

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

GARNELL WALLS,
Plaintiff-Appellant,

v.

PRINCE GEORGE'S COUNTY, MD, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Maryland, Greenbelt Division
Case No. 8:23-cv-001359-DLB

**COMBINED PETITION FOR PANEL REHEARING,
OR ALTERNATIVELY, REHEARING EN BANC**

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INTRODUCTION

Plaintiff-Appellant Garnell Walls respectfully petitions for rehearing by the panel or, alternatively, for rehearing en banc pursuant to Federal Rule of Appellate Procedure 40 and Fourth Circuit Local Rule 40(a). This petition is warranted because the panel's per curiam opinion, filed February 23, 2026 (ECF No. 49) (hereinafter referred to as the "Opinion"), involves a question of exceptional importance and conflicts with the decisions of the Supreme Court in the following respects.

First, the panel's Opinion treats as equivalent two fundamentally distinct governmental processes: the Department of Permitting, Inspections, and Enforcement ("DPIE") regulatory waiver process and the County Council's legislative amendment process. The Opinion views the latter as a continuation of the former for purposes of the finality requirement articulated in *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), *overruled on other grounds by Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180 (2019). In doing so, the Opinion effectively requires Mr. Walls to petition the County's legislative body to change the law before he may challenge an administrative agency's definitive regulatory determination. This result is irreconcilable with the Supreme Court's finality framework as articulated in *Pakdel v. City and County of San Francisco*, 594 U.S. 474 (2021).

Second, the Opinion applies an unduly restrictive futility standard that, if left undisturbed, would require property owners to obtain a pre-application denial from a legislative body before establishing futility. This creates a burden no court has previously imposed and one that is inconsistent with this Court’s well-established principle that a property owner need not pursue further applications where the implementing agency has made clear that relief will not be forthcoming. *See Epcon Homestead, LLC v. Town of Chapel Hill*, 62 F.4th 882, 888 (4th Cir. 2023) (applying *Pakdel*’s relatively modest finality requirement); *see also Pakdel*, 594 U.S. at 478 (holding that a taking is final when “there [is] no question . . . about how the regulations at issue apply to the particular land in question” (citation and internal quotation marks omitted)).

Third, the Opinion establishes a principle that is of broad application and extraordinarily destructive to fundamental, constitutionally protected, property rights. That is, no regulatory takings claim can ripen so long as a legislative body retains the theoretical authority to amend the regulatory framework under which the agency acted. This result would effectively nullify the relatively modest finality doctrine and render regulatory takings claims in this Circuit virtually nonjusticiable.

Because of their significance to property owners throughout the Fourth Circuit, these issues warrant a rehearing by the panel, or in the alternative, en banc consideration.

STATEMENT OF THE CASE

Garnell Walls purchased an undeveloped parcel of land at 13501 South Hill Road, Brandywine, Maryland in 1978 with the intent of building a single-family home. JA059. Because connecting the property to existing public water and sewer lines would cost between approximately \$2.1 million and \$2.5 million, Mr. Walls sought to install an interim well and septic system, which required a waiver from DPIE under Prince George's County's 2018 Water & Sewer Plan ("the Plan"). JA060 and JA063.

Mr. Walls applied for the required waiver. JA061. DPIE's Water & Sewer Coordinator, Shirley Branch, informed him on multiple occasions that the agency would not approve the waiver and that DPIE Director Melinda Bolling "did not have the legal authority to approve the [waiver] given the implementation of the [Plan]." JA062 and JA111. In February 2022, Director Bolling sent Mr. Walls a letter stating that his property "does not meet the criteria for a waiver" under the Plan. JA63. In that same letter, Bolling informed Mr. Walls that his only remaining option was to pursue a "water and sewer category amendment" through the County

Council’s legislative amendment process, which is an entirely separate process requiring action by the County’s legislative body. JA064–65.

Mr. Walls did not pursue the legislative amendment process. He alleged that Branch told him on several occasions that “the County Council would not support or approve any effort to use the legislative amendment process to reclassify the Brandywine lot.” JA065. In May 2023, Mr. Walls filed the present action under 42 U.S.C. § 1983, alleging that DPIE’s actions constituted a regulatory taking in violation of the Fifth Amendment. The district court dismissed the claim as unripe. This Court affirmed, holding that Mr. Walls’s claim was not ripe because the County could still permit him to build an interim well and septic system through the legislative amendment process.

ARGUMENT

I. The Opinion treats a legislative process as an extension of an administrative determination, which cannot be reconciled with the Supreme Court’s finality framework.

