

Nos. 26-107 & 26-110

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

GARNELL WALLS,

*Petitioner,*

*v.*

PRINCE GEORGE'S COUNTY, ET AL.,

*Respondents.*

*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit*

TEDFORD'S TENANCY, LLC,

*Petitioner,*

*v.*

CITY OF NEW YORK, ET AL.,

*Respondents.*

*On Petition for Writ of Certiorari to the  
New York Supreme Court, Appellate Division*

**BRIEF OF THE MANHATTAN INSTITUTE AND  
PROFESSOR JAMES W. ELY JR. AS *AMICI*  
*CURIAE* IN SUPPORT OF PETITIONERS**

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## **QUESTIONS PRESENTED**

This brief primarily addresses the question presented by both petitions:

When a property owner has sufficiently pled jurisdictional standing for a Fifth Amendment regulatory takings claim, may the court nonetheless dismiss the case on prudential ripeness grounds?

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

The Manhattan Institute (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. MI has historically sponsored scholarship and filed briefs supporting property rights. MI has a longstanding interest in ensuring that constitutional protections for private property survive doctrinal uncertainty.

James W. Ely Jr. is the Milton R. Underwood Professor of Law and Professor of History, Emeritus, at Vanderbilt University. He is a nationally recognized property-law expert and legal historian who has written extensively about the Takings Clause and its just-compensation requirement. See *The Guardian of Every Other Right: A Constitutional History of Property Rights* (3rd ed. 2008) and *The Contract Clause: A Constitutional History* (2016). This Court and other courts have relied on his property-rights scholarship. See, e.g., *Sheetz v. County of El Dorado*, 601 U.S. 267, 277 (2024); *Sveen v. Melin*, 584 U.S. 811, 830 (2018) (Gorsuch, J., dissenting); *Marvin M. Brandt Revocable Trust v. United States*, 572 U.S. 93, 93 (2014).

*Amici*'s interest concerns the proper exercise of the finality requirement to regulatory takings claims. The Court's resolution of the questions presented would have major implications for the consistent application of that requirement in litigation nationwide.

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<sup>1</sup> Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

## SUMMARY OF ARGUMENT

These cases raise important questions concerning the proper role of the finality requirement for determining “ripe” regulatory takings claims. In *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474 (2021), the Court expounded on what the finality inquiry entails. The Court asserted that finality is “relatively modest,” *id.* at 478, requiring only that the government have adopted a “conclusive position” concerning the application of regulations to particular property. *Id.* at 480. Once that threshold is cleared, a property owner need not continue to pursue state administrative procedures before bringing a takings claim. *Id.*

But *Pakdel* left unresolved the doctrinal status of the finality inquiry itself. In explaining that finality turns on whether there is a “conclusive position” that inflicts an “actual, concrete injury,” *id.* at 478, 480, the Court articulated a requirement that, in substance, tracks Article III standing. *See, e.g., First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1122 (2026); *Dep’t of Educ. v. Brown*, 600 U.S. 551, 561 (2023); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Yet the Court in *Pakdel* did not expressly clarify that the inquiry it articulated is therefore jurisdictional rather than prudential.

That omission has contributed to confusion in the lower courts. Relying on this Court’s invocation of prudential ripeness in earlier cases, *see, e.g., Suitum v. Tahoe Reg’l Plan. Agency*, 520 U.S. 725, 733, 733 n.7, 734 (1997); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1012–13 (1992), some lower courts have continued to erect prudential-ripeness hurdles that label

claims unripe even where there is a conclusive governmental position, flouting *Pakdel*.

