No. 26-110

In the Supreme Court of the United States

TEDFORD'S TENANCY, LLC,

Petitioner,

v.

CITY OF NEW YORK, *et al.*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO NEW YORK STATE SUPREME COURT, APPELLATE DIVISION

CITY RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner brought this action in state court, claiming that the State of New York and City of New York effected a regulatory taking by applying the State's Rent Stabilization Law to deny petitioner any economic benefit from its property. The case was resolved by an intermediate state appellate court, which dismissed the action on two independent grounds: (1) the action was not ripe because petitioner was yet to seek the State's go-ahead to increase rents to speak to its purported economic hardship; and (2) even setting that aside, the claim failed on the merits because petitioner was already netting income from the property, despite decades of mismanagement and lost opportunities to maximize rental income consistent with the Rent Stabilization Law. The highest state court declined to review the case. The questions presented are:

1. Whether state courts must apply Article III standing principles when evaluating whether claims are ripe for review, when they are not governed by Article III and may approach jurisdictional and jurisprudential questions differently than federal courts do?

2. Whether petitioner's as-applied takings claim was not ripe for review, where petitioner made no attempt to pursue available avenues for further increasing its rental income from the property?

3. Whether the lower court's alternative holding that petitioner's claim fails on the merits under this Court's precedent, which petitioner fails to challenge, makes any ripeness issue immaterial?

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INTRODUCTION

Petitioner, a limited liability company, owns real property in Manhattan with one market-rate commercial unit and six residential units subject to the State of New York's Rent Stabilization Law (RSL). When petitioner acquired the property, it had already been subject to the RSL for over three decades.

The property was managed by a third party for about 40 years. When that arrangement ended, petitioner allegedly discovered that the property had been badly mismanaged, with its physical state a disaster and its finances in tatters. Among other things, the third-party manager had apparently given out sweetheart residential leases rather than charging the maximum allowable rents under the RSL—a failure that, with the way rent increases work under the RSL, can compound lost profits year over year. Unsurprisingly, petitioner sued the third-party manager, claiming that the decades-long mismanagement of the property cost petitioner dearly, including by failing to maximize rental income consistent with the RSL.

None of this stopped petitioner from bringing this separate action against the State and City of New York, claiming that the application of the RSL to the property violated the Takings Clause because it denied petitioner any economic benefit from the property. Petitioner elected to pursue this action in state court, where it effectively ended in an intermediate appellate court. The Appellate Division of the New York State Supreme Court concluded that petitioner's as-applied takings claim (1) was not yet ripe for

review, as petitioner could still seek the State's green-light to increase rents to address the economic hardship it claimed to be experiencing; and (2) failed on the merits in any event, as petitioner's allegations showed that it was realizing a net income from the property. The New York State Court of Appeals declined to review the case. This Court should now deny certiorari.

This case could hardly be a worse vehicle to review the questions identified in the petition. Petitioner starts with the premise that "[s]tanding and ripeness both originate from the same constitutional limitation that courts can only adjudicate 'case[s] or controvers[ies]'" (Pet. 15), and then argues that courts should treat "final decision ripeness [as] jurisdictional and connected to standing," rather than "prudential, discretionary, and distinct from standing" (Pet. 2).

That argument is unmoored from this state-court action. State courts are not governed by the Article III-based principles that are the focus of the petition, and state courts can and often do approach jurisdictional and jurisprudential questions in markedly different ways than federal courts. For example, in New York, standing is not a jurisdictional question—it is a waivable affirmative defense.

So at times, it feels like the petition is not about this case at all. It is perhaps no surprise, then, that the same arguments appear in the petition in *Walls v. Prince George's County*, No. 26-107. That petition, for all its faults, is at least about a federal action.

While the fundamental disconnect plaguing this petition defeats it, other flaws abound. For instance,

even if petitioner had brought this action in federal court, whether ripeness in this context is jurisdictional or prudential would be of no practical consequence. The distinction may matter when considering whether an objection on this basis can be waived or instead must be considered by the courts. But here, the City raised petitioner's ripeness problem at the first opportunity, and so the courts below never had to ask whether the objection was waived and, if so, whether they were nonetheless obliged to address it.

The petition itself is also deeply confused about its premises and the relief sought. Most of the time, petitioner argues that problems with prudential ripeness counsel in favor of reclassifying the "final decision" ripeness doctrine set out in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), as jurisdictional (Pet. 2-3, 16-17). At other times, petitioner intimates that the doctrine should instead be "extinguished" (Pet. 19-21, 27-29). To state the obvious, final decision ripeness cannot be both jurisdictional and extinguished.

One could imagine a different petition that presents a direct case for abolishing *Williamson County*'s final decision ripeness doctrine. *Cf.* Petition for Writ of Certiorari at i, *Knick v. Township of Scott*, No. 17-647, 2017 WL 5158056 (U.S. Oct. 31, 2017). But that is not this petition. In any case, if that is what petitioner means to argue—which is far from clear—it would make little sense to resolve such a significant issue through the looking glass of nested, confusing, and sometimes contradictory arguments about federal

jurisdictional and jurisprudential principles. It would make zero sense to do so in this state-court action, where those principles do not apply.

Petitioner's separate contention that it would have been futile for it to seek economic hardship relief under the RSL is nothing more than a plea for error correction. Even if this Court were in the error-correction business, there is no error here. New York law is clear that petitioner was eligible to apply for a hardship waiver, which is perhaps why petitioner abandoned its ineligibility argument at the earliest stages of this case and never raised it on appeal below. Nor can petitioner brush aside the availability of relief simply by asserting that the benefits would be de minimis. Had petitioner sought relief, it might have been able to double its rental income in twelve years, allowing it to add to the income it already receives from the property despite decades of mismanagement and lost opportunities to maximize rental income consistent with the RSL. The petition fails to account for this reality, which is yet another reason to deny it.