The finality requirement for regulatory takings claims originated in *Williamson County*, 473 U.S. at 186, which held that a takings claim “is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” It is important to note that in 2019, the Supreme Court overruled *Williamson County*’s second prong that imposed a “state-litigation requirement”

before a plaintiff could bring a takings claim in federal court. *See Knick v. Township of Scott*, 588 U.S. 180, 184 (2019) (overruling *Williamson County*). But the Supreme Court expressly left the finality requirement intact. *Id.* at 188 (noting that the plaintiff “does not question the validity of this finality requirement, which is not at issue here”). Accordingly, the finality requirement remains good law, but its scope and application are the issues presented here.

The critical question is the identity of the “government entity charged with implementing the regulations.” *Williamson County*, 473 U.S. at 186. DPIE is the agency the County designated to administer the Plan’s waiver provisions. DPIE evaluated Mr. Walls’s property against the Plan’s published criteria and determined that it “does not meet the criteria for a waiver.” JA063. Director Bolling further represented that the Director “did not have the legal authority” to grant the waiver. JA111. This was a definitive regulatory determination by the agency charged with implementing the regulations, and it is the very type of determination that satisfies the finality requirement. *See Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 480 (2021) (“[A]dministrative missteps do not defeat ripeness once the government has adopted its final position.”).

The County Council’s legislative amendment process is not a review of, appeal from, or continuation of DPIE’s waiver determination. As the panel itself acknowledged, it is 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.” *Walls v. Prince George’s County*, No. 25-1121, slip op. at 7 (4th Cir. Feb. 23, 2026) (per curiam) (unpublished). The County Council is not the “government entity charged with implementing the regulations[,]” it is a legislative body with the power to change the regulations entirely. There is a fundamental difference between requiring a property owner to exhaust the administrative process before the implementing agency (which the finality requirement demands) and requiring a property owner to petition the legislature to amend the regulatory framework (which no court has previously required).

The Supreme Court’s decision in *Pakdel* confirms this distinction. In *Pakdel*, the Court explained that a determination is conclusive when the “government is committed to a position” on the use of the plaintiff’s property and no “avenues still remain for the government to clarify or change its decision.” 594 U.S. at 479–480. The “avenues” contemplated by *Pakdel* are administrative avenues within the implementing agency’s decision-making process, not legislative avenues through which a separate governmental body might amend the underlying regulatory scheme. If the possibility of legislative amendment sufficed to defeat finality, then no regulatory takings claim could ever ripen because every legislative body retains the power to amend its own enactments. The finality requirement would swallow the right it is meant to protect.

The Opinion’s reliance on *Palazzolo*’s observation that the legislative amendment process is not a “repetitive or unfair land-use procedure[]” does not resolve the issue. *See Walls*, slip op. at 7 (citing *Palazzolo*, 533 U.S. at 621). The concern in *Palazzolo* centered on the “repetitive or unfair” procedures with the administrative application process; that is, resubmitting the same application to the same agency multiple times. It did not address—and cannot fairly be read to require—that a property owner petition a legislative body to change the law before challenging an agency’s regulatory determination.

Similarly, the Opinion’s citation to *Chosen Consulting, LLC v. Town Council of Highland*, 148 F.4th 451 (7th Cir. 2025) does not support its conclusion. In *Chosen Consulting*, the Seventh Circuit found finality lacking where the plaintiff had not applied to the Board of Zoning Appeals, an administrative appellate body that operates within the same regulatory framework as the initial zoning decision-maker and exercises delegated administrative authority to review individual applications. To be clear, the Board of Zoning Appeals in *Chosen Consulting* was not a legislative body exercising plenary lawmaking authority. The distinction is critical because requiring exhaustion of an administrative appeal within the implementing regulatory structure is fundamentally different from requiring a property owner to petition the legislature to amend the law itself.

II. This case involves a question of exceptional importance warranting a rehearing by the panel, or in the alternative, en banc review.

The Opinion establishes a principle with significant implications for property owners throughout the Fourth Circuit. Under the reasoning in the Opinion, whenever a regulatory agency denies relief but a legislative pathway theoretically exists to amend the underlying regulatory framework, the property owner's takings claim is not ripe until the property owner has petitioned the legislature and been denied. This principle extends well beyond the facts of this case.

Consider the common scenario of a zoning board denying a use variance. Under the Opinion's reasoning, the property owner's takings claim would not ripen until the owner had petitioned the local legislature to rezone the property, because the legislative body could still theoretically amend the zoning ordinance. The same logic would apply, for example, to an environmental agency denying a development permit in wetlands—the claim would not be ripe until the owner had petitioned the legislature to amend the wetlands statute. In each scenario, the property owner must seek legislative relief as a precondition to challenging an administrative denial, effectively transforming the finality requirement into an obligation to seek legislative reversal of the regulatory framework.

