RECORD NO.

22-2722

In The

United States Court of Appeals

For The Second Circuit

BEN BRINKMANN, HANK BRINKMANN, MATTITUCK 12500 LLC,

***Plaintiff – Appellants*,**

v.

TOWN OF SOUTHOLD, NEW YORK,

***Defendant – Appellee*.**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK (CENTRAL ISLIP)

REPLY BRIEF OF APPELLANTS

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Introduction

In their opening brief, the Brinkmanns demonstrated that every court to confront the question in this case has agreed: It is unconstitutional for the government to take private property, under the pretext of a public use, when the true purpose is simply to prevent property owners from putting their property to lawful uses. In response, the Town advances an argument that no court except the district court has ever adopted, and which has been rejected in the only other case in which it was advanced: That pretextual takings are perfectly permissible, so long as the true purpose of the taking is something other than conferring a private benefit.

Nothing in the decisions of the Supreme Court or this Court supports such a rule. And although there is no *controlling* authority that squarely answers the question in this case, decisions of this Court and the Supreme Court are at the very least in serious tension with the Town's proposed rule. Moreover, affirming the decision below would unquestionably create a major split of authority where none previously existed, including with a state inside this Circuit.

The Town also refuses to engage with the Supreme Court's fundamental rights framework, seemingly implying that a "history, text, and tradition" analysis is only appropriate before the Supreme Court. But that is not what the Court has said. Where no precedent is squarely on point, such as in this case, *all* courts are required to turn to history, text, and tradition to determine the scope of enumerated rights, of which a right to property under the Public Use Clause surely is one.

Finally, the Town does not dispute that its proposed rule will allow for tremendous governmental abuse. It argues, instead, that courts should not be concerned with such abuse so long as the victims are white men like the Brinkmanns. No authority supports such a crabbed view of private property rights. The decision below should be reversed.

Argument

I. Courts that have considered the question have unanimously concluded that eminent domain may not be used to stop property owners from making lawful uses of their property.

There is no binding authority that squarely answers the question in this case. Yet there is overwhelming persuasive authority supporting the Brinkmanns' claim. Most significantly, if this Court affirms the decision below, it would create a split of authority with the Supreme

Court of Connecticut, which held in *New England Estates, LLC v. Town of Branford* that a taking violates the Fifth Amendment where the stated public use is simply a pretext for stopping property owners from making perfectly legal but disfavored use of their property. 988 A.2d 229, 252–53 (Conn. 2010). That is precisely what the Brinkmanns have alleged here.

The Town's response to *New England Estates* is difficult to follow, but it appears to take issue with the fact that in that case, the Connecticut Supreme Court was affirming a jury verdict, whereas in the procedural posture of present case, the Town of Southold "was required to accept the Brinkmanns' baseless allegations as true on a 12(b)(6) motion." Town Br. at 13. Why that matters is a mystery. If the Town's legal theory in this case were correct—if it were simply irrelevant that the Town acted in bad faith and lied about its reasons for taking the Brinkmanns' property—then *New England Estates* never should have proceeded to a jury in the first place. But it did proceed to a jury. The Connecticut Supreme Court, in a detailed and thoughtful opinion, affirmed the jury's verdict and thoroughly rejected the exact legal theory that the Town of Southold is asking this Court to adopt here. *See New England Ests.*, 988 A.2d at 252 ("[The Town] argues that it did not violate

the public use requirement by being dishonest about the reasons for which it took the land. It is well established, however, that a government actor's bad faith exercise of the power of eminent domain is a violation of the takings clause." (citations omitted)). There is simply no path to affirmance that does not create a split with a state high court inside the Second Circuit.