STATEMENT

A. New York's Rent Stabilization Law

New York City is a city of renters. Almost 70% of households rent their homes, a rate far higher than the national average. *See* New York City Rent Guidelines Board, *2026 Housing Supply Report* 5, https://perma.cc/B6WT-GDTJ. The City's rental housing market is exceedingly tight and volatile due to natural geographic constraints, exceptional

population density, steep construction costs, and a highly desirable location. For the last century, various forms of rent regulation have been an important feature of life in the City, preserving stability and affordability.

The State's Rent Stabilization Law (RSL) applies to almost a million apartment units, slightly under half of the City's rental market. *See* New York City Department of Housing Preservation and Development, *2023 New York City Housing and Vacancy Survey: Selected Initial Findings* 5 (2024), https://perma.cc/3VZM-DHKU. Generally speaking, the RSL places restrictions on a landlord's ability to increase the rent on regulated units. But the exact content of the law has changed frequently in response to market conditions and political currents.

1. The RSL builds on a long history of rent regulation in New York City. New York's earliest rental protections were adopted after World War I, as rapid growth was already leading to landlord extortion, safety concerns, and widespread dispossession. *See People ex rel. Durham Realty Corp. v. La Fetra*, 230 N.Y. 429, 437-38 (1921). Another wave of regulations followed World War II, including rent control laws that still apply to a small fraction of units. *See La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 71 (1981); *2023 New York City Housing and Vacancy Survey* 5.

The first form of rent stabilization was enacted in 1969 to curb "exorbitant and unconscionable rent increases" that were "uprooting long-time city residents from their communities." N.Y.C. Admin. Code § 26-

501; *see La Guardia*, 53 N.Y.2d at 72. The State Legislature briefly rolled back stabilization a few years later, but this experiment led only to "ever-increasing rents" with no increase in new development. *La Guardia*, 53 N.Y.2d at 74.

The Legislature therefore reversed course and passed the Emergency Tenant Protection Act of 1974 (ETPA), the foundation of modern rent stabilization. *See* N.Y. Unconsol. Laws, ch. 249-B, §§ 1-14 (Consol. 2023). The ETPA covers rental units in buildings with six or more units that were built before 1974. *See id.* § 5(4)-(5). It does not apply to new construction, except where owners opt in to gain tax incentives or receive certain public financing. *See, e.g.*, N.Y. Real Prop. Tax Law § 421-a(2)(f); N.Y. Priv. Hous. Fin. Law § 452(8).

The ETPA will continue to apply in New York City so long as the vacancy rate is five percent or lower and the New York City Council finds a continuing need for statutory protection. N.Y. Unconsol. Laws, ch. 249-B, § 3(a). Since 1974, New York City's vacancy rate has never risen above five percent, and the City Council has declared a housing emergency every three years.

During this time, the Legislature has frequently revised the provisions of the ETPA and the New York City Administrative Code that jointly codify the RSL. The changes have sometimes favored landlords and sometimes tenants. In 1993, 1997, and 2003, for example, the Legislature afforded landlords new ways to remove units from regulation. 1993 N.Y. Laws ch. 253; 1997 N.Y. Laws ch. 116; 2003 N.Y. Laws ch. 82. More than 150,000 units permanently exited rent

stabilization through those mechanisms. *Rent Regulation and Tenant Protection Legis.: Hearing before N.Y. Senate Standing Comm. on Hous., Constr and Cmty. Dev.* 19 (May 22, 2019) (testimony of L. Carroll and E. Gaumer), https://perma.cc/MX3M-HMF2.

By contrast, in 2015 and 2019, the Legislature strengthened the RSL's tenant protections. 2015 N.Y. Laws ch. 20, Part A; 2019 N.Y. Laws ch. 36. The 2019 legislation repealed or limited several of the Legislature's earlier changes, including the forms of "decontrol" added in 1993 and opportunities for additional rent increases added in 1993, 1997, and 2003. 2019 N.Y. Laws ch. 36, Parts A, B, D, E, & K.

2. The RSL restricts the amount by which landlords may increase the rent on regulated units. N.Y.C. Admin. Code §§ 26-510(b), 26-511(c). Landlords are also required to register each stabilized apartment yearly and identify the rent charged. *Id.* § 26-517(a). In its current form, the RSL provides several avenues for a landlord to increase rents.

Most obviously, the New York City Rent Guidelines Board—composed of representatives of landlords, tenants, and the public—determines a maximum permissible rent increase annually (expressed as a percentage of existing rents) for all rent-stabilized apartments. *Id.* § 26-510(a)-(b). The Board considers the economic condition of the residential real-estate industry—including tax rates, maintenance costs, the housing supply, and vacancy rates—as well as the cost of living and housing affordability. *Id.* § 26-510(b).

A landlord may also apply for several types of rent increases specific to a particular building or apartment. When a landlord makes major capital improvements to an entire building, it may seek to cover the costs by increasing the rent for all units an additional two percent per year above the otherwise allowable amount. *Id.* § 26-511(c)(6)(b); *see* 9 N.Y.C.R.R. § 2522.4(b). A landlord who makes individual apartment improvements may also apply for a small additional increase to the rent of the particular apartment improved. N.Y.C. Admin. Code § 26-511(c)(13); *see* 9 N.Y.C.R.R. § 2522.4(a).

