No. 17-647

In the Supreme Court of the United States

ROSE MARY KNICK, PETITIONER

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL.

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

BRIEF FOR THE STATES OF TEXAS AND OKLAHOMA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

The amici States of Texas and Oklahoma (and their agencies and officials) are frequent litigants in takings cases, and property owners in the amici States sue all levels of government—federal, state, and local—seeking just compensation for takings. Since this Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), adjudication of takings cases has been complicated and prolonged when property owners seek a federal forum for resolution of their Fifth Amendment claims. The federal courts are competent to resolve claims under the Fifth Amendment when those claims are ripe for Article III and prudential purposes, and both the amici States and their citizens have an interest in efficient resolution of those claims free of the non-jurisdictional "ripeness" constraint that *Williamson County* erroneously imposed.*

SUMMARY OF ARGUMENT

I. The Court erred in *Williamson County* in stating that Fifth Amendment takings claims are not ripe unless and until they have been adjudicated in state court. That conclusion was not based on the doctrine of ripeness in its jurisdictional sense, and other decisions confirm that a takings claim may be ripe for Article III and prudential purposes even if a state court has not resolved it. In light of its res judicata implications, *Williamson County*'s state-litigation "ripeness" rule essen-

* This amicus curiae brief is filed with written consent of all parties as reflected on the docket.

tially strips federal courts of jurisdiction over specific types of claims. That result is not justified either by the decisions *Williamson County* cited or the Court's broader body of precedent.

II. The Court should overrule the challenged portion of *Williamson County*. That portion of the decision is not only erroneous, but also imposes a substantial impediment to Fifth Amendment plaintiffs' access to lower federal courts. As explained in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 326-27 (2005), that impediment arises by virtue of the full faith and credit statute, which requires federal courts to give preclusive effect to state-court judgments resulting from proceedings mandated by *Williamson County*'s state-litigation requirement. Plaintiffs in other constitutional cases do not face that barrier, and there is no sound basis to retain it in the Fifth Amendment context.

ARGUMENT

I. *Williamson County*'s State-Court Litigation "Ripeness" Requirement Is Erroneous.

When a governmental entity takes private property, the property owner's injury is not speculative. Liability arises when the government interferes with property rights, not when a court later concludes that property was taken. *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304, 319-20 (1987); *see also Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 143 (1974) (explaining that "[w]here the inevitability of the operation of a statute against [a takings plaintiff] is patent, it is irrelevant to the existence of a justiciable

controversy that there will be a time delay before the disputed provisions will come into effect"). A Fifth Amendment takings claim is therefore ripe, as that term is routinely used in justiciability analysis, *see, e.g.*, *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 & n.18 (1993), regardless of whether a state court has already adjudicated such a claim.

In *Williamson County*, however, the Court used the word "ripe" in a different sense to preclude federal-court review of a Fifth Amendment takings claim before exhaustion of state-court remedies. 473 U.S. at 194. The Court has already recognized that *Williamson County*'s "ripeness" requirement "is not, strictly speaking, jurisdictional." *Horne v. Dep't of Agric.*, 569 U.S. 513, 526 (2013) (citing *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 729 & n.10 (2010)). It should now recognize that imposing a state-court litigation requirement was error.

A. The plaintiff landowner in *Williamson County* sued a local land-use planning commission in federal court under 42 U.S.C. § 1983, alleging a Fifth Amendment taking based on the commission's rejection of a preliminary proposal to develop its land. 473 U.S. at 175, 182. The landowner had not requested variances from the commission, appealed the commission's decision to a zoning board of appeals, or sued under state law for inverse condemnation. *Id.* at 188.

Without reaching the question on which certiorari was granted, the Court "examine[d] the procedural posture of [the landowner's] claim" and held that the claim was not ripe for two reasons. *Id.* at 175-76, 185-86. First, the commission had denied only a preliminary

proposal, and because the landowner had not sought variances from the commission, the denial was "not a final, reviewable decision." *Id.* at 186-94. Second, the landowner "did not seek compensation through the procedures [Tennessee] ha[d] provided," including litigation in state court of an inverse-condemnation claim under state law. *Id.* at 194-97.

B. Though presented as a principle of ripeness, the second element of *Williamson County*'s reasoning did not suggest a lack of ripeness under traditional analysis of "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). The first *Williamson County* consideration, whether the defendant has issued a final decision, 473 U.S. at 194, is alone sufficient to inform the fitness inquiry. And requiring a Fifth Amendment plaintiff to obtain a state-court judgment that will resolve the live controversy and have preclusive effect certainly imposes a "hardship," *Abbott Labs.*, 387 U.S. at 149, when the plaintiff seeks a federal forum for resolution of a federal claim. *See infra* Part II.A (discussing the combined effect of *Williamson County*'s state-court litigation requirement and the full faith and credit statute, 28 U.S.C. § 1738).

