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The Opening of a Pandora's Box: How Sports Teams Exploit The Broad Reading of Kelo to Develop Sports Stadiums

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THE OPENING OF A PANDORA’S BOX: HOW SPORTS TEAMS EXPLOIT THE BROAD READING OF *KELO* TO DEVELOP SPORTS STADIUMS

Bruce Racine *

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INTRODUCTION

The Faith Deliverance Temple sits in the middle of downtown Orlando, Florida, right near the Amway Center, where Orlando's National Basketball Association (NBA) team plays.¹ The Faith Deliverance Temple has been serving the Parramore residents in Orlando for over 40 years; the Temple has been at its current location for almost three decades.² In 2014, the City of Orlando approached the church to buy its property through a voluntary acquisition.³ When the church refused to negotiate with the City because its roots in the community were too strong, Orlando looked into other options to acquire land to build a new Major League Soccer (MLS) stadium for the Orlando City Soccer Club.⁴ The City settled on using eminent domain to obtain the land.⁵ At first, the City threatened the Faith Deliverance Temple with eminent domain, but the church still refused to

1. See *City of Orlando MLS Stadium: Faith Deliverance Temple (Orange County, FL)*, BRIGHAM PROP. RTS. L. FIRM (2016) [hereinafter *City of Orlando MLS Stadium*], <https://propertyrights.com/project/faith-deliverance-temple/> [https://perma.cc/YNF7-4K85].

2. See *id.*

3. See *Church Fights Back Against City's Eminent Domain Suit*, OWNERS' COUNS. AMERICA (June 11, 2014), <https://www.ownerscounsel.com/church-fights-back-against-citys-eminent-domain-suit/> [https://perma.cc/6H4V-XZBH].

4. See David Damron, *Orlando Drops Eminent Domain Action Against Church, Moves Soccer Stadium Farther West*, ORLANDO SENTINEL (Aug. 4, 2014, 6:17 PM), <https://www.orlandosentinel.com/news/breaking-news/os-orlando-soccer-stadium-church-eminent-domain-20140804-story.html> [https://perma.cc/D5HY-P95V].

5. See Mark Schleub, *Judge: Orlando Can Take Land for Soccer Stadium*, ORLANDO SENTINEL (Jan. 31, 2014), <https://www.orlandosentinel.com/news/os-xpm-2014-01-31-os-orlando-soccer-stadium-land-20140131-story.html> [https://perma.cc/Q94B-MN4Y]. Eminent domain refers to the government's power to take private property and convert it to public use. The Fifth Amendment of the U.S. Constitution states that the government may only use this option if it provides just compensation to the property owners. See *Eminent Domain*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/eminent_domain [https://perma.cc/KVB5-M776] (last visited Oct. 18, 2020).

sell their land.⁶ Weeks of negotiations over prices eventually faltered, forcing Orlando to file an eminent domain lawsuit to take the land.⁷

The City of Orlando was under a tight timeframe to begin constructing the stadium in time for the 2016 MLS season.⁸ The Faith Deliverance Temple had no intention of moving and decided to play the long game with city officials, which meant challenging the taking in court.⁹ In January 2014, Circuit Judge Patricia Doherty ruled that the stadium served a public purpose and the City had the right to take the land needed for the MLS stadium.¹⁰ Despite this ruling, the church chose to continue challenging the taking.¹¹ But, by this point in the suit, Orlando's use of eminent domain to take property from a small church to build a \$100 million stadium became national news.¹² After receiving backlash for their intended actions, City officials stopped pursuing the church's land and relocated the stadium one block from the original plan.¹³ Today, the Faith Deliverance Temple stands in the shadow of the Orlando City Soccer Club's stadium. Orlando's use of eminent domain made national news as reporters from *ESPN*, *Forbes*, and *The Washington Post* wrote articles about the use.¹⁴ Many reporters

6. See Damron, *supra* note 4.

7. See Schleub, *supra* note 5.

8. See Damron, *supra* note 4.

9. See *id.*

10. See Schleub, *supra* note 5.

11. See *City of Orlando MLS Stadium*, *supra* note 1.

12. See Ilya Somin, *Orlando Condemns Private Property in Order to Build a Major League Soccer Stadium*, WASH. POST (Feb. 7, 2014, 5:23 PM) [hereinafter Somin, *Orlando Condemns*],

<https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/02/07/orlando-condemns-private-property-in-order-to-build-a-major-league-soccer-stadium/> [https://perma.cc/827P-GTB5].

13. See Damron, *supra* note 4; IJ Action, *Orlando Drops Attempt to Abuse Eminent Domain*, INST. FOR JUST. (Aug. 6, 2014), <https://ij.org/action-post/orlando-drops-attempt-to-abuse-eminent-domain-replace-church-with-soccer-stadium/> [https://perma.cc/ULD4-PHVQ].

14. See Marc Edelman, *Florida Court Allows Taking of Private Land to Build a Major League Soccer Stadium Based on a Broad Application of "Public Use" Doctrine*, FORBES (Feb. 3, 2014, 1:03 PM), <https://www.forbes.com/sites/marcedelman/2014/02/03/florida-court-allows-the-taking-of-church-land-to-build-a-major-league-soccer-stadium/#74391bb15e64>

[https://perma.cc/6P53-WG5D]; Mina Kimes, *Stadium Progress Halted by Church*, ESPN (July 7, 2014), https://www.espn.com/espn/story/_/id/11181941/city-orlando-plans-soccer-stadium-thwarted-church-espn-magazine [https://perma.cc/9MP4-CCFF]; Somin, *Orlando Condemns*, *supra* note 12.

observed that despite Florida having some of the strongest post-*Kelo*¹⁵ eminent domain reform laws in the country, the judge ruled for the City.¹⁶

Throughout the country, cities and local governments compete to build the next greatest stadium or arena. Land use experts Amirit Kulkarni, Brenda Aguilar-Guerrero, and David Skinner observed that “[c]ities, counties and private enterprises throughout the U.S., particularly in California, are competing to recruit and retain professional sports teams. The decisive factor in nearly every proposed deal is providing a new multi-million dollar sports arena.”¹⁷ In the past 27 years, there have been over 122 sports facilities erected in the United States.¹⁸ In the last 12 years alone, the four major sports leagues — the National Football League (NFL), National Basketball Association (NBA), Major League Baseball (MLB), and National Hockey League (NHL) — have built 27 stadiums or arenas.¹⁹ These statistics on major stadiums do not include smaller leagues

15. *Kelo v. City of New London*, 545 U.S. 469 (2005); see also discussion *infra* Section III.A.

16. See Somin, *Orlando Condemns*, *supra* note 12. Florida has some of the strongest state laws, and its courts initially refused to recognize public purpose in building sports facilities. See Ilya Somin, *The Case Against the Kelo Decision — Part I*, WASH. POST (June 1, 2015, 11:10 AM) [hereinafter Somin, *The Case Against the Kelo Decision*], <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/06/01/why-the-ke-lo-decision-is-wrong-part-i/> [https://perma.cc/3PEA-58B2]; see also Ilya Somin, *Justice Stevens Admits Error in the Kelo Case — But Also Doubles Down on the Bottom Line*, REASON (June 8, 2019, 2:55 PM) [hereinafter Somin, *Justice Stevens Admits Error*], <https://reason.com/2019/06/08/justice-stevens-admits-error-in-the-ke-lo-case-but-also-double-s-down-on-the-bottom-line/> [https://perma.cc/YR5H-MBG2]. Yet, recently, the courts have become more accepting of using eminent domain for sports stadiums. See Edelman, *supra* note 14.

17. Amrit Kulkarni, Brenda Aguilar-Guerrero & David Skinner, *City of Sacramento Beats All Challenges to New \$477 Million Downtown Sports Arena*, MEYERS NAVE, <https://www.meyersnave.com/city-of-sacramento-beats-all-challenges-to-new-477-million-downtown-sports-arena/> [https://perma.cc/R9K6-R9HH] (last visited Oct. 18, 2020).

18. See Aaron Gordon, *America Has a Stadium Problem*, PAC. STANDARD (June 14, 2017), <https://psmag.com/economics/america-has-a-stadium-problem-62665> [https://perma.cc/8MV9-GG58]; *Ballpark & Stadium Comparisons, Ballparks of Baseball*, BALLPARKSOFBASEBALL.COM, <https://www.ballparksofbaseball.com/comparisons/> [https://perma.cc/N54J-JWGQ] (last visited Oct. 18, 2020); *Future Ballparks*, BALLPARKSOFBASEBALL.COM, <https://www.ballparksofbaseball.com/future-ballparks/> [https://perma.cc/324E-P7ZL] (last visited Oct. 18, 2020); *Future NFL Stadiums*, STADIUMS PRO FOOTBALL, <https://www.stadiumsofprofootball.com/future-stadiums/> [https://perma.cc/NNA8-GALE] (last visited Oct. 18, 2020); *NBA Arenas — 2019–20’ Season*, HISPANOSNBA, <https://en.hispanosnba.com/nba-arenas> [https://perma.cc/JHL6-TP39] (last visited Oct. 18, 2020); *NFL Stadiums Comparisons*, STADIUMS PRO FOOTBALL, <https://www.stadiumsofprofootball.com/comparisons/> [https://perma.cc/QC9G-FPN5] (last visited Oct. 18, 2020); Zach Spedden, *NHL Arenas Oldest to Newest*, ARENA DIG. (Oct. 18, 2018), <https://arenadigest.com/2018/10/18/nhl-arenas-oldest-newest/> [https://perma.cc/LZG9-WF9R].

19. See *supra* note 18 and accompanying text.

like MLS, which has constructed, or is in the process of constructing, 12 new facilities.²⁰

The use of eminent domain to build these stadiums or arenas has risen significantly since the Supreme Court's 2005 decision in *Kelo v. City of New London*.²¹ Sports team owners see the benefits of building a facility as close to downtown areas as possible and view eminent domain as a practical means to achieving that goal.²² Before 2005, sports team owners rarely used eminent domain to acquire the land on which to build their facility; by contrast, since 2005, at least eight sports team owners have used eminent domain to secure land.²³ Teams now petition local governments to use the power of eminent domain, given the Supreme Court's *Kelo* interpretation of the word "public use" in the Takings Clause.²⁴

While other articles have addressed sports team owners' use of eminent domain to obtain the land on which to build their sports arenas, this Note discusses if it is time for a critical reexamination as to whether this is a proper use of eminent domain.²⁵ Since the *Kelo* decision, the effects and

20. See Zach Spedden, *MLS Stadiums Oldest to Newest: Updated for 2019*, SOCCER STADIUM DIG. (Jan. 10, 2019), <https://soccerstadiumdigest.com/2019/01/mls-stadiums-oldest-to-newest-updated-for-2019/> [<https://perma.cc/6LPL-E3JN>].

21. 545 U.S. 469 (2005).

22. See Keith Schneider, *Welcome to the Neighborhood: America's Sports Stadiums Are Moving Downtown*, N.Y. TIMES (Jan. 19, 2018), <https://www.nytimes.com/2018/01/19/business/sports-arena-development.html> [<https://perma.cc/SH9G-W6JR>]; Patrick Sisson, *Can Stadiums Save Downtowns — And Be Good Deals for Cities?*, CURBED (Jan. 30, 2018, 12:33 PM), <https://www.curbed.com/2018/1/30/16948360/stadium-public-funding-sacramento-kings> [<https://perma.cc/M5GE-M4XJ>]. Sports team owners observe that they only have to pay "fair market" value for the land, which could make the land cheaper compared to what the original landowners would want. See, e.g., James Joyner, *Eminent Domain Ruling Affects Dallas Cowboys Stadium*, OUTSIDE BELTWAY (June 25, 2005), https://www.outsidethebeltway.com/eminent_domain_ruling_affects_dallas_cowboys_stadium/ [<https://perma.cc/8YY7-3DBC>] (discussing the tough negotiations between the Dallas Cowboys and landowners, and how the Cowboys tried paying pennies on the dollar for the land).

23. See IJ Action, *Foul Ball: Ten Cities That Used Eminent Domain for Sports Stadiums*, INST. FOR JUST. (Sept. 18, 2015) [hereinafter IJ Action, *Foul Ball*], <https://ij.org/action-post/foul-ball-ten-cities-that-used-eminent-domain-for-sports-stadiums/> [<https://perma.cc/L5GD-3GSV>]. The eight stadiums are Mercedes-Benz Stadium, Petco Park, Golden 1 Center, Nationals Stadium, Global Life Park, AT&T Stadium, Kansas City Speedway, and Barclays Center. See *id.* Using eminent domain for sports stadiums is a recent phenomenon — there are only two examples of eminent domain used by sports team owners before 2005. More teams will notice the use and explore the possibilities because using eminent domain initially seems less expensive than privately negotiating with the original landowners.

24. See U.S. CONST. amend. V.

25. See generally Alberto Lopez, *Weighing and Reweighing Eminent Domain's Political Philosophies Post-Kelo*, 41 WAKE FOREST L. REV. 237 (2006); David Mark, *Taking One for*

consequences of the Court's expansive view of what constitutes an acceptable "public use" have raised major concerns in many communities. Invoking eminent domain, local governments are transferring title of private property from one private entity to another. Eminent domain remains an attractive option for local governments' attempts to find new ways to keep sports teams in their cities and build the next "premier" stadium or arena. While certain writers have suggested limiting eminent domain by passing local or state laws that restrict what constitutes an appropriate public use, this Note maintains that this is not sufficient, as these laws could pit jurisdictions or states against one another.²⁶ Other authors have suggested increasing the amount of compensation paid for the taken land, but this Note contends that such a proposal does not address the fundamental question of eminent domain's constitutionality.²⁷ As detailed below, the government should not use eminent domain for sports stadiums or arenas for the primary benefit of sports team owners. This Note argues the Supreme Court should narrow the current broad holding of *Kelo* and the Takings Clause. A narrow interpretation of the Takings Clause would prohibit governments from caving to the demands of sports team owners to use eminent domain to construct sports facilities.

Part I of this Note discusses the history of the interpretation of "public use" in the Fifth Amendment and the government's use of eminent domain. Part I further reviews how the Court has interpreted the phrase "public use" over the decades, leading to an analysis of two major cases — *Hawaii Housing Authority v. Midkiff*²⁸ and *Berman v. Parker*²⁹ — that gave rise to the *Kelo* decision. After examining those cases, this Note construes the *Kelo* decision by dissecting the Court's broad reading of the Takings Clause and its ramifications.

Part II reviews the criticism and support of the broad interpretation of *Kelo*. Part II also scrutinizes *Kelo*'s use for building sports stadiums by determining how sports team owners build sports stadiums at a much higher rate presently than before. Part II then considers how sports team owners lobby local governments to utilize eminent domain to acquire the land they need for new stadiums or arenas. Further, this Part scrutinizes

the Team: The Persistent Abuse of Eminent Domain in Sports Stadium Construction, 5 FIU L. REV. 781 (2010); Philip Weinberg, *Eminent Domain for Private Sports Stadiums: Fair Ball or Foul?*, 35 ENV'T. L. 311 (2005).

26. See Larry Morandi, *State Eminent Domain Legislation and Ballot Measures*, NAT'L CONF. ST. LEGISLATURES (Jan. 1, 2012), <https://www.ncsl.org/research/environment-and-natural-resources/eminent-domain-legislation-and-ballot-measures.aspx> [https://perma.cc/26UP-74WF].

27. See Weinberg, *supra* note 25.

28. 467 U.S. 229 (1984).

29. 348 U.S. 26 (1954).

four recent cases of sports team owners using eminent domain to build sports stadiums or arenas, and their implications for potential future use of eminent domain for sports stadiums or arenas. Part II, however, also analyzes the perceived benefits that sports stadiums and arenas provide cities, and why building new stadiums or arenas can work if done properly. Lastly, Part II analyzes how sports stadiums and arenas are being built at an accelerating rate, displaying the need to resolve the overuse, and possible exploitation, of eminent domain by sports team owners and local governments.

Part III explores potential solutions to this excessive use of eminent domain. This Note submits that the Supreme Court should revisit the issues in *Kelo* and limit the interpretation of “public purpose” and “public use” in the Takings Clause. If the Court does not explicitly overrule *Kelo*, then the Court should read the Takings Clause to guarantee that local governments cannot sell or lease to private developers private land taken through eminent domain, for the benefit of sports team owners. Part III discusses other approaches that state legislatures and courts can apply to the extensive reliance on eminent domain, particularly if the Supreme Court refuses to review *Kelo*.

Part IV explains which solutions from Part III are feasible. Part IV presents strengths and weaknesses related to each possible solution and why some responses are more likely to succeed than others. This Part also offers the most direct way to curb the exploitation of sports team owners utilizing eminent domain. Finally, in conclusion, this Note forecasts a potential case that might rise to the Supreme Court and how the Court should rule.

I. THE EVOLVING NATURE OF “PUBLIC USE” AND EMINENT DOMAIN

This Section reviews the key Supreme Court cases leading to the *Kelo* decision, particularly focusing on how the Court has developed its interpretation of “public use” in the Takings Clause.

A. History of “Public Use” and Eminent Domain

Private property ownership is one of the most sacred and inviolable rights in common law and the United States.³⁰ The Founders, wanting to limit the government’s ability to take private property from the people, crafted the Takings Clause. At the end of the Fifth Amendment, the

30. See 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS, 134–35 (1765); see also ROBERT MELTZ, DWIGHT MERRIAM & RICHARD FRANK, THE TAKINGS ISSUE: CONSTITUTIONAL LIMITS ON LAND USE CONTROL AND ENVIRONMENTAL REGULATION (1999).

Takings Clause states, “nor shall private property be taken for public use, without just compensation.”³¹ Courts have interpreted the clause and recognized that the power of eminent domain is a fundamental and necessary attribute of sovereignty, superior to all private property rights.³² The Fifth Amendment, through the public use requirement, ensures that this taking power has limits and that the government does not misuse it. In the nineteenth century, the federal courts ruled that the Due Process Clause of the Fourteenth Amendment allowed them to review takings by state governments.³³

The Court’s interpretation of “public use” and the government’s use of eminent domain has evolved over the decades.³⁴ Traditionally, the government utilized eminent domain to facilitate transportation, supply water and other public utilities, construct public buildings, and aid in defense readiness.³⁵ The government has also used eminent domain for national parks or infrastructure projects such as federal courthouses or the Washington, D.C., metro system.³⁶ The government took the vast majority of these properties for public use, but in the past half-century, the Court’s

31. U.S. CONST. amend. V.

32. See *Goldstein v. Pataki*, 516 F.3d 50, 57 (2d Cir. 2008) (citing *Rosenthal & Rosenthal, Inc. v. N.Y. State Urb. Dev. Corp.*, 771 F.2d 44, 45 (2d Cir. 1985)).

