No. _____

In The
Supreme Court of the United States

WOODCREST HOMES, INC.,

Petitioner,

v.

CAROUSEL FARMS METROPOLITAN DISTRICT,

Respondent.

On Petition for a Writ of Certiorari to the Colorado Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the Fifth Amendment's restriction of eminent domain to "public use[s]" satisfied even if a condemnation is undertaken "for the purpose of conferring a private benefit on a particular private party"?

PARTIES TO THE PROCEEDING

Petitioner is Woodcrest Homes, Inc., a Colorado corporation. Respondent is Carousel Farms Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a limited liability company with a sole member: Geonerco Investments, LLC. Geonerco Investments has no parent corporation, and no publicly traded company owns any of its stock.

RELATED PROCEEDINGS

Colorado Supreme Court (Colo.):

> *Carousel Farms Metro. Dist.* v. *Woodcrest Homes, Inc.*, 18SC30 (June 10, 2019)

Colorado Court of Appeals (Colo. App.):

> *Carousel Farms Metro. Dist.* v. *Woodcrest Homes, Inc.*, 15CA1956 (Nov. 30, 2017)

District Court of Douglas County, Colorado (Douglas Cty. Dist. Ct.):

> *Carousel Farms Metro. Dist.* v. *Woodcrest Homes, Inc.*, 2015CV30013 (April 1, 2015)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the judgment of the Colorado Supreme Court.

OPINIONS BELOW

The opinion of the Colorado Supreme Court, App. 1, is reported at 442 P.3d 402. The opinion of the Colorado Court of Appeals, App. 27, is reported at 444 P.3d 802. The opinion of the Colorado District Court, App. 50, is not reported.

JURISDICTION

The judgment of the Colorado Supreme Court was entered on June 10, 2019. On August 16, 2019, Justice Sotomayor granted Petitioner's application for an extension of time, giving Petitioner until November 7, 2019, to file its petition. This petition is timely filed on that date. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides, "nor shall private property be taken for public use, without just compensation."

STATEMENT

In *Kelo* v. *City of New London* this Court held that a taking by eminent domain cannot be supported by "the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit." 545 U.S. 469, 478 (2005). This case presents a challenge to the Colorado Supreme Court's approval of such a pretextual taking. The opinion below exemplifies the nationwide conflict that has arisen on that issue in the years since *Kelo* was decided.

The parties in this case are Petitioner Woodcrest Homes, Inc., a private developer, and Respondent Carousel Farms Metropolitan District, a "quasi-municipal corporation and political subdivision of the State of Colorado," created and controlled by a competing private developer, Century Communities, Inc.

In 2006, Woodcrest began the process of securing three parcels to build a housing development that would be annexed into the town of Parker, Colorado. Woodcrest purchased Parcel C, a small parcel sandwiched between two larger parcels, A and B, that Woodcrest had the option to purchase. Due to the housing downturn, Woodcrest abandoned its plans and did not exercise its options to purchase parcels A and B. Woodcrest did not develop any of the parcels. App. 3–4.

Years later, Century picked up where Woodcrest left off. Using Woodcrest's plans, Century negotiated with the Town. Century and the Town entered into an agreement that required Century to acquire all three parcels, including Parcel C, before the Town would

annex the development or approve any plats. App. 32–33. This condition was necessary to meet the Town's density requirements; the Town expressed no opinion about the uses to which each parcel would be put. *Ibid.*

Century briefly negotiated with Woodcrest to purchase Parcel C, but the parties could not agree. When Woodcrest refused Century's offer, Century threatened that it would condemn Parcel C with the "Town Council's support." App. 4. But Century never asked the Town to use eminent domain; indeed, as a matter of policy, the Town "doesn't do condemnation." App. 32 (alteration omitted). Instead, Century created a "Special Metropolitan District" and, acting through the District, Century condemned Parcel C directly. App. 5.

