

No.

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*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In this Fifth Amendment takings case, the court below dismissed the property owner's as applied claim on prudential ripeness grounds. It held that an owner cannot sue without first petitioning the legislature to change the law responsible for the taking. The decision presents two splits of authority.

First, courts conflict about whether a property owner must exhaust legislative remedies to ripen a regulatory takings claim. The Ninth Circuit, Virginia, California, New York, Ohio, Michigan and Hawaii, say no. However, the Fourth Circuit below, plus Illinois, Florida, Georgia, and Wisconsin demand legislative exhaustion.

Second, courts conflict about whether ripeness is an element of jurisdictional standing or, instead, a prudential doctrine that allows the court to dismiss justiciable cases. On the jurisdictional side are this Court's decisions in *Williamson County Regional Planning Commission*, *Horne*, and *Pakdel*, plus the Third and Eighth Circuits. On the prudential side are this Court's decisions in *Lucas* and *Suitum*, and the Fourth, Fifth, Seventh, Ninth, and Tenth Circuits.

The questions presented are:

1. Must a property owner exhaust legislative remedies in order to ripen an as-applied regulatory takings claim under the Fifth Amendment?
2. When a property owner sufficiently pleads jurisdictional standing for a Fifth Amendment regulatory takings claim, may the court nonetheless dismiss the case on prudential ripeness grounds?

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner Garnell Walls, a natural person, was Plaintiff and Appellant below.

Respondent Prince George's County, Maryland, a government entity, was Defendant and Appellee below.

Melinda Bolling, individually and in her official capacity as Director of the Department of Permitting, Inspections and Enforcement, was Defendant and Appellee below. Dawit Abraham, the current Director, is substituted for Ms. Bolling as a matter of law pursuant to Supreme Court Rule 35.3.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Walls v. Prince George's County, No. 8:23-cv-01359-DLB (D. Md., Southern Div.)

Walls v. Prince George's County, No. 25-1121 (4th Circuit Court of Appeals)

Walls v. Prince George's County, No. C-16-CV-25-001424 (PGC Cir. Ct.)

Walls v. Prince George's County, No. ACM-REG-1320-2025 (Md. App. Ct.)

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PETITION FOR A WRIT OF CERTIORARI

In 1978, Garnell Walls bought a vacant development site in Brandywine, Maryland. From the beginning, it was intended to be a long-term investment and the site of his future retirement home. After forty years as a mechanic, Walls retired and then spent the next two years and close to \$40,000 getting the necessary permits and approvals.

Walls performed a hydrological study, passed the necessary soil percolation tests, and agreed to dedicate a portion of his land to conservation. The County also approved Walls' site development plan and his single-family dwelling permit. The last step was to arrange for water and sewer services. There are no public utilities nearby and connecting to the closest available location would cost over \$2 million dollars. That is not a viable option for a single-family home. Accordingly, Walls sought permission from Prince George's County to install a private well and septic system. The County refused and as a result, Walls' property is left vacant, idle, and unbuildable.

Walls' regulatory takings claim under the federal and state constitutions was dismissed as unripe by the Fourth Circuit Court of Appeals. The court viewed ripeness as a prudential determination that is enforceable at the court's discretion and distinct from jurisdictional standing. To that end, it refused to hear Walls' constitutional claim unless Walls first goes to the County legislature and tries to change the law that caused the unconstitutional taking. The decision joins two distinct splits of authority about when, and under what circumstances, an as-applied regulatory takings claim under the Fifth Amendment is ripe for determination.

Legislative Exhaustion

Lower courts are divided about whether a property owner must exhaust legislative remedies and attempt to change the existing law in order to ripen its Fifth Amendment claim. Most courts say no. Legislative exhaustion is not required in the Ninth Circuit, Virginia, California, New York, Ohio, Michigan and Hawaii. However, other courts, including the Fourth Circuit below, plus Illinois, Florida, Georgia, and Wisconsin, require a property owner to first seek legislative change as a condition precedent to an as-applied regulatory takings claim.

The Fifth Amendment's protection should not differ by jurisdiction. Only this Court can resolve the conflict, as well as the tension between legislative exhaustion and several established legal doctrines. First, the judiciary's "virtually unflagging obligation" to hear and decide constitutional cases, *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-18 (1976), is hard to reconcile with a ripeness doctrine that defers to the legislature and compels property owners to seek political relief in the first instance. Second, legislative exhaustion is also in tension with the property owner's obligation to establish final decision ripeness. *Williamson Cnty. Reg. Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), *overruled on other grounds by, Knick v. Twp. of Scott*, 588 U.S. 180 (2019). Legislative decisions are almost never "final" because the legislature can always create, amend, or repeal a law, irrespective of whatever decisions it may have made in the past. Consequently, an owner cannot show that it has exhausted legislative remedies when the potential for legislative action is inexhaustible.

And third, it is well established that once a government regulation strips away private property rights, subsequent legislative amendments cannot excuse the government's liability. *First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 321 (1987) (“[N]o subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective.”). Legislative exhaustion is in tension with that also, to the extent that a property owner that has already suffered an unconstitutional taking is denied the right to be heard because of a hypothetical, future legislative action that cannot erase the existing violation.

Jurisdictional versus Prudential Ripeness

The Fourth Circuit's decision amplified a substantial and persistent split of authority about whether final decision ripeness is jurisdictional and connected to standing and concrete injury; or instead, prudential, discretionary, and distinct from standing.¹

For regulatory takings, standing and ripeness are seemingly interrelated. Standing ensures that the property owner has suffered a particularized and concrete injury, as opposed to one that is speculative, hypothetical, or contingent on future events. Ripeness for a regulatory takings claim requires a *de facto* final position by the government with respect to the regulation and property at issue. *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 478 (2021). Accordingly, standing and ripeness are complementary, or even overlapping, requirements. Final

¹ This issue is also presented in the pending Petition for Certiorari in *Tedford's Tenancy, LLC, v. City of New York, et al.*, No. 26-____ (filed June 30, 2026).

decisions result in concrete takings injuries and standing; conversely, the lack of a final decision means that the claimed injury is merely speculative such that no standing exists.

But that changes if ripeness is deemed prudential. The prudential designation means that the court can decline to hear a case for reasons that are judicially self-imposed, discretionary, and mutable. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). Under a prudential ripeness doctrine, even when the property owner establishes a concrete injury and standing, the court can refuse to decide an undisputedly justiciable case and demand that the owner undertake additional procedural hurdles. That is what happened here.

