No. 25-856

IN THE

Supreme Court of the United States

WILLIAM KING, Individually and on Behalf of Others Similarly Situated as a Class, *et al.*,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

Brief of the Pension Rights Center as *Amicus Curiae* in Support of Petitioner

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INTEREST OF AMICUS CURIAE[1]

The Pension Rights Center (the "Center") is a not-for-profit, nonpartisan consumer organization that was established in 1976, shortly after enactment of the Employee Retirement Income Security Act of 1974 (ERISA). The Center's mission is largely coextensive with that of ERISA: to protect the retirement security of American workers, retirees, and their families. As a part of its work, the Center has advised thousands of retirement plan participants and beneficiaries seeking to enforce their rights or recover benefits under the terms of their plans, in accordance with the statutory protections embodied in ERISA. This case is of interest to the Center because it concerns the Fifth Amendment rights of all pensioners who participate in defined-benefit plans governed by ERISA.

INTRODUCTION

The Court should grant the petition to address an issue of great importance to retirees and pensioners nationwide: whether fully vested rights to pension benefits are subject to constitutional protection under the Takings Clause. The Federal Circuit held that vested entitlements to defined pension benefits are not protected by the Takings Clause because plan participants do not additionally own the underlying assets of such plans. Well-settled takings and ERISA jurisprudence compels the opposite result: fully accrued and vested rights to pension benefits are "private property" that cannot be "taken for public use, without just compensation." U.S. Const. amend. V.

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[1] 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 *amicus* funded its preparation or submission.

To find otherwise would impose an untenable burden on retirees—or, in many cases, their surviving spouses—whenever the government authorizes the expropriation of "guaranteed" and "nonforfeitable" pension benefits for a public purpose, as it did here. Placing these benefits beyond the scope of the Takings Clause incentivizes uncompensated appropriations of vested property rights from those least equipped to absorb the loss. The Federal Circuit's new "underlying assets" test wrongly deprives pensioners of vital Fifth Amendment protection and has no basis in precedent.

SUMMARY OF THE ARGUMENT

Retirees and pensioners are entitled to full constitutional protection, particularly with respect to their hard-earned and vested retirement benefits. The Federal Circuit's decision, however, sets a standard that categorically excludes defined pension benefits from Takings-Clause protection—even when the right to guaranteed payment has fully accrued and vested. The Court should grant the petition and reverse this harmful erosion of rights, for at least these reasons:

1. This case presents a significant constitutional question on which federal appeals courts do not agree, and the Federal Circuit's approach here is incorrect. The Takings Clause does not require ownership of a specific *type* of asset; rather, it guards settled interests in property that have accrued and vested as a matter of law and common understanding. By conditioning constitutional protection for pension benefits on ownership of a pension plan's underlying assets, the Federal Circuit's novel test places an entire class of vested assets beyond the reach of the Takings Clause, based on an impossible standard and contrary to core principles of takings jurisprudence.

2. This case also implicates an important question of federal law because the Federal Circuit's decision effectively deprives pensioners of ERISA's statutory protections, contrary to legislative intent. Congress enacted ERISA to ensure that employees receive the full benefits in retirement that they have been promised. The statute's accrual, vesting, anti-cutback, and funding provisions define when a pension benefit becomes the participant's irrevocable right and shield that right from later impairment. Once accrued, vested benefits are fixed, unconditional, and legally enforceable, independent of continued employment or plan amendments. Permitting the government to freely appropriate vested pension benefits nullifies not just the Takings Clause, but also ERISA itself.

3. This case poses immediate social and economic harm for millions of Americans. The Federal Circuit's decision weakens not only individual retirement security, but also the communal economic stability that reliable pension income provides. Sanctioning the government's free appropriation of vested pension benefits revives the very risks that ERISA was designed to prevent, shifting systemic financial stress to retirees who are least able to absorb the loss.

ARGUMENT

Fully accrued and vested pension benefits are not merely a series of maybes or if-thens. They are legally enforceable rights to fixed monetary payments, earned through years of service, upon which retirees rely for basic needs after leaving the workforce. Congress enacted ERISA specifically to ensure that such benefits are nonforfeitable once vested. This Court's precedent confirms that such vested rights warrant protection under the Takings Clause.