33. See *Missouri Pac. Ry. Co. v. Nebraska*, 164 U.S. 403, 417 (1896) (holding that a taking of private property of one person or corporation without the owner’s consent and for the private use of another is not due process of law, and thus violates the Fourteenth Amendment).

34. See *History of the Federal Use of Eminent Domain*, U.S. DEP’T JUSTICE (May 15, 2015), <https://www.justice.gov/enrd/history-federal-use-eminent-domain> [https://perma.cc/MT4Q-N2HX]. *United States v. Gettysburg Electric Railway Co.*, 160 U.S. 668 (1896), shaped the Court’s view of the Takings Clause for years. The Court held that the federal government had the power to condemn property “whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the constitution.” *Gettysburg Elec. Ry. Co.*, 160 U.S. at 679. Even though the legislative branch did not have an absolute right, it could determine what constituted public use, thus, opening the door to a broader interpretation.

35. See *History of the Federal Use of Eminent Domain*, *supra* note 34; see also *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913) (permitting a government taking for navigational waters); *Sharp v. United States*, 191 U.S. 341 (1903) (authorizing a taking for the production of war materials); *United States v. Great Falls Mfg. Co.*, 112 U.S. 645 (1884) (allowing takings so that cities could provide drinking water); *Kohl v. United States*, 91 U.S. 367 (1875) (holding that the federal government had the power to appropriate property for public buildings).

36. See *History of the Federal Use of Eminent Domain*, *supra* note 34; see, e.g., *Gwathmey v. United States*, 215 F.2d 148 (5th Cir. 1954) (concluding that a taking for NASA’s launch facility constituted a valid eminent domain taking). At the end of the nineteenth century, the Court began applying the Fifth Amendment to states and embracing the broader construction of “public use” as public purpose. See *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158–64 (1896).

interpretation has broadened in scope, potentially exposing citizens around the country to eminent domain abuse.

Since 1954, the Court has expanded its interpretation of “public use,” setting the stage for the extremely broad reading of *Kelo v. City of New London*. The key cases leading up to *Kelo* are *Berman v. Parker* and *Hawaii Housing Authority v. Midkiff*.³⁷ In his majority opinion in *Kelo*, Justice John Paul Stevens extensively cites these two cases, and the dissents by Justices Clarence Thomas and Sandra O'Connor do as well.³⁸ This Note aims to address whether these cases truly support an expansive reading in *Kelo*.

i. Berman v. Parker: The Use of Eminent Domain for Economic Development Starts

In 1954, the Court started to expand the meaning of “public use” in the Fifth Amendment in *Berman v. Parker*.³⁹ The Court “upheld a redevelopment plan targeting a blighted area in Washington, D.C., in which most of the housing for the area’s 5,000 inhabitants was beyond repair.”⁴⁰ The plan would entail construction of public facilities on part of the area, and the lease or sale of the rest of the area to private developers.⁴¹ The owner of one parcel of land challenged the condemnation, pointing out that his property was not blighted and that creating a “better balanced, more attractive community” was not a valid public use.⁴² The Court unanimously refused to evaluate this claim in isolation.⁴³ Instead, the Court deferred to the legislative and agency judgment and looked at the condemnation for the redevelopment plan as a whole.⁴⁴ The Court stated that “[t]he concept of the public welfare is broad and inclusive. . . . It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”⁴⁵ The Court ultimately decided that if the City’s government believed that the condemnation of property for eminent

37. See *Berman v. Parker*, 348 U.S. 26 (1954); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984).

38. See *Kelo v. City of New London*, 545 U.S. 469 (2005); see also *Kelo*, 545 U.S. at 505 (Thomas, J., dissenting).

39. *Berman*, 348 U.S. 26.

40. *Kelo*, 545 U.S. at 30 (citing *Berman*, 348 U.S. 26).

41. See *Berman*, 348 U.S. at 29–33.

42. See *id.* at 31.

43. See *id.* at 34.

44. See *id.* at 33–34.

45. *Id.* at 33.

domain was in the best interest of the City, then nothing in the Fifth Amendment stood in the way.

*ii. Hawaii Housing Authority v. Midkiff: The Court Further Expands
“Public Use”*

Exactly 30 years later, in 1984, the Court further expanded the Takings Clause in *Hawaii Housing Authority v. Midkiff*.⁴⁶ In this case, the Court considered a Hawaii statute that took fee title from lessors and transferred the property to lessees (for just compensation) to reduce the concentration of land ownership.⁴⁷ The Court unanimously upheld the statute and rejected the Ninth Circuit’s narrower view.⁴⁸ The Court reaffirmed *Berman*’s deferential view toward the legislature and held that the state’s purpose of eliminating the “social and economic evils of a land oligopoly” qualified as a valid public use.⁴⁹ The *Midkiff* Court rejected the view that a state’s taking of property from private owners and immediate transfer to other private individuals did not qualify as public use under the Takings Clause.⁵⁰ The Court stated, “it is only the taking’s purpose, and not its mechanics,” that matter when defining the “public use.”⁵¹ In doing so, the Court broadened the meaning of “public use” and “public purpose” and set the stage for *Kelo*. The unanimous Courts in both *Berman* and *Midkiff* were deferential to the legislative branch, thus allowing states and local governments to push the boundaries of what is an acceptable taking under the Fifth Amendment.

Over 21 years later, the Court had another opportunity to modify the reading of “public use” in the Takings Clause.⁵² At this point, the established precedent was that “public use” under the Takings Clause could mean public purpose.⁵³ Justice Stevens would further expand this precedent in *Kelo*.⁵⁴

46. 467 U.S. 229 (1984).

47. *See id.* at 232–33.

48. *See id.* at 235.

49. *Id.* at 241–42.

50. *See Kelo v. City of New London*, 545 U.S. 469, 482 (2005) (discussing *Midkiff* and the Court’s rejection of transfer of property).

51. *Midkiff*, 467 U.S. at 244.

52. *See generally Kelo*, 545 U.S. 469.

53. *See generally Midkiff*, 467 U.S. 229.

54. *See Kelo*, 545 U.S. at 484 (holding that a city could take private property for the purpose of economic development because it satisfies the public purpose).

iii. Kelo v. City of New London: The Court Opens a Pandora's Box

In *Kelo*, the City of New London, Connecticut, proposed an economic plan to develop parcels of land.⁵⁵ The City specifically targeted the Fort Trumbull area for economic revitalization.⁵⁶ The New London Development Corporation (NLDC), a private nonprofit entity,⁵⁷ assisted in implementing the plan, which included the promise that the pharmaceutical company Pfizer Inc. would build a \$300 million research facility immediately adjacent to Fort Trumbull.⁵⁸ The plan aimed to draw new business to the area; according to the NLDC, the economic plan would create jobs, generate tax revenue, and help “build momentum for the revitalization of downtown New London.”⁵⁹ Throughout this planning, the NLDC held a series of neighborhood meetings to inform the public of the development.⁶⁰ In May 1999, the NLDC submitted its plans to the state agencies, which subsequently approved them.⁶¹ The City Council initially approved the NLDC’s development plan in January 2000 and designated the NLDC as its development agent in charge of implementation.⁶² At the same time, the City Council authorized the NLDC to buy or use eminent domain to acquire the needed land in the Fort Trumbull area.⁶³ The NLDC obtained over 90 properties through negotiations but failed to acquire some necessary parcels.⁶⁴ Facing this roadblock, the NLDC used eminent domain to take the rest of the land without the permission of the landowners.⁶⁵

In *Kelo*, nine landowners (petitioners) called the City’s use of eminent domain improper.⁶⁶ The nine petitioners owned 15 properties in Fort

55. *See id.* at 472.

56. *See id.* at 473.

57. “[D]evelopment corporations . . . are 501(c)(3) non-profit organizations that are created to support and revitalize communities, especially those that are impoverished or struggling.” Rachid Erekaeni, *What Is a Community Development Corporation?*, NACEDA (Sept. 17, 2014), https://www.naceda.org/index.php?option=com_dailyplanetblog&view=entry&category=bright-ideas&id=25%3Awhat-is-a-community-development-corporation-&Itemid=171 [<https://perma.cc/5FJW-2JP3>].

58. *See Kelo*, 545 U.S. at 473.

59. *See id.* at 473–74.

60. *See id.* at 473.

61. *See id.* at 473–74. Various state agencies reviewed the plans. One agency, the Office of Policy and Management, reviewed the plan and found it consistent with the state and municipal laws. *See id.* at 473 n.2.

62. *See id.* at 473, 475; *see also* CONN. GEN. STAT. § 8-188 (2005).

63. *See Kelo*, 545 U.S. at 475; *see also* CONN. GEN. STAT. § 8-193 (2005).

64. *See Kelo*, 545 U.S. at 474–75.

65. *See id.* at 475.

66. *See id.*

Trumbull, with four in Parcel 3 and 11 in Parcel 4A of the development plan.⁶⁷ Each property varied as the owner or a family member occupied ten of the parcels, and outside investors owned and rented out five of the properties.⁶⁸ One petitioner, Susette Kelo, had lived in Fort Trumbull since 1997, while another petitioner, Wilhelmina Dery, still lived in the Fort Trumbull house in which she was born in 1918.⁶⁹ Mrs. Dery's husband, Charles (also a petitioner), moved in when the two were married, which was over 60 years before the *Kelo* decision.⁷⁰ The NLDC did not allege that any of the properties were blighted or in poor condition.⁷¹ Rather, the Government condemned the petitioners' properties only because they were located in the development area.⁷²

The petitioners believed that this taking of their properties violated the public use restriction in the Fifth Amendment. They appealed the adverse decisions of the Connecticut Superior Court and the Supreme Court of Connecticut to the United States Supreme Court.⁷³ The petitioners argued that the Connecticut state courts incorrectly equated "public use" with public benefits, such as taxes and jobs, that might flow from private business enterprises.⁷⁴ Traditionally, governments used eminent domain for roads or public buildings, yet in the petitioners' situation, none of those reasons applied.⁷⁵ In the petitioners' case, private property was taken for private use — more specifically, for a private economic development plan that might not even materialize.⁷⁶ The petitioners argued that if all a local government had to establish for a land taking to constitute public use was to list the development's expected tax revenue and job growth, then governments could use eminent domain for practically any private use or business.⁷⁷ As the petitioners stated in their argument, "[b]y encouraging a vision of eminent domain where virtually any property can be taken for virtually any private business, the majority opinion [of the Connecticut Supreme Court] invites abuse by governmental bodies and private parties."⁷⁸ Therefore, the petitioners wanted the Court to declare this taking improper under the Fifth Amendment and adopt a new bright-line

67. *See id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

73. *See id.* at 476.

74. *See* Brief for Petitioner at 10, *Kelo*, 545 U.S. 469 (No. 04-108).

75. *See id.*

76. *See id.*

77. *See id.*

78. *Id.* at 15.

rule that economic development does not qualify as public use.⁷⁹ Further, the petitioners asserted that if the Court generally allowed eminent domain for economic development purposes, then there should be reasonable certainty that the economic project would yield public benefits to justify the condemnation.⁸⁰ Otherwise, the affirmance of the Connecticut Supreme Court's decision would "open the floodgates."⁸¹

Five of the Supreme Court Justices rejected the petitioners' arguments on the public use language of the Fifth Amendment. Writing for the majority, Justice Stevens concluded that because the "plan unquestionably serve[d] a public purpose, the takings challenged here satisf[ied] the public use requirement of the Fifth Amendment."⁸² Justice Stevens also wrote that "[p]romoting economic development is a traditional and long-accepted function of government . . . [and] there is no basis for exempting economic development from our traditionally broad understanding of public purpose."⁸³ Despite the petitioners' contention that allowing a municipality to use eminent domain as part of an economic development plan would blur the boundary between public and private takings, the Court decided to defer to the legislature.⁸⁴ The Court held that economic development qualified as a valid public use under the Fifth Amendment and that an economic development plan like the one in *Kelo* furthered a public use because it was for a public purpose.⁸⁵ The Court has not addressed the public use language in the Fifth Amendment since *Kelo*.

The dissents from Justices Thomas and O'Connor warned the majority of the consequences of such a broad reading.⁸⁶ Justice Thomas wrote that the holding established a "far-reaching and dangerous result."⁸⁷ Justice O'Connor further stated that under the majority's view, "the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public — such as increased tax

79. See *Kelo*, 545 U.S. at 484.

80. See Brief of Petitioner, *supra* note 74, at 36.

81. See *id.* at 48–49.

82. *Kelo*, 545 U.S. at 484.

83. *Id.* at 484–85.

84. See *id.* at 488–89. "Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch." *Id.* at 489 (quoting *Berman v. Parker*, 348 U.S. 26, 35–36 (1954)).

85. See *id.* at 489–90.

86. See *id.* at 493–505 (O'Connor, J., dissenting); *id.* at 505–23 (Thomas, J., dissenting).

87. See *id.* at 523 (Thomas, J., dissenting).

revenue, more jobs, maybe even esthetic pleasure.”⁸⁸ *Kelo* gave the proverbial “green light” to local and state governments to expand their meaning of “public use” to fit broad, economic development goals.

iv. Ramifications of Kelo

The Court’s decision in *Kelo* allows local and state governments to use the new interpretation of the Takings Clause to develop private land. At first, many states adopted laws that raised the floor for what constituted public purpose.⁸⁹ The *Kelo* opinion received significant criticism from legal scholars and politicians who argued that the decision could lead to abuse from local governments and private developers.⁹⁰ The criticism and dissents of *Kelo* theorized that local governments would misuse the *Kelo* decision and extend their applications of *Kelo* further than the original

88. *Id.* at 501 (O’Connor, J., dissenting). But see *id.* at 498 (O’Connor, J., dissenting), for Justice O’Connor’s language (“[T]he sovereign may transfer private property to private parties, often common carriers, who make the property available for the public’s use — such as with a railroad, a public utility, or a stadium. See, e.g., *National Railroad Passenger Corporation v. Boston & Maine Corp.*, 503 U.S. 407, 118 L. Ed. 2d 52, 112 S. Ct. 1394 (1992); *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30, 60 L. Ed. 507, 36 S. Ct. 234 (1916)”). The first case involves Amtrak, a private, for-profit corporation created by Congress, and the second case concerns a power company incorporated under the laws of the state of Maine to manufacture, supply, and sell power to the public. Justice O’Connor provided no case citation for her inclusion of “stadium” in this list. One could argue that, to be consistent with the concept of a common carrier or public utility, the suggested stadium would be more likely controlled by a publicly financed organization, such as a public university, and not by a private interest without a communal public purpose.

89. See Morandi, *supra* note 26. Generally, the eminent domain statutes or requirements fall into five categories: (1) prohibiting using eminent domain to develop the economy, generate tax revenue, increase employment, or transfer private property to another private entity; (2) defining what constitutes “public use” to be the possession, occupation, or enjoyment of the property by the public at large, public agencies, or public utilities; (3) restricting eminent domain to blighted properties and redefining what constitutes “blighted” to emphasize detriment to public health or safety; (4) requiring greater public notice, more public hearings, negotiation in good faith with landowners, and approval by elected governing bodies; and (5) requiring compensation greater than fair market value where the property condemned is the principal residence. See *id.* For example, Florida prohibits the transfer of private property acquired through eminent domain to another private entity unless its use meets certain exceptions. Florida also mandates a three-fifths vote of both houses of the state legislature to use eminent domain to transfer private property to another private entity. Some states, such as New Hampshire and New Mexico, prohibit the use of eminent domain to transfer private property to another private entity for private development or even prohibit eminent domain for redevelopment projects. At the same time, other states such as West Virginia and Alabama provide exceptions to the use of eminent domain, including the blight exception. See *id.*

90. See Somin, *The Case Against the Kelo Decision*, *supra* note 16; see also Somin, *Justice Stevens Admits Error*, *supra* note 16.

decision intended.⁹¹ In particular, the *Kelo* dissents emphasized that there was no legal precedent for the position that economic development constituted public purpose under the Fifth Amendment.⁹² Essentially, the majority's holding permitted local governments to attach the words "economic development" to a plan to justify taking private land and ceding it to a private entity or person. If such a taking were in furtherance of an alleged public purpose, then the taking would be considered constitutional.⁹³

Some courts and state governments attempted to prevent the abuse of using eminent domain for economic development by stating that for an area to be eligible for taking by eminent domain, the area must be considered blighted.⁹⁴ Experience shows, however, that local governments could easily circumvent that requirement. States differ as to what constitutes a blighted area, with some establishing a very low threshold.⁹⁵ Furthermore, the definition of "blight" is too obscure or far-reaching to limit misuse by local governments because these municipalities could deem areas as "blighted" and then seize private properties in those areas.⁹⁶ Such vague

91. See Somin, *Justice Stevens Admits Error*, *supra* note 16.

92. See *Kelo*, 545 U.S. at 498 (O'Connor, J., dissenting); see also *Kelo*, 545 U.S. at 519 (Thomas, J., dissenting).

93. Based on *Kelo*, essentially any taking that provides any benefit to the public would constitute a valid taking. See *Kelo*, 545 U.S. 469.

94. See generally Morandi, *supra* note 26.

95. See *id.* Wisconsin "[p]rohibits the use of eminent domain to condemn non-blighted properties to be transferred to another private entity." *Id.* Yet Wisconsin state law defines "blight" to include properties that have detrimental effects on public health and safety; this potentially opens the door for private developers to use this broad definition to support an eminent domain taking. See *id.* Florida, on the other hand, limits how developers and local officials can condemn certain property as blight. Florida's statute specifies that a

"[b]lighted area" means an area in which there are a substantial number of deteriorated or deteriorating structures; in which conditions, as indicated by government-maintained statistics or other studies, endanger life or property or are leading to economic distress; and in which two or more of the following factors are present . . .

FLA. STAT. ANN. § 163.340(8) (West 2007).

96. See generally Morandi, *supra* note 26. For example, Minnesota's statute does not contain any limitations on the property selection factors in its language. The statute defines a "blighted area" as

any area with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

definitions allow local governments to use eminent domain to exploit low-income, marginalized occupants. Often, these low-income communities have few, if any, resources to challenge the government's determination that their areas are blighted.⁹⁷ *Kelo* erected a huge barrier to property owners challenging such takings when it established the precedent that economic development was a constitutionally permissible reason for the taking of private property.

