SUPREME COURT OF THE STATE OF LOUISIANA

DOCKET NO. 2025-C-00827

PLAQUEMINES PORT HARBOR & TERMINAL DISTRICT,

Plaintiff – Appellant,

v.

TUAN NGUYEN,

Defendant – Appellee.

On Writ of Certiorari,
Parish of Plaquemines, 25th Judicial District Court, No. 68-734,
Court of Appeal, Fourth Circuit, No. 2024-CA-0614

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT-APPELLEE

RANDALL A. SMITH
ANDRE M. STOLIER
La. Bar No. 2117
La. Bar No. 40063
Smith & Fawer, LLC
201 St. Charles Avenue
Suite 3702
New Orleans, LA 70170
(504) 525-2200
rasmith@smithfawer.com
astolier@smithfawer.com

BRIDGET F. CONLAN*
Ill. Bar No. 6348769
Pacific Legal Foundation
3100 Clarendon Boulevard
Suite 1000
Arlington, VA 22201
(202) 888-6881
BConlan@pacificlegal.org

**Pro Hac Vice forthcoming*

Counsel for Amicus Curiae Pacific Legal Foundation

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

Pursuant to Supreme Court of Louisiana Rule VII, Section 12, Pacific Legal Foundation ("PLF") respectfully submits this amicus curiae brief in support of Defendant-Appellee Tuan Nguyen. This brief is conditionally submitted with the accompanying motion seeking leave to file.

INTEREST OF AMICUS CURIAE

PLF was founded over 50 years ago, is widely recognized as the most experienced nonprofit legal foundation of its kind, and regularly litigates matters affecting property rights in state and federal courts across the country. PLF attorneys have participated as lead counsel in multiple landmark cases before the United States Supreme Court in defense of the right to make reasonable use of property and the corollary right to obtain just compensation when that right is infringed. *See, e.g.*, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Sackett v. Env't Prot. Agency*, 598 U.S. 651 (2023); *Wilkins v. United States*, 598 U.S. 152 (2023); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Pakdel v. City & Cty. of San Francisco*, 594 U.S. 474 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725 (1997); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987). PLF also frequently participates as amicus curiae in cases that pertain to important property rights issues, including matters before this Court. *See Watson Memorial Spiritual Temple of Christ v. Korban*, 2024-00055 (La. 6/28/24), 387 So.3d 499; *St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc.*, 2017-0434 (La. 1/30/18), 239 So.3d 243. Consequently, Pacific Legal Foundation is uniquely suited to provide specialized assistance to this Court and to identify law and arguments that might otherwise escape the Court's consideration.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns a political subdivision's attempt to weaponize expropriation to take private land and lease it to a single private company for that company's exclusive use—despite the landowner's ongoing willingness to sell or lease the

property voluntarily. At stake is whether the Port may displace a willing owner not to further any legitimate public-port function,[1] but to position itself to reap the financial benefits of a private commercial venture that the landowner is fully able, and just as willing, to facilitate without government intervention.

Mr. Nguyen has always been willing to lease or sell his property—whether to the Port or directly to Venture Global—and he remains willing to do so today. Accordingly, nothing about the project requires the Port to insert itself as intermediary, and neither the viability of the project nor the purported economic benefits turn on the resolution of this case. The Port nevertheless invoked expropriation not to advance a permissible public use of the land as part of a public port, but to capture the financial upside of a nonpublic, exclusively private commercial enterprise—one that Mr. Nguyen is just as capable of enabling through a voluntary transaction.