The Town's real complaint appears to be with the 12(b)(6) standard itself. It suggests in passing that the Brinkmann's allegations are "baseless," Town Br. at 13, "conclusory," *id.* at 15, and they should not be allowed to proceed to discovery.[1] Yet the Town did not argue below and does not make any argument here that the Brinkmanns' allegations fail

[1] The Town also insinuates, without actually arguing, that the Brinkmanns cannot challenge the Town's public-use determination in federal court because they did not file a lawsuit in state court challenging that determination. *See* Town Br. at 1, 6, 10. As the Town surely knows, "exhaustion of state remedies, whether administrative or judicial, is not a prerequisite to maintaining an action under § 1983." *Nussle v. Willette*, 224 F.3d 95, 97–98 (2d Cir. 2000) (citing *Patsy v. Bd. of Regents*, 457 U.S. 496, 508 (1982)), *rev'd on other grounds sub nom. Porter v. Nussle*, 534 U.S. 516 (2002). This case is in the same procedural posture as *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 232 (1984) and *Goldstein v. Pataki*, 516 F.3d 50, 54 (2d Cir. 2008), and neither court entertained any doubts about whether the merits of the plaintiffs' takings claims were properly before it. The Brinkmanns are likewise entitled to litigate their federal claims in federal court, notwithstanding the Town's preferences.

to satisfy the pleading standards of *Iqbal* and *Twombly*. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). And with good reason. As detailed in their opening brief, the Brinkmanns' allegations are detailed, specific, and overwhelming. A-11–35. For instance, the Brinkmanns alleged that the Town:

(1) tried to erect multiple barriers to the Brinkmanns' proposed hardware store,

(2) attempted to interfere with the sale of the property,

(3) enacted an illegal building moratorium and enforced it selectively against the Brinkmanns,

(4) only resorted to taking the property when it looked like those barriers would prove ineffective,

(5) never had any plans for a park on the Brinkmanns' property until after it voted to condemn the property; and

(6) did not consider any other plot of land for the alleged park, including the vacant property that was listed for sale next door to the Brinkmanns' property.[2]

[2] Cherry-picking from the Brinkmanns' factual allegations, the Town characterizes the Brinkmanns' allegations as merely showing the Town's desire to keep the Brinkmanns' property as undeveloped land. Town Br. at 8. Elsewhere, the Town claims that the Brinkmanns have merely alleged that the Town "fail[ed] to apprise the[m] of their plan." Town Br. at 14. Not only do these assertions ignore some of the most troubling of the Brinkmanns' allegations—that the Town had no plans to condemn the Brinkmanns' property until its other efforts to stop the Brinkmanns from building their hardware store seemed likely to fail—it also bucks

These facts, accepted as true, compel a single conclusion: The Town of Southold lied when it said it was condemning the Brinkmanns' property for a park, just as the Town of Branford lied when it said that it was condemning property "to remediate any environmental contamination" and for "playing fields, when in fact the town's real purpose was to prevent the proposed residential development." *New England Ests.*, 988 A.2d at 246. Of course, the Town is free to argue (as Town of Branford unsuccessfully did) that it's perfectly legal for the government to lie when it condemns property. But there is no way to distinguish *New England Estates*.

The Town fares little better in trying to distinguish the many other cases that have unanimously ruled for property owners who found themselves in situations similar to the Brinkmanns. But before discussing the Town's more specific objections to each of these cases, the Brinkmanns offer a broader observation: The Town of Southold has made no effort to argue that any of these out-of-state cases were wrongly

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the standard for a motion to dismiss. *See Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 304 (2d Cir. 2020) (reiterating that all reasonable inferences are drawn in the plaintiff's favor at the motion-to-dismiss stage).

decided. It does not argue that they are poorly reasoned. It does not argue that they apply rules that are unworkable in practice. It does not argue that they were inconsistent with precedent. It argues, instead, (1) that these cases are non-binding, (2) that some of them predated *Kelo*, and (3) that some were not decided under the U.S. Constitution.

As to the first point, the Brinkmanns of course agree. Unlike the Town, the Brinkmanns have never asserted that any binding precedent from the Supreme Court or this Court squarely answers the question in the present case. Their purpose in pointing to this "[e]ndless [l]itany" of "[n]on-[b]inding [a]uthority," Town Br. at 19, is to highlight these cases' persuasive value and to emphasize that affirming the district court's decision in this case would create a major split of authority where none previously existed.