Special districts are a creature of Colorado statute. See generally Colo. Rev. Stat. § 32-1-101 *et seq*. To form a district, private parties file a service plan with a local government, stating the intended purpose of the district. Once approved, a court determines whether the petitioners are eligible to vote in the district. If they are, it orders an election of the district's board.

By statute, district residents *and property owners* may vote. *Id.* § 32-1-103(5). It is common, therefore, for a developer to enter into sham option contracts with its own directors, officers, and employees to manufacture an electoral majority and control the district. See App. 62 ("It is common practice in Colorado for a metropolitan district * * * to be controlled by those directly connected with the development."). Although the developer's proxies rarely exercise their options to

purchase property under these contracts, they qualify as district electors, and the developer can maintain absolute control over the district. App. 33 (noting that all of the District's board members are Century principals or employees); see also *Landmark Towers Ass'n, Inc.* v. *UMB Bank, N.A.*, 436 P.3d 1126, 1130, 1137 (Colo. App. 2016) ("[T]he [district] organizers' contracts for options to purchase parcels were sham agreements."), rev'd sub nom. *UMB Bank, N.A.* v. *Landmark Towers Ass'n, Inc.*, 408 P.3d 836 (Colo. 2017).

Once formed, a district is imbued with broad governmental authority. It can tax, issue bonds, and condemn property through eminent domain. Colo. Rev. Stat. §§ 32-1-1001; 32-1-1004. And despite its enormous powers, a district acts without any oversight or approval from any other governmental entity; the district *is* the government. App. 23. ("[T]he District functions as a public entity, not a private one.").

In this case, the District was run exclusively by Century's employees and officers and functioned as Century's "alter ego." App. 28; see also App. 42–43 ("[C]ounsel for the District conceded that the District's directors, all employees of [Century], operated under a conflict of interest in pursuing condemnation of Parcel C."). Indeed, the Directors disclosed their conflict of interest, as required by Colorado law, but nothing prevented them from *acting* under a conflict of interest. See Colo. Rev. Stat. § 18-8-308.

The District took Parcel C to ensure that Century satisfied its agreement with the Town, so that Century

could take the next step in the development process and request approval of its plat. Only then could Century begin construction of the development, including any public improvements thereon. App. 41.

Woodcrest challenged the District's actions at an immediate-possession hearing in Colorado district court, arguing that the taking was not for a public purpose. App. 5. The court upheld the taking, however, finding that it had a public purpose because the District asserted that it would build roads on the property "so that the public can eventually gain access" to the development. App. 66.

The court of appeals reversed. It explained that "[t]he question * * * is not whether the condemned property will eventually be devoted to a public use, but whether the *taking itself* was for a public purpose." App. 40. The court of appeals concluded that it was not. Rather, "the essential purpose of the taking itself was to ensure that [the agreement between Century and the Town was] satisfied so that [Century] could seek approval of its final plat * * * ." App. 41.

The Colorado Supreme Court reversed, upholding the District's use of eminent domain. The court found it irrelevant that Parcel C's acquisition was necessary to satisfy the contract between Century and the Town, and, therefore, necessary for the project to proceed. The court acknowledged that "the *first* benefit to be received * * * [wa]s satisfying the contractual obligations between the District and [the Town], which isn't a public benefit in any sense." App. 16. Nevertheless, the

court held that the taking was "essentially for public benefit" because "Parcel C will be used for public rights of way, storm drainage, and sewer improvements[,]" and "[i]t is difficult to argue that those functions don't essentially benefit the public." App. 15.

REASONS FOR GRANTING THE PETITION

The decision below should not stand. It directly contradicts *Kelo*, where this Court held that a taking's actual purpose is the lodestar for determining whether an instance of eminent domain satisfies the Takings Clause. Where an asserted public purpose is merely pretext, the taking is unconstitutional. Below, the Colorado Supreme Court rejected this Court's instructions, holding, instead, that a taking's actual purpose should not be considered, so long as its stated purpose envisions future public use.

