

No. 25-965

In the Supreme Court of the United States

DANIEL GRAND,

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Respondents.

*On Writ of Certiorari
to the United States Court of
Appeals for the Sixth Circuit*

**BRIEF AMICUS CURIAE OF
PACIFIC LEGAL FOUNDATION,
TEDFORD'S TENANCY, LLC, AND
GARNELL WALLS IN SUPPORT
OF PETITIONER**

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QUESTION PRESENTED

Whether the First Amendment's established chilling-effect doctrine—under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury—is displaced by *Williamson County*'s land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.

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IDENTITY AND INTEREST OF AMICI CURIAE¹

Pacific Legal Foundation (PLF) is a nonprofit, non-partisan public-interest law firm that has defended individual liberty and limited government since 1973. PLF has litigated tirelessly on behalf of property owners whose takings claims are sent to procedural purgatory, including victorious appearances before this Court in cases such as *Knick v. Township of Scott*, 588 U.S. 180 (2019), and *Pakdel v. City & County of San Francisco*, 594 U.S. 474 (2021), and currently represents co-amici Tedford’s Tenancy and Garnell Walls on petitions presently pending, who, like Petitioner in this case, are victims of the “final decision” ripeness rules.

Tedford’s Tenancy, LLC, owns a 100-year-old, multi-family, mixed used building in Gramercy Park, Manhattan. The principal owners are Lynette Amico Ciner and Richard Ciner and the property has been in Lynette’s family since the 1940s. The Ciners intend to restore the building to its former glory, move back to New York, and take up residence in one of the building’s apartments. However, the City caps the rent, for all six of the one- and two-bedroom apartments *combined*, at \$2,584 per month, or approximately \$430 per apartment. This is substantially below the market rates in this Gramercy neighborhood, where the average rent for a studio apartment is \$3,500; a one-bedroom apartment is \$4,200; and a two-bedroom apartment is \$5,275. In other words, the allowable residential rent for the entire building is less than the market rent for a

¹ Amici curiae state that no counsel for any party authored this brief in whole or in part and that no entity or person other than PLF and its counsel made any monetary contribution toward the preparation or submission of this brief.

single studio apartment. Under no circumstances does the rent exceed operating expenses, and those expenses do not include debt service, necessary maintenance, and improvements. Moreover, the building requires lead paint and asbestos remediation, an additional sprinkler system, the repairing of leaks, and other fixes. These additional expenses would cost at least \$1 million. Bleeding money hand over fist as a direct consequence of New York's price controls, Tedford's Tenancy sued the City of New York for a regulatory taking. They never even made it past the complaint, however, because the courts invoked for "prudential" reasons, the finality rule of *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), to avoid considering their complaint. *Tedford's Tenancy, LLC v. City of New York*, 238 A.D.3d 624 (N.Y. App. Div. 2025). Tedford's Tenancy's petition for writ of certiorari challenging this "prudential" refusal to consider the merits of this case is pending. Docket No. 26-110.

Garnell Walls, a retired mechanic, has owned a vacant lot in Prince George's County, Maryland, for forty years, on which he intends to build his retirement home. He has jumped through all the necessary hoops at a cost exceeding \$40,000 but has yet to break ground because the county will not permit him to dig a well and install an individual septic system. The county's position is dictated by its 2018 Water & Sewer Plan: because of the categorization of Walls' property, it is ineligible for the well and septic system. Thus stymied, Walls sued the county, alleging a regulatory taking. Like the Ciners, Walls never got a chance to make his case. The district court dismissed his case on "prudential" ripeness grounds. The Fourth Circuit Court of Appeals affirmed the dismissal in an opinion

explaining that Walls can only ripen his claim by pursuing legislative amendments to the Water & Sewer Plan to recategorize his property. *Walls v. Prince George's Cnty.*, No. 25-1121, 2026 WL 497988, at *4 (4th Cir. Feb. 23, 2026). Walls, too, seeks relief from this Court, arguing that *Williamson County's* prudential ripeness doctrine wrongly foreclosed his constitutional claims and that property owners are not required to exhaust legislative (i.e., political) remedies. Docket No. 26-107.