Williamson County's litigation "ripeness" requirement is more accurately described as a Court-created doctrine stripping lower federal courts of jurisdiction over Fifth Amendment takings claims for just compensation. *See, e.g.*, Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and The Federal System* 1049-1151 (6th ed. 2009) (discussing judicially developed limitations on federal-court jurisdiction). But

neither the cases *Williamson County* relied on nor other decisions of this Court offer adequate support for that doctrine.

1. *Williamson County* cited *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), and *Parratt v. Taylor*, 451 U.S. 527 (1981), as support for the state-court litigation requirement. 473 U.S. at 194-95. That reliance was misplaced in each instance.

a. *Monsanto* held that "[e]quitable relief is not available to enjoin an alleged taking of private property . . . when a suit for compensation can be brought against the sovereign subsequent to the taking." 467 U.S. at 1016. As that holding indicates, the *Monsanto* plaintiff requested equitable relief, not just compensation. *Id.* at 998-99.

Monsanto supports the proposition that "[i]f the government has provided an adequate process for obtaining compensation, and if resort to that process 'yield[s] just compensation,' then the property owner 'has no claim'" for equitable relief "'against the Government' for a taking." *Williamson Cty.*, 473 U.S. at 194-95 (quoting *Monsanto*, 467 U.S. at 1013, 1018 n.21). That conclusion does not provide a basis for *Williamson County*'s litigation "ripeness" requirement for claims seeking just compensation. After all, the Court concluded in *Monsanto* that such a claim could be brought in federal court under the Tucker Act. 467 U.S. at 1017-20.

b. In *Parratt*, an inmate sued prison officials who allegedly failed to follow their own mail-distribution policies, resulting in the loss of packages containing hobby materials that the inmate had purchased. 451 U.S. at

530-31. The Court held that the inmate's due process claim was not actionable under 42 U.S.C. § 1983 because the State provided a postdeprivation remedy for the challenged "random and unauthorized act by a state employee," for which a predeprivation hearing was necessarily unavailable. *Id.* at 541, 543-44. Reasoning by analogy, *Williamson County* applied *Parratt*'s holding to takings claims, concluding that a "State's action is not 'complete' in the sense of causing a constitutional injury 'unless or until the State fails to provide an adequate postdeprivation remedy for the property loss.'" *Williamson Cty.*, 473 U.S. at 195 (quoting *Hudson v. Palmer*, 468 U.S. 517, 532 n.12 (1984)).

Williamson County acknowledged that "[t]he analogy to *Parratt* is imperfect because *Parratt* does not extend to situations . . . in which the deprivation of property is effected pursuant to an established state policy or procedure, and the State could provide predeprivation process." 473 U.S. at 195 n.14. Indeed, because a taking is always the result of an established policy or procedure, a government employee's random act can never be the basis of a takings claim. *See* J. David Breemer, *Overcoming* Williamson County*'s Troubling State Procedures Rule: How the* England *Reservation, Issue Preclusion Exceptions, and the Inadequacy Exception Open the Federal Courthouse Door to Ripe Takings Claims*, 18 J. Land Use & Envtl. L. 209, 229 (2003). For that reason, *Parratt* provides no support for *Williamson County*'s litigation "ripeness" rule.

2. Other decisions of this Court confirm that *Williamson County*'s state-court litigation requirement is

neither a ripeness rule nor a valid rule limiting federal-court jurisdiction.

a. *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), illustrates the first point. If *Williamson County*'s litigation "ripeness" requirement deprived a federal district court of jurisdiction, a takings claim could not be removed to federal court before state litigation was complete because removal requires the federal court to have jurisdiction over the state-court action. 28 U.S.C. § 1441(a). But in *City of Chicago*, the Court permitted removal of a takings claim that a state court had not yet adjudicated. 522 U.S. at 164-65. That disposition was correct because the *City of Chicago* plaintiff alleged a concrete injury flowing from a final decision denying his permit applications. *Id.* at 160. Contrary to the erroneous reasoning of *Williamson County*, the takings claim was therefore ripe. *See First English*, 482 U.S. at 319-20; *Reg'l Rail Reorganization Act Cases*, 419 U.S. at 143.

b. Whenever the Court creates a rule limiting federal-court jurisdiction, it is subject to the challenge that federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821); *see Marshall v. Marshall*, 547 U.S. 293, 298-99 (2006). But even putting that challenge aside, *Williamson County*'s state-court litigation requirement is not a valid jurisdiction-limiting rule.

In the few instances in which the Court has imposed such a rule, it has identified strong historical or federalism-based grounds. In *Ankenbrandt v. Richards*, the Court found that "an understood rule . . . rec-

ognized [since 1859]" justified its conclusion that federal courts lack jurisdiction over state-law questions of domestic relations. 504 U.S. 689, 694-95 (1992) (referencing *Barber v. Barber*, 62 U.S. (21 How.) 582, 584 (1858)); *see id.* at 700-03. The judicially imposed limitations on federal jurisdiction over probate matters stem from the jurisdiction of the English Court of Chancery in 1789. *Markham v. Allen*, 326 U.S. 490, 494 (1946). And the rationale for stripping federal courts of jurisdiction over matters of state taxation is based on a unique combination of history and federalism. *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 102-03, 107-15 (1981).