Despite correctly assuming that pension plan participants possess a cognizable property interest in their vested rights to benefits, the Federal Circuit incorrectly held that those vested rights are not protected by the Takings Clause. Under the court's reasoning, the owner of a *claim* to funds held in a defined-benefit plan cannot allege a taking of that entitlement because they do not own the underlying funds themselves. This unprecedented standard leaves all participants in defined-benefit pension plans—by definition—vulnerable to uncompensated appropriations of their vested property rights. That categorical exclusion finds no support in the established principles that guide this Court's interpretations of the Takings Clause or ERISA.

This issue is of pressing importance to millions of Americans who rely on vested promises that pension benefits will be paid in full. As it currently stands, the Federal Circuit's novel, precedential decision deprives pensioners nationwide of important constitutional and federal statutory protections. The petition for a writ of certiorari should be granted.

I. The Federal Circuit's Decision Departs From Fundamental Takings Principles.

The Fifth Amendment provides that "private property" shall not "be taken for public use, without just compensation." U.S. Const. amend. V. That guarantee reflects the Founders' conviction that government exists "to protect property of every sort"—including "the various rights of individuals," such as the right to "enforce private debts with the most exact faith." James Madison, *Property* (Mar. 29, 1792); *see also* James Madison, *Rights* (June 8, 1789); *The Federalist No. 44* (James Madison) ("[E]x-post-facto

laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation."); *Horne v. Department of Agric.*, 576 U.S. 350, 358 (2015) ("The colonists brought the principles of Magna Carta with them to the New World, including that charter's protection against uncompensated takings of personal property.").[2]

The threshold question in any Takings-Clause analysis is "whether the claimant has identified a cognizable property interest." *See* Pet. App. 16a (citing *Hearts Bluff Game Ranch, Inc. v. United States*, 669 F.3d 1326, 1329 (Fed. Cir. 2012)). Answering that question requires consulting "existing rules or understandings" drawn from independent sources—e.g., state laws, traditional property principles, historical practice, and this Court's precedents. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 638 (2023) (quoting *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998)). Such established rules or common understandings dictate whether an interest has *vested* as property[3]—and it is those "vested property rights" that may not be appropriated "except for a public use and upon payment." *Landgraf v. USI Film Prods.*,

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[2] Justice Story later commented that the government should not be permitted to "take away vested rights of property; to take the property of A. and transfer it to B. by a mere legislative act." Joseph Story, 3 *Commentaries on the Constitution of the United States* § 1393 (1833) ("That government can scarcely be deemed to be free, where the rights of property are left solely dependent upon a legislative body, without any restraint. The fundamental maxims of a free government seem to require, that the rights of personal liberty, and private property, should be held sacred.").

[3] *See Vested*, *Black's Law Dictionary* (12th ed. 2024) ("Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute.").

511 U.S. 244, 266 (1994) (quotations omitted); *see also Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) ("When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot devest those rights[.]").

Along those lines, this Court has broadly defined "property interests" as meaning "the security of interests that a person has *already acquired* in specific benefits." *Bd. of Regents of State Colls. v. Roth,* 408 U.S. 564, 576 (1972) (emphasis added). Whether an interest has vested as property depends on the specific, settled nature of the interest—not any particular technical form. *See id.* ("These interests—property interests—may take many forms."); *Horne*, 576 U.S. at 358 ("The Takings Clause ... protects 'private property' without any distinction between different types.").

For example, in *Damon v. Territory of Hawaii*, this Court considered "a peculiar sort" of exclusive right to fish in Hawaii "between the coral reef and the ahupuaa of Moanalua on the main land of the island of Oahu." 194 U.S. 154, 157–158 (1904). Recognizing that "[a] right of this sort is somewhat different from those familiar to the common law," this Court nevertheless held the right "vested" and not subject to retroactive repeal because it was "well known to Hawaii" and "established" under local law, so there was "no more theoretical difficulty in regarding it as property and a vested right" than there was in recognizing an ordinary easement. *Id.* at 158. As Justice Holmes explained: "[I]f it is sanctioned by legislation, if the statutes have erected it into a property right, property it will be, and there is nothing for the courts to do except to recognize it as a right." *Id.*