3. Separately, if a landlord's annual rental income drops below a certain level even with these increases, the landlord may be entitled to a hardship increase. N.Y.C. Admin. Code § 26-511(c)(6), (6-a). Two types of hardship increase are available.

A comparative hardship increase allows a landlord to maintain the same income level as during a prior period. Upon application, the State Division of Housing and Community Renewal (DHCR) must grant the increase if rental income is insufficient to yield the same average annual net income as prevailed between 1968 and 1970, or, if records from that time are not available, for the first three years after the landlord acquired title in a bona fide sale. *Id*. § 26-511(c)(6); 9 N.Y.C.R.R. § 2522.4(c).

An alternative hardship increase allows a landlord to maintain a certain level of income over expenses. Upon application, DHCR must grant the increase if the otherwise allowable rent increase does not allow

the landlord to maintain rental income of at least five percent above operating expenses. N.Y.C. Admin. Code § 26-511(c)(6-a); 9 N.Y.C.R.R. § 2522.4(d).

A landlord may only receive one type of hardship increase. If the increase is granted, the landlord may increase the rent by up to six percent per year until income reaches the relevant threshold. 9 N.Y.C.R.R. § 2522.4(c)(3)(i), (d)(2)(1). A hardship increase is not generally available if the landlord has pending challenges to real estate taxes and water or sewer charges, except that an owner with a pending tax certiorari proceeding may receive the increase. 9 N.Y.C.R.R. § 2522.4(c)(3)(iii), (d)(2)(iii).

4. Under the RSL, a landlord may refuse to renew a lease by demonstrating to DHCR that it intends to use the unit for a business it owns and operates, to use it as a personal residence (subject to certain limitations), or to withdraw it from market due to substantial code violations that would be financially impracticable to correct. *Id.* §§ 2524.4(a)-(c), 2524.5(a). Otherwise, a landlord is generally required to offer a compliant tenant in a rent-stabilized apartment the opportunity to renew their lease. *Id.* § 2523.5(a). If a rent-stabilized apartment becomes vacant, the RSL does not require a landlord to offer it for residential rental.

Since 1990, the net operating income of rent-stabilized buildings has increased by 56%, adjusting for inflation. N.Y.C. Rent Guidelines Board, *2026 Income and Expense Study* 12, https://perma.cc/452X-RF3K.

B. Petitioner's as-applied challenge to the Rent Stabilization Law

1. Petitioner, a limited liability company, brought this case in New York Supreme Court, claiming that the State and the City applied the RSL so as to effectuate a regulatory taking of its property located at 294 Third Avenue in Manhattan (Appendix ("App.") 15a-44a). The property consists of six rent-stabilized residential units and one market-rate commercial unit (App. 26a-27a).

Petitioner's sole members are Lynette and Richard Ciner (App. 23a). Petitioner obtained ownership of the property in 2006 via Lynette, who inherited it from her family, which had owned it since the 1940s (App. 25a). When petitioner acquired the property, it had been subject to the RSL for over 30 years.

2. Since 1978, the entire property was managed by Horizons Investor's Inc. ("Horizons") under a long-term ground lease (App. 26a). Horizons continued to manage the property through 2020 (*id.*).

When the ground lease expired in 2020, petitioner found the property was "a physical and economic disaster" (App. 18a). On the physical side, Horizons made no major capital improvements or individual apartment improvements during the 42-year term of the lease (App. 27a). Indeed, few substantial renovations have ever been performed in the property's 100-year history (App. 30a). The property constantly leaks and has lead paint and asbestos throughout (App. 20a).

Petitioner has not thoroughly inspected the building, but it maintains that the issues caused by Horizons' decades-long mismanagement could cost more than $1 million to repair (App. 20a-21a). Petitioner sued Horizons for its failure to maintain the building and make needed repairs. *See* Compl., *Tedford's Tenancy, LLC v. Horizons Investors Corp.* ¶¶ 83-123, No. 653392/2023 (Sup. Ct. July 13, 2023), NYSCEF No. 1.

In the same lawsuit, petitioner alleges that Horizons has cost it substantial rental income by offering sweetheart leases and failing to take available rent increases under the RSL. *Id.* When the ground lease expired, Horizons was charging residential tenants monthly rents as low as $205 (App. 18a). The rents set by Horizons had no basis in the RSL, which it seems to have largely disregarded (App. 18a).

Although landlords are required to register rent-stabilized apartments yearly, Horizons had long failed to file reliable rent registrations (App. 27a; Appellate Division Record on Appeal ("R") 79). Registrations between 2006 and 2020 list widely varying rents from year to year, rather than the steady increases one would expect under rent stabilization, and list as many as four units at a time as "owner occupied" (R380-96). For example, as recently as 2018, Horizons registered two units as renting for $2,100 and $2,300 (R458), but the very next year Horizons dropped the rent to $600 for each apartment (R457).

Because Horizons seemingly set rents without regard for the RSL, and because petitioner has not clarified the proper legal rents with DHCR, petitioner

decided to continue charging the same rents charged by Horizons in 2020 (R54-55; App. 27a).

3. Petitioner acknowledges that despite Horizons' mismanagement and failure to realize the maximum rental income under the RSL, the property produces a net income (App. 22a). The annual rent roll for the building is over $151,000, with the market-rate commercial tenant paying $7,500 monthly and the residential tenants paying a cumulative $5,150 monthly (App. 18a, 27a). Meanwhile, petitioner's fixed operating expenses are a little over $109,000, with the commercial tenant covering the building's heating costs (App. 19a-20a). Petitioner thus nets roughly $42,000 in rental income each year.[1]

4. Though petitioner contends that improvements to the building will cause it to go into the red, it has never sought a hardship increase to ensure that rental income can cover expenses (App. 34a-35a). Petitioner asserts that it is ineligible for a hardship increase because it has pending tax certiorari proceedings (*id.*), and that the gains would be de minimis because hardship increases are capped at 6% per year (*id.*).

