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 FOR THE INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

Other Authorities

INTEREST OF AMICUS CURIAE[1]

The Institute for Justice is a nonprofit, public-interest law firm dedicated to defending the foundations of a free society by securing greater protection for individual liberty. As part of that mission, IJ is a leading national advocate for the rights of ordinary people to use their property in normal, harmless ways to build a life, pursue their dreams, and help their communities. IJ regularly challenges unjust and arbitrary zoning, land-use, and similar requirements that violate those rights under the federal and state constitutions. *See, e.g.*, *Flathead Warming Center v. City of Kalispell*, 756 F. Supp. 3d 985 (D. Mont. 2024) (finding likelihood of success on the merits of a due process claim challenging the arbitrary revocation of a homeless shelter's conditional use permit); *Catherine H. Barber Mem'l Shelter, Inc. v. Town of North Wilkesboro*, 576 F. Supp. 3d 318 (W.D.N.C. 2021) (town violated federal equal protection clause by imposing arbitrary zoning requirements on its only homeless shelter); *Shaw v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2023-01568-COA-R3-CV, 2025 WL 2205914 (Tenn. Ct. App. Aug. 4, 2025) (Nashville violated equal protection by restricting customer visits to some home-based businesses but not others).

In this case, the lower courts wrongly imposed the unique "finality" requirement from *Williamson County Regional Planning Commission v. Hamilton*

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[1] Pursuant to Rule 37.6, Amicus affirms that no counsel for a party authored this brief in whole or part or made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than Amicus made a monetary contribution to its preparation or submission.

Bank, 473 U.S. 172 (1985), to refuse to consider Petitioner's claims. Other lower courts have similarly imposed *Williamson County* finality requirements on a host of constitutional and statutory claims that are in no way related to the narrow class of claims to which *this* Court has applied *Williamson County*. In so doing, the lower courts are refusing to protect constitutional and statutory rights against ripe injuries by effectively "declin[ing] the exercise of jurisdiction." *Cf. Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). The lower courts are thus imperiling these rights and frustrating the work of the Institute.

SUMMARY OF ARGUMENT

Meaningful judicial review of land-use restrictions is essential to ordered liberty. That is because property itself is the mechanism by which people order their lives—and fidelity to the Takings Clause alone warrants scrutinizing government restrictions on the use of property, including land. But land-use restrictions implicate more than property rights; as this case demonstrates, they often implicate other critical rights like religion, speech, association, privacy, etc. The mere fact that a regulation comes in the guise of a "land-use" restriction, therefore, cannot be a reason for courts to avoid scrutinizing it.

Yet lower courts, as exemplified by the decision below, are erroneously withholding review of any land-use restriction, based on an expansion of *Williamson County*'s "finality" rule. This Court derived that rule to apply only to a subset of as-applied takings claims where liability turns on a regulation's economic impact upon a particular parcel, and where a potential discretionary variance, waiver, special permit, or other administrative act might reduce that economic impact. Lower courts, however, are applying it to claims where liability does not turn on economic impact at all—including other kinds of takings claims, other kinds of constitutional claims, as well as statutory claims such as claims invoking the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Fair Housing Act (FHA), and the Americans with Disabilities Act (ADA). The lower courts have thus wrongly converted *Williamson County*'s narrow rule into a broad exhaustion requirement for any case involving "land use."

This development is especially troubling in light of *Williamson County*'s increasingly shaky foundation. This Court has already overruled half of *Williamson County*—that is, its "exhaustion" requirement—while explaining that Section 1983 claims do not require exhaustion. However, *Williamson County* "finality," which supposes that a claimant may not challenge a restriction currently burdening his property unless and until he undergo a process that might result in the government's lifting it, is merely exhaustion by another name.

It is also troubling in light of *Williamson County*'s harmful practical consequences. It is increasingly difficult to build anything, in large part because laws governing land-use are increasingly unpredictable, discretionary, and permission-based. This incentivizes more restrictive default rules, while making it prohibitively expensive to plan projects—which is one reason why there is a nationwide housing shortage. *Williamson County* "finality" further incentivizes this discretionary paradigm, as it signals to government that it may avoid needing to justify its restrictions in court so long as it dangles the possibility of a variance, waiver, etc., however remote.

