

No. 25-856

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

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WILLIAM KING, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED AS A CLASS, ET AL.  
*Petitioners,*

*v.*

UNITED STATES

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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**AMICUS BRIEF OF PROFESSOR SAMANTHA  
J. PRINCE SUPPORTING PETITIONERS**

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## INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37, Amicus Curiae Samantha J. Prince respectfully submits this brief *amicus curiae* in support to Petitioners.<sup>1</sup>

Amicus Curiae Samantha J. Prince is an Associate Professor of Law at Penn State Dickinson Law and is widely recognized as an expert in retirement plans and employer-sponsored benefit schemes. Professor Prince's extensive research and scholarship focus on the critical reliance employees place on their retirement plans and how specific plan provisions—particularly 401(k) vesting schedules and their resulting forfeitures—impact the financial security of the modern workforce.

Professor Prince's scholarship appearing in the *Yale Law & Policy Review* and the *Yale Law Journal Forum* demonstrates that 401(k) vesting schedules enable employers to claw back savings from vulnerable employees, exacerbating both economic inequality and systemic retirement insecurity.

Of direct relevance to this Petition, Professor Prince offers expertise in the historical significance of vesting rights and the traditional framework of

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<sup>1</sup> Pursuant to this Court's Rule 37.2, counsel of record for all listed parties received notice at least 10 days prior to the due date of the Amicus Curiae's intention to file this brief.

Pursuant to this Court's Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended the fund the preparation or submission of this brief. No person other than Amicus Curiae or its counsel made a monetary contribution to this brief's preparation or submission.

“nonforfeitable” benefits under ERISA. As recent legislation like the MPRA threatens to alter these settled frameworks, Professor Prince’s perspective will assist this Court in understanding the broader systemic risks of permitting the claw back of vested benefits. She has a deep interest in ensuring that the legal protections intended to secure an American worker’s retirement remain as promised and earned.

## SUMMARY OF ARGUMENT

This Court should grant *certiorari* in this matter because the Federal Circuit has unnecessarily complicated a straightforward application of the Takings Clause of the Fifth Amendment. In doing so, the Federal Circuit has created a split with other circuits, and created uncertainty in takings law, an area it plays an outsized role in interpreting. It also threatens to undermine the vested retirement rights of American workers.

Accrued retirement benefits—whether emanating from defined benefit or defined contribution plans—are vested, nonforfeitable contractual rights to those benefits. American workers have made an exchange of labor for those property rights and then toiled for years to ensure that their rights vest. Vested rights to retirement benefits have a unique status among contract provisions; they represent not just the maturation of a legal milestone, but the point where a worker has fully paid for a benefit through their labor.

The Takings Clause of the Fifth Amendment applies, by its plain text, to the taking of all “private property.” It draws no distinction between real and personal property, or between tangible and intangible. Therefore, when the government directly targets any specific, identifiable, property right—including a vested contractual right—for elimination or diminution, it has effectuated a taking.

These *per se* takings are distinguishable from the countless instances in which federal regulation creates “economic injuries caused by public action,” such as frustrating the purpose of an existing contract, indirectly diminishing the value of that contract, or even

declaring certain categories of contract provisions as against public policy. *See Penn. Cent. Transp. Co. v. New York*, 438 U.S. 104, 122 (1978). When analyzing such regulatory actions, courts engage in a laxer “ad hoc” inquiry into whether the government has “forc[ed] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Penn Central*, 438 U.S. at 122; *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

The Federal Circuit analyzed this case as a regulatory taking by determining that vested contractual rights—which are in and of themselves “private property”—must be linked to a second property interest, and specifically in a piece of tangible property. Neither the text of the Takings Clause nor this Court’s prior jurisprudence supports any such requirement. If anything, vested retirement benefits, which workers have fully paid for through sweat equity, represent property uniquely tied to individual ownership. This Court should grant *certiorari* and hold that when the government directly targets a vested retirement benefit for elimination or diminution, a taking has occurred.