Inconsistent decisions from this Court have cast doubt on whether final decision ripeness is jurisdictional or prudential. In three decisions, this Court linked final decision ripeness to jurisdictional standing. *Williamson Cnty.*, 473 U.S. at 193; *Horne v. Dep't of Agric.*, 569 U.S. 513, 525 (2013); *Pakdel*, 594 U.S. at 479. Conversely, in two other decisions, this Court deemed final decision ripeness to be prudential and discretionary. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1013 (1992); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 729, 733 (1997). As a result, the lower courts are both fiercely divided and utterly confused. The Third Circuit, the Eighth Circuit, and Nevada have declared ripeness to be jurisdictional for takings cases.² The Fourth, Fifth, Seventh, Ninth and Tenth Circuits have declared it to be prudential.³ An Eleventh Circuit decision declared ripeness to be jurisdictional and then decided the case on prudential

² See *infra* at 27.

³ See *infra* at 29-30.

grounds, and California and Iowa courts have done the same.⁴ The Federal Circuit and Second Circuit have issued inconsistent intra-circuit decisions.⁵ And in the Sixth Circuit, it remains an open question.⁶

Considering the above, the Fourth Circuit's demand for legislative exhaustion on prudential ripeness grounds impermissibly rejected the inherent justiciability of Walls' plausibly pled constitutional claim. The access to courts was unfairly prejudiced and it reduced property rights to the "poor relation" of the Bill of Rights. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994); Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U. J.L. & Pol'y 99, 131 n.136 (2000) (decrying "a huge and unjustified difference between land use ripeness cases and all other ripeness cases").

Certiorari should be granted.

⁴ See *infra* at 31-32.

⁵ See *infra* at 30-31.

⁶ See *infra* at 28-29.

OPINIONS BELOW

The unpublished decision of the Fourth Circuit Court of Appeals is reprinted at App. 1a. The court's order denying rehearing is reprinted at App. 30a. The district court's unpublished ruling is reprinted at App. 13a.

JURISDICTION

The courts below had jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and 42 U.S.C. § 1983, and this Court has jurisdiction under 28 U.S.C. § 1254.

The unpublished decision of the Fourth Circuit Court of Appeals was issued on February 23, 2026, and the court denied rehearing on March 23, 2026. Chief Justice Roberts granted an extension to file the petition in this case until July 22, 2026. No. 25A1280.

CONSTITUTIONAL PROVISION INVOLVED

The Takings Clause of the Fifth Amendment provides that “private property [shall not] be taken for public use without just compensation.” U.S. Const. amend. V.

STATEMENT OF THE CASE

A. Walls' Property and Governing Regulations

Garnell Walls owns a vacant lot in a partially developed neighborhood in Prince George's County, Maryland. App. 37a. When he bought the land in 1978, he intended to use the property to build a house for himself upon retirement. In the years that followed, he worked as a mechanic repairing police, fire, and ambulance vehicles for Prince George's County. Now retired, and on disability, Walls set out to build a single-family home on the land that he bought for that purpose. *Ibid.*

Between 2019 and 2021, Walls expended close to \$40,000, plus a significant amount of time and resources to obtain the requisite permits and inspections. App. 38a-39a. He had a hydrological study performed. App. 38a. He conducted, and passed, soil percolation tests. *Ibid.* And Walls recorded a woodland conservation easement for the balance of the property. App. 38a-39a. The County approved his Site Development permit and his single-family dwelling permit, and its Department of Permitting, Inspections and Enforcement (DPIE) gave Walls periodic assurances that he would be granted the approval to build. App. 39a.

However, it was not feasible for Walls to connect to public utilities. The nearest public sewer connection is over one-half mile away and the nearest public water connection is approximately 900 feet away. App. 41a. Walls' cost to connect would be in the range of \$2.1 million to \$2.4 million, an amount that is not economically viable for the construction of a single-family home. App. 39a. Consequently, the last step in the process was permission from the County to

install an interim private well and septic system. *Ibid.*

A private well and septic system cannot be constructed without the County's permission. App. 34a, 36a. That was not always the case. Prior to the 2018 revisions to the County's land regulations, the government historically allowed private well and septic systems in areas not served by municipal utilities, including for two of Wall's similarly situated neighbors. App. 34a, 37a, 41a, 43a. Now, though, Walls must obtain permission in the form of a "waiver" under the controlling law, codified as the 2018 Water & Sewer Plan. App. 36a-37a. The "waiver process is designed to eliminate unnecessary burden on an individual owner of an existing . . . lot." App. 36a.

Walls' Complaint alleged that he satisfied the necessary criteria. App. 35a, 37a, 41a. Nonetheless, the County informed Walls that it would not permit him to construct, and *did not have the authority to approve*, an interim private well and septic system. App. 40a, 43a; *see* Joint Appendix (JA) at 078-079, *Walls v. Prince George's County, et al.*, No. 25-1121, Fourth Circuit Court of Appeals. Instead, Walls was told that "it is possible," JA 079, that he could connect to public utilities that were anticipated to be built in the future as part of the "Saddle Creek" subdivision development. App. 42a.

Yet the Saddle Creek development is not forthcoming. Saddle Creek representatives informed Walls that the project is still in the concept phase and that construction is four-to-five years away, at best; and further, that Saddle Creek had no plans to extend its water or sewer lines to a location that would work for Walls' property. App. 42a-43a. Walls relayed this to

the County, but the County refused to change its position. App. 43a. It informed Walls that his sole avenue to build on his property was to seek a legislative amendment to the County's 2018 Water & Sewer Plan and connect to a future development. App. 40a, 42a-43a.

B. The Courts Below Demand Legislative Exhaustion to Ripen the Case

With his property left vacant and unbuildable, App. 44a. Walls filed a complaint in the United States District Court for the District of Maryland against Prince George's County and the DPIE Director (the "Government"). App. 31a-48a. He asserted as-applied regulatory takings claims under the federal and state constitutions and sought declaratory relief and damages in the form of just compensation. App. 44a-48a.

