

No. 26-167

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IN THE  
**Supreme Court of the United States**

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POPPLETON NOW COMMUNITY  
ASSOCIATION, INC., *et al.*,

*Petitioners,*

*v.*

LA CITE DEVELOPMENT, LLC, *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**REPLY BRIEF FOR PETITIONERS**

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## REPLY BRIEF FOR PETITIONERS

### INTRODUCTION

By accepting “community development” as a public use without enforceable limits, *Kelo* opened Pandora’s box, unleashing an era of municipal overreach that has eroded property rights and destroyed communities. Unlike Pandora, this Court can reseal the box.

In vacating the dismissal for lack of standing, the Fourth Circuit held that Petitioners adequately alleged that Baltimore City violated the Public Use Clause and *Kelo*, and they plausibly tie that violation to “quintessential” damage to their own property interests. *Poppleton Now Cmty. Ass’n v. La Cité Dev., LLC*, 175 F.4th 457, 462–63 (4th Cir. 2026). Yet, relying on *Rakas v. Illinois*, 439 U.S. 128 (1978), the panel held that Petitioners lack a cause of action because their own homes were not taken. *Id.* at 463. Petitioners adequately pleaded a § 1983 claim, and even if not, federal courts have long exercised equitable power to enjoin state actions that exceed constitutional limits. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).

Respondents recast Petitioners’ answer to *Rakas* as a bid to open every condemnation to new plaintiffs, and raise procedural objections unsupported by the law and record. *See infra*, Part I. Respondents’ position that *Berman*, not *Kelo*, applies is more troubling. For two decades, the City justified taking 13.8 acres of Poppleton as development for the community’s benefit. Now it invokes *Berman v. Parker*, 348 U.S. 26 (1954), the decision that blessed block clearing—later critiqued “Negro removal”—to

justify their actions. *See infra*, Part II. Neither *Rakas* nor *Berman* respond to Petitioners' central allegations, and Respondents' recasting of disputed facts ignores the motion to dismiss standard.

Petitioners have adequately alleged standing and injury to their own property interests sufficient to state a claim for relief under § 1983, and federal courts also have equitable authority to review cases and controversies involving State actions that violate federal constitutional law. Because this case arrives on a motion to dismiss for failure to state a claim, the Court can clarify *Kelo* and the method of enforcing it without sorting through a complicated record involving disputes of fact. This case also arrives at a moment when the right to be secure in one's own property against unwarranted government interference has never mattered more.

## **I. Petitioners Are Entitled to Judicial Review.**

Respondents contend that because Petitioners do not own the condemned parcels, the Public Use Clause does not protect them and § 1983 provides no remedy. Accepting that view, federal courts are closed to Petitioners, and the alleged unconstitutional actions are beyond the power of judicial review. Respondents add that recognizing Petitioners' claim would create a broad and amorphous new class of plaintiffs. Both arguments fail. The Public Use Clause secures property rights, and Petitioners' own property rights have been injured; that is a § 1983 claim. Independently, federal courts have long exercised equitable power to enjoin state action that exceeds constitutional limits—a judge-made remedy that does not depend on a statutory or implied right of action. *See*

*Armstrong*, 575 U.S. at 327. Nor do Petitioners seek a new class of plaintiffs. They ask that persons with standing and injury be able to obtain judicial review of A-to-B transfers made in the name of “community development”—an amorphous public use that, unlike a school or bridge, has no natural limit.

**A. Respondents State a 42 U.S.C. § 1983 Claim.**

Section 1983 provides a remedy to “any citizen of the United States or other person” whom a state actor subjects to “the deprivation of any rights, privileges, or immunities secured by the Constitution.” 42 U.S.C. § 1983. The Fifth Amendment permits the taking of private property only “for public use.” U.S. Const. amend. V. That requirement is not merely a condition of compensation; it is a prohibition on government power. As *Kelo* recognized, the sovereign “may not take the property of A for the sole purpose of transferring it to another private party B.” 545 U.S. at 477. When government violates that prohibition, the injury does not stop at the edge of the condemned parcel. An A-to-B transfer gives a favored private party property-rights, as well as community-welfare and market power, that it could not have obtained through fair dealing. The neighbors bear the cost, both in the use and enjoyment of their homes and in the property value that is encumbered by empty land the government took but does not fully control. Those owners are deprived of rights the Public Use Clause guarantees, not only to the condemnee. They are entitled to have a court hear their claims. The class is not unlimited. Only those with Article III standing may sue. Adjacent owners who meet that test fall comfortably within § 1983.