None of those grounds applies here. *Williamson County*'s state-court litigation requirement was first conceived in that case and is unrelated to any jurisdictional limitations of the Court of Chancery. And although there are some federalism concerns in the takings context, they are not nearly as strong as those the Court relied on in the state-taxation context. *See id.* at 102-03 (citing 28 U.S.C. § 1341 as evidence of congressional "recogni[tion] that the autonomy and fiscal stability of the States survive best when state tax systems are not subject to scrutiny in federal courts"). For those reasons, *Williamson County*'s requirement of state-court litigation is unjustified when viewed as what it is: a Court-imposed rule stripping lower federal courts of jurisdiction they would otherwise possess under ordinary Article III case-or-controversy principles.

II. The Court Should Overrule the Erroneous Portion of *Williamson County*.

Williamson County's litigation "ripeness" analysis has drawn criticism from several current and former Members of the Court. *E.g.*, *Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas, J., joined by Kennedy, J., dissenting from the denial of certiorari); *San Remo Hotel*, 545 U.S. at 351-52 (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring in the judgment). Numerous commentators have also criticized *Williamson County*. *E.g.*, J. David Breemer, *Dying on the Vine: How A Rethinking of "Without Just Compensation" and Takings Remedies Undercuts* Williamson County*'s Ripeness Doctrine*, 42 Vt. L. Rev. 61, 62 & n.2 (2017) (collecting commentators' reactions to *Williamson County*). The question in this case is whether those or other criticisms warrant overruling the challenged portion of *Williamson County*. Pet. i.

As the Court has explained, "[r]evisiting precedent is particularly appropriate where . . . a departure would not upset expectations, the precedent consists of a judge-made rule that was recently adopted to improve the operation of the courts, and experience has pointed up the precedent's shortcomings." *Pearson v. Callahan*, 555 U.S. 223, 233 (2009). These considerations favor overruling the portion of *Williamson County* that imposed the litigation "ripeness" requirement.

A. Under 28 U.S.C. § 1738, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra*

v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). That means that claim preclusion (or "res judicata") bars federal-court litigation of any claim between the same parties that could have been raised in state court, and issue preclusion (or "collateral estoppel") bars federal-court litigation of any issue actually decided in state court. *See id.* at 77 n.1.

"[N]early every State has a compensation provision that is, or has been interpreted to be, very similar to the Just Compensation Clause" of the Fifth Amendment. H.R. Rep. No. 106-518, at 13 (2000). For that reason, takings plaintiffs who seek federal forums for their Fifth Amendment claims encounter a "Catch-22" under *Williamson County*: to ripen their federal claims, they must litigate in state court, but once they litigate in state court, the resulting decisions preclude their claims in federal court. Michael M. Berger & Gideon Kanner, *Shell Game! You Can't Get There from Here: Supreme Court Ripeness Jurisprudence in Takings Cases at Long Last Reaches Self-Parody Stage*, 36 Urb. Law. 671, 677 (2004).

The majority opinion in *San Remo Hotel* highlights this problem, and the Chief Justice's opinion concurring in the judgment correctly identifies *Williamson County* as the obstacle to its resolution. *See San Remo Hotel*, 545 U.S. at 326-48, 348-52. As it stands, the litigation "ripeness" requirement is a significant impediment to takings plaintiffs' access to the lower federal courts—and, in some jurisdictions, to any court at all. As Justice Thomas noted in his dissent from the denial of certiorari in *Arrigoni*, "some federal judges have dismissed [takings] claims, rather than remanding them," after

defendants removed suits "in state court to exhaust . . . remedies as *Williamson County* instructs." 136 S. Ct. at 1411 (citing *Koscielski v. City of Minneapolis*, 435 F.3d 898, 903 (8th Cir. 2006), as an example).

B. Overruling the challenged portion of *Williamson County* will neither deprive litigants of appropriate forums for resolution of Fifth Amendment takings claims nor overwhelm the federal courts. Like lower state courts, lower federal courts are fully capable of considering evidence of property value and adjudicating parties' disputes.

Some decisions have suggested that state courts are better equipped to resolve the issues that often arise in takings cases involving interpretation of municipal land-use regulations. *E.g.*, *San Remo Hotel*, 545 U.S. at 347; *Gardner v. Mayor of Baltimore*, 969 F.2d 63, 67 (4th Cir. 1992). But the same could be said of other issues that federal courts have unquestioned competence to resolve, such as First Amendment and Equal Protection Clause challenges to the same types of regulations. *See, e.g.*, *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 43-46 (1986); *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 435-39 (1985).

As the Court accurately observed in *Dolan v. City of Tigard*, there is "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." 512 U.S. 374, 392 (1994). Because the state-court litigation requirement erroneously "downgraded the protection afforded by the Takings Clause to second-class status," *Arrigoni*, 136 S. Ct. at 1411 (Thomas, J., dissenting

from the denial of certiorari), and adherence to that requirement is not justified on *stare decisis* grounds, the Court should overrule the portion of *Williamson County* that imposed it.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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