The Government filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). JA 005-20. It argued that Walls's claims were not ripe for judicial review and that the Amended Complaint failed to state a plausible claim for relief. *Ibid.*

The district court agreed that the case was not ripe for determination.⁷ App. 14a. It viewed ripeness as a prudential consideration that did not implicate the court's jurisdiction. App. 18a-19a. With that context, the court decided that Walls' claim would not be heard until the County issued an official denial of his waiver application, App. 20a-21a, 23a, irrespective of Walls' pleading that he filed a waiver application, App. 20a, and the County's subsequent confirmation in writing

⁷ The court read its prepared ruling into the record at the conclusion of the hearing on the motions.

that no well and septic permit would be granted. App. 21a-22a; *see also* App. 21a (According to the trial court, the County’s letter “does suggest that DPIE might not approve a waiver if one were submitted on the current facts” and should Walls “wish to pursue [his] initial inquiry for interim systems usage, it will necessitate the legislative amendment process.”). The trial court made no ruling on legislative exhaustion but expressed skepticism that it was required to ripen his claim. App. 27a (“I won’t discuss here whether or not the . . . legislative amendment process . . . is required in order to obtain a final decision. Frankly, under my reading of the law, I don’t believe it is.”).⁸

The Fourth Circuit affirmed in an unpublished, per curiam opinion.⁹ The court did not require Walls to file another waiver application simply for the sake of getting an official denial. App. 7a, n.6. But the Fourth Circuit did agree that ripeness is prudential and concluded that Walls’ claim was not prudentially ripe because he had not approached the legislature and tried to change the County’s 2018 Water and Sewer Plan. App. 2a, n.1. Unlike the district court, the Fourth Circuit held that the legislative amendment process was a prerequisite to Walls’ constitutional

⁸ In dicta, the district court stated that if the case were ripe, it would invoke *Burford* abstention and remand it to state court to determine the takings claims because it involves “local land use issues.” App. 27a-29a. The Fourth Circuit did not comment on this.

⁹ This Court grants certiorari in cases with unpublished decisions that are controlled by binding circuit precedent. *See, e.g., Lora v. United States*, 599 U.S. 453 (2023); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022); *Stokeling v. United States*, 586 U.S. 73 (2019); *see also* Rachel Brown et al., *Is Unpublished Unequal?*, 107 Cornell L. Rev. 1, 139-45 (2021) (listing 75 others).

claim being heard: “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.’” *Ibid.* According to the court, “though this legislative process . . . there is still an opportunity for the County to change its position.” App. 9a.

The court recognized that the Legislative Amendment process is not a review of the County’s waiver denial, but “a separate procedure in which the County Council conducts its own evaluation of the property and has plenary authority to deny or grant the requested relief.” App. 8a. The two-step procedure is as follows.¹⁰ JA 022-030. First, Walls must ask for a Legislative Amendment that redesignates his property from “Category 5” to “Category 4.”¹¹ JA 079. It follows a quintessential legislative process: (a) DPIE coordinates with County and Bi-County agencies and evaluates, prepares and submits proposed Legislative Amendments for the County Executive’s review and recommendation; (b) the recommendation is sent to the County Council for consideration; (c) notice is given to the public, plus County and State agencies; (d) a public hearing is held; (e) the County Council Committee holds a work session; (f) the County Council acts on the proposed Legislative Amendments; and finally, (g) the County Executive has 10 days to comment on the County Council’s action before the resolution is effective. JA 023-026. Notably, the County Council has no

¹⁰ The Fourth Circuit took judicial notice of the legislative amendment process. App. 4a, n.3.

¹¹ For a discussion of the categories, see <https://tinyurl.com/3ya2dwez> at pp. 2-2 through 2-5 (visited July 18, 2026).

obligation to state its reasons for approving or disapproving a Legislative Amendment. *Ibid.*

If Walls succeeds in obtaining legislative approval, he must *again* pursue a slightly more streamlined legislative process to seek an amendment redesignating the “Category 4” property to “Category 3.” JA 079. In this phase, he must submit the request along with other documentation to the DPIE, JA 026-028, which “reserves the right to determine what is necessary before transmitting the evaluation to the County Executive and the County Council.” JA 027. Although this phase begins with the DPIE and is designated an “Administrative Amendment,” the County Executive and County Council ultimately evaluate and decide the merits of the requested amendment. JA 027. Unlike the first process, if the County Executive and Council make no comment on the submitted materials, the Director of DPIE is authorized to approve the recategorization. *Ibid.* However, the County Executive and County Council retain discretion to transfer the request into the first Legislative Amendment process described above. *Ibid.* The process contains no criteria for the exercise of that discretion. JA 026-028.

Walls cannot construct an interim private well and septic system on his property, even if he succeeds in obtaining a Category 3 designation. This legislative process would allow Walls only to connect to the Saddle Creek subdivision development, App. 42a-43a, JA 079, which does not now, and may never, exist. App. 42a-43a.

Nevertheless, regardless of Walls’ standing and concrete injury, the Fourth Circuit considered the above to be a “classic type of ordinary process required

to satisfy the finality requirement.” App. 8a (cleaned up). Because Walls’ complaint did not allege that “that the County Council had a practice of denying legislative amendments as a matter of course,” as a matter of prudential ripeness, he was required to go through the process in order for his constitutional claim to be heard. App. 10a.

Walls’ petition for rehearing en banc was denied. App. 30a. This petition follows.

REASONS FOR GRANTING THE PETITION

I. Courts Conflict as to Whether Property Owners Must Pursue Legislative Change to Ripen Takings Claims

There is a split of authority, primarily amongst state courts, about whether legislative exhaustion is a necessary precondition for a Fifth Amendment regulatory takings claim. It is a crucial divide about the justiciability of constitutional property rights claims that can only be resolved by this Court.

A. Most courts do not require property owners to engage in the inherently political, legislative process prior to seeking just compensation for a regulatory taking

A takings claim is ripe for determination once the government’s regulatory position is known to a reasonable degree of certainty. *Pakdel*, 594 U.S. at 478; *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001). It is a modest, de facto, requirement. *Pakdel*, 594 U.S. at 479. Thus, numerous courts have held that a property owner does not have to attempt legislative change to satisfy final decision ripeness. Once the government has committed to a position, it

is not a requirement for the legislature to then double down on that commitment by also refusing to alter the law.