Respondents repeatedly state that Petitioners fail to allege a harm to their own property interest, and argue that the Fourth Circuit reached this conclusion. This is false—Petitioners allege that the violation of the Public Use Clause directly interferes and harms with their *own* property rights and interests.

The City’s open-ended land grant recalls the very system of sovereign patents the Clause was designed to extinguish: the sovereign’s power to grant exclusive economic privilege to favored private persons. The Revolution was fought to overthrow the Crown’s practice of “granting monopolies to court favorites in goods or businesses which had long before been enjoyed by the public.” *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 5 (1966). Such grants interfere with public and efficient markets. *See Standard Oil Co. of N.J. v. U.S.*, 221 U.S. 1, 52–55 (1911) (describing the common law’s condemnation of monopolies for restricting individual freedom of contract and injuring the public).

The Public Use Clause protects the full spectrum of private property rights. From the Republic’s first decade, the ban on taking one citizen’s property to bestow it on another was treated as a foundational and categorical limit that courts would enforce. In *Calder v. Bull*, Justice Chase declared “a law that takes property from A. and gives it to B.” to be “against all reason and justice,” such that “it cannot be presumed” that a free people would “entrust a Legislature with SUCH powers.” 3 U.S. (3 Dall.) 386, 388 (1798). Writing for this Court, Justice Story confirmed that “government can scarcely be deemed to be free, where the rights of property are left solely dependent upon the will of a legislative body.” *Wilkinson v. Leland*, 27 U.S. (2 Pet.)

627, 657 (1829). Riding circuit, Justice Paterson called “the right of acquiring and possessing property, and having it protected,” one of the “natural, inherent, and unalienable rights of man,” and warned that if a legislature could “take land from one citizen . . . and vest it in another,” then “we are all tenants at will, and hold our landed property at the mere pleasure of the Legislature.” *VanHorne’s Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 310–11, 315–16 (C.C.D. Pa. 1795). Madison agreed: “[g]overnment is instituted to protect property of every sort,” and “that alone is a just government, which impartially secures to every man, whatever is his own.” James Madison, Property, Nat’l Gazette (Mar. 29, 1792); see *Kelo*, 545 U.S. at 510 (O’Connor, J., dissenting). A century later, this Court confirmed that property security extends to use and enjoyment: “the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government.” *Monongahela Nav. Co. v. U.S.*, 148 U.S. 312, 324 (1893).

Because the Public Use Clause secures property rights, and Petitioners allege that the City’s violation interferes with their *own* property rights, they have stated a § 1983 claim.

**B. Petitioners Are Entitled to Judicial Review and Their Intended Beneficiary Status Distinguishes Them from *Rakas*.**

Even if § 1983 contains no substantive right, Respondents wrongly conclude from this that § 1983 is Petitioners’ only “key to the courthouse door.” Br. in Opp. 16. Federal courts may sit in equity to address

constitutional wrongs, *see infra* Part I.B.i, and can do so here because Petitioners have standing and are the intended beneficiaries of the pretextual “community development.”<sup>1</sup> No new class of plaintiff, or even a change of law, is required for a Court determine whether Respondents’ transaction violates *Kelo*. *See infra* Part I.B.ii. And this Court need not decide if a violation occurred—only whether a lower court can make this determination and using what standard.

