SUPREME COURT OF LOUISIANA

NO. 17-C-434

ST. BERNARD PORT, HARBOR & TERMINAL DISTRICT
Respondent

versus

VIOLET DOCK PORT, INC., LLC
Applicant

ON WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT FROM THE FOURTH CIRCUIT COURT OF APPEAL, NO. 2016-CA-0096 C/W 2016-CA-0262 AND 2016-CA-0331, AND FROM THE THIRTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD, STATE OF LOUISIANA, NO. 116-860, JUDGE JACQUES A. SANBORN, PRESIDING

CIVIL PROCEEDING

MOTION FOR LEAVE OF COURT TO FILE BRIEF OF *AMICI CURIAE* NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, SOUTHEASTERN LEGAL FOUNDATION, CATO INSTITUTE, AND LOUISIANA ASSOCIATION OF BUSINESS AND INDUSTRY

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NOW INTO COURT, through undersigned counsel, come the National Federation of Independent Business Small Business Legal Center (NFIB Legal Center), Southeastern Legal Foundation (SLF), Cato Institute (Cato) and Louisiana Association of Business and Industry (LABI), who respectfully move this Honorable Court for leave to file an *amici curiae* brief in support of the applicant, Violet Dock Port. This Court previously granted a similar motion to file by NFIB Legal Center, SLF, and LABI in support of the writ application in this case. These *amici*, now joined by Cato, submit the following in support of their motion to participate as *amici curiae* on the merits.

A. Identity of *Amici Curiae*

The **NFIB Legal Center** is a nonprofit, public-interest law firm established to provide legal resources and be the voice of small businesses in the nation's courts through representation on issues of public interest affecting small businesses. NFIB is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the rights of its members to own, operate, and grow their businesses. NFIB represents small businesses nationwide, and its membership spans the spectrum of business operations, ranging from sole-proprietor enterprises to firms with hundreds of employees. While there is no standard definition of a "small business," the typical NFIB member employs 10 people and reports gross sales of about $500,000 a year. The NFIB membership is a reflection of American small business. To fulfill its role as the voice of small business, the NFIB Legal Center frequently files *amicus curiae* briefs in cases that will impact small businesses.

Founded in 1976, **SLF** is a national nonprofit, public-interest law firm and policy center that advocates constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. For 40 years, SLF has advocated, both in and out of the courtroom, for the protection of private property interests from unconstitutional governmental takings. This aspect of its advocacy is reflected in regular representation of property owners challenging overreaching governmental actions in violation of their property rights. Additionally, SLF frequently files *amicus curiae* briefs at both the state and federal level in support of property holders. *See, e.g.*, *Army Corps of Eng'rs v. Hawkes*, 136 S. Ct. 1807 (2016); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725 (1997); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Lucas*

v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Finally, following the Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), SLF took the lead in the successful effort to roll back eminent domain private property seizures by government for so-called "economic development" purposes, assisting then-Georgia Governor Sonny Perdue in drafting Georgia's anti-*Kelo* laws. Georgia's law served as a blueprint for the American Legislative Exchange Council, and as a result, SLF worked with a number of states providing legal opinions and research on the issue.

Cato is a nonpartisan, public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus curiae* briefs in federal and state courts nationwide.

LABI is the largest business advocacy group in Louisiana. Its members include over 2,600 businesses, representing approximately 200,000 people, and 117 local chambers and trade associations. Over eighty percent of LABI's members are small businesses. LABI's mission is to foster a climate of economic growth by championing the principles of the free enterprise system and to represent the general interests of the business community through active involvement in legislative, regulatory, and judicial processes. LABI is concerned that the Port Authority's taking of a private business and transferring ownership to a public entity—to run it in the same general manner—will set a troubling precedent that will expose all Louisiana businesses to abuses of governmental entities' eminent domain powers.