For example, the Ninth Circuit held that a property owner does not have to seek a legislative amendment in order to ripen a temporary takings claim. *Tahoe-Sierra Preserv. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 938 F.2d 153, 157 (9th Cir. 1991). That decision adopted the dissent of Judge Kozinski from a previous iteration of the case. *Ibid.*, adopting *Tahoe-Sierra Preserv. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 911 F.2d 1331, 1344-46 (9th Cir. 1990) (Kozinski, J., dissenting). He explained that a legislative amendment is “an exercise of political judgment” that can never final, because it is subject to “a change in the makeup of the legislative body, a shift in the political winds, [] a change in attitude” or equally, for “no ascertainable reason at all.” 911 F.2d at 1345 (Kozinski, J., dissenting). Thus, “once it is clear that the proposed development plan does not fit within the governing law, the owner has exhausted and need not go the next step of asking for a change in the law.” *Id.* at 1345, n.1 (Kozinski, J., dissenting).

The Fourth Circuit, in contrast with its decision in this case, relied on Judge Kozinski’s analysis in *New Pulaski Co. Ltd. Partnership v. Mayor and City Council of Baltimore*, 217 F.3d 840, 2000 WL 1005207 (4th Cir. 2000). It noted that discretionary determinations by a City Council represent “the exercise of political judgment” that cannot be described as “administrative.” *Id.* at *4; *see also Land Grantors in Henderson, Union, and Webster Counties*, 64 Fed. Cl. 661, 717 (2005) (The court was unaware of “any legal precedent requiring plaintiffs to exhaust a potential legislative remedy, when a legal claim has been

established, for which the court may enter a final judgment and damages and the parties may seek appellate review.”).

Most decisions on this issue come from state courts, prior to *Knick*’s abrogation of the state court exhaustion requirement of *Williamson County*. *Knick*, 588 U.S. 180. Collectively, they reject the need for property owners to seek legislative remedies to ripen a takings claim.

The New York Court of Appeals rejected legislative exhaustion in *Ward v. Bennett*, 79 N.Y.2d 394, 400-01 (1992) (“the ripeness doctrine does not impose a threshold barrier requiring pursuit of all possible remedies that might be available through myriad government regulatory and legislative bodies”). In that case, the lower courts dismissed the property owner’s takings claim as unripe because he did not engage in “an elaborate demapping procedure, which is costly, cumbersome, lengthy and requires the final approval of the New York City Council, the ultimate legislative body of the City.” *Id.* at 401. The high court reversed, noting that “[a]n aggrieved property owner could be effectively blocked from seeking meaningful judicial review of a confiscation claim until, for example, a change in governing law—a possibly excessively burdensome course of action, such as is presented in this case.” *Ibid.*

In *Rinker v. City of Fairfax*, 238 Va. 24, 27, 30 (1989), the court held that the trial court erred when it ordered a landowner to seek a legislative amendment to the challenged legislation as a precondition to review. “Otherwise, a local governing body could impose involuntary conditions and force the landowner to seek legislative review to repair

those illegal conditions, a situation inimical to the orderly process of zoning.” *Id.* at 29-30.

In *Howard v. County of San Diego*, 184 Cal. App. 4th 1422, 1426 (2010), the county refused a property owner’s request to build a barn on his land because it was designated in the General Plan as the future location for a road. The trial court determined that Howard’s takings claim was not ripe because he did not seek a General Plan amendment to modify the road standard. The appellate court reversed, holding that “regardless of the process” by which landowners may seek an amendment to the county’s General Plan, “the ultimate decision is a legislative one to be voted on, after notice and a hearing, by the County’s Board of Supervisors.” *Id.* at 1432. The court distinguished the legislative remedy from administrative exhaustion and the lawsuit was allowed to proceed. *Ibid.* The California Supreme Court adopted *Howard*’s analysis in *Hill RHF Housing Partners, L.P. v. City of Los Angeles*, 12 Cal. 5th 458, 477 n.5 (2021), citing *Howard*, 184 Cal. App. 4th at 1431-32 (describing “legislative actions as political in nature” and in contrast with administrative or adjudicative actions, which apply law that already exists) (cleaned up).

Other state courts agree:

Leone v. County of Maui, 128 Haw. 183, 196 (Ct. App. 2012), held that “[r]ipeness requires only that landowners take advantage of any available variances or waivers under existing law; it does not require them to undertake changing the law itself.”

Paris v. Mayfield Village, 14 Ohio App. 3d 450, 452 (1984), held that property owners are not required to “pursue an initiative referendum to change the

present village zoning ordinance before they may raise the constitutionality of the subject zoning in a declaratory judgment action.”

In *In re Quality of Service Standards for Regulated Telecommunication Services*, 204 Mich. App. 607, 610 (1994), the court flatly stated that “exhaustion of legislative remedies, [is] a doctrine unknown to our jurisprudence.”

B. Other courts require exhaustion of legislative remedies

Conversely, the Fourth Circuit below and certain state courts demand attempted legislative solutions before legal relief. In *Nat’l Brick Co. v. City of Chicago*, 92 Ill. App. 2d 192, 196 (1968), the plaintiff’s action was dismissed as unripe for failing to petition the City Council for a change to the zoning ordinance. Said the Illinois court, “[w]e believe that under the facts and circumstances of the instant case the plaintiffs should first have exhausted their legislative remedy before petitioning the courts for relief.” *Ibid.* (citing *Bright v. City of Evanston*, 10 Ill. 2d 178 (1956); *Reilly v. City of Chicago*, 24 Ill. 2d 348, 350 (1962)) (Plaintiff “failed to seek relief by amendment, the only procedure available to him under the ordinance [and this] was a prerequisite to access to the courts.”).

Florida courts also may require property owners to seek political, legislative relief to ripen a regulatory takings claim. For example, in *Taylor v. Village of N. Palm Beach*, 659 So.2d 1167, 1173-74 (Fla. App. 1995), the court held that the availability of a “political resolution” barred the landowner’s as-applied regulatory takings claim “because she did not seek to amend” the village’s Comprehensive Land Use Plan. Similarly, in *City of Jacksonville Beach v. Prom*, 656

So.2d 581, 582-83 (Fla. App. 1995), the court noted that although amending the comprehensive plan was “a legislative act of the city council,” the council, staff, or landowners may propose site-specific amendments. Therefore, the court held that the landowner must pursue that remedy to ripen a regulatory takings claim. *Id.* at 583. Georgia and Wisconsin courts echo this approach. *See Shelley v. Town of Tyrone*, 302 Ga. 297, 305 (2017) (rejecting a regulatory takings claim as unripe because the property owner “did not formally ask the council . . . to rezone the property in question”); *Thorp v. Town of Lebanon*, 225 Wis. 2d 672, 696 (Wis. Ct. App. 1999) (requiring property owner to seek rezoning to ripen takings claim, but not to appeal the denial).

