No. A-_____

In the Supreme Court of the United States

KEITH PUNTENNEY; LAVERNE I. JOHNSON; RICHARD R. LAMB, TRUSTEE OF THE RICHARD R. LAMB REVOCABLE TRUST; MARIAN D. JOHNSON BY HER AGENT VERDELL JOHNSON; NORTHWEST IOWA LANDOWNERS ASSOCIATION; AND IOWA FARMLAND OWNERS ASSOCIATION, INC.,

Applicants,

v.

IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA; OFFICE OF CONSUMER ADVOCATE; THE MAIN COALITION; AND DAKOTA ACCESS, LLC,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

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CORPORATE DISCLOSURE STATEMENT

Iowa Farmland Owners Association, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

To the Honorable Neil M. Gorsuch, Associate Justice of the United States Supreme Court and Circuit Justice for the Eighth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicants Keith Puntenney; LaVerne I. Johnson; Richard R. Lamb, trustee of the Richard R. Lamb Revocable Trust; Marian D. Johnson by her Agent Verdell Johnson; Northwest Iowa Landowners Association; and Iowa Farmland Owners Association, Inc. respectfully request a 60-day extension of time, until October 28, 2019, within which to file a petition for a writ of certiorari. The Supreme Court of Iowa issued its opinion on May 31, 2019. The opinion, a copy of which is attached, App., *infra*, 1a–48a, is reported at 928 N.W.2d 829 (Iowa 2019). This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Absent an extension, a petition for a writ of certiorari would be due August 29, 2019. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This appeal concerns a decision by the Supreme Court of Iowa concerning an important federal question that stands in conflict with the decisions of other state courts of last resort, and which presents an important question of federal law that has not been, but should be, settled by this Court.

4. Applicants seek review of a divided decision of the Supreme Court of Iowa concerning whether the state could delegate its power of eminent domain to a private pipeline, allowing it to obtain rights-of-way to transport crude oil from North

Dakota, through Iowa, to Illinois. While purporting to follow the dissenting opinion from this Court's decision in *Kelo v. City of New London*, 454 U.S. 469 (2005), the Iowa Supreme Court's analysis violated the Fifth Amendment's "public use" requirement as interpreted by all nine justices in *Kelo* because it mischaracterized the proposed pipeline as a common carrier and blessed a pretextual public purpose with only hypothetical incidental economic benefits to Iowans.

5. The Iowa Supreme Court held that the exercise of eminent domain did not violate the Takings Clause of the Fifth Amendment to the U.S. Constitution by reasoning that the private pipeline qualified as a common carrier, rendering the taking for a "public use." App. at 32a. In relying on the pipeline owner's purported status as a *national* common carrier, the Iowa court overruled objections that the taking was a pretextual transfer from one private party to another that would provide, at most, incidental benefits to the public in Iowa. *Id.* at 33a–34a. But it is undisputed that no member of the Iowa public will be able to use the pipeline, and that the pipeline will neither pick up nor drop off oil in the state of Iowa.

6. This use of eminent domain to permit a pipeline to carry oil from outside Iowa, through the state, to a destination outside Iowa exceeded the government's authority, which, at most, permits the state to transfer property from one private party to another for a "public purpose" to be enjoyed within that state's boundaries. *See, e.g.*, *Kohl v. United States*, 91 U.S. 367, 373–74 (1875) ("The proper view of the right of eminent domain seems to be, that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another."); *Adams*

v. Greenwich Water Co., 83 A.2d 177, 182 (Conn. 1951) ("[N]o state is permitted to exercise or authorize the exercise of the power of eminent domain except for a public use within its own borders.").

7. This Court cautioned in *Kelo* that "transferring citizen *A*'s property to citizen *B* for the sole reason that citizen *B* will put the property to a more productive use" would constitute an "unusual exercise of government power" and an "aberration[]" that was not presented by that case. 545 U.S. at 486–87 & n.17. The majority explained that eminent domain cannot be exercised "under the mere pretext of a public purpose," *id.* at 478, and Justice Kennedy's concurrence, which supplied the crucial fifth vote, emphasized that the Fifth Amendment prohibits the transfer of private property from one private party to another for only "incidental or pretextual public benefits," *id.* at 490 (Kennedy, J. concurring). This appeal presents an opportunity for this Court to clarify its decision in *Kelo* regarding the prohibition on states performing pretextual takings with only incidental public benefits (and, indeed, as here, *no* public benefits), particularly where the supposed "public use" and "public purpose" at issue will be enjoyed solely outside the state's boundaries. Taking their cue from both the majority and concurring opinions in *Kelo*, state courts of last resort have developed inconsistent tests for evaluating an allegedly pretextual taking, generating considerable confusion and creating an urgent need for this Court to further elucidate the "public use" requirement of the Takings Clause.[1]

[1] *See, e.g.*, Ilya Somin, *The Judicial Reaction to Kelo*, 4 Alb. Gov't L. Rev. 1, 3 (2011) ("[S]tate courts have been all over the map in their efforts to apply *Kelo*'s restrictions on 'pretextual' takings. There is no consensus in sight on this crucial

8. Applicants respectfully request an extension of time to file a petition for certiorari. Applicants confirmed their engagement of undersigned counsel just this week. A 60-day extension would allow recently retained counsel sufficient time to fully research and analyze the important constitutional issues presented and prepare the petition for filing. In addition, undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before August 29, 2019.

Wherefore, Applicants respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to October 28, 2019.

August 16, 2019

Respectfully submitted,

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issue. It may be that none will develop unless and until the Supreme Court decides another case in this field."); *Cty. of Hawaii v. C & J Coupe Family Ltd. P'ship*, 119 Haw. 352, 384 (2008) (applying a "predominantly private benefit" test); *Franco v. Nat'l Capital Revitalization Corp.*, 930 A.2d 160, 173 (D.C. 2007) (testing for pretext by comparing public and private benefits); *Middletown Twp. v. Lands of Stone*, 939 A.2d 331, 337 (2007) (focusing on "the real or fundamental purpose" of the taking); *Mayor & City Council of Baltimore City v. Valsamaki*, 916 A.2d 324, 352 (2007) (focusing on whether the government exercised eminent domain according to an established development plan); *Rhode Island Econ. Dev. Corp. v. The Parking Co., L.P.*, 892 A.2d 87, 104 (R.I. 2006) (same).