**i. Federal Courts Have Equitable Authority to Review This Case.**

State violations of the Fifth Amendment cannot be *damnum absque injuria* to those with standing. Such a rule guts judicial review: “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

Federal courts sitting in equity have long decided constitutional matters, and Petitioners primarily seek equitable relief. *See Armstrong*, 575 U.S. at 327 (2015) (“The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.”) (citing Jaffe & Henderson, *Judicial Review and the Rule of Law: Historical Origins*, 72 L.Q. Rev. 345 (1956)); *id.* at 335 (Sotomayor, J., dissenting) (“Suits in federal court to

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1. Petitioner Poppleton Now Community Association, Inc., has the right to seek judicial review based on its organizational standing.

restrain state officials from executing laws that assertedly conflict with the Constitution or with a federal statute are not novel; to the contrary, this Court has adjudicated such requests for equitable relief since the early days of the Republic.”); *Ex parte Young*, 209 U.S. 123 (1908); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819).

**ii. Petitioners Require No New Class of Plaintiffs.**

Respondents argue that Petitioners ask this Court to invent an “amorphous new class of ‘intended beneficiary’ plaintiffs” reaching every eminent domain case. Br. in Opp. 17. Not so. Petitioners have always been entitled to judicial review, and their standing and status as intended beneficiaries strengthens this position. Petitioners invoked the intended-beneficiary concept in response to the Fourth Circuit’s use of *Rakas*.

The principle Petitioners advance is narrow. When the government justifies a taking by “community development,” rather than by a concrete and finite public use such as a road or a school, injured persons should be able to seek judicial review to the extent Article III permits. This matters most when, as here, the taking is an A-to-B transfer. *Kelo*’s limits on such transfers must be enforceable. Otherwise, the government can evade the Public Use Clause by closing the eminent domain cases and then altering the deal.<sup>2</sup>

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2. Petitioners’ claims are properly before this Court. The District Court dismissed for lack of standing, and did not reach the cause-of-action question. Relying on *Rakas*, which neither party had briefed, the Fourth Circuit dismissed for lack of cause of action, *sua sponte*. An issue “passed upon” below is properly

## II. The Court Should Revisit or Clarify *Kelo*.

From inception, Petitioners have pled that the City's taking of 13.8 acres of their neighborhood, and the City's land contract with the developer, violated the Public Use Clause and *Kelo*. On this basis, Petitioners primarily have sought a ruling that the offending land contract is void. *See supra* Part I.B.i.

Respondents argue, surprisingly, that *Berman*, not *Kelo*, governs, and, in light of *Berman*, suggest that Petitioners' claims would have been better brought under Equal Protection or Due Process than under the Public Use Clause and *Kelo*. Respondents' reliance on *Berman* is as legally wrong as it is offensive. Further, this Court should revisit *Kelo* because, even if *Kelo* is to remain the law, lower courts (including in this case) must have a standard for determining whether the government action violates the Public Use Clause.

### A. *Berman* Changes Nothing.

Respondents argue that *Kelo* does not apply and that this case is a routine application of *Berman*. That is wrong as a matter of law. *Berman* predates *Kelo* by half a century, and *Kelo*, which built on *Berman*, is this Court's controlling statement of the limits on transfers from one private party to another, including its bar on pretextual takings. *Berman* cannot displace *Kelo*.

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before this Court, *U.S. v. Williams*, 504 U.S. 36, 41 (1992), and once a federal claim is properly presented, Petitioners may make any argument in its support, including that *Kelo* should be revisited, *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995).

More troubling is that Respondents, and the City of Baltimore, in particular, would invoke *Berman* at all. *Berman* blessed the mid-nineteenth-century practice of wholesale block clearance that, “uprooted hundreds of thousands of people, disrupted fragile urban neighborhoods, and helped entrench racial segregation in the inner city,” so pervasively that “urban renewal came to be known as ‘Negro removal.’” Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 Yale L. & Pol’y Rev. 1, 47 (2003) (cited in *Kelo*, 545 U.S. at 521 (Thomas, J., dissenting)). The dislocation “increased pressure on other neighborhoods . . . and accelerated neighborhood decline in other areas.” *Id.* at 35. It destroyed market value, isolated residents, and severed their social networks: the very harms Petitioners allege here. *See id.* at 35, 47. That the City now defends its land grant to this private developer under the case that stands for block clearance—the opposite of the community revitalization it promised to justify the takings—shows how far the City will go to protect a political patron over its own residents’ property rights.

