court has established that public safety, public health, morals, peace, and maintaining law are merely "some. . . examples of the traditional application of the police power," and do not serve as limitations. *Berman v. Parker*, 348 U.S. 26, 32 (1954). Moreover, this Court has repeatedly

embraced the broader test of "public use" as "public purpose." *See Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158-64 (1896); *Strickley v. Highland Boy Gold Mining Co*., 200 U.S. 527, 531 (1906) (acknowledging "the inadequacy of use by the general public as a universal test."). Thus, the broadly defined parameters of "public use" strongly reject any attempt to overturn *Kelo.*

In *Kelo*, while it may seem that the trial court and the state's Supreme Court disagreed whether the exercise of the taking here constituted a "public use", that was not the case. The issue was whether the City "failed to adduce "clear and convincing evidence" that the economic benefits of the plan would...pass." *Id.* at 477. All judges, including the dissent, agreed that under the rational basis review, their economic plan "was intended to revitalize the local economy, not to serve the interests of [the business]." Thus, it constituted a "public use." *Id. at* 491.

In the present case, the State of New Louisiana's exercise of eminent domain is rationally related to a conceivable purpose, and thus satisfies the "public use" standard. The State formed a comprehensive economic community plan to revitalize struggling communities, benefiting both businesses and local residents. Specifically, the State's plan will raise tax revenue, increase property values, attract tourists, and create over 3,000 jobs. R. at 2. This aligns directly with the broad interpretation of "public use" established by this Court in *Berman* and *Midkiff*. These efforts undoubtedly serve a public purpose by promoting economic growth and enhancing the overall welfare of the community. For example, a significant portion–fifteen percent–of the tax revenue generated from the plan will be used to revitalize the surrounding community and ensure long-lasting benefits. R. at 2. Currently, the area in dispute has been "struggling to produce marketable crops because of the soil conditions, and many plots have been overgrown, depleting their value as farmland." R. at 2. The residents' homes "require substantial improvements" and

"deplete the local market value." R. at 2. By raising taxes, increasing property values, attracting tourists, and creating over 3,000 jobs for the community, the plan directly aims to combat these issues, which aligns with the court's historical interpretation of "public use." Thus, the State's taking constitutes a "public use."

It is well understood that "a *purely* private taking could not withstand the scrutiny of the public use requirement." *Kelo v. City of New London*, 545 U.S. 469, 478 (2005) (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984) (emphasis added). However, that was not the case in *Kelo*. Both the trial court and the state Supreme Court, which were well-acquainted with local concerns, all "agree[d] that there was no evidence of an illegitimate purpose." *Kelo*, 545 U.S. at 478. Petitioners and their supporters argue that *Kelo* should be overturned because it permits the transfer of private property to another private entity. However, once a public purpose has been identified, like here (improve economic conditions), the legislature retains the sole authority to determine how to achieve that purpose. In *Berman*, this Court emphasized, "[t]he means are for Congress and Congress alone to determine, once the public purpose has been established." *Berman*, 348 U.S. at 33. The Court further rejected the notion that "public ownership is the sole method of promoting the public purposes of community development projects." *Id.* at 34. Importantly, "public use" does not require the property to be used by the general public. *See Mt. Vernon-Woodberry Cotton Duck Co., v. Alabama Interstate Power Co*., 240 U.S. 30, 32 (1916) ("the inadequacy of use by the general public as a universal test is established"); *see also Ruckleshaus v. Monsanto Co.*, 467 U.S. 986, 1014-1915 (1984) ("This Court, however, has rejected the notion that a use is a public use only if the property taken is put to use for the general public."). The fact that a private party benefits from a project does not negate its public use. This is because, in many cases, public benefits "coincide with the

immediate benefit of private parties." *Kelo*, 545 U.S. at 485; *Nat'l R.R. Passenger Corp. v. Bo. & Me. Corp*. 503 U.S. 407, 422 (1992) (public purpose of "facilitating Amtrak's rail service" served by taking rail track from one private company and transferring it to another private company.). The court long ago rejected any literal requirement that condemned property be put into use for the general public. This is because "[i]t is not essential that the entire community, not even any considerable portion, …directly enjoy or participate in any improvement in order [for it] to constitute a public use." *Midkiff,* at. 244 (citing *Rindge Co. v. Los Angeles*, 262 U.S. 700, 707 (1923); *Kelo*, 545 U.S. at 485; *see also Nat'l R.R. Passenger Corp. v. Bo. & Me. Corp*. 503 U.S. 407, 422 (1992) (public purpose of "facilitating Amtrak's rail service" served by taking rail track from one private company and transferring it to another private company.).