Because Mr. Nguyen stands ready to complete a voluntary sale or lease with Venture Global, the Port's assertion that expropriation is necessary to secure the project's success—or to obtain any derivative, attenuated benefits for the public port—is unfounded. The project can proceed regardless of the outcome here. What the Port seeks is not the project's advancement, but the project's *revenue*. Invoking expropriation to merely augment a government entity's coffers is not a viable "public interest." Such abuse of the power of eminent domain, as the Port attempts here, "could aptly be described as municipal thuggery." *Union Station Associates v. Rossi*, 862 A.2d 185, 187 (R.I. 2004) (exercising condemnation authority in bad faith and retaliatory manner in drawn out dispute with property owner); *see also Rhode Island Econ. Dev. Corp. v. The Parking Co., L.P.*, 892 A.2d 87, 106 (R.I. 2006) (motive of

[1] While the Port asserts that "[n]o artful stretch of language is necessary" to conclude that its ownership of property "dedicated to the facilitation of domestic and international commerce" satisfies the Louisiana Constitution's public-purpose requirement, its briefing depends on exactly such a stretch. While the Constitution authorizes expropriation for the operation of public ports, the Port never contends that Mr. Nguyen's property will be used as a public port at all. It instead describes a facility to be used exclusively by Venture Global, a private operator. Plaintiff-Applicant's Original Brief at 8.

increased revenue was not a valid public use, condemning property "altered the balance of bargaining power" in government's favor to achieve concessions it was otherwise unable to obtain from the property owner).

Eminent domain permits the government to take property by force—standing as a limited exception to the foundational principle of property rights. *See generally* William Baude, *Rethinking the Federal Eminent Domain Power*, 122 Yale L.J. 1738 (2013). Commensurate with that power, the Fifth Amendment and Louisiana's counterpart impose limitations—ensuring that property can be taken only for a public use, and carefully cabining what constitutes such a use—crucial to preventing government abuse. *See Hawai'i Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984) ("A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void."). Indeed, Louisiana adopts an especially protective approach to shielding private property from governmental intrusion, layering additional safeguards atop the Fifth Amendment's baseline protections. *See, e.g.*, *State v. 1971 Green GMC Van*, 354 So.2d 479, 486 (La. 1977) (Louisiana's 1974 Constitution "goes beyond other state constitutions, including our 1921 Constitution, and the federal constitution in limiting the power of government to regulate private property."); La. Const. art. I § 4(B)(6) ("No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise."); 2006 La. Acts 851 (banning economic development takings).

Here, the Port failed to adhere to Louisiana's limitations on governmental expropriation authority. It is undisputed that the Port used its power of eminent domain to take private property and then lease it to Venture Global, a private company, for exclusive private use by Venture Global—i.e., *not* as a public port, as the Constitution requires. That is not only constitutionally impermissible, but it is unfathomable that such a thing would be permissible in Louisiana, the State that passed three constitutional amendments to prevent eminent domain abuse following the U.S. Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005).

See 2006 La. Acts 851 (amending the Louisiana Constitution to forbid takings "for predominant use by" or "transfer of ownership to any private person or entity," narrowing the definition of "public purpose" and forbidding government from considering economic development, tax revenues, or any incidental benefit to the public in determining whether the taking is for a public purpose), 2006 La. Acts 853 (changing the compensation awarded in a taking if the property is taken for hurricane protection), 2006 La. Acts 859 (requiring that any property taken be offered back to the owner before sale or lease to a private party). Even assuming *arguendo* that other jurisdictions are willing to turn a blind eye to such an obvious private taking, Louisiana is not one of them.

The decision below should be affirmed.

ARGUMENT

I. In Response to *Kelo*, Louisiana Strengthened Its Already Robust Protections Against Eminent Domain Abuse

In *Kelo*, the U.S. Supreme Court held that New London, Connecticut, could lawfully condemn dozens of private homes to transfer them to other private parties, in the hopes that economic redevelopment would result in jobs and property tax revenue. The decision was immediately unpopular. The vast majority of Americans, spanning the geographic, political, and social spectrum, expressed their disagreement. Ilya Somin, *The Grasping Hand:* Kelo v. City of New London *& the Limits of Eminent Domain*, 139 (The University of Chicago Press, 2015). In response to that shocking decision, forty-four states—including Louisiana—enacted laws or amended their state constitutions to strengthen protections against the potential abuse of eminent domain under *Kelo*. Dana Berliner, *Looking Back Ten Years After* Kelo, 125 Yale L.J. Forum 82, 84 (2015) (citing La. Const. art. I, § 4 (2006)).