This Court should grant the petition not only to correct the opinion below, but to resolve the growing jurisdictional conflict that it represents. High courts in Connecticut, Georgia, Hawaii, Massachusetts, Pennsylvania, and Rhode Island have all adhered to *Kelo* and held that the actual purpose of a taking must be considered and pretextual takings rejected. High courts in Iowa, New Hampshire, New York, Texas, and, now, Colorado have held precisely the opposite—that a taking's actual purpose is irrelevant. In those jurisdictions, if a taking's stated purpose, pretextual or not, is

a "classic" public purpose (*e.g.*, a road, a public park, or a common carrier), it will be approved.

Without this Court's guidance, courts will continue to be confused about the meaning of "public use," the conflict will deepen, and property owners in a growing number of states will be subject to unconstitutional takings.

A. The decision below conflicts with this Court's holding in *Kelo*.

In *Kelo*, this Court held that the Fifth Amendment does not limit the power of eminent domain to situations where property is being taken for "use by the public," instead embracing a broader "public purpose" test. *Kelo* v. *City of New London*, 545 U.S. 469, 479 (2005). Applying that test, this Court held that—at least in the context of a "comprehensive" plan adopted after "thorough deliberation"—it was constitutional to use eminent domain to transfer property from one private party to another for purposes of promoting "economic development." *Id.* at 484.

This expansion of the eminent-domain power, however, was limited. The majority in *Kelo* stressed that the Takings Clause still prohibits the government "from taking [private property] for the purpose of conferring a private benefit on a particular private party" and, relatedly, from taking private property "under the mere pretext of a public purpose, when its actual purpose [i]s to bestow a private benefit." 545 U.S. at 477–78 (footnote omitted); see also *id.* at 486–87 (noting

that the Court's opinion was not approving "a one-to-one [private] transfer of property [from citizen *A* to citizen *B*], executed outside the confines of an integrated development plan").

This case goes far beyond *Kelo*'s limited expansion of power. Here, the government did not take from *A* and give to *B*. Instead, it delegated its eminent-domain power to *B* so that *B* could simply take from *A* directly. There was no legislative finding of public purpose. Not a single *bona fide* elected official was involved in the process. Instead:

> [W]hen [Century] could not obtain Parcel C at the desired price, the District stepped in to assist [Century] and ensure that the development process could proceed. The fact that [Century] threatened to condemn Parcel C when it had no authority to do so, and then created the District (which promptly initiated condemnation proceedings), suggests a kind of alter ego relationship between the District and [Century], as does the fact that [Century] signed the amendments to the Agreement [with the Town], but the District did not. *In other words*, [*Century*] *spoke for the District and the District acted for* [*Century*].

App. 44 (emphasis added).

And Century used the delegated power of eminent domain for a private purpose: completing its development-and-annexation deal with the Town of Parker. That, too, runs beyond the limits established in *Kelo*. 545 U.S. at 478 (noting that the City would have been

prohibited from "tak[ing] property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit").

Justice Kennedy elaborated on this point in his concurrence, writing that a court "should strike down a taking that, by a clear showing, is intended to favor a particular private party, with only incidental or pretextual public benefits, just as a court * * * must strike down a government classification that is clearly intended to injure a particular class of private parties, with only incidental or pretextual public justifications." *Kelo*, 545 U.S. at 491 (Kennedy, J., concurring). Where there is evidence of pretext, "the risk of undetected impermissible favoritism of private parties is so acute that a presumption (rebuttable or otherwise) of invalidity is warranted under the Public Use Clause." *Id.* at 493. But such a standard was not applicable in *Kelo*, Justice Kennedy explained, because "[t]he identities of most of the private beneficiaries [to the comprehensive development plan] were unknown at the time the city formulated its plans." *Ibid.*

In this case, the evidence of pretext is overwhelming: The private beneficiary was not only known, it created and controlled the condemning authority. When it could not purchase Woodcrest's property through a voluntary exchange, Century formed the District, staffed it with its own conflicted directors and employees, and used the power of eminent domain to take its rival's property. See App. 42–43. As the Colorado Court of Appeals explained:

> [T]he essential purpose of the taking itself was to ensure that the terms and conditions of the Agreement [between Century and the Town] were satisfied so that [Century] could seek approval of its final plat in the first place.