Accordingly, this Court should construe *Williamson County*'s "finality" rule as narrowly as possible and hold that it does not apply to this case in the first instance. That rule, so long as it survives, should be relegated to the narrow category of as-applied claims that turn on a regulation's economic impact upon a particular parcel. And, in an appropriate future case, this Court should overrule its application even to those claims.

ARGUMENT

I. Meaningful judicial review of land-use restrictions is essential to ordered liberty.

Property cannot be disentangled from liberty. As this Court has explained, there is a "fundamental interdependence" between "personal liberties and property rights," such that distinguishing between the two is a "false dichotomy." *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972). "Individual freedom finds tangible expression in property rights," *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993), and the ability to determine how property will be used is an important component of the liberty property secures.

Indeed, the Takings Clause is important not just because property should be protected for its own sake, but because property is the mechanism by which we secure individual liberty. The Clause was "adopted for protection and security to the rights of the individual as against the government," and it "plac[es] the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them." *Pumpelly v. Green Bay & Miss. Canal Co.*, 80 U.S. (13 Wall.) 166, 177 (1872). Accordingly, this Court has repeatedly explained that the Takings Clause should not be considered "a poor relation" among the Bill of Rights' guarantees. *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019) (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994)). The Takings Clause alone demands that courts exercise meaningful review over governmental restrictions on property, including land.

The stakes in land-use cases, however, extend well beyond the Takings Clause. People necessarily exercise liberty somewhere—that is, on land. They raise their families on land. *See, e.g.*, *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (challenge to law restricting extended family from living within the same dwelling). They form communities on land. *See, e.g.*, *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985) (challenge to permit requirement for special-needs group home). They express themselves on land. *See, e.g.*, *City of Ladue v. Gilleo*, 512 U.S. 43 (1994) (challenge to law restricting display of signs on residential property). They educate their children on land. *Roman Catholic Welfare Corp. of S.F. v. City of Piedmont*, 45 Cal. 2d 325 (1955) (challenge to zoning law prohibiting private schools). They help others on land. *See, e.g.*, *Catherine H. Barber Mem'l Shelter, Inc. v. Town of North Wilkesboro*, 576 F. Supp. 3d 318 (W.D.N.C. 2021) (challenge to requirement that homeless shelter obtain a conditional-use permit).

They earn an honest living on land. *See Shaw v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2023-01568-COA-R3-CV, 2025 WL 2205914 (Tenn. Ct. App. Aug. 4, 2025) (challenge to restriction on home-based businesses). And as the case at bar illustrates, they worship on land.

Our system of ordered liberty, therefore, depends on land-use regulations being subject to meaningful judicial review. Left unchecked, a power to regulate "land use" is a power to regulate virtually all aspects of people's lives. This Court should therefore be skeptical of any doctrine that effectively allows government to avoid justifying land-use regulations in court. But as explained below, *Williamson County* has wrongly resulted in judicial review of land-use claims being uniquely disfavored.

II. Lower courts have dangerously extended *Williamson County*.

Some lower courts, including the ones here, have effectively side-stepped judicial review of any case or controversy touching on "land use" by extending *Williamson County*'s "finality" rule far beyond its stated rationale. This Court fashioned that rule only for a subcategory of as-applied takings claims where liability turns on economic impact, and where this Court has found it necessary to know the full economic burden the government will impose on a particular claimant before deciding whether that burden goes "too far." But some lower courts have transformed that specialized rule into something quite different: a general doctrine disfavoring adjudication of "land-use" cases. These courts are therefore postponing review of perfectly justiciable claims. Claims where liability under the Takings Clause does not rely on any economic-impact inquiry. And claims that are "logically prior to and distinct from the question whether a regulation effects a taking," such as where a regulation cannot be imposed even if just compensation is paid. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005). That expansion finds no support in this Court's cases; it deeply threatens the exercise of ordered liberty; and it warrants correction.

A. *Williamson County*'s rationale applies only to claims where liability turns on a regulation's economic impact upon a specific parcel.