As to the fact that some of these cases predated *Kelo*, so what? As further explained below, nothing in *Kelo* casts any doubt over the reasoning of the cases the Brinkmanns rely on. To the extent that *Kelo* did weigh in on the issues in this case, it was to note its approval of cases that had set aside pretextual or bad-faith takings. There is simply no way to read the relevant language of *Kelo* and conclude that the Supreme

Court intended, *sub silentio*, to overrule all of the cases the Brinkmanns have cited and establish a new rule that pretextual takings are impermissible, but only when true purpose of the taking is to benefit a private party. *See New England Ests.*, 988 A.2d at 252 (noting that "the United States Supreme Court has not yet addressed this [pretext] issue directly"). Nor can the Town even offer a plausible reason why the Supreme Court would have wanted to narrow the pretext doctrine in a case that wasn't about pretext.

Finally, in arguing that some of these cases were decided as matters of state law, the Town essentially asks this Court to reverse the normal *Michigan v. Long* presumption—as the district court did—and hold that states are presumed to be applying state law independently of federal law unless they explicitly say otherwise. *See Michigan v. Long,* 463 U.S. 1032, 1044 (1983) (requiring a "plain statement" that the state court decision "rested on an adequate and independent state ground"). Contrary to the Town's suggestion, courts do not tally up citations to federal and state law to see which comes out on top in a particular opinion. Town Br. at 22 n.8 ("Notably, the decision includes two citations to *Kelo*, as compared to 24 citations to statutes and 35 citations to Pennsylvania case law."). The

rule is simple: If state courts are applying their constitutions independently of the U.S. Constitution, they must say so explicitly. Not a single one of the cases that the Town seeks to distinguish meets that standard.

With regard to *Lands of Stone*, the Town argues that "the very first sentence of the decision . . . makes clear that the case was decided under specific Pennsylvania statutes and not the Fifth Amendment." Town Br. at 21. But that framing is not right. *See Middletown Twp. v. Lands of Stone*, 939 A.2d 331, 337 (Penn. 2007) ("The Takings Clause of the Fifth Amendment provides the only means of validly overcoming the private right of property ownership"). The state statutes at issue granted the Township the authority to condemn property for recreational purposes but not for the preservation of open space—in other words, the statutes defined the permissible public use.

Yet, in applying the pretext doctrine, the Pennsylvania Supreme Court explicitly relied on the Fifth Amendment and *Kelo*. *Id.* at 337, 338, 339, 340. The inquiry whether the stated purpose was the true purpose was grounded in the constitutional principle of public use. *Id.* at 338 ("[T]he government is not free to give mere lip service to its authorized

purpose or to act precipitously and offer retroactive justification. . . . [U]nless the property is acquired for an authorized public use, and after a suitable investigation leading to an intelligent, informed judgment by the condemnor, the condemnation is invalid." (internal quotation omitted)). Indeed, "[a]nything less would make an empty shell of our public use requirements." *Id.* at 340. And the Pennsylvania Supreme Court later confirmed that *Lands of Stone* was grounded in both the state and federal constitutions. *See In re Opening Priv. Rd. for Benefit of O'Reilly*, 5 A.3d 246, 258 (Pa. 2010) ("The Constitutions of the United States and Pennsylvania mandate that private property can only be taken to serve a public purpose. . . . This Court has maintained that, to satisfy this obligation, the public must be the primary and paramount beneficiary of the taking. *See Lands of Stone*, 595 Pa. at 617, 939 A.2d at 337.").

Next, with regard to *Pheasant Ridge*, the Town argues that the case is distinguishable because the court there highlighted a variety of evidence of pretext that is "absent here." Town Br. at 22; *see also Pheasant Ridge Assocs. Ltd. P'ship v. Town of Burlington*, 506 N.E.2d 1152, 1156 (Mass. 1987). It is unclear what point the Town is trying to

make. We are here on a motion to dismiss, and the only question is whether the Constitution prohibits the government from using pretextual takings to stop property owners from making lawful use of their property. If the Town of Southold believes that it can prove, as a factual matter, that its taking was not pretextual, it will have the opportunity to do so after remand. (Though, as the Brinkmanns noted in their opening brief, the alleged facts of the present case are far more damning than the facts of *Pheasant Ridge*. Brinkmanns Br. at 27.) But the Town cannot argue that *Pheasant Ridge* can somehow be reconciled with the decision below. *See Pheasant Ridge*, 506 N.E.2d at 1156 ("Bad faith in the use of the power of eminent domain is not limited to action taken solely to benefit private interests. It includes the use of the power of eminent domain solely for a reason that is not proper, although the stated public purpose or purposes for the taking are plainly valid ones.").

