No. 23-1301

IN THE
Supreme Court of the United States

BEN BRINKMANN, HANK BRINKMANN, and MATTITUCK 12500 LLC,

Petitioners,

v.

TOWN OF SOUTHOLD, NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF SOUTHERN CALIFORNIA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Jamie E. Wright
J. WRIGHT LAW GROUP, P.C.
8939 S. Sepulveda Blvd.
Suite 102
Los Angeles, CA 90045

Samuel Eckman
Matt Aidan Getz
Counsel of Record
Maryam Asenuga
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave.
Los Angeles, CA 90071
(213) 229-7754
mgetz@gibsondunn.com

Counsel for Amicus Curiae

QUESTION PRESENTED

Whether the Takings Clause, U.S. Const. amend. V, is violated when private property is taken for a public amenity as a pretext to deprive the owner of his property rights.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

IN THE

Supreme Court of the United States

No. 23-1301

BEN BRINKMANN, HANK BRINKMANN, and MATTITUCK 12500 LLC,

Petitioners,

v.

TOWN OF SOUTHOLD, NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF SOUTHERN CALIFORNIA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*[*]

The Southern Christian Leadership Conference of Southern California is a local chapter of the Southern Christian Leadership Conference ("SCLC"), a

[*] No counsel for a party authored this brief in whole or in part, and no entity or person other than *amicus*, its members, and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received notice of *amicus*'s intent to file this brief at least 10 days before its due date under this Court's Rule 37.2.

nonprofit civil rights organization founded in 1957 by Dr. Martin Luther King, Jr., and other civil rights leaders. SCLC is a nonsectarian, interfaith advocacy organization committed to achieving social, economic, and political justice. SCLC of Southern California works to ensure justice, eradicate racism, build community, and secure civil rights throughout the region.

INTRODUCTION AND SUMMARY OF ARGUMENT

Property rights held esteemed status at the Founding, both on their own and as a guarantee of individual liberty. In fact, protecting property was one of the core reasons the Framers designed a government in the first place. And the Takings Clause was one of the main ways the Framers went about protecting those valuable rights. It requires takings not just to be accompanied by "just compensation," but also to be "for public use," U.S. Const. amend. V—which, as this Court has explained, serves as an independent limitation on the power of eminent domain. *Haw. Hous. Auth.* v. *Midkiff*, 467 U.S. 229, 241 (1984).

The Framers were right to give property rights those protections. Property is how people generate and retain wealth. It's also foundational to how they live and associate in a broader sense. And for minorities and disfavored groups, property is perhaps most important because it shields them against the pressures of a hostile majority.

But for too long, the Takings Clause has been flipped on its head. Instead of being an important limitation on improper government action, it has been used to legitimate improper attacks on property rights held by disfavored groups.

That sad story has long played out across Southern California. When Manhattan Beach residents at the height of Jim Crow grew alarmed by Bruce's Beach, a community of Black families based around a popular seaside resort, the city used the Takings Clause to seize the land and force the Black families out by promising a public park it took more than three decades to deliver. When Santa Monica in the 1950s wanted to eliminate Black homes and businesses from the thriving Belmar Triangle area, the Takings Clause again came to the rescue. This case provides yet another example showing the harm of pretextual takings, which destroy property rights even when the government has no real interest in putting the land to a public use.

The Constitution demands more. This Court's decision in *Kelo* v. *City of New London*, 545 U.S. 469 (2005), came with a promise: that the Takings Clause could not justify the seizure of private property based on "mere pretext." *Id.* at 478. Allowing courts to examine the government's invocation of a public purpose for signs of pretext ensures that the Takings Clause does not become a parchment promise.

The majority disagreed, holding that judicial scrutiny of pretextual seizures of property under the Takings Clause is unnecessary and improper. That was wrong on both counts. Other constitutional provisions serve other values and vindicate other harms, but the Takings Clause guarantees that the government can seize public property only for a legitimate public purpose, and that guarantee should not depend on the property owner's ability to make out some *other* claim. And courts routinely consider whether legislative action was taken for an improper purpose. Successful pretextual-takings claims may be unusual, but where

challengers make the necessary showing—and both the majority and dissenting judge below agreed petitioners have done just that—courts should protect property rights and hold the government to the Constitution's promise.

