

In the Supreme Court of the United States

GARNELL WALLS,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, ET AL.,

Respondents.

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

PETITIONER'S REPLY BRIEF

JORDAN HOWLETTE
Justly Prudent
420 Florida Ave., N.E.
Suite 27
Washington, DC 20002

JONATHAN M. HOUGHTON
Counsel of Record
DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201
(202) 888-6881
JHoughton@pacificlegal.org

Counsel for Petitioner Garnell Walls

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INTRODUCTION

Garnell Walls has been prohibited from building a retirement home, or anything else for that matter, on his vacant land. The applicable law will not allow it. However, the court below refused to hear his regulatory takings case. It held, as a matter of prudential discretion, that Petitioner Walls does not have a ripe Fifth Amendment claim unless he first asks the legislature to change the law that caused the unconstitutional taking.

The lower court's determination implicates two substantial splits of authority. First, there is a persistent conflict about whether a property owner must enter the world of politics and establish legislative exhaustion before he can vindicate his constitutional rights in federal court. And second, there is a deep split of authority about whether a court, as a matter of prudential discretion, can dismiss a constitutional claim over which it has Article III jurisdiction.

Respondents Prince George's County and Dawit Abraham (the Government) do not provide any basis to deny certiorari. The Government agrees with the Fourth Circuit below that a property owner must first try to change the applicable law as a condition precedent to having his constitutional claim heard. Brief in Opposition (BIO) 8-11. The Government cannot persuasively refute the split of authority about whether legislative exhaustion is required in order to ripen a claim. BIO 12-13. And the Government apparently concedes that there is an additional split of authority about whether ripeness is a jurisdictional inquiry connected to concrete injury, or instead, a prudential decision to be made at the court's

discretion. BIO, generally (declining to address the issue).

The Petition thus presents an issue of substantial importance. The Court has recognized that “the protection of private property is indispensable to the promotion of individual freedom. As John Adams tersely put it, ‘[p]roperty must be secured, or liberty cannot exist.’” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (internal citations omitted). Yet property rights cannot be safeguarded in the face of confusion and conflict within this Court’s decisions, and amongst the lower courts, about what is necessary simply for a Fifth Amendment claim to be heard on the merits.

These well-entrenched conflicts deny property owners a clear, consistent, and uniform application of constitutional law. It also means that a property owner’s access to court will differ based on the jurisdiction in which they live. In some jurisdictions (but not others), property rights die aborning before liability can even be addressed, based upon a court’s discretionary demand for legislative and political solutions before judicial determinations, and irrespective of whether the property owner has already suffered a redressable injury. *See Aegis of Ariz., LLC v. Town of Marana*, 206 Ariz. 557, 569 (Ariz. Ct. App. 2003) (“[O]nce the application for the [conditional use permit] 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.”). The consequences are severe. *See, e.g., Br. of Atlantic Legal Foundation and James Doyle at 17-21* (lower court confusion about ripeness has impeded constitutional protections, particularly for

amici James Doyle, whose case was dismissed on prudential ripeness grounds because Doyle did not undertake a futile administrative process); Br. of Amicus Curiae New York Apartment Association at 2-7 (discussing the substantial prejudicial impact of prudential ripeness upon New York property owners whose access to justice is denied despite ripe claims and concrete injuries); Br. of Amicus Curiae California Rental Housing Association at 2 (in jurisdictions that demand legislative exhaustion, courts “deflect and discourage” the protection of property rights, impose improper burdens, and “have compounded the injuries associated with the initial takings”); Br. of Amici Curiae Manhattan Institute and James Ely, at 12, 21-22 (the confusion amongst the lower courts has resulted in property rights being given second class treatment); Br. of Amici Curiae National Association of Realtors, et al. at 17-19 (explaining how delayed judicial determinations lead to excessive costs to the housing market).

The Petition should be granted.