The decisions below reflect such confusion. The New York courts treated the mere existence of additional administrative procedures as defeating finality, even though Tedford's Tenancy ("Tedford") was ineligible for those procedures and, in any event, those procedures could offer Tedford at most *de minimis* relief. *See* Tedford Pet. at 10–11. The Fourth Circuit similarly treated the availability of an additional procedure as defeating finality, holding Garnell Walls's takings claim unripe because he had not pursued a "legislative amendment." Yet that amendment offered only the prospect of connection to a potential future development's sewage system, which, in any event, the developer does not plan to extend to a location serviceable for Walls's property. *See* Walls Pet. at 8, 12. In both cases, the courts backpedaled from *Pakdel*'s threshold inquiry into whether the government had reached a conclusive position. By compelling property owners to pursue every conceivable administrative refinement before filing suit, the courts resurrected the very exhaustion mandate that *Pakdel* rejected outright.

These cases thus afford the Court an opportunity to reaffirm and illuminate *Pakdel*'s articulation of finality. Specifically, finality does not require fine-tuning of the government's position through additional administrative procedures that are inapplicable or that cannot materially alter the government's position. To that end, these cases will allow the Court to emphasize two implications of *Pakdel* that lower courts have failed to follow. *First*, the finality inquiry asks whether the government has adopted a conclusive position, not whether additional administrative procedures remain

available. *See Pakdel*, 594 U.S. at 480. *Second*, so long as further administrative procedures can materially alter the government’s position, no conclusive position has been reached. Once they no longer can do so, they cease to bear on finality. Requiring the completion of *pro forma* or otherwise immaterial procedures amounts to imposing the administrative-exhaustion mandate that *Pakdel* rejected. *See id.*

At the same time, these cases afford the Court an opportunity to clarify *Pakdel*’s doctrinal foundation. The decisions below illustrate the confusion that persists where courts invoke prudential-ripeness principles notwithstanding *Pakdel*’s updated articulation of the finality inquiry. Clarifying that the finality inquiry post-*Pakdel* turns on Article III standing, and is thus jurisdictional rather than prudential, would help to resolve lower courts’ confusion about the finality inquiry by displacing reliance on earlier descriptions.

In both cases below, the government reached the requisite conclusive position concerning the petitioners’ properties to satisfy finality. The lower courts’ insistence that Tedford pursue futile hardship applications and that Walls seek a legislative amendment offering no meaningful prospect of material relief falls flat in light of *Pakdel*.

The petitions should be granted so that the Court may reaffirm the proper function of the finality requirement and clarify its jurisdictional (rather than prudential) character. In sodoing, the Court can both promote the finality requirement’s consistent application and unfetter property rights from their historically unfounded, second-class treatment.

## ARGUMENT

### I. THE COURT SHOULD REAFFIRM *PAKDEL*'S FINALITY REQUIREMENT, WHICH THE LOWER COURTS MISAPPLIED

Ripeness doctrine prescribes that courts may consider a plaintiff's claim that the government effected a regulatory taking only after the government has reached a "final decision" regarding the plaintiff's property. *Pakdel*, 594 U.S. at 477; *Knick v. Twp. of Scott*, 588 U.S. 180, 188 (2019). This finality requirement is satisfied once the government has adopted a "conclusive position" concerning the application of regulations to the property. *Pakdel*, 594 U.S. at 480. In *Pakdel*, the Court held that once the government has reached a conclusive position concerning a property, its owners may bring takings claims without having exhausted administrative procedures. *Id.*

In ruling against Tedford and Walls, the lower courts ran afoul of *Pakdel*. New York State and City reached a conclusive position concerning Tedford's property, and the state courts' insistence that Tedford pursue futile hardship exemptions is erroneous. Prince George's County likewise reached a conclusive position concerning Walls's property, and the Fourth Circuit committed the same error by requiring Walls to seek a legislative amendment that could not materially alter that position. In both cases, the decisions below illustrate continued confusion over the role of further process once the government has adopted a conclusive

position. These cases offer a good occasion for the Court to further explain *Pakdel*'s finality requirement.