ARGUMENT

I. Pretextual takings threaten the fundamental property rights of minorities and other disfavored groups.

A. Property rights are core civil rights, and are especially vital for disadvantaged groups.

"Property rights are necessary to preserve freedom." *Murr* v. *Wisconsin*, 582 U.S. 383, 394 (2017). Property has intrinsic value, both monetary and intangible. But property is also instrumental: it "empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them." *Id.*

The Framers knew this well. They viewed the protection of property as one of the core "end[s] of government." Madison, Property, *in* 6 Writings of James Madison 102 (G. Hunt ed. 1906) ("[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*"). But they also recognized the role property played in securing *other* invaluable rights. As John Adams put it, "property must be secured, or liberty cannot exist." Adams, Discourses on Davila, *in* 6 Works of John Adams 280 (C. Adams ed. 1851).

It is no surprise, then, that the protection of property rights was a central concern of lawmakers from

the earliest years of the Republic. The First Continental Congress declared property rights "immutable." 1 Journals of the Continental Congress, 1774-1789, at 67-68 (W. Ford ed. 1904). And the Virginia Declaration of Rights listed "acquiring and possessing property" among the "inherent" rights of a free people, Va. Declaration of Rights § 1 (1776), *in* 3 Federal and State Constitutions 3813 (F. Thorpe ed. 1909), while the Massachusetts Declaration of Rights named "acquiring, possessing, and protecting property" as "natural, essential, and unalienable rights," Mass. Declaration of Rights art. I (1780), *in* 3 Federal and State Constitutions, *supra*, at 1889.

The Framers wove property rights into the fabric of the Constitution itself. The Due Process Clause bars the government from depriving people of their property "without due process of law." U.S. Const. amend. V. And in the Takings Clause, the Framers further limited the government's power to seize property, requiring takings to be "for public use" and accompanied by "just compensation." *Id.* As this Court has recognized, the Takings Clause's two limits have independent effect. *Haw. Hous. Auth.* v. *Midkiff*, 467 U.S. 229, 241 (1984) ("a compensated taking of property" that "lack[s] . . . a justifying public purpose" is "invalid[]").

Centuries of practice have confirmed the Framers' wisdom. Today, property is a major, if not the main, way to achieve lasting wealth in America. Indeed, property ownership—typically, home ownership—is "the leading vehicle to preserve and grow wealth" in the modern economy. Foohey & Martin, *Fintech's Role in Exacerbating or Reducing the Wealth Gap*, 2021 U. Ill. L. Rev. 459, 473.

Property rights are especially important for minorities and other disadvantaged groups. For decades—centuries, even—unequal access to property created and then perpetuated a wealth gap between disadvantaged and privileged communities. *E.g.*, Roithmayr, *Them That Has, Gets*, 27 Miss. Coll. L. Rev. 373, 385-86 (2008). And when that gap shrinks, the accumulation of property by disadvantaged groups is usually responsible. *See, e.g.*, Goodman & Mayer, *Homeownership and the American Dream*, 32 J. Econ. Perspectives 31, 53 (2018) ("[h]ome equity is the largest component of net worth . . . and is particularly important for minority borrowers" given the "positive association between homeownership and wealth accumulation").

But property's value cannot be captured in just dollars and cents. Property gives people a space to raise their families, support their neighbors, build their communities, discuss their faiths, and debate their views. And for minority groups, those spaces are pivotal. In Los Angeles, for instance, the neighborhoods of Palo Verde, La Loma, and Bishop—in what is today Chavez Ravine—were home to "a flourishing residential community" for generations of Mexican Americans in the late nineteenth and early to mid-twentieth centuries. Stanton, *Home Team Advantage?: The Taking of Private Property for Sports Stadiums*, 9 N.Y.C. L. Rev. 93, 101 (2005). And on the other side of the country, a slender strip of upper Manhattan populated predominantly by Black families, many of whom fled the South in search of work in the more industrial North, gave rise to the Harlem Renaissance, "one of the most significant eras of cultural expression in the nation's history" and, in the words of one scholar, "a 'spiritual coming of age' in which African Americans transformed 'social disillusionment

to race pride.'" *A New African American Identity: The Harlem Renaissance*, Nat'l Museum of African American History & Culture, https://tinyurl.com/5a828m9y (accessed July 4, 2024).

There are countless other examples where minority groups have used their property to create vibrant, supportive communities. When communities flourish, property rights are almost always to thank.

B. The Takings Clause has often been misused as a pretext to seize the property of disfavored groups.

Property's value and central role in personal and community life has made it a target for abuses. The Takings Clause has too often been the vehicle for those abuses, as governments have used the takings power as a pretext to target disfavored or vulnerable groups, with disastrous consequences for the people and groups affected.