This principle is irreconcilable with the Supreme Court's modest finality requirement discussed in *Pakdel*, 594 U.S. at 481, and its admonition in *Knick* that

takings claims should not be relegated “‘to the status of a poor relation’ among the provisions of the Bill of Rights.” 588 U.S. at 189 (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994)). Although *Knick* addressed the state-litigation requirement rather than the finality requirement, its animating concern that procedural barriers should not render takings claims effectively unjusticiable applies with equal force here. The panel’s expansion of the finality requirement to encompass legislative processes creates precisely the type of insurmountable procedural barrier that *Knick* sought to eliminate.

Because the question of whether the finality requirement for regulatory takings claims extends to legislative processes has not been squarely addressed by this Court sitting en banc, and because the panel’s resolution of that question has far-reaching consequences for property owners and local governments alike, this case presents a question of exceptional importance warranting rehearing, or in the alternative, en banc review under Federal Rule of Appellate Procedure 40.

III. The Opinion’s futility standard imposes requirements not previously recognized in this Circuit or by the Supreme Court.

To be clear, the question is not whether pursuit of the legislative amendment process would have been futile, it is whether any further efforts to obtain a waiver through DPIE’s specific waiver process would have been futile. DPIE is the agency charged with approving or denying interim waiver applications for the installation of well and septic systems on property through the County. The

legislative amendment process is a completely separate, unrelated avenue by which a property owner may attempt to have their property reclassified under local zoning and land use ordinances by the County's legislative body.

Even assuming *arguendo* that the legislative amendment process is relevant to the finality analysis, the Opinion applied an unduly restrictive futility standard in concluding that Walls failed to demonstrate that pursuing a legislative amendment would have been futile. The Opinion acknowledged that DPIE's Water & Sewer Coordinator, Shirley Branch, informed Walls on several occasions that "the County Council would not support or approve any effort to use the legislative amendment process to reclassify the Brandywine Lot." *Walls*, slip op. at 9 (quoting from JA065). Nevertheless, the Opinion concluded this evidence because there were "no allegations that Branch had the authority to speak on behalf of the County Council or had any insight into that body's view of the issue." Op. at 9.

This standard is inconsistent with this Court's recognition in *Hamilton v. Pallozzi*, 848 F.3d 614, 621 (4th Cir. 2017) that a plaintiff may demonstrate futility by making a "substantial showing" that further applications would be denied. The Opinion's holding effectively requires that the futility showing come from the legislative body itself. That is, Walls would need to obtain a pre-application representation from the County Council that it would deny his legislative amendment before he could establish futility. This is an extraordinary requirement

that has no basis in this Court’s precedent or in the Supreme Court’s takings jurisprudence.

Statements from the agency’s own personnel—the individuals charged with administering the waiver program and advising applicants on available options—were not merely casual opinions from uninformed bystanders. Ms. Branch was the DPIE Water & Sewer Coordinator, the very person whom the County designated to interact with applicants regarding the Plan’s waiver provisions. Her repeated representations that the County Council would not approve a legislative amendment reflect the agency’s institutional understanding of the legislative body’s likely disposition. JA064–65, JA115, and JA152–153. At the motion-to-dismiss stage, where all factual allegations must be accepted as true and all reasonable inferences drawn in favor of the plaintiff, these allegations were sufficient to plausibly establish futility. *Cf. Herr v. U.S. Forest Serv.*, 803 F.3d 809, 822–23 (6th Cir. 2015) (holding that exhaustion is excused where administrative review would “come to naught” and the plaintiff could “fairly assume that the same [agency] would apply the same standard to the same facts to reach the same result,” because “[t]he law does not force them to take on hopeless causes”).

The standard adopted by the Opinion would require either direct statements from the legislative body or evidence that the legislative body has “a practice of

denying legislative amendments as a matter of course.” *Walls*, slip op. at 9. But such a standard imposes a burden that no property owner could reasonably satisfy at the pleading stage. Legislative bodies do not issue advisory opinions on how they will vote on future applications. Requiring such evidence to establish futility at the 12(b)(6) stage effectively forecloses the futility exception in all cases involving legislative processes, rendering it a dead letter. *Cf. Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1012 n.3 (1992) (acknowledging that an application for a variance is not required to be submitted when doing so would be “pointless”).

CONCLUSION

For the foregoing reasons, Plaintiff–Appellant Garnell Walls respectfully requests that this Court grant this petition for a panel rehearing or, in the alternative, a rehearing en banc. The panel’s opinion treats distinct regulatory and legislative processes as equivalent, applies a futility standard not previously recognized in this Circuit, and establishes a rule that would effectively foreclose judicial review of regulatory takings whenever a legislative pathway theoretically exists to amend the underlying regulatory framework. These errors warrant correction by the panel or by the full Court.

Dated: March 9, 2026

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CERTIFICATION OF COMPLIANCE

This petition complies with the type-volume limitation of Federal Rule of Appellate Procedure 40(d)(3) and Local Rule 40(d)(3) because it contains fewer than 3,900 words, excluding the parts of the petition exempted by Federal Rule of Appellate Procedure 32(f).

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