### **A. Both Cases Satisfy the Baseline Finality Standard**

The Court has made clear that the finality requirement is “relatively modest.” *Id.* at 478. To establish the government’s “conclusive position,” a plaintiff need show only that “there is no question about how the regulations at issue apply to the particular land in question.” *Id.* In *Pakdel*, the Court found that San Francisco reached a conclusive position when it obligated a married couple, who had sought to convert their apartment building to individual condominiums, to execute a lifetime lease or else face enforcement action. *See id.* The Court emphasized that there was “no question” either of “the city’s position” or that its position had inflicted “an actual, concrete injury” on the couple. *Id.*

Both parts of that baseline finality standard are satisfied as to Tedford. First, Tedford is subject to rent limitations imposed under the laws of New York State and set by the New York City Rent Guidelines Board, which those laws created. *See* Tedford Pet. at 10. Just as San Francisco obligated the couple in *Pakdel* to execute a lifetime lease, here the state and city have obligated Tedford to comply with rent ceilings. There is thus similarly “no question,” *Pakdel*, 594 U.S. at 478, of the position that the state and city hold relative to Tedford. Second, in light of the expenses Tedford must sustain, it will be unable to make economic use of the building. *See* Tedford Pet. at 10–11. Its “necessary expenses will *always* outstrip its [allowed] income” under the government’s rent ceilings, irrespective of theoretical marginal modifications. *Id.* (emphasis added). Thus, there is “no question” that the government’s

position “has inflicted an actual, concrete injury.” *Pakdel*, 594 U.S. at 478 (citation modified).

The same is true of Walls. Prince George’s County informed Walls that it would not permit the private well and septic system he needs to construct a home on his property and, moreover, that it lacked authority to approve that system. *See* Walls Pet. at 8. A concept-phase future development to whose sewage system Walls might theoretically connect his property upon enactment of a legislative amendment would not, as it is currently planned, enable such a connection. *Id.* There is thus “no question,” *Pakdel*, 594 U.S. at 478, of the county’s position. Nor is Walls’s injury hypothetical: The county’s position simply prevents him from constructing a home on his property. *See* Walls Pet. at 8. As in *Pakdel*, there is again “no question” that the government “has inflicted an actual, concrete injury.” *Pakdel*, 594 U.S. at 478 (citation modified).

Accordingly, both New York and Prince George’s County have adopted the “conclusive position” concerning petitioners’ properties that finality demands. The baseline finality standard is doubly satisfied.

#### **B. Lower Courts’ Emphasis on More Administrative Procedures Is Legally Irrelevant**

Declining to conclude that the jurisdictions below had satisfied the finality requirement, the lower courts pointed to additional procedures that Tedford and Walls had not undertaken. The New York courts relied on two hardship exemptions for which Tedford had not applied, while the Fourth Circuit relied on a

legislative-amendment procedure that Walls had not pursued. In doing so, the courts went astray of *Pakdel*.

**1. Further procedures cannot materially alter the governments' positions concerning the petitioners' properties.**

Once “there is no question about how the regulations at issue apply to the particular land in question,” the finality inquiry is at an end. *Pakdel*, 594 U.S. at 478 (citation modified). The Court in *Williamson County* determined that that question remained open, as the developer in that case still had an opportunity to seek a permissive variance from an appeals board. *See Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 192–94 (1985); *Knick*, 588 U.S. at 187–88. There is no such question in either case here. In other words, no administrative avenue “remain[s]” by which the governments may “clarify or change” their decisions concerning the petitioners' properties. *Pakdel*, 594 U.S. at 480.