II. EMINENT DOMAIN RELATING TO SPORTS STADIUMS AND ARENAS

Part II focuses on the *Kelo* decision's impact on the use of eminent domain to build new stadiums or arenas for sports team owners. This Part provides specific examples of such use to construct sports facilities in Washington, D.C.; Brooklyn, New York; and Sacramento, California.

A. History of Using Eminent Domain for Sports Stadiums and Arenas in the United States

Since *Kelo*, state and local governments around the country have pushed the boundaries of what constitutes public purpose and use under the Fifth Amendment. The governments — perhaps believing that courts would uphold very few challenges to its interpretation of the Fifth Amendment language — have looked beyond economic development for their basis, to see what other land-taking justifications the courts would allow. After the broad *Kelo* decision in 2005 determined what constitutes public use, governments have frequently used eminent domain for building new sports stadiums and arenas.⁹⁸ Sports team owners realized the eminent domain option could be less expensive than private negotiations.⁹⁹ Before *Kelo*, it

MINN. STAT. ANN. § 469.002 (West 2007); see also ROBINSON & COLE, NAT'L ASS'N REALTORS, URBAN BLIGHT: AN ANALYSIS OF STATE BLIGHT STATUTES AND THEIR IMPLICATIONS FOR EMINENT DOMAIN REFORM 9–10 (2007), [https://www.nar.realtor/smart_growth.nsf/docfiles/blight_study_revised.pdf/\\$FILE/blight_study_revised.pdf](https://www.nar.realtor/smart_growth.nsf/docfiles/blight_study_revised.pdf/$FILE/blight_study_revised.pdf) [<https://perma.cc/AU8C-5GA8>].

97. See generally Martin Gold & Lynne Sagalyn, *The Use and Abuse of Blight in Eminent Domain*, 38 FORDHAM URB. L.J. 1119 (2011).

98. See IJ Action, *Foul Ball*, *supra* note 23.

99. In private negotiations, sports team owners offer a price to the owners for the land. The landowners then can accept the original offer, reject it, or make a counteroffer. The negotiations can get out of hand, as the sports team owners might lowball the landowners, while the landowners might ask for an exorbitant price because of their emotional attachment to the land. Sports team owners, presently, can use eminent domain if the negotiations fall apart, which may give them more leverage to offer a lower price for the parcel of land. See Alex Hornday, Note, *Imminently Eminent: A Game Theoretic Analysis of Takings Since Kelo v. City of London*, 64 WASH. & LEE L. REV. 1619, 1621–22 (2007); Richard Bilbao, *Breaking: Soccer Stadium Land Talks Stall; City Considers Eminent Domain*, ORLANDO BUS. J. (Sept. 16, 2013, 10:51 AM),

was more challenging for states and cities to use eminent domain to take private property for such facilities, as the test for the use of eminent domain was narrower and more difficult to satisfy.

Two pre-*Kelo* examples of cities successfully using eminent domain to build sports facilities include Pittsburgh in the 1950s and Los Angeles in the 1960s.¹⁰⁰ The City of Pittsburgh decided to build a new arena in one of Pittsburgh's most historic neighborhoods.¹⁰¹ The Urban Development Authority designated the area as blighted, and the City then stated that the takings were for economic development.¹⁰² The City seized hundreds of properties to construct a new arena for the NHL's Pittsburgh Penguins, resulting in the removal of several thousand people.¹⁰³ The Los Angeles Dodgers built its current baseball stadium in Chavez Ravine from 1957 until its opening on April 10, 1962.¹⁰⁴ Los Angeles first planned to take the land and use it for public housing, but after taking the land, the City government decided, instead, to use the land to construct the current stadium.¹⁰⁵ The ensuing conflict became known as the "Battle for Chavez Ravine."¹⁰⁶ Generations of families, most of them Mexican American, had

<https://www.bizjournals.com/orlando/blog/2013/09/soccer-stadium-land-talks-stall-city.html> [https://perma.cc/RP85-ATHB]; Craig Lucie, *Eminent Domain Could Be Used to Build Falcons Stadium*, WSB-TV (Sept. 25, 2013, 7:33 PM), <https://www.wsbtv.com/news/local/eminent-domain-could-be-used-build-stadium/242917006/> [https://perma.cc/XYS3-UWZB].

100. See IJ Action, *Foul Ball*, *supra* note 23.

101. See *id.* The neighborhood was called the Lower Hill District, which was the cultural center of Black life in Pittsburgh. See generally JOE TROTTER & JARED DAY, RACE AND RENAISSANCE: AFRICAN AMERICANS IN PITTSBURGH SINCE WORLD WAR II (2010).

102. See *id.* The Urban Development Authority is the City of Pittsburgh's economic development agency, which supports the City's economic development goals. See *Who We Are*, URB. REDEVELOPMENT AUTH. PITTSBURGH, <https://www.ura.org/pages/who-we-are> [https://perma.cc/74S5-SF4E] (last visited Oct. 5, 2020).

103. See IJ Action, *Foul Ball*, *supra* note 23.

104. See Matthew Savare, John Middleton, Jr. & Scott Walker, *Stadia Mania: The Business, Civic and Legal Issues of New Stadium Construction — Part I*, CORP. COUNS. BUS. J. (Feb. 1, 2008), <https://ccbjournal.com/articles/stadia-mania-business-civic-and-legal-issues-new-stadium-construction-part-i> [https://perma.cc/ME6V-BFE8]; see also Scott Harrison, *From the Archives: First Game Played in Dodger Stadium*, L.A. TIMES (Apr. 3, 2017, 1:00 AM), <https://www.latimes.com/visuals/photography/la-me-fw-archives-first-game-played-in-dodger-stadium-20170330-story.html> [https://perma.cc/926H-6DB8].

105. See Nathan Masters, *Chavez Ravine: Community to Controversial Real Estate*, KCET (Sept. 13, 2012), <https://www.kcet.org/shows/lost-la/chavez-ravine-community-to-controversial-real-estate> [https://perma.cc/VGT8-L7VX].

106. See Jerald Podair, *How the Dodger Baseball Stadium Shaped LA — And Revealed Its Divisions*, GUARDIAN (Apr. 12, 2017, 2:30 AM), <https://www.theguardian.com/cities/2017/apr/12/dodger-baseball-stadium-shaped-la-and-revealed-its-divisions> [https://perma.cc/J69Y-Q3PS].

lived in the area.¹⁰⁷ Yet, government officials labeled the land “blighted” and began plans to redevelop it.¹⁰⁸ The ensuing decade-long fight for the land caused much hardship for the families, and eventually a referendum approved the trade of 352 acres of the land to Brooklyn Dodgers’ owner Walter O’Malley.¹⁰⁹ The Dodgers, then in Brooklyn, New York, moved to Los Angeles, California, once the City built the new stadium.¹¹⁰

The trend of using eminent domain to seize property and build sports stadiums extended into the 1990s and 2000s in Arlington, Texas, and Kansas City, Missouri.¹¹¹ The City of Arlington, Texas, used eminent domain to acquire 13 acres for the Texas Rangers’ ballpark in 1991.¹¹² The Texas Rangers’ officials successfully lobbied the local government to use eminent domain to acquire the land needed for the baseball stadium.¹¹³ One of the prominent investors, George W. Bush, converted his small initial investment into a multimillion-dollar profit when the ownership of the team changed hands.¹¹⁴ In 2001, Kansas City opened up the Kansas City Speedway; before construction, the City took property from 165 owners who argued that the National Association for Stock Car Auto Racing (NASCAR) would reap the benefits of this taking and not the City.¹¹⁵

While cities used eminent domain to build sports facilities before the Court’s *Kelo* decision, the use of this strategy has exploded in recent years. In the years following *Kelo*, at least eight local governments have used

107. See Elina Shatkin, *The Ugly, Violent Clearing of Chavez Ravine Before It Was Home to the Dodgers*, LAIST (Oct. 17, 2018, 12:00 PM), https://laist.com/2018/10/17/dodger_stadium_chavez_ravine_battle.php [<https://perma.cc/PP3T-BV54>].

108. See *id.*

109. See *id.*

110. See *id.*

111. See IJ Action, *Foul Ball*, *supra* note 23.

112. See *id.*

113. See Ilya Somin, *The Bush Family and Eminent Domain*, WASH. POST (Feb. 8, 2016, 3:07 PM), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/02/08/the-bush-family-and-eminent-domain/> [<https://perma.cc/8XQ9-RLKL>]. George W. Bush, prior to becoming President of the United States, and his partners with the Rangers convinced Arlington officials to use the government’s power of eminent domain in their favor. They convinced the Arlington officials to condemn land the Rangers could not, or did not, want to buy on the open market and to give the Rangers control over the area surrounding the stadium. This allowed the Rangers to buy the stadium (which cost \$191 million to build) for just \$60 million. See Robert Bryce, *What Price Baseball? The Rangers Ain’t Gonna Like This*, YOGI, AUSTIN CHRON. (June 20, 1997), <https://www.austinchronicle.com/news/1997-06-20/529131/> [<https://perma.cc/UEH2-9R79>].

114. See IJ Action, *Foul Ball*, *supra* note 23; see also Bryce, *supra* note 113.

115. See IJ Action, *Foul Ball*, *supra* note 23.

eminent domain to acquire land desired by sports team owners for new sports facilities.¹¹⁶ Typically, sports team owners and local governments advocate for a new stadium by claiming the new stadium will create economic development in the city.¹¹⁷ Proponents also argue the takings constitute part of an economic development plan to justify allowing local governments to utilize eminent domain and obtain the land. This method is usually cheaper, quicker, and easier for government to acquire the land than negotiating privately with individual landowners because it eliminates the holdout problem and forces landowners to accept for their land the “just compensation” that the Fifth Amendment requires.¹¹⁸

Courts in the United States have largely adopted these arguments because of the broad reading of the Takings Clause in *Kelo*. Given the current interpretation that “public purpose” means public use under the Fifth Amendment, building a new sports arena serves that broad public purpose, even if most of the public cannot use it.

B. Rampant Building of Sports Stadiums and Arenas During the Last Few Decades

Sports team owners around the country are building new stadiums and arenas at a rapid rate.¹¹⁹ In the last 27 years, cities in the United States have built around 122 stadiums and arenas, as more sports team owners wanted to replace their old stadiums with new ones containing various fan-pleasing amenities and revenue-generating extras such as luxury suites.¹²⁰ A number of sports team owners have proposed new stadiums, which necessarily need land.¹²¹

116. *See id.*

117. *See* Savare, Middleton Jr. & Walker, *supra* note 104. Sports owners and politicians consistently use this argument by stating that the new stadium will provide new jobs in the stadium and in the restaurants and shops that open near the stadium.

118. Typically, a local government reaches out to landowners to negotiate for the property. Some will accept the offers, while others refuse to part with their property. This scenario creates a holdout problem. Those who refuse to accept the government’s offer might do so for a variety of reasons; some hold sentimental values of their property, while others just want more money. The holdouts could increase the cost of the stadium and delay construction. *See, e.g.,* Joyner, *supra* note 22.

119. In the last 12 years, teams in the four major sports leagues built 27 new stadiums. MLS has built or is building 12 stadiums, and many colleges likewise are constructing new sports facilities. *See supra* Part I.

120. *See* David Broughton, *Venues Change with the Times*, SPORTS BUS. J. (Apr. 30, 2018), <https://www.sportsbusinessdaily.com/Journal/Issues/2018/04/30/Facilities/Venue-trends.aspx> [<https://perma.cc/L5HW-WBJP>] (describing some of the new amenities in sports stadiums); *supra* note 18 and accompanying text; *see also* Schneider, *supra* note 22.

121. *See* Schneider, *supra* note 22; *see also* Andrew Zimbalist & Roger G. Noll, *Sports, Jobs, & Taxes: Are New Stadiums Worth the Cost?*, BROOKINGS (June 1, 1997),

Sports team owners know politicians do not want to be associated with why a sports team leaves a city.¹²² The negative press and the disapproving reactions from voters make it very unpopular for a sports team to move.¹²³ The pressure from the media and voters to guarantee that a team stays in the city allows sports team owners to take advantage of local politicians. Sports team owners can threaten to leave, and many do so, unless the city helps them build a new stadium or arena.¹²⁴ Government officials often give franchise owners tax breaks or stadium subsidies to build the newest stadium — thereby avoiding the team’s relocation.¹²⁵ Local governments’ use of eminent domain is unpopular because of the hardships created, but losing a team may be more detrimental to a politician’s reputation.¹²⁶

The ideal stadium location is now as close to downtown areas as possible¹²⁷ because it provides convenient transportation options for

<https://www.brookings.edu/articles/sports-jobs-taxes-are-new-stadiums-worth-the-cost/> [<https://perma.cc/3QTT-LZT4>]. One can question whether the COVID-19 pandemic will lessen this push for new sports facilities as the four major sports have significantly limited fan attendance at their games. As most stadium and arena construction take years to plan and build, one can expect that such need for new facilities will not significantly diminish as the sports team owners look past the pandemic to new facilities that please fans and generate revenue. Plus, the pandemic experience might require building new facilities to accommodate fans by providing a healthier environment to minimize concerns of disease spread while still permitting fan attendance.

122. See generally Jim Brunner & Sharon Pian Chan, *Sonics Moving to Oklahoma City*, SEATTLE TIMES (July 3, 2008, 12:00 A.M.), <https://www.seattletimes.com/seattle-news/sonics-moving-to-oklahoma-city/> [<https://perma.cc/6GRX-DLU3>]; Gordon, *supra* note 18; Joe Nocera, *In Losing the Rams, St. Louis Wins*, N.Y. TIMES (Jan. 15, 2016), <https://www.nytimes.com/2016/01/16/sports/football/st-louis-should-be-glad-it-lost-the-ram-s.html> [<https://perma.cc/N2HX-F393>]; Brent Schrotenboer, *This Super Bowl Stinks in St. Louis, Still Burdened by Rams Dome Debt*, USA TODAY (Jan. 29, 2019, 3:56 PM), <https://www.usatoday.com/story/sports/2019/01/29/super-bowl-st-louis-still-picking-up-pieces-rams-saga/2708034002/> [<https://perma.cc/Q8TB-QFYM>].

123. See Brunner & Chan, *supra* note 122; see also Gordon, *supra* note 18.

124. For instance, owners in the NFL have tried to hold their cities hostage to convince city administrations to build new stadiums. When the government officials did not budge, the teams stayed true to their word and left. The NFL’s St. Louis Rams warned that the team would leave St. Louis if it did not receive a new stadium, and subsequently moved to Los Angeles. See Nocera, *supra* note 122. Also, in the NBA, the Seattle SuperSonics left Seattle to move to Oklahoma City for the same reason. See Brunner & Chan, *supra* note 122.

125. See Savare, Middleton Jr. & Walker, *supra* note 104. A recent example of this occurred in Sacramento with the NBA’s Sacramento Kings. It threatened to leave before the City succumbed to the pressure of losing a sports franchise. See *infra* Section II.C.iii.

126. People are often forced to move from homes they have lived in for decades. See Brunner & Chan, *supra* note 122; see also Gordon, *supra* note 18. Still, losing a sports team can be devastating for local politicians because of the personal attachment many citizens feel towards the team. See *infra* Section II.E.

127. See Schneider, *supra* note 22.

fans.¹²⁸ Sports team owners often buy not only the downtown land for the stadium or arena, but also the land surrounding the facility to build stores and restaurants.¹²⁹ Sports team owners, therefore, can propose a comprehensive economic development argument for obtaining this land because it brings jobs, business, and tax revenue to the cities.¹³⁰ The economic development arguments and the stadium, packaged together, make it easier for the government to justify using eminent domain to the courts and press.

The data does not establish,¹³¹ and economists have yet to determine, whether building a new stadium brings significant economic change and benefits to the city.¹³² For every success like Nationals Park in Washington, D.C., there is a Miami Marlins baseball stadium in Miami, Florida, with years of low attendance.¹³³ Nevertheless, the Supreme Court in *Kelo* held that the City does not need to actually receive the expected public benefit.¹³⁴ Indeed, in *Kelo*, Pfizer never built its pharmaceutical plant, and the economic development never materialized in New London.¹³⁵ Therefore, the sports team owners have significant leeway to push their plans through state and local governments. Without much

128. *See id.* Older stadiums and arenas were usually built further away from the city to provide less expensive parking. *See id.*

129. *See id.*

130. *See id.*

131. *See generally* Ted Gayer, Austin J. Drukker & Alexander K. Gold, *Tax-Exempt Municipal Bonds and the Financing of Professional Sports Stadiums*, ECON. STUD. BROOKINGS (Sept. 2016) [hereinafter Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*], https://www.brookings.edu/wp-content/uploads/2016/09/gayerdrukkergold_stadiumsubsidies_090816.pdf [https://perma.cc/2V8T-BHCV].

132. *See* Eric Bull, *Top 10 Biggest Federal Subsidies for Pro Stadiums (Hint: The Yankees Are #1)*, BROOKINGS (Sept. 9, 2016), <https://www.brookings.edu/blog/brookings-now/2016/09/09/top-10-biggest-federal-subsidies-for-pro-stadiums-hint-the-yankees-are-1/> [https://perma.cc/Z3GS-UP3D]; *see also* Alexander K. Gold, Austin J. Drukker & Ted Gayer, *Why the Federal Government Should Stop Spending Billions on Private Sports Stadiums*, BROOKINGS (Sept. 8, 2016) [hereinafter, Gold, Drukker & Gayer, *Federal Government Spending*], <https://www.brookings.edu/research/why-the-federal-government-should-stop-spending-billions-on-private-sports-stadiums/> [https://perma.cc/X4U5-LCTK]. *See generally* Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*, *supra* note 131.

133. *See* Maury Brown, *No, It's Not Too Early to Talk About the Historically Bad Attendance of the Miami Marlins*, FORBES (Apr. 4, 2019, 8:00 AM), <https://www.forbes.com/sites/maurybrown/2019/04/04/no-its-not-too-early-to-talk-about-the-historically-bad-attendance-of-the-miami-marlins/#3313ecd17b64> [https://perma.cc/H2QJ-K59G].

134. *See Kelo v. City of New London*, 545 U.S. 469, 487 (2005).