Bruce's Beach provides a stark, and heartbreaking, example. Meet Charles and Willa Bruce:

City of Manhattan Beach, History Advisory Board Report 17 (2021), https://tinyurl.com/5f4sh2vn. In 1912, the Bruces bought property in Manhattan Beach, a growing seaside community along the southern coast of greater Los Angeles. Karlamangla, *The Debate Around Bruce's Beach*, N.Y. Times (Mar. 9, 2023), https://tinyurl.com/ms4n8r6k. When they arrived, there were few Black people in the area. But the Bruces put their property to use, creating "a beachfront resort where other Black families could swim, lounge, eat and dance without being subject to racist harassment." *Id.*

Bruce's Beach soon became a beacon of community, freedom, and fun in an otherwise hostile region.

Other Black families were drawn to the community developing around the Bruces' resort and bought their own plots nearby. *Bruce's Beach*, L.A. County, https://tinyurl.com/3pn4ue9c (accessed July 4, 2024).

But the arrival of Black families did not sit well with some of the area's residents. In fact, the opening of the Bruces' resort brought "great agitation . . . among white property owners of adjoining land." City of Manhattan Beach, *supra*, at 19 (cleaned up). The neighbors "complained of a 'Negro invasion.'" Karlamangla, *supra*. And they petitioned the city council to take action to drive the Bruces and other members of the growing Black community out of town. *Bruce's Beach*, *supra*.

So the government acted. In 1924, Manhattan Beach invoked its eminent-domain power, seizing Bruce's Beach and many surrounding properties, supposedly to build a public park. *Bruce's Beach*, *supra*. But it is "indisputable" that the real reason for seizing the properties was "to eliminate the use of its beach by Black families." Jenkins, *Bruce's Beach: How Far Have We Come?*, ABA State & Local L. News (Apr. 15, 2022), https://tinyurl.com/yc4hacz3. As if to prove the point, the park wasn't built for over thirty years. *Id.*; *see Bruce's Beach*, *supra* ("No park was built, and the land sat empty for decades.").

Bruce's Beach shows how the takings power can be abused. The Bruces and other Black families bought property and, using that property, built a vibrant community for people who were under constant threat of racism and violence. The city, acting in accordance with the wishes of a hostile majority, set out to deprive those families of their property rights. And the Takings Clause provided the perfect cover. Merely by promising a park that, evidently, no one

wanted, the city legitimated what would otherwise have been a flagrant abuse of power and violation of individual rights.

Unfortunately, Bruce's Beach isn't an isolated case. In Southern California alone, the same story has played out time and again.

Take Silas White, a Black entrepreneur who bought land in Santa Monica in the 1950s. The land was in a historically Black neighborhood, and he hoped to use it for the Ebony Beach Club, "a place where the local Black community could come together during a time when such establishments were sparse." Snowden, *Black Community Speaks Out over Silas White Property Controversy, Descendants Call for Land to Be Returned*, Santa Monica Daily Press (Feb. 26, 2024), https://tinyurl.com/43vta7ck. But local government officials didn't embrace that vision. So they turned to the takings power, seizing the land and demolishing the Club under the pretext of a public taking. *Id.*

Santa Monica, "the first African American settlement in any seaside community in the region," saw further pretextual uses of the Takings Clause. Himmelrich, *Statement Apologizing to Santa Monica's African American Residents and Their Descendants*, City of Santa Monica (Nov. 16, 2022), https://tinyurl.com/2bbj9h3j. In the 1950s, the Belmar Triangle area was home to a "thriving" community of Black homes and businesses. *Id.* But city officials, "target[ing]" that neighborhood, turned to condemnation and eminent domain, seizing and destroying many of the properties that had defined the area. *Id.*

If these examples sound familiar, they should. This case provides yet another. The Town of Southold

"did not like what the [Brinkmanns] were doing with their property." Pet. App. 23a (Menashi, J., dissenting). The dislike may have run deeper still—a member of the town board took to the local paper to object that town officials were targeting the Brinkmanns because they didn't "like the family." Nappa, *Eminent Domain Decision Sets a Dangerous Precedent*, Suffolk Times (Sept. 19, 2020), https://tinyurl.com/48wsh2kn. Every other option the town had to restrict the Brinkmanns' exercise of their property rights, including "muster[ing] the political support to pass a zoning law," came with too high a price. Pet. App. 23a (Menashi, J., dissenting). But the Takings Clause, as it has for decades, provided ample cover. By promising to build a park it "*does not want*," the city could seize the Brinkmanns' property and put an end to their otherwise lawful use of it. *Id.*

Some may not object to that sort of constitutional workaround. No doubt many in Southold were displeased by the arrival of the "big-box hardware store" the Brinkmanns planned. Pet. App. 2a. No doubt, too, many families in Manhattan Beach at the height of Jim Crow were displeased that Bruce's Beach was giving rise to Black community activity they found unappealing. But the Bill of Rights, Takings Clause included, was ratified precisely to avoid such "occasional tyrannies of governing majorities." *Whitney* v. *California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring).