Louisiana's decision to join with its sister states in responding to *Kelo* is unsurprising. This state has a long history of affording its citizens with "even greater protection of rights than is available under federal law." John Devlin, *Louisiana Associated General Contractors: A Case Study in the Failure of A State Equality*

Guarantee to Further the Transformative Vision of Civil Rights, 63 La. L. Rev. 887, 900 n.58 (2003) (citing Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 La. L. Rev. 1, 1 (1974)); Louis "Woody" Jenkins, *The Declaration of Rights*, 21 Loy. L. Rev. 9 (1975); *State v. Perry*, 610 So.2d 746, 755 (La. 1992) ("[T]he Louisiana constitution provides greater protection of individual rights than does the federal Constitution ...."); *accord Guidry v. Roberts*, 335 So.2d 438, 448 (1976). The drafters of the Louisiana Declaration of Rights made this point clear: "The only purpose of having a Bill of Rights in our State Constitution is to grant additional protection that is not given to us by the Federal Constitution." Comments of Delegate Louis "Woody" Jenkins introducing the draft Declaration of Rights, VI Records of the Louisiana Constitutional Convention of 1972: Convention Transcripts, (1977), p. 990, 37th day's proceedings, August 28, 1993.

Even before *Kelo*, Louisiana employed additional mechanisms to limit expropriations and safeguard the rights of property owners:

> The citizens of Louisiana have long maintained, through the constitutional provisions they ratified, that the situations in which the government can expropriate private property are greatly limited. Providing a guarantee prominently positioned in the second section of the Bill of Rights, the 1921 Constitution indicates: "Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."

St. Bernard Port, 2017-0434, p. 1, 239 So.3d at 255–56 (Weimer, J., dissenting) (quoting La. Const. 1921 art. I, § 2). Louisiana's 1974 Constitution added to these limitations, requiring that a taking by a private entity, such as a common carrier, must be for a "public and necessary purpose" and "whether the purpose is public and necessary shall be a judicial question[.]" La. Const. 1974 art. I, § 4(B)(4). This provision intentionally precludes common carriers from utilizing expropriation to take more than is "necessary," regardless of whether the public purpose is legitimate or historically accepted. Indeed, while Louisiana swiftly reacted to *Kelo*, its preexisting protections beyond federal requirements led scholars to suggest that Louisiana need not adopt additional protections post-*Kelo* because the Louisiana

Constitution could "already be construed as more restrictive than the federal provision and could prevent the type of taking that occurred in *Kelo*" by "differentiat[ing] between public and private takings, [and] imposing a higher standard for the latter." Scott P. Ledet, *The* Kelo *Effect: Eminent Domain and Property Rights in Louisiana*, 67 La. L. Rev. 171, 184 (2006).

Further, Louisiana has no presumption of constitutionality for takings, significantly departing from the federal scheme. *Id.* at 185. The State's compensation scheme for property owners likewise goes beyond the requirements for just compensation under federal law by providing a right to trial by jury to determine the amount that ensures compensation "to the full extent of his loss"—a provision that has been interpreted to include attorneys' fees, relocation expenses, and other incidental costs. Jennie Jackson Miller, *Saving Private Development: Rescuing Louisiana from Its Reaction to* Kelo, 68 La. L. Rev. 631, 648 (2008); La. Const. art. I, § 4. Louisiana also requires that takings be approved by a government authority—this acts as a check on expropriations "because the local elected officials are well aware that expropriating their constituents' private property, when not absolutely necessary, costs them their jobs." Miller, *supra*, at 648.