B. Interest of *Amici Curiae*

The NFIB Legal Center, SLF, Cato, and LABI request leave to file their *amici curiae* brief because there are matters of law that might otherwise escape the Court's attention. *See* La. Supreme Ct. Rule VII, § 12. Specifically, *amici* file because of their concern for basic protections of property rights—especially eminent domain abuse—and economic liberty. But, this case presents an issue of even greater concern than the typical economic redevelopment case because the proposed expropriation would transfer the facilities of a private business to ownership of a public corporation (and operation under another company)—in direct competition. *Amici* also

move to file their brief because this case presents a grave issue of the highest order for individual entrepreneurs and the small business community: whether a public entity may, consistent with Article I, Section 4(B)(6) of the Louisiana Constitution and the Fifth Amendment of the U.S. Constitution, invoke the power of eminent domain to eliminate private competition in the market.

What is more, the proposed *amici curiae* brief offers a valuable outside insight into the vexing issues presented here. Given that the NFIB Legal Center frequently receives complaints from small business owners about public corporations (like the Port Authority) offering services in competition with private enterprise, the NFIB Legal Center has devoted significant energy to demarcating the line between legitimate acts of a public enterprise (*e.g.*, subsidizing services) and illegitimate acts (*e.g.*, enacting legislation to eliminate private competition). *See* Jarod M. Bona and Luke A. Wake, *The Market-Participant Exception to State Action Immunity From Antitrust Liability*, 23 Competition: J. Anti. & Unfair Comp. L. Sec. St. B. Cal. 156, 171 (2014) (arguing that public authorities abuse their powers to the extent they seek to stomp out competition through affirmatively anticompetitive conduct). Together, *amici* bring significant and varied expertise. They submit that their brief will prove helpful in the Court's analysis.

WHEREFORE, movants pray that the Honorable Court grant this motion and permit the filing of the NFIB Legal Center, SLF, Cato, and LABI's *amici curiae* brief, which is conditionally filed herewith.

Respectfully submitted,

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ORDER

Considering the foregoing motion for leave of court to file brief of *amici curiae* National Federation of Independent Business Small Business Legal Center, Southeastern Legal Foundation, Cato Institute, and Louisiana Association of Business and Industry (the "Motion"),

IT IS HEREBY ORDERED, that the Motion is **GRANTED**. National Federation of Independent Business Small Business Legal Center, Southeastern Legal Foundation, Cato Institute, and Louisiana Association of Business and Industry's *amici curiae* brief is hereby deemed filed.

Signed this _____ day of _____, 2017.

_____
JUSTICE, LOUISIANA SUPREME COURT

CERTIFICATE OF SERVICE

I certify that true and correct copies of this motion were served on June 30, 2017, on counsel for all parties by email and U.S. mail, and by U.S. mail to the appellate court and the district court as listed below:

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INTRODUCTION

The decision below goes well beyond even what *Kelo v. City of New London*, 545 U.S. 469 (2005), would allow. The appellate court's decision blessed the use of eminent domain powers for affirmatively anticompetitive purposes, which are entirely antithetical to the public interest. *St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC*, 2016-CA-0096 (La. App. 4th Cir. 12/14/16). Not only does the appellate court's opinion approve of a forcible transfer of private, commercial property to eliminate competition with a public enterprise, but it invites corruption on a level even beyond the abuses that Justice O'Connor anticipated when she warned that *Kelo* had opened the door for any mom-and-pop store to be replaced by a Ritz-Carlton. *Kelo*, 545 U.S. at 503 (O'Connor, J., dissenting).

Unchecked, the decision below will incentivize politically powerful corporate interests to lobby public authorities to expropriate properties owned and operated by smaller firms—solely for the purpose of eliminating competition. But we need not hypothesize about what this opinion means for small business. In this very case, an independent enterprise has been displaced from the market for a purpose that can only be viewed as anticompetitive.

