No. 17-647

In the Supreme Court of the United States

ROSE MARY KNICK,

Petitioner,

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF THE STATES OF CALIFORNIA, DELAWARE, INDIANA, IOWA, LOUISIANA, MAINE, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, UTAH, VERMONT, WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the Court should overrule the portion of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), requiring property owners to pursue compensation remedies that are available in state court before bringing takings claims in federal court.

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INTERESTS OF AMICI

Amici States are committed to preserving property owners' rights under both federal and state law.[1] At the same time, in our federal system States and their local subdivisions have the primary responsibility both for property law and for adopting reasonable, locally appropriate regulations for land use, public safety, environmental protection, and public health. Where an owner claims that the application of a state or local regulation affects property in a way that amounts to an unconstitutional taking, States have a strong interest in addressing the claim through their own procedures so that the regulation's legality can be determined under state law, any necessary or preferred accommodation between the regulatory scheme and the owner's rights can be made, and any required compensation can be ascertained and paid. These steps can be accomplished, and any just compensation provided, without any federal takings claim ever developing.

States have longstanding, clearly-established procedures by which property owners may raise challenges to state and local regulations in state court, including claims that the application of a regulation is functionally equivalent to an appropriation of private property for public use that requires just com-

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[1] *See, e.g.*, Cal. Const. art. I, § 1 (listing, among people's "inalienable rights," the right to "acquir[e], possess[], and protect[] property"); *id*. § 19(a) (requiring just compensation when private property is taken for public use); Mass. Const. pt.1, art. X (listing, among people's "essential and unalienable rights," the right to "acquir[e], possess[], and protect[] property"); N.Y. Const. art. I, §7(a) ("Private property shall not be taken for public use without just compensation.").

pensation. State courts also have extensive experience applying state law procedures and rules for determining what compensation is just, if a taking is found. Such proceedings enforce state-law restrictions on the exercise of state or local power and afford property owners readily available remedies, including just compensation. They allow state courts, applying state laws, to determine issues that are logically prior to the existence of, and certainly necessary to the resolution of, any potential later federal takings claim. This permits the proper development and application of state law and, by allowing for just compensation via state remedies, it potentially precludes a federal constitutional violation from ever occurring.

This Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-96 (1985), protects these powerful state interests by ensuring that state processes have an opportunity to fully address and resolve any potential takings claim. Overruling the portion of *Williamson County* challenged in this case would undercut state primacy in core areas of property law and state and local regulation and limit States' ability to enforce their own restrictions on state or local regulatory action. It would force the federal courts to prematurely entertain takings claims based on the federal constitution and effectively act as super boards of zoning appeals addressing uniquely state law issues.

Indeed, the very existence of a takings claim is often highly contingent on complex legal and factual questions arising under state law, remedies under state law, and, importantly, whether a state or local regulator would prefer to pay permanent compensation or alter or rescind a regulation. *Williamson County* properly recognizes that such questions are much

more appropriately addressed first through state proceedings. Setting aside this rule from *Williamson County* would improperly hinder the States in their efforts to simultaneously define and enforce property rights, regulate appropriately for the public health, safety, and welfare in accordance with local conditions, and protect the public fisc. The amici States have a strong interest in urging this Court to avoid that result.

SUMMARY OF ARGUMENT

Williamson County provides that a party asserting an unconstitutional taking of property must use state processes for seeking compensation before filing a federal lawsuit. The *Williamson County* rule reflects the character of the protection afforded by the federal Takings Clause, which makes a taking of private property for public use a violation of the federal constitution only if it is uncompensated. Unless and until a claimant has pursued the state compensation process, a claimant cannot state a colorable federal Takings Clause claim in federal court. This rule respects and upholds the sovereignty of the States by preventing them or their subdivisions from defending federal lawsuits when the alleged constitutional violation has not yet occurred and, depending on the outcome of the state compensation process, may never occur.

To that end, *Williamson County* recognizes two specific preconditions for a claim that a state or local regulation interferes with property rights in a way that requires compensation under the federal Takings Clause. First, the state or locality must have made a final decision about how it will apply the regulation to the property at issue, including a determination of the applicability of any variances. Second, the owner must have pursued any reasonable, certain, and

adequate state procedure for obtaining compensation for any alleged taking.

These rules reflect the substantive elements of the Takings Clause. A violation of that clause requires both a taking of property and a failure to pay just compensation. State courts typically have the power under state law to set aside regulatory actions that have given rise to takings claims, or to order the payment of just compensation. Until state courts have reached final decisions on both matters, there can be no federal takings claim.

The *Williamson County* rule requiring that these issues normally be addressed first through appropriate state proceedings does not in any way denigrate federal constitutional protections or result in their under-enforcement. Petitioner and certain amici point to cases in which lower courts have reached decisions that are arguably procedurally incorrect or unfair to takings plaintiffs. But any such problems arise from misapplications of *Williamson County*, not from its basic rule. There is no reason to overturn the rule itself.

Directing these claims to appropriate state court processes serves core state interests. It appropriately defers to States and their courts in the first instance to reach proper accommodations between individual property rights and core public interests—subject, of course, to the right of takings plaintiffs to seek review by this Court. It ensures full enforcement of state-law limitations that could invalidate or limit a regulation independent of a Fifth Amendment challenge. And it allows the State to determine, through administrative and judicial processes, whether the regulatory benefits at issue are worth paying for if a state court determines that the regulatory decision would effect a

taking, or whether the State should modify or rescind the decision or regulation to limit the expenditure of scarce tax dollars.