135. *See* Patrick McGeehan, *Pfizer to Leave City That Won Land-Use Case*, N.Y. TIMES (Nov. 12, 2009), <https://www.nytimes.com/2009/11/13/nyregion/13pfizer.html> [https://perma.cc/T2RT-GKQV].

difficulty, a city can label a new stadium as an economic development project that would improve its landscape.

The dissents in *Kelo* highlighted the concern that those most impacted by the Supreme Court's decision are the ones who cannot effectively combat it.¹³⁶ Sports team owners often choose to develop arguably "blighted" areas because the land is less expensive, and it is easier to use eminent domain, if necessary, to acquire the land and bypass holdouts. Before *Kelo*, the courts could restrict at least some takings by the government when it went too far in using eminent domain.¹³⁷ *Kelo*, by contrast, compounded the issue and essentially enabled the government to take any private land for so-called public use.¹³⁸

Governments and cities can readily label future projects as urban developments or renewal programs to pass the test set out in *Kelo*. The reading of the public purpose language in *Kelo* is broad enough that courts can give any economically beneficial goal significant weight, even if the potential losses fall disproportionately on low-income communities. The people in these communities lose their homes and receive no compensation for the subjective value of their displaced land.¹³⁹ In her dissent, Justice O'Connor criticized the majority's view in *Kelo*: "[T]he sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public — such as increased tax revenue, more jobs, maybe even esthetic pleasure."¹⁴⁰ The majority's interpretation of "public use" does not effectively constrain any takings; instead, it allows the government to take private property, at any time, and upgrade it any way it sees fit, including by building a sports stadium or arena.

C. Recent Uses of Eminent Domain by Sports Teams and Cities

Eminent domain remains an attractive option for city officials and sports team owners because it is generally a cheaper option than private negotiations.¹⁴¹ As stated above, sports team owners and city officials did not widely use eminent domain before the *Kelo* decision.¹⁴² Now, cities are

136. *See Kelo*, 545 U.S. at 521–22.

137. *See id.* at 520–21.

138. *See id.* at 521.

139. Typically, the courts have ruled that "just compensation" means the fair market value of the property. *See Bauman v. Ross*, 167 U.S. 548, 569–70 (1897); *see also Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9–10 (1984).

140. *Kelo*, 545 U.S. at 501 (O'Connor, J., dissenting).

141. *See supra* note 99 and accompanying text.

142. *See IJ Action, Foul Ball, supra* note 23.

unafraid to use eminent domain to acquire land to appease sports team owners threatening to leave. After the *Kelo* decision, cities like Washington, D.C., Orlando, Sacramento, and New York City began to realize the benefits of eminent domain.¹⁴³ Some residents whose properties were seized by their city under eminent domain challenged its use in court,¹⁴⁴ asserting that building a sports stadium or arena on the land was not for a public purpose.¹⁴⁵ The challenges failed, and the courts upheld the takings by looking to *Kelo*, which established a broad precedent that gives an inordinate amount of latitude to government officials.

i. Nationals Park: Eminent Domain in the Nation's Capital

In 2005, professional baseball and the MLB returned to Washington, D.C. The new team, the Washington Nationals, began playing in Robert F. Kennedy (RFK) Stadium, located in Northeast Washington, D.C., which the City built in 1961 for the previous D.C. MLB team.¹⁴⁶ While the stadium could easily house a baseball diamond and had ample room for 40,000 fans, RFK Stadium lacked many amenities that newer stadiums included.¹⁴⁷ The Nationals's owners wanted to find a location closer to D.C.'s landmarks, with easy access to public transportation and, most importantly, cost-controlled land they could build on. They ultimately decided on the Navy Yard Waterfront in Southeast D.C. for the new stadium.¹⁴⁸ They intended to use the new stadium to revitalize and bring significant development to the area. They encountered one problem — the land was not for sale. The City officials, consequently, decided to invoke eminent domain to take the 21 acres the Nationals' owners needed to build

143. See *infra* Section II.C.

144. In *Goldstein v. Pataki*, the plaintiffs filed their lawsuits against the defendants, some separately, while others together. See *Goldstein v. Pataki*, 516 F.3d 50, 53–54 (2d Cir. 2008). Eventually, the court consolidated the lawsuits into one action with multiple claims. See *id.*

145. See *id.* at 55.

146. See Robert McCartney, *Bye-Bye, Bouncy Seats: District to Raze RFK Stadium by 2021*, WASH. POST (Sept. 5, 2019), https://www.washingtonpost.com/local/dc-politics/district-to-raze-rfk-stadium-by-2021--but-not-necessarily-so-redskins-can-build-a-new-one/2019/09/05/48b18fc6-cfea-11e9-87fa-8501a456c003_story.html?arc404=true [<https://perma.cc/EJA6-LH3P>]. The stadium was named after former Senator Robert F. Kennedy. See *id.*

147. See David Nakamura, *Long Before the World Series, This Ragtag Group of D.C. Property Owners Was Evicted to Make Way for Baseball*, WASH. POST (Oct. 24, 2019, 4:00 PM), https://www.washingtonpost.com/local/long-before-the-world-series-this-ragtag-group-of-d-c-property-owners-was-evicted-to-make-way-for-baseball/2019/10/24/50a945c8-f4d6-11e9-8cf0-4cc99f74d127_story.html [<https://perma.cc/FB4P-78QA>].

148. See *id.*

the stadium.¹⁴⁹ The D.C. Government sent the 23 landowners eviction letters, allowing them 90 days to move.¹⁵⁰ The City's Director of Development, Stephen Green, stated that "we thought the neighborhood offered a huge economic development opportunity. But this was not about displacing people. There were very few people down there to displace."¹⁵¹ Sixteen of the 23 landowners filed for court-monitored arbitration, and each settled with the City for more than the initial offer.¹⁵² Although many of the owners believed that they were undercompensated, they also asserted they had few options because it was impossible to fight the City's use of eminent domain successfully.¹⁵³

In the Nationals Park case, Justice O'Connor's prediction proved true — the D.C. Government took property from private entities (the original landowners) and transferred it to another private entity (the Washington Nationals).¹⁵⁴ Furthermore, given the assertion that the stadium was part of an economic development plan for the Navy Yard Waterfront, City officials were willing to displace people if it meant building a new sports stadium.¹⁵⁵ In Justice O'Connor's dissent, she worried that the *Kelo* majority gave the government license to take away property from those with few resources and give to those who have more.¹⁵⁶

The effect of *Kelo* makes any property, particularly property belonging to those with more limited means, vulnerable to a taking if the government asserts that the property will be put to more profitable use, as exemplified by the building of Nationals Park. Furthermore, the Nationals Park case indicates how local governments view parcels of land as numbers on a piece of paper — they are not concerned about removing what they consider to be an inconsequential number of people from their homes to build the stadium or arena.¹⁵⁷

ii. *Goldstein v. Pataki: The Nets Move to Brooklyn*

In 2012, the NBA's New Jersey Nets moved from Newark, New Jersey, to Brooklyn, New York, arguing that the move would increase the value of

149. *See id.*

150. *See id.*

151. *Id.*

152. *See id.* The City arguably overcompensated the 23 landowners by offering them \$95 million for the land, which was only valued at \$32 million. *See id.*

153. *See id.*

154. *See Kelo v. City of New London*, 545 U.S. 469, 502 (2005).

155. *See Nakamura*, *supra* note 147.

156. *See Kelo*, 545 U.S. at 505.

157. *See Nakamura*, *supra* note 147.

the franchise.¹⁵⁸ The targeted land for the new arena in Brooklyn was expensive and privately owned.¹⁵⁹ The price of the land and difficult negotiations with the landowners led the Brooklyn Nets to lobby local officials to use eminent domain to acquire the desired private land.¹⁶⁰ To further convince the local government that building the arena was in the best interest of the neighborhood, the Brooklyn Nets proposed economic development plans to construct a \$4 billion project of residential and office spaces along with the arena.¹⁶¹ The local government, made up of various officials, agencies, and subdivisions of New York State, along with the Nets, took the position that this land was “blighted” under a definition in New York State law, allowing the government to use eminent domain to acquire the land.¹⁶² The residents who stood to lose their land challenged the taking in the Southern District of New York and appealed the District Court’s adverse decision to the Second Circuit.¹⁶³ The residents contended that the City’s labeling of the project as an economic development of a “blighted” area was a mere pretext to meet *Kelo*’s public use and purpose standards.¹⁶⁴

The Second Circuit in *Goldstein v. Pataki* followed the Supreme Court’s precedent from *Berman* to *Kelo*. The court held that “[a]s *Berman* and *Rosenthal* illustrate, the redevelopment of a blighted area, even standing alone, represents a ‘classic example of a taking for a public use.’”¹⁶⁵ The role the courts play in reviewing a legislature’s judgment of what constitutes a public use is a narrow one.¹⁶⁶ Further, the court stated that “[t]he public-use requirement will be satisfied as long as the purpose involves ‘developing [a blighted] area to create conditions that would

158. See David Lengel, *Goodbye New Jersey as Nets Head to Brooklyn*, GUARDIAN (Apr. 24, 2012, 9:00 AM), <https://www.theguardian.com/sport/blog/2012/apr/24/new-jersey-nets-goodbye-brooklyn> [https://perma.cc/2KLT-VY58]; see also Joshua Berlinger, *Why Half of Brooklyn Hates the New Barclay’s Center Stadium*, BUS. INSIDER (Aug. 29, 2012, 1:06 AM), <https://www.businessinsider.com/why-half-of-brooklyn-hates-the-new-barcclays-center-stadium-2012-8> [https://perma.cc/6235-KRYN].

159. See Berlinger, *supra* note 158.

160. See *id.*

161. See *About Atlantic Yards*, EMPIRE ST. DEV., https://esd.ny.gov/subsidiaries_projects/ayp/ayaboutus.html [https://perma.cc/EK57-ZXXR] (last visited Oct. 23, 2020).

162. See *Goldstein v. Pataki*, 516 F.3d 50, 53 (2d Cir. 2008); see also Berlinger, *supra* note 158.

163. See *Goldstein*, 516 F.3d at 55.

164. See *id.*

165. *Id.* at 59 (quoting *Rosenthal & Rosenthal Inc. v. N.Y. State Urb. Dev. Corp.*, 771 F.2d 44, 46 (2d Cir. 1985)).

166. See *id.* at 57.

prevent a reversion to blight in the future.”¹⁶⁷ The Second Circuit rejected the residents’ argument that the government lacked a basis to label the land as blighted and had merely done so to satisfy *Kelo*’s public purpose requirement.¹⁶⁸ The Second Circuit held that mere suspicion of improper reasoning behind the taking did not require the court to scrutinize the taking and the legislative choice.¹⁶⁹ The Second Circuit reiterated the line from *Midkiff* that it is the taking’s purpose, not its mechanics, that must pass scrutiny under the Public Use Clause.¹⁷⁰ The court held

[a]ccordingly, we must reject the notion that, in a single sentence, the *Kelo* majority sought *sub silentio* to overrule *Berman*, *Midkiff*, and over a century of precedent and to require federal courts in all cases to give close scrutiny to the mechanics of a taking rationally related to a classic public use as a means to gauge the purity of the motives of the various government officials who approved it.¹⁷¹

The deferential treatment in *Kelo* supported the court’s conclusion that “the mere fact that a private party stands to benefit from a proposed taking does not suggest its purpose is invalid because ‘[q]uite simply, the government’s pursuit of a public purpose will often benefit individual private parties.’”¹⁷² *Kelo*, consequently, makes it difficult for a landowner to challenge a public taking because *Kelo* requires courts to defer to the legislature’s statement that the taking fit a public purpose.

iii. Sacramento Kings: Eminent Domain Usage Spreads to the West Coast

The NBA’s Sacramento Kings struggled with attendance, and its arena needed drastic renovations.¹⁷³ Instead of renovating, however, the Kings decided to build a new arena closer to downtown Sacramento by using eminent domain to acquire the necessary land.¹⁷⁴ On January 7, 2014, the Sacramento City Council voted 7–2 in favor of authorizing the use of

167. *Id.* at 60 (quoting *Kelo v. City of New London*, 545 U.S. 469, 484 (2005)) (alteration in original).

168. *See id.* at 60–65.

169. *See id.* at 62.

170. *See id.* (citing *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 244 (1984)).

171. *Id.*

172. *Id.* at 64 (quoting *Kelo*, 545 U.S. at 485) (alteration in original).

173. *See* Ryan Lillis, *Despite Another Down Season, Kings Attendance Hits 8-Year High*, SACRAMENTO BEE (Apr. 13, 2015, 10:04 AM), <https://www.sacbee.com/sports/nba/sacramento-kings/article18355862.html> [https://perma.cc/Y3L5-ZH3T].

174. *See id.*; *see also* Nick Sibilla, *Sacramento Approves Eminent Domain to Build an NBA Arena*, INST. FOR JUST. (Jan. 14, 2014), <https://ij.org/action-post/sacramento-approves-eminant-domain-to-build-an-nba-arena/> [https://perma.cc/L47G-BGCM].

eminent domain and provided almost \$258 million worth of subsidies to the team to build the sports arena.¹⁷⁵ One of the two dissenters, Councilmember Darrell Fong, asserted that “[t]he right to take a necessity, to take property, I do have serious concerns. I’ve given this a lot of thought and it does not cross a threshold for me to use eminent domain.”¹⁷⁶

To understand why the City Council ignored these objections in ultimately approving the use of eminent domain requires a look at the context surrounding the vote. Sacramento does not have any teams in the four major sports leagues other than the NBA’s Sacramento Kings.¹⁷⁷ In 2013, rumors swirled that an investment group from Seattle, Washington, was attempting to buy the Kings and move the team to Seattle.¹⁷⁸ To keep the Kings in Sacramento, City officials conceded to the team owners’ demands, rationalizing that the negative press politicians would receive from the team leaving Sacramento was too much to bear.¹⁷⁹ Despite the City Council’s authorization of eminent domain, the mortgage holders of one of the holdout parcels challenged the taking in state court.¹⁸⁰ The California Superior Court ruled that the City had the right to take the property by eminent domain.¹⁸¹ Following this ruling, the two sides

175. See Sibilla, *supra* note 174; see also Bob Moffitt, *Council Approves Eminent Domain for Arena Project*, CAPRADIO (Jan. 8, 2014), <https://www.capradio.org/articles/2014/01/08/council-approves-eminent-domain-for-arena-project/> [<https://perma.cc/7XM5-5SF7>].

176. See Moffitt, *supra* note 175; see also Sibilla, *supra* note 174.

177. See Cork Gaines, *Chart: Some US Cities May Have Too Many Pro Sports Teams*, BUS. INSIDER (Nov. 8, 2013, 7:52 PM), <https://www.businessinsider.com/chart-some-us-cities-may-have-too-many-pro-sports-teams-2013-11> [<https://perma.cc/FF5S-6HCC>].

178. See Ken Belson, *Two Investment Groups Present Pitches for Kings*, N.Y. TIMES (Apr. 3, 2013), <https://www.nytimes.com/2013/04/04/sports/basketball/groups-of-investors-make-pitches-for-sacramento-kings.html> [<https://perma.cc/YKV4-7KX6>]. Seattle had recently lost its NBA team to Oklahoma City after Seattle declined to build a new arena; Oklahoma City built a new arena. See *id.*

179. See *id.* Indeed, Seattle, perhaps recognizing its error and feeling pressure from fans for the loss of its team, actively courted the Kings to move with promises of a new arena. See *id.*; see also Branden Fitzpatrick, *NBA Rumors: 5 Reasons Why the Kings Have to Stay in Sacramento*, BLEACHER REP. (Feb. 22, 2012), <https://bleacherreport.com/articles/1076709-nba-rumors-5-reasons-why-the-kings-have-to-stay-in-sacramento> [<https://perma.cc/LLQ7-HCYD>].

180. See *Judge Gives Sacramento Possession of Old Macy’s Building in Downtown*, CAPRADIO (Mar. 21, 2014) [hereinafter *Judge Gives Sacramento Possession*], <https://www.capradio.org/articles/2014/03/21/judge-finalizes-ruling-in-eminent-domain-arena-case/> [<https://perma.cc/L63J-L8TS>].

181. See Kulkarni, Aguilar-Guerrero & Skinner, *supra* note 17; see also Ryan Lillis, *Sacramento Kings Will Pay \$12 Million for Former Macy’s Property Under Court Settlement*, SACRAMENTO BEE (Feb. 11, 2015, 7:32 AM),

negotiated over what constituted just compensation,¹⁸² eventually settling for \$12 million, an amount between the two sides' expert appraisals.¹⁸³

The City Council justified the use of eminent domain as generally good for the community.¹⁸⁴ These politicians, however, did not verify in exact numbers how building a new sports arena downtown would help the community. The City provided \$258 million in subsidies to the sports team and further angered its citizens by taking their private land for an NBA team that plays 41 home games each year.¹⁸⁵ The mortgage holders of the land challenged the ruling because they believed the City would not offer fair compensation for the parcel of land.¹⁸⁶ The landowner still lost the case because *Kelo*'s broad interpretation of the use of eminent domain gave the City significant discretion with which land to take.¹⁸⁷ This taking is allowed under *Kelo* even if the taken private property is given to another private individual for a sports stadium — in essence, using eminent domain without any limitation.

iv. Audi Field: Eminent Domain Returns to the District

MLS's D.C. United has a long history in Washington, D.C.¹⁸⁸ The soccer club has struggled during the past 15 years, even though the popularity of many other teams in the MLS has skyrocketed.¹⁸⁹ After playing for years in the old RFK stadium, the team desperately needed a new facility.¹⁹⁰ In the early 2010s, when D.C. United looked for a new

<https://www.sacbee.com/news/local/news-columns-blogs/city-beat/article9711272.html> [https://perma.cc/ZQP5-2G2D].

182. See Lillis, *supra* note 181.

183. See *id.*

184. The City Council believed the new arena was in the best interests of the City because it would bring significant economic growth. See *id.*

185. See Sibilla, *supra* note 174; see also Lillis, *supra* note 181; Ian McMahan, *How Sleep and Jet-Lag Influences Success in the Travel-Crazy NBA*, GUARDIAN (Oct. 26, 2018, 4:00 AM), <https://www.theguardian.com/sport/2018/oct/26/sleep-nba-effects-basketball> [https://perma.cc/RT7S-TM2C].

