

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 OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that the government's approval of an application to amend a private pension plan is not a physical taking of property.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Federal Claims:

King v. United States, No. 18-1115 (Apr. 20, 2023)

United States Court of Appeals (Fed. Cir.):

King v. United States, No. 23-1956 (Aug. 18, 2025)

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction.....	1
Statement	2
Argument.....	7
Conclusion	15

TABLE OF AUTHORITIES

Cases:

<i>AFT Michigan v. Michigan</i> , 866 N.W.2d 782 (Mich. 2015)	13
<i>Ballinger v. City of Oakland</i> , 24 F.4th 1287 (9th Cir.), cert. denied, 142 S. Ct. 2777 (2022)	12
<i>Brown v. Legal Foundation</i> , 538 U.S. 216 (2003)	10
<i>Cedar Point Nursery v. Hassid</i> , 594 U.S. 139 (2021).....	7, 8
<i>Central Laborers’ Pension Fund v. Heinz</i> , 541 U.S. 739 (2004).....	2
<i>Citizens Bank of Maryland v. Strumpf</i> , 516 U.S. 16 (1995)	10
<i>Commonwealth Edison Co. v. United States</i> , 271 F.3d 1327 (Fed. Cir. 2001) (en banc), cert. denied, 535 U.S. 1096 (2002)	13
<i>Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Trust</i> , 508 U.S. 602 (1993).....	2, 6, 8
<i>Connolly v. Pension Benefit Guar. Corp.</i> , 475 U.S. 211 (1986).....	2, 6, 8, 9, 11
<i>Dandridge v. Williams</i> , 397 U.S. 471 (1970)	13
<i>Dugan v. Rank</i> , 372 U.S. 609 (1963).....	11
<i>Fitchburg Gas & Elec. Light Co. v. Department of Pub. Utils.</i> , 7 N.E.3d 1045 (Mass. 2014).....	12
<i>Herb v. Pitcairn</i> , 324 U.S. 117 (1945).....	13

IV

Cases—Continued:	Page
<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 570 U.S. 595 (2013).....	10
<i>Lynch v. United States</i> , 292 U.S. 571 (1934)	11
<i>McCarthy v. City of Cleveland</i> , 626 F.3d 280 (6th Cir. 2010)	12
<i>Murr v. Wisconsin</i> , 582 U.S. 383 (2017)	7
<i>Penn Cent. Transp. Co. v. New York City</i> , 438 U.S. 104 (1978).....	4, 7, 11
<i>Supervisors v. Stanley</i> , 105 U.S. 305 (1882)	13
<i>Swisher Int’l, Inc. v. Schafer</i> , 550 F.3d 1046 (11th Cir. 2008), cert. denied, 558 U.S. 932 (2009)	12
<i>Thole v. U.S. Bank N.A.</i> , 590 U.S. 538 (2020).....	2, 10
<i>Tyler v. Hennepin County</i> , 598 U.S. 631 (2023).....	12
<i>United Water Conservation Dist. v. United States</i> , 133 F.4th 1050 (Fed. Cir. 2025), cert. denied, No. 25-523 (Mar. 2, 2026)	11
<i>Valancourt Books, LLC v. Garland</i> , 82 F.4th 1222 (D.C. Cir. 2023)	12
<i>Webb’s Fabulous Pharmacies, Inc. v. Beckwith</i> , 449 U.S. 155 (1980).....	10
Constitution and statutes:	
U.S. Const. Amend. V (Just Compensation Clause).....	7
American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4	3, 5, 14
Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 <i>et seq.</i>	2, 3, 8, 9, 11
29 U.S.C. 1054(g)(1)	2
29 U.S.C. 1085(b)(6)	3
29 U.S.C. 1085(e)(9)(A)	3
29 U.S.C. 1085(e)(9)(G)	3

Statutes—Continued:	Page
29 U.S.C. 1085(e)(9)(H).....	3
29 U.S.C. 1305(i) (Supp. III 2021).....	3
29 U.S.C. 1426(b).....	2
29 U.S.C. 1432(a)(2) (Supp. IV 2022).....	3
29 U.S.C. 1432(j)(1) (Supp. IV 2022).....	3
29 U.S.C. 1432(k) (Supp. IV 2022).....	3
29 U.S.C. 1441.....	2
29 U.S.C. 1441(d)(1).....	2
Multiemployer Pension Reform Act of 2014, Pub. L. No. 113-235, Div. O, 128 Stat. 2773.....	3-6, 9

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 151 F.4th 1348. The memorandum opinion of the Court of Federal Claims (Pet. App. 36a-115a) is reported at 165 Fed. Cl. 613. Prior memorandum opinions of the Court of Federal Claims are reported at 159 Fed. Cl. 450 and available at 2022 WL 3716442.