5. On this foundation, petitioner brought this suit claiming that the application of the RSL to the property inflicts a regulatory taking (App. 38a). The State and the City moved to dismiss, arguing that the claim is not ripe and fails to allege a regulatory taking

[1] Petitioner claims its "legal income" is $121,008 based on its contention that it is not legally allowed to charge the rents it is currently charging (Pet. 9). To be clear, the "actual rent" petitioner is charging for the property is $151,860 (App. 27a).

(R345-356). New York Supreme Court agreed, and dismissed the action on both grounds (App. 5a-13a).

The Appellate Division affirmed (App. 1a-3a). First, the court held that the claim was unripe because petitioner failed to apply for a hardship increase (App. 2a), relying on Second Circuit law applying *Williamson County* to find that a similar RSL as-applied takings claim was unripe (App. 2a (citing *74 Pinehurst LLC v. City of N.Y.*, 59 F.4th 557, 565 (2d Cir. 2023), *cert. denied*, 146 S.Ct. 540 (2024)). Second, the court held that petitioner failed to state a claim in any event, as the property retains economically beneficial use (App. 3a).

ARGUMENT

A. The question as to whether final decision ripeness is jurisdictional or prudential does not warrant review here for multiple reasons.

1. This state-law case is a terrible vehicle to confront the question.

Petitioner seems to have written the first question presented with a different case in mind. As the question has no relevance to this case and was never "raised, preserved, or passed upon in the state courts below," the petition should be denied. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969).

1. The first question proposed raises an issue of federal justiciability—whether final-decision ripeness is a prudential doctrine or a jurisdictional aspect of

Article III standing (Pet. 15-29). But this case was filed in state court (App. 15a). This obvious mismatch renders the question inapplicable.

Article III does not apply to state courts, which "are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989); *see City of Los Angeles v. Lyons*, 461 U.S. 95, 113 (1983). Rather, states are free to determine their own justiciability doctrines. *See ASARCO*, 490 U.S. at 617 ("[T]he state judiciary here chose a different path, as was their right, and took no account of federal standing rules.").

Jurisdictional and jurisprudential doctrines can thus look quite different in state court. In New York, subject-matter jurisdiction simply refers to whether a court has "power to adjudge concerning the general question involved," for example, power to hear a divorce action or criminal case. *Thrasher v. U. S. Liab. Ins. Co.*, 19 N.Y.2d 159, 166 (1967); *see Hunt v. Hunt*, 72 N.Y. 217, 229-30 (1878). New York Supreme Court, where this case began, "is a court of original, unlimited and unqualified jurisdiction," with authority to hear any type of case not specifically proscribed. *Fry*, 89 N.Y.2d at 718 (1997) (quoting *Kagen v. Kagen*, 21 N.Y.2d 532, 537 (1968)); *see* N.Y. Const. art. 6, § 7. And the Appellate Division, where this case met its end, is "a division of the Supreme Court" and "possesses all of the original jurisdiction of the Supreme Court." *Merritt Hill Vineyards Inc. v. Windy Heights Vineyard, Inc.*, 61 N.Y.2d 106, 111 (1984). Subject-

matter jurisdiction is thus rarely an issue in New York litigation.

The New York Constitution has no analogue to the federal case-or-controversy requirement, and standing is not a jurisdictional issue in New York. *See People v. Johnson*, 46 N.Y.3d 65, 74 (2025). Rather, under New York law, standing is an affirmative defense that is waived if not timely raised. *See U.S. Bank Nat'l Ass'n v. Nelson*, 36 N.Y.3d 998, 999 (2020); *Fossella v. Dinkins*, 66 N.Y.2d 162, 167-68 (1985). As a result, "[w]hether the action is being pursued by the proper party is an issue separate from the subject matter of the action or proceeding, and does not affect the court's power to entertain the case before it." *Wells Fargo Bank Minnesota, Nat'l Ass'n v. Mastropaolo*, 42 A.D.3d 239, 243 (App. Div. 2007).

New York also has a robust and state-specific body of ripeness law, especially on whether an agency action is final and ripe for review. *See Matter of Gordon v. Rush*, 100 N.Y.2d 236, 242 & n.6 (2003) (determining ripeness of agency action under state law); *Walton v. New York State Dep't of Corr. Servs.*, 8 N.Y.3d 186, 195 (2007); *New York State Inspection, Sec. & L. Enf't Emps., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 N.Y.2d 233, 238 (1984) (tracing ripeness and other justiciability doctrines to "the pattern of government adopted by the State of New York").

This New York case therefore does not raise any of the concerns described in the first question proposed in the petition, which all have to do with federal justiciability doctrine. This case does not raise any conflict

between prudential ripeness and jurisdictional standing (Pet. 15), because standing is not jurisdictional in New York courts. It does not raise any of the concerns mentioned in this Court's Article III precedent, because New York courts are not constrained by Article III. *See ASARCO*, 490 U.S. at 617. And it does not present any tension with the federal courts' "unflagging obligation" to hear cases within their jurisdiction (Pet. 4), because the court below was not a federal court.

Rather than grappling with this fundamental defect, the petition simply ignores it. Petitioner's only acknowledgment that this is a state court action consists of passing suggestions that federal and state courts treat takings claims the same (Pet. 15 & n.16, 16 n.17, 21 n.19). But even if this is true as to the substantive standards for a takings claim, it is certainly not true as to whether a court has jurisdiction over a takings claim. New York courts do not rely on Article III to determine their own jurisdiction.