C. Exhaustion of legislative remedies is in tension with multiple doctrines

In addition to the split of authority above, a legislative exhaustion requirement for Fifth Amendment cases sits in tension with multiple established legal principles. First, the judiciary has a clear obligation to resolve constitutional claims in the first instance. *See, e.g., Colorado River*, 424 U.S. at 817-18 (There is a “virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.”) (citations omitted). Yet, when a court bypasses that duty and designates the legislature as the initial arbiter of constitutional disputes, it unbalances the separation of powers and diminishes the judiciary. Particularly when considering that the legislative body is not required to explain its determinations (as here, JA 022-030), and such inherently political decisions are prone to the forces that generally attend such acts. For example,

legislative bodies often bend to public opposition and refuse to allow property owners to develop their land. *See, e.g., Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 819 (4th Cir. 1995) (citing cases in which legislative bodies acceded to public opposition and refused development proposals by certain religious and racial groups); *City of Las Vegas v. 180 Land Co., LLC*, 546 P.3d 1239, 1252 (Nev. 2024) (noting that the city council’s hostility to the proposed development reflected the neighboring property owners’ opposition); *Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan*, 272 N.J. Super. 1, 12 (App. Div. 1994) (noting that “the enactment or amendment of a zoning ordinance is a legislative act, [and] a governing body may respond to the views of its constituents in performing this responsibility”).

Second, to the extent that property owners must pursue legislative change in order to ripen a regulatory takings claim, it is in tension with *Williamson County*’s final decision rule. 473 U.S. at 193 (The landowner is only required to show that the government has reached a “definitive position” about how the land use restrictions will be applied to the property.). A legislative decision is rarely “final” because the legislature is almost always free to change its mind and do something different in the future, particularly with respect to discretionary determinations. *See Horne v. Flores*, 557 U.S. 433, 449 (2009) (legislatures cannot bind the hands of future legislatures); *Cherry v. Mayor and City Council of Baltimore City*, 475 Md. 565, 623 (2021) (same). Therefore, if legislature has the continuous ability to act regardless of past decisions, then the property owner can be perpetually compelled to ask for legislative change, which would effectively bar the

resolution of its constitutional claim. *See Tahoe-Sierra Pres. Council, Inc.*, 911 F.2d at 1345 (Kozinski, J., dissenting) (“A decision denying a variance is final, whereas a decision not to amend a law never is.”).

Third, the demand for legislative exhaustion both alters the nature of Fifth Amendment claims and undermines this Court’s temporary takings doctrine. Once a regulation causes a taking of private property, future changes to that law do not erase the constitutional violation that has already occurred. *First English*, 482 U.S. at 317-18 (if the government “abandon[s] its intrusion or discontinue regulations,” the result is a temporary taking); *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 657 (1981) (Brennan, J., dissenting) (“The fact that a regulatory taking may be temporary, by virtue of the government’s power to rescind or amend the regulation, does not make it any less of a constitutional taking.”) (internal quotations omitted); *Knick*, 588 U.S. at 193 (“A later payment of compensation may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place. . . . A bank robber might give the loot back, but he still robbed the bank.”). That is in substantial tension with a ripeness doctrine that renders the original violation nonactionable and deprives the owner of judicial review unless and until the legislature, at the future date of its choosing, decides whether to confirm, rescind, or alter the law. It also changes the scope of the Fifth Amendment’s protection, by grounding the claim upon the legislature’s failure to cure as opposed to the original violation itself.

II. This Court Should Resolve the Conflict Between Jurisdictional Standing and Prudential Ripeness in Takings Cases

There is a substantial split of authority about whether final decision ripeness is jurisdictional or prudential for Fifth Amendment regulatory takings claims.¹² On the jurisdictional side are this Court’s decisions in *Williamson County Regional Planning Commission, Horne*, and *Pakdel*, plus the Third and Eighth Circuits. On the prudential side are this Court’s decisions in *Lucas* and *Suitum*, and the Fourth, Fifth, Seventh, Ninth, and Tenth Circuits. The Federal and Second Circuits have intra-circuit splits and in the remaining Circuits, it is an open question. As a result, there is substantial uncertainty about what a property owner must plead for its constitutional claim to be heard on the merits.

A. This Court’s conflicting decisions about ripeness

For regulatory takings claims under the Fifth Amendment, property owners must establish standing and final decision ripeness. Both originate from the same constitutional limitation that courts can only adjudicate “case[s] or controvers[ies],” *Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332, 335 (2006), and they “boil down to the same question” of whether the plaintiff properly alleged an injury. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007).

With respect to standing, the owner must show (i) an injury-in-fact, (ii) a causal connection between the injury and the conduct complained of, and (iii) and

¹² This question is also raised in *Tedford’s Tenancy, LLC, v. City of New York*, No. 26-____. (filed June 30, 2026).

redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury-in-fact must be “concrete, particularized, and actual or imminent.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1122 (2026). Conversely, “conjectural or hypothetical” injuries are insufficient. *Dep’t of Educ. v. Brown*, 600 U.S. 551, 561 (2023) (quoting *Lujan*, 504 U.S. at 560).

With respect to ripeness, under the Fifth Amendment the government is liable for regulations that have gone “too far.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (“[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”). Accordingly, the property owner must plausibly plead that the government has committed to a *de facto* final position, *Pakdel*, 594 U.S. at 479, so that the court knows “how far the regulation goes.” *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 348 (1986). Final decision ripeness is a modest requirement that reflects the limits of the regulation as applied to the property and it does not demand administrative exhaustion. *Pakdel*, 594 U.S. at 480.

For Fifth Amendment takings cases, final decision ripeness is complementary of, or even duplicative of, standing. If there is a final decision, then the claimed injury-in-fact is concrete and particularized. And if there is no final decision, then the injury is merely speculative or hypothetical. In some cases, this Court has equated final decision ripeness with standing and concrete injury. See, e.g., *Williamson Cnty.*, 473 U.S. at 193 (“the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury”); *Horne*, 569 U.S. at 525 (final decision ripeness is based on whether the owner had

been injured by the government’s action and suffered a concrete injury); *Pakdel*, 594 U.S. at 479 (ripeness ensures that the owner has been injured and that the case is not about a hypothetical harm).