This Court has never announced any special ripeness rule for land-use regulations. Nor has it recognized a special ripeness rule for any claim based on the Takings Clause.[2] Rather, this Court's justification for *Williamson County*'s "finality" rule applies only to one particular kind of claim: an as-applied takings claim where liability turns on the regulation's economic impact upon a specific parcel and where the claimant can undergo a procedure that may lessen that economic impact such that liability is avoided.

Start with *Williamson County* itself. A developer asserted that zoning restrictions prevented it from making "reasonable beneficial use of the property" in light of its investment-backed interest. *Williamson County*, 473 U.S. at 191 & n.12. This Court reasoned that it could not answer whether that was true

[2] That is, other than *Williamson County*'s now-defunct "exhaustion" requirement. *See infra* pt. III(A).

without first knowing the full range of uses the government would permit on the parcel, *i.e.*, any variances the government might grant. *Id*. at 191. The soundness of that reasoning is contestable. *See infra* pt. IV(A) (explaining that *Williamson County*'s "finality" requirement reflects the same fundamental misunderstanding of the Takings Clause as its now-overruled "exhaustion" requirement). But one thing is clear: *Williamson County* does not apply outside a narrow sub-category of as-applied regulatory takings claims.

This Court has consistently cabined *Williamson County* to cases where liability "depend[s] on the extent to which [the owner is] deprived of the economic use of their particular pieces of property," and where that extent might be critically lessened by an available variance. *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). Thus, even for as-applied regulatory takings claims, *Williamson County* has no place where the economic impact of the government's action is sufficiently clear such that the Court may conduct the liability analysis, irrespective of further proceedings. *See, e.g.*, *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739 (1997). As this Court most recently explained, *Williamson County* finality is a "relatively modest" requirement. *Pakdel v. City & County of San Francisco*, 594 U.S. 474, 478–79 (2021).

Thus, under its own terms, *Williamson County* bears no application to claims other than as-applied claims where liability depends on a regulation's economic impact upon a specific parcel. It does not apply to facial claims asserting that a law is inherently invalid, regardless of its economic impact on any particular property. *Yee*, 503 U.S. at 534 (facial challenges are ripe because they assert that a law is invalid "no matter how it is applied"). It does not apply to takings claims (facial or as-applied) that attack the "character" of a regulation—irrespective of its economic impact on property or its interference with investment-backed interests. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982) (finding that "the character of the government action" was "not only [] an important factor in resolving whether the action works a taking but also is determinative"); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 151 (2021) (explaining that *Loretto* found a taking even if there was "only a trivial economic loss"). Logically, it does not apply to *Nollan-Dolan* claims, which assert that a conditional property restriction is insufficiently tailored to mitigating harm arising from its desired use—again, irrespective of its economic impact on property or its interference with investment-backed interests. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 614 (2013) (under *Nollan-Dolan*, courts do "not apply *Penn Central*'s essentially ad hoc, factual inquiry" that asks whether "a regulation is too costly" (cleaned up)). And it does not apply, *a fortiori*, to claims like Grand's, which are not predicated on the Takings Clause at all, much less dependent on the economic impact of the challenged regulation upon property.

B. Lower courts are applying *Williamson County* far beyond its stated rationale.

Some lower courts have nevertheless transformed *Williamson County* into a peculiar ripeness rule that applies to all land-use cases—regardless of the nature of the constitutional or statutory claim. The result? A doctrine untethered from *Williamson County*'s stated rationale, and where courts withhold review of claims, like Grand's, that are clearly justiciable.

This case is a paradigmatic example of just how far courts are stretching *Williamson County*. Grand does not allege that University Heights has gone "too far" in diminishing his property's economic value or frustrating his investment-backed expectations. Grand's claims are not premised on the Takings Clause at all. Rather, he asserts that the City has impermissibly restricted his property's use via a classification that turns on the desired use's religious character. It is apparent that government cannot enforce such a restriction against him. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) ("[A]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue . . . regulates or prohibits conduct because it is undertaken for religious reasons."). Yet the Sixth Circuit refrained from adjudicating the merits—not because it was incapable of doing so, nor because Grand lacks a personal stake in whether a restriction currently burdening his property can be enforced (of course he has a personal stake in that), but because "municipal land-use policy [should] begin[] in local, politically accountable hands." Pet.App.7a.