App. 41.

Nevertheless, the Colorado Supreme Court approved the taking because it found that the only relevant issue was the ultimate use to which the taken property would be put. Conceding that the "'taking itself' wasn't for a public purpose," the court held that the primary beneficiary of the taking was irrelevant because the asserted future use was one widely considered to be public: *i.e.*, "public rights of way, storm drainage, and sewer improvements." App. 15–16. On that basis, the court concluded that the taking was "essentially for public benefit." App. 15.

In effect, the court took the so-called "classic categories" of public use Justice O'Connor identified in her *Kelo* dissent and held that so long as the stated purpose of a condemnation falls into one of those categories, it is immune from further scrutiny under the Takings Clause. App. 15; *Kelo*, 545 U.S. at 497–98 (O'Connor, J., dissenting). In other words, if land is taken to build a road, Colorado courts will not inquire into whether that "road" is in fact simply a driveway for a private party or whether it has been placed at the request of a private business in order to destroy a competitor. That rule is flatly contrary to this Court's instruction that a taking is unconstitutional when the "actual purpose [i]s to bestow a private benefit." *Kelo*,

545 U.S. at 478; accord *id.* at 482 ("It is only the taking's purpose * * * that matters in determining public use.") (internal brackets omitted) (citing *Hawaii Housing Auth.* v. *Midkiff*, 467 U.S. 229, 244 (1984)); *id.* at 478 (holding that government may not "take property under the mere pretext of a public purpose").

As a result, whole swaths of condemnations in Colorado are subject to no meaningful public-use analysis at all. Colorado developers are free to create municipal districts, populate them with proxy electors, and wield the government's eminent domain power for their own private benefit without review or oversight. As the court wrote below, while "[p]ermitting some private benefit by public taking may strike some as unusual[ ] * * * Colorado is no stranger to this method of encouraging development." App. 15 n.7.

B. The decision below conflicts with decisions from other jurisdictions and exemplifies the growing rift between public purpose and public use.

The decision below exacerbates a longstanding and growing split of authority about the limits of eminent domain. On one side, Colorado joins the courts of Iowa, New Hampshire, New York, and Texas in holding that the actual purpose of a taking is irrelevant.[1] Iowa

[1] *Puntenney* v. *Iowa Utils. Bd.*, 928 N.W.2d 829, 848 (Iowa 2019) ("[T]his case falls into the second category of traditionally valid public uses cited by Justice O'Connor: a common carrier akin to a railroad or a public utility. This kind of taking has long been recognized in Iowa as a valid public use, even when the

and Texas, like Colorado, reached that conclusion just this year. In all these jurisdictions, the argument of a pretextual public purpose is inapposite. Condemnations can be evaluated only on their face, and their actual purpose is irrelevant.

For instance, earlier this year, the Texas Supreme Court upheld the condemnation of land for a "public road" that was, in reality, nothing more than a second driveway into the private parking lot of a grocery store. The property owner had argued that the purpose of such a taking was simply to bestow a private benefit on a private party. But the court held that even if that were the true purpose of the taking, it was still constitutional unless "the taking would actually confer *only* a private benefit." *KMS Retail Rowlett, LP* v. *City of Rowlett*, No. 17-0850, 2019 WL 2147205, at *12 (Tex. May 17, 2019) (emphasis added), reh'g denied (Oct. 4,