ARGUMENT

I. THE *WILLIAMSON COUNTY* RULE IS SOUND

Petitioner raises a variety of challenges to *Williamson County*'s rule that property owners alleging that a state or local regulation effects a federal taking must first seek compensation through available state procedures. That rule, however, is fundamentally sound. It accurately reflects that, in many States, the elements of any constitutional takings claim will not be established until the state courts, which are the States' final decision makers on pertinent issues, have adjudicated the matter and decided whether just compensation is due. And it appropriately defers to the leading role of the States in striking the proper constitutional balance between individual property rights and state property and land-use rules—all of which are quintessentially matters of state law.

A. *Williamson County*

In *Williamson County*, a landowner sued a county planning commission in federal court, claiming that the application of various zoning requirements to its property amounted to a federal taking. 473 U.S. 172. This Court held that the suit was not appropriate for federal determination at that time, for two reasons.

First, the Court reasoned, "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." 473 U.S. at 186. The owners had not applied to a Board of Zoning

Appeals that could have exempted the project from certain requirements. *Id.* at 188. As a result, there was not yet any "final decision regarding how [the owner would] be allowed to develop its property," making it impossible to undertake the fact-specific inquiry whether a federal taking had occurred, such as the "economic impact of the challenged action and the extent to which it interfere[d] with reasonable investment-backed expectations." *Id.* at 190-91.

Second, the federal takings claim was "not yet ripe" because it was not clear whether the Fifth Amendment right would in fact be violated, or to what extent. The owner had not sought compensation through the state-court "procedures the State ha[d] provided for doing so." 473 U.S. at 194. The Fifth Amendment does not, the Court reiterated, "require that just compensation be paid in advance of, or contemporaneously with, [a] taking." *Id.* Instead, "all that is required is that 'a reasonable, certain and adequate provision for obtaining compensation' exist at the time of the taking." *Id.* (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 124-25 (1974)). Just as "taking claims against the Federal Government are premature until the property owner has availed itself of the process provided by the [federal] Tucker Act," *id.* at 195 (citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1016-20 (1984)), so too "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied compensation," *id.* Because the plaintiff had not availed itself of the available state-law procedure, its federal suit was "premature." *Id.* at 197, 200.

B. *Williamson County* Properly Reflects the Special Nature of Takings Claims

Petitioner portrays *Williamson County*'s requirement that a federal takings claimant first resort to available state compensation procedures as a striking and unjustified anomaly. *See, e.g.,* Pet. Br. 28 ("No other type of constitutional plaintiff faces such a stern barrier to federal court access."). But no other constitutional provision requires compensation as an element of the violation. The *Williamson County* rule properly reflects that state-court decision-making is necessarily antecedent to determining whether and to what extent there has been any federal constitutional violation at all and that the questions at issue concern core state interests.

1. State-court Proceedings Are Part of the State's Final Regulatory Decisions

Petitioner does not challenge the portion of *Williamson County* that requires federal plaintiffs to obtain, as a prerequisite to bringing suit in federal court, a "final decision," through available administrative appeals, on how a state or local authority will apply laws or regulations in a particular case. 473 U.S. at 190-91. She challenges only the other holding of *Williamson County*, requiring federal plaintiffs to give state *courts* a chance to consider regulatory actions that purportedly cause a taking, and to decide what compensation, if any, will be provided for those actions as a matter of state law. But under the processes that some States have instituted, review by a state court is just as necessary as a final administrative decision before a court can properly analyze whether the federal Takings Clause has been violated. State court review can resolve any potential violations

under state law and, if necessary, determine just compensation, thereby satisfying federal constitutional requirements.

a. States, through their constitutions, statutes, and common law, have subjected themselves and their subordinate entities to a variety of restrictions on the exercise of regulatory power. The maintenance of these self-imposed restrictions is fundamental to each State's existence as a sovereign, self-governing entity. *See generally Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) ("Through the structure of its government … a State defines itself as a sovereign."); *Sugarman v. Dougall*, 413 U.S. 634, 642 (1973) (recognizing each State's "interest in establishing its own form of government").

Each State decides the degree to which regulatory authority is delegated to or withheld from the state entities and local governments that "are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them ... in [the State's] absolute discretion." *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 607-08 (1991) (quoting *Sailors v. Bd. of Ed. of Kent Cty.*, 387 U.S. 105, 108 (1967)).[2] The exercise of state regu-

[2] The United States contends that "the effect of the *Williamson County* rule is limited to claims against local governments." U.S. Br. 4 n.2. That is not correct. States are directly affected by *Williamson County* when they waive sovereign immunity as to just compensation claims or, as the United States acknowledges, when their officers are sued for Takings Clause violations under 42 U.S.C. § 1983. *Id.; cf. Downing/Salt Pond Partners, L.P. v. Rhode Island and Providence Plantations*, 642 F.3d 16 (1st. Cir. 2011). And, as this brief explains, *Williamson County* affects the

latory power is further subject to substantive limitations under state law.[3] And the exercise of governmental power is conditioned on compliance with important procedural requirements to ensure that the people of each State "retain control over the instruments they have created."[4]

Collectively these requirements supersede any particular administrative body's decision, because if a regulation is invalid under state law then it may not be applied. *See, e.g., Morehart v. Cty. of Santa Barbara*, 7 Cal. 4th 725, 732 (1994) (county lacked power to impose certain conditions on issuance of development permit); *Sawyer Envtl. Recovery Facilities v. Town of Hampden*, 760 A.2d 257, 265-66 (Me. 2000) (state environmental statute preempts more stringent local ordinance); *Cohen v. Bd. of Appeals*, 100 N.Y.2d 395, 399 (2003) (statewide standard of area variance review controls locality); *Isla Verde Int'l Holdings v. City of Camas*, 49 P.3d 867, 878 (Wash. 2002) (city regulation requiring developer to set aside part of

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administration of state law and regulatory processes.