ARGUMENT

I. This Case Is an Excellent Vehicle for the Court to Resolve Multiple Splits of Authority

The court below declined to decide Walls’ regulatory takings action as a matter of prudential discretion.¹ Pet. App. 2a n.1. It held that Walls could not bring a Fifth Amendment claim unless Walls first goes to the legislature and asks it to change the law that is responsible for the deprivation of his private

¹ Walls filed an as-applied takings claim, Pet. App. 31a-48a, not a facial claim as implied by the Government. BIO 8, 14.

property rights. Pet. App. 7a n.6 (“regardless of the status of Walls’ waiver request to DPIE, the County could not have reached a final decision on Walls’ property until he sought a water and sewer category amendment.”), 9a (“though this legislative process . . . there is still an opportunity for the County to change its position”).

The Government agrees that the court may exercise its prudential discretion, BIO 10, to demand legislative exhaustion.² *See, e.g.*, BIO 2 (Walls would not qualify for a waiver “without first obtaining a sewer category change via a legislative amendment process”), 9 (Walls “failed to take any proactive steps to seek the county council Plan amendment”), 10 (there was no final decision because “the County may still permit Walls to install an interim well and septic system by granting him a water and sewer category amendment”); 14 (Walls “needed to proceed to achieve the final decision by the policy makers and to actually apply for the waiver through the legislative amendment process”).

However, the Government cannot effectively dispute that there is a longstanding split of authority about whether a property owner must endure legislative exhaustion in order to have a ripe Fifth Amendment claim. To wit, the Fourth Circuit, Illinois, Florida, Georgia, and Wisconsin hold that legislative exhaustion is a necessary precondition. *See* Pet. 17-18. But the opposite holds true in the Ninth Circuit, and in New York, Virginia, California,

² The Government inconsistently states that “the Courts below did not demand legislative exhaustion and the Petition has nothing to do with legislative exhaustion,” BIO 1, but that is belied by the Fourth Circuit’s decision and the Government’s repeated confirmation that legislative exhaustion was required.

Hawaii, Ohio, and Michigan. See Pet. 13-17. The Government acknowledges the cases on both sides of the divide.³ BIO 12-13. And contrary to the determination of the court below, it also repeatedly notes that ripeness is grounded upon administrative finality. BIO 4-6.

That some of the conflicting cases above are from intermediate appellate courts does not preclude this Court’s review. For example, the Court granted certiorari to resolve a split between the state intermediate appellate courts of Kentucky and Ohio over the application of the Commerce Clause. *Dep’t of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008). Nor does the age of the conflicting cases matter when they remain good law that is presently applied in those jurisdictions. See *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 146 (2023) (“This case poses a very old question indeed—one this Court resolved more than a century ago in *Pennsylvania Fire*. Because that decision remains the law, the judgment of the Supreme Court of Pennsylvania is vacated, and the case is remanded.”); see also *U.S. Trustee v. Delafield*, 57 F.4th 414, 420 (4th Cir. 2023) (King, J., concurring) (“a legal precedent’s vitality is not determined solely by its age”).

While many jurisdictions do lack precedent on the subject, it only serves to reveal the outlier status of legislative exhaustion: requiring property owners to act as lobbyists to change an applicable existing law as a mandatory requirement to challenge the constitutional validity of that law is so far afield of

³ While the Government’s section heading states, “There is no split of authority or any reason to warrant review,” BIO 12, it is at odds with the text that follows.

normal ripeness doctrine that many courts simply have not encountered it. But for those that have, a clear split of authority exists amongst multiple state high courts on a federal issue of justiciability. The conflict is longstanding and cannot be resolved absent this Court's intervention to determine whether the Fourth Circuit's conflation of administrative finality and legislative exhaustion was appropriate.

The Government also does not contest that there is a substantial split of authority about whether courts have the prudential discretion to dismiss a Fifth Amendment takings case after the property owner has already established a concrete injury sufficient to invoke Article III jurisdiction. BIO, generally (declining to address that issue). This Court deemed ripeness to be a prudential matter in *Lucas* and in *Suitum*, followed by the Fourth, Fifth, Seventh, Ninth and Tenth Circuits. See Pet. 23, 28-30, citing *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1013 (1992), and *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 729, 733 (1997).