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operator is a private entity and the primary benefit is a reduction in operational costs."), citing *Kelo*, 545 U.S. at 498 (O'Connor, J., dissenting); *Rodgers Dev. Co.* v. *Town of Tilton*, 781 A.2d 1029, 1034 (N.H. 2001) ("[W]henever property is taken for a highway, it is for the public use, notwithstanding that the highway may greatly benefit a private party. Thus, although Market Basket will be particularly benefited by the dedication of the roads to public use, the taking of the landowners' property for that use is constitutional.") (citations and internal quotation marks omitted); *In re Goldstein* v. *N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 172 (N.Y. 2009) (holding that property could be taken so long as it was asserted to be "blight[ed], as that expression has come to be understood and used by political appointees to public corporations relying upon studies paid for by developers"); see also *id.* at 189 (Smith, J., dissenting) (noting that the blight study in question substantially post-dated the original plans to acquire and redevelop the property).

2019). As the dissent observed, "[i]t is nearly impossible to imagine a taking that would fail this standard," *id*. at 18 n.3 (Blacklock, J., dissenting), which means that purpose is now effectively irrelevant in Texas.

Yet, in reaching its decision, the Texas Supreme Court distinguished on-point earlier cases regarding condemnations for other ostensibly "public roads," which were in reality little more than driveways to private property. The court explained that those cases did not apply because the land was in "rural" areas rather than a "densely populated" area. *Id*. at 12. So it appears that the purpose of a taking is irrelevant in the urban parts of Texas, but perhaps not in the rural parts.

Other jurisdictions disagree. The highest courts of Connecticut, Georgia, Hawaii, Massachusetts, Pennsylvania, and Rhode Island have rejected condemnations that on their face were aimed at "classic" public uses like roads or open spaces but whose true purpose was impermissible.[2] This second line of cases is also in

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[2] *New England Estates, LLC* v. *Town of Branford*, 988 A.2d 229, 252 (Conn. 2010) ("[A] government actor's bad faith exercise of the power of eminent domain is a violation of the takings clause."); *Earth Mgmt., Inc.* v. *Heard County*, 283 S.E.2d 455, 459–60 (Ga. 1981) ("The remaining question then is whether the action of the county commissioner in condemning this parcel of land was taken for the purpose of building a public park or whether this was a mere subterfuge utilized in order to veil the real purpose * * * ."); *County of Haw.* v. *C & J Coupe Family Ltd. P'ship*, 198 P.3d 615, 647 (Haw. 2008) ("Plainly it was not the intention of this court in *Ajimine* or of the Supreme Court in *Kelo* to foreclose the possibility of pretext arguments merely because the stated purpose is a 'classic' one."); *Pheasant Ridge Assocs. Ltd. P'ship* v. *Town of Burlington*, 506 N.E.2d 1152, 1157 (Mass. 1987)

keeping with a long line of pre-*Kelo* federal precedent holding that courts have a duty to examine the true purpose of a taking, not just the asserted purpose or the ultimate use of the property.[3]

The split of authority is illustrated as follows:

("The public purposes for which the site purportedly was to be taken were not purposes for which the town intended in good faith to take and use the property. They were selected as a device in the erroneous belief that, as generally lawful public purposes, they would make the taking proper."); *Middletown Twp.* v. *Lands of Stone*, 939 A.2d 331, 337 (Pa. 2007) ("Stated otherwise, the **true** purpose must primarily benefit the public."); *Rhode Island Econ. Dev. Corp.* v. *The Parking Co., LP*, 892 A.2d 87, 107 (R.I. 2006) ("We are of the opinion that the taking in this case was not a proper exercise of the state's condemnation authority, but was designed to gain control of Garage B at a discounted price.").