It thus comes as no surprise that Louisiana's swift response to *Kelo* has been called "the most drastic reaction … taken by any state." *Id.* at 646. In response to *Kelo*, Louisiana passed three constitutional amendments to strictly limit "public purpose" to an enumerated list of traditional public uses and forbid economic development takings. One of these amendments—known as "Amendment 5"—was described by its co-author as intended "to prevent expropriation by a public entity of a person's property for economic development and to 'flip' that to a third party." *Id.* at 653 (citing Archived Broadcasts of House of Representatives Civil Law Committee Meeting, May 2, 2006, at 2:17).[2] "Amendment 5 prohibits purely economic takings altogether and any takings for use by or transfer to private entities" except for the

[2] https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2006/may/0502_06_CL.

narrow list of uses provided in article VI, § 21, *id.* at 646, which provides for limited industrial purposes such as "the *operation* of *public* ports[.]" La. Const. art. VI, § 21(A)(3) (emphasis added); *see also* Archived Broadcasts of House of Representatives Civil Law Committee Meeting, May 2, 2006, at 2:20[3] ("we don't have a problem with ports as long as they're doing a traditional port function, common carriers …." (statements by Rep. Bruneau)). Amendment 5 also further expanded compensation awarded for takings to include "all costs of relocation, inconvenience and any other damages." Miller, *supra*, at 654. Amendment 5 passed almost unanimously through the State Legislature, 91-3 in the House and 36-1 in the Senate on a concurrence vote. *Id.* at 652, n.124.

Here, the Port has attempted to expropriate private property for the singular purpose of leasing it to a private company, not for use as a "public port" as the Constitution allows, but for the operation of a *private* port facility, to be exclusively used by that single *private* entity.[4] This is precisely the type of expropriation that the Louisiana legislators intended to prohibit through Amendment 5.

Louisiana's history of strong protections against government interference with private property rights, including its response to *Kelo*, removes any doubt that the legislature far from intended for expropriation power to be used in the manner the Port advances. To the contrary, the clear intent of Louisiana's post-*Kelo* amendments—following the historical boundaries of traditional public use and rejecting the amorphous "economic development" rationale—was to prevent precisely what the Port seeks to do here: take private property for private benefit. What the Port has attempted to accomplish here would require an expansion of public use that the Louisiana Constitution expressly rejects by its clear and unambiguous terms and

---

[3] https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2006/may/0502_06_CL.

[4] *See* La. Const. art. I, § 4(B)(2)(b)(vi) (limiting "public purpose" to mean, as pertinent here, "[p]ublic ports … to facilitate the transport of goods or persons in domestic or international commerce"); La. Const. art. VI, § 21(A)(3) (permitting, *inter alia*, expropriation to "facilitate the operation of public ports"). The Port's implicit claim that these provisions confer upon public ports the authority to expropriate property for use as a *private* port for a *private* company finds no support in the text of these provisions.

the legislative history. The lower court properly interpreted the Louisiana Constitution to bar the Port's attempt to abuse its expropriation authority.

II. Endorsing the Port's So-Called Public Use Would Extend Louisiana's Public-Use Doctrine Beyond Constitutional Limits and Historic Norms

Not only does Louisiana's Constitution explicitly reject economic development as a valid rationale for condemnation, here, the taking sought would be just as doomed in other jurisdictions with less robust protections. Specifically, the Port does not dispute that the property will be exclusively used by a private entity for its benefit, rather than as a public port; any benefits to the public or the Port itself are indirect and too attenuated to pass constitutional muster.[5] "[I]t has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation." *Kelo*, 545 U.S. at 477.

Even in *Kelo,* which stretched the definition of public use beyond historical bounds, the condemned land was to be open to the public as a retail space and riverwalk. By contrast, here, the Port condemned the land "for the singular purpose of leasing the property to a private company to operate a *private* port facility for the exclusive use of that single, private entity—not for the purpose and use of a *public* port." *Plaquemines Port Harbor & Terminal Dist. v. Nguyen*, 2024-0614, p. 7 (La. App. 4 Cir. 5/29/25), 2025 WL 1527337, at *3, *writ granted*, 2025-00827 (La. 10/22/25). Venture Global is not a common carrier. The land will ***not*** become part of a larger public port network. Instead, it will be exclusively used by a private company that the Port glaringly declines to assert will use the property to operate a "public port."