Another example, particularly relevant here, can be found in the statutory insurance benefits that the Court recognized as protected property in *Lynch v. United States*, 292 U.S. 571, 577 (1934). There, the government had issued war-risk insurance policies under a federal statutory scheme, and this Court acknowledged that beneficiaries of those policies owned "vested rights" in "property" found "in part in the polic[ies], in part in the statutes under which they are issued and the regulations promulgated thereunder." *Id.* Congress then decided, amid the Great Depression, to "relieve[] the United States from all liability on the contracts without making compensation to the beneficiaries." *Id.* at 579–580. That abrogation was unconstitutional because "[v]alid contracts are property," and fiscal urgency is no justification for repudiating vested obligations without compensation. *Id.* at 577, 580.[4]

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[4] The Court's dicta in *Lynch* that "[p]ensions" constitute mere "gratuities" reflects the general understanding at the time—92 years ago—that pension benefits "involve[d] no agreement of parties" and thus carried "no vested right." 292 U.S. at 577. The "gratuity" concept became obsolete within a decade, replaced by a recognition of the need to honor pension promises. *See* James A. Wooten, *"The Most Glorious Story of Failure in the Business": The Studebaker-Packard Corporation and the Origins of ERISA*, 49 Buff. L. Rev. 683, 687–692 (2001). The 1963 Studebaker plant closure in South Bend, Indiana, was the final impetus to drive pension reform that culminated in the enactment of ERISA, which among other things, established mandatory accrual and vesting requirements and treated pension benefits as rights to payment rather than mere gratuities. *See, e.g.*, *Williams v. Rohm & Haas Pension Plan*, 497 F.3d 710, 714 (7th Cir. 2007) ("Employers are not required to provide pension benefits, but when they do, their plans must comply with ERISA, and the promises they make can in no way be considered mere gratuities."); *cf.*, Rev. Rul. 64-70, 1964-1 C.B. 67 ("[I]t is the well

Once a specific financial entitlement has vested, a subsequent "transfer of the interest" from the claimant to another effects a *per se* taking. *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 235 (2003). This Court has never required a takings claimant who has a vested right to payment to also own the means by which payment is made. Quite the contrary: the Court has repeatedly recognized that the Takings Clause requires the government to compensate private parties when the government appropriates vested property rights in monetary payments. *See, e.g.*, *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 614 (2013) (funds linked to a bank account); *Brown*, 538 U.S. at 235 (interest on trust accounts); *Phillips*, 524 U.S. at 171–172 (same); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (earnings of an interpleaded fund); *Lynch*, 292 U.S. at 577 (insurance policy payments).[5]

The unifying thread when property interests are protected under the Takings Clause is not technical form of title, but rather the settled expectations that result from owning a vested interest in a specific property right. At that point, an individual has an

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settled position of the Internal Revenue Service that pensions paid by employers to persons by whom services have been rendered are in the nature of additional compensation for such services and are consequently distinguishable from gifts"). Thus, like the war-insurance policies issued in *Lynch*, pension benefits today reflect vested property interests that are derived "in part in the [plans], in part in [ERISA] under which they are issued and the regulations promulgated thereunder." 292 U.S. at 577.

[5] As correctly explained in the Petition, the Federal Circuit's decision "is not consistent with these precedents," as the Court has often recognized *per se* takings where claimants owned only "a contractual right to make a demand on a pool of assets without any other interest in the underlying assets." *See* Pet. 20–24.

ownership interest in the property, and the *per se* rule is simple: "The government must pay for what it takes." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148 (2021).

II. The Federal Circuit's Decision Undermines ERISA's Central Purpose.

Congress enacted ERISA "to prevent the 'great personal tragedy' suffered by employees" who did not receive the benefits they were promised. *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 374 (1980) (citation omitted). Indeed, before ERISA, "some employees were receiving nothing from their plans because the plan cupboards were bare, and locked besides." Norman P. Stein, *Raiders of the Corporate Pension Plan: The Reversion of Excess Plan Assets to the Employer*, 5 Am. J. Tax Pol'y 117, 123 (1986). Vesting terms were "generally severe and restrictive, or nonexistent," resulting in "difficulties and hardships" that left participants vulnerable to "los[ing] their benefits" under oppressive plan terms. S. Rep. No. 93-127, *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4841–4845; H.R. Rep. No. 93-533, *as reprinted in* 1974 U.S.C.C.A.N. 4639, 4643–4644. Even long-serving workers nearing retirement could face vesting requirements a "hypothetical worker could not meet." *See* President's Comm. on Corp. Pension Funds & Other Priv. Ret. & Welfare Programs, *Public Policy and Private Pension Programs* 39 (1965).