JURISDICTION

The judgment of the court of appeals was entered on August 18, 2025. On November 4, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including January 15, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, “provide[s] comprehensive regulation for private pension plans.” *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 214 (1986). A pension plan is “in the nature of a contract” through which employers agree to provide benefits to participants (employees) and their beneficiaries. *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 542-543 (2020). ERISA governs both single- and multi-employer plans, the latter of which are common in some industries. See *Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 606 (1993). “The contributions made by employers participating in such a multiemployer plan are pooled in a general fund available to pay any benefit obligation of the plan.” *Id.* at 605.

ERISA generally provides that “[t]he accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in * * * [29 U.S.C.] 1441,” among other exceptions. 29 U.S.C. 1054(g)(1). Section 1441’s express exception to that “anti-cutback rule,” *Central Laborers’ Pension Fund v. Heinz*, 541 U.S. 739, 744 (2004), permits benefit reductions if a multiemployer plan “is insolvent,” 29 U.S.C. 1441(d)(1). But ERISA’s definition of “insolvency” is “significantly narrower than the definition of the term in the Bankruptcy Code, as it d[oes] not focus on the long-term shortfall of a plan’s assets compared to its liabilities.” Pet. App. 8a (citing 29 U.S.C. 1426(b)). “The result,” until recent amendments to ERISA, “was that a plan with a long-term shortfall was still permitted, indeed required, to pay current benefits, exacerbating that long-term shortfall * * * at the expense of future beneficiaries.” *Id.* at 8a-9a.

The Multiemployer Pension Reform Act of 2014 (MPRA), Pub. L. No. 113-235, Div. O, 128 Stat. 2773, however, effectively “provide[s] an expanded statutory exception to the anti-cutback rule” by permitting benefit reductions if a plan “is projected to become insolvent” within 14 years (even if it does not yet meet ERISA’s narrow definition of insolvency). Pet. App. 9a-10a (quoting 29 U.S.C. 1085(b)(6)); see 29 U.S.C. 1085(e)(9)(A). The MPRA subjects those benefit reductions to various conditions, including a requirement for approval by the Department of the Treasury through notice-and-comment proceedings and an opportunity for participants and beneficiaries to vote on proposed reductions. 29 U.S.C. 1085(e)(9)(G) and (H); see Pet. App. 10a-11a.

Congress further amended ERISA by enacting the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4. That Act directed the government to assist struggling multiemployer pension plans by providing a lump-sum payment sufficient “to pay all benefits due” through the year 2051, including the “reinstatement” of any benefits previously reduced under the MPRA. 29 U.S.C. 1432(j)(1) and (k) (Supp. IV 2022). The financial assistance is generally not subject to repayment and is funded with taxpayer money. See 29 U.S.C. 1305(i) (Supp. III 2021); 29 U.S.C. 1432(a)(2) (Supp. IV 2022).

2. Petitioners are participants in the New York State Teamsters Conference Pension and Retirement Fund (Plan), a private multiemployer pension plan. Pet. App. 12a-13a. Under the governing plan documents, participating employers contribute money to a “Fund Estate” that the Plan’s trustees “receive and hold.” C.A. App. 12,891-12,892. Half of the trustees are selected by the employers and half by the labor unions representing the employees. Pet. App. 41a. The trustees are entrusted

with “[t]he general administration of the Plan and the responsibility for carrying out [its] provisions,” C.A. App. 12,810, “in accordance with * * * ERISA,” *id.* at 12,761. The trustees have “power to suspend payment of pension or retirement benefits * * * for such periods of time as in their judgment shall be necessary, should the financial condition of the [Plan] require it,” *id.* at 12,903, and to “modify or amend” the Plan, *id.* at 12,813.