186. See *Judge Gives Sacramento Possession*, *supra* note 180; Moffitt, *supra* note 175.

187. See *Judge Gives Sacramento Possession*, *supra* note 180; Lillis, *supra* note 181. See generally *Kelo v. City of New London*, 545 U.S. 469 (2005).

188. See Graham Ruthven, *Wayne Rooney Has Driven a Revolution at DC United*, GUARDIAN (May 20, 2019, 5:00 AM), <https://www.theguardian.com/football/2019/may/20/wayne-rooney-dc-united-mls-soccer> [https://perma.cc/GFY5-JJ4N].

189. See *id.*; see also Michael LoRé, *Soccer's Growth in U.S. Has International Legends Buzzing*, FORBES (Apr. 26, 2019, 12:16 PM), <https://www.forbes.com/sites/michaellore/2019/04/26/soccers-growth-in-u-s-has-international-legends-buzzing/#1227a1e17f1a> [https://perma.cc/BYX7-99Z4].

190. See Pablo Iglesias Maurer, *D.C. United Is About to Get a New Home. Is the Team Ready for Its Close-Up?*, DCIST (June 13, 2018, 4:30 PM),

stadium, the team immediately focused on Buzzard Point because Nationals Park had already proved successful in revitalizing the nearby area.¹⁹¹ D.C. United pushed the City to use eminent domain to take the Buzzard Point land for its new stadium.¹⁹² D.C. United argued it would benefit by saving on land costs, allowing the team to allocate more money towards amenities in the stadium. Although the sports team owners privately negotiated with the landowners, one holdout wanted more than the City had offered.¹⁹³ When the private negotiations fell apart, the City filed an action in the D.C. Superior Court seeking to use eminent domain to take control of the holdout property and have a judge in the D.C. Superior Court decide on the price of the land.¹⁹⁴

When the City filed suit against the holdout landowner, it used eminent domain to seize property from a private entity to give it to another private entity.¹⁹⁵ In the filing, the D.C. Government stated that the local statutes gave them authority to take the land for the public purpose of the D.C. citizens.¹⁹⁶ Further, the City defined that public purpose by stating

<https://dcist.com/story/18/06/13/is-dc-united-ready-for-its-close-up/>
[<https://perma.cc/EK2V-ZU4Q>].

191. See Michelle Goldchain, *D.C. United Stadium to Be MLS' Priciest Crown Jewel*, CURBED (Nov. 5, 2014, 3:24 PM), <https://dc.curbed.com/2014/11/5/10026696/dc-united-stadium-to-be-mls-priciest-crown-jewel> [<https://perma.cc/5H6Q-X3JV>]; Michael Neibauer, *D.C. Seizes Full Control of D.C. United Stadium Site*, WASH. BUS. J. (Oct. 1, 2015, 9:53 AM), https://www.bizjournals.com/washington/breaking_ground/2015/09/d-c-seizes-full-control-of-d-c-united-stadium-site.html [<https://perma.cc/UKP8-YCME?type=image>]; Daniel Sernovitz, *Akridge Wins Buzzard Point Eminent Domain Case. Here's How Much D.C. Will Have to Pay*, WASH. BUS. J. (June 14, 2018, 11:33 AM), <https://www.bizjournals.com/washington/news/2018/06/13/akridge-wins-buzzard-point-eminent-domain-case.html> [<https://perma.cc/LCY5-5KRD?type=image>].

192. See Sernovitz, *supra* note 191.

193. See Aaron Wiener, *The D.C. United Stadium Deal, by the Numbers*, WASH. CITY PAPER (June 24, 2014), <https://www.washingtoncitypaper.com/news/housing-complex/blog/13124161/the-d-c-united-stadium-deal-by-the-numbers> [<https://perma.cc/E473-HJ4K>]. The two parties could not agree on the price. See *id.*

194. See *id.*; see also Neibauer, *supra* note 191; Sernovitz, *supra* note 191.

195. See Neibauer, *supra* note 191.

196. Specifically, the D.C. Government cited the language:

[C]ontained in *D.C. Official Code* § 16-1311 (2001), the Soccer Stadium Development Act of 2014, D.C. Law 20-233, the Soccer Stadium Development Technical Clarification Temporary Amendment Act of 2015, D.C. Law 21-17, and the Fiscal Year 2016 Budget Support Emergency Act of 2015, D.C. Act 21-127, and as set forth in the Declaration of Taking filed simultaneously herewith.

Complaint at 2, *D.C. v. SW Land Holder, LLC*, No. 2015 Civ. 007569E (D.C. Super. Ct. Sept. 30, 2015).

[t]he public purpose for which District of Columbia hereby takes the Property is for the construction and operation of a soccer stadium complex, including a stadium and facilities functionally related and subordinate thereto, and the accompanying infrastructure including parking, office, and transportation facilities, in order to promote the recreation, entertainment and enjoyment of the public.¹⁹⁷

The Washington, D.C., Government asserted the soccer stadium fits this public purpose under the D.C. statute, which allowed them to take the land to build a new state-of-the-art facility.

Not only did Washington, D.C., use eminent domain to acquire the land, but also the City gave D.C. United the largest subsidy in MLS history at \$183 million.¹⁹⁸ Although the City initially estimated the construction costs to be around \$290 million, the stadium ended up costing over \$400 million after the legal battles over the use of eminent domain.¹⁹⁹ To help fund this project, the City shifted around \$32 million in its budget away from other areas of social need, such as school improvement.²⁰⁰ Because the City paid for around 46% of the stadium bill, as the costs rose, so did the City's expenses.²⁰¹ Yet City officials continued to view the new D.C. United Stadium project as essential to the neighborhood's economic development.²⁰² In a public report on the cost-benefit analysis of the stadium, the City explained that the new stadium would bring in \$109.4 million in benefits over 32 years along with about 1,683 full-time or equivalent jobs.²⁰³ Economic studies question these alleged financial benefits and present evidence that new sports stadiums or arenas do not automatically bring in new revenue, especially when the public heavily subsidizes the stadium.²⁰⁴

197. *Id.*

198. See Michael Farren, *DC Taxpayers to Fund Nearly Half of New Stadium Costs*, BRIDGE (July 25, 2018), <https://www.mercatus.org/bridge/commentary/dc-taxpayers-fund-nearly-half-new-stadium-costs> [https://perma.cc/T49A-8WX2].

199. See *id.*; Michelle Goldchain, *New Renderings Released for Planned D.C. United Stadium*, CURBED (Jan. 21, 2016, 11:00 AM), <https://dc.curbed.com/2016/1/21/10844964/dc-united-renderings-new> [https://perma.cc/85BN-5YY6].

200. See Farren, *supra* note 198.

201. See *id.*

202. See generally CONVENTIONS, SPORTS & LEISURE INT'L ET AL., COST-BENEFIT ANALYSIS OF THE SOCCER STADIUM DEVELOPMENT ACT OF 2014 (2014), <http://lms.dccouncil.us/Download/31817/B20-0805-FINAL-Report---Cost-Benefit-Analysis50.pdf> [https://perma.cc/Z6AB-NRD6].

203. See *id.*

204. See Pat Garofalo & Travis Waldron, *If You Build It, They Might Not Come: The Risky Economics of Sports Stadiums*, ATLANTIC (Sept. 7, 2012), <https://www.theatlantic.com/business/archive/2012/09/if-you-build-it-they-might-not-come->

D. Future Problems of Eminent Domain with Sports Stadiums

These previous instances of local governments using eminent domain for sports stadiums are not isolated incidents. Players and fans demand new amenities in these stadiums, and sports team owners pressure cities to comply with the requests of their players and fans.²⁰⁵ As technology improves, fan experiences change, and fans often demand the latest enhanced features and conveniences.²⁰⁶ The Texas Rangers, which used eminent domain to acquire the land for its baseball stadium in 1991, already replaced that stadium by 2020.²⁰⁷ The old stadium only lasted 26 years.²⁰⁸

In these stadium and arena cases, the cities' economic development arguments meet *Kelo*'s standards because the holding in *Kelo* allows for broad public purpose discretion. City governments argue their use of eminent domain supports economic growth by improving an area and providing jobs.²⁰⁹ Further, city governments often assert that the new stadium or arena will result in higher tax revenue.²¹⁰ Cities, however, do not discuss or bring up the costs that eminent domain-related legal battles

the-risky-economics-of-sports-stadiums/260900/ [https://perma.cc/5ULW-MFK2]; Clifton B. Parker, *Sports Stadiums Do Not Generate Significant Local Economic Growth*, *Stanford Expert Says*, STAN. NEWS (July 30, 2015), <https://news.stanford.edu/2015/07/30/stadium-economics-noll-073015/> [https://perma.cc/42MF-MRG7]; Rick Paulas, *Sports Stadiums Are a Bad Deal for Cities: But Cities Can Fight Back*, ATLANTIC (Nov. 21, 2018), <https://www.theatlantic.com/technology/archive/2018/11/sports-stadiums-can-be-bad-cities/576334/> [https://perma.cc/59UC-Z6H2].

205. See Gordon, *supra* note 18; see also Troy McMullen, *Luxury Housing Marks the Latest Trend in Stadium Amenities Around the Country*, WASH. POST (Apr. 20, 2017), https://www.washingtonpost.com/realestate/luxury-housing-marks-the-latest-trend-in-stadium-amenities-around-the-country/2017/04/20/c07dd14e-b8a1-11e6-959c-172c82123976_story.html [https://perma.cc/WZ78-MEBC].

206. See Broughton, *supra* note 120.

207. See IJ Action, *Foul Ball*, *supra* note 23.

208. As other teams in the MLB modernized their stadiums, the Rangers realized how outdated its stadium had become. Seeing as baseball is played in the summer, it also made the architectural error of building a baseball stadium in Texas without a roof. The team lost thousands of fans every year because it was too hot to sit in the Texas summer sun. The Texas Rangers corrected this mistake by building a new, domed stadium. See Dan Solomon, *The Texas Rangers' Shiny New Stadium Embodies the 'New Arlington,'* TEX. MONTHLY (Feb. 28, 2020), <https://www.texasmonthly.com/the-culture/new-texas-rangers-stadium-arlington/> [https://perma.cc/T47Z-RSXX].

209. See Zimbalist & Noll, *supra* note 121; see also McMullen, *supra* note 205.

210. For example, City officials asserted that tax revenue for the new Texas Rangers' baseball stadium would help justify its costs. See Jason Notte, *One Thing Gets Lost in Plans for an Expensive Texas Baseball Stadium: Math*, MARKETWATCH (Oct. 24, 2016, 1:50 PM), <https://www.marketwatch.com/story/one-thing-gets-lost-in-plans-for-an-expensive-texas-baseball-stadium-math-2016-10-24> [https://perma.cc/77B2-H63B].

cause. The legal actions add to the construction costs because the teams believe they would acquire the land at a less expensive price. In the four recent cases mentioned above in Section II.C, the legal battles added to the expenditure for the cities. Going to court for several months, if not years, is expensive for both parties and might wipe out some of the gains the cities acquired from using eminent domain.

The broad reading of the Takings Clause in *Kelo* gives the state legislatures the power to define what “public use” and “public purpose” satisfy the public use requirement.²¹¹ Cities push the limits of *Kelo* because if taking land for building a sports stadium is a public purpose, then the city can acquire almost any land for a proposed economic development. Unless the Supreme Court revises its reading of *Kelo*, sports team owners are likely to continue to exploit eminent domain to acquire their desired land.²¹² Urban areas in the United States are already densely populated, with more people moving to cities from rural and suburban areas.²¹³ Consequently, there are few large tracts of vacant land for large stadiums or arenas, especially close to the economic and social centers of the cities. Teams can lobby cities to use eminent domain to reduce costs and allow owners to reap substantial benefits.²¹⁴ The inducement to use eminent domain has even caused sports team owners to mandate its use in their contracts with the cities.²¹⁵

211. See *Kelo v. City of New London*, 545 U.S. 469, 517 (2005) (Thomas, J., dissenting).

212. Specifically, in the Washington, D.C., area, the Washington Football Team plays in one of the older NFL stadiums. In response, Dan Snyder, the owner of the team, wants to build a new stadium. The location of Washington, D.C., puts Snyder in a unique situation compared to other owners. Maryland and Virginia surround Washington, D.C. Therefore, Snyder can actively approach all three locations and negotiate the best deal for himself and the team. See Robert McCartney, *Where Will Redskins Build New Stadium? Early Signs Point to Current FedEx Site.*, WASH. POST (Feb. 17, 2020, 5:00 AM), https://www.washingtonpost.com/local/md-politics/where-will-redskins-build-new-stadium-early-signs-point-to-current-fedex-site/2020/02/16/65375460-4eb0-11ea-bf44-f5043eb3918a_story.html [https://perma.cc/HN8E-LMJR]. The search for a new home for the Washington Football Team raises the possibility that states and cities could use eminent domain in the immediate future to acquire the needed land. See Martin Austermuhle, *Nats Park Helped Remake a D.C. Neighborhood. Could a New Stadium at RFK Do the Same?*, NPR (Nov. 18, 2019), <https://www.npr.org/local/305/2019/11/18/780434977/nats-park-helped-remake-a-d-c-neighborhood-could-a-new-stadium-at-r-f-k-do-the-same> [https://perma.cc/TV85-7CXQ].

213. See Schneider, *supra* note 22.

214. See Bryce, *supra* note 113.

215. See Chris Perfett, *The Clippers Want a New Home. For Inglewood, It's Not So Simple.: Lawsuits, Regulations and City Woes Cloud a New Arena Proposal*, USC STORY SPACE, <https://uscstoryspace.com/2017-2018/clemieux/Investigation/> [https://perma.cc/372L-UUCR] (last visited Oct. 11, 2020).

For example, the NBA's Los Angeles Clippers currently plays its home games at the Staples Center, which opened in 1999.²¹⁶ The Clippers share this arena with the NBA's Los Angeles Lakers and the NHL's Los Angeles Kings.²¹⁷ The Clippers want its own arena to play in, as the Lakers and Kings are contractually the main tenants of the Staples Center and earn higher percentages of the arena's revenue.²¹⁸ Building a new arena would give the Clippers its own identity and raise the value of the team.²¹⁹ The Los Angeles Clippers faces two issues — the cost of land in Los Angeles and the lack of available space to build a new arena.

In its current contract with Los Angeles, the Clippers have an eminent domain clause. The clause states that if the Clippers cannot acquire the land it wants for the new arena through private negotiations, then the City would allow the Clippers to use eminent domain to obtain that land.²²⁰ This provision is valuable for the Clippers because the team has proposed to build the new arena in high-priced, heavily populated Inglewood, California, near the new \$5 billion NFL stadium.²²¹ This stipulation provides a form of insurance to the Clippers if it cannot privately negotiate the procurement of the needed land, and gives the Clippers a new stadium when the contract clause kicks in. Recently, the Clippers agreed to buy the old Los Angeles Forum, but if that deal falls apart, then the team can still use the eminent domain clause to build a new arena.²²²

Another example of a sports team threatening to use eminent domain for a new stadium is Miami's MLS team. In 2015, it was posited that using eminent domain to acquire the needed land was one option for the team's

216. See *The Greatest Moments in Staples Center History*, DISCOVER L.A. (Oct. 17, 2019), <https://www.discoverlosangeles.com/things-to-do/the-greatest-moments-in-staples-center-history> [https://perma.cc/E8SH-EP7W].

217. See *id.*

218. See Perfett, *supra* note 215; see also Andrew Greif, *Clippers Reveal Renderings for Proposed 18,500-seat Inglewood Arena*, L.A. TIMES (July 25, 2019, 6:30 PM), <https://www.latimes.com/sports/clippers/story/2019-07-25/clippers-arena-inglewood-renderings-steve-ballmer> [https://perma.cc/2G57-NVRK].

219. See Greif, *supra* note 218.

220. See Perfett, *supra* note 215.

221. See Scott Davis & Libertina Brandt, *American Airlines Will Pay \$90 Million to Sponsor the Massive, \$5 Billion Los Angeles Stadium the Rams and Chargers Will Call Home — Take a Look Inside*, BUS. INSIDER (Aug. 8, 2019, 6:26 PM), <https://www.businessinsider.com/la-stadium-photos-chargers-rams-2018-3> [https://perma.cc/EM7G-9788]; Greif, *supra* note 218.

222. See Ohm Youngisuk, *Clippers' Steve Ballmer Reaches Deal to Buy Forum for \$400M in Cash*, ESPN (Mar. 24, 2020), https://www.espn.com/nba/story/_/id/28949728/clippers-steve-ballmer-reaches-deal-buy-forum-400m [https://perma.cc/6EMX-WT89]; see also Perfett, *supra* note 215.

owners, one of whom is retired soccer star David Beckham.²²³ Because the team has no current stadium, obtaining the desired land is critical to the success of the Miami team. In addition to the stadium, renderings of the surrounding area also depicted other forms of economic development.²²⁴ The team proposed plans to build new parks and fields for local people to enjoy, along with plans to build retail stores and restaurants in the area.²²⁵ As of right now, the team will not need to use eminent domain, as the team will build the stadium on land owned by the City — a byproduct of a referendum.²²⁶ The threat of eminent domain to take the land, however, positioned the team more favorably in negotiations with the City to obtain land — land the City could have used for other developments such as more residential housing.²²⁷ The City, however, believed that an MLS stadium might be a better fit for the area.²²⁸

E. The Power of Sports in People's Lives

Building new sports stadiums and arenas is not always a negative investment, as many stadiums and arenas become financially successful.²²⁹ Furthermore, cities generally need to replace or renovate old stadiums or arenas as they reach the end of their useful life. When a stadium or arena becomes outdated, fans' attendance drops, harming the businesses around the stadium or arena. When a city builds a new stadium or arena, by contrast, the new facility, at least initially, draws people to attend games,

223. See Douglas Hanks & David Smiley, *Beckham to Miami Mayor: Soccer Stadium Next to Marlins Park Can Be 'World-Class,'* MIA. HERALD (July 22, 2015, 5:39 PM), <https://www.miamiherald.com/news/local/community/miami-dade/article28288822.html> [https://perma.cc/558G-BV5J].

224. See *id.*; see also Sydney Franklin, *Plans for David Beckham's Freedom Park Come to Life in New Renderings,* ARCHITECT'S NEWSPAPER (Nov. 8, 2019), <https://archpaper.com/2019/11/david-beckham-miami-freedom-park-prevote/> [https://perma.cc/GW44-KL8N].