With regard to *Earth Management Inc. v. Heard County*, 283 S.E.2d 455 (Ga. 1981), the Town suggests that case was special because the true purpose of the pretextual taking there was to stop the property owner from putting the land to a use "in which the state has an interest." Town Br. at 23 (emphasis omitted). Although the court did note in passing that

the "state has an interest" in the construction of waste disposal facilities, the court did not purport to base its decision on that factor. 283 S.E.2d at 460–61. Had it been essential to the holding, the court would surely have said so. Notably, none of the cases that have since relied on *Earth Management* as authority for rejecting pretextual takings have ever discovered the limitation that the Town now finds so obvious. *See Pheasant*, 506 N.E.2d at 1156; *Casino Reinvestment Dev. Auth. v. Banin*, 727 A.2d 102, 103 (N.J. Super. Ct. Law. Div. 1998); *Borough of Essex Fells v. Kessler Inst. for Rehab., Inc.*, 673 A.2d 856, 861 (N.J. Super. Ct. Law. Div. 1995).

Affirming the decision below will require this Court to squarely reject all of these cases, and the others cited in the Brinkmanns' opening brief, creating a massive split of authority where previously there was unanimity. Of course, this Court is free to do so, if it is convinced that is the right course. But the Town has offered no justification for adopting such a radical rule.

II. Neither *Kelo* nor *Goldstein* control the outcome of this case.

Although the question in this case is one of first impression in this jurisdiction, decisions of the Supreme Court and this Court strongly

imply that the Brinkmanns' claim is valid. Under those decisions: (1) pretextual or bad faith takings are unconstitutional; (2) there is no basis for limiting the pretext doctrine to situations where property owners are alleging that the true purpose is to bestow a private benefit; and (3) courts should not defer to legislative judgments about public use in cases where property owners have sufficiently alleged pretext or bad faith.

The *Kelo* Court approvingly cited cases finding pretextual takings unconstitutional, noting that there was no evidence of such an improper purpose in that case and concluding that courts can confront such "hypothetical cases . . . if and when they arise." *Kelo v. City of New London*, 545 U.S. 469, 487 (2005). In other words, the Court went out of its way to caution that its decision should not be overread. Yet that is precisely what the Town is doing by arguing that *Kelo* silently overruled an "[e]ndless [l]itany," Town Br. at 19, of pretext cases that it did not even cite, Town Br. at 14 (arguing that pretext cases are irrelevant if they are "pre-*Kelo*").[3]

[3] The Town accuses the Brinkmanns of taking dicta in *Kelo* and "transmogrif[ying] them into an additional requirement" that courts should "closely scrutinize the municipality's intent." Town Br. at 12

Finding no support in *Kelo* for its proposed rule, the Town turns to this Court's decision in *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. 2008) but its efforts there fare no better.[4] In *Goldstein*, this Court noted that legislative deference is not appropriate where a "use [is] palpably without reasonable foundation[,]" and this Court "preserv[ed] the possibility that a fact pattern may one day arise in which the circumstances of the approval process so greatly undermine the basic legitimacy of the outcome reached that a closer *objective* scrutiny of the justification being offered is required. In this area, 'hypothetical cases . . . can be confronted if and when they arise.' *Kelo*, 545 U.S. at 487." *Goldstein*, 516 F.3d at 58, 63 (emphasis in original). As the Brinkmanns explained in their opening

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(referring to statements the Brinkmanns quoted from *Kelo*). The Brinkmanns, however, are merely arguing that the specific and overwhelming allegations *in this case* warrant further scrutiny. And, notably, the *Kelo* Court *did* closely scrutinize the evidence of legislative purpose before concluding that there was no evidence of bad faith. *See id.* at 491–92 (Kennedy, J., concurring) ("The trial court considered testimony from government officials and corporate officers, documentary evidence of communications," and a great deal more evidence in concluding there was no pretext (internal citations omitted)).