Unfortunately, Grand's case is not unusual: Courts regularly insert *Williamson County* where it does not belong. That includes *per se* takings claims—*i.e.*, takings claims that attack a regulation for its "character," rather than its economic impact. *See, e.g.*, *Money v. City of San Marcos*, No. 24-50187, 2025 WL

429980, at *3 (5th Cir. Feb. 7, 2025) (stating that *Williamson County*'s "logic does not extend to *per se* takings," but nevertheless recognizing that "circuit precedent requires us to apply the finality requirement to regulatory and *per se* takings claims alike"). That also includes *Nollan-Dolan* claims where, again, the economic impact of the regulation bears no relevance to the liability analysis. *See, e.g.*, *Alto Eldorado P'ship v. County of Santa Fe*, 634 F.3d 1170, 1179 (10th Cir. 2011) (applying "the *Williamson County* requirements" to *Nollan-Dolan* claims), *but see Koontz*, 570 U.S. at 614 (*Nollan-Dolan* claims do not turn on whether "a regulation is too costly"). It further includes discrimination claims, including Equal Protection and FHA claims, *see, e.g.*, *BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595, 598 (2d Cir. 2024), as well as ADA claims, *Chosen Consulting, LLC v. Town Council of Highland*, 148 F.4th 451, 454–59 (7th Cir. 2025). And it includes substantive-due-process claims, such as the right to run an ordinary business. *See, e.g.*, *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 686 (3d Cir. 1991) (claim that city was "arbitrarily and irrationally enforc[ing] fire and building regulations to drive it out of business" was unripe because claimant "did not appeal to the Review Board the citations for violations it received . . . nor the denial of the certificate of occupancy").

To be sure, some courts have properly resisted this trend. *See, e.g.*, *Fowler v. Guerin*, 899 F.3d 1112, 1117 (9th Cir. 2018) ("By its terms, *Williamson County* applies only to regulatory, not *per se*, takings."); *Newberg Crestview, LLC v. City of Newberg*, No. 3:22-cv-1289-AR, 2023 WL 8372167, at *4 (D. Or. Dec. 4, 2023) ("*Williamson County*'s finality requirement does not apply to land-use exaction claims."); *Jackson v. Okaloosa County*, 21 F.3d 1531, 1541 (11th Cir. 1994) (FHA claim was ripe, notwithstanding that plaintiffs did not "complete[] the process of seeking approval from the County Commission"); *Eide v. Sarasota County*, 908 F.2d 716, 724 n.13 (11th Cir. 1990) (*Williamson County*'s "rationale is not applicable to an as applied arbitrary and capricious due process claim").

In much of the country, however, the message is clear: judicial review of land-use claims is uniquely disfavored. Given the importance that "land use" plays in all our daily lives, *supra* pt. I, this development is a serious threat to our system of ordered liberty.

III. This Court should construe *Williamson County* as narrowly as possible and reject its application here.

As the foregoing suggests, this Court should make clear that *Williamson County* finality is a narrow doctrine that has no application to Grand here. As construed by the Sixth Circuit, and by other federal courts, *Williamson County* has become a rule requiring administrative exhaustion of claims that are not otherwise subject to administrative exhaustion requirements.

A. Section 1983 does not require administrative exhaustion.

Whatever the scope of *Williamson County* "finality," it cannot be synonymous with exhaustion. "[E]xhaustion is not a prerequisite to an action under

§ 1983." *Patsy v. Bd. of Regents*, 457 U.S. 496, 500–01 (1982). No state or local remedy "need [] be first sought and refused before the federal one is invoked." *Monroe v. Pape*, 365 U.S. 167, 183 (1961), *overruled in part on other grounds by Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

The no-exhaustion-is-necessary rule is one of substance, not style. An administrative remedy does not cease to be one because the government calls it a "variance," "waiver," "special exception," or "appeal." *McNeese v. Bd. of Educ.*, 373 U.S. 668 (1963) (allowing a Section 1983 action to proceed notwithstanding an unpursued state administrative process that might have afforded relief).