225. See Franklin, *supra* note 224.

226. See *Miami Referendums: MLS Soccer Stadium and Miami River Approved, 'Strong Mayor' Rejected,* NBC MIA. (Nov. 7, 2018, 1:33 AM), <https://www.nbcmiami.com/news/local/miami-referendums-mls-soccer-stadium-strong-mayor/167371/> [https://perma.cc/AZ6Z-HX2L].

227. The Miami team currently has two proposals to build its stadium on one of two parcels of property. It is looking into which parcel of land will be less expensive and more convenient for the location of its stadium and has yet to decide on the final location. See Douglas Hanks, *Beckham May Have Another Play in Overtown. Partner Wants to Develop Land There,* MIA. HERALD (Apr. 1, 2019, 4:33 PM), <https://www.miamiherald.com/news/local/community/miami-dade/article228425794.html> [https://perma.cc/RAT7-B2MG].

228. See *id.*

229. See Austeruhle, *supra* note 212; see also McMullen, *supra* note 205.

spend money at the games, and frequent nearby businesses.²³⁰ If the city develops the area around the stadium or arena, fans are likely to patronize those areas before and after the game.²³¹

Two previously mentioned stadiums and arenas — Nationals Park and Barclays Center — provide good examples of this increase in revenue for the area around the stadium or arena. Before Washington, D.C., built Capital One Arena and, later, Nationals Park, certain regions of the City were in decline; the new facilities, therefore, changed the City's landscape.²³² D.C.'s Chinatown and Navy Yard Waterfront neighborhoods are virtually unrecognizable today because of both regions' development that occurred after the building of the arena and stadium. Developers noticed the economic viabilities in these regions and decided to construct offices and residential buildings there.²³³ The developments of Chinatown and the Navy Yard Waterfront would not likely have occurred, at least to the present extent, without the sports facilities serving as key components.²³⁴ Barclays Center has also proven successful in the Atlantic Yards Brooklyn area by expanding residential and commercial buildings along with acres of publicly accessible open space.²³⁵ These developments and subsequently generated revenue would not necessarily have materialized without these facilities drawing fans to the games.²³⁶

230. See generally Dan Coates & Brad Humphreys, *Novelty Effects of New Facilities on Attendance at Professional Sporting Events* (Univ. of MD., Balt. Cnty., Working Paper No. 03-101, 2003) (explaining that new sports stadiums around the country do see the novelty effect of an increase in attendance. When a team builds a new stadium or arena, they expect to see not only a bump in attendance but also a corresponding increase in revenue).

231. See, e.g., Andrew Weiland, *Commentary: Fiserv Forum a Huge Success*, MILWAUKEE BUS. NEWS (May 13, 2019, 12:00 AM), <https://biztimes.com/fiserv-forum-a-huge-success/> [<https://perma.cc/3SP7-C5QN>] (arguing that the arena brings in a lot of revenue for the City because of the different events it hosts beyond just NBA basketball alone).

232. See Auster Muhle, *supra* note 212; see also McMullen, *supra* note 205. Capital One Arena, built in 1997, is home to Washington, D.C.'s NHL and NBA teams. The arena, located in D.C.'s Chinatown area, brought a major transformation to the region. See Sasha-Ann Simons, *20 Years Later: How a D.C. Arena Marked a Major Transition in Chinatown*, WAMU 88.5 (Dec. 1, 2017), <https://wamu.org/story/17/12/01/20-years-later-d-c-arena-marked-major-transition-chinatown/> [<https://perma.cc/7DGT-WSJS>].

233. See Jeff Clabaugh, *Navy Yard Growth Isn't All Because of Nationals*, WTOP NEWS (Mar. 31, 2017, 4:59 AM), <https://wtop.com/business-finance/2017/03/navy-yard-growth-isnt-nationals/> [<https://perma.cc/6RAG-WDA7>].

234. See McMullen, *supra* note 205.

235. See *id.*

236. See *id.*; see also Auster Muhle, *supra* note 212.

These economic benefits deriving from the construction of stadiums occur because fans spend money on sports teams.²³⁷ The emotional attachment that supporters have for their sports teams and the civic pride that followers display for their teams are hard to quantify, but the success of sports in the United States and around the world illustrates the strength of this attachment and pride.²³⁸ For example, fans collectively spend billions of dollars every year for each of the four major sports leagues.²³⁹ Sports teams endow local supporters with a sense of community pride.²⁴⁰ Consider attendance when a local team has a championship run; the pictures and videos of the city's fans celebrating for the team corroborate this point.²⁴¹

The positivity and sense of identification with a team can also offer its followers a distraction from the hardships and difficulties of daily life. For example, the first public event in Las Vegas after the Vegas shooting²⁴² was the NHL game on October 1, 2017, between the new Vegas Golden Knights and San Jose Sharks.²⁴³ The pre-game ceremony was emotional,

237. Fans care so much about their teams that, back in 2017, they collectively spent over \$100 billion on all sport activities in a 12-month span. This entails spending over \$56 billion on attending sporting events alone, which included tickets, transportation, and food and beverage. See Steven Kutz, *\$100 Billion — That's How Much Americans Spent on Sports over the Past 12 Months*, MARKETWATCH (Sept. 12, 2017, 4:25 PM), <https://www.marketwatch.com/story/heres-how-much-americans-spend-on-sports-in-one-chart-2017-09-11> [<https://perma.cc/3REW-P63E>]. A study by PricewaterhouseCoopers showed that people in the United States spent \$71 billion on sports. See Joe Drape, Ken Belson & Billy Witz, *The Coronavirus Doesn't Care When Sports Come Back*, N.Y. TIMES (Apr. 19, 2020), <https://www.nytimes.com/2020/04/19/sports/coronavirus-sports-economy.html?action=click&module=Top%20Stories&pgtype=Homepage> [<https://perma.cc/U8XA-NMT8>].

238. See Gordon, *supra* note 18.

239. See Kutz, *supra* note 237.

240. See generally Jason Mays, *Fan Loyalty and Motivation* (2012) (Theses, Dissertations, Professional Papers, & Capstones, University of Nevada, Las Vegas).

241. Studies have shown strong correlations between attendance spikes and good team performance, and the inverse correlation when teams start losing. See Ben Langhorst, *What Do Your Fans Want? Attendance Correlations with Performance, Ticket Prices, and Payroll Factors*, 43 *BASEBALL RSCH. J.* 101 (2014); see also Darren B. Glass, *Fair-Weather Fans: The Correlation Between Attendance and Winning Percentage*, 32 *BASEBALL RSCH. J.* 81, 81–84 (2003).

242. See Kieran Corcoran, Sinéad Baker & David Choi, *The FBI Has Closed Its Investigation of the Las Vegas Mass Shooting That Killed 58 People and Injured Hundreds More. Here's Exactly How the Nation's Worst Modern Gun Massacre Unfolded*, BUS. INSIDER (Jan. 29, 2019, 11:35 PM), <https://www.businessinsider.com/timeline-shows-exactly-how-the-las-vegas-massacre-unfolded-2018-9> [<https://perma.cc/PZZ8-32DT>].

243. See Kevin Allen, *Vegas Golden Knights Make History with Big Win in Emotional Home Opener*, USA TODAY (Oct. 11, 2017, 3:53 PM), <https://www.usatoday.com/story/sports/nhl/golden-knights/2017/10/10/vegas-golden-knight-s-make-history-in-home-opener/752900001/> [<https://perma.cc/6UUZ-BWKD>]; see also

as the teams commemorated the lives of the 58 people who died in the shooting.²⁴⁴ The Las Vegas NHL team became a rallying point for the City after the shooting.²⁴⁵ Similarly, following the Boston Marathon Bombing, the Red Sox became Boston's focal point when, five days after the bombing, first baseman David Ortiz gave an emotional and well-received speech to the City.²⁴⁶ In 2006, in the first game in the Superdome after Hurricane Katrina, the New Orleans Saints beat the Atlanta Falcons 23–3.²⁴⁷ Many people argued that the game that night was a “symbol of the city's rebirth” and the greatest night in all of New Orleans history.²⁴⁸ Perhaps one of the most famous moments of cities turning to sports in the wake of tragedy was during the aftermath of the September 11 attacks. The New York Mets won a dramatic home baseball game ten days after the attacks, and local newspapers labeled the win as a healing moment for traumatized New Yorkers.²⁴⁹ In the darkest moments for many of these people, sports offered an outlet and distraction, a benefit that cannot be easily dismissed.

Emily Kaplan, *Fifteen Days That Defined the Golden Knights' Season*, ESPN (June 12, 2018), https://www.espn.com/nhl/story/_/id/23762995/nhl-remembering-vegas-golden-knights-ridiculous-inaugural-season [https://perma.cc/3AUF-AV8T].

244. See Hemal Jhaveri, *Golden Knights Honor Victims of Las Vegas Shooting in Emotional Opening Ceremony*, USA TODAY (Oct. 10, 2017, 11:12 PM), <https://ftw.usatoday.com/2017/10/golden-knights-honored-the-victims-of-las-vegas-shooting-in-emotional-opening-ceremony> [https://perma.cc/LVX9-QV2Y].

245. The team won the first game and became the most successful expansion team in the history of the four major professional leagues in the United States. See Kaplan, *supra* note 243. The team made it all the way to the Stanley Cup Finals, losing in five games to the Washington Capitals. See *id.*

246. See *Boston Marathon Terror Attack Fast Facts*, CNN (Aug. 4, 2020, 10:53 AM), <https://www.cnn.com/2013/06/03/us/boston-marathon-terror-attack-fast-facts/index.html> [https://perma.cc/XNT8-3ASJ]; Julian Benbow, *David Ortiz's Impassioned Speech Caps Emotional Red Sox Pregame Ceremony*, BOSTON.COM (Apr. 21, 2013), <https://www.boston.com/sports/boston-red-sox/2013/04/21/david-ortiz-impassioned-speech-caps-emotional-red-sox-pregame-ceremony> [https://perma.cc/X2JC-EFXN].

247. See Mike Triplett, *Steve Gleason's 2006 Blocked Punt Symbolized the 'Rebirth' of the Saints, New Orleans*, ESPN (Apr. 6, 2020), https://www.espn.com/nfl/story/_/id/17611735/steve-gleason-2006-blocked-punt-symbolized-rebirth-saints-new-orleans [https://perma.cc/7KCB-Y35S].

248. See *id.*

249. See Dave Consolazio, *MLB: Remembering Mike Piazza's Incredible Post-9/11 Home Run*, SPORTSCASTING (May 4, 2020), <https://www.sportscasting.com/mlb-remembering-mike-piazzas-incredible-post-9-11-home-run/> [https://perma.cc/6YCK-Y47P]. The Mets won when Mike Piazza hit a home run in the bottom of the eighth inning. See Ryan Hatch, *Mets' Mike Piazza Hit Iconic 9/11 Home Run 15 Years Ago Wednesday*, NJ.COM (Jan. 16, 2019), https://www.nj.com/mets/2016/09/15_years_ago_today_mets_mike_piazza_hit_an_iconic.html [https://perma.cc/9ZPQ-ZGYD].

In sum, sports teams bring some economic benefits to cities — including fans' increased spending at and near stadiums and arenas and the development of neighboring areas.²⁵⁰ Sports also give the community subjective benefits, the value of which is hard to express in dollars. In light of these perceived benefits, cities are often willing to build new stadiums or arenas to keep their teams or convince other teams to relocate there.²⁵¹

III. ENDING SPORTS TEAMS' EXPLOITATION OF *KELO* FOR SPORTS STADIUMS

Part III first explores potential solutions to the excessive use of eminent domain: (1) the Supreme Court narrows its reading of the Takings Clause in *Kelo*, (2) state legislatures curb sports team owners' exploitation of eminent domain, and (3) state courts narrow takings under current state laws. This Part then debates the usage of eminent domain and relocation contractual provisions and analyzes the Public Purpose Doctrine.

While the benefits derived from a sports stadium or arena can be consequential, a city's ability to use eminent domain to obtain the land necessary for these stadiums or arenas should not be so far reaching that it would enable the city to transfer land from one private entity to another private entity. Regardless of the perceived benefits, this expansive grant of power stretches the limits of *Kelo*'s reading of public purpose beyond public takings the Fifth Amendment allows.

In their *Kelo* dissents, Justices O'Connor and Thomas warned of the majority's far-reaching precedent.²⁵² Recent cases illustrate Justice O'Connor's uneasiness in the *Kelo* opinion, as courts and legislatures accept that stadiums and economic development go hand in hand.²⁵³ However, there are multiple solutions that prevent further eminent domain overreach by sports team owners. This Note looks at five solutions that help curtail this abuse and can be applied in the courts or the legislative chambers: (1) the Supreme Court accepts a challenge to an eminent domain taking and narrows *Kelo*, (2) the state legislatures enact stronger provisions to their state laws interpreting the Takings Clause (Congress can also do

250. See McMullen, *supra* note 205.

251. See generally Dennis Coates & Brad R. Humphreys, *Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-events?*, 5 ECON J. WATCH 294 (2008).

252. See generally *Kelo v. City of New London*, 545 U.S. 469, 493–505 (2005) (O'Connor, J., dissenting); *id.* at 505–23 (Thomas, J., dissenting).

253. Justice O'Connor cautioned that under *Kelo*, “[a] sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public — such as increased tax revenue, more jobs, maybe even esthetic pleasure.” *Id.* at 501 (O'Connor, J., dissenting).

this at the federal level), (3) if state legislatures are slow to act, then the state courts can act and decide to read *Kelo* narrowly not to allow sports stadiums to fit the mold of economic development, (4) cities and local governments can negotiate contracts with sports teams that include provisions that disallow relocation of the team and eminent domain use to acquire private land, and (5) courts can look into applying the Public Purpose Doctrine to eminent domain takings meant for publicly financed sports stadiums and land acquisitions. All five of these responses would individually help prevent excessive reliance by state and local governments on eminent domain, yet some of them are easier to implement than others.

A. The Supreme Court Could Narrow *Kelo*

The most direct way to solve the exploitation of eminent domain is for the Supreme Court to narrow *Kelo*. There are multiple ways to do so. First, the Court could eliminate economic development as a justified public purpose for a taking of private property by limiting the meaning of “public use” in the Takings Clause. As Justice Thomas stated in his dissent, “public use” should mean “public use only if the government or the public actually uses the taken property.”²⁵⁴ “Public purpose,” as interpreted in *Kelo*, has too expansive a meaning and opens the Takings Clause to exploitation.²⁵⁵ By limiting “public use” to mean “actual” public use, the Supreme Court could immediately limit eminent domain usage.²⁵⁶ Justice Thomas’s dissent provides a blueprint that the current Supreme Court could and should follow to limit eminent domain overuse.²⁵⁷ The Supreme Court should revisit the Public Use Clause and consider returning to the original meaning of the clause: that the government may take property only if it actually uses it, gives the public a legal right to use it, or uses it to serve a communal public purpose.²⁵⁸ A sports stadium or arena would not fit that meaning because the public does not have an absolute right to utilize the stadium, especially when the home team is not playing there. Such a facility is a private interest. Local citizens have to pay the team’s ownership for the privilege of having limited access to a sports stadium or arena during a game.²⁵⁹

254. *Id.* at 514 (Thomas, J., dissenting).

255. *See id.* at 520–21.

256. The construction of a highway or public park are some examples of actual public use. The public can use the land without having to pay, or by paying a minimal fee, for the opportunity to do so. The government, whether at the state or local level, operates and holds complete control of the land.

257. *See generally Kelo*, 545 U.S. at 505–23.

258. *See id.* at 514.

259. For examples of appropriate public use, see *supra* note 256.

Narrowing *Kelo* would substantially limit the scope of eminent domain. Justice Stevens's majority opinion stated, "it 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."²⁶⁰ Justice Stevens's hypothetical of a Takings Clause violation describes the current situations in the majority of eminent domain cases for sports stadiums. One of the most expansive views of "public purpose" involves using eminent domain to take land for sports stadiums or arenas under the guise of economic development. If the Supreme Court holds that economic development no longer serves as a public purpose or use under the Takings Clause, then building sports stadiums will not serve the public purpose to justify taking private land by eminent domain. A narrow reading of *Kelo* would prevent cities from selling or leasing private land acquired through eminent domain to private owners. By preventing cities from condoning this private transaction, the narrow interpretation of the Takings Clause would curtail the abuse of eminent domain specifically by sports team owners because cities could no longer use eminent domain to acquire private land for the sports team owners' benefits.

Another way the Court can narrow *Kelo* in cases that rely on economic development justifications for the taking is to apply a heightened scrutiny test for economic development to assess the taking instead of deferring to the legislature. The heightened scrutiny test revolves around the ascertainability of the level of economic development.²⁶¹ Currently, the

260. *Kelo*, 545 U.S. at 477.

261. To adopt this test, the Court would look by analogy at other areas of the law that use such a test in evaluating economic data or right to relief. For example, some circuit courts use ascertainability as an extra element for Federal Rules of Civil Procedure Rule 23(a) for class certification, to see if there is an administratively feasible way to identify class members. The class must be very clear, precise, and objective. *See, e.g., Simer v. Rios*, 661 F.2d 655 (7th Cir. 1981) (affirming the denial of class certification for a class of all individuals who were eligible for cash assistance for utility bills, but were either denied assistance or discouraged from applying for assistance.); *see also Marcus v. BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012) (holding that classes cannot be too hard to determine). Similarly, bankruptcy courts around the country conduct valuation analyses for their cases. The bankruptcy courts must provide creditors and debtors certainty of the value of assets, liabilities, and equity by evaluating them. Bankruptcy courts typically use three valuation techniques: discount cash flow (project cash flows (operating profits), select relevant discount rate, and calculate present value), market multiple approach (use the market value of companies comparable to the one in bankruptcy), and comparable transactions (e.g., look at comparable companies' operating profits, do not look at expected value, look at recent deals). Ascertainability in eminent domain cases would operate comparably to the bankruptcy valuation analyses; during an eminent domain dispute over the price of the land, the trial court would follow similar procedures that bankruptcy courts apply. That way, the city would be reasonably assured that the economic development would occur after the taking because the court conducted a proper valuation. *See, e.g., In re DBSD N. Am., Inc.*, 419 B.R. 179 (Bankr. S.D.N.Y. 2009).