[3] *See, e.g.*, California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000-21189.57; California Subdivision Map Act, Cal. Gov't Code §§ 66410-66499.38; California Coastal Act, Cal. Pub. Res. Code §§ 30000-30900; Massachusetts Wetlands Regulations, 310 Mass. Code Regs. §§ 10.01-10.60; New York Tidal Wetlands Act, N.Y. Envtl. Conserv. Law §§ 25-0101–25-0601.

[4] Cal. Gov't Code § 54950 (legislative declaration regarding law on open meeting and public processes); *see, e.g., id.* §§ 11120-11132 (open meeting law); *id.* §§ 11340 et seq. (Administrative Procedure Act); Mass. Gen. Laws ch. 30A, §§ 1-25 (Administrative Procedure Act); N.Y. Em. Dom. Proc. Law §§ 201-206 (requiring notice and public hearings prior to condemnation).

parcel as open space invalidated under state law).[5] As a result, even where an administrative appeal has run its course, state court processes are integral to determining whether and how a regulatory action that could be challenged as a federal taking will in fact go into effect.

In California, for instance, where a property owner challenges development restrictions as a taking of property, the owner's inverse condemnation action must be joined with a petition for administrative mandamus (for as-applied challenges) or complaint for declaratory relief (for facial challenges). *Hensler v. City of Glendale*, 8 Cal. 4th 1, 14 (1994). That allows the judge to determine whether the "application of the ordinance or regulation to the property is statutorily permissible." *Id.* Where the regulatory action is unauthorized under state law, it must be set aside on those grounds. *See, e.g., Shaw v. Cty. of Santa Cruz*, 88 Cal. Rptr. 3d 186, 210, 221 (Ct. App. 2008) (noting trial court decision to set aside a permit denial that was unauthorized under state law); *see also Steinbergh v. Rent Control Bd. of Cambridge*, 546 N.E.2d.

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[5] In addition, many state and local laws are specifically crafted to avoid takings liability. *See, e.g.*, 310 Mass. Code Regs. § 10.05(10)(a)(3) (authorizing agency to waive the application of any state wetlands regulation where "it is necessary to avoid an Order that so restricts the use of property as to constitute an unconstitutional taking without compensation"); Cal. Pub. Res. Code § 30010; *see also Daddario v. Cape Cod Comm'n*, 681 N.E.2d 833, 836 (Mass. 1997) (applying regulation which provided that "the commission shall approve or approve with conditions a development of regional impact where an applicant demonstrates that to disapprove the development of regional impact would constitute a taking of property in violation of the Massachusetts and United States Constitutions").

169, 172 (Mass. 1989) (city ordinance exceeded authority granted in state law); *Premium Standard Farms v. Lincoln Twp.*, 946 S.W.2d 234, 240 (Mo. 1997) (setback and bonding requirements exceeded township's statutorily granted zoning powers).

In these and similar instances, there can be no clear basis for a federal takings claim unless and until it has been resolved as a matter of state law whether and how a state or local regulation or regulatory decision will finally apply to particular property.

b. Similarly, some States include state-court adjudication as part of the decision-making process that determines whether or not a regulation should continue to be applied given its effect on objecting property owners. This Court has recognized that a government entity held to have committed a regulatory taking is not obliged to maintain its initial position and pay for a permanent taking. Rather, "the government may elect to abandon its intrusion or discontinue regulations" and pay only for any temporary taking that occurred before that decision. *First English Evangelical Lutheran Church of Glendale v. Cty. of Los Angeles*, 482 U.S. 304, 317 (1987). Where the governmental body "acquiesce[s]" in this manner, a landowner "has no right under the Just Compensation Clause to insist that a 'temporary' taking be deemed a permanent taking." *Id.*

In some States, state-court adjudication is structured to provide a clear point in the process where the public entity may rescind or modify an action and pay only for any temporary taking. In California, for example, a multi-step process facilitates the sequential resolution of state-law issues and liability for any taking before a jury is convened to decide on a just amount of compensation. *Hensler*, 8 Cal. 4th at 14. If

a judge rules that a regulatory action effects a taking, then the government has an opportunity to rescind its action or choose not to apply it. *See, e.g., Avenida San Juan P'ship v. City of San Clemente*, 135 Cal. Rptr. 3d 570, 591 (Ct. App. 2011) (giving city a choice to invalidate its action or pay permanent-taking compensation). Under New York's Tidal Wetlands Act, when a property owner challenges a permit denial, the court first determines whether the agency decision is supported by substantial evidence and if so, whether it constitutes a taking requiring compensation. N.Y. Envtl. Conserv. Law § 25-0404. If the landowner prevails, "the Commissioner is directed, at his option, to either grant the requested permit or institute condemnation proceedings." *de St. Aubin v. Flacke*, 68 N.Y.2d 66, 70 (1986). State-court adjudication thus serves as an integral step in determining whether and for how long a regulation or decision will continue to govern the plaintiff's use of his or her property.