The architects of ERISA drew from "the common law of trusts, the law that governed most benefit plans before ERISA's enactment." *Varity Corp. v. Howe*, 516 U.S. 489, 496 (1996). But "trust law does not tell the entire story," as Congress implemented a more-comprehensive federal scheme governing funding, administration, and payment of pension benefits,

which together "reflect a congressional determination that the common law of trusts did not offer completely satisfactory protection." *Id.* at 497. For instance, Congress supplemented fiduciary standards with statutory funding requirements, and an insurance model to ensure benefits would be paid through the plan when possible, or with PBGC support when necessary. 29 U.S.C. §§ 1081, 1301–1310.

ERISA prescribes minimum accrual and vesting rules that clearly define when retirement benefits become the worker's secured entitlement. 29 U.S.C. §§ 1053(a)(2), 1054(b)(1). As this Court has explained, "the concepts of vested rights and nonforfeitable rights are critical to the ERISA scheme." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 510 (1981). ERISA's vesting rules prescribe "the process by which an employee's already-accrued pension account becomes irrevocably his property." *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 749 (2004). Once earned, "the realization of the benefit is no longer contingent" on continued employment; it becomes a "vested property right[]." *Nachman*, 446 U.S. at 378 n.27 (quoting *Nachman Corp. v. Pension Benefit Guar. Corp.*, 592 F.2d 947, 953 (7th Cir. 1979)). Tellingly, nothing in ERISA purports to condition the right to vested benefits on ownership of plan assets.

Once accrued and vested, claims to pension benefits are "nonforfeitable," 29 U.S.C. § 1053(a)(2)(A)(ii), (iii), i.e., unconditional and legally enforceable against the plan, 29 U.S.C. § 1002(19). In fact, participants are guaranteed a "100% interest in the pension benefit." *Alessi*, 451 U.S. at 510 n.6. Congress made that guarantee robust even in stressed settings, including by requiring terminated multiemployer plans "to discharge when due all of the plan's obligations with respect to nonforfeitable benefits." *See* 29 U.S.C.

§§ 1441(c)(1), 1341a; 29 C.F.R. § 4041A.41. ERISA also expressly prohibits cutbacks: accrued benefits typically "may not be decreased by an amendment of the plan." 29 U.S.C. § 1054(g)(1). These provisions reflect the "sweeping assurance" Congress enacted ERISA to provide. *Alessi*, 451 U.S. at 511; *see also Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020).[6]

ERISA also insulates vested benefits from ordinary contractual incidents. For instance, claims for vested pension benefits generally may not be assigned, 29 U.S.C. § 1056(d)(1), and are protected from garnishment, *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 (1988). Such protections reflect Congress's judgment that an entitlement to reliable retirement income, earned over years of service, should not be subject to later renegotiation or erosion simply because the worker separates from employment. *See Heinz*, 541 U.S. at 750 n.5.

It therefore gives ERISA short shrift to describe vested pension rights, for purposes such as those

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[6] The Court's decision in *Thole* underscores (and, in fact, directly relies on) the settled nature of vested, defined-benefit pensions. Participants in a single-employer defined-benefit plan sued for mismanagement, but this Court held they lacked Article III standing because their benefits were guaranteed regardless of plan performance. 590 U.S. at 543 ("The plan participants' benefits are fixed and *will not change*, regardless of how well or poorly the plan is managed." (emphasis added)). But had the petitioners "not received their vested pension benefits," this Court explained, "they would of course" have the requisite concrete interest to support a suit, along with a statutory cause of action in 29 U.S.C. § 1132(a)(1)(B). *Id.* at 542. Here, the participants did not receive their accrued, vested benefits. To the extent the Federal Circuit relied on *Thole*, it was mistaken because *Thole* did not condition vested entitlements to benefits on ownership of underlying plan assets. *Thole* had nothing to do with takings.

presented here, as merely "contractual in nature." *See* Pet. App. 17a. To the contrary, ERISA's vesting and non-forfeitability provisions reflect Congress's determination that ordinary contract and trust arrangements were inadequate to secure workers' retirements. As this Court has emphasized, "there is no doubt about the centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them," as Congress sought to ensure that workers "actually will receive" the benefits they have vested. *Heinz*, 541 U.S. at 743 (citations and alterations omitted).