[5] Again, the Port minces words by incorrectly claiming that the Constitution authorizes public ports to expropriate private property "for lease and predominant use by a private person provided that the expropriation is to encourage industrial enterprise, or for an industrial plant or to facilitate the operation of a public port." *See* Plaintiff-Applicant's Original Brief at 6. Section 21 of article VI contains no language authorizing a port to expropriate property and lease it to a private entity for that entity's own private, revenue-generating operations; the provision merely permits the legislature to authorize acquisitions for public port facilities and public port operations "which relate to or facilitate the transportation of goods," and nothing in its text converts a private commercial installation into such a public port facility simply because it may incidentally benefit a port's operations. La. Const. art. VI, § 21(A)(4)(b).

Other jurisdictions have confronted and rejected condemnations similar to the one at issue here where the property itself would be used by a private party and not put to public use. *See, e.g.*, *Sw. Ill. Dev. Auth. v. Nat'l City Env't, LLC*, 199 Ill.2d 225, 238–39 (2002) (regional development authority lacked public use to condemn auto recycling facility to give to a racetrack for its planned parking lot expansion); *Mayor v. Thomas*, 645 So.2d 940, 943 (Miss. 1994) (government did not demonstrate a public use when it condemned land devoted to riverfront gambling for the purpose of giving it to new entrant Harrah's Casino to use in whatever manner it chose). State courts have also invalidated the use of eminent domain when the private purpose outweighs the public one. *See, e.g.*, *Matter of Syracuse Univ. v Project Orange Assoc. Servs. Corp.*, 71 A.D.3d 1432, 1433–34 (N.Y. App. Div. 2010) (condemning utility sought to take property by eminent domain to free itself of an unfavorable long-term lease agreement, "a merely incidental public benefit coupled with a dominant private purpose will invalidate a condemnor's determination"); *Mayor*, 645 So.2d at 943 (refusing to allow an eminent domain taking because the private use was "paramount" and the public use was incidental); *Denver West Metro. Dist. v. Geudner*, 786 P.2d 434, 436 (Colo. App. 1991) ("If the primary purpose underlying a condemnation decision is to advance private interests, the existence of an incidental public benefit does not prevent a court from finding bad faith and invalidating a condemning authority's determination that a particular acquisition is necessary."); *Olmstead v. Camp*, 33 Conn. 532, 543 (1866) ("A public benefit resulting incidentally from the transfer of interest in property from one man or set of men to another is not a legitimate ground for the exercise of the right of eminent domain. It has never been regarded as such.").

Given its long history of safeguarding private property from the abusive exercise of expropriation authority, it defies law, logic, and reason that Louisiana would not similarly reject such attenuated "public uses." To wit, under its post-*Kelo* 2006 amendments, Louisiana's Constitution strictly limits "public purposes" to the list enumerated in article I, § 4, and plainly states that "Neither *economic*

development, enhancement of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose[.]" La. Const. art. I, § 4(B)(3) (emphasis added). The Port's articulated justification of "enormous economic impact on Plaquemines Parish ... new and expanded industry and increase[d] port activity," Plaintiff-Applicant's Original Brief at 8, is not only speculative, but at best an impermissibly "incidental benefit" insufficient to justify expropriation under the rigorous standards in Louisiana.