Knick v. Township of Scott, 588 U.S. 180 (2019), confirms that property rights are no exception to that rule. In overruling *Williamson County*'s state-litigation requirement, this Court emphasized that the ordinary rule against exhaustion "is as true for takings claims as for any other claim grounded in the Bill of Rights." *Id.* at 194. Whatever the contours that *Williamson County* "finality" retains after *Knick*, it therefore cannot simply be another name for requiring a Section 1983 plaintiff to exhaust a potential remedy for an injury that already exists. *See Pakdel*, 594 U.S. at 479 (reversing Ninth Circuit for applying the "finality" requirement in a way that effectively requires exhaustion).

The same no-exhaustion-is-necessary rule also holds for Grand's RLUIPA claim. Congress did impose an exhaustion requirement for RLUIPA claims related to prison conditions when it subjected such claims to the Prison Litigation Reform Act of 1995. 42 U.S.C. § 2000cc-2(e); *see Cutter v. Wilkinson*, 544 U.S. 709, 723 n.12 (2005). But Congress pointedly imposed no requirement that administrative remedies be exhausted before a religious land use plaintiff may file suit. 42 U.S.C. § 2000cc-2(a). Accordingly, applying such a requirement on Grand's RLUIPA claim would also be error. *See United States v. City of Walnut*, No. CV 10-6774, 2011 WL 12464619, at *2–4 (C.D. Cal. Jan. 13, 2011).

B. *Williamson County* does not apply here.

Williamson County does not and cannot apply to this case for two reasons.

First, Grand's claim does not assert any theory of liability that turns on the extent to which the government has economically impacted his property. For that reason alone, *Williamson County* has no place here—just as it has no place for takings claims where the theory of liability does not depend on economic impact. *See supra* pt. II(A).

Second, *Williamson County* in this case is effectively an (impermissible) exhaustion requirement. At the time the Complaint was filed, Grand's property was currently burdened by a restriction that (he contends) cannot be constitutionally enforced against him. The Sixth Circuit held that, before he may challenge that restriction, he must first utilize procedures that might result in the City's lifting that restriction. There is a term for that: exhaustion.

Put another way, the relevant "final" decision in this case was the City's decision to set a default rule prohibiting a "house of worship" that (arguably) included Grand's home-based prayer group. The City has included Grand's property within a U-1 district, which specifies that certain uses are permitted as of right but prohibits religious uses absent a Special Use Permit. Pet.App.3a. That restriction does not spring into existence only if the Planning Commission denies a permit application. If Grand obtains a Special Use Permit, the City will have granted permission to engage in a use that it had previously forbidden; it will not thereby have completed some unfinished legislative decision about whether to impose the restriction in the first instance.

The Sixth Circuit therefore looked for "finality" in the wrong place and wrongly imposed an exhaustion requirement. It construed Grand's claim as asserting that the City had wrongfully refused to grant Grand a permit—a claim that would not be ripe unless and until the City issues such a refusal. Pet.App.8a–9a. But Grand makes no such assertion. Rather, he asserts that the City has no authority to enforce its permit restriction against him. There is no question that the existence of that restriction is "final"; the City has enacted it into law. And because that law exists and (arguably) forbade action by Grand, he easily established standing to challenge it. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024) ("Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements. So in those cases, standing is usually easy to establish.").

The cease-and-desist letter confirms this, but it should not obscure the more fundamental point. The City did not need to send Grand a letter to make its ordinance "final." The letter simply confirmed the entirely unsurprising proposition that the City regards its zoning laws as operative and that those laws "arguably" restricted Grand. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 162 (2014) (intended future conduct that is "arguably . . . proscribed by [the] statute" demonstrates a credible threat of enforcement and a ripe claim). The supposed absence of "finality" here arises only because Grand did not seek administrative relief from the prohibition on Grand's use in existing law. But neither Grand, nor any other Section 1983 claimant (including takings claimants), nor any religious land-use claimant under RLUIPA, need seek administrative relief from any law before they may challenge its constitutionality. *See supra* pt. III(A).

* * *

The Sixth Circuit's decision below was error. Grand has not brought any claim that depends on the regulation's economic impact. Accordingly, *Williamson County* does not and cannot apply in this case. By imposing *Williamson County* finality here, the Sixth Circuit wrongly required administrative exhaustion of claims that are not subject to exhaustion.