## ARGUMENT

At the core of ERISA-protected employee retirement plans—be they defined benefit or defined contribution plans such as 401(k)s—is the concept that employees have agreed to and then worked for vested benefits. Vesting is a doubly significant milestone. It represents the moments when an employee has paid for their retirement through toil and when “an employee’s already-accrued pension account becomes irrevocably his property.” *Central Laborers’ Pension*

*Fund v. Heinz*, 541 U.S. 739, 749 (2004) *see also, e.g.,* *Portman v. County of Santa Clara*, 995 F.2d 898, 906 (9th Cir. 1993) (holding that “deprivation of *pension* or *disability* benefits amounts to the deprivation of constitutionally protected property”); *Winston v. City of New York*, 759 F.2d 242, 247 (2d Cir. 1985) (holding that a “contractual right [to a pension] is a property interest under State law.”); *Mallette v. Arlington County Employees’ Supplemental Retirement System II*, 91 F.3d 630, 637 (4th Cir. 1996) (finding “a property interest in [] *potential* eligibility for disability retirement benefits . . .”) (emphasis added).

The Takings Clause of the Fifth Amendment applies to all private property, including vested contractual rights. But, here, the Federal Circuit has grafted on a new requirement to the Fifth Amendment by holding that intangible property rights must be linked to a second and specifically-identifiable tangible property right.

This additional precondition has no basis in either the text of the Fifth Amendment or this Court’s takings jurisprudence. It should be rejected on this basis alone. Policy considerations also support its rejection, as its adoption would severely undermine the settled expectations and hard work of the American workforce. Instead, this Court should reaffirm that where the federal government directly diminishes or eliminates the value of a vested retirement benefit, it has engaged in a taking.

**I. The vesting of a retirement benefit creates a uniquely important contractual right.**

This litigation arose after the United States authorized Petitioners' pension fund to cut their vested pensions by more than \$1,000 per month. Vested pensions are contract rights. But to represent them merely as such ignores the economic reality that retirement benefits are akin to deferred wages that employees already earned with their labor. The vesting of a retirement benefit represents not just a maturation of a legal milestone or contract right; it is the point where a worker has fully paid for that property.

In that sense, taking a vested pension is uniquely invasive. It is akin to the government authorizing an employer to claw back a paycheck due for work performed years ago. And because the work has already been rendered, there is no meaningful remedy. Workers have foregone the ability to earn retirement funds elsewhere as they have worked to vest their rights at their current employer. They also suppress their ability to maximize their current pay, trading that value for the value and security of retirement plans. Samantha J. Prince, *Vesting Villainy: The Call to Ban 401(k) Vesting Schedules*, 28 U. PENN. J. OF BUS. L. (forthcoming 2026) (available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=6255718](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6255718)).

Shortfalls in savings—such as when pension plans are reduced—also hurt the public good. When a retiree's settled expectations are upset, they become more reliant on the government. Such reliance does not just harm retirees' dignity—it harms all other taxpayers. Ultimately, introducing volatility hurts employees and, indirectly, all Americans. *See generally*

Samantha J. Prince, *Nest Eggs and Lifelines: The Overlooked Strain of Economic Volatility on 401(K) Participants*, CORP. AND BUS. L. J. 1, 55-56 (2026).

## II. Vested contractual rights are property rights under the Fifth Amendment takings inquiry.

Although Fifth Amendment takings doctrine often refers to “physical” takings, it is equally well-settled takings law that “private property” covers both tangible and intangible property, and specifically includes contractual rights. “Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States.” *Lynch v. United States*, 292 U.S. 571, 579 (1934); 1934); *see also El Paso v. Simmons*, 379 U.S. 497, 533 (1965) (“Contractual rights, this Court has held, are property, and the Fifth Amendment requires that Property shall not be taken for public use without just compensation.”); *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 278 n.31 (1969) (“[W]e have held that ‘valid contracts are property. . . .’”).

Because contract rights are property, they can be subject to a *per se* taking. A *per se* taking occurs when the government commands the relinquishment of funds linked to any specific, indefinable property interest. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 614 (2013); *see also Long Island Water Supply Co. v. Brooklyn*, 166 U.S. 685, 690 (1897) (“[A] contract is property, and, like any other property, may be taken under condemnation proceedings for public use . . . . Its condemnation is, of course, subject to the rule of just compensation.”); *Omnia Commercial Co. v. United States*, 261 U.S. 502, 508 (1923) (Holding that a contract “was property within the meaning of the

Fifth Amendment.”). Because a contractual right is itself a specific, identifiable property interest, the direct diminution or elimination of that right can constitute a *per se* taking.