The Plan provides that no person, including a participant, “shall have any right, title or interest in or to the Fund Estate or any part thereof, except the right” to receive “benefits, subject to such terms and conditions as the Trustees shall have determined for entitlement thereto, and further subject to the limitations, terms and conditions that may or shall be specified in the [Plan] or in any amendment or amendments thereto.” C.A. App. 12,894. Benefits “shall be reduced” if funds are “insufficient.” Pet. App. 43a (citation omitted).

In 2017, the trustees projected that the Plan would become insolvent by 2026 if it continued to pay benefits at then-current levels. Pet. App. 13a. To avoid that result, the trustees applied to the Department of the Treasury to reduce benefits under the MPRA. *Ibid.* Following notice, comment, and a vote by participants and beneficiaries, the Department approved the application, and the trustees amended the Plan accordingly. *Ibid.*

3. a. In 2018, petitioners sued the United States in the Court of Federal Claims to challenge the government’s approval of the application to amend the Plan under the MPRA. Pet. App. 13a. Petitioners allege (*id.* at 13a, 28-29a) that the government’s action constituted either an “uncompensated physical taking” or alternatively a “regulatory taking” under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

The Court of Federal Claims determined that petitioners have identified a constitutionally cognizable property interest in receiving their vested pension benefits. 159 Fed. Cl. 450, 456. The court also granted petitioners' motion to certify a class of similarly situated participants and beneficiaries, 2022 WL 3716442, at *1-*2, *6, although no class notice was undertaken and no one opted in to the class, Pet. ii; Pet. App. 14a n.8.

While the litigation was ongoing, Congress enacted the American Rescue Plan Act of 2021. See p. 3, *supra*. Invoking that Act, the Plan's trustees applied for and received more than \$1.3 billion in financial assistance from the government. Gov't C.A. Br. 14-15. That assistance generally restored benefits to the levels they were at before the 2017 Plan amendment that petitioners challenge, and payments were made to reinstate the amounts previously withheld under the MPRA. *Ibid.*; Pet. App. 37a. Consistent with the Act, however, the government did not pay interest on previously withheld amounts, nor did it restore benefits for participants and beneficiaries who died between 2017 and 2022. Pet. App. 37a.

b. The Court of Federal Claims then granted the government's motion for summary judgment and denied petitioners' cross-motion. Pet. App. 37a-115a. The court held that "[t]he physical-takings test is inapplicable to [petitioners'] claims because the federal government has neither appropriated [their] property nor occupied it." *Id.* at 38a. The court also held that, "[u]nder the Penn Central factors, [petitioners] have not demonstrated that a regulatory taking occurred." *Ibid.* The court concluded that the government "therefore has not violated the takings clause." *Ibid.*

4. The court of appeals affirmed in a unanimous decision. Pet. App. 1a-35a. The court "assume[d], without

deciding, that [petitioners] have identified a cognizable contract right under the Plan documents, which constitutes property for purposes of a takings analysis, though they do not hold a property interest in the assets of the Plan itself.” *Id.* at 17a (citation omitted). Even on that assumption, the court held that the challenged action “was not a physical taking and plaintiffs did not prove it was a regulatory taking.” *Id.* at 2a.

The court of appeals explained that under this Court’s precedents, “the federal government has broad authority to adopt regulations modifying the rights and obligations under third-party contracts without running afoul of constitutional prohibitions.” Pet. App. 20a. “Not surprisingly, and of crucial relevance to the issue before us today, these principles have been extended to contract rights relating to pension plans,” as to which this Court has repeatedly considered takings claims under a “regulatory takings framework.” *Id.* at 22a-23a. The court of appeals concluded that the reduction of benefits under the MPRA, as challenged by petitioners, “is precisely the kind of legislative intervention that has historically been analyzed under the regulatory, not physical, takings analysis.” *Id.* at 27a (citing, *inter alia*, *Connolly*, 475 U.S. at 224-228, and *Concrete Pipe*, 508 U.S. at 643-647). The court was “unpersuaded” by petitioners’ reliance on cases from other contexts that “all involved the government’s appropriation of specific physical or intangible property for its own use or the use of others,” which “is not what occurred with the enactment of the MPRA or its application to the Plan.” *Id.* at 24a, 26a. The court thus “h[e]ld that there is no physical taking here.” *Id.* at 27a.