IV. This Court should overrule *Williamson County* "finality" in an appropriate future case.

The foregoing analysis demonstrates why *Williamson County* finality, under its own rationale, cannot apply here and Grand is entitled to pursue his claims today. And if this Court so determines, it need not proceed into further analysis.

But the foregoing analysis further exposes a core weakness in *Williamson County* "finality": It is, in substance, indistinguishable from an exhaustion requirement. Its logic cannot be reconciled with *Knick*, and it is exacerbating a nationwide trend whereby government overly restricts land use by default to facilitate abusive "discretionary" demands and evade judicial review. This Court should therefore construe *Williamson County* "finality" as narrowly as possible here and, in an appropriate future case, overrule it entirely.

A. *Williamson County* is untenable as a matter of doctrine.

Following *Knick*, *Williamson County* "finality" rests on a shaky foundation. *Knick* determined that *Williamson County*'s state-compensation "exhaustion" rule reflected a fundamental misunderstanding of the Takings Clause: that a takings plaintiff is not really injured unless and until the government denies him a remedy for the injury. 588 U.S. at 191–92. As this Court explained, "[t]he availability of any particular compensation remedy, such as an inverse condemnation claim under state law, cannot infringe or restrict the property owner's federal constitutional claim[.]" *Id.* at 191. Therefore, *Williamson County*'s "exhaustion" requirement—which held that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Takings Clause until it has used the procedure and been denied just compensation"—was untenable. *Id.* at 191, 194–95 (cleaned up).

Williamson County's "finality" rule, which was not challenged and not at issue in *Knick*, 588 U.S. at 188, reflects the same fundamental misunderstanding about the accrual of a takings claim. "Finality" prevents a takings plaintiff from challenging a restriction currently operating on her property because, at some later date, perhaps the government will choose to ignore, modify, or repeal it. *See Williamson County*, 473 U.S. at 193–94 ("[The law] prevents respondent from developing its subdivision without obtaining the necessary variances, but leaves open the possibility that respondent may develop the subdivision according to its plat after obtaining the variances."); *but see Pakdel*, 594 U.S. at 479 ("The Ninth Circuit's demand that a plaintiff seek 'an exemption through the prescribed [state] procedures[]' plainly requires exhaustion." (internal citation omitted)). But if the possibility of a future monetary remedy does not preclude a takings claim because the restriction is operative today, then the possibility that government at some point in the future may choose to lift or modify the restriction should fare no better. Either way, whether the available local procedure might result in a monetary award or in a waiver or modification of the restriction, requiring the owner to undergo that procedure is an exhaustion requirement—a requirement that this Court has emphatically rejected. *Knick*, 588 U.S. at 185 ("The Civil Rights Act of 1871, after all, guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials, and the settled rule is that exhaustion of state remedies is *not* a prerequisite to an action under [42 U.S.C.] § 1983." (internal quotation marks omitted, alteration in original)).

Nor is *Williamson County* necessary to identify genuinely premature takings claims. Ordinary Article III principles already do that work. If government has not imposed the restriction the plaintiff challenges—for example, if the legislature has not yet passed a zoning restriction into law (and perhaps never will), or if the law specifies that the owner may presumptively use his property in the desired way but leaves open a remote possibility that an agency will impose an additional restriction—the owner might have no actual or imminent injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). But when an ordinance itself presently restricts the property, it is axiomatic that there is no uncertainty concerning whether the property is burdened by the restriction. The question is whether that restriction is unconstitutional—and that is a justiciable merits question. Perhaps the claimant cannot show that the restriction fails on the merits. That is a reason for the claimant to lose on the merits, not for the court to avoid reaching them.