Indeed, whereas petitioner argues that the focus of the ripeness inquiry here should be the metes-and-bounds of jurisdictional standing under Article III, New York courts have rejected the entire concept of jurisdictional standing. *See Nelson*, 36 N.Y.3d at 999. So even if this Court were to hold that ripeness in this context is anchored in Article III standing, such a holding might not translate to state court litigation at all. At a bare minimum, this state-court action is a decidedly poor vehicle to explore these issues in the first instance.

2. The question identified in the petitioner is doubly irrelevant because even if this case were in federal court, the jurisdictional-versus-prudential status of ripeness would not matter. The result would be exactly the same regardless of whether the requirement is jurisdictional or prudential.

Whether a requirement is jurisdictional or not speaks to how "stern" the requirement is. *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 20 (2017). Jurisdictional requirements are unlike prudential requirements because they may be raised at any time, even after entry of judgment, and may not be waived. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006). Even if jurisdictional requirements are never raised, a federal court must raise them sua sponte. *Id.* at 514. Jurisdictional defects may thus be unexpectedly resurrected after expensive litigation, creating "harsh consequences" for courts and litigants. *United States v. Kwai Fun Wong*, 575 U.S. 402, 409 (2015).

Here, however, the City promptly raised ripeness in its motion to dismiss (R345). No one argued that the issue was waived, nor did the Appellate Division raise it sua sponte. *Cf. Arbaugh*, 546 U.S. at 504 (defendant raised the issue after losing jury trial); *Santos-Zacaria v. Garland*, 598 U.S. 411, 415 (2023) (court raised the issue sua sponte). The Appellate Division simply considered whether the claim was ripe, held it was not, and dismissed it. In this situation, it does not matter whether ripeness is labeled prudential or jurisdictional. The claim was "properly dismissed for lack of ripeness regardless of whether that defect is jurisdictional, prudential, or both." *Doyle v.*

United States, 2024 WL 5154019, at *3 (Fed. Cir. Dec. 18, 2024). In this case, the distinction is academic.

3. Unsurprisingly, given its complete irrelevance here, the classification of final decision ripeness was never "raised, preserved, or passed upon in the state courts below." *Cardinale*, 394 U.S. at 438. No party ever asked the state courts to decide whether ripeness is jurisdictional or prudential, nor did any party conflate Article III jurisprudence with New York law, as petitioner now attempts to do. The parties simply asked the New York courts to decide whether the claim was ripe (R6, 345-49, 546-51, 631-34). And the courts responded by holding that the claim was unripe, without addressing whether this defect was jurisdictional or prudential (App. 1a, 8a-10a).

Accordingly, the court below did not somehow "join[] the ongoing debate about whether final decision ripeness is jurisdictional and connected to standing" (Pet. 3). The court only considered the substance of the ripeness requirement, which is a separate issue from whether ripeness is properly characterized as jurisdictional or prudential. Because the question presented was never raised in state court, it cannot be properly raised here. *See Adams v. Robertson*, 520 U.S. 83, 87 (1997) (requiring petitioner to show that the state court had "a fair opportunity to address the federal question that is sought to be presented").

In sum, petitioner asks this court to decide an issue of federal justiciability that is irrelevant to this state case, would be irrelevant even to a similar federal case, and was never raised or decided below.

These severe issues require denial of the petition. The Court does not decide questions "abstractly," but only in the context of "meaningful litigation." *The Monrosa v. Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959).

2. The putative split is illusory.

Petitioner is also incorrect that the question presented surfaces any live debate regarding the Article III jurisdiction of federal courts.[2] This Court has expressly stated that final decision ripeness is prudential, and as the issue has percolated, lower courts have consistently converged on the same position.

1. In federal court, ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725 (1997) (quoting *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57, n.18 (1993)). While *Williamson County*, 473 U.S. at 188-94, did not specify whether final decision ripeness is prudential or jurisdictional, this Court has since made clear that the requirement is prudential. *Suitum*, 520 U.S. at 73334 ("There are two independent prudential hurdles to a regulatory takings claim ... ."); *Lucas*, 505 U.S. at 1010-14.

[2] Although petitioner includes state authorities in its description of the purported split (Pet. 22, 26), state courts cannot split with federal courts on the issue of jurisdiction for reasons stated above. There is no conflict between a state court holding a requirement is jurisdictional under state law and a federal court holding is it not jurisdictional under Article III.

Therefore, circuit courts which have analyzed the issue have also held that final decision ripeness is prudential. *See Rosedale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86, 88-89 (5th Cir. 2011); *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1228-29 (10th Cir. 2021); *Kolton v. Frerichs*, 869 F.3d 532, 534 (7th Cir. 2017); *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1089 (9th Cir. 2015); *Washlefske v. Winston*, 234 F.3d 179, 182 (4th Cir. 2000); *McGuire v. United States*, 707 F.3d 1351, 1358 (Fed. Cir. 2013). Many of these courts had previously issued "drive-by jurisdictional rulings," but disavowed these rulings in light of this Court's more recent precedent. *Kolton*, 869 F.3d at 534; *see N. Mill St.*, 6 F.4th at 1228-29; *Rosedale Missionary Baptist Church*, 641 F.3d at 88; *McGuire*, 707 F.3d at 1358 n.3.