Amici urge the Court that, in ruling for Petitioner (as it should), the Court should remain mindful that property owners' rights to be free of uncompensated takings are equal to other rights protected by the Bill of Rights and warrant equal access to the courts. To the extent *Williamson County's* finality ripeness rule is contrary to that fundamental principle, courts should not employ it to dismiss otherwise justiciable constitutional claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

Owners of private property should not be singled out to bear a pleadings burden that is greater than, or distinct from, any other litigant asserting a civil rights claim. The Sixth Circuit erred by viewing the critical question as whether Grand had been involved in a "land use" application, Pet. App. 7a-8a, as opposed to whether he had been injured by government's actions or inaction in violation of his constitutional and statutory rights. But in correcting that error, there is no reason to adopt a rule distinguishing Grand's free exercise, RLUIPA²

² Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*

and related claims, and takings claims; nor hold that property owners are subject to unique requirements that do not apply to others. *See SW Nashville EB Owner, LLC v. Metropolitan Gov't of Nashville & Davidson Cnty.*, No. 25-5781, __ F.4th __, 2026 WL 2364309, at *4 (6th Cir. Aug. 14, 2026) (“‘land-use cases’ come with their own distinct rule for addressing ripeness”). Subjecting property owners to procedural hurdles only they—and no other civil rights claimants—face effectively renders protection of private property a second-class constitutional right. That reality is not abstract, but concrete: The “final decision” requirement incentivizes governments to be opaque when they should be clear, to repeatedly say “maybe” when they mean “no,” and to urge courts to avoid property cases even where they unquestionably have jurisdiction. *See, e.g., Bay-Houston Towing Co. v. United States*, 58 Fed. Cl. 462, 471 (2003) (government has “no incentive to issue a final decision”); *SW Nashville*, 2026 WL 2364309, at *6-7 (government put development on hold for the “‘indefinite’ future,” rendering the property “undevelopable and unsellable.”). Needlessly delaying constitutional and civil rights claimants from having their claims heard on the merits through procedural gamesmanship not only allows governments to violate the First Amendment without consequence, but deters needed development of housing and commercial space and deprives property owners of their right to adjudication of their Fifth Amendment constitutional rights.

Williamson County’s finality ripeness rule, to the extent it diverges from jurisdictional standing requirements, should not govern Free Exercise, RLUIPA, or any other constitutional or civil rights claim, *including* takings claims. The Court should not suggest that

takings claimants are uniquely subject to a requirement that undermines the courts' Article III jurisdiction and duty to resolve disputes. Moreover, this Court should fully and finally reject the trope that "land use" cases are distinctly of local concern, such that federal courts abrogate their jurisdiction to resolve constitutional challenge in favor of deferring to the very government being challenged.

The decision below should be reversed.

ARGUMENT

I. Courts Improperly Invoke *Williamson County*'s Finality Ripeness Rule to Dismiss Otherwise Justiciable Property Rights Cases

For regulatory takings, standing and ripeness are seemingly interrelated. Standing ensures that the property owner has suffered a concrete injury. The claimed injury must not be speculative, hypothetical, or contingent on future events. Thus, final decision ripeness is complementary of, or even duplicative of, standing. If there is a final decision, then the claimed injury-in-fact is concrete and particularized. And if there is no final decision, then the injury is merely speculative or hypothetical. In multiple cases, this Court has equated final decision ripeness with standing and concrete injury. *See Williamson Cnty.*, 473 U.S. at 193 ("the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury"); *Horne v. Dep't of Agric.*, 569 U.S. 513, 525 (2013) (final decision ripeness is based on whether the owner had been injured by the government's action and suffered a concrete injury).

But the overlap between standing and ripeness can disappear when ripeness is deemed prudential. *See, e.g., Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 733 (1997); *id.* at 734 and n.7 (ripeness is “drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction”) (citing *Reno v. Cath. Social Servs., Inc.*, 509 U.S. 43, 57, n.18 (1993)). The prudential designation means that courts can decline to hear a case for reasons that are judicially self-imposed, discretionary, and mutable. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). Under a prudential ripeness doctrine, even if the property owner has established a concrete injury and standing, the court may abdicate its duty to hear an undisputedly justiciable case and demand that the owner undertake additional procedural hurdles. *See, e.g., BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595, 600 (2d Cir. 2024) (“we are free to affirm the district court’s dismissal of a case on prudential-ripeness grounds without first addressing jurisdictional issues such as standing”).