Today, collaboration between the public and private sectors is more critical than ever and should be encouraged. Governments, such as the State of New Louisiana, often lack the financial resources to execute large-scale projects such as this economic revitalization plan. Public-private partnerships are essential for achieving public objectives and securing public benefits. "Public use" was purposely made to be broad to achieve such objectives. The argument that taking one private party's property to benefit another private party has been addressed repeatedly by the Court, which affirmed that the "means of executing projects are for Congress and Congress alone." *Midkiff*, at. 240. Overturning *Kelo* will not resolve these questions because there is precedent beyond *Kelo* that addresses this; however, overturning *Kelo* will jeopardize the stability of Takings Clause jurisprudence and throw public-private partnerships into disarray, potentially endangering the number of public benefits conferred by such partnerships.

Uncertainty regarding a project's success is not a valid reason to overturn *Kelo*. It is not within the court's authority to determine whether the act or purpose will achieve its goals. As

noted in *Midkiff*, "whether in fact the provision will accomplish its objectives is not the question: the [Fifth Amendment] is satisfied if the [state] legislature rationally could have believed that the [Act] would promote its objective." *Midkiff*, 467 U.S. at 243. Furthermore, this Court has made it clear that "[w]hen 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." *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 243 (1984); *see also Nat'l R.R. Passenger Corp. v. Bos. & Me. Corp*., 503 U.S. 407, 422-23(1992) ("[W]e need not make specific factual determination whether condemnation will accomplish its objectives."). Legislatures will always face uncertainties, whether *Kelo* is upheld or overturned. The potential for failure is inherent in any project or decision. These are risks that the constituents of the State of New Louisiana accepted when electing their officials. Citizens elect their officials trusting that the officials will exercise proper judgment and achieve favorable outcomes for the community. But as with everything, that is not a guarantee nor a right.

In sum, the Takings Clause of the Fifth Amendment should be interpreted in light of long-standing precedents that emphasize a broad understanding of "public use" as serving as a legitimate public purpose, even if private entities incidentally benefit from the taking.

B. Overruling *Kelo* Would Undermine *Stare Decisis* and Destabilize Established Precedents in Takings Law.

This Court should maintain its public use precedent and not overrule *Kelo*, as doing so would undermine *stare decisis* and destabilize established precedents in Takings jurisprudence. This Court has long recognized that maintaining precedent promotes consistency, predictability, and judicial integrity. *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) ("*Stare decisis* is the

preferred course because it promotes the evenhanded, predictable and consistent development of legal principles..."). Departure from *stare decisis* is warranted only for "exceptional action[s]" that demand "special justification," particularly in cases like *Kelo*, where settled law has guided legal and societal expectations. *Janus v. AFSCME*, 585 U.S. 898, 955 (2018) (citing *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984); *Randall v. Sorrel*, 547 U.S. 230, 243-422 (2006). For a precedent to be overturned, it must meet a high threshold of it "not just [being] wrong, but grievously or egregiously wrong." *Ramos v. Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring). The party challenging *stare decisis* bears the heavy burden. *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 395 (2022) (emphasizing that a party seeking to overrule precedent must demonstrate a "heavy burden of persuading the Court that changes in society or in the law dictate that the values served by stare decisis yield in favor of a greater objective."). The Petitioners cannot meet this heavy burden as overturning *Kelo* would have grave consequences.

When deciding whether *stare decisis* requires adherence, courts consider several factors: the quality of the reasoning, the workability of the rule it established, its consistency with other related decisions, and reliance on the decision. *Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018).

Both *Berman* and *Midkiff* laid the foundation for *Kelo*, establishing that public use under the Takings Clause is broad and includes economic revitalization plans. These cases affirmed that the government's use of eminent domain to achieve public purposes, whether urban development (*Berman*) or addressing land monopolies (*Midkiff)* will suffice. *Kelo* simply followed the well-established line of precedent and overturning it would undermine over half a century of settled law.

1. Quality of the Reasoning

The quality of a decision's reasoning involves assessing whether the prior decision was well-reasoned, logically sound, and supported by a unified court. *Gamble v. United States*, 587 U.S. 678, 755 (2019); *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2290 (2024); *Franchise Tax Bd. v. Hyatt*, 587 U.A. 230, 248 (2019); *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 358 (2022). The decision in *Kelo*, which rests upon the unanimous and deferential precedents of *Berman* and *Midkiff*, is well-reasoned and logically sound.

