

No. 16-1194

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In the  
**Supreme Court of the United States**

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KINDERACE, LLC,

*Petitioner,*

v.

CITY OF SAMMAMISH,

*Respondent.*

—◆—  
**On Petition for Writ of Certiorari  
to the Washington State Court of Appeals**

—◆—  
**BRIEF IN REPLY TO OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

—◆—  
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**QUESTION PRESENTED**

Whether the “relevant parcel” inquiry, as set out in *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 130-31 (1978), allows a court to combine an owner’s interests in two legally distinct, but previously commonly owned, adjacent parcels when determining the extent of property that a court should consider when reviewing a regulatory takings claim. This issue raises a critical and unresolved question of constitutional law that is currently pending before this Court in *Murr v. State of Wisconsin*, Dkt. No. 15-214.

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## INTRODUCTION AND SUMMARY OF ARGUMENT

The City of Sammamish opposes Kinderace's (Elliot Severson's) petition on several grounds, most of which are unrelated to the question presented, and none of which has any merit. First, the City rewrites the question presented to shift focus away from the lower court's relevant parcel determination, asking instead whether the court properly resolved the merits of Severson's regulatory takings claim. Opp. at i; 18-21, 24-27. Determination of the relevant parcel, however, is a threshold issue in a regulatory takings case because it provides the denominator against which the impact of regulations must be measured. See *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 130-31 (1978); *Keystone Bituminous Coal Ass'n v. DeBenedictus*, 480 U.S. 470, 497 (1987). Thus, the City's rewritten issue statement merely begs the question presented.

Second, the City argues that review is not warranted because the lower court decided this case on an independent state-law basis. Opp. at 14-18. Not so. According to the Washington court, the relevant parcel determination—indeed, the entire regulatory takings analysis—was based on federal takings law. Pet. App. A at 8. The fact that the lower court referenced state property law when discussing the extent of Severson's

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