Ideally, this Court should hold that the Louisiana Constitution provides greater "public use" protections for landowners than *Kelo* recognized under our federal jurisprudence. *See e.g.*, *City of Norwood v. Horney*, 853 N.E.2d 1115 (Ohio 2006); *Bd. of Cty. Comm'rs of Muskogee Cty. v. Lowery*, 136 P.3d 639 (Okla. 2006). But this Court need not decide specifically whether the *Kelo* standard applies in this jurisdiction; this Court can—and should—decide this case on the simple ground that a taking for the purpose of eliminating private competition is not a legitimate "public use." As Judge Lobrano observed in her dissent, the Louisiana Constitution unequivocally forbids the appropriation of private commercial enterprise for the mere purpose of coopting business facilities, investments, or contracts. *St. Bernard Port*, 2016-CA-0096 p.1 (La. App. 4th Cir. 12/14/16) (Lobrano, J., dissenting). But, in any event, the taking in this case violates the Public Use Clause of the Fifth Amendment—notwithstanding *Kelo*. As such, this Court should reverse the decision of the appellate court because the Port Authority is using eminent domain powers (abusively) to advance its own position as a market-participant—as opposed to acting in its role as a sovereign entity.

ARGUMENT

A. The Port Authority is acting as an anticompetitive market-participant.

Notwithstanding the Port Authority's pretextual arguments that expropriation of private dock facilities will advance the public interest by creating jobs and bringing in revenue, the reality is that there is nothing public-minded about destroying a private-sector business for the benefit of a public enterprise (or another competing business).[1] *See Kelo*, 545 U.S. at 478 (emphasizing that government may not "take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit"). Such conduct is entirely predatory. *See Calder v. Bull*, 3 Dall. 386, 388 (1798) ("[A] law that takes property from A. and gives it to B: [] is against all reason and justice . . . ."). For this reason Justice Kennedy emphasized, in his concurrence in *Kelo*, that where "confronted with a plausible accusation" of improper motives, a reviewing court must consider "the primary motivation" for the expropriating authority.[2] *Kelo*, 545 U.S. at 491-92 (Kennedy, J., concurring); *supra* 545 U.S. at 478 (emphasizing the lack of evidence any "illegitimate purpose" in *Kelo*).

Consider the analogous case of a private entity seeking to destroy a small business competitor. If ABC Corporation were to burn down a competitor's facility (perhaps to monopolize the relevant market), that would be viewed as anticompetitive conduct.[3] The same would be true

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[1] The appellate court never explained how operation of a private docking facility injures the public in any manner that might be ameliorated through public appropriation. This is a problem because an essential unifying principle in federal takings jurisprudence is the basic understanding that, for a condemnation to serve a public purpose, it must either allow actual use by the public or be intended to ameliorate a social problem. *See Kelo*, 545 U.S. at 481-82 (observing that in previous cases the Court had recognized a public purpose in the removal of blight and the elimination of "social and economic evils of a land oligopoly") (internal citations omitted); *id*. at 500 (O'Connor, J., dissenting) (emphasizing that this should be understood as a limiting principle under the Public Use Clause).

[2] Justice Kennedy directed that a reviewing court "should treat the objection as a serious one and review the record to see if it has merit, though with the presumption that the government's actions were reasonable and intended to serve a public purpose." *Kelo*, 545 U.S. at 491 (Kennedy, J., concurring). But the presumption of propriety is improper where it is the public authority itself that seeks to advance its pecuniary institutional interests. *See 99 Cents Only Stores v. Lancaster Redevelopment Agency*, 237 F. Supp. 2d 1123, 1129 (C.D. Cal. 2001) ("No judicial deference is required, [] where the ostensible public use is demonstrably pretextual."); *Kelo*, 545 U.S. at 493 (emphasizing that "a more stringent standard of review" would be appropriate where there is heightened "risk of undetected impermissible favoritism . . . ."). Where the government has invoked regulatory or eminent domain powers to confer favors upon its own commercial enterprise, to the detriment of private business, it violates the fundamental trust of the people. John Locke, Second Treatise on Government, Ch. IX, Sec. 124; Ch. XIX Sec. 222 (1690) (positing that "[t]he great and chief end, therefore, of Men in uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property. . . . [Thus] whenever the *Legislators . . . endeavor to take away, and destroy the Property of the People* . . . they put themselves into a state of War with the People . . . ."), *available* online at www.constitution.org/jl/2ndtreat.htm (last visited Mar. 8, 2017) (emphasis added).