Prior cases, including *Berman* and *Midkiff*, have established that economic development qualifies as a "public use" and serves a legitimate public purpose. This is grounded in the principle that "public use" should be interpreted as "broad and inclusive." *Berman v. Parker*, 348 U.S. 26, 33 (1954). In *Berman*, this Court made clear that the government's determination of "public use" falls under its police powers, and that term is broad enough to encompass issues such as "public safety, public health, morality, peace and quiet," with the understanding that this list is not exhaustive. *Berman,* at. 31. This is because it is well within the legislatures' powers and theirs "alone to determine, once the public purpose has been established." *Id.* at 31.

Building on *Berman*, *Midkiff* expanded the scope of "public use," holding that the government's action of transferring property from one private party to another was justified under "public use" because it reduced the concentration of landownership, which was deemed a public purpose. *Midkiff,* at. 240. *Midkiff* set a clear precedent for future cases involving economic development, paving the way for a case such as *Kelo*, where this Court similarly upheld the taking of property for economic revitalization aimed at reversing the declining local economy.

The decisions in *Berman* and *Midkiff* were both unanimous, which weighs heavily in favor of the decision being well-reasoned and logically sound. In assessing the weight of earlier

cases, this Court emphasized the importance of evaluating the precedential weight of earlier decisions, emphasizing that the unanimous decision gives support and tends to reflect a stronger consensus on the reasoning behind the ruling. *Randall v. Sorrel*, 547 U.S. 230, 244 (2006). The fact that *Midkiff* reaffirmed the principles of *Berman* thirty years later with a unanimous decision reinforces the soundness of the reasoning in these cases. *Id.* at 244. (giving deference to *stare decisis* when the precedent in question has become settled through iteration and reiteration over a long period of time); 13 Charles L. Brieant, *Moore's Federal Practice* § 26.40 (2024).

It is important to acknowledge that even the dissenting judges in *Kelo* agreed that the economic development plan was intended to serve a valid public purpose, meeting the "public use" standard. Thus, recognition by a state court, which is more knowledgeable about the specific needs of its citizens, supports the sound reasoning behind the decision.

2. Workability of the Rule it Established

Precedents that are simple and workable weigh heavily in favor of maintaining *stare decisis*. *Kimble v. Marvel Entm't LLC*, 576 U.S. 446, 459 (2015). Recognizing economic revitalization plans as "public use" is both simple and workable. If the rule can be understood and applied in a consistent and predictable manner, then it is workable and weighs in favor of upholding *stare decisis*. *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 281(2022) ("[An] important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable – that is, whether it can be understood and applied in a consistent and predictable manner."); *Montejo v. Louisiana,* 556 U.S. 778, 792 (2009; *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989).

This Court must uphold the precedent that "public use" is broad and inclusive, particularly in a rapidly evolving society. *Citizens United v. Federal Election Comm'n*, 558 U.S.

310, 364 (2010) (Court remarked that "[r]apid changes in technology–and the creative dynamic inherent in the concept of free expression– counsel against upholding a law that restricts political speech in certain media or by certain speakers."). It is crucial for this Court not to restrict the definition of "public use." Narrowing the definition would limit governments, like the State of New Louisiana, from adapting to community concerns and evolving societal needs, and further undermine the established precedents in *Berman* and *Midkiff*. The current standard of "public use" grants legislatures the flexibility to address their community needs. In *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, the court noted that "use by the public" as a means to restrict would be difficult to administer and could not evolve with changing community needs. *Id*. at 32. Narrowing the standard would complicate its application and make it less workable, which contradicts the takings clause intended purpose.

While some states have enacted statutes regulating eminent domain, this does not render the decision unworkable. Instead, it demonstrates the flexibility of the ruling, allowing states to adapt their laws to address local concerns while maintaining the broad principles established by this Court. This ability shows the workability of *Kelo*, allowing room for states to adjust as needed. In *Dobbs*, this Court rejected concern that the Court should consider whether "American people's belief in the rule of law would be shaken." *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 290 (2022). So, while there may be demands to overturn *Kelo*, this concern must not be considered.