[4] The Town suggests that the Brinkmanns failed to bring *Goldstein* to this Court's attention in their opening brief. Town Br. at 15. But the Brinkmanns discussed this Court's holding in *Goldstein* at length, explaining how *Goldstein*—a decision about the factual sufficiency of a pretext challenge—does not support the district court's holding. Brinkmanns Br. at 29–30.

brief, the *Goldstein* court rejected the pretext claim there not because such a claim does not exist, as the Town argues, but because the Court found the only allegations supporting the claim of improper purpose "involve[d] purported excesses in the costs of the plan as measured against its benefits." *Id.* at 62. In other words, this Court concluded the pretext claim was "conclusory." *Id.* at 63.[5]

Nevertheless, the Town argues that *Goldstein* simply could not have been a case about the sufficiency of pretext allegations. Why? Because it was "lengthy and well-reasoned" and because it "provide[d] a detailed examination of the Court's role in assessing public uses under the Takings Clause." Town Br. at 19. This logic is difficult to follow. The fact that an opinion is long does not mean that one can excise the parts that one doesn't like; this Court explicitly held that the *Goldstein* plaintiffs had failed to sufficiently allege pretext and explicitly left open

[5] Indeed, the Town implicitly concedes as much by arguing that *Goldstein* had somehow limited pretext claims to allegations of improper private benefit. Town Br. at 11 ("[T]he Brinkmanns did not allege any private benefit, as required by *Goldstein*."). Although this Court did no such thing, the Town's concession that the claim at issue in *Goldstein* was at least valid in the abstract necessarily means that the only way it could have been dismissed was because it was insufficiently alleged, not because the theory was wrong.

the possibility that, in a future case, a pretext claim would succeed. That is what matters.

The present case is one of those "hypothetical cases" that *Kelo* and *Goldstein* were talking about. The Town asserts that a taking for a park is not an extreme case and therefore the Town's decision to take the Brinkmanns' property is entitled to complete deference. Town Br. at 17–18. But this case is not about whether taking land for a park is a legitimate public use. Rather, this case is about whether a town abused its eminent-domain power by taking property for an illegitimate purpose while hiding behind the fig leaf of an established public use. The Brinkmanns' detailed factual allegations are distinct from any claims about the subjective motivations of particular Town officials. They are also analogous to the facts of numerous cases discussed in the Brinkmanns' opening brief, where property owners defeated pretextual condemnations. Brinkmanns Br. at 33–44. The Brinkmanns have sailed past the bar of plausibly alleging that the Town used its eminent-domain power for the illegitimate and impermissible purpose of blocking them from lawfully using their property, and no decision from this Court or the Supreme Court forecloses their claim.

III. The Supreme Court's fundamental rights framework is binding.

As the Brinkmanns explained in their opening brief, Brinkmanns Br. at 44–52, when federal courts are called to interpret a constitutional provision without on-point Supreme Court guidance, as in this case, courts should first look to the Constitution's text, history, and tradition before borrowing freely from adjacent Supreme Court jurisprudence. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2129–30 (2022); *cf.* Antonin Scalia, *Common Law Courts in a Civil-Law System in* A Matter of Interpretation 39 (1997) (disapprovingly describing constitutional analysis that takes as its "starting point" Supreme Court case law and thus removes from focus the Constitution's "original text and understanding"). Although the Town concedes that the right at issue here is enumerated in the Bill of Rights, it objects to this mode of analysis, asserting that it is more appropriate for "a cert petition" than "an appellate brief." Town Br. at 25–28. The Supreme Court, however, has never cabined this method of analysis to One First Street—it is a mandatory framework for *all* courts interpreting the Bill of Rights. "To be sure, historical analysis can be difficult," *Bruen*, 142 S. Ct. at 2130 (cleaned up), but that does not mean we can skip it.

Of course, federal courts do not go back to the drawing board when there are controlling cases directly on point—but this is not such a case, as explained above. Indeed, the Town seems to concede as much. It argues that the district court based its interpretation of the Public Use Clause on "well-settled and binding precedent," Town Br. at 30, but in same breath equivocates by seemingly conceding that this is a case of first impression—because it is, *see id.* at 15 (arguing *Goldstein* is "instructive"); *id.* at 14 (conceding that the Connecticut Supreme Court admitted in *New England Estates* that the United States Supreme Court has yet to address the issue raised here).