[3] *See Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993) (explaining that antitrust law prohibits conduct that "unfairly tends to destroy competition"); *see also Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 308 (3d Cir. 2007) (explaining that "[a]nticompetitive conduct may take a variety of

if ABC Corporation convinced its friends on the City Council to use eminent domain to transfer title to its competitor's facility.[4] Under either scenario, ABC Corporation might potentially thrive and grow—perhaps replacing the jobs eliminated from the competitor's facilities on a one-for-one basis; however, this would amount to a naked transfer of private market-power to the detriment of consumers within the relevant market. This forced transfer might even enable ABC Corporation to become prosperous and create even more jobs with time, but those theoretical benefits are not only speculative but wholly incidental to ABC Corporation's primary (self-serving) motivation. *See Kelo*, 545 U.S. at 490 (Kennedy, J., concurring) (observing that even *Kelo's* deferential standard does not "alter the fact that transfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits, are forbidden by the Public Use Clause"); *see also Hausler v. JPMorgan Chase Bank*, 845 F. Supp. 2d 553, 576 (S.D.N.Y. 2012) (considering whether public benefit was merely incidental or the primary purpose); *J.D. Francis, Inc. v. Bremer Cty.*, No. C09-2065, 2011 WL 978651 at *7 (N.D. Iowa Mar. 17, 2011).

The same is true here, as the Port Authority stands in the very same position as ABC Corporation. The only difference is that the Authority does not have to engage in back-room deal-making to convince public authorities to utilize eminent domain against its competitor. All too conveniently, the Authority has been conferred the power to expropriate private property for public use. But if that "public use" limitation is construed so liberally as to allow a taking purely to advance the Authority's interest as a market-participant in the port service industry, then the Public Use Clause has no meaning. *Kelo*, 545 U.S. at 506 (Thomas, J., dissenting) (warning that, when the "public purpose" concept is stretched too far, it may tenuously justify any condemnation); *Cf. United States v. Lopez*, 514 U.S. 549, 564 (1995) (emphasizing that there must be a limiting principle for any theory of government power if the Constitution is to be given any effect).

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forms, but it is generally defined as conduct to obtain or maintain monopoly power as a result of competition on some basis other than the merits").

[4] *See Armendariz v. Penman*, 75 F.3d 1311, 1321 (9th Cir. 1996) (en banc) (invaliding a taking because the official rationale of blight alleviation was a mere pretext for a "scheme . . . to deprive the plaintiffs of their property . . . so a shopping-center developer could buy [it] at a lower price"); *Aaron v. Target Corp.*, 269 F. Supp. 2d 1162, 1174-76 (E.D. Mo. 2003), *rev'd on other grounds*, 357 F.3d 768 (8th Cir. 2004) (holding that a property owner was likely to prevail on a claim that a taking, ostensibly to alleviate blight, was actually intended to serve the interests of the Target Corporation); *Middletown Twp. v. Lands of Stone*, 939 A.2d 331, 337 (Pa. 2007) (interpreting *Kelo* as requiring courts to examine "the real or fundamental purpose behind the taking . . . ."); *Cty. of Hawaii v. C&J Coupe Family Ltd. P'ship*, 198 P.3d 615, 647-49 (Haw. 2008) (emphasizing courts must look to the "actual purpose" of a taking).

B. Elimination of private competition is not a legitimate public use.

The Port Authority cannot seriously maintain that it is acting in the public interest when it has placed its rapacious institutional interests above the interests of the public—including small and independent businesses, and consumers alike. Indeed, to the extent the Authority participates in the market for port services on a transactional, revenue-generating basis, it is acting in the role of an ordinary commercial actor—not in any sovereign capacity. *Cf.* Bernard H. Siegan, Property Rights: From Magna Carta to the Fourteenth Amendment 16-17 (2001) (explaining the jurisprudence of Lord Coke and observing that even the King and his ministers were foreclosed from taking private property for their own self-serving purposes under the Magna Carta). Accordingly, invocation of eminent domain powers for the purpose of advancing the Authority's commercial interests is necessarily an illegitimate act.[5] This is true because it advances an effectively private financial interest, even if residents may share some tenuous and diffused financial interest in the revenue-generating functions of a public corporation. Indeed, to the extent residents should benefit at all from a public entity's entry into the market for goods or services, they effectively stand in the shoes of a private shareholder.