Article VI, § 21, provides no shelter for the Port's appeal. The Port points to section 21, emphasizing in its brief the provision's language authorizing "the legislature by law [to] authorize" public ports to expropriate "industrial plant buildings and operations" and to "lease" such property. Plaintiff-Applicant's Original Brief at 7. Setting aside the fact that the property here is not an "industrial plant," the Port's claim that "the final condition to … expropriate[ion] for lease and predominant use by a private entity is the existence of legislation authorizing," such an exercise of its power ignores the linear nature of time and fundamental principles of constitutional interpretation. *Id.* at 9. Here, the constitutional provision authorizing the legislation was enacted post-*Kelo* in 2006 pursuant to Acts 2006, No. 851. While the Port argues that "[t]he required law is satisfied by La. R.S. 34:1353 …. [and] La. R.S. 34:1360," Plaintiff-Applicant's Original Brief at 9, those statutes were enacted and amended between 1954 and 1971. This Court has long explained that "constitutional provision[s] should be construed as having a *prospective effect only* unless it exhibits the intention of its framers to be given a retrospective effect." *State v. Cousan*, 94-2503, p. 18 (La. 11/25/96), 684 So.2d 382, 393 n.8 (emphasis added) (quoting *State ex rel. Hyams' Heirs v. Grace*, 1 So.2d 683, 686 (1941)). Thus, although the Port concedes that enabling statutory authority is required under article IV, section 21, the statutes it cites cannot serve as such authority without dispensing with longstanding principles that guide the interpretation of constitutional and statutory law. Thus, even the Port's interpretation of these provisions were not so detached from their text, the unconstitutional application the Port's interpretation

could not be cured by the adoption of article IV, section 21, because "unconstitutional legislation is not validated by the subsequent adoption of constitutional amendments or other provisions merely authorizing the enactment of such legislation and without expressing any intent to validate it." *Etchison Drilling Co. v. Flournoy*, 59 So. 867, 872 (1912) (citation omitted).

III. Monetary Gain to the Government from Acting as a Middleman Is Not a Valid "Public Use"

Eminent domain is the sovereign power to take private property without the owner's consent in certain limited circumstances. *See Vanhorne's Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 307 (1795) (noting eminent domain's origin in the "absolute despotic power" of the monarch). It is not designed to give the government the power to unilaterally pick and choose its preferred owner for any given property or to transfer profits from private property owners to the government. Hence, eminent domain power is carefully cabined through enumerated limits to permissible public uses and just compensation requirements. Perverse incentives will ensue if the government is permitted to act as a middleman that can force the transfer of property from one private owner to another any time there is an opportunity for arbitrage and monetary gain.

It is well-established that government profit is not an acceptable "public use" to justify the use of eminent domain. *See Commonwealth v. Rush*, 14 Pa. 186, 191 (1850) (Holding the government could not condemn property to sell it, even where the sale proceeds would be used to supply a city with water, "this pretext is almost too barefaced to require a serious answer" because "[i]t is not the proceeds of the square the uses of which the city councils are authorized to declare" but "the property itself[.]" "What difference is it to what use the proceeds are applied? The property is not theirs for sale."). The plain language of the Louisiana Constitution reinforces this principle: "Neither economic development, enhancement of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose[.]"La. Const. art. I, § 4(B)(3).

Here, the property owner was, and remains, willing to sell or lease the property to Venture Global, eviscerating any claim that failure to reverse the decisions below would scuttle the project. Rather than advancing that project, here, the Port has inserted itself in what could just as easily—and constitutionally—be a private transaction to extract a profit. Appellee Brief, *Plaquemines Port Harbor & Terminal District v. Tuan Nguyen*, No. 2024-CA-0614, 2024 WL 4922472, at *4–5 (Nov. 21, 2024). "Mr. Nguyen maintains that he is equally as able as the District to lease his property to Venture Global." *Id.* at *5. The Port's interference with private property rights by injecting itself into this private transaction cannot be countenanced. Even if the Port merely wanted to ensure that the property was leased to Venture Global, the Port's actions here are not justified and betray an underlying motive. If the Port was not concerned with its own monetary gain, the Port could and should have facilitated that private transaction or else paid the property owner the precise amount that it stands to make from the lease payments. Instead, the Port has obfuscated and refused to reveal that number by avoiding entering the alleged lease agreement into evidence. *Plaquemines Port Harbor*, 2024-0614, p. 7 n.4, 2025 WL 1527337, at *3 n.4 ("The alleged lease option or lease agreement was not introduced into evidence.") "[T]he Government should turn square corners in dealing with the people," and the Port has failed to do so here. *St. Regis Paper Co. v. United States*, 368 U.S. 208, 229 (1961) (Black, J., dissenting).