c. Finally, as *Williamson County* recognized, a public entity violates the Fifth Amendment when private property is both "taken for public use" and the public entity fails to pay "just compensation." U.S. Const., amend. V. The appropriate compensation may be determined through post-taking proceedings—particularly where either the existence of a taking or the amount of compensation due is subject to dispute. *See, e.g.*, *Williamson County*, 473 U.S. at 194-95; U.S. Br. 8-16.[6] Channeling takings claims (and particularly regulatory takings claims) to state courts thus

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[6] Arguments that the Takings Clause at its inception required compensation to be simultaneous with any expropriation (*e.g.*, Washington Legal Foundation Br. 11-12) have no force when applied to regulatory takings, which were not envisioned when

allows state processes to resolve in the first instance whether the state action is lawful, whether compensation is required, and if so, whether to rescind the regulation and pay only for a temporary taking—and thus whether or not there is any basis for a federal takings claim to begin with.

Particularly where regulation, rather than physical expropriation, is at issue, agencies usually are not equipped to determine in advance whether a particular action would constitute a compensable taking under state and federal rules. *See Lingle v. Chevron USA Inc.*, 544 U.S. 528, 538, 539 (2005) (most regulatory takings are governed by the standards in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), each of which "has given rise to vexing subsidiary questions"); *cf.* U.S. Br. 16 (it would be "impossible to provide compensation in advance for all federal actions that might ultimately be found to be takings"). In any event, the property owner is normally entitled to judicial review of an agency determination on that issue. States have therefore entrusted their courts with the authority to undertake the factual and legal inquiries necessary to determine whether the government is obligated to pay property owners for any harm allegedly caused by regulatory

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the Fifth Amendment was enacted, and which normally are held to exist only after contested proceedings. *See Lucas v. S. C. Coastal Council*, 505 U.S. 1003, 1014 (1992) ("Prior to Justice Holmes's exposition in *Pennsylvania Coal Co. v Mahon*, it was generally thought that the Takings Clause reached only a 'direct appropriation' of property or the functional equivalent of a 'practical ouster of [the owner's] possession.'" (internal citations omitted)); *see also* Treanor, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment*, 94 Yale L.J. 694, 708 (1985).

action. The state courts are, in effect, the final decision makers, providing answers to questions without which a federal Takings Clause violation does not occur. And *Williamson County* properly recognizes that unless and until those final decision makers refuse to provide adequate compensation, there has been no federal "taking." *Williamson County*, 473 U.S. at 196-97.

2. Without a Completed State Adjudication, Many Federal Takings Claims Are Hypothetical or Contingent

Accordingly, at least in some States, it will not be "clear that the Government has both taken property *and* denied just compensation," *Horne v. Dep't of Agric.*, 569 U.S. 513, 525–526 (2013), until state courts have acted on a particular related set of claims. The state court's application of state law may clarify the scope of the compensable claim, and the state court's determination of whether and how long a regulation will remain in place is vital to determining whether a violation has occurred and the proper remedy for it.

These concerns explain why *Williamson County* properly described a federal lawsuit as "premature" before such state judicial determinations have been made. *See* 473 U.S. at 197, 200. The same principle underlies both that rule and the portion of *Williamson County* that petitioner does not challenge, holding that the federal case is unripe if there has been no final decision by "the government entity charged with implementing the regulations" regarding "the application of the regulations to the property at issue." *Williamson County,* 473 U.S. at 186.

A federal takings claim is not "fit for review," *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 812

(2003), until the State has come to a "final, definitive position," through the processes established under state law, on how the State and its local governments will "apply the regulations at issue to the particular [property] in question," *Williamson County*, 473 U.S. at 191.[7] In fact, a state court's decision to invalidate a regulation or a decision applying the regulation on state-law grounds, or to require compensation on state-law grounds, may completely moot the federal issue, making it especially unwise to act prematurely. *See generally, e.g.*, *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 345 (1936) (Brandeis, J., concurring); *cf. La. Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 32-33 (1959) (Brennan, J., dissenting) ("Numerous decisions … have sanctioned abstention from deciding cases involving a federal constitutional issue where a state court determination of state law might moot the issue or put the case in a different posture.").

3. *Williamson County* Is Consistent with Other Principles of Federal Jurisdiction

Petitioner contends that *Williamson County*'s rule should be discarded because it "den[ies] a federal forum to property owners claiming a 'taking' of

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[7] Indeed, the question of "just compensation" is inherently tied to state law, and some States have takings clauses with both stricter public purpose requirements and more generous compensation. Whereas just compensation under the Fifth Amendment is generally measured by fair market value, *see Horne v. Dep't of Agric.*, ___ U.S. ___, 135 S.Ct. 2419, 2432 (2015), Louisiana, for example, compensates owners for the "full extent of the loss." La. Const. Art. I, §4(B)(5). This standard includes other damages caused by the expropriation, such as inconvenience, relocation expenses, and business losses. *See S. Lafourche Levee Dist. v. Jarreau*, 217 So.3d 298, 306 (La. 2017).

property," Pet. Br. 27. She argues that requiring initial state proceedings is inconsistent with her right to "a federal forum for federal civil rights claims under … 42 U.S.C. § 1983." Pet. Br. 27. But certain types of claims involving federal constitutional rights have long been predominantly adjudicated in state courts.