New York's rent control subjects Tedford to a vast income-expenditure deficit, and no subsequent applications or decisions concerning exemptions can alter that reality. *See* Tedford Pet. at 10. Unlike the developer in *Williamson County*, Tedford has no recourse to potentially ameliorative administrative procedure. It is ineligible for either of the two hardship exemptions that the lower courts said it must pursue. *Id.* Even if Tedford were eligible, the maximum allowable adjustment of 6% would make only a negligible (not material) difference, leaving Tedford well in the red in any event. *Id.* Because its position toward Tedford's property would rightly be characterized as unwavering, New York has already staked out a sufficiently conclusive position to establish “*de facto* finality.” *Pakdel*,

594 U.S. at 479. Accordingly, “nothing more than *de facto* finality” is needed to satisfy the requirement. *Id.*

The legislative-amendment process likewise cannot materially alter the position that Prince George’s County has taken concerning Walls’s property. The county informed Walls that it will not permit, and lacks authority to approve, the private well and septic system he needs to build a home. *See Walls Pet.* at 8. A legislative amendment would not provide the potentially ameliorative relief contemplated in *Williamson County*. It might reclassify Walls’s property to facilitate connection to the sewage system of a potential future development. *See id.* at 8, 11–12. But even if that development were to be built, its developer has no plans to extend sewage lines to a location that could serve Walls’s property. *See id.* at 8. Prince George’s County has thus reached *de facto* finality concerning Walls’s property. *See Pakdel*, 594 U.S. at 479.

These cases present a straightforward opportunity to emphasize that the finality inquiry ends once the government has adopted a conclusive position concerning property. Where, as here, no remaining administrative procedure can materially alter that position, those procedures cease to bear on finality.

## **2. The lower courts misunderstood what finality means.**

The *Pakdel* Court explained that the finality requirement seeks to ensure that “a plaintiff has actually been injured by the Government’s action and is not prematurely suing over a hypothetical harm.” *Id.* (cleaned up). In these cases, the lower courts departed from the requirement’s rationale by insisting that property owners alleging as-applied regulatory

takings pursue further administrative procedures despite conclusive governmental positions.

The lower courts transformed that finality requirement from an inquiry into whether the government has reached a conclusive position into a blanket mandate that property owners refine that position. But such refinement is irrelevant to the threshold inquiry. *See id.* at 480–81 (explaining that the government’s conclusive position is all that is relevant for finality, while claimants’ administrative missteps may become relevant only during the merits stage). The proper finality inquiry asks only whether the government’s position is *settled enough* such that a court knows what restrictions will apply to the property—and thus can determine that the government has reached a final position. *See id.* at 479 (contrasting hypothetical from actual injuries). In other words, the finality requirement performs an informational function, not an evaluative one. *See id.* (characterizing the government’s adoption of a conclusive position as the critical juncture when “potential ambiguities evaporate”).

To be sure, courts applying the finality requirement necessarily ascertain “how far the regulation goes,” *id.* (quoting *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 348 (1986)), but they do so only to identify the government’s conclusive position concerning the property, *see id.* Whether and to what degree a regulation has “gone too far” and so constitutes a taking presents the distinct merits inquiry. *Id.* (quoting *MacDonald*, 477 U.S. at 348). At its core, finality is a threshold doctrine that asks whether the government has reached a conclusive position, not a

mechanism for extracting every conceivable administrative refinement before a takings claim may proceed.

Here, the relevant governmental positions are already established. It is already known how New York’s hardship exemptions bear on Tedford—they are inapplicable and would afford at most *de minimis* relief—so the threshold has been cleared. Likewise, it is already known how the legislative amendment would affect Walls: It offers only theoretical future relief and, in any event, no material relief as presently contemplated. The mere possibility of future amelioration does not render Walls’s existing injury hypothetical; otherwise, his takings claim could be insulated from adjudication as perpetually unripe. Therefore, both New York and Prince George’s County have adopted the conclusive positions needed to satisfy finality.

### **3. The lower courts effectively imposed an impermissible exhaustion requirement.**

The lower courts’ approach mistakes the possible availability of further administrative steps for the absence of a conclusive position. *Pakdel* rejected precisely that view, holding that a government may reach a final position even though administrative procedures remain available. *See id.* at 480. The mere existence of remaining procedures cannot deprive an otherwise conclusive governmental position of its finality. Indeed, “administrative exhaustion of state remedies is not a prerequisite for a takings claim when the government has reached a conclusive position.” *Id.* (cleaned up); *cf. Knick*, 588 U.S. at 194 (rejecting *Williamson County*’s state-litigation requirement because it “effectively established an exhaustion requirement”).