Under the Fifth Amendment the government is liable for regulations that have gone “too far.” *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (“while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”). Property owners bear only a “relatively modest” burden to demonstrate that the “initial decisionmaker” has staked out a “final” position. *Pakdel*, 594 U.S. at 478. It is a *de facto* determination about “how the regulations at issue apply to the particular land in question,” *ibid.* (internal citations omitted), so that the court knows “how far the regulation goes.” *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 348 (1986). Yet, many lower

courts rely on *Williamson County* to demand that property owners seek a different answer to the previously asked question, a process that may involve multiple agencies,³ reapplications,⁴ and appeals,⁵ even though the property owner plausibly alleged the effect of the regulation. See *Hikma Pharms. USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (a claim “that is plausible on its face” proceeds to discovery). Allowing dismissal under these circumstances creates an improper hurdle that serves only to nullify the protections of the Fifth Amendment. See Michael K. Whitman, *The Ripeness Doctrine in the Land-Use Context: The Municipality’s Ally and the*

³ See, e.g., *Haney v. Town of Mashpee*, 70 F.4th 12, 21-22 (1st Cir. 2023) (holding a takings challenge unripe despite two variance denials from the Town Board that precluded the owner from building a single-family home because the property owner did not seek approval from a different body for a separate matter related to the proposed construction of the house).

⁴ See, e.g., *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1229, 1234 (10th Cir. 2021) (owner whose development permit was denied met Article III standing and ripeness standards, but case was “not prudentially ripe” because the city might grant different requests); *PPI Enters., LLC v. Town of Windham*, No. 2022-0707, 2024 WL 397790, at *3 (N.H. Feb. 2, 2024) (property owner’s takings claim was unripe despite two denials of formal complete site plan applications for a development permit because the Town asserted that it would be willing to review yet another site plan, modified in some unspecified way, should the property owner “choose to resubmit” one).

⁵ See, e.g., *DiBiccari v. State*, 352 A.3d 147, 155 (R.I. 2026); *Md. Reclamation Assocs., Inc. v. Harford Cnty.*, 468 Md. 339, 410-11 (2020). Demands that property owners appeal permit denials contradict *Pakdel* and *Williamson County*, both of which consider only whether “the initial decisionmaker has arrived at a definitive position on the issue.” *Pakdel*, 594 U.S. at 478 (citation omitted) (emphasis added); *Williamson Cnty.*, 473 U.S. at 192-93 (same).

Landowner's Nemesis, 29 Urb. Law. 13, 39 (1997) (“a plaintiff property owner should not be required to waste his time and resources in order to obtain an adverse decision that it can prove would have been made if subsequent application were made”).

A ruling whereby First Amendment free exercise and RLUIPA claims are welcomed into federal court should not come at the cost of holding that property owners are subject to a pleadings burden that is greater than any other civil rights litigant or in excess of jurisdictional standing requirements.

II. Federal Courts Should Not Defer to State Courts and Local Governments to Determine Constitutional Cases Involving Property Rights

The federal judiciary’s basic purpose and duty is protecting and vindicating federal constitutional rights. *Marbury v. Madison*, 5 U.S. 137, 178 (1803) (determining whether government action “be in opposition to the constitution” is “the very essence of judicial duty.”); *Zwickler v. Koota*, 389 U.S. 241, 248 (1967) (“escape from that duty is not permissible merely because state courts also have the solemn responsibility, equally with the federal courts, ‘* * * to guard, enforce, and protect every right granted or secured by the constitution of the United States * * *.’”) (citation omitted). Procedural doctrines that effectively bar Americans with federal constitutional and civil rights claims from pursuing vindication in federal courts are hard to reconcile with the judiciary’s fundamental role. Yet many federal courts routinely defer to state courts when constitutional claims involve laws or regulations affecting land use, ostensibly because they are matters of “local” concern.

No such deference is required, *Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971), nor would such a requirement be good policy because zoning is an issue of local concern that must adhere to constitutional guidelines.