Cases involving domestic relations, parental rights, and probate law, for example, frequently implicate fundamental federal rights. *See, e.g., Lehr v. Robertson*, 463 U.S. 248 (1983) (equal protection and due process challenges in paternity proceedings); *Trimble v. Gordon*, 430 U.S. 762 (1977) (equal protection challenge to inheritance rule). Yet they are litigated almost exclusively in state court. *See, e.g., Ankenbrandt v. Richards*, 504 U.S. 689, 694-695 (1992) (domestic relations cases); *Markham v. Allen*, 326 U.S. 490, 494 (1946) (probate).

Challenges to the enforcement of state tax laws may also involve claimed constitutional violations. *See, e.g., Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 107 (1981). This Court has reasoned, however, that the "ready access to federal courts" that is generally provided under 42 U.S.C. § 1983 does not give taxpayers an automatic right to have their constitutional claims adjudicated by federal courts in the first instance. *Id.* at 116. Instead, as *Fair Assessment* holds, state "taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete." *Id.* Without such a rule, the Court reasoned, federal courts would be turned into "'a source of appellate review of all state property tax classifications.'" *Id.* at 114 (quoting *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 478 F.Supp. 1231, 1234 (E.D.Mo. 1979)).

Similar concerns are present here. Federal courts should not be a routine forum for challenging zoning and land-use decisions. *See Village of Belle Terre v. Boraas*, 416 U.S. 1, 13 (1974) (Marshall, J., dissenting) ("Our role is not and should not be to sit as a zoning board of appeals."). This makes sense, because complex questions about the application of state and local law to particular facts are inextricably intertwined with takings claims, and "[m]inimal respect for the state processes ... precludes any presumption that the state courts will not safeguard federal constitutional rights." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) (emphasis omitted).

Nor is there anything about the Takings Clause in particular that makes immediate access to an Article III court indispensable. This Court's decision in *Williamson County* to channel most takings claims involving state or local governments to the state courts is consistent with the way the federal system treats similar claims against the federal government. Most plaintiffs who wish to pursue such claims must sue first in the Court of Federal Claims. *See* 28 U.S.C. § 1491(a)(1); *Williamson County*, 473 U.S. at 195. Only after that court decides whether and how much compensation will be paid may the claimant proceed to an Article III court, by appeal to the Federal Circuit. The Court of Federal Claims is not an Article III court, and its proceedings in Washington D.C. may be far less convenient for claimants than local state court proceedings under *Williamson County*.

C. *Williamson County* Is Not Unfair to Property Owners

Petitioner likewise argues that "[t]he central issue in this case is whether American property owners …

are entitled to a realistic and fair opportunity to seek compensation for a 'taking' of property within the meaning of the Fifth Amendment." Pet. Br. 1. But neither *Williamson County* itself, nor the preclusive effects that can result from state-court adjudication, deprive property owners of a fair adjudication of their federal rights.

1. Many arguments against *Williamson County* seem ultimately premised on a general "distrust of the capacity of the state courts to render correct decisions on constitutional issues." *Allen v. McCurry*, 449 U.S. 90, 104 (1980); *see, e.g.,* San Remo Hotel Br. 3-4, 9-10, 16-17. But state courts have a constitutional obligation to enforce federal law, and this Court's precedents reflect a "confidence in their ability to do so." *Allen*, 449 U.S. at 104. Indeed, this is a "foundational principle of our federal system." *Burt v. Titlow*, 571 U.S. 12, 19 (2013). Here, as in other contexts, the Court should be "unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States." *Stone v. Powell*, 428 U.S. 465, 493 n.35 (1976).

In practice, state courts have carefully protected property owners' rights. That is evident from the many appellate decisions (not to mention trial court decisions) holding that a taking has occurred and ordering compensation.[8]

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[8] *See, e.g., Lockaway Storage v. Cty. of Alameda*, 156 Cal. Rptr. 3d 607 (Ct. App. 2013) (authorizing the challenged development to proceed and awarding temporary takings damages of $990,000); *Noghrey v. Town of Brookhaven*, 938 N.Y.S. 2d 613 (App. Div. 2012) ($840,000 damages award where rezoning led to decline in property value); *Avenida San Juan P'ship*, 135 Cal.

Of course, property owners also often lose regulatory takings claims in state court. But that outcome properly reflects a combination of the state and local efforts to regulate in ways that do not effect a taking of property and the substantive standard that applies to such claims under federal law. In federal court, too, plaintiffs "rarely prevail in a *Penn Central* claim." Pomeroy, Penn Central *After 35 Years: A Three Part Balancing Test or A One Strike Rule?*, 22 Fed. Circuit B.J. 677, 699 (2013); *see also* Meltz, *Takings Law Today: A Primer for the Perplexed,* 34 Ecology L.Q. 307, 333 (2007) ("The *Penn Central* test has rarely been invoked successfully in the Supreme Court, except where a special feature of the challenged regulation, such as physical invasion, total taking, or interference with a fundamental property interest, triggered categorical analysis."). The problem is not that plaintiffs are victims of state-court discrimination; it is that regulatory takings claims are difficult to establish in any forum.

2. Nor is there any anomaly or unfairness in the possibility that issues decided in state-court adjudication regarding takings claims may have preclusive effect in later federal proceedings. *See* Pet. Br. 24-26.