3. Consistency with Other Related Decisions

Kelo is aligned with the longstanding public use precedents. *Kelo* does not create a new standard. It reaffirms the court's continuous efforts in upholding the broad application of "public use," as established in *Berman* and *Midkiff*. Given that *Kelo* does not stand as an outlier, *Kelo* is

consistent with other related decisions. *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 248 (2019) (stating that *stare decisis* did not compel continued adherence to it as it was an "outlier"). *Kelo* is part of a well-established framework. *See Bradley*, 164 U.S. at 158-84 (interpreting "public use" as "public purpose."). Even Justice Thomas's dissent acknowledges that the Court relied "almost exclusively on this Court's prior cases" to decide *Kelo*. *Kelo*, at 523. This further emphasizes that *Kelo* did not establish a novel rule but merely clarified the consistent application of long-standing principles in public use cases.

4. Reliance on the Decision

Kelo has been consistently relied upon by courts and legislatures. This reliance is evident in this Court's refusal to revisit *Kelo*. *See Eychaner v. City of Chicago*, 141 S. Ct. 2422, 3422 (2021) (cert. denied). This is reflective of this Courts' adherence to the clarity provided by *Berman*, *Midkiff*, and *Kelo*.

In cases involving property rights, considerations favoring *stare decisis* are "at their acme," as parties "rely heavily on precedent when organizing their affairs" *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 457-58 (2015); *Cherokee Nation or Tribe of Indians v. Oklahoma*, 397 U.S. 620 (1970) ("We recognize the importance of stare decisis to decisions affecting property rights."); *See* 13 Charles L. Brieant, *Moore's Federal Practice* § 26.40 (2024). The rulings in *Berman*, *Midkiff*, and *Kelo* provide a clear framework that legislatures and state courts have consistently used to guide property projects and disputes. As Judge Hayes of the Thirteenth Circuit observed, "Redevelopment projects take years, require negotiations and planning with multiple parties, and cost millions of dollars." R. at 13. Overturning *Kelo* would "halt" these plans, and "communities could suffer because one property owner refuses to sell." R. at 13.

In sum, the well-reasoned foundations established in *Berman* and *Midkiff*, the workable standard established, its alignment with longstanding precedent, and the significant reliance on it in property rights all weigh heavily in favor of upholding *Kelo* under the principles of *stare decisis*. Overruling *Kelo* would destabilize established legal frameworks and distort states and legislatures' practical reliance on this precedent when deciding how to promote economic growth in struggling communities such as the New State of Louisiana.

C. Overruling *Kelo* Would Tie the Hands of the Legislatures, Preventing Them from Addressing Local Community Needs.

No one community is the same – California is very different, compared to Idaho. A plan that improves a community in California will not yield the same positive results in a community like Idaho.

This is why property disputes are best resolved at the local level, where the unique characteristics and needs of each community can be effectively addressed. States have a sovereign right of eminent domain. As this Court noted in *Kelo*, "[o]ur earliest cases in particular embodied a strong theme of federalism, emphasizing the 'great respect' that we owe to state legislatures and state courts in discerning local public need." *Kelo*, 545 U.S. at 483. This Court should continue to honor this principle because the needs of communities can vary significantly based on "resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of people." *Hairson v. Danville & Western R. Co*., 208 U.S. 598, 606-07 (1908).

Moreover, in *O'Neill v. Leamer*, the Court acknowledged that "there is nothing in the Federal Constitution which denies [states] the right to formulate. . .policies or to exercise the power of eminent domain in carrying it into effect." *O'Neill v. Leamer*, 239 U.S. 244, 253 (1915). State courts are the best to evaluate and assess local conditions as they have a duty to the

state and its people. Thus, their judgment should be given the highest priority. *O'Neill*, 239 U.S. at 253 ("With the local situation the state court is peculiarly familiar and its judgment is entitled to the highest respect."). As *Kelo* recognized, "[p]romoting economic development is a traditional and long accepted function of the [state] government." *Kelo*, 545 U.S. at 484. Narrowing the definition of public use would inhibit local governments' ability to execute plans effectively.

The Court should continue to "decline to second-guess the City's considered judgments about the efficacy of its development." *Kelo*, 545 U.S. at 488-89. As Justice Thomas's dissent in *Kelo* noted: "[c]ourts are ill-equipped to evaluate the efficacy of proposed legislative initiatives," emphasizing the role of the legislature as the "main guardian of the public needs to be served by social legislation." *Kelo*, 545 U.S. at 499; *see also Berman v. Parker*, 348 U.S. 26, 32 (1954).

In conclusion, overturning *Kelo* would severely hinder state and local governments' ability to respond effectively to their community needs, ultimately stifling economic growth and development in areas like the State of New Louisiana. Overturning *Kelo* means denying communities, not just in New Louisiana, but across the country, economic relief they desperately need.