Kelo test is not strict enough. In *Kelo*, the Court rejected a reasonable certainty test of whether the expected public benefits would accrue.²⁶² Instead, the Court decided to simply rule on whether the taking is for a public purpose, and if so, deemed the taking legal.²⁶³ This test can be changed so that if there is a taking of private property for economic development, then the Court would apply a heightened scrutiny test to be certain, or reasonably assured, that the economic development will in fact occur. The economic development must be ascertainable to the courts — the project's financial benefits must be clear, precise, and objective. Too often, city officials attach the phrase “economic development” to sports stadium or arena projects, yet cannot guarantee or provide reasonable assurances that the cities will reap financial benefits from the project.²⁶⁴ Applying the heightened scrutiny test on a case-by-case basis will give courts the ability to decide if the taking is truly for the public purpose and, in doing so, give meaning to “public” again.

Over the years, the meaning of “public” in the phrase “public use” shifted in eminent domain cases. Initially, public takings often were used for public schools or other government buildings such as city halls.²⁶⁵ Then, the United States Government or state or local governments used eminent domain for common carriers such as railroads and utilities.²⁶⁶ Next, the government expanded the meaning of “public takings” to eliminate “blighted areas” as part of urban renewal.²⁶⁷ Later, the government used eminent domain to break up monopolies of private landowners, as seen in *Midkiff*.²⁶⁸ Finally, the Court held in *Kelo* that public use includes economic development.²⁶⁹ The Court, therefore, expanded the meaning of the Takings Clause over the decades — the Takings Clause's purpose expanded from public use to public purpose to economic development.²⁷⁰ In doing so, the Supreme Court blurred the lines between private and public. Because the economic development in

262. See *Kelo*, 545 U.S. at 487.

263. See *id.* at 488.

264. See, e.g., Bryce, *supra* note 113; Neibauer, *supra* note 191; Sibilla, *supra* note 174. As mentioned briefly before in Section II.B and below in Section III.B, economic studies show that new stadiums or arenas do not provide the promised economic benefits to the city or the businesses surrounding the new stadium or arena. Nor are there the projected increases in jobs or tax collections. See *infra* notes 281–282.

265. See *supra* note 35.

266. See *supra* note 35.

267. *Berman v. Parker*, 348 U.S. 26, 35 (1954).

268. See *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984).

269. See *Kelo v. City of New London*, 545 U.S. 469 (2005).

270. See *supra* Section II.A.

Kelo was not ascertainable,²⁷¹ the public purpose of the taking was not clear.²⁷² A heightened scrutiny test would require courts to verify that when the government premises a taking on economic development, the government must establish that the financial benefits are ascertainable.

The heightened scrutiny test will limit eminent domain misuse by sports team owners because courts will realize that most, if not all, takings for sports stadiums or arenas do not fit the heightened scrutiny test for economic development. Numerous economic studies conclude that new stadiums or arenas often do not bring the expected economic benefits to the cities.²⁷³ Many cities give sports team owners subsidies or tax breaks to construct new stadiums or arenas, further compounding the issues of economic development for stadiums or arenas.²⁷⁴ As the petitioners in *Kelo* stated in their brief, the exceptions to the public purpose definition in the Takings Clause cannot swallow the rule.²⁷⁵ Post-*Kelo*, the exceptions to what constitutes public use include private property.

As more local governments and sports team owners exploit the Takings Clause, more private landowners have the opportunity to challenge the taking and seek a limiting or reversal of *Kelo*.²⁷⁶ Justice Kavanaugh's 2020 concurrence in *Ramos v. Louisiana* laid out three factors the Court should consider when deciding whether to overturn *stare decisis*.²⁷⁷ First, the Court should ask whether the prior decision was not just wrong, but "egregiously wrong."²⁷⁸ Second, the Court should assess if the prior decision caused "significant negative jurisprudential or real-world consequences."²⁷⁹ Third, the Court should examine the reliance interests of

271. Different Justices in *Kelo* stated that the NLDC did not need to guarantee economic success. In the majority opinion, Justice Stevens stated the Connecticut judges held that the City failed to produce clear and convincing evidence that the economic benefits of the plan would come to pass. *See Kelo*, 545 U.S. at 477.

272. In fact, Pfizer never built the research facility. The taking's public purpose, the financial benefits of the facility, never materialized. *See McGeehan, supra* note 135.

273. *See Bull, supra* note 132; *see also* Garofalo & Waldron, *supra* note 204; Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds, supra* note 131; Gold, Drukker & Gayer, *Federal Government Spending, supra* note 132; Parker, *supra* note 204; Paulas, *supra* note 204.

274. *See generally* Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds, supra* note 131. The study further shows that since 2000, the federal tax subsidies have cost the federal government an estimated revenue loss of \$3.7 billion. *See id.* at 16.

275. *See* Brief of Petitioner, *supra* note 74, at 29.

276. A good case for certiorari may be one in which the government uses eminent domain to acquire private land that is not blighted and then transfers that land to a sports team owner to build a stadium or arena with the justification that the stadium or arena is part of an economic development.

277. *See Ramos v. Louisiana*, 140 S. Ct. 1390, 1414–15 (2020).

278. *See id.* at 1414.

279. *Id.* at 1415.

the parties before overturning the precedent.²⁸⁰ These factors are likely met here because, as discussed in this Note, *Kelo* was arguably an egregiously wrong decision that allowed for subsequent abuses, causing real-world, harmful consequences for private landowners. Given the widespread criticism of *Kelo* and calls for limiting the broad reading of “public use” at the federal or state levels, sports team owners cannot reasonably rely on it in the future. Narrowing *Kelo*’s interpretation of public use, however, would likely require several years, given that time and money are necessary to bring a case challenging eminent domain to the Court. Therefore, the state legislatures should act.

B. State Legislatures Stepping In

Since *Kelo*, a majority of state governments wrote new legislation limiting eminent domain in an attempt to prevent businesses and local governments from misusing eminent domain.²⁸¹ However, the new legislation does not often work as effectively as planned because developers circumvent legislation.²⁸² The majority in *Kelo* stated their support for legislative deference.²⁸³ Justice Thomas, however, recognized that legislative deference, relied upon by the majority to serve as a safeguard to potential abuse, has not done enough.²⁸⁴ State legislation is not applied narrowly and consistently enough to protect residents in many major cities. Nevertheless, the Supreme Court-supported legislative deference opens the door for states to write legislation that limits the public use requirement, and, therefore, curbs the great breadth of eminent domain. The Court’s decision in *Kelo* sets the floor for eminent domain

280. *See id.*

281. *See* Dana Berliner, *Looking Back Ten Years After Kelo*, 125 YALE L.J.F. 82, 84–88 (2015).

282. For example, in the *Goldstein* case, New York State did not enact stronger provisions, which afforded the Nets and Brooklyn a large degree of latitude to use eminent domain. *See generally* *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. 2008). Although both the House and Senate have introduced bills in attempts to restrict the eminent domain abuse since *Kelo*, HR 3058 is the only bill restricting eminent domain takings that the federal government has actually passed. It constrained eminent domain takings in certain federally funded programs. *See* Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, H.R. 3058, 109th Cong. (2005).

283. *See Kelo v. City of New London*, 545 U.S. 469, 480 (2005).

284. *See Kelo*, 545 U.S. at 516–20 (Thomas, J., dissenting). In *Whittaker v. County of Lawrence*, the Third Circuit allowed a taking despite the state legislature forbidding condemnation for economic development. *See Whittaker*, 437 F. App’x 105 (3d Cir. 2011).

challenges.²⁸⁵ States can still apply a higher standard to the Takings Clause.²⁸⁶

Accordingly, to prevent eminent domain abuse by sports team owners, legislatures across the country should enact stronger provisions. Some states enacted stronger state law provisions regarding takings post-*Kelo*.²⁸⁷ Nonetheless, local governments and sports team owners have maneuvered around the legislation.²⁸⁸

First, states could pass legislation prohibiting sports team owners and local governments from using eminent domain to acquire land for sports stadiums or arenas. Such legislation would be the quickest and most efficient step to solving the eminent domain exploitation. Stronger state laws would stop sports team owners from threatening cities and residents with the use of eminent domain when they are trying to acquire the land they want for the stadiums. Sports team owners would know they have to negotiate privately with the citizens.²⁸⁹ Sports team owners would not have

285. See generally Berliner, *supra* note 281, at 90 (stating that the *Kelo* decision provides a federal constitutional floor for the circuit court to review eminent domain takings).

286. See generally Morandi, *supra* note 26.

287. For example, Florida requires localities to wait ten years before transferring land taken by eminent domain from one owner to another and does not allow the use of eminent domain to eliminate “blight” areas. The Florida bill also requires a three-fifths majority in both legislative houses to grant exceptions to the bill to allow eminent domain for private use. See FLA. STAT. § 73.013 (2006); Scott J. Kennelly, *In Honor of Walter O. Weyrach: Florida’s Eminent Domain Overhaul: Creating More Problems Than It Solved*, 60 Fla. L. Rev. 471, 475 (2008) (noting that the requirement for three-fifths majority comes from Florida’s state constitution). Other states have laws that try to protect private property owners from eminent domain takings. See Morandi, *supra* note 26. By 2016, 47 states had enacted some protections against private takings. This still means that the private citizens of Arkansas, Massachusetts, New York, and Washington, D.C., have only the protection that *Kelo* affords. See Berliner, *supra* note 281, at 88.

288. Economic studies show that stadiums or arenas rarely ever bring in economic benefits to the area. See Bull, *supra* note 132; see also Garofalo & Waldron, *supra* note 204; Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*, *supra* note 131; Gold, Drukker & Gayer, *Federal Government Spending*, *supra* note 132; Parker, *supra* note 204; Paulas, *supra* note 204. At the same time, attendance across the four major sports leagues has decreased from 2008 to 2018, with the MLB suffering a 12-year slide. This further proves that a new sports facility can be a bad investment for a city. See Grant Suneson, *These Pro Sports Teams Are Running Out of Fans*, USA TODAY (July 20, 2019, 6:56 AM), <https://www.usatoday.com/story/money/2019/07/15/nfl-nba-nhl-mlb-sports-teams-running-out-of-fans/39667999/> [<https://perma.cc/E54S-JELC>]; see also Danielle Allentuck & Kevin Draper, *Baseball Saw a Million More Empty Seats. Does It Matter?*, N.Y. TIMES (Oct. 1, 2019), <https://www.nytimes.com/2019/09/29/sports/baseball/mlb-attendance.html> [<https://perma.cc/VQX2-ZM9R>].

289. One issue with eliminating eminent domain as an option is that it might raise construction costs on stadiums and cause sports owners to ask for subsidies or tax breaks. While this is hypothetical, sports team owners have been shown to consistently threaten cities with all sorts of financial demands. Cities should not cave into these demands, as economic studies have shown that subsidies and tax breaks for stadiums are not good

the option to threaten eminent domain; this would give residents more leverage when negotiating with the sports team owners. Stronger state laws that outlaw eminent domain use for stadiums or arenas would immediately narrow the reading of *Kelo* and guarantee that sports team owners do not take advantage of marginalized communities.

Second, states that permit eminent domain use for sports stadiums and arenas can still curb abuse by enacting stricter provisions. For example, states could severely restrict what constitutes economic development and raise the standard needed to justify a taking for economic development by applying the heightened scrutiny test mentioned above. If states allow eminent domain takings for economic development, the financial benefits must be recognizable and reasonably assured. This heightened standard would reject many economic development takings as justification for using eminent domain for sports venues because many sports stadium and arena constructions fail to bring the assured economic benefits.²⁹⁰

C. State Courts Narrowing Takings Under State Laws

A third solution is that state courts read *Kelo* narrowly to not allow economic development to include sports stadiums or arenas. While some state courts applied a broader reading of *Kelo*, other state courts narrowly applied *Kelo* and set examples that even other states could follow.²⁹¹ Currently, a majority of state laws allow courts to narrowly apply eminent domain usage, especially for business and economic growth.²⁹²

These states do not need stronger state laws to prohibit eminent domain use for sports stadiums and arenas, as they already have state laws that attempt to restrict takings for economic development.²⁹³ Some state courts, however, in applying even these stronger state laws defer to the local

financial risks and can leave cities with significant debt. See Savare, Middleton Jr. & Walker, *supra* note 104; see, e.g., Joyner, *supra* note 22; *supra* notes 119, 184 and accompanying text.

290. See generally Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*, *supra* note 131. In contrast to a research or manufacturing plant that employs thousands of people in the area on a permanent basis, a sports stadium or arena employs people temporarily for the games and events taking place there. A football stadium has only eight home games a year and can rarely be used for other events. Many sports team owners keep a majority of the profits from those events on top of the subsidies and tax breaks most cities grant the sports team owners for the construction.

291. See, e.g., *Carousel Farms Metro. Dist. v. Woodcrest Homes, Inc.*, 442 P.3d 402 (Colo. 2019) (finding a district's condemnation of a parcel of land for a developer was valid); see also Berliner, *supra* note 281, at 84–88.

292. See generally Morandi, *supra* note 26.

293. See *id.*; see also Berliner, *supra* note 281, at 84–88.

governments seeking to use eminent domain.²⁹⁴ For instance, Florida has some of the strictest state laws concerning the use of eminent domain for economic expansion; yet, a judge initially approved a taking for an MLS stadium in the previously mentioned Orlando takings case.²⁹⁵ If the state court applied the state law as written, the Orlando MLS team would not have been able to use or threaten the use of eminent domain for the church's property. Some newspapers that followed the story stated that if the church challenged the taking to the appellate level, the church would have won.²⁹⁶ The issue became moot as the Orlando MLS team relocated its stadium.²⁹⁷ This case, nevertheless, highlights the fact that state courts could narrow their reading of *Kelo* by applying the current stricter state laws. State courts that do so would substantially limit the number of eminent domain takings for economic development, not just for sports venues but for other business projects too.

Some state courts follow this thought process and apply a narrower holding for eminent domain takings for economic development. Ohio, Pennsylvania, Iowa, Oklahoma, and Michigan restricted land takings based on state laws passed after *Kelo*.²⁹⁸ The courts in these states held that while the local legislatures enjoy broad rights to take property, the courts have the authority to check that power.²⁹⁹ In *Norwood v. Horney*, the Ohio Supreme Court stated that “[t]he scrutiny by the courts in appropriation cases is limited in scope, but it clearly remains a critical constitutional component.”³⁰⁰ The court further explained, “it is for the courts to ensure that the legislature’s exercise of power is not beyond the scope of its authority, and that the power is not abused by irregular or oppressive use, or use in bad faith.”³⁰¹ These state courts can effectively restrain governments and sports team owners from taking land through eminent domain.

294. See Berliner, *supra* note 281, at 90–91; see, e.g., *City of Austin v. Whittington*, 384 S.W.3d 766, 792–93 (Tex. 2012) (allowing a taking despite a jury deciding that the taking was for private use); *State v. Kettleson*, 801 N.W.2d 160, 165 (Minn. 2011) (giving deference to the legislative finding of public use).

295. See Schleub, *supra* note 5; see also *supra* note 287 and accompanying text (discussing Florida’s eminent domain statute).

296. See Somin, *Orlando Condemns*, *supra* note 12.

297. See Damron, *supra* note 4.

298. See Morandi, *supra* note 26; see also The Oklahoman Editorial Board, *Study Shows Why Eminent Domain Should Be Narrowly Tailored*, OKLAHOMAN (Oct. 29, 2014, 12:00 AM),

<https://oklahoman.com/article/5361199/study-shows-why-eminent-domain-should-be-narrowly-tailored> [<https://perma.cc/3YHX-S949>].

299. See *Norwood v. Horney*, 853 N.E.2d 1115, 1138 (Ohio 2006).

300. *Id.*

301. *Id.*

Other state supreme courts have reached similar positions.³⁰² These state courts maintain that while some takings are allowed, the current state laws do not allow certain eminent domain takings, such as those pursuant to economic development. As discussed previously in Part II, sports stadiums often fall under the economic development category of taking. If more state courts limit eminent domain use for economic and business development, then it would prove more difficult for sports team owners to use eminent domain.

Eminent domain takings are also challenged in federal court. The Second, Third, and Fifth circuits each applied *Kelo* broadly because the claims brought included challenges based on the federal Constitution and state laws.³⁰³ In the federal claims, the circuit courts applied the Supreme Court's holding from *Kelo*. The courts of appeals, however, did not directly rule on the state law claims. Instead, they remanded the cases back to the district courts to rule on the state law claims.³⁰⁴ To receive the

302. See, e.g., Reading Area Water Auth. v. Schuylkill River Greenway Ass'n, 100 A.3d 572, 583–84 (Pa. 2014) (concluding that Pennsylvania state laws enacted after *Kelo* restrict eminent domain use for economic development and the drainage easement was not for public use and could not be allowed); Bd. of Cnty. Comm'rs of Muskogee Cnty. v. Lowery, 136 P.3d 639, 653 (Okla. 2006) (rejecting a taking of a landowner's private property for the private benefit to a private party); Cnty. of Wayne v. Hathcock, 684 N.W.2d 765, 782–83 (Mich. 2004) (holding that in order for a taking to be for the public use under the Michigan Constitution, it must be for public necessity, remain subject to public oversight, or there must be an independent public need).

303. See, e.g., Whittaker v. Cnty. of Lawrence, 437 F. App'x 105, 108 (3d Cir. 2011); Goldstein v. Pataki, 516 F.3d 50, 58 (2d Cir. 2008); Western Seafood Co. v. United States, 202 F. App'x 670, 675 (5th Cir. 2006).

304. The Second Circuit held:

Few powers of government have as immediate and intrusive an impact on the lives of citizens as the power of eminent domain But federal judges may not intervene in such matters simply on the basis of our sympathies. Just as eminent domain has its costs, it has its benefits, and in all but the most extreme cases, Supreme Court precedent requires us to leave questions of how to balance the two to the elected representatives of government, notwithstanding the hardships felt by those whose property is slated for condemnation.

Goldstein, 516 F.3d at 52. The Third Circuit held:

Rather than doing this, we will take *Kelo* at its face value, and interpret it as providing a federal constitutional floor for the definition of a public use that allows states to build upon this floor should they choose to do so. Although we need not resolve the question of whether the conduct in this case violated Pennsylvania's state laws or constitution, we do hold that such conduct does not violate the Federal Constitution and we will affirm the District Court's dismissal of the Property Owners' Fifth Amendment takings claim.

Whittaker, 437 F. App'x at 108.

desired outcome of limiting eminent domain in the federal courts, state legislatures need to establish precedent like those in Ohio, Pennsylvania, or Oklahoma and apply a more stringent test for economic development takings.