The court of appeals also conducted a regulatory-takings analysis and “conclude[d] that the three Penn

Central factors weigh in favor of the government.” Pet. App. 34a. The court thus held that “there was no regulatory taking,” either. *Ibid.*

ARGUMENT

The court of appeals correctly held that the approval of an application to amend petitioners’ pension plan was not a physical, or *per se*, taking. That decision does not conflict with any decision of this Court, another court of appeals, or a state court of last resort. In any event, this case would be a poor vehicle for review because petitioners’ claim also fails for the antecedent reason that they lack a cognizable property interest—an alternative argument advanced by the government below that the court of appeals did not need to reach—and because subsequent legislation has greatly reduced the practical stakes of petitioners’ claim. Further review is unwarranted.

1. The decision below is correct.

a. The Just Compensation Clause of the Fifth Amendment provides: “[N]or shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V. Under this Court’s precedents, the standard for determining whether a governmental action effects a taking depends on the nature of the action.

“When the government physically acquires private property for a public use,” the Court applies “a simple, *per se* rule: The government must pay for what it takes.” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147-148 (2021). But “a different standard applies,” *id.* at 148, when the government instead imposes “regulatory burdens on private property,” *Murr v. Wisconsin*, 582 U.S. 383, 392 (2017). In those “regulatory takings” cases, the Court “has generally applied the flexible test developed” in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), which “balanc[es] factors such as the eco-

conomic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action.” *Cedar Point*, 594 U.S. at 148-149 (citation omitted).

In the specific context of ERISA provisions governing payment obligations in private pension plans, this Court has twice “reject[ed]” the “contention that the appropriate analytical framework is the one employed in [the Court’s] cases dealing with permanent physical occupation or destruction of economically beneficial use of real property.” *Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 643 (1993). First, *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986), rejected a takings challenge to ERISA provisions “requiring employers to transfer their assets for the private use of pension trusts.” *Id.* at 221. The Court explained that “under [ERISA, as amended], the Government does not physically invade or permanently appropriate any of the employer’s assets for its own use,” but “[i]nstead * * * safeguards the participants in multiemployer pension plans” as part of “a public program that adjusts the benefits and burdens of economic life to promote the common good.” *Id.* at 225. The Court therefore applied a *Penn Central* regulatory-takings analysis and found that there had been no taking. *Id.* at 224-228. And *Concrete Pipe* rejected a similar challenge for similar reasons, reaffirming that the “test for regulatory taking” controlled and that the Court would not “shoehorn” the plaintiffs’ claim into a physical-taking framework. 508 U.S. at 643-644 (citation omitted).

Connolly and *Concrete Pipe* built on analogous precedents rejecting takings challenges to other legislation that, like ERISA, affected rights in contracts between

private parties. See *Connolly*, 475 U.S. at 224-225 (citing cases); Pet. App. 20a-22a (same). As those cases illustrate, “[i]n the course of regulating commercial and other human affairs, Congress routinely creates burdens for some that directly benefit others,” and “the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking.” *Connolly*, 475 U.S. at 223-224. Where “the United States has taken nothing for its own use, and only has nullified a contractual provision * * * by imposing an additional obligation that is otherwise within the power of Congress to impose,” there is no taking. *Id.* at 224. Those cases, too, are incompatible with the theory that such government action is “always” (or *per se*) a taking, which “would prove too much” and contravene a host of prior decisions. *Id.* at 222-223.