The U.S. Supreme Court has already recognized—in the context of the Dormant Commerce Clause—an important constitutional distinction between a public authority acting (a) in the capacity of a sovereign or (b) in the capacity of a market-participant.[6] *See e.g.*, *Reeves, Inc. v. Stake*, 447 U.S. 429, 440 (1980) (concluding that South Dakota was acting in the capacity as a

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[5] *Cf. Case of the King's Prerogative in Saltpetre*, 77 Eng. Rep. 1294 (1607) (holding that King James I could take saltpeter [essential for gunpowder] from private lands for the purpose of defending the realm, but emphasizing limits on the King's power to take private property: "[T]he King cannot [take property] for the [improvement] . . . of his own house . . . for that doth not extend to public benefit."); *see also* Timothy Sandefur, *A Natural Rights Perspective on Eminent Domain in California: A Rationale for Meaningful Judicial Scrutiny of "Public Use,"* 32 Sw. U. L. Rev. 569, 572-73 (2003) (discussing the *Case of the King's Prerogative in Saltpetre*: "The King could not take property for his own benefit or 'for the disinheritance of the subject,' because 'the King . . . cannot do any wrong.' [By this] [t]he court did not mean that the King was incapable of doing wrong, but that the King's authority to take private property would not permit him to take property wrongfully, which a private taking would be.").

[6] In the context of the Dormant Commerce Clause, public entities may avoid a legal challenge for treating out-of-state interests differently if they are acting in the capacity of a market-participant because, in so far as they are engaged in a market activity, they stand "on the same footing as private parties." *SSC Corp. v. Town of Smithtown*, 66 F.3d 502, 510 (2d Cir. 1995). "In other words, the constitutional restrictions, implicit in the Dormant Commerce Clause, apply only against the State when it acts in a regulatory capacity." Jarod M. Bona and Luke A. Wake, *The Market-Participant Exception to State Action Immunity From Antitrust Liability*, 23 Competition: J. Anti. & Unfair Comp. L. Sec. St. B. Cal. 156, 171 (2014). But the converse is true in the context of a Public Use Clause challenge because the Authority must be able to demonstrate that it is acting in a truly sovereign capacity to expropriate private property consistent with the Fifth Amendment. To the extent the authority is engaged as a "market-participant" on equal footing with other economic actors, the taking should be deemed a *per se* violation.

market-participant on the same footing as other private parties, and not in a sovereign capacity, when selling cement); *White v. Mass. Council of Const. Emp'rs, Inc.*, 460 U.S. 204, 214-15 (1983) ("In so far as the city expended [] its own funds in entering into construction contracts for public projects, it was a market participant and [not acting in its sovereign capacity] . . . ."). This makes sense because government exists to serve the public, not to further its own corporeal interests.[7] Accordingly, this Court should distinguish between the legitimate use of police and eminent domain powers in which the government acts as a disinterested arbiter among private interests, and the pernicious invocation of those powers for self-serving (*i.e.*, anticompetitive) purposes. *Cf.* Bona and Wake, *supra*, at 171 (observing that courts often distinguish between the exercise of sovereign political power and economic conduct in which a public entity might engage as an independent actor in the market).