D. Eminent Domain and Relocation Contractual Provisions

Cities and local governments have a fourth option to curb eminent domain overreach. Cities can negotiate with sports team owners to add contractual provisions that disallow relocation and the use of eminent domain for future sports stadiums or arenas. Just as the Los Angeles Clippers's contract included the ability to use eminent domain for its future arena, the City of Los Angeles could have done the reverse and included a provision that prohibits the use of eminent domain.³⁰⁵ The restriction of relocation would deter sports team owners from lobbying local governments for new stadiums and threatening to leave the city unless it built them a new sports facility. The prohibition on using eminent domain would preclude sports team owners from threatening cities or citizens to take land through these means. Although the contract solution would be the quickest to implement going forward because it is a matter of contract law, such an idea would be difficult to apply retroactively to previous eminent domain takings. But, when the current contracts are up, cities can look into adding these provisions and restricting the sports team owners' leverage over cities and their local governments.

E. The Public Purpose Doctrine

The fifth and final solution that cities and local governments could explore is the Public Purpose Doctrine. The Public Purpose Doctrine is a judicially imposed constitutional limit on how local, state, and federal governments can spend public funds for a public purpose.³⁰⁶ If a private corporation attempts to build a new facility, the corporation would likely argue it is for the public purpose of that location. Many private-sector corporations depend on obtaining favorable subsidies or tax breaks.³⁰⁷ These subsidies, however, have risen to substantial levels, causing state and

305. See Perfett, *supra* note 215.

306. See Dale F. Rubin, *The Public Pays, the Corporation Profits: The Emasculation of the Public Purpose Doctrine and a Not-for-Profit Solution*, 28 U. RICH. L. REV. 1311, 1312 (1994).

307. See *id.*; see also Brian Libgober, *The Death of Public Purpose (and How to Prevent It)* (John M. Olin Ctr. for L., Econ., & Bus. Fellows' Discussion Paper Series, Discussion Paper No. 63, 2016); Robert Reich, *How Corporate Welfare Hurts You*, AM. PROSPECT (July 23, 2019), <https://prospect.org/economy/corporate-welfare-hurts/> [https://perma.cc/4UYN-8JGR].

local debt to increase exponentially.³⁰⁸ The Public Purpose Doctrine, as invoked through the courts, ensures that private corporation improvements benefit the public and serve the public purpose of the area.

Courts can apply the Public Purpose Doctrine with a balancing test. Courts must consider the costs and benefits; if the benefits outweigh the costs, courts can allow the proposed economic development plan. The balancing test will provide that before the proposal can be approved, the local government must identify or receive the financial benefits from the economic development plan. The application of the Public Purpose Doctrine balancing test could be relevant to a review of proposals for sports stadiums and arenas if they receive public subsidies and tax breaks. The test allows courts another opportunity to scrutinize eminent domain takings for sports stadiums and arenas and see if they are truly for a public purpose. As economic studies show, constructing a new stadium or arena rarely brings financial benefits to the city.³⁰⁹

In a situation where a sports team owner and a local government attempt to use eminent domain to acquire land for a sports stadium or arena, the landowners can challenge this taking under the Public Purpose Doctrine if the city decides to give the sports team owners subsidies or tax breaks. To permit this taking and construction, the courts must require that the plan's primary benefit is for the public, that the public benefit is not incidental, and that the net gain is ascertainable. Otherwise, without this judicial intervention, the residents lose their property and incur higher taxes to offset the subsidies and tax breaks. The Public Purpose Doctrine gives citizens another chance to fight the taking and provides an opportunity for the public to challenge new stadiums or arenas that receive hundreds of millions of dollars from cities through subsidies or tax breaks.

Nevertheless, sports team owners and local governments might avoid the Public Purpose Doctrine because of how broadly the courts construe "public purpose." Over the years, the definition of "public purpose" has become fairly fluid. As discussed above, courts have held that economic improvement is a constitutionally supported public purpose, so many states accept economic development for blighted areas.³¹⁰ Additionally, many courts defer to the legislative branch because the legislature represents the

308. See Libgober, *supra* note 307, at 4–5. By 2013, state and local government debts rose to \$3 trillion. See Penelope Lemov, *Do the States Have a Debt Problem?*, GOVERNING (May 30, 2013, 5:00 PM), <https://www.governing.com/columns/public-finance/col-states-rising-debt-problem.html> [<https://perma.cc/V259-2TBP>].

309. See generally Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*, *supra* note 131.

310. See, e.g., Goldstein v. Pataki, 516 F.3d 50 (2d Cir. 2008); see also Kelo v. City of New London, 545 U.S. 469 (2005); Berman v. Parker, 348 U.S. 26 (1954).

public.³¹¹ For the Public Purpose Doctrine to prevent eminent domain abuse for publicly subsidized sports stadiums and arenas, courts must read “public purpose” narrowly and utilize the applicable balancing test.³¹²

IV. THE SOLUTIONS THAT CAN WORK

There are two solutions that have the best chance of being successful. The most direct way to prevent sports team owners from using eminent domain for sports stadiums and arenas requires the Supreme Court to take up an eminent domain case, reverse *Kelo*'s holding on the public use clause, and conclude that economic development does not constitute public use and is not an appropriate application of eminent domain. If the Supreme Court changes the *Kelo* holding, this decision would impact all 50 states and be applied immediately post-ruling. The new ruling would automatically set a higher bar that city and local governments must meet before using eminent domain. More importantly, a narrower holding of the public use clause in *Kelo* would make sports team owners accountable for the land they want to acquire for their sports stadiums or arenas. Sports team owners know that if they cannot use eminent domain for their sports stadiums or arenas, the free market will force them into more balanced negotiations for land acquisitions. A Supreme Court ruling that narrows *Kelo* and its scope of the public use clause would apply to every state. This would be the most efficient way to counteract the prevalent use of eminent domain for such purposes.

There is a deterrent factor with any Supreme Court decision — the length of time. The Supreme Court would have to take up a case that a previous appellate court heard either at the state or federal court level. A plaintiff would have to argue his or her case all the way to the Supreme Court, which requires money, time, and dedication. The case must be one the plaintiff believes is worth this tremendous effort. The Supreme Court could have reviewed an eminent domain case regarding their holding in *Kelo* in 2014 with *Goldstein v. Pataki*, but the Court denied certiorari.³¹³

In the past, some members of the Supreme Court have stated they would like to reexamine *Kelo* in the future.³¹⁴ After the Barclays Center case,

311. See *Kelo*, 545 U.S. at 480 (reasoning that the courts have a longstanding policy of deference to legislative judgments in determining public purpose).

312. See Libgober, *supra* note 307.

313. See *Goldstein*, 554 U.S. 930.

314. *Kelo* remains one of the least popular opinions, especially among some Justices. Justice Antonin Scalia compared the *Kelo* decision to two other cases — *Dred Scott v. Sanford*, 60 U.S. 393 (1857), and *Roe v. Wade*, 410 U.S. 113 (1973) — as decisions that were “mistakes of political judgment.” He said that “*Kelo* will not survive.” Colin Young, *Could the Supreme Court Overturn the Kelo Decision?*, DAY (June 23, 2015, 10:36 PM),

landowners sought certiorari — a rare occasion for a public taking, especially for a taking regarding a sports stadium. The Supreme Court denied certiorari, but Justice Alito wrote a statement on the denial of certiorari.³¹⁵ One can speculate that Justice Alito realizes he might now have the majority needed to reverse *Kelo*. The fact that Justice Alito would have granted certiorari likely shows he believed it was time for the Court to reexamine *Kelo*'s holding.³¹⁶ Since *Kelo*, the Court's conservative majority has grown;³¹⁷ of the seven appointments since *Kelo*, five Justices may be labeled as "conservative."³¹⁸ The two Justices who wrote the majority and concurring opinions in *Kelo*, Justices Anthony Kennedy and Stevens, have left the Court. Both Justices were replaced by more conservative-leaning Justices that may vote in a manner more aligned with Justices Thomas's and O'Connor's *Kelo* dissents.³¹⁹ Therefore, if and when the Supreme Court revisits *Kelo*, one can predict it will apply a stricter reading of the Takings Clause.

While the landowners wait for the Supreme Court to take up the appropriate case, there is another answer that would be efficient in curbing eminent domain abuse. The state legislatures could step in and pass laws that outlaw the use of eminent domain for economic development, in particular sports stadiums and arenas. Most states already have certain laws that make it difficult to use eminent domain for economic

<https://www.theday.com/article/20150622/NWS01/150629796>

[<https://perma.cc/TJ9G-Q9NU>]; see also Somin, *The Case Against the Kelo Decision*, *supra* note 16. While Justice Scalia is no longer on the bench, his replacement, Justice Neil Gorsuch, may rule in a similar manner as he would have. See Adam Feldman, *Empirical SCOTUS: How Gorsuch's First Year Compares*, SCOTUSBLOG (Apr. 11, 2018, 12:00 PM), <https://www.scotusblog.com/2018/04/empirical-scotus-how-gorsuchs-first-year-compares/> [<https://perma.cc/UR7Z-EH8X>].

315. See *Goldstein*, 554 U.S. 930.

316. See *id.*; see also Patricia Salkin, *SCOTUS Denies Cert in Goldstein v. Pataki — Atlantic Yards Eminent Domain Case*, LAW LAND (June 23, 2008), <https://lawoftheland.wordpress.com/2008/06/23/scouts-denies-cert-in-goldstein-v-pataki-%E2%80%93-atlantic-yards-eminent-domain-case/> [<https://perma.cc/Y7ZN-SZ7K>].

317. See *Justices 1789 to Present*, SUP. CT. U.S., https://www.supremecourt.gov/about/members_text.aspx [<https://perma.cc/ERT7-3CFG>] (last visited Nov. 24, 2020); see also *The Political Leanings of the Supreme Court Justices*, AXIOS (June 1, 2019), <https://www.axios.com/supreme-court-justices-ideology-52ed3cad-fcff-4467-a336-8bec2e6e36d4.html> [<https://perma.cc/Y38U-H4RT>].

318. See *Justices 1789 to Present*, *supra* note 317; see also Amelia Thomson-DeVeaux, *Is the Supreme Court Heading for a Conservative Revolution?*, FIVETHIRTYEIGHT (Oct. 7, 2019, 6:00 AM), <https://fivethirtyeight.com/features/is-the-supreme-court-heading-for-a-conservative-revolution/> [<https://perma.cc/RL2C-8UKV>].

319. See *The Political Leanings of the Supreme Court Justices*, *supra* note 317; see also Thomson-DeVeaux, *supra* note 318.

development, but by amending these laws, states can further protect their citizens from eminent domain abuse.

There are, however, two problems with this response — it requires each state to either amend its laws or create new ones. This takes time, especially as there is occasionally political gridlock in state and local governments.³²⁰ Because this response requires each state to prohibit eminent domain use for sports stadiums and arenas, some states might be slow to act. Sports team owners would continue to take advantage of eminent domain until the respective state legislature prevents it.³²¹

As to other solutions offered in Part III, they are not as feasible as the two best solutions. Courts might have difficulty applying the Public Purpose Doctrine and the ascertainability test. These concepts might be too much of a stretch for the courts to accept, as some courts do not even accept ascertainability for class actions.³²² Such a scheme would be the hardest to apply.

The proposed solution of cities and local governments, including a contractual clause forbidding eminent domain, is only applicable to the city and the sports team owner that negotiated the contract. The contractual clause would not prohibit other sports team owners from utilizing eminent domain in other cities when the team finds it appropriate. The contractual clause would not alleviate the problem unless every city and local government insists on using it.³²³ This is unlikely even if a majority of sports team owners might approve of it.

The third possibility of state courts narrowing takings under state laws is direct but only works if a majority of state courts apply it. Presently, some state courts do not narrow takings under state laws, which consequently opens those states to future abuse by sports team owners. To be effective, the state court solution would also require multiple lawsuits across the

320. See, e.g., Francine Kiefer, *Gridlock in States: Why They're Mimicking D.C.*, CHRISTIAN SCI. MONITOR (Apr. 8, 2016), <https://www.csmonitor.com/USA/Politics/2016/0408/Gridlock-in-states-why-they-re-mimic-king-D.C> [<https://perma.cc/KJ6K-QRFM>].

321. At the start of writing this Note, the COVID-19 pandemic had not yet affected the United States. The obvious economic repercussions from the pandemic will alter how some sports team owners operate in the near future because fans are prevented from or limited in attending sporting events, thus significantly curtailing revenue. When fans eventually return to attending games, sports team owners will likely look to build and update their stadiums.

322. See *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017) (holding that by any reasonable statutory construction, ascertainability is not included in F.R.C.P. Rule 23).

323. The contractual clause only binds the two parties who negotiated it. In cases of cities and sports team owners inserting the clause in their contracts, it would only bind those cities and sports team owners. It would not bind any other cities, local governments, or sports team owners. Therefore, other cities and local governments would be required to separately negotiate with their respective sports team owners.

nation to challenge government use of eminent domain for stadium or arena development. This is also unlikely to happen in the near future — this type of response could take years, significant financial resources, and much legal action by various parties. Until all 50 states' courts take up eminent domain cases, residents of states without challenges will be unprotected.

After reviewing the pros and cons of each possible solution to the overuse of eminent domain for sports stadiums and arenas, this Note advocates for the Supreme Court to reverse *Kelo* and for the state and federal legislatures to create or amend laws that prohibit the practice. The Supreme Court reversal would take time and money, and the right case to appeal. Until that happens, this Note recommends that the state and federal legislatures restrict the use of eminent domain to build sports stadiums or arenas. Political gridlock and lobbying by sports team owners could pose obstacles that might prevent the legislatures from passing the laws needed to protect people from the ongoing eminent domain misuse.³²⁴ However, the hope is that the legislatures can overcome these hurdles to protect their constituents from overly opportunistic sports team owners.

CONCLUSION

Plutocratic sports team owners are taking advantage of private landowners so that the owners can build new sports stadiums that are worth hundreds of millions, if not billions, of dollars. Sports team owners do this at the expense of the public. These new sports stadiums and arenas, however, are not for public use but serve private interests. Local community members cannot use the stadiums or arenas without first buying the privilege to use them via tickets. Sports team owners attach the words “economic development” as a pretext to build the stadium, thereby making it easier to circumvent an eminent domain challenge in court. Economic studies, however, consistently demonstrate that new stadiums or arenas do not bring the promised financial benefits to cities.³²⁵ In fact, because of

324. See Adie Tomer & Lara Fishbane, *Political Gridlock Blocks Infrastructure Progress and Costs Our Economy*, BROOKINGS (Apr. 25, 2019), <https://www.brookings.edu/blog/the-avenue/2019/04/25/political-gridlock-blocks-infrastructure-progress-and-costs-our-economy/> [<https://perma.cc/BTV4-4KXZ>].

325. See generally Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*, *supra* note 131; see also Bryce, *supra* note 113; Neibauer, *supra* note 191; Sibilla, *supra* note 174. As mentioned briefly in Sections II.B and III.B, economic studies show that new stadiums or arenas do not provide the promised economic benefits to the city or the businesses surrounding the new stadium or arena. Nor are there the projected increases in jobs or tax collections. See Gayer, Drukker & Gold, *Tax-Exempt Municipal Bonds*, *supra* note 131.

additional subsidies or tax breaks that cities give the sports team owners, cities lose millions of dollars to build new stadiums or arenas.³²⁶

The Supreme Court's grant of certiorari on a challenge to an eminent domain taking for a sports stadium would be the most straightforward way for the Court to rule that courts have read the Takings Clause too broadly. The recent change in the makeup of the Supreme Court opens the door to reexamining *Kelo*.³²⁷ Although the Court cannot retroactively give back the land taken from individuals impacted by the *Kelo* decision, the Court can guarantee this does not happen as often in the future.

There are times when eminent domain is appropriate or even required for government use. Building a new privately owned sports stadium on land taken by eminent domain from a private entity is not one of them. When a government takes land from private individuals, it should give the public the legal right to use that property after the taking or at least be certain the public will benefit from the taking. The government should not transfer the land to another private entity that will put it to private use unless the government is reasonably assured that the economic development will materialize. Narrowing the Takings Clause in the Fifth Amendment will require the government to utilize eminent domain sparingly and with appropriate rationale, thus preventing individuals with significant influence and power, such as sports team owners, from taking advantage of those residents who are less fortunate. It will level the playing field, which is what sports team owners around the country should want, as it is the sporting thing to do.

326. The COVID-19 pandemic exacerbated the issue that stadiums' debts cost cities. Cities give hundreds of millions of dollars to construct stadiums thinking they will bring in new revenue. During the pandemic, the country halted sporting events; none of the leagues or teams brought in revenue and people employed by the teams were furloughed. See Patrick Murray, *How Could The Golden State Warriors' Finances Be Impacted If the NBA Season Is Canceled?*, FORBES (Apr. 6, 2020, 8:30 AM), <https://www.forbes.com/sites/patrickmurray/2020/04/06/how-could-the-golden-state-warrior-s-finances-be-impacted-if-the-nba-season-is-canceled/#3ebb370d2ff8>

[<https://perma.cc/U236-XEKN>]. Meanwhile, the cities that gave the sports team owners subsidies or tax breaks still had to pay off these debts during the pandemic. Cities that were cash strapped because of the pandemic suffered even more. See Adam Harris, *The Other Way the Coronavirus Will Ravage Our Cities*, ATLANTIC (Apr. 1, 2020), <https://www.theatlantic.com/politics/archive/2020/04/coronavirus-cities-bankruptcy/609169/> [<https://perma.cc/NXX2-PFTY>]. Some cities, like St. Louis, are still paying stadium debts even after the team left the City years ago. See Robin Respaut, *With NFL Rams Gone, St. Louis Still Stuck with Stadium Debt*, REUTERS (Feb. 5, 2016, 8:29 AM), <https://www.reuters.com/article/us-sports-nfl-stadiums-insight/with-nfl-rams-gone-st-louis-s-till-stuck-with-stadium-debt-idUSKCN0VC0EP> [<https://perma.cc/6FH9-62UP>].

327. See Ilya Somin, *Prospects for the Future of Kelo, Property Rights, and Public Use*, WASH. POST (June 5, 2015, 11:40 AM), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/06/05/prospects-for-the-future-of-kelo-property-rights-and-public-use/> [<https://perma.cc/29JE-BW43>].