Williamson County's "finality" requirement is therefore best understood as an anomalous and unjustifiable restriction on pre-enforcement review for takings claims. Both Section 1983 and *Ex parte Young* allow for prospective relief, including prospective relief against violations of property rights. *Mitchum v. Foster*, 407 U.S. 225, 242 (1972) ("Congress plainly authorized the federal courts to issue injunctions in § 1983 actions, by expressly authorizing a 'suit in equity' as one of the means of redress."); *DeVillier v. Texas*, 601 U.S. 285, 291–92 (2024) (noting "several takings cases where property owners sought injunctions to prevent the Government from interfering with their property rights"); *Ex parte Young*, 209 U.S. 123, 144–45, 167–68 (1908) (explaining that the underlying federal action was a pre-enforcement suit seeking to enjoin state officials from enforcing allegedly confiscatory railroad rates). *Accord Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (reversing denial of preliminary injunction in takings case); *Barber v. Charter Twp. of Springfield*, 31 F.4th 382, 388 (6th Cir. 2022) ("[*Cedar Point*] allowed the plaintiffs to proceed with their motion for a preliminary injunction *even though* union representatives had never set foot on one plaintiff's property."). There is no reason why the ordinary rule for pre-enforcement challenges—that a plaintiff may challenge a law that affects them without first violating it or seeking discretionary permission to escape it, *see Susan B. Anthony List*, 573 U.S. at 158–59—should not likewise apply to claims asserting that a law violates the Takings Clause. *See Knick*, 588 U.S. at 194 (Courts should not "relegate[] the Takings Clause 'to the status of a poor relation' among the provisions of the Bill of Rights.").

B. *Williamson County* is untenable as a matter of practice.

Williamson County (and its expansion in the lower courts) is dangerous enough on its own, considering the importance that land use plays in everyone's daily lives. *See supra* pt. I. Zooming out, however, the picture becomes even bleaker: *Williamson County* is exacerbating a trend where, increasingly, the default rule is that people must obtain discretionary permission to use their land. That is making it ever harder for people to build anything—exacerbating a nationwide housing crisis.

Laws governing the use of land have moved from as-right systems with clear rules to unpredictable discretionary permission-based systems. Zoning laws "are of modern origin" and likely would have been viewed by the founding generation (and the ratifiers of the Fourteenth Amendment) "as arbitrary and oppressive." *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386 (1926). Nevertheless, courts eventually accepted them as a "clear-cut, ex-ante substitute for the unpredictable common law of nuisance" where "objective requirements—use, height, bulk, setbacks, etc.— would be permitted 'as of right.'" Christopher S. Elmendorf & Darien Shanske, *Auctioning the Upzone*, 70 Case W. Res. L. Rev. 513, 520 (2020). *See also Euclid*, 272 U.S. at 387 (analogizing zoning to "the law of nuisances"). But today, land-use regulation "has become thoroughly discretionary, often requiring project-by-project negotiations over design, scale, public benefits, affordable-housing set asides, and so much more." Elmendorf & Shanske, *Auction the Upzone*, *supra* at 520. "The system of local land use regulation as it has developed in U.S. society today is primarily a system of discretionary permit decisions—decisions about conditional use permits (or their equivalents), variances, subdivision maps or plats (or their equivalents), planned development approvals, development agreements, site plans, and in some cases building permits, construction permits, or grading permits." Craig Anthony Arnold, *Is Wet Growth Smarter Than Smart Growth?: The Fragmentation and Integration of Land Use and Water*, 35 Env't L. Rep. 10152, 10174 (2005).

This discretion-based system of no clear rules "means that, absent some form of discretionary relief, new development is nearly impossible" in many areas. John J. Infranca, *Decoding Land Use Discretion*, 110 Iowa L. Rev. 1755, 1757 (2025). This includes not just "large [or] controversial" projects but also "small or routine" ones and "for a variety of mundane reasons." Katherine Levine Einstein et al., *Neighborhood Defenders, Participatory Politics and America's Housing Crisis* 81–82 (2019). Some form of special government permission—which must be applied for, negotiated for, and often paid for—is required for almost any project. That "raises the costs of knowing what development rights one buys with the purchase of a lot." David Schleicher & Roderick M. Hills, Jr., *Can 'Planning' Deregulate Land Use?*, Regulation, Fall 2015, at 36, 39–40.

These costs are bad enough for those who can afford them; they're even worse for those who cannot. This Court has already recognized that landowners are "especially vulnerable" to extortionate demands in such a system. *Koontz*, 570 U.S. at 604–05.