It would contravene the entire purpose of ERISA, through which Congress intended to protect vested pension rights from post-hoc impairments, to find that there is *no* constitutional takings protection with respect to those same benefits. The government cannot circumvent the constitutional mandate of the Takings Clause based merely on the claim that financial pressure makes cutbacks expedient. *See Lynch*, 292 U.S. at 580. Vested property rights often are the first target when urgency presses, but the Constitution's answer is always the same: the Takings Clause "bar[s] 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." *Tyler*, 598 U.S. at 647 (citation omitted).

III. The Federal Circuit's Decision Poses Immediate Harm To Pensioners And Their Communities.

This case does not merely involve a misapplication of the Takings Clause; it threatens to unravel essential retirement security that Congress enacted ERISA to protect. Congress understood that pension benefits

are deferred compensation, earned over years of service and relied upon in retirement, and that forfeiture or post hoc impairment of those benefits produces acute hardship. Authorizing the government to freely divest pensioners of their vested entitlements to benefits revives the insecurity, unpredictability, and forfeiture that ERISA was designed to eliminate. *See Nachman*, 446 U.S. at 374 (describing the "great personal tragedy" ERISA sought to address); *Alessi*, 451 U.S. at 510–511.

Defined-benefit pensions offer reliable lifetime income that allows retirees to afford basic needs after leaving the workforce.[7] For Americans age 65 and older, pension benefits often represent the dividing line between economic security or hardship.[8] Because pension benefits are deferred rather than paid as wages, pensioners with vested benefits have already forgone opportunities to save or invest those earnings independently. *See Heinz*, 541 U.S. at 743–744. Once retired, many are frequently ill-positioned to replace reductions in pension income through renewed employment or additional savings. *See* H.R. Rep. No. 93-533, *as reprinted in* 1974 U.S.C.C.A.N. at 4644 ("The difficulties and hardships resulting from non-existent or inadequate plan provisions for vesting of benefits have been vividly established by the Committee's studies and hearings."). Consequently, post-vesting impairments threaten to impose severe and often irreversible harms.

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[7] Zhe Li et al., Cong. Rsch. Serv., IF12330, *Retirement Income Security: Issues and Policies* 1 (2023).

[8] Nari Rhee, *Closing the Gap: The Role of Public Pensions in Reducing Retirement Inequality*, Nat'l Inst. Ret. Sec., 1 (Sept. 2023).

These dangers are particularly acute in the context of multiemployer plans, which cover approximately 10 million participants nationwide.[9] Such plans predominate in industries marked by high labor mobility and cyclical employment (e.g., trucking, transportation, manufacturing) where portability of benefits is essential to retirement security.[10] In these sectors, workers depend on multiemployer plans to preserve earned benefits across employers and economic cycles, even as downturns temporarily reduce active contributions.[11] Expropriating those already vested pension benefits without constitutional limits unfairly shifts those systemic pressures onto retirees—the population who may be least able to absorb the loss.

The broader economic consequences extend well beyond individual hardship. Defined-benefit pension payments are a stabilizing force in local and national economies, sustaining consumer demand regardless of market conditions. In 2022 alone, pension benefit expenditures collectively supported 7.1 million jobs, generated $1.5 trillion in total economic output nationwide, and produced $224.3 billion in federal, state, and local tax revenues.[12] Because pension income is steady and predictable, it continues to

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[9] *Introduction to Multiemployer Plans*, Pension Benefit Guar. Corp. (updated Dec. 17, 2022), https://www.pbgc.gov/employers-practitioners/multiemployer/introduction.

[10] *See id.*; Alicia H. Munnell et al., *Multiemployer Pension Plans: Current Status & Future Trends*, Ctr. Ret. Rsch. Bos. Coll., 3–4, 10 (Dec. 2017).

[11] Munnell, *supra* note 10, at 10.

[12] Ilana Boivie & Dan Doonan, *Pensionomics 2025: Measuring the Economic Impact of DB Pension Expenditures*, Nat'l Inst. Ret. Sec., 1–2 (Jan. 2025).

circulate even during economic downturns, stabilizing communities in ways that more volatile retirement income sources cannot.

By placing vested pension benefits categorically outside the Takings Clause, the Federal Circuit's decision in this case invites uncompensated reductions in earned retirement income whenever fiscal or administrative pressures arise. That result squarely conflicts with ERISA's core assurance that vested benefits are nonforfeitable and reliably payable, and it contravenes the Constitution's basic command that public burdens be borne by the public as a whole—not imposed on a discrete and economically vulnerable class of retirees.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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