This logic applies with perhaps special force to vested retirement rights. Vested retirement rights are not merely contractual clauses in a larger employment contract. They are specific exchanges in which an employee agrees to toil for an extended period (and likely take reduced current compensation) to obtain a guaranteed right in deferred wages. It is for this reason that this Court has highlighted the special significance of vesting: it is “the process by which an employee’s already-accrued pension account becomes irrevocably his property.” *Heinz*, 541 U.S. at 749.

**III. The Federal Circuit grafted on an additional requirement that vested retirement benefit property rights be tied to a second piece of tangible property to qualify as a taking.**

Although the Federal Circuit assumed, without deciding, that Petitioners possessed a vested right to their pensions, the court announced that there was a distinction between “[p]hysical or intangible personal property rights on the one hand” and “third-party contract rights on the other.” Pat. App. 20a. It then held that this Court has permitted the federal government broad authority to adopt regulations that have substantial effects on third party contracts without running afoul of constitutional prohibitions. *Id.*

This latter claim is broadly accurate. After all, “[g]overnment hardly could go on if to some extent values incident to property could not be diminished

without paying for every such change in the general law.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922).

Where the Federal Circuit erred is by creating, mostly from whole cloth, a rule that a vested contractual right can be the subject of a takings only if it can be linked to a specific second piece of tangible property—a unique requirement, not imposed on any other form of property. Specifically, the Federal Circuit held that, to be a taking, the contract right must be linked to “specific, identifiable property interests—whether real property or personal property—for its own or a third party’s use.” Pet. App. 26a.

This requirement that a vested contract right be linked to some second, tangible property interest finds no textual support in the Fifth Amendment, which applies, on its face, to all “private property.” U.S. Const. amend. V. Petitioners pointed this fact out, and identified five cases of this Court that they contended supported their position.

The Federal Circuit rejected the Petitioner’s argument, and attempted to reframe each of these cases as “involve[ing] the government’s appropriation of specific physical or intangible property for its own use or the use of others, not the modification of contractual obligations owed by third parties.” Pet. App. 24a. But the Federal Circuit’s attempt to reframe these cases as supporting its atextual requirement fails.

The Federal Circuit began by distinguishing *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), as mandating physical access to commercial farms. Pet. App. 24a. But while that case did involve physical access to property, at no point did this Court deny—

directly or by implication—that intangible property such as a vested contractual right is “private property” within the meaning of the Fifth Amendment.

Instead, this Court in *Cedar Point* framed the distinction between *per se* and regulatory takings as whether the government has directly appropriated private property or merely imposed regulations that incidentally restrict an owner’s ability to use his own property. 594 U.S. at 148. Directly “appropriating private property for itself or a third party” is a taking, full stop. *Id.* In contrast, “imposing regulations that restrict an owner’s ability to use his own property” triggers analysis as a regulatory taking. *Id.*

The relevant inquiry then is whether a property interest has been directly appropriated or merely burdened by regulation. Here, the government’s authorization of an amendment to the pension plans directly and explicitly reduced the value of Petitioner’s vested contractual rights. And thus the Fifth Amendment is implicated.

*Cedar Point* did not impose a requirement that vested contractual rights be backed by a second legal interest in physical property. Indeed, the opinion does not even mention contractual rights or intangible property, at all. While this Court does use the phrase “physical taking,” the Federal Circuit appeared to recognize that *per se* analysis can apply to intangible property. Pet. App. 24a (“Those cases all involved the government’s appropriation of specific physical or intangible property for its own use or the use of others.”). Utterly absent from *Cedar Point* is the suggestion that where the type of intangible property at issue is a vested contract right, that particular type of

property must be backed by a second interest in either physical or intangible property.