In this case, the court of appeals correctly applied *Connolly*, *Concrete Pipe*, and related precedents to reject petitioners’ contention that “they have suffered a physical taking because they possess a ‘right to unreduced benefits under their vested pensions,’ and [petitioners’] contract rights were modified in order to benefit other plan beneficiaries.” Pet. App. 19a (citation omitted). That challenged action under the MPRA “is precisely the kind of legislative intervention that has historically been analyzed under the regulatory, not physical, takings analysis.” *Id.* at 27a. And petitioners do not seek review of the court’s holding that their alternative regulatory-taking claim fails as a matter of law. See Pet. i; pp. 6-7, *supra*.

b. The petition for a writ of certiorari does not address *Connolly*, *Concrete Pipe*, or the other takings cases involving congressional alteration of private contracts on which the decision below rested. Instead, petitioners pri-

marily rely (Pet. 2, 15-19, 22) on three inapposite cases from other contexts: *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), *Brown v. Legal Foundation*, 538 U.S. 216 (2003), and *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013). But, as the court of appeals explained, *Webb’s* and *Brown* “involved the government’s appropriation of specific physical or intangible property for its own use or the use of others,” Pet. App. 24a—specifically, the government’s seizure for itself of “interest” that was the “property” of the plaintiffs who owned the principal, *Brown*, 538 U.S. at 220 (citation omitted); see *Webb’s*, 449 U.S. at 155. “That is not what occurred with the enactment of the MPRA or its application to the Plan,” because petitioners “do not hold a property interest in the underlying assets of the Plan, only a contractual right, making them akin to unsecured creditors.” Pet. App. 26a (citing *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 543 (2020)). *Koontz* is also distinguishable. There, this Court applied unconstitutional-conditions doctrine to a case whose “fulcrum” was a “direct link between the government’s demand and a specific parcel of real property,” which is not present here. *Koontz*, 570 U.S. at 614. “Critically, the claimant in *Koontz* owned the affected property, unlike [petitioners], who have no ownership right in the funds of the Plan.” Pet. App. 26a; see p. 4, *supra*.

Petitioners also now suggest (Pet. 21-24) that the court of appeals’ decision conflicts with three of this Court’s cases from the banking, insurance, and water-rights contexts. Those cases are likewise inapposite, which is presumably why petitioners did not cite them below. *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16 (1995), was a statutory-interpretation case about bank accounts, which did not address takings at all (much less

the distinction between physical and regulatory takings). In *Lynch v. United States*, 292 U.S. 571 (1934), the Court addressed a “due process” claim involving insurance contracts “entered into by the United States” (as the insurer), not a takings claim involving a contract, as here, between private parties. *Id.* at 575-576. And the opinion in *Dugan v. Rank*, 372 U.S. 609 (1963), “d[id] not acknowledge any distinction between physical and regulatory takings.” *United Water Conservation Dist. v. United States*, 133 F.4th 1050, 1058 (Fed. Cir. 2025), cert. denied, No. 25-523 (Mar. 2, 2026). To the extent that *Dugan* engaged in any takings analysis, it was dicta. See 372 U.S. at 626 (“[W]e make clear that we do not in any way pass upon or indicate any view regarding the validity of respondents’ water right claims.”). Moreover, *Dugan*’s reasoning was consistent with the view that a dam’s operation had effected a regulatory, rather than a physical, taking. *Id.* at 625 (noting that downstream users had been deprived of the “profitable use” of their riparian rights) (citation omitted).

Nor are petitioners correct in contending (Pet. 24-28) that the decision below portends a disruptive change from existing practice. This Court has long applied regulatory-takings analysis to a variety of areas in which “Congress routinely creates burdens for some that directly benefit others.” *Connolly*, 475 U.S. at 223; see *id.* at 224-225 (citing *Penn Central*, 438 U.S. at 124). It is petitioners’ contrary theory of *per se* takings, not the decision below, that is “inconsistent with [the Court’s] prior Takings Clause cases.” *Id.* at 224.

2. Petitioners fail to identify any conflict in the lower courts on the question presented. They erroneously rely (Pet. 15-18) on a series of inapposite circuit and state-court cases, none of which arose in the ERISA context

or addressed an analogous claim. The only one of those cases that even sustained a takings claim, *Valancourt Books, LLC v. Garland*, 82 F.4th 1222 (D.C. Cir. 2023), held that a quite different statute “requiring copyright owners to provide physical copies of books * * * ‘effects a classic taking in which the government directly appropriates private property for its own use.’” *Id.* at 1231 (brackets and some internal quotation marks omitted) (quoting *Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023)). But here, the government neither requisitioned physical property nor appropriated anything for its own use. See pp. 8-10, *supra*.