One Circuit, the Eighth, has not reconsidered its holdings describing *Williamson County* as jurisdictional. *See Snaza v. City of Saint Paul, Minn.*, 548 F.3d 1178, 1182 (8th Cir. 2008). However, the Eighth Circuit has applied that description only to the state compensation prong of *Williamson*, which is now defunct. *Id.*; *see Koscielski v. City of Minneapolis*, 435 F.3d 898, 903 (8th Cir. 2006); *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180 188-89 (2019) (overruling the state compensation prong). And the Eighth Circuit has not had a chance to update its position as to final decision ripeness based on recent jurisprudence, as it has not ruled on the issue in over a decade.

2. No federal court that has actually analyzed this issue after *Suitum* maintains that final decision ripeness is jurisdictional. *See Lilly Invs. v. City of*

Rochester, 674 F. App'x 523, 530 (6th Cir. 2017) (recognizing that the Eighth Circuit "is the only circuit that considers *Williamson County* jurisdictional, a conclusion inconsistent with Supreme Court precedent"). Petitioner's suggestions to the contrary involve cases that are outdated or present drive-by jurisdictional statements, as well as their distortions of cases that address unrelated issues.

For example, petitioner states that the Third Circuit "deems ripeness to be jurisdictional in takings cases" (Pet. 22). But its only support for this conclusion is *Dillow v. Treasurer of Pennsylvania*, an unpublished decision without precedential force. 2025 WL 2813596, at *2 (3d Cir. Oct. 3, 2025). *Dillow* also does not analyze final decision ripeness under *Williamson County*, instead relying on the general principle that "[f]or a case to be ripe, it must not 'depend on contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id.* (quoting *Trump v. State of N.Y.*, 592 U.S. 125, 131 (2020)).

Petitioner's "intra-circuit splits" are similarly contrived. The substance of the "split" in the Federal Circuit is that after that circuit thoroughly analyzed the issue and disavowed its previous drive-by jurisdictional rulings, *McGuire*, 707 F.3d at 1358 & n.3, one later panel missed this and issued another drive-by ruling, *Martin v. United States*, 894 F.3d 1356, 1360 (Fed. Cir. 2018). And the supposed intra-circuit tension in the Second and Tenth Circuits is non-existent, as it consists simply of the fact that these courts issued drive-by jurisdictional rulings before later correcting course. *See N. Mill St.*, 6 F.4th at 1228

(confirming that decisions petitioner relied on to show intra-circuit split were superseded); *Sherman v. Town of Chester*, 752 F.3d 554, 561 (2d Cir. 2014) (clearly holding ripeness is prudential despite prior statements).

3. In summary, lower federal courts do not need an urgent answer to the classification of final decision ripeness. Simply allowing the issue to percolate has led to almost total convergence on the prudential position, which makes sense given this Court's express statements. There is no live debate in the lower courts that requires this Court's intervention.

3. Petitioner conflates distinct issues.

In pressing the first of its proposed questions, the petition is also confused and sometimes contradictory. Petitioner's purported circuit split concerns "whether final decision ripeness is jurisdictional or prudential," as does much of the petition (Pet. i, 16-19, 21-27). But at other points, the petition instead seems to suggest that this Court should extinguish or abolish the final decision ripeness requirement laid out in *Williamson County* (Pet. i, 12-13, 17-21, 27). Those are entirely separate issues, and this Court should not address an important substantive issue by conflating it with a largely inconsequential threshold one.

1. Again, whether a requirement is jurisdictional or prudential speaks to how "stern" the requirement is—not *what* the requirement is. *Hamer*, 583 U.S. at 20; *see Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 203 (2022) ("Jurisdictional requirements cannot be waived or forfeited, must be raised

by courts *sua sponte*, and, as relevant to this case, do not allow for equitable exceptions."). Therefore, in asking this Court "whether final decision ripeness is jurisdictional or prudential for Fifth Amendment cases" (Pet. 4), petitioner appears to be asking this Court how stern the final decision ripeness requirement is. Can final decision ripeness be waived? Can a court create equitable exceptions? If final decision ripeness is not raised by the parties, is a court nevertheless required to consider it sua sponte?

2. However, much of the petition conflates holding final decision ripeness to be jurisdictional with lowering the substantive standard for ripeness (Pet. 27, *see* 19-21). Currently, the substantive standard for ripeness is that "the government entity charged with implementing the regulations" must have "reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty.*, 473 U.S. at 186; *see Pakdel*, 594 U.S. at 478 (plaintiff must show that "there [is] no question ... about how the regulations at issue apply to the particular land in question" (quotation marks omitted)). Petitioner seems to believe that if *Williamson County* is jurisdictional, then a takings petitioner will no longer need to show this, because ripeness will be replaced by the lower bar of Article III standing (Pet. 2-3, 27-29).

But this is not what it would mean for this Court to hold that "final decision ripeness is jurisdictional" (Pet. i, 2, 3, 4, 27). If final decision ripeness is jurisdictional because without it any injury is merely "hypothetical," *Pakdel*, 594 U.S. at 479, final decision ripeness *is* the bar for Article III standing. According

jurisdictional status to the question would indicate that the ripeness requirement set out in *Williamson County* and *Pakdel* specifies what the Constitution requires and must be examined sua sponte in every case. To the extent that any dated decisions have held that *Williamson County* is jurisdictional, this is what they mean. *See Snaza*, 548 F.3d at 1182; *Koscielski*, 435 F.3d at 903. Holding ripeness is jurisdictional would not relieve petitioner from complying with *Williamson County* or *Pakdel*.