Tedford therefore need not expend time and money applying for futile hardship exemptions, nor must Walls seek a legislative amendment that offers no meaningful prospect of material relief. A property owner “has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it.” *Knick*, 588 U.S. at 189. So it is for both petitioners. Congress has expressly required administrative exhaustion for other constitutional claims when it has deemed doing so appropriate. *See Pakdel*, 594 U.S. at 481. It has imposed no such requirement for takings plaintiffs. *See id.* Review of these cases is warranted to ensure that finality ceases to backslide into the very administrative-exhaustion requirement that *Pakdel* rejected.

## **II. THE COURT SHOULD CLARIFY THAT THE FINALITY REQUIREMENT IS JURISDICTIONAL, NOT PRUDENTIAL**

The confusion exhibited by the courts below is not unique. Although *Pakdel* expounded on the finality inquiry, it did not expressly identify the inquiry’s doctrinal character as jurisdictional. Consequently, lower courts have continued to impose hurdles on takings plaintiffs that rely on a prudential-ripeness conception of finality with which *Pakdel* is difficult to reconcile. These cases present an opportunity to clarify that finality turns on Article III standing and is jurisdictional rather than prudential. The Court can thus promote the finality requirement’s consistent application after *Pakdel* and unfetter property rights from their historically unfounded, second-class treatment.

### A. *Pakdel*'s Finality Inquiry Tracks Article III Standing

*Pakdel* articulated a finality requirement that substantially mirrors or operates within Article III standing. Finality requires that the government have reached a conclusive position, which means that there must be “no question” either of the government’s position or that its position has inflicted “an actual, concrete injury.” *Pakdel*, 594 U.S. at 478. Finality serves to ensure that “a plaintiff has actually been injured by the Government’s action and is not prematurely suing over a hypothetical harm.” *Id.* at 479.

The same distinguishing line of actual versus hypothetical injuries animates Article III standing. To establish standing, a plaintiff must demonstrate an injury in fact that is “concrete, particularized, and actual or imminent,” *First Choice Women’s Res. Ctrs., Inc.*, 146 S. Ct. at 1122, rather than “conjectural or hypothetical.” *Dep’t of Educ. v. Brown*, 600 U.S. 551, 561 (2023) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)); *see also Lujan*, 504 U.S. at 560–61 (discussing other standing requirements: that the injury be fairly traceable to the challenged governmental action and likely to be redressed by a judicial decision).

*Pakdel*’s finality requirement thus overlaps with rather than operates independently of Article III standing. That finality inquiry tracks one component of the standing inquiry: Both require a claimant to have suffered an actual (as distinct from hypothetical), concrete injury. Satisfying finality thus takes one step toward standing. It follows that finality necessarily has a jurisdictional rather than prudential character.

The Court’s treatment of finality post-*Williamson County* supports that reading of *Pakdel*. Some decisions described finality as a matter of prudential ripeness, see *Suitum v. Tahoe Reg’l Plan. Agency*, 520 U.S. 725, 733, 733 n.7, 734 (1997); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1012–13 (1992), but those descriptions arose against the backdrop of the Court’s evolving efforts to justify *Williamson County*’s separate state-litigation requirement. See *Knick*, 588 U.S. at 204. In *Horne*, the Court characterized the state-litigation requirement as one of “prudential ripeness” while tellingly discussing finality in terms of “federal jurisdiction.” *Horne v. Dep’t of Agric.*, 569 U.S. 513, 525 (2013). *Knick* then abandoned the state-litigation requirement, explaining that the Court had repeatedly changed the justifications behind it before eventually “recast[ing]” it as a “‘prudential’ ripeness rule.” *Knick*, 588 U.S. at 203–04. *Knick* had no occasion to address finality because that requirement was not at issue. See *id.* at 188. Ultimately, *Pakdel* expounded on the surviving finality requirement in terms of actual, concrete injury as distinct from hypothetical harm. See *Pakdel*, 594 U.S. at 479. The whole of this doctrinal trajectory has left the prudential conception of finality as a last, inadvertent vestige of *Williamson County* and its convoluted progeny. These cases afford the Court an appropriate occasion to clarify that *Pakdel*’s articulation of finality at last discarded that conception.