However, this Court has also said the exact opposite and characterized ripeness as a “prudential” doctrine for takings claims. In *Suitum*, the Court explained that final decision ripeness is reviewed “under prudential ripeness principles” and it is an “independent prudential hurdle.” 520 U.S. at 733; *id.* at 734 and n.7 (ripeness is “drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction”) (citing *Reno v. Cath. Social Servs., Inc.*, 509 U.S. 43, 57, n.18 (1993)).¹³ It did the same in *Lucas*, 505 U.S. at 1012-13 (“That there is a discretionary special permit procedure . . . goes only to the prudential ripeness of Lucas’s challenge, and for the reasons discussed we do not think it prudent to apply that prudential requirement here.”).

The distinction between the two is extraordinarily important because prudential considerations are separate from “the immutable requirements of Article III.” *Bennett*, 520 U.S. at 162. While they “bear on the question of standing,” they are “self-imposed limits” on the exercise of jurisdiction that can be freely modified or abrogated by the legislature. *Ibid.*; *United States v. Windsor*, 570 U.S. 744, 757 (2013) (prudential limitations are separate from standing and “essentially matters of judicial self-governance.”). As

¹³ *Suitum* also held that the *Abbott Laboratories*’ two-prong “fitness for review” ripeness test was “not on point” for takings cases but otherwise stated that ripeness was prudential. 520 U.S. at 744 (discussing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-153 (1967)).

one federal court explained, “when a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later It does not mean that the case is not a real or concrete dispute affecting cognizable current concerns of the parties within the meaning of Article III.” *Simmonds v. I.N.S.*, 326 F.3d 351, 357 (2d Cir. 2003); *Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd.*, 152 F.4th 47, 58 (2d Cir. 2025) (same); *A.C.L.U. v. Nat’l Sec. Agency*, 493 F.3d 644, 677 (6th Cir. 2007) (“[P]rudential principles are ‘limits’ on standing, they do not themselves create jurisdiction; they exist only to remove jurisdiction where the Article III standing requirements are otherwise satisfied.”).

Jurisdictional standing and prudential ripeness are therefore in substantial tension with each other. Once jurisdiction is established, “a federal court’s obligation to hear and decide a case is virtually unflagging.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (internal citations and quotations omitted); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) (when a party properly invokes federal jurisdiction, the court is “bound to take the case and proceed to judgment”); *Bd. of Comm’rs of Knox Cnty. v. Aspinwall*, 65 U.S. (24 How.) 376, 385 (1861) (“[N]o court, having proper jurisdiction and process to compel the satisfaction of its own judgments, can be justified in turning its suitors over to another tribunal to obtain justice.”).

That well-established judicial duty cannot be easily reconciled with a prudential doctrine that gives the court the discretionary power to refuse to decide a justiciable case. In other words, it is unclear how a court can be obligated to decide a case for which it has jurisdiction; and at the same time, have the

discretionary prudential power to refuse to decide a case for which it has jurisdiction. One of these two rules must ultimately yield to the other.

This Court has repeatedly acknowledged the doctrinal divide. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (Prudential ripeness “is in some tension with our recent reaffirmation of the principle that a federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging.”); *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014) (same); *see also Grocery Mfrs. Ass’n v. E.P.A.*, 693 F.3d 169, 185 (D.C. Cir. 2012) (Kavanaugh, J., dissenting) (Stating in the context of a Clean Air case that “the majority opinion here concludes that prudential standing is jurisdictional. The majority opinion thus creates a deep and important circuit split on this important issue.”). And at least one federal judge has sharply questioned whether prudential ripeness should exist at all. D.C. Circuit Court of Appeals Judge Henderson explained that “ripeness is a solution in search of a problem and a needlessly muddled area of justiciability.” *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1163 (D.C. Cir. 2025) (Henderson, J., concurring). “Insofar as ripeness traces its lineage to Article III, it has become absorbed by standing. Insofar as ripeness rests on prudential considerations, it infringes on our constitutional duty to adjudicate a proper case or controversy.” *Ibid.*

Commentators also argue that the prudential ripeness doctrine finds little support in the language and history of Article III. “Its ‘tortured constitutional discourse’ has been characterized, among other things, as permeated with ‘doctrinal confusion,’

‘hopelessly incoherent and subject to manipulation,’ a ‘pointless constraint on the courts,’ and driven by substantive or normative assessments masquerading as threshold jurisdictional inquiries.” S. Todd Brown, *The Story of Prudential Standing*, 42 Hastings Const. L.Q. 95, 97 (2014) (internal citations omitted); Erwin Chemerinsky, *A Unified Approach to Justiciability*, 22 Conn. L. Rev. 677, 692 (1990) (The distinction between constitutional and prudential requirements was judicially created and “of quite recent origin.”). As with the abrogated state court exhaustion requirement, the justifications for prudential ripeness “are suspect, while its impact on takings plaintiffs is dramatic.” *San Remo Hotel, L.P. v. City and Cnty. of San Francisco*, 545 U.S. 323, 352 (2005) (Rehnquist, C.J., concurring in the judgment).

B. Lower courts conflict in their approach to final decision ripeness in as-applied regulatory takings cases

This Court has not conclusively determined whether final decision ripeness under the Fifth Amendment is jurisdictional or prudential. Consequently, federal courts are left with extraordinary uncertainty, with *Williamson County*, *Horne*, and *Pakdel* on the side of jurisdictional ripeness; *Suitum* and *Lucas* on the side of prudential ripeness; and unresolved tension between jurisdictional standing and prudential ripeness. See, e.g., *N.H. Lottery Comm’n v. Rosen*, 986 F.3d 38, 52 n.8 (1st Cir. 2021) (“The Supreme Court has expressed doubt about whether the doctrine of prudential ripeness is consistent with the settled principle that a federal court has a ‘virtually unflagging’ obligation to hear and decide cases within its jurisdiction.”); *Fowler v.*

Guerin, 899 F.3d 1112, 1116 n.1 (9th Cir. 2018) (“[P]rudential ripeness is a disfavored judge-made doctrine” that is in tension with obligation to hear justiciable cases and “[t]he Court has not yet had occasion to ‘resolve the continuing vitality of the prudential ripeness doctrine.’”); *see also Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 66 (9th Cir. 2024) (Noting in a First Amendment case “that the Supreme Court in dictum has questioned the ‘continued vitality’ of prudential ripeness doctrine . . . The Court appears to have walked up to the line but stopped short of abrogating the doctrine.”). Overall, there are numerous splits about what ripeness means and on what side of line it belongs.