Rptr. 3d 570 (ordering compliance with writ invalidating spot zoning or payment of $1.3 million in takings damages); *see also Muskin v. State Dep't of Assessments*, 30 A.3d 962 (Md. Ct. App. 2011) (holding statute transferring unregistered ground leases was a taking and invalidating statute); *Monks v. City of Rancho Palos Verdes*, 84 Cal. Rptr. 3d 75 (Ct. App. 2008) (holding city's moratorium on development was a taking and remanding for determination of just compensation); *Lopes v. City of Peabody*, 718 N.E. 2d 846 (Mass. 1999) (holding that property owner entitled to reimbursement of real estate taxes based on uncontested trial court finding of partial regulatory taking).

Issue preclusion is not automatic in takings cases. It applies under the same terms as other applications of the Full Faith and Credit Clause. If a state court decision does not meet the requirements that have been developed under that clause to protect litigants' rights, issue preclusion does not apply. *See e.g., Dodd v. Hood River Cty.*, 136 F.3d 1219, 1227-28 (9th Cir. 1998) (no preclusion where Oregon's substantive test for evaluating regulatory takings differed from the test under federal law).

In any event, there is nothing improper about applying issue preclusion to state-court decisions affecting constitutional issues. A plaintiff who wishes to press Fourth and Fifth Amendment claims relating to an arrest, search, or prosecution is generally barred from doing so in federal court while a state criminal case involving the same facts is imminent or pending. *See Younger v. Harris*, 401 U.S. 37 (1971). State-court decisions in such cases receive full preclusive effect in any later federal civil case, and may bar the later federal claim entirely. *See Allen*, 449 U.S. 90 (state trial court's decision that search was proper under Fourth Amendment precluded raising same claim under Section 1983). Similarly, a State may decide to waive its sovereign immunity to suit in state court but not federal court. *See Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 305 (1990). Where that happens, an adverse decision on particular issues in state court would have preclusive effect in any later federal suit against other defendants. Preclusive effects are a consequence of having had a full and fair opportunity to litigate one's claims in any forum. They are not a special disadvantage imposed by state courts or by the *Williamson County* framework.

3. Finally, petitioner argues that *Williamson County* must be overruled because property owners might find themselves in the unfair position of being unable to proceed in either state or federal court—if, for example, a state case were removed to federal court and then dismissed under *Williamson County*. *See* Pet. 30-33. But any such problem would arise only from a misapplication of *Williamson County*. Petitioner points to no necessary unfairness that would justify overruling the decision's basic rule.

The *Williamson County* rule applies only where the state-court proceeding would provide a "reasonable, certain, and adequate judicial remedy." 473 U.S. at 194; *see Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 733-34 (1997). Some state procedures may not meet this test. *See, e.g., First English*, 482 U.S. at 321 (state process for addressing regulatory takings inadequate where it provided no compensation for temporary regulatory takings). Where that is the case, a plaintiff need not resort to those procedures before proceeding to federal court. *See, e.g., City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 699 (1999) (noting decision allowing federal plaintiff to bypass procedures deemed inadequate in *First English*); *cf. Fair Assessment*, 454 U.S. at 116 n.8 (requirement that taxpayer claims be brought in state court if there is a "plain, adequate, and complete" remedy requires pursuing state-court remedies only if substantive federal rights "will not be thereby lost").

Federal courts have correctly recognized that a case should also remain in federal court under *Williamson County* if a state procedure which would otherwise be adequate is being applied unfairly or inefficiently in the particular case. *See, e.g.*, *Town of Nags Head v. Toloczko*, 728 F.3d 391, 399 (4th Cir.

2013); *Adam Bros. Farming, Inc. v. County of Santa Barbara*, 604 F.3d 1142, 1148 (9th Cir. 2010).[9]

The amici States do not endorse any application of *Williamson County* under which a governmental defendant could first remove a case to federal court and then seek dismissal solely under *Williamson County*. *See* Pet. Br. 31; *cf. Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613 (2002) (state waives Eleventh Amendment immunity by voluntarily removing a case to federal court). As petitioner acknowledges (Br. 32), courts have frequently determined that a case which the defendant has thus removed may proceed in federal court without further state proceedings. *See, e.g., Sherman v. Town of Chester*, 752 F.3d 554, 564 (2d Cir. 2014); *Sansotta v. Town of Nags Head*, 724 F.3d 533, 545-547 (4th Cir. 2013); *Lilly Inv. v. City of Rochester*, 674 Fed. App'x 523, 530 (6th Cir. 2017).[10] If there are decisions allowing procedural maneuvering that has the

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[9] *See also, e.g.*, *Robinson v. City of Baton Rouge,* No. 13-375-JWD-RLB, 2016 WL 6211276, at *31, *as amended*, 2016 WL 6460220 (M.D. La. Oct. 28, 2016) (manipulation waived *Williamson County's* state court litigation requirement); *Los Altos El Granada Investors v. City of Capitola*, No. 045138JFPVT, 2005 WL 1774247, at *7 (N.D. Cal. July 26, 2005) (declining to apply *Williamson County* where state court "had been given fair warning that the plaintiff was asserting a takings claim and a fair opportunity to provide just compensation," but declined to hear the claim).