Perhaps because of *Berman*’s troubled civil-rights legacy, Respondents suggest that Petitioners’ claims would be better framed in Equal Protection or Due Process. Petitioners disagree. Although Petitioners are members of a suspect class and may have such claims. Petitioners seek equality—not “equity”; whatever rule governs to limit the tyranny government can inflict with its taking power should apply equally to the poor neighborhood of Poppleton and the rich neighborhood of Roland Park, and regardless of race.

## **B. *Kelo* Must Be Revisited and Clarified.**

Had this Court held the Public Use Clause to its original meaning, this case would not have arisen. As originally understood, the Clause permits takings only for a true public use, such as a road, a school, or a finite project the public holds and uses in common. *See Kelo*, 545 U.S. at 508 (Thomas, J., dissenting). Under that bright line, Baltimore could never have taken this land and given it to a political patron—the transfer is simply prohibited.

The limits *Kelo* promised on private-to-private transfers have not materialized, and *Kelo* gives lower courts no workable standard for enforcing them. In *Eychaner v. City of Chicago*, three Members of this Court would have granted review to define those limits. 594 U.S. \_\_\_, No. 20-1214 (July 2, 2021) (Thomas, J., joined by Gorsuch, J., dissenting from denial of certiorari); *id.* (Kavanaugh, J., would grant).

Governments like Baltimore’s have learned to satisfy *Kelo*’s form while evading its substance, and this case provides the blueprint. Favoritism may surface only years later (as it did here), and City officials can bind the City to a favored developer indefinitely without requiring a public use (as they did here). In the “community development context,” where such abuses are likely, courts must be especially vigilant. *See Kelo*, 545 U.S. at 493 (Kennedy, J., concurring) (recognizing that some private transfers carry a risk of “undetected impermissible favoritism” so acute that a presumption of invalidity may be warranted); *id.* at 518 (Thomas, J., dissenting) (criticizing deference to legislative determinations of public use). But Courts cannot be vigilant without Plaintiffs, and adjacent owners

have long been able to bring such controversies to a judge's attention.

Finally, this Court's recent decisions confirm that the Takings Clause is "no poor relation" among the Bill of Rights' guarantees, but a full-fledged protection the Court will enforce against government overreach. *See Knick v. Township of Scott*, 588 U.S. 180, 189 (2019); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021); *Tyler v. Hennepin County*, 598 U.S. 631, 647 (2023); *Sheetz v. County of El Dorado*, 601 U.S. 267, 275–76 (2024). Its public-use component cannot be the exception: second-class, and beyond judicial review once the condemnation cases close.

### **III. The Public Use Question Rests at the Foundation of Our Democracy, and Now Is the Time to Resolve It.**

Respondents close by calling this case routine and unimportant. It is neither. *Kelo* opened the door, and governments, like Baltimore's, have walked through it, using eminent domain to reward favored developers at their citizens' expense. The limits *Kelo* purported to impose have proven unenforceable.

The stakes extend well beyond Baltimore City. Calls are growing for government to redirect property and reorder markets in the name of some "public benefit." Left unchecked, that power leads back to the system the Framers rejected: land and commerce parceled out by the sovereign and monopolized by its favorites, while everyone else holds property (including its value, use and enjoyment), "at the mere pleasure of the Legislature." *VanHorne's Lessee*, 2 U.S. (2 Dall.) at 311. When government hands

control of a neighborhood to a single private party, those who remain bear the cost: in the use and enjoyment of their homes, in the value of their property, and in their ability to compete on fair terms in a public market. There has never been a more important time to reaffirm protections the Fifth Amendment's Framers secured, and there may never be a better opportunity, on better facts, than this one. *Kelo* opened Pandora's box; this Court can still reseal it.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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