II. TO ALLOW TAKINGS CLAUSE CLAIMS DIRECTLY AGAINST STATES UNDERMINES PRINCIPLES OF FEDERALISM AND STATE SOVEREIGN IMMUNITY, WHICH CONGRESS AND THE COURTS HAVE HISTORICALLY PROTECTED.

Sovereign immunity, enshrined in the Eleventh Amendment, provides States with immunity from private suits in federal court, absent express waiver or revocation by Congress. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989) ("Eleventh Amendment bars such suits unless the State waived its immunity or unless Congress has exercised its undoubted power to override that immunity"). Traditionally, courts have

refused to revoke state immunity when Congress fails to explicitly authorize private suits against States for damages. Both the Tucker Act, 28 U.S.C. § 1491, and 42 U.S.C. § 1983 waive immunity and create a cause of action under which relief for constitutional rights violations, including under the Takings Clause, can be sought. Petitioners concede that neither statute applies here. Petitioners assert that the "Tucker Act and § 1983 waive sovereign immunity but were not the source of the cause of action for a remedy for a taking." R. at 4. As such, the State of New Louisiana has immunity from liability for monetary damages, which is what Petitioners inverse condemnation claims seek, and Petitioners cannot show a waiver of the State's immunity from liability. The Thirteenth Circuit correctly affirmed and held that the Fifth Amendment only provides a right to just compensation if a right to sue is otherwise provided by law.

A. The Takings Clause Does Not Create a Direct Cause of Action Against a State, As It Relies on Legislative Mechanisms for Enforcement.

In addition to establishing a waiver of sovereign immunity, a plaintiff seeking to hold a State liable for damages must also "identify a cause of action that entitles it to sue." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 112 (1984). Despite the lack of waiver, Petitioner's Fifth Amendment taking claims would still fail because, as they properly concede, they do not have a cause of action allowing such a claim against the State under the Tucker Act or 42 U.S.C. § 1983. A claimant seeking compensation for a constitutional violation must use a statutory cause of action, mainly 42 U.S.C. § 1983. *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994) ("Section 1983 provides a federal cause of action for the deprivation, under color of law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws' of the United States."). In the present case, Petitioners cannot invoke Section 1983 against the State itself. Section 1983 states, in

relevant part, "every person who, under color of law, subjects a citizen to deprivation of his federal rights shall be liable to that citizen." 42 U.S.C. § 1983. The State is not a "person" within Section 1983's meaning. *Mich. Dep't of State Police*, 491 U.S. at 66. (the Court found that "common usage of the word "person" did not include the State, thus, the Court construed § 1983 as excluding the State from the definition of "person"). Thus, "Section 1983 actions do not lie against a State." *Arizonans for Official Eng. v. Arizona,* 520 U.S. 43, 69 (1997) ("We have held that § 1983 actions do not lie against a State").

As this Court has held, "constitutional rights do not come with a built-in cause of action to allow for private enforcement in courts." *DeVillier v. Texas*, 601 U.S. 285, 291 (2024). The Takings Clause guarantees just compensation for government takings of property, but does not, by itself, create a direct right of action against States. Instead, the Takings Clause relies on legislative mechanisms for enforcement, and this Court's holdings further support this. When the government violates the Takings Clause, a property owner may bring a Fifth Amendment claim under 42 U.S.C. § 1983.

In *DeVillier*, the Fifth Circuit explicitly held that the Fifth Amendment Takings Clause, as applied to the States, does not provide a right of action for takings claims against a State. *Id.* at 285. This Court agreed, holding that Texas law provided a cause of action, and thus, plaintiffs were instructed to pursue their claims under the Takings Clause through Texas law. *Id.* Courts have long recognized that Congressional statutes produce private rights of action and remedies. In *Alexander v. Sandoval,* the Court explained that "private rights of action to enforce federal law must be created by Congress." 532 U.S. 275, 286 (2001) ("remedies available are those that Congress enacted into law. The Court held that the judicial task was to interpret the congressional statute to determine whether it

contains an intent to create, not just a private right, but also a private remedy"). This rule is paramount even when the "underlying federal law is the Constitution". *Ziglar v. Abbasi*, 582 U.S. 120, 133 (2017).