This is standard practice. Federal courts frequently resolve local issues that implicate constitutional rights, such as evaluating community standards in matters ranging from obscenity, *United States v. Various Articles of Obscene Merchandise, Schedule No. 1303*, 562 F.2d 185, 189 (2d Cir. 1977), to excessive jury awards, *Brown v. Freedman Baking Co., Inc.*, 810 F.2d 6, 11 (1st Cir. 1987). Analogously, they analyze complex and politically fraught matters involving tribal lands. *Hodel v. Irving*, 481 U.S. 704, 712-13 (1987) (applying *Penn Central* to assess a requirement that title to land within Indian reservations escheat to the tribe upon a landowner's death); *Confederated Tribes of Colville Rsrv. v. United States*, 964 F.2d 1102, 1116 (Fed. Cir. 1992) (taking of water rights involved “complex issues of Indian land law” coupled with “fact-intensive takings jurisprudence seeking just compensation”). Zoning and other property rights-based disputes are no different. See, e.g., *Boraas v. Vill. of Belle Terre*, 476 F.2d 806, 815 (2d Cir. 1973), *rev'd on other grounds*, 416 U.S. 1 (1974) (noting that district court “start[ed] by examin[ing]” the zoning ordinance with reference to “the interest of the local community in the protection and maintenance of the prevailing traditional family pattern”); *Congregation Kol Ami v. Abington Twp.*, 309 F.3d 120, 135 (3d Cir. 2002) (applying “meaningful review” to local zoning ordinance).

The premise that federal court enforcement of federal constitutional rights necessarily interferes

with local policy or decision-making misunderstands of the role of the federal court in administering the Section 1983 remedy. No local government has the right or discretion to disregard the Constitution. *Owen v. City of Independence*, 445 U.S. 622, 647-48 (1980) (“the municipality’s ‘governmental’ immunity is obviously abrogated by the sovereign’s enactment of a statute making it amenable to suit. Section 1983 was just such a statute.”). In these situations, federal court review does not interfere with local policy choices or discretion. *Id.* at 649-50.

When a property owner accuses the government of unconstitutionally interfering with constitutionally-protected property rights, a court’s deference to governmental demands for additional administrative process bypasses the judiciary’s primary purpose to resolve constitutional questions. As Sixth Circuit Judge Kethledge observed: “Federal courts have a ‘virtually unflagging’ obligation to exercise the jurisdiction that Congress has given them. Congress has given us jurisdiction to hear these takings claims. Our constitutional order would be better served, I respectfully suggest, if we simply adjudicated them.” *Lumbard v. City of Ann Arbor*, 913 F.3d 585, 592 (6th Cir. 2019) (Kethledge, J., concurring) (citation omitted).

For all civil rights actions, including property rights, the goal is not to prematurely bar the doors shut but to “to ‘throw open the doors of the United States courts’ to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights.” *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 504 (1982) (referencing Section 1 of the Civil Rights Act of 1871, the precursor to Section 1983); *see also Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 205 (2023)

(Gorsuch, J., concurring in judgment) (28 U.S.C. § 1331, providing that district courts “shall” have jurisdiction over civil actions arising under the Constitution, “is as clear as statutes get.”). Whether courts employ the *Williamson County* finality ripeness doctrine, *Pullman* abstention,⁶ or other prudential, discretionary reasons to avoid deciding takings cases, all of this comes at a dear cost to property owners seeking to vindicate constitutional rights and to the productive use of their land. *Cf. Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 184 (2025) (Procedural “[d]elay upon delay” means “[f]ewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary.”). In short, the Court can and should rule in favor of Grand without throwing property owners under the bus. *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972) (“The right to enjoy property

⁶ *Pullman* abstention cases also improperly rank the protections of the Bill of Rights: federal courts rarely abstain in First Amendment cases, while equally important constitutional rights are shunted to state court. *See City of Houston v. Hill*, 482 U.S. 451, 467 (1987) (collecting cases refusing abstention in First Amendment cases); *Jones v. Coleman*, 848 F.3d 744, 753 (6th Cir. 2017) (noting this Court’s “strong aversion” to *Pullman* abstention in First Amendment cases); *Tran v. Dep’t of Plan. for Cnty. of Maui*, No. 19-00654, 2020 WL 3146584, at *9 (D. Haw. June 12, 2020) (dismissal of First Amendment claim “eliminates concerns about the propriety of *Pullman* abstention” for Fifth Amendment takings claim). There is no constitutional basis for this disparate treatment between takings claims and “challenges to municipal land-use regulations based on the First Amendment, or the Equal Protection Clause.” *San Remo Hotel, L.P. v. City and Cnty. of San Francisco*, 545 U.S. 323, 350-51 (2005) (Rehnquist, C.J., concurring in the judgment) (citations omitted).

without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a ‘personal’ right That rights in property are basic civil rights has long been recognized.”).

CONCLUSION

The First Amendment rights in this case are important and worthy of protection; that protection need not and should not come at the expense of property rights. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994) (property rights are not a “poor relation”).

The decision below should be reversed.

Respectfully submitted,

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