1. Ripeness is jurisdictional. The Third Circuit deems ripeness to be jurisdictional in takings cases. *Dillow v. Treasurer of Pennsylvania*, No. 24-2004, 2025 WL 2813596, at *2 (3d Cir. Oct. 3, 2025) (ripeness is an element of Article III jurisdiction). The Eighth Circuit and Nevada Supreme Court do so as well. *Snaza v. City of Saint Paul*, 548 F.3d 1178, 1182 (8th Cir. 2008) (ripeness is jurisdictional with respect to takings claims); *City of Las Vegas v. 180 Land Co., LLC*, 546 P.3d 1239, 1250 (Nev. 2024) (if a takings claim isn’t ripe, the court exceeds its jurisdiction by allowing the claim to proceed) (citing *MacDonald*, *Palazzolo*, and *Williamson County*).

The Sixth Circuit is undecided but leans toward the jurisdictional side. As it explained, “[w]hether that ripeness argument can square with [*Knick v. Township of Scott*] is an open question in our circuit.” *Hendershot v. Stanton*, 162 F.4th 625, 628 n.1 (6th Cir. 2025) (also noting the federal circuit split between *Knellinger v. Young*, 134 F.4th 1034, 1044 (10th Cir. 2025), and *Maron v. Chief Fin. Officer of Fla.*, 136

F.4th 1322, 1332-33 (11th Cir. 2025), with *Dillow*, 2025 WL 2813596, at *2-3).

However, in several cases, the court has been reticent to apply the prudential ripeness doctrine. In *Miller v. City of Wickliffe*, although not a regulatory takings case, ripeness turned on whether the plaintiff had applied for a particular land use permit. 852 F.3d 497, 501 (6th Cir. 2017). The court noted that this Court in *Lexmark* and *Driehaus*, and the Sixth Circuit in *Kiser*, cast doubt on prudential standing and consequently, “we are hesitant to ground our decision in prudential-standing principles.” *Id.* at 503, n.2 (citing *Lexmark*, 572 U.S. at 125-26, *Driehaus*, 573 U.S. at 167, and *Kiser v. Reitz*, 765 F.3d 601, 606-07 (6th Cir. 2014)).¹⁴ See also *F.P. Dev., LLC v. Charter Twp. of Canton*, 16 F.4th 198, 203 (6th Cir. 2021) (In the context of a regulatory takings action, “we do not think it prudent to apply the doctrine of prudential ripeness sua sponte here. F.P. has standing under Article III, and the status of the prudential ripeness doctrine is uncertain.”) (internal quotation marks and citations omitted); *Cath. Healthcare Int’l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 445-48 (6th Cir. 2023) (ripeness was determined by concrete injury and the plaintiff was not required to show that it has complied with the administrative process).

2. Ripeness is prudential. The Fourth, Fifth and Seventh Circuits hold that ripeness is prudential and distinct from standing. *Washlefske v. Winston*, 234 F.3d 179, 182 (4th Cir. 2000) (“Ripeness in this context

¹⁴ “*Lexmark*, *Driehaus*, and *Kiser* do not affirmatively state that the prudential-standing doctrine is dead, and we cannot predict its future. But, in view of the question, we choose to rely on a more solid foundation for deciding the case—namely, constitutional-standing principles.” *Ibid.*

does not refer to Article III’s case or controversy requirement for that is plainly satisfied here. . . . Rather, the question is one of prudential ripeness—whether we *should* exercise federal jurisdiction.”) (citing *Suitum*, 520 U.S. at 733 n.7); *Money v. City of San Marcos*, No. 24-50187, 2025 WL 429980, at *3 (5th Cir. Feb. 7, 2025) (the finality requirement is a prudential ripeness determination); *Kolton v. Frerichs*, 869 F.3d 532, 534 (7th Cir. 2017), as amended (Nov. 9, 2017) (ripeness in a takings case is prudential and waivable). New York courts have followed suit. *Tedford’s Tenancy, LLC v. City of New York*, 238 A.D.3d 624, 625 (N.Y. App. Div. 2025).

The Ninth Circuit similarly emphasizes the prudential aspect. See, e.g., *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1089 (9th Cir. 2015) (“ripeness requirements are prudential rather than jurisdictional, meaning that they are formulated by the court rather than stemming from Article III”); *Twitter, Inc. v. Paxton*, 26 F.4th 1119, 1123 (9th Cir. 2022) (in the context of a First Amendment case, holding that the fixed standard of constitutional ripeness applies “less stringently” when constitutional rights are asserted but simultaneously reasoning that prudential ripeness is “amplified” when constitutional rights are asserted).

But the Ninth Circuit has also strongly questioned prudential ripeness, calling it a disfavored doctrine in tension with the court’s obligation to decide justiciable cases. *Fowler*, 899 F.3d at 1116 n.1; see also *Nat’l Cmty. Reinvestment Coal. v. Off. of Comptroller of Currency*, No. 4:20-CV-04186-KAW, 2021 WL 4932548, at *8 (N.D. Cal. Jan. 29, 2021) (in an Administrative Procedure Act case, noting that the Ninth Circuit considers prudential ripeness to be “a

disfavored judge-made doctrine” and “declin[ing] to address prudential ripeness when constitutional ripeness is satisfied”) (citation omitted).

The Tenth Circuit acknowledged the tension between jurisdictional and prudential ripeness and declared it to be prudential in deference to *Lucas*, *Suitum*, and *Horne*. See *N. Mill Street, LLC v. City of Aspen*, 6 F.4th 1216, 1227-29 (10th Cir. 2021) (holding that although the takings claim was ripe under Article III and the owner had standing, it was “not prudentially ripe,” and the case must be dismissed). The tumult that preceded this decision is noteworthy. The Tenth Circuit had been struggling for years with respect to this issue and intra-circuit splits were rampant. *Id.* at 1228 (citing to the jurisdictional ripeness cases of *Bateman v. City of West Bountiful*, 89 F.3d 704, 706 (10th Cir. 1996); *SK Finance SA v. La Plata Cnty., Bd. of Cnty. Comm’rs*, 126 F.3d 1272, 1275-76 (10th Cir. 1997); and the prudential ripeness cases of *B. Willis, C.P.A., Inc. v. BNSF Railway Corp.*, 531 F.3d 1282, 1299 n.20 (10th Cir. 2008); *Alto Eldorado P’ship v. Cnty. of Santa Fe*, 634 F.3d 1170, 1179-80 (10th Cir. 2011) (citations omitted).