II. Nothing in the Constitution shields pretextual takings from judicial scrutiny.

Pretextual takings threaten to deprive people of their fundamental rights—particularly minorities and other disfavored groups, who are most vulnerable to majority pressures and most reliant on property

rights for economic security and community. Nothing in the Constitution shields such pretextual takings from scrutiny.

To the contrary, in *Kelo* v. *City of New London*, 545 U.S. 469 (2005), this Court made clear that a city would not "be allowed to take property under the *mere pretext* of a public purpose." *Id.* at 478 (emphasis added). As both the majority and dissenting judge concluded, this is a mere-pretext case. So *Kelo* instructs that the Takings Clause provides no shield to respondent.

The majority disagreed, deeming significant that the Court in *Kelo* went on to say that pretextual invocations of public purpose are unlawful when the government's "actual purpose [i]s to bestow a *private benefit*." 545 U.S. at 478 (emphasis added). True, in *Kelo*, the precise dispute before the Court was whether the government's planned use of seized property was private or public in nature. But the *reasoning* the Court employed in considering pretext was not so limited. The Court rightly recognized that if the Takings Clause were agnostic about the government's motives, its vital protections could be too easily skirted. All the more so after *Kelo*, that concern remains very real. There are *many* public uses a government can invoke to justify a taking—including, as this case illustrates, a "passive use" park, essentially an empty lot "with no significant facilities or improvements." Pet. App. 92a. If accepted, the majority's approval of pretextual takings would give the government free rein to seize essentially any property, even if its only reason for doing so was to deprive someone of legitimate property rights. That cannot be right.

The majority gave several additional reasons for its holding that the Takings Clause is agnostic as to pretext. None is defensible.

The majority observes, for instance, that takings can violate *other* provisions of the Constitution, including the Equal Protection Clause. Pet. App. 19a. Of course, as petitioners rightly recognize, the Equal Protection Clause is a real impediment to government abuses only when it comes to a limited set of suspect classes that trigger heightened scrutiny. Pet. 21. But property rights shouldn't be subject to sham takings for other vulnerable or disfavored communities who can't claim the mantle of a suspect class. Nor should any member of a "class of one," who for whatever reason finds herself at the mercy of a hostile government hoping to seize her property, be left without recourse. For those people, the protections of the Takings Clause are even *more* paramount.

The majority also frets that permitting review of pretextual takings shows insufficient "deference to the legislature's 'public use' determination." Pet. App. 7a (quoting *Midkiff*, 467 U.S. at 240). But neither Bruce's Beach, nor this case, nor any of the most troubling examples of pretextual takings involves any question about "a legislature's judgment of what *constitutes* a public use." *Midkiff*, 467 U.S. at 240 (emphasis added). Rather, the question is whether the private property has been taken *for* the asserted public purpose, or instead for another purpose under the mere pretext of a public use. If pretext can be established (as a matter of pleading or proof) only in unusual cases, that's a good thing. But in those cases—and the Brinkmanns' is one—there's no legislative judgment to which courts must defer.

Finally, the majority winces at any judicial examination of legislative motive. Pet. App. 10a-11a. Of course, if the "motives" of individual legislators are too "fragmented" to discern anything about the legislative body's decision (*id.* at 10a), then a plaintiff claiming a pretextual taking may well lose. But that is no reason to bar a pretextual-takings claim in the first place. Courts are no strangers to considering whether legislative action "had an impermissible object," even if the motive "is masked." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 524, 534-35 (1993). And courts are likewise well versed in analyzing "such circumstantial and direct evidence" of legislative purpose "as may be available," including the "historical background" or "sequence of events" leading to a decision and contemporaneous "statements by members of the decisionmaking body." *Village of Arlington Heights* v. *Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977).

* * *

The Takings Clause is meant to constrain the government's use of eminent domain, and thus to shield property rights from improper interference. It shouldn't be converted into a weapon governments can use to deprive property rights from disfavored groups based on a sham assertion of a public purpose. If the Second Circuit's decision is allowed to stand, it will harm minority groups and other disadvantaged communities, all of whom depend on the sanctity of property for their freedom, association, and security.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Jamie E. Wright
J. WRIGHT LAW GROUP, P.C.
8939 S. Sepulveda Blvd.
Suite 102
Los Angeles, CA 90045

Samuel Eckman
Matt Aidan Getz
Counsel of Record
Maryam Asenuga
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave.
Los Angeles, CA 90071
(213) 229-7754
mgetz@gibsondunn.com

Counsel for Amicus Curiae

July 15, 2024