[3] See *Armendariz* v. *Penman*, 75 F.3d 1311, 1321 (9th Cir. 1996) (en banc) (invalidating a taking because the official rationale of blight alleviation was a mere pretext for "a scheme . . . to deprive the plaintiffs of their property * * * so a shopping-center developer could buy [it] at a lower price * * * ."); *Aaron* v. *Target Corp.*, 269 F. Supp. 2d 1162, 1174–76 (E.D. Mo. 2003), rev'd on other grounds, 357 F.3d 768 (8th Cir. 2004) (holding that a property owner was likely to prevail on a claim that a taking ostensibly to alleviate blight was actually intended to serve the interests of the Target Corporation); *Cottonwood Christian Ctr.* v. *Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1229 (C.D. Cal. 2002) ("Courts must look beyond the government's purported public use to determine whether that is the genuine reason or if it is merely pretext."); *99 Cents Only Stores* v. *Lancaster Redev. Agency*, 237 F. Supp. 2d 1123, 1129 (C.D. Cal. 2001) ("No judicial deference is required * * * where the ostensible public use is demonstrably pretextual."); see also *Kelo*, 545 U.S. at 487 n.17 (favorably citing *99 Cents Only Store*).

Courts that *will* consider a taking's purpose	Courts that *will not* consider a taking's purpose
• **Connecticut** *New England Estates, LLC* v. *Town of Branford*, 988 A.2d 229 (Conn. 2010)	• **Colorado** *Carousel Farms Metro. Dist.* v. *Woodcrest Homes, Inc.*, 442 P.3d 402 (Colo. 2019)
• **Hawaii*** *County of Haw.* v. *C & J Coupe Family Ltd. P'ship*, 198 P.3d 615 (Haw. 2008)	• **Iowa*** *Puntenney* v. *Iowa Utils. Bd.*, 928 N.W.2d 829 (Iowa 2019)
• **Pennsylvania*** *Middletown Twp.* v. *Lands of Stone*, 939 A.2d 331 (Pa. 2007)	• **Texas*** *KMS Retail Rowlett, LP* v. *City of Rowlett*, No. 17-0850, 2019 WL 2147205 (Tex. May 17, 2019)
• **Rhode Island** *Rhode Island Econ. Dev. Corp.* v. *The Parking Co., LP*, 892 A.2d 87 (R.I. 2006)	• **New York*** *In re Goldstein* v. *N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 172 (N.Y. 2009)
• **Massachusetts** *Pheasant Ridge Assocs. Ltd. P'ship* v. *Town of Burlington*, 506 N.E.2d 1152 (Mass. 1987)	• **New Hampshire** *Rodgers Dev. Co.* v. *Town of Tilton*, 781 A.2d 1029 (N.H. 2001)
• **Georgia** *Earth Mgmt., Inc.* v. *Heard Cty.*, 283 S.E.2d 455 (Ga. 1981)	

* Cases occasioning dissenting opinions on the issue of purpose or a closely related issue. See *infra*, n.5.

In any of the courts that consider pretextual public purposes, this case would have been decided differently. For instance, in contrast with the decision below, the Hawaii Supreme Court has held that "although our courts afford substantial deference to the government's asserted public purpose for a taking in condemnation proceeding[s], where there is evidence that the asserted purpose is pretextual, courts should consider a landowner's defense of pretext." *C & J Coupe*, 198 P.3d at 620.

In that case, the County of Hawaii condemned land and transferred it to a private developer, so it could build a road to its to-be-constructed development. The property owner argued that the taking did not have a public purpose because the road at issue was only being built to advance the private interests of the developer.

The Hawaii Supreme Court took the case to address the issue of pretext, noting that *Kelo* "allows Courts to look behind an eminent domain plaintiff's asserted public purpose under certain circumstances." *Id.* at 638. The majority held that "although the government's stated public purpose is subject to prima facie acceptance, it need not be taken at face value where there is evidence that the stated purpose might be pretextual," *id.* at 644, and ultimately remanded the case to the circuit court for consideration of that issue.