The Federal Circuit next characterized two cases, *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980) and *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003), as dealing with contractual rights tied to specific, tangible property because the government had effectuated a taking of money held in deposit. Pet. App. 24. This attempted distinction fails because this Court has held that a bank account itself does not contain “money belonging to the depositor and held by the bank,” but “consists of nothing more or less than a promise to pay, from the bank to the depositor.” *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 21 (1995). What is more, as this Court noted in *Webb*, “none of the creditor claimants had any right to the deposited funds until their claims were recognized and distribution was ordered.” 449 U.S. at 162. The creditors held *at most* a contractual right to eventually receive some form of payment from the bank, not a vested right in any specific money. *Webb* and *Brown* dealt only with the elimination of a promise to pay, not the actual taking of any specific pile of cash belonging to the depositor.

Meanwhile, in distinguishing *Louisville Joint Sock Land Bank v. Radford*, 295 U.S. 555 (1935), the Federal Circuit focused on the fact that a mortgagor who holds “the position of a secured creditor, who has rights in specific property, differs fundamentally from that of an unsecured creditor, who has none.” Pet. App. 25a. But this Court explicitly stated that it did not rely on this distinction, which was relevant only to whether the act fell within Congress’s power to

regulate bankruptcy, and that *Radford* instead was governed by the Fifth Amendment. 295 U.S. at 589.

The reason the act at issue violated the takings clause was, in fact, because it was “bottomed on principles entirely alien to established bankruptcy law” and “specifically directed against mortgagees and other secured creditors, and was enacted for the very purpose of depriving them of the collateral for which they had bargained for.” *Id.* at 555. While in *Radford* this Court did reference “specific property,” it never held that a vested contractual right was not a form of “private property,” as that term is used in the Fifth Amendment. Quite the opposite; it made clear that directly targeting for diminution a bargained-for right violates the takings clause.

And while *Armstrong v. United States*, 364 U.S. 40 (1960) involved the destruction of a physical asset, this Court never held, either explicitly or otherwise, that a vested contractual right could not also be “private property.” Indeed, in that case, the Petitioners’ property consisted of intangible legal rights: liens in hulls and other material for using boats. *Id.* at 47. The government directly destroyed the value of those liens by appropriating the hulls and materials. *Id.* This Court framed the relevant inquiry as whether the government action directly diminished or destroyed private property or did so only as a “consequential incidence” of an otherwise valid regulatory measure. 364 U.S. at 48.

None of the five cases the Federal Circuit discuss stand for the principle that a vested legal right is not a form of “private property.” Instead, they draw a distinction between *per se* takings in which the government directly undermines the value of a property

right, and regulatory takings, where the diminution of a property right is the mere consequential incidence of a valid regulatory measure. Put another way, they do not seek to define the term “private property” at all, but instead address when such property has been “taken for public use.”

These cases support the Petitioners, who no doubt had a vested right in their benefits. The government acted directly to diminish the value of that right.

And while this logic could apply to any vested contractual right, which is itself a form of property, the Federal Circuit’s conclusion that retirement accounts are not linked to an underlying property interest is particularly peculiar. Retirement benefits are a unique exchange in that they vest only after a worker has performed a certain amount of work—and forgone the option of employment elsewhere. They are thus inexorably tied to a specific asset; the employee’s own time and effort.

If some underlying interest independent of a vested contractual right were required to trigger the Fifth Amendment, American workers’ sweat equity, and their settled expectation in receiving a particular retirement benefit, ought to fit that bill. This position is not merely one of opinion. It was the very intent of Congress in enacting ERISA, and the reason that this Court has expressly identified a vested retirement benefit as “irrevocably [a worker’s] property.” *Heinz*, 541 U.S. at 749.

## CONCLUSION

A vested retirement benefit is itself a form of “private property” within the meaning of the Fifth Amendment. The question of whether a taking of that

property is *per se* or must be subject to analysis under the regulatory takings doctrine turns not on whether the benefit can be linked to a second piece of physical property, but on whether the government has directly appropriated the benefit or merely burdened it incidentally by regulation. Because here, the government directly diminished Petitioners' vested retirement benefits, this Court should grant *certiorari* and reverse the decision of the Federal Circuit.

Respectfully submitted.

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