For that reason, and because the district court broke new constitutional ground, the burden is on the Town to justify its interference with the Brinkmanns' property rights. It must offer a theory supported by the Fifth Amendment's text, history, and tradition. *See* Brinkmanns Br. at 45–52 (explaining why the government must justify its interference with fundamental rights under the Fifth Amendment). But the Town offers nothing at all. It makes no attempt at invoking the Fifth Amendment's text, history, and common law roots to justify the

taking of private property when the government's stated public use is pretextual.

The Town's default is fatal. It concedes in its response that "[i]t is beyond dispute that the Fifth Amendment codifies the common law in precluding the government from seizing property on a whim[,]" Town Br. at 26, but the Town runs for the exit when the Brinkmanns invoke the Fifth Amendment's common law roots. Federal courts are required to take the Public Use Clause seriously because its mandate that property shall not "be taken for public use, without just compensation" is "an affirmance of a great doctrine established by the common law for the protection of private property." *Chi., B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 236 (1897); *see also* Brinkmanns Br. at 45 n.5 (collecting sources). In response, the Town pleads "legislative deference" to avoid inquiry into the Fifth Amendment's history and common law tradition. Town Br. at 26. But "it is not deference that the Constitution demands here." *Bruen*, 142 S. Ct. at 2131.

Nor does the Constitution tolerate the Town's invitation to choose which fundamental rights get meaningful judicial scrutiny, and which do not. *See* Town Br. at 26. Just as the Second Amendment is not "a second-

class right, subject to an entirely different body of rules than the other Bill of Rights guarantees[,]" *Bruen*, 142 S. Ct. at 2156 (quotation omitted), neither is the Fifth Amendment. Why? Because "the Framers' understanding [was] that property is a natural, fundamental right." *Kelo*, 545 U.S. at 510 (Thomas, J., dissenting). If the district court had done a textual and historical analysis of the Fifth Amendment, it would have reached the same conclusion as every other court to examine the issue: A façade of a public use is not enough to pass constitutional muster. *See* Brinkmanns Br. at 45–52. When the government takes property for purported public uses, those uses must be genuine.

IV. Property rights are not only for "historically marginalized groups."

The Brinkmanns' opening brief offered numerous examples—both real and hypothetical—of the kinds of abuse that the Town's radical public use theory would permit. (For instance, a town in New Hampshire, unhappy with Justice Souter's vote in *Kelo*, could have turned his cabin into a "museum of private property." Brinkmanns Br. at 53 n.9.) The brief also pointed out a number of reasons that other constitutional safeguards are inadequate to prevent such abuse. Brinkmanns Br. at 55–57.

The Town offers two responses. First, it simply points out that other constitutional claims exist (a point that nobody disputes), without defending their adequacy. The Town does not dispute, for instance, that Willa Bruce, a black woman whose beachfront resort was taken for a park by the City of Manhattan Beach, Brinkmanns Br. at 53–54, would have had a far more difficult time prevailing under Due Process or Equal Protection claim than under a Fifth Amendment pretext claim.

Second, the Town suggests that the Court simply shouldn't care about the plight of "white male big-box hardware store owners." Town Br. at 28; *see also id.* at 29 ("It is undisputed that there is not a single nonwhite person involved in any aspect of this dispute").[6] The Town seems to think it is self-evident that people like the Brinkmanns are not entitled to judicial protection of their private property rights. But the Town doesn't explain its rationale, and no authority supports such a proposition.

[6] The Town repeatedly refers to Brinkmann's Hardware as a "big box" store. Town Br. at 3, 4, 28. That characterization is inconsistent with the Brinkmanns' complaint, which alleges that they operate small hardware stores that are nonetheless able to compete with big-box stores. A-15.

Conclusion

The decision below should be reversed.

Dated: January 31, 2023

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Dated: January 31, 2023

/s/ Jeffrey Redfern
Counsel for Appellants

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 31st day of January, 2023, I caused this Reply Brief of Appellants to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

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