Moreover, our increasingly individualized, parcel-by-parcel bargaining system results in arbitrary decision making, where politically powerful interests hijack the process and leave political outsiders—the poor; minorities (often racial, but, as here, also religious); and those that are literally from out-of-town—without the same rights. *E.g.*, Einstein, *Neighborhood Defenders*, *supra*; Lydia Lo & Yonah Freemark, Urb. Inst., *Influencers, Bias, and Equity in Rezoning Cases: An Evaluation of Developer-Initiated Zoning Changes in Louisville, Kentucky* (2022); *Aegis of Ariz., LLC v. Town of Marana*, 81 P.3d 1016, 1028 (Ariz. Ct. App. 2003) ("[O]nce the application for the CUP was submitted, Aegis was subject to the inherently unpredictable and often politicized process of seeking permission from a local legislative body to conduct certain activity on a piece of property."). Many people simply cannot afford this. *See, e.g.*, *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 981 (9th Cir. 2011) (withholding review under *Williamson County*, notwithstanding that "the financial burden it must undertake to complete the application process would necessarily 'destroy' the Church").

The trend toward a discretion-based system is also leading to ever more restrictive default land-use rules. Discretion means bargaining, which means that in a discretionary regime, "the optimal zoning code" will have "rules that are both onerous and (at least some of the time) unnecessary. Onerous regulations bring developers to the table; unnecessary regulations can be traded away at little cost." Michael Manville & Taner Osman, *Motivations for Growth Revolts: Discretion and Pretext as Sources of Development Conflict*, 16 City & Cmty. 66, 73 (March 2017).

The result? Fewer homes and fewer businesses. *See, e.g.*, Jake Blumgart & Ryan W. Briggs, *One of the biggest roadblocks to construction in Philly? The board that approves the projects*, Phila. Inquirer (Feb. 27, 2023), https://www.inquirer.com/real-estate/zoning-board-of-adjustment-small-business-pandemic-virtual-work-20230227.html.

Williamson County feeds this trend. Already, government is incentivized to retain discretion for itself in land-use matters, if only so that it may exact concessions from landowners (while rewarding connected interests). *Williamson County* provides another incentive: If a city wishes effectively to insulate its land-use regulations from judicial review, all it need do is dangle the remote possibility that it might conceivably waive or modify them. *See, e.g.*, *74 Pinehurst LLC v. New York*, 59 F.4th 557, 565 (2d Cir. 2023) (requiring claimant to seek an exemption from rent-control laws, notwithstanding claimant's allegations that the exemption process is illusory). *See also Adams v. City of Seattle*, No. 24-6505, 2025 WL 3081848, at *1 (9th Cir. Nov. 4, 2025) (requiring claimant to seek waiver of statutory housing permitting fee, notwithstanding that the claimant presented a facial challenge and the city had granted waiver only one time while otherwise enforcing the fee citywide). That is a breathtaking development—and one that deeply threatens the concept of ordered liberty. *See supra* pt. I.

Grand asks this Court to consider *Williamson County*'s potential negative effect on the judicial protection of First Amendment rights. Pet.Br.52–57. For decades, *Williamson County* has been working that same negative effect on people's right to utilize their own property because judicial review of land-use claims has become uniquely disfavored. *But see Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 833–34 n.2 (1987) ("[T]he right to build on one's own property . . . cannot remotely be described as a 'governmental benefit.'"). That is producing further, severe, and ongoing consequences across the country: Most importantly, it is making it increasingly impossible for people to access housing. *See* Edward L. Glaeser & Joseph Gyourko, *America's Housing Supply Problem: The Closing of the Suburban Frontier?*, 2025 Brookings Papers on Econ. Activity 375, 375–78 (documenting nationwide decline in housing production over recent decades). This is a massive problem that, in an appropriate future case, this Court should address.

CONCLUSION

Williamson County does not and cannot apply here. Grand's constitutional and statutory claims do not implicate the narrow category of claims that *Williamson County* was intended to address: as-applied claims where liability turns on a regulation's economic impact upon a parcel. At the same time, this case highlights how *Williamson County*'s "finality" requirement is increasingly untenable—both in terms of its doctrinal incoherence and its harmful practical consequences. When the question is squarely presented, this Court should finish what *Knick* started and overrule what's left of *Williamson County*.

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