If the government can profit from a strategic use of eminent domain, its role shifts from protecting the public interest to effectively selling its condemnation power to private parties. If the property owner is unwilling to sell, or the private buyer knows it can get a lower price by colluding with the government, a private buyer can simply pay the government to commandeer the government's eminent domain power against the will of the hapless owner. To illustrate, consider a developer that wants to purchase a piece of property where the property owner wants $1,000,000. The developer would be willing to pay the $1,000,000, but the government determines that it can obtain the desired property for $800,000 through eminent domain. The

developer agrees to pay the government $900,000 for the property, effectively paying a $100,000 fee for a one-time use of the government's eminent domain power. The government condemns the property, pays the owner $800,000, sells the property to the developer for $900,000, and pockets the $100,000 difference. Without the government's involvement, the developer would have paid $1,000,000 directly to the property owner, and the property owner would keep the full $1,000,000. With government involvement, the developer saves $100,000, but the property owner suffers a loss of $200,000 as a result of the government's abusive exercise of its eminent domain power.

Such abuse comes with no discernable public benefit, because the developer would have purchased the land either way. The Takings Clause does not support this result. *See also Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 201 (2012) ("Denbury Green's construction leads to a result that we cannot believe the Legislature intended, namely a gaming of the permitting process to allow a private carrier to wield the power of eminent domain."); *Phillips v. Foster*, 215 Va. 543, 547 (1975) (invalidating a statute that granted a private right of condemnation because "[s]uch a taking is not for a public use within constitutional limitations, and amounts to an unconstitutional application of the statute in question in this case."). The government's eminent domain power is not an asset for trade, nor for private use.

IV. *St. Bernard Port v. Violet Dock* Should be Overruled or Limited to Its Facts

The Port's assertion that this Court's decision in *St. Bernard Port* controls is detached from the facts and analysis of this Court's ruling. The lower court correctly distinguished *St. Bernard Port* from this case. *St. Bernard Port* concerned property that would do precisely what the Port here has no plans to: expand a *public* cargo terminal.[6] Here, it is undisputed that Mr. Nguyen's property will not be part of a

[6] *See St. Bernard Port*, 2017-0434, pp. 2–3, 239 So.3d at 246–47 (explaining that the Port leased property to a private entity to handle "several types of cargo," "began experiencing a shortage of space," "was operating at near capacity," and "sought to expand in order to meet

public port network, it will be exclusively used by and for Venture Global, a private company.

It is true that "[t]he Louisiana Constitution … provides that the government can expropriate property for '[p]ublic ports ... to facilitate the transport of goods or persons in domestic or international commerce.'" *St. Bernard Port*, 2017-0434, p. 1, 239 So.3d at 245–46 (quoting La. Const. art. I, § 4(B)(2)(b)(vi)). And a public port may "lease the expropriated property to another entity that physically handles the operations[.]" *Id.* at 251 n.9. "However, the 'operations' must nevertheless be those of a *public* port 'to facilitate the transport of goods ...,' as contemplated under La. Const. art. I, § 4(B)(1)." *Plaquemines Port Harbor*, 2024-0614, p. 6, 2025 WL 1527337, at *3.

By definition and the Port's own admissions, the proposed use of Mr. Nguyen's property does not fall within the narrow list of exceptions to the requirement that "[P]roperty shall not be taken or damaged by the state or its political subdivisions: … (a) for predominant use by any private person or entity[.]" La. Const. art. I, § 4(B)(1). This is not a *public* port.[7] Venture Global "will have exclusive operation and use of the property[.]" *Plaquemines Port Harbor*, 2024-0614, p. 6, 2025 WL 1527337, at *3. The Port will not have any access or participation in the property once it is leased to Venture Global. Appellee Brief, 2024 WL 4922472, at *8. The property will only be accessible by, and used by, Venture Global. "Not only will these terminals be privately held and used by Venture Global, they will also be part of a physically secured complex guarded to prevent any party from entering or using the site, except for Venture Global." *Id.* at *8. While these facts may be inconvenient for the Port, it does not require any mental gymnastics to understand that the contemplated port is *not public*.