The disagreement between *C & J Coupe*'s majority and dissent neatly illustrates the judicial conflict on the issue of pretext. To wit, the dissent argued that all takings should be afforded rational-basis deference, "which includes deference to the government's statement of public purpose." *Id.* at 654 (Moon, C.J., dissenting); see also *id.* at 656 ("In analyzing whether the taking is for a valid public purpose, courts give great deference to the government's determination of public purpose" unless "the party challenging the taking makes a 'clear showing' that the government's stated public purpose is 'irrational,' with 'only incidental or pretextual public benefits.' ") (citations omitted). It further proclaimed that "whenever property is taken for a highway, it is for the public use, notwithstanding that the highway may greatly benefit a private party." *Id.* at 658 (emphasis and quotation marks omitted) (citing *Rodgers*, 781 A.2d at 1034). "[T]he power of eminent domain is merely the means to the end * * * . Once the object[, *i.e.*, the public purpose,] is within the authority of [the government], the means by which it will be attained is also for [the government] to determine." *Id.* at 656 (citing *Midkiff*, 467 U.S. at 240) (internal quotation marks omitted, bracketed changes in original).

The dissenting opinion in Hawaii would have been the majority in New York or Iowa or New Hampshire—and now, in light of the decision in this case, in Colorado as well. Indeed, the ruling below represents the logical conclusion against which the Hawaii Supreme

Court warned in *C & J Coupe*.[4] Colorado now can delegate its eminent domain power to an unsupervised private party, while Hawaii cannot. Iowa can, while Georgia cannot. New Hampshire can, while Pennsylvania cannot, and so on. The confusion is further exemplified by the fact that four of the decisions comprising this split inspired dissents.[5] This Court should grant the petition to clarify which competing interpretation of the Takings Clause applies to governments nationwide.

C. This case provides an effective vehicle to resolve the jurisdictional split of authority over an important constitutional issue.

The proper interpretation of the Public Use Clause is not merely an abstract doctrinal question; it has serious consequences for countless Americans. For instance, while lawyers may quibble about the extent to which *Kelo* broke new ground doctrinally, the data show that the decision had a profound effect in the real

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[4] "Taken to its logical conclusion, [the dissent's argument] would mean that the government could delegate its eminent domain power to a private party if it so chose, so long as the end that was finally achieved was a 'classic public use.' " 198 P.3d at 652.

[5] See *Puntenney*, 928 N.W.2d at 854 (Wiggins, J., dissenting); *In re Goldstein*, 921 N.E.2d at 189 (Smith, J., dissenting); *C & J Coupe*, 198 P.3d at 653 (Moon, C.J., dissenting); *Lands of Stone*, 939 A.2d at 342 (Eakin, J., dissenting); cf. *KMS Retail*, No. 17-0850, 2019 WL 2147205, at *14 (Blacklock, J., dissenting) (arguing that the Texas Constitution provides for a narrower meaning of public use).

world: In the year immediately following *Kelo*, the rate of condemnations tripled nationwide.[6] And, of course, there is simply no way to know how many more properties were sold under the threat of condemnation.

Yet, as discussed above, *Kelo* did contain some important limitations—limitations that Colorado and a growing number of courts around the country have disregarded. These erroneous decisions are unquestionably costing people their homes.

This case presents this Court with an effective and rare vehicle to address the growing confusion over the scope and meaning of the Public Use Clause. The decision below is purely legal, and the parties agree on the relevant facts. App. 9–12. Woodcrest is also a rarity—a condemnee with both the will and means to fight the taking. Most property owners threatened with eminent domain choose to sell rather than litigate. And even when they do litigate, the overwhelming majority of condemnees do not contest the asserted public use of the taking—not because they have no case, but because the only representation they can afford is a contingency-fee lawyer to litigate the issue of just compensation.

This Court should take this opportunity to clarify the meaning of "public use," ensure a consistent application of the Takings Clause nationwide, and, in so

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[6] See Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in a Post-Kelo World*, (Institute for Justice 2006), https://perma.cc/E5HB-LZUJ.

doing, resolve a serious and important constitutional conflict for the bench and bar.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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