**B. Lower Courts Rely on Prudential Ripeness to Impose Additional Hurdles That Contravene *Pakdel***

*Pakdel*’s failure to expressly identify finality as jurisdictional has contributed to confusion in the lower courts. Several continue to characterize finality as a

prudential doctrine. Some such courts, including New York’s and the Fourth Circuit in these cases, have consequently erected prudential hurdles that reach beyond *Pakdel*’s requirement of a conclusive governmental position. The resulting decisions illustrate the need for this Court to clarify finality’s jurisdictional character and thereby bar the imposition of such hurdles.

Consider the Fifth Circuit, which continues to conceive of finality as a matter of prudential ripeness. *See, e.g., Money v. City of San Marcos*, No. 24-50187, 2025 WL 429980, at \*3 (5th Cir. Feb. 7, 2025). In *Beach v. City of Galveston*, the Fifth Circuit barred a property owner’s takings claim because he failed to appeal the loss of the property’s grandfather status and to reapply after the city council denied his application for a special-use permit. *See Beach v. City of Galveston*, No. 21-40321, 2022 WL 996432, at \*3 (5th Cir. Apr. 4, 2022). Neither failure bore on whether the city had committed to a conclusive position concerning the proposed use of the property. Once the city had done so, *Pakdel* required nothing further. A conclusive position is all that is relevant, while claimants’ putative administrative missteps may become relevant only during the merits stage. *See Pakdel*, 594 U.S. at 480–81.

The Ninth Circuit, too, continues to treat finality as a prudential requirement. *See, e.g., Pharm. Rsch. & Mfrs. of Am. v. Stolfi*, 153 F.4th 795, 831–32 (9th Cir. 2025). Like the Fifth Circuit, the Ninth has imposed administrative requirements divorced from *Pakdel*’s conclusive-position inquiry. In *Ralston v. County of San Mateo*, the Ninth Circuit faulted a property owner for failing to apply for a Coastal Development Permit even though applicable law precluded the proposed development and county officials had confirmed that no

home could be built on the property. *See Ralston v. Cnty. of San Mateo*, No. 21-16489, 2022 WL 16570800, at \*2 (9th Cir. Nov. 1, 2022). Requiring the plaintiff to submit a futile application that could not alter the government’s position, as the Ninth Circuit did, contravenes *Pakdel*’s instruction that “nothing more than *de facto* finality is necessary.” *Pakdel*, 594 U.S. at 479.

New York courts also rely on a prudential-ripeness conception of finality. *See Tedford’s Tenancy, LLC v. City of New York*, 238 A.D.3d 624, 625 (N.Y. App. Div. 2026) (invoking pre-*Pakdel* case law to require Tedford to have personally experienced repetitive or unfair procedures); *Tedford’s Tenancy, LLC v. City of New York*, No. 154082/2022, 2023 WL 7493254, at \*3 (N.Y. Sup. Ct. Nov. 13, 2023) (describing ripeness as prudential); *id.* at \*5 (citing pre-*Pakdel* case law, obliging those in regulated industries to devote “time and expense to wade through a complex process,” even if to no avail). Applying that prudential conception of finality, the courts required Tedford to pursue further administrative procedures even though it was ineligible for them and, regardless, they could afford at most *de minimis* relief. *See Tedford Pet.* at 10–11. These courts resurrected the administrative-exhaustion rule that *Pakdel* proscribed. *See Pakdel*, 594 U.S. at 480.