Petitioners mistakenly argue that the text of the Fifth Amendment provides their cause of action. The Supreme Court's decisions illustrate that constitutional rights violation claims are traditionally invoked in cases under other sources of law or asserted per an independent cause of action designed specifically for that purpose. Implying a cause of action from the Fifth Amendment's Takings Clause would undermine centuries of precedent. The Supreme Court has long recognized that another source of law must provide the cause of action because the Fifth Amendment does not include an inherent cause of action, and thus, without statutory support, Petitioners do not state a cause of action upon which relief can be granted.

B. Federalism Principles and Sovereign Immunity Preclude the Recognition of a Self-Executing Cause of Action Under the Taking Clause Against States.

Federalism, the division of power between federal and state governments, ensures the states' autonomy and checks and balances between the branches of the federal government. The Framers of the Constitution sought to ensure that there was a clear division of federal and state powers, which in turn, prompted the creation of the Tenth Amendment. The Tenth Amendment reserves the powers not specifically delegated to the federal government "to the states respectively, or to the people." U.S. CONST. amend. X, § 1. When a party seeks to "assert an implied cause of action under the Constitution itself, separation of powers principles is central to the analysis." *Ziglar,* U.S. 120 at 135. Here, Petitioners assert that the Fifth Amendment is self-executing, therefore, this Court must include the separation of powers principle in its analysis. Traditionally, this Court has

supported the Framers' notion and upheld the separation of powers principle, holding that, the Constitution "protects rather than creates property interests." *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998) and generally "state law defines property interests." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 707 (2010). Courts have long recognized that States are best equipped to handle takings claims because they are most familiar with their citizens' needs. Allowing federal courts to decide direct claims against States under the Takings Clause would significantly interfere with the balance of power between federal and state governments. This Court has held that when the States immunity from private suits is disregarded the "course of their public policy and the administration of their public affairs can become subject to and controlled by the mandates of judicial tribunals without their consent, and in favor of individual interests." *Alden v. Maine,* 527 U.S. 706, 750 (1999). The Supreme Court has consistently held that States have a crucial role in resolving property disputes, and thus, the Court should not interfere with the State's constitutionally bestowed power to govern in accordance with the will of its citizens.

This Court has repeatedly emphasized that State sovereign immunity is a fundamental pillar of the constitutional design, reflecting the balance between federal authority and state sovereignty. Sovereign immunity, preserved in the Eleventh Amendment, provides States with immunity from private suits in federal court, immunity from liability, and protects the State from judgments even if it has consented to the suit. *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 373 (2006), *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993). The Eleventh Amendment has been construed to deprive federal courts of jurisdiction over suits by private parties

over non-consenting states. Unless the State waives its immunity or Congress overrides it, States are immune to private suits. *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 952 (9th Cir. 2008), *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). In the present case, New Louisiana has immunity from liability in suits seeking to "control state action by imposing liability on the State," including through a claim for money damages. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 856 (2002). This Court has held that where the "purpose of a proceeding against state officials is to control action of the State, the suit is against the State and cannot be maintained without the consent of the legislature." *Griffin v. Hawn*, 341 S.W.2d 151, 152 (1960). Here, Petitioners' claims seek to control the State by seeking monetary damages, but such a claim is barred by the State's immunity from liability. *Meyers v. Texas*, 410 F.3d 236, 241 (5th Cir. 2005). Absent some waiver, New Louisiana's sovereign immunity from liability for money damages remains intact.

This Court has recognized that suits for money damages against States may "threaten the financial integrity of the states." *Reata Constr. Corp.*197 S.W.3d at 373. Here, Respondents are in the process of building a ski-resort to economically revitalize the community. The ski resort will increase tax revenue for the area, attract wealthy tourists, and provide over 3,000 new jobs for New Louisiana citizens. R. at 2. Allowing money damages for Petitioners in this instance would thwart the State's rejuvenation efforts and force New Louisiana citizens to remain in squalor. The area in dispute was traditionally used for farming and has been consistently struggling to produce marketable crops because of the soil conditions. R. at 2. This consistent struggle has resulted in many plots being neglected and depleted in value. R. at 2. The average income in the area is barely $50,000,

and the revenue derived from the ski resort will seriously combat these issues. The State has a duty to its citizens to enhance and protect their communities, and thus, to grant Petitioner's claim for money damages against the State would foil the State's development plan to economically revitalize the communities of its citizens.

CONCLUSION

For the reasons stated herein, this Court should not overturn *Kelo* as economic development constitutes a permissible "public use" and reaffirm that the Fifth Amendment is not self-executing.

Respectfully submitted.

/s/ Team 8

DATED: October 21, 2024, Counsel for Respondents