For that matter, a public authority would act improperly if it should seek to insulate its own commercial enterprise from private competition by invoking its police powers to eliminate private competition.[8] To be sure, the U.S. Fifth Circuit holds that the legitimate powers of government are limited to the promotion of the *public good*, such that government cannot legitimately act purely to insulate an economic actor from private competition. *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5th Cir. 2013) (holding that economic protection is not a legitimate state interest); *see also Merrifield v. Lockyer*, 547 F.3d 978, 191 n.15 (9th Cir. 2008) (concluding that "mere economic protectionism for the sake of economic protectionism" advances no legitimate public purpose); *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (holding that there is no public interest in

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[7] "[T]o the extent the State acts to advance its own pecuniary interests to the detriment of its citizens, it may exceed its natural charter to govern in the public interest." Bona and Wake, *supra*, at 169 (citing Timothy Sandefur, *In Defense of Substantive Due Process, or the Promise of Lawful Rule*, 35 Harv. J.L. & Pub. Pol'y 283, 299 (2012) ("In Politics, Aristotle distinguished between governments aimed for the benefit of the ruled and those that aim at the ruler's benefit.")); *see also* Joseph L. Sax, *Taking and the Police Power*, 74 Yale L.J. 36, 62 (1964) (distinguishing between an appropriate exercise of police powers and self-interested abuse of power under the Takings Clause); *Cf.* Einer Richard Elhauge, *The Scope of Antitrust Process*, 104 Harv. L. Rev. 668, 696 (1991) (arguing that state and local authorities should be subject to the same rules as private economic actors unless it may be said that "a financially disinterested and politically accountable actor controls and makes [the] substantive decision in favor of [the anti-competitive act in question] . . . .").

[8] *See Kelo*, 545 U.S. at 491 (Kennedy J., concurring) (arguing that courts should strike down any government act where there is a "clear showing" that the taking or regulation "is intended to favor a particular private party, with only incidental or pretextual public benefits . . . ."); *see also* Bona and Wake, *supra*, at 176 n.140 (suggesting that intermediate scrutiny would be more appropriate than rational basis review in the context of a suit contesting the propriety of regulation that was seemingly adopted for the purpose of eliminating private competition with a public enterprise).

the mere displacement of competition). It necessarily follows that no public interest is served here where the Authority seeks to expropriate property of a private competitor solely for its pecuniary gain.[9] That would be wholly improper. *Cf.* Siegan, *supra*, at 16-17, 39 (2001) (explaining that it has always been unlawful to abrogate an individual's property rights for the advancement of purely private interests).

C. The Louisiana Constitution expressly forbids takings for the purpose of operating a business enterprise or its facilities.

As Judge Lobrano argued in her compelling dissent, the Louisiana Constitution speaks specifically to the question presented here: "No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or *halting competition with a government enterprise* . . . ." La. Const. Art. I, Sec. 4(B)(6) (emphasis added). With the decision below, this language has been rendered obsolete. To be sure, the appellate court blessed allowing a public corporation to coopt the facilities of a private business, for the transparent purpose of eliminating competition. *St. Bernard Port*, 2016-CA-0096, p.3 (La. 12/14/16) (Lobrano, dissenting) (emphasizing that the record in this case makes clear that the purpose of this expropriation is to enable the Port Authority to generate greater revenue, so as to finance future contemplated investments).

The decision below offers no principled explanation as to why the taking is consistent with Article I, Section 4(B)(6). The majority appeared to view the Port Authority's expropriation power as sanctioned by a broad reading of Article I, Section 4(B)(1); it does not make sense, however, to interpret general constitutional language in a manner that would effectively eliminate more specific textual provisions. Such an approach would violate the canons of construction. *Burge v. State*, 2010-C-2229 (La. 2/11/11); 54 So. 3d 1110, 1113 (emphasizing that more specific language should always be given effect over more general).

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[9] One might seek to draw a distinction because *St. Joseph Abbey*, *Craigmiles*, and *Merrifield* concerned restrictions on economic activity under the state's police powers, which were challenged as violative of due process and equal protection rights under the Fourteenth Amendment. But this is a distinction without a difference. There is no principled basis for saying that an expropriation undertaken for a purely anticompetitive purpose advances a public purpose if a restriction implemented for that same purpose is deemed not to advance any legitimate public interest.

CONCLUSION

For the forgoing reasons, this Court should reverse the judgments of the trial court and court of appeal.

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Hon. Justin Woods
Clerk of Court
Louisiana Fourth Circuit Court of Appeal
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