At times, petitioner seems to be suggesting something else—that final decision ripeness is an improper prudential requirement and should be abolished (Pet. i, 12-13, 17-19). That proposition frames the only ruling that would help a takings plaintiff like petitioner press its claim despite lingering uncertainty "regarding the application of the regulations to the property at issue." *Williamson Cnty.*, 473 U.S. at 186. But that claim has nothing to do with the purported circuit split presented by petitioner or any question of "whether final decision ripeness is jurisdictional or prudential" (Pet. i). It is closer to a broadside on *Williamson County* based on its purported incompatibility with dicta from cases like *Lexmark* and *Driehaus*, which address entirely different prudential ripeness doctrines (Pet. 19-20).

A future petition for certiorari is free to make this case—but petitioner cannot do so here via the Trojan horse of an unrelated procedural issue. The final decision ripeness requirement is a longstanding and important feature of takings jurisprudence that this Court reaffirmed only a few years ago in *Pakdel*, 594

U.S. at 479, and before that in *Knick*, 588 U.S. at 188-89. Localities have structured their regulatory schemes in reliance on the idea that if they provide opportunities for permits and variances, the regulation will not be ruled a taking merely because it facially limits the use of a property. *See United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 127 (1985) ("A requirement that a person obtain a permit before engaging in a certain use of his or her property does not itself 'take' the property in any sense ...."). Even assuming it were wise to reconsider *Williamson County*, the question should be squarely presented and fully briefed in the lower courts before the Court entertains such a step.

Because petitioner seems to conflate holding *Williamson County* to be jurisdictional with overruling it, attempting to address the question posed in the petition can lead only to confusion. Even if this Court wanted to address the substance of the final decision ripeness requirement, it would make no sense to do so through the lens of a separate jurisdictional issue that is not even presented by this state-court case.

B. The second question presented does not warrant review, as it merely involves the correct application of established law to particular facts.

The petition's second question presented also does not warrant review, as it simply asks this Court to correct a nonexistent error below. The Appellate Division correctly held that petitioner's claim was unripe, because petitioner did not seek a hardship increase that

exists to address exactly the type of issues petitioner now claims to be experiencing.

Petitioner implicitly concedes that there is no disagreement in the lower courts regarding the standard for determining whether a takings claim is ripe. This Court recently set out the standard in *Pakdel*: "[a]ll a plaintiff must show is that 'there [is] no question ... about how the regulations at issue apply to the particular land in question.'" *Pakdel*, 594 U.S. at 478 (quoting *Suitum*, 520 U.S. at 739).

Petitioner's argument is only that the Appellate Division improperly applied this settled standard to the facts here. But error correction is not a ground for certiorari. And even if the Court were interested in error correction, there was no error.

Petitioner first suggests that it did not need to apply for a hardship increase because it "was ineligible under the express terms of the relevant statutes" (Pet. 30). This argument is meritless and was abandoned almost as soon as this litigation started. Petitioner asserted in its complaint that it was ineligible for either type of hardship increase because it has pending tax certiorari proceedings (App. 34a-35a). But as the City pointed out in moving to dismiss, this is false as a matter of law (R347 & n.3). State law allows property owners with pending tax certiorari proceedings to seek a hardship increase, even explaining how the owner's tax expenses should be calculated in this situation. *See* 9 N.Y.C.R.R § 2522.4(b)(3)(iii). Petitioner therefore dropped the ineligibility argument in

opposing the motion to dismiss and never asserted it on appeal. It cannot now support this Court's review.

Petitioner also suggests that seeking a hardship increase would be futile because the increase would not be "meaningful" (Pet. 11; *see* Pet. 30, App. 34a). But this does nothing to show the government has reached a final position on the hardship increase, which is what ripeness requires. *Pakdel*, 594 U.S. at 478 (quoting *Suitum*, 520 U.S. at 739). The argument implicitly concedes that the application of the regulation is uncertain, and the claim is therefore unripe. It simply suggests that ripeness should be excused in these particular circumstances because the uncertainty is not relevant to its takings claim.

Yet it is not clear why this would be true. The Court has repeatedly explained that to analyze whether a regulation has gone "'too far,' the court must first 'kno[w] how far the regulation goes.'" *Pakdel*, 594 U.S. at 479 (quoting *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348 (1986)). This is because regulatory takings claims involve "ad hoc, factual inquiries" in which the most important factors are "the economic impact of the regulation on the claimant and, ... the extent to which the regulation has interfered with distinct investment-backed expectations." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978). A hardship increase allows the petitioner to raise rents to a much greater degree than otherwise permitted, which is obviously relevant to the economic impact of the RSL on a building owner. Indeed, the increase is designed to address the exact issue petitioner alleges creates a constitutional

deficiency—that rent is "not enough to cover the property's normal operating expenses" (Pet. 1). If ripeness is generally required before a court can evaluate takings claims, there is no reason this case should be an exception to that principle.

Petitioner's only response to this is to suggest vaguely that a hardship increase is "de minimis" and will never allow income to outstrip expenses (Pet. 11, Pet. 30, App. 34a). But that claim is unsupported. The building already makes a net income (R92), and a hardship increase, if sought and granted, would allow petitioner to raise rents by six percent per year until collectible rent reaches at least five percent above operating expenses. 9 N.Y.C.R.R. § 2522.4(d). An increase of 6% per year would double the rent roll in twelve years. It cannot simply be brushed aside as de minimis.

This case is accordingly nothing like the litany of cases petitioner cites in which courts purportedly forced plaintiffs "to endure never-ending administrative processes" as part of "shell game" and "shifting goal post" manipulations (Pet. 31-34). Petitioner endured exactly zero administrative hurdles, as it never filed an application for any available rent increase under the RSL. It also has not made repairs to its building, attempted to recover for those repairs, or even sought a determination on the correct legal rent of its units. Instead, it premises its takings claim solely on hypotheticals about what its profit and loss might be if it actually followed the regulatory scheme.