The Fourth Circuit employs the same prudential designation. *See Walls v. Prince George’s Cnty.*, No. 25-1121, 2026 WL 497988, at \*2 n.1 (4th Cir. Feb. 23, 2026). The court held Walls’s claim unripe because he had not pursued a legislative amendment. *Id.* at \*3–4. But the amendment would merely allow Walls to seek connection to the sewage system of a development that has yet to occur—and whose developer has no plans to extend the system to a location from which Walls could

connect his property's sewage system. *See* Walls Pet. at 8, 12. The availability of the amendment process did not make the county's position any less conclusive, and to treat it as defeating finality therefore departed from *Pakdel*. *See Pakdel*, 594 U.S. at 478–80.

The Tedford and Walls cases encapsulate the consequences of leaving *Pakdel*'s doctrinal character unstated: Courts continue to supplement its conclusive-position inquiry with prudential barriers. Clarifying that finality is jurisdictional would foreclose courts from imposing such hurdles and promote the consistent application of *Pakdel*'s modest finality inquiry.

### **III. THE CONSTITUTIONAL IMPORTANCE OF PROPERTY RIGHTS FURTHER COUNSELS AGAINST TREATING FINALITY AS PRUDENTIAL**

For the founding generation, property rights represented arguably the most important institution that protected individual liberty. Prudential ripeness nonetheless subjects Takings Clause claimants to hurdles not faced by plaintiffs asserting other constitutional claims. *See, e.g.,* Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U. J.L. & Pol'y 99, 131 n.137 (2000) (decrying “a huge and unjustified difference between land use ripeness cases and all other ripeness cases.”). That second-class doctrinal treatment is inconsistent both with property rights' centrality to the Framers' constitutional vision and with the clause's protective function.

#### **A. Property Has Long Been Recognized as the Cornerstone of Liberty**

Anglo-American constitutional thought has linked the security of private property to the enjoyment of

individual rights since at least Magna Carta (1215). English common law stressed the importance of property as a bulwark against governmental encroachment on other basic rights. John Locke famously observed that “[t]he great and chief end . . . of Men’s uniting into Commonwealth, and putting themselves under Government, is the Preservation of their Property.” *Second Treatise of Government* ch. IX, § 127 (1689). Locke identified property ownership with political liberty, and he maintained that government had a duty to safeguard property. *See id.*

In the 18th century, this intimate connection between liberty and property was a widely shared constitutional understanding. As historian John Phillip Reid observed, “[t]here may have been no eighteenth-century educated American who did not associate defense of liberty with property.” J.P. Reid, *Constitutional History of the American Revolution: The Authority of Rights* 33 (1986). Leading figures of the founding generation readily expressed such sentiments. “Property must be secured,” John Adams proclaimed in 1790, “or liberty cannot exist.” John Adams, “Discourses on Davila,” in 6 *Works of John Adams* 280 (1852). Alexander Hamilton similarly declared in 1795, “Adieu to the security of property[,] adieu to the security of liberty.” Alexander Hamilton, “Defense of the Funding System,” in 19 *The Papers of Alexander Hamilton* 47 (1973). Chief Justice Roberts recently drew upon this tradition, asserting that “[t]he Founders recognized that the protection of private property is indispensable to the protection of individual freedom.” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021).

The founding generation incorporated this principle into the governing charters of the new republic.

Many state constitutions of the Revolutionary era emphasized an individual's right to legal protection of his property. For example, the Pennsylvania Constitution of 1776 stated that "all men . . . have certain natural, inherent, and inalienable rights, [such as] enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety." Pa. Const. of 1776, art. I, § I. In the same vein, the Northwest Ordinance of 1787—enacted by the Confederation Congress and an important ideological model for the Constitution—included a clause requiring payment of "full compensation" when property was taken for public use. *An Ordinance for the Government of the Territory of the United States North-West of the River Ohio* art. II (1787), reprinted in 2 Rev. Stat. U.S. 13, 15 (2d ed. 1878).