3. The intra-circuit splits. The Federal Circuit is divided. It has held that ripeness in takings cases is jurisdictional, *Martin v. United States*, 894 F.3d 1356, 1360 (Fed. Cir. 2018), and that ripeness is prudential, *McGuire v. United States*, 707 F.3d 1351, 1358 (Fed. Cir. 2013). The court explained its dilemma: “Opinions from the Supreme Court, as well as our own, show that it can be difficult to distinguish between ripeness cases that involve jurisdictional inquiries and those that turn instead on prudential concerns.” *Doyle v. United States*, No. 2023-1735,

2024 WL 5154019, at *3 (Fed. Cir. Dec. 18, 2024) (citing *Suitum*, 520 U.S. at 733 n.7).

The Second Circuit also has an intra-circuit split. It has held that ripeness is prudential and discretionary; and also, that it is jurisdictional and mandatory. *Compare Vandor, Inc. v. Militello*, 301 F.3d 37, 38-39 (2d Cir. 2002) (“We are obliged to consider the ripeness question before reaching the merits of Vandor’s claims because ripeness is jurisdictional[.]”); *with Sherman v. Town of Chester*, 752 F.3d 554, 561 (2d Cir. 2014) (“Because *Williamson County* [ripeness] is a prudential rather than a jurisdictional rule, we may determine that in some instances, the rule should not apply and we still have the power to decide the case.”) (citation omitted).

4. Some courts are just confused. In a recent Fifth Amendment takings case, the Eleventh Circuit held that ripeness is jurisdictional. *Maron*, 136 F.4th at 1329 (“standing, ripeness, and sovereign immunity . . . are jurisdictional issues”). Nonetheless, after determining that the owner had sufficiently alleged standing, *id.* at 1331, the court proceeded to evaluate ripeness pursuant to the two-part prudential ripeness test that this Court in *Suitum* said was inapplicable to takings actions. *Id.* at 1332; *see Suitum*, 520 U.S. at 744;¹⁵ *compare Busse v. Lee Cnty.*, 317 Fed. App’x

¹⁵ The Eleventh Circuit is not the only one to mistakenly apply the two-part ripeness test (i.e., fitness for review and hardship to the parties) that *Suitum* deemed inapplicable. The Ninth Circuit and New York Court of Appeals have as well, *Manufactured Home Communities Inc. v. City of San Jose*, 420 F.3d 1022, 1033 (9th Cir. 2005); *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 519-20 (1986). This only amplifies the need for this Court to clarify what ripeness means and whether it is jurisdictional or prudential.

968, 972 (11th Cir. 2009) (ripeness is a matter of subject matter jurisdiction). Iowa’s high court did the same. *Iowa Coal Min. Co. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa 1996). Similarly, the California Supreme Court deemed ripeness to be a prudential doctrine, while simultaneously stating that ripeness only applies when the government is “invested with great discretion, which it has not yet even been asked to exercise,” which equally reflects standing and the lack of a concrete injury. *Landgate, Inc. v. Cal. Coastal Comm’n*, 17 Cal. 4th 1006, 1038 (1998).

C. Certiorari is warranted to resolve the conflict

Certiorari should be granted to resolve the persistent confusion and multiple splits in the lower courts regarding whether final decision ripeness is jurisdictional or prudential. It is a critical question of justiciability for Fifth Amendment takings claims that only this Court can resolve. The adequate, consistent, and uniform protection of fundamental property rights is dependent on a clear understanding of what a property owner must show for its constitutional claim to be heard.

The determination includes whether the characterization of final decision ripeness as prudential in *Lucas* and *Suitum* was precedential or non-precedential. If it was merely a “drive-by” reference, it is to be given no effect. *See, e.g., Wilkins v. United States*, 598 U.S. 152, 160 (2023) (Statements that lack analysis and that are immaterial to the outcome are understood to be “a drive-by jurisdictional ruling that receives no precedential effect.”) (citing *Arbaugh v.*

Y&H Corp., 546 U.S. 500, 511 (2006), and *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998)).

In other contexts, this Court has readily clarified when certain prudential requirements were improper or needed to be extinguished. *Lexmark*, 572 U.S. at 127 & n.3 (reviewing instances where “what we have previously classified as an aspect of ‘prudential standing’ but for which, upon closer inspection, we have found that label inapt”) (citing *Lujan*, 504 U.S. at 573-74); *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam); *Cuno*, 547 U.S. at 344-46; *Dep’t of Labor v. Triplett*, 494 U.S. 715, 721 n.** (1990); *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982)); see also *Arbaugh*, 546 U.S. at 510 (“Jurisdiction . . . is a word of many, too many, meanings. [The Supreme] Court, no less than other courts, has sometimes been profligate in its use of the term.”) (internal citations omitted).

To that end, in *Knick*, this Court explained that final decision ripeness was not the intended target for the prudential designation: “[B]ecause of its shaky foundations, the state-litigation requirement has been a rule in search of a justification for over 30 years. We eventually abandoned the view that the requirement is an element of a takings claim and recast it as a ‘prudential’ ripeness rule.” *Knick*, 588 U.S. at 204; see *Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409, 1411 (2016) (Thomas, J., dissenting from denial of certiorari) (“[W]e should reconsider *Williamson County* because our attempts to ameliorate the effects of its state-litigation rule have spawned only more confusion in the lower courts. As early as 1992, the Court began to recast the state-

litigation rule as a ‘prudential’ rather than jurisdictional requirement.”).

Knick left final decision ripeness and its prudential moniker in place because neither were at issue. *Knick*, 588 U.S. at 188. Nonetheless, *Knick*’s reasoning suggests that the prudential classification for final decision ripeness was merely a non-precedential “drive-by” statement. That view is supported by *Pakdel*, which, two years after *Knick* was decided, re-coupled final decision ripeness to standing and concrete injury. 594 U.S. at 479 (“this [ripeness] requirement ensures that a plaintiff has actually been injured by the Government’s action and is not prematurely suing over a hypothetical harm”); see also *Horne*, 569 U.S. at 525 (limiting its designation of prudential ripeness to the state court exhaustion requirement).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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