---

these growing needs," and thus determined the property at issue was appropriate "for the *Port* to place a cargo facility"—i.e., a *public port*).

[7] Nor does a ruling affirming the decisions below, as the Port contends, "suggest[] an unsubstantiated concept that a public port which leases to a private entity for that entity's exclusive use loses its public port mantle." Plaintiff-Applicant's Original Brief at 12. No such consequences ensure from the well-reasoned decisions below, and the Port remains free to exercise its expropriation authority within the bounds of the Constitution.

Nevertheless, to the extent this Court declines to distinguish *St. Bernard Port*, it should overrule it for the reasons stated in Chief Justice Weimer's dissent and "consistent with the core principles underlying Louisiana's interest in protecting private property rights." *St. Bernard Port*, 2017-0434, p.4, 239 So.3d at 257 (Weimer, J., dissenting); *id.* at p. 19, 239 So.3d at 265 ("The constitution is clear—the government cannot simply take a private business to operate the business or to end competition.").

CONCLUSION

Louisiana's Constitution draws a bright line against using expropriation to take private property for the exclusive use and benefit of a private enterprise. The Port crossed that line. Because the project can proceed through an ordinary, voluntary transaction—and because the Port seeks only to insert itself to capture private revenue—this taking is precisely the abuse the post-*Kelo* amendments were enacted to forbid. Affirming the decision below will not halt development, but it will uphold the constitutional limits that safeguard every Louisianan's property rights. Accordingly, for the foregoing reasons this Court should affirm the decision of the lower court.

DATED: December 5, 2025.

Respectfully submitted,

/s/ Randall A. Smith
RANDALL A. SMITH
ANDRE M. STOLIER
La. Bar No. 2117
La. Bar No. 40063
Smith & Fawer, LLC
201 St. Charles Avenue
Suite 3702
New Orleans, LA 70170
(504) 525-2200
rasmith@smithfawer.com
astolier@smithfawer.com

/s/ Bridget F. Conlan
BRIDGET F. CONLAN*
Ill. Bar No. 6348769
Pacific Legal Foundation
3100 Clarendon Boulevard
Suite 1000
Arlington, VA 22201
(202) 888-6881
BConlan@pacificlegal.org

**Pro Hac Vice motion forthcoming*

Counsel for Amicus Curiae Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume limit of La. R. VII, Section 12:

■ this document contains 5,382 words and contains 15 pages.

2. This document complies with the typeface requirements of La. R. VII, Section 2:

■ this document has been prepared in a proportionally spaced typeface using Word in 12-point, Century Schoolbook font**.**

DATED: December 5, 2025.

/s/ Randall A. Smith
Randall A. Smith

Counsel for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I electronically filed the foregoing with the Clerk of the Court by using the Louisiana Supreme Court E-Filing system. This document will also be e-served to all counsel of record via email.

Stephen I. Dwyer
Susanne M. Cambre
Jennifer S. Avallone
3000 West Esplanade Ave., Suite 200
Metairie, LA 70002
sdwyer@dwyercambre.com
scambre@dwyercambre.com
javallone@dwyercambre.com
Counsel for Appellant
Plaquemines Port Harbor & Terminal District

Cheryl M. Kornick, Esq.
Matthew D. Simone, Esq.
Zachary D. Berryman, Esq.
Liskow & Lewis
Hancock Whitney Center
701 Poydras Street, 50th Floor
New Orleans, LA 70139-5001
cmkornick@liskow.com
mdsimone@liskow.com
zberryman@liskow.com
Counsel for Appellee
Tuan Nguyen

/s/ Randall A. Smith
Randall A. Smith