This Court, too, has long acknowledged the essential link between private property and a free society. In *Wilkinson v. Leland*, 27 U.S. 627, 657 (1829), Justice Joseph Story wrote:

That government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body, without any restraints. The fundamental maxims of a free government seem to require that the rights of liberty and property should be held sacred.

Almost a century and a half later, Justice Potter Stewart insisted, "[A] fundamental interdependence exists between the personal right to liberty and the personal right to property. Neither could have meaning without the other. That rights to property are basic civil rights has long been recognized." *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972).

## **B. The Takings Clause Protects Individuals from Arbitrary Government**

Against this philosophical backdrop linking property and liberty, it is hardly surprising that the Constitution and the Bill of Rights contain numerous provisions that safeguard the rights of property owners. Foremost among these is the Fifth Amendment's Takings Clause. The just-compensation principle was well settled in English common law long before it was written into the Bill of Rights. See James W. Ely Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights* 13, 31, 55 (3d ed. 2008). Justice William Paterson, who had been a member of the Constitutional Convention, wrote that "no one can be called upon to surrender or sacrifice his whole property, real and personal, for the good of the community, without receiving a recompence in value. This would be laying a burden upon an individual, which ought to be sustained by the society at large." *VanHorne's Lessee v. Dorrance*, 2 U.S. 304, 310 (1795). As Paterson underscored, the Takings Clause protects property owners from the government's pursuit of politically attractive goals for free—that is, without raising taxes and without drawing on the public fisc. Arbitrary, confiscatory governmental action is exactly what the clause was designed to protect against.

This Court has repeatedly stressed the protective function of the Takings Clause. In 1871, Justice Nathan Clifford observed that "there are few safeguards ordained in the fundamental law against oppression and the exercise of arbitrary power of more ancient origin[,] or of greater value to the citizen, as the provision for compensation" when the government deprives owners of their property. *United States v. Russell*, 80

U.S. 623, 627 (1871); *see also Monongahela Navigation Co. v. United States*, 148 U.S. 312, 325 (1893) (affirming that the right to compensation is a “natural equity”). Justice Hugo Black also famously expressed that idea: “The Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

### **C. Prudential Ripeness Subjects Takings Claims to Second-Class Treatment**

As the history above makes plain, it is unfounded to burden takings claimants with hurdles that plaintiffs pressing other constitutional claims do not face. The Court has long endorsed this premise: that the Takings Clause should receive the same degree of judicial solicitude as do other provisions of the Bill of Rights. As the Court has explained, “[w]e see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation.” *See Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994). The Court has reiterated this principle, invoking *Dolan*, in several important cases in the past decade. *E.g.*, *Sheetz v. County of El Dorado*, 601 U.S. 267, 279 (2024); *Pakdel*, 594 U.S. at 481; *Knick*, 588 U.S. at 189.

Prudential ripeness doctrine treats the Takings Clause as an outcast from the Bill of Rights, even worse than the poor relation of whom the Court has worried. Under the supposed remit of prudential ripeness, courts impose procedural hurdles that seriously

handicap property owners in pressing regulatory takings claims. As seen in the cases here, the New York courts and the Fourth Circuit denied Tedford and Walls the opportunity even to present the merits of their claims. No other constitutional claim is singled out to carry such an onerous burden. This disparate, second-class treatment disregards the centrality of property rights to the founding generation and hollows out the protective function of the Takings Clause for regulatory takings claimants.

### CONCLUSION

The Court should grant certiorari to reaffirm the proper function of the finality requirement and clarify its jurisdictional character. In doing so, the Court can both promote the finality requirement's consistent application after *Pakdel* and restore property rights to a place of rightful treatment by the courts.

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