Petitioners’ other cited cases are also far afield and do not conflict with one another or with the decision below. In *Swisher International, Inc. v. Schafer*, 550 F.3d 1046 (11th Cir. 2008), cert. denied, 558 U.S. 932 (2009), the court did not address the distinction between physical and regulatory takings; it rejected a challenge to a tobacco-regulation scheme on the antecedent ground that “there is no semblance of a property interest involved.” *Id.* at 1055 n.6; see *id.* at 1056-1057. Likewise, the remaining cases in petitioners’ putative “camps” (Pet. 16) all relied on similar reasoning to reject challenges to other regulatory schemes, in consensus with one another and the Federal Circuit. See *McCarthy v. City of Cleveland*, 626 F.3d 280, 285-286 (6th Cir. 2010) (in the context of a traffic ordinance, agreeing with the “uniform[.]” view of *Swisher* and “all circuits” that a takings claim fails absent a cognizable “‘property interest’”) (quoting *Swisher*, 550 F.3d at 1057); *Ballinger v. City of Oakland*, 24 F.4th 1287, 1295-1296 (9th Cir.) (similar, relying on *Swisher* and *McCarthy* to reject takings challenge to tenancy regulation), cert. denied, 142 S. Ct. 2777 (2022); *Fitchburg Gas & Elec. Light Co. v.*

Department of Pub. Utils., 7 N.E.3d 1045, 1056 (Mass. 2014) (rejecting takings challenge to public-utility regulation, “guided by” *McCarthy* and *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1329, 1340 (Fed. Cir. 2001) (en banc), cert. denied, 535 U.S. 1096 (2002)).*

Contrary to petitioners’ assertion (Pet. 18), none of those cases suggests that petitioners’ physical-takings claim would have succeeded in any other court.

3. At all events, this case would be an unsuitable vehicle to address the question presented for two reasons.

First, petitioners’ takings claim fails on alternative grounds that were advanced by the government below but were not addressed by the court of appeals. See *Dandridge v. Williams*, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below). This Court does not grant a writ of certiorari to “decide abstract questions of law * * * which, if decided either way, affect no right” of the parties. *Supervisors v. Stanley*, 105 U.S. 305, 311 (1882); see *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (“[O]ur power is to correct wrong judgments, not to revise opinions.”). The government argued below that petitioners have failed to identify a cognizable property interest in their contractual rights to particular benefit levels under the Plan—a failure that would independently doom their claim regardless of whether physical-takings analysis applies. See Gov’t C.A. Br. 20-30 (urging affirmance on that ground); contra Pet. 28 (incorrectly as-

* Nor did *AFT Michigan v. Michigan*, 866 N.W.2d 782 (Mich. 2015), address the distinction between physical and regulatory takings. Instead, it rejected a challenge to a “voluntary” state-pension program on the antecedent ground that “the state does not ‘take’ property that is voluntarily given.” *Id.* at 795, 802.

serting that the government “did not” raise that issue “on appeal”). Because the court of appeals merely “assume[d], without deciding,” that petitioners have a property interest, that issue would still need to be resolved in the Federal Circuit in other cases (or on any potential remand in this case). Pet. App. 17a. Given the court of appeals’ reservation of that significant threshold issue, this Court should await further percolation before addressing a downstream question that may well prove academic.

Second, Congress’s enactment of the American Rescue Plan Act of 2021, while this litigation was pending, has greatly decreased the practical stakes of this case. Under that Act, the government has now paid the Plan more than \$1.3 billion, which is projected to ensure the Plan’s solvency through 2051 and has already provided for the restoration of most of the benefit reductions that petitioners brought this suit to challenge. See p. 5, *supra*. Petitioners’ suit has thereby become a “less significant” dispute over “interest on the amounts withheld while the benefit cuts were in effect” and over benefits for the subset of potential class members (not including the named plaintiffs) who died between 2017 and 2022. Pet. App. 37a, 95a. Those practical developments ameliorating petitioners’ grievances also militate against further review, even though they do not “fully moot [petitioners’] claims.” *Id.* at 57a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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