Conversely, this Court deemed final decision ripeness to be jurisdictional and connected to concrete injury in *Williamson County*, in *Horne* and in *Pakdel*, followed by the Third and Eighth Circuits and Nevada. See Pet. 22-23, 27-28, citing *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), *Horne v. Dep't of Agric.*, 569 U.S. 513, 525 (2013), and *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021).

For the rest of the lower courts, namely the Second, Sixth, and Eleventh Circuits, and the Federal Circuit, their interpretations of ripeness are defined by intra-

circuit splits, confusion, and indecision. *See* Pet. 27-28, 30-32.

This conflict remains a persistent source of injustice to property owners who are simply seeking a hearing on the merits of their takings claims. Lower courts can choose sides, but they cannot resolve the issue. *Cf.* Wayne A. Logan, *Constitutional Cacophony: Federal Circuit Splits and the Fourth Amendment*, 65 Vand. L. Rev. 1137, 1170 (2012) (“Disputes over the nature and reach of rights present basic normative questions for judicial resolution, and delay simply allows for their continued unequal distribution.”).

II. The Government’s Other Arguments Are Not an Impediment to Certiorari

The Government contends that Walls did not file a waiver application seeking permission to construct an interim well and septic system and that, as a result, the claim is unripe. BIO 2-4, 6, 11. It also said the complete opposite. BIO 11 (“Here, the District Court properly recognized that DPIE’s letter of February 28, 2022 was not a letter of final determination addressing Walls’ waiver application.”).

First, Walls did file a waiver application.⁴ Pet. App. 39a-40a (complaint paragraphs 36, 40). This fact was accepted as true by the district court. Joint

⁴ According to the Government, Walls admitted that he never filed a waiver application. BIO 9. That is not correct. The Joint Appendix citation on which the Government relies (JA 100) merely corrects *who* filed the first waiver application. The Amended Complaint incorrectly states that it was filed by Walls himself. (Pet. App. 39a). As Walls later attested to in his sworn affidavit, the first waiver application, filed on July 21, 2021, was actually filed by his agent, Ruth Contee. JA 114. Walls personally mailed a subsequent waiver application, JA 115, at some point after August 11, 2021. Pet. App. 40a.

Appendix (JA) at 175, *Walls v. Prince George's Cnty., et al.*, No. 25-1121 (district court order: “I accept as true the facts that Mr. Walls has pled in his complaint In Walls’ amended complaint, he alleges that he completed a waiver application and mailed it to DPIE as instructed on the application”). The Fourth Circuit made the same determination. Pet. App. 7a (assuming that Walls filed a waiver).

Second, the waiver application was a futile endeavor because, as the Government confirmed, it had no legal authority to grant it. BIO 2 (Walls would not qualify for a waiver unless he first went through the legislative amendment process), 9 (confirming that the DPIE “did not have the legal authority to approve such a waiver”); *see also* Pet. App. 40a, 43a and JA 078-079 (same). Consequently, the Fourth Circuit’s ripeness determination was solely based on whether Walls sought a legislative amendment to the applicable law prior to the filing his Fifth Amendment takings claim. Pet. App. 6a-11a.

The Government’s Brief also repeatedly addresses liability and the merits of the underlying action. BIO 6-8, 11. Yet this Petition is only about a property owner’s access to courts, precisely so that Walls can make those arguments to the lower court in the first instance. Regardless of the Government’s view of the merits, Walls has suffered a concrete constitutional injury that warrants a federal forum to seek redress.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JONATHAN M. HOUGHTON

Counsel of Record

DEBORAH J. LA FETRA

Pacific Legal Foundation

3100 Clarendon Blvd.,

Suite 1000

Arlington, VA 22201

(202) 888-6881

JHoughton@pacificlegal.org

JORDAN HOWLETTE

Justly Prudent

420 Florida Ave., N.E.

Suite 27

Washington, DC 20002

Counsel for Petitioner Garnell Walls

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