Nevertheless, the Appellate Division did not suggest that petitioner needs to seek all available increases or eliminate all regulatory issues for its claim to be ripe. It merely held that before petitioner brings a takings claim based on the premise that the property will inevitably lose income, it needs to pursue the avenue the regulatory scheme specifically provides to make sure that properties have an avenue to redress such a circumstance—the hardship increase. This holding is entirely reasonable, and it has nothing to do with what other courts have held on other facts.

Relatedly, this Court should reject the efforts of amici to lump this case in with *Walls v. Prince George's County*, 2026 WL 497988 (4th Cir. Feb. 23, 2026).[3] In *Walls*, the plaintiff actually applied for an administrative waiver to install an interim well or septic system, which was denied. *Id.* at *2. The issue is whether this denial was a final decision or whether the plaintiff was also required to pursue "a water and sewer category amendment" from the City Council, as the county suggested. *Id.* at *3. Here, by contrast, petitioner never applied for anything or received any decision from anyone. Although some cases may present difficult issues regarding the number of administrative avenues a petitioner needs to pursue before a decision is deemed final, this case is not one of them.

[3] Four amicus briefs have been submitted making this comparison. *See* Brief Amici Curiae of National Association of Realtors, et al.; Brief Amici Curiae of Manhattan Institute, et al.; Brief Amici Curiae of Advancing American Freedom, et al.; Brief Amici Curiae of the Atlantic Legal Foundation, et al.

C. The lower court's dismissal of petitioner's claims on the merits also warrants denying certiorari.

Finally, this case is not a proper vehicle to address any ripeness issue because the Appellate Division independently dismissed petitioner's takings claim on the merits.[4] It therefore does not matter whether the claim was ripe, and this case is not a proper case to address any ripeness issue.

Although the petition focuses only on ripeness, both courts below independently held that petitioner did not state a claim for a regulatory taking (App. 2a-3a, 10a-11a). The Appellate Division explained that there is no total regulatory taking under *Lucas* because the property still has economic use, as petitioner "still receives regulated residential and unregulated commercial rent" (App. 2a). And it held that there was no regulatory taking under *Penn Central*

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[4] Petitioner suggests that "after the Appellate Division held that it lacked the ability to decide the case, it is questionable whether it had the power to proceed further and issue its alternate finding" (Pet. 13 n.15 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998))). This statement again improperly applies federal law on Article III jurisdiction to the New York courts. New York State Supreme Court has "is a court of original, unlimited and unqualified jurisdiction," and no principle of New York law prevents it from issuing holdings in the alternative. *Fry*, 89 N.Y.2d at 718. And to be clear, the Appellate Division here did not hold that it "lacked the ability to decide the case" (Pet. 13 n.15)—it simply held that the claim was not ripe (App. 1a-2a). The effect of this holding on the ability of the Appellate Division to decide other issues would be a matter of New York law.

because even if the RSL prevents petitioner from collecting market rate rents, petitioner would have expected this when it acquired the property and the RSL is a broad regulatory regime intended to serve the public interest (App. 3a).

Petitioner does not seek certiorari on these merits issues, perhaps because it recognizes the weakness of its claims. The complaint actively contradicts the idea that the RSL prevents "all economically beneficial or productive use" of the property, as petitioner still collects over $150,000 in rent annually (R90, 92, 97, App. 19a-20a). *Lucas*, 505 U.S. at 1015 (1992); *see Palazzolo v. Rhode Island*, 533 U.S. 606, 631 (2001) (no total taking when property retained $200,000 in development value). And petitioner's mismanagement of its building gives it a uniquely poor claim under *Penn Central* that it is being forced to "bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017). The public should not be forced to bear the burden of the building manager's failure to maximize the allowable rent under the RSL or conduct building maintenance for approximately 50 years, even if this allegedly now makes it difficult for petitioner to complete needed repairs while complying with the RSL. The value of the property was effectively "taken" by petitioner's chosen manager, not by the RSL.

Because the Appellate Division already ruled against petitioner on the merits, the state-court judgment does not rest on the ripeness issue. The Appellate Division analyzed the claim as if it were ripe, without considering any hardship increase, and held

that nevertheless there was no taking. If this Court held the claim was ripe, nothing would change. Ripeness at this point is solely an intellectual exercise.

Petitioner engages with this issue only in a footnote, which suggests that it can still gain relief on remand because the merits issue "is curable through the filing of an amended complaint" (Pet. 13 n.15). Petitioner identifies no case where the Court has granted review on such a tenuous theory, which would allow a petitioner to receive an advisory opinion on any issue simply by saying it could amend its complaint on others. Petitioner does not dispute that the Appellate Division would render the same judgment on the merits regardless of this Court's decision on ripeness.[5] And this is true regardless of whether petitioner could effectively restart his case by amending its complaint at the trial court, which would not cast doubt on the Appellate Division ruling but simply raise new issues. If this court wants to address the ripeness of a takings claim, it should do so in a case where it matters.

Because the lower court reached the merits and denied petitioner's claim, ripeness is now academic. This point is yet another reason the petition should be denied.

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[5] This distinguishes the case from *National Rifle Association of America v. Vullo*, in which the Court held that the petitioner could receive effectual relief on remand because the Court's decision on the merits could lead the Second Circuit to reconsider the closely related issue of qualified immunity. 602 U.S. 175, 186 n.3 (2024).

CONCLUSION

The petition for a writ of certiorari should be denied.

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