[10] *See also, e.g.*, *River N. Prop., LLC v. City & County of Denver*, No. 13-cv-01410-CMA-CBS, 2014 WL 1247813, at *7 (D. Colo. Mar. 26, 2014); *Athanasiou v. Town of Westhampton*, 30 F. Supp. 3d 84, 89 (D. Mass. 2014); *Zanke–Jodway v. Capital Consultants, Inc.*, No. 306206, 2014 WL 1267262, at *6 (Mich. Ct. App. Mar. 27, 2014); *Petersen v. Riverton City*, No. 2:08-CV-664 SA, 2009 WL 564392, at *2 (D. Utah Mar. 5, 2009)

practical effect of depriving litigants of any forum, that problem should be dealt with by disapproving those decisions, not by a wholesale abandonment of the legal and prudential considerations on which *Williamson County* is firmly based. These or similar questions are matters of how to apply *Williamson County* in a way that is sensible and fair. They reveal no problem with the basic rule itself.

II. *WILLIAMSON COUNTY* SERVES CORE STATE INTERESTS

Petitioner nonetheless asks this Court to overrule *Williamson County* and permit all takings plaintiffs to proceed immediately to federal courts, regardless of the situation in which their claim arises or the degree to which it is dependent on state-law questions that have not yet been fairly presented to and adjudicated by the state courts. The Court should reject that request. In addition to all the normal reasons for respecting stare decisis, this case implicates important state interests that are well served by *Williamson County*'s rule. Directing takings claims to state courts that provide a reasonable, certain, and adequate means for seeking relief in the first instance serves sovereign interests in respecting the primacy of state processes in core areas of state law and policy and in promoting effective and balanced regulation.

A. *Williamson County* Respects State Primacy in Matters of State Property Law

Williamson County brings takings cases, in the first instance, to the courts that are best able to answer underlying questions of state property law, and that are best situated to resolve often complex and highly local conflicts where individual rights and the needs of the community may be in tension.

The existence and nature of an underlying property right is the first question that courts must decide to resolve a takings claim. *See M&J Coal Co. v. United States*, 47 F.3d 1148, 1154 (Fed. Cir. 1995) (courts first "inquire into the nature of the land owner's estate to determine whether the use interest proscribed by the governmental action was part of the owner's title to begin with"). Although the Fifth Amendment right against an uncompensated taking is a matter of federal law, the underlying property interests are typically defined by state law. *See Phillips v. Wash. Legal Found.*, 524 U.S. 156, 161 (1998). The governing rules are often complex or unique to the individual state. *See, e.g., Phillips Petroleum Co. v. Miss.*, 484 U.S. 469 (1988) (Mississippi public trust law); *Fox River Paper Co. v. R.R. Comm'n of Wis.*, 274 U.S. 651, 655 (1927) (riparian rights in navigable waters and the soil); *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 414 (1922) (Pennsylvania law on subterranean coal). Here, for instance, the petitioner's takings claim depends in part on longstanding and highly specialized state common law pertaining to cemeteries. *See* Cemetery Law Scholars Br. 23-26.

Williamson County ensures that such issues are addressed in the first instance by state courts with relevant experience and knowledge, subject to review by state appellate courts that (unlike their federal counterparts) have the ultimate power to "define and interpret state law." *Schlesinger v. Councilman*, 420 U.S. 738, 755 (1975). This both spares the federal courts from having to grapple in the first instance with often complex or technical state-law issues and results in more consistent and reliable decisions. *See Shively v. Bowlby*, 152 U.S. 1, 26 (1894) ("[g]reat caution … is necessary in applying [property right] precedents in

one state to cases arising in another"). While the appellate determination of an open state-law issue in state court is typically definitive, determination of the same issue in federal court might be only a "dubious and tentative forecast" of how the state courts would resolve the issue. *La. Power & Light*, 360 U.S. at 29.[11]

Williamson County also respects that, as this Court and other federal courts have acknowledged, state courts have a particular advantage in resolving other "complex … legal questions related to zoning and land-use regulations." *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 347 (2005).[12] Land use planning is "an area of particularly local concern," *Chez Sez III Corp. v. Twp. of Union*, 945 F.2d 628, 633 (3d Cir. 1991), involving "important matters of state and local policy," *Meredith v. Talbot Cty*, 828 F.2d 228, 232 (4th Cir. 1987). In determining whether a taking has occurred, "courts must consider all reasonable expectations whatever their source." *Lucas*, 505 U.S. at 1035 (Kennedy, J., concurring). State courts are better positioned than federal courts to

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[11] The Takings Clause does not require that state property law be "static," and does not prevent States from "enacting new regulatory initiatives in response to changing conditions." *Lucas*, 505 U.S. at 1035 (Kennedy, J., concurring).

[12] *See, e.g., River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 165 (7th Cir. 1994) ("Federal courts are not boards of zoning appeals."); *Sinclair Oil Corp. v. Cty. of Santa Barbara*, 96 F.3d 401, 409 (9th Cir. 1996) ("[l]and use planning is a sensitive area of social policy" and interpreting land use regulations turns on "the peculiar facts of each case in light of the many [applicable] local and state-wide land use laws" (internal quotation marks omitted)); *Hill v. City of El Paso*, 437 F.2d 352, 357 (5th Cir. 1971) (describing local zoning ordinances as "grass roots procedures" that "are outside the general supervisory power of federal courts").

identify and assess "unique concerns," *id.*, for example, relating to particular land systems or areas, which might significantly affect the federal takings analysis of a particular regulation. In this area of the law, as in certain others, it is both efficient and proper for state courts to address such questions in the first instance. *See La. Power & Light,* 360 U.S. at 28 (federal court properly abstained from deciding challenge to eminent domain proceeding, in part because state courts are better situated to rule on issues that "turn on legislation with much local variation interpreted in local settings").

Of course, state decisions on ultimate questions of federal takings law are always subject to review by this Court. *See, e.g., Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702 (2010). Indeed, the Court has previously recognized that "most of the cases in [its] takings jurisprudence, including nearly all of the cases [involving regulatory takings], came to [the Court] on writs of certiorari from state courts of last resort." *San Remo Hotel*, 545 U.S. at 347. That tradition reflects state courts' primacy in most matters of state property law and land-use regulation, and this Court's ability to respect that state role while providing authoritative guidance for the protection of federal constitutional rights.

B. State-court Litigation Ensures that State-law Limits on Regulatory Action Are Enforced, Facilitating Effective and Fiscally Responsible State Regulation

Finally, *Williamson County* protects each State's ability to prevent regulatory overreaching by its own agents or subdivisions, thereby facilitating state efforts to ensure effective, efficient, and fiscally responsible regulation.

First, *Williamson County* serves a core state interest in establishing state mechanisms for reviewing the activities of subordinate governmental entities to ensure their compliance with state law. State courts typically have the authority to invalidate improper regulations and the decisions that apply them on a variety of state-law grounds, rather than holding that a particular action amounts to a taking and requiring compensation. *See supra,* pp. 7-9. *Williamson County* ensures that States will have the practical ability to enforce such state-law limits on regulatory action. Proper state proceedings may make it unnecessary ever to reach federal takings issues, thus allowing the courts to avoid reaching the constitutional issue at all. *See Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) (a "long-standing principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them"). At a minimum, those state proceedings substantially clarify the actual contours of a federal takings claim. Indeed, as discussed above (*see supra,* p. 10), some States ensure that unnecessary federal constitutional adjudication will be avoided by requiring those seeking compensation to join available state-law claims that could invalidate or require modification of a regulatory action.

In contrast, plaintiffs in federal court would not necessarily be required to join meritorious state-law claims to a Fifth Amendment takings claim. And even where a violation of state law is pleaded and would provide a basis to invalidate or modify a regulatory action, federal judges could choose to decide federal constitutional claims first or to decline jurisdiction over the state-law claims entirely. *See* 28 U.S.C. § 1367(c); *cf. R.R. Comm'n v. Pullman Co.*, 312 U.S.

496, 499 (1941) ("as outsiders without special competence in Texas law," federal courts would leave issues regarding the state railroad commission's authority to the Texas courts).

Second, *Williamson County* supports fiscally responsible government. State procedures can be designed to allow state or local regulators clear opportunities to alter regulatory policies or actions if a state court concludes that they would otherwise require compensation under state law. *See supra,* pp. 11-12. Such procedures, which are most effectively managed within the boundaries of a State's own legal system, can help regulators appropriately balance the true costs and benefits of a regulation. Federal adjudication is not similarly structured to allow specifically for a state or local entity to rescind or modify an action between a finding of liability and an assessment of just compensation. To allow the governmental entity an opportunity to implement its right to rescind or alter an action if it is determined to effect a taking, the federal court might need to insert a lengthy pause between the liability and compensation phases of a single federal jury trial.[13] There is no reason to embark on the project of working out such potential complexities with respect to federal proceedings when state courts already provide an appropriate forum for managing these claims.

Finally, *Williamson County* allows States to consider state administrative law as well as takings challenges in a comprehensive and timely manner,

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[13] *See generally City of Monterey*, 526 U.S. 687 (Seventh Amendment requires jury trial on liability and compensation for inverse condemnation claims in federal court).

providing the certainty that facilitates effective regulation and allows development to proceed. Land-use regulations consist of interrelated parts that interact with each other in complex ways.[14] They are designed to operate as an integrated whole. *See, e.g., Dolan v. City of Tigard*, 512 U.S. 374, 377 (1994) (discussing Oregon's "comprehensive land use management program," including "regulations which are part of an integrated hierarchy of legally binding goals, plans, and regulations"). Where one aspect of such a regime is invalidated, or requires payment for a permanent taking, changes to other aspects may be in order. Efficiently coordinated resolution of such challenges is therefore necessary for effective regulation—and should also serve regulated parties, whose planning and financing benefits from as much certainty as can be provided. *See* Nat'l Assn. of Home Builders Br. 1 (noting dependence on "clear regulatory and legal processes").

Some States have reacted to this reality by designing systems to adjudicate challenges to such programs as quickly as possible. S*ee, e.g.,* Cal. Code Civ. Proc. § 65009 (requiring prompt presentation of suits seeking to void a legislative body's adoption of land-use plan or zoning ordinance); Cal. Gov't Code § 66020(d)(2) (action to void conditions placed on development project "shall take precedence over all other matters of the calendar of the court except

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[14] *See, e.g.,* Cal. Gov't Code §§ 65590, 65590.1 (Mello Act requirement that demolition of low- and moderate-income housing be offset elsewhere in the same city or county); Cal. Pub. Res. Code §§ 30001.5, 30500-30526 (Coastal Act requirements for land use plans and implementing ordinances); *Pac. Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal. 4th 783, 798 (2012) (applying Mello Act and Coastal Act together).

criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings"). Federal courts, which are removed from the day-to-day workings of state government, have different priorities, naturally designed to serve federal goals. *See* Fed. R. Civ. P. 40 ("The court must give priority to actions entitled to priority by a federal statute."). Channeling takings cases that arise from state regulation to state courts allows States to resolve such challenges as part of a comprehensive system for managing important issues of regulation, development, and private property rights that could not be more integral to the complex business of state and local governance.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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