Nos. 26-107, 26-110

IN THE

Supreme Court of the United States

GARNELL WALLS,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, ET AL.,

Respondents.

(For Continuation of Caption, See Inside Cover)

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

BRIEF OF THE NATIONAL ASSOCIATION OF REALTORS®, NATIONAL ASSOCIATION OF HOME BUILDERS, CALIFORNIA APARTMENT ASSOCIATION, SAN FRANCISCO APARTMENT ASSOCIATION, AND GREATER BOSTON REAL ESTATE BOARD AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

August 21, 2026

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TEDFORD'S TENANCY, LLC,

Petitioner,

v.

CITY OF NEW YORK, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the New York Supreme Court, Appellate Division

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INTEREST OF *AMICI CURIAE*[1]

Amici are proud to represent millions of Americans engaged in the design, development, sale, rental, and purchase of homes across the United States. As prominent voices for the nation's housing industry, *amici* write to impress upon the justices the urgent political, social, and economic stakes lurking behind the legal questions presented by these cases. *Amici* are not a monolith, and do occasionally disagree with one another on political, social, and economic matters. Yet here there is little space for debate. The empirical evidence confirms that overdone exhaustion requirements and other unconstitutional defects imposed on the development process are one pose significant challenges to alleviating our nation's chronic housing shortage.

The **National Association of REALTORS®** ("NAR") is a national trade association representing over 1.4 million members, including its institutes, societies, and councils involved in all aspects of the residential and commercial real estate industries. Members are residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of the approximately 1,200 local and 54 state and territory associations of REALTORS® and support private property rights, including the right to own, use, and transfer real property.

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[1] Pursuant to Rule 37, counsel for *amici* affirm that no counsel for any party authored this brief in whole or part, and no person or entity, other than *amici*, their members, or counsel, made any monetary contribution to its preparation or submission. All parties received timely notice of *amici*'s intention to file.

The **National Association of Home Builders** ("NAHB") is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. Chief among NAHB's goals are providing and expanding opportunities for all people to have safe, decent, and affordable housing, whether they choose to buy a home or rent. Founded in 1942, NAHB is a federation of more than 700 state and local associations. NAHB's approximately 140,000 members consist of home builders, suppliers, remodelers and other professionals supporting the home building industry. NAHB's membership builds 80% of all new homes constructed in the United States, both single-family and multifamily.

The **California Apartment Association** ("CAA") is the largest statewide rental housing trade association in the country, representing more than 50,000 rental property-owners and operators, who are responsible for nearly two million rental housing units throughout California. CAA's mission is to promote fairness and equality in the rental of residential housing, and to promote and aid in the availability of high-quality rental housing in California. CAA represents its members in legislative, regulatory, judicial, and other state and local fora.

The **San Francisco Apartment Association** ("SFAA") is a full-service, non-profit trade association founded in 1917 of persons and entities who own residential rental properties in San Francisco, which has one of the most stringent rent control regimes in the country. SFAA currently has more than 2,800 active members. The Association is dedicated to educating, advocating for, and supporting the rental housing community, and preserving the property rights of all residential rental property providers in San Francisco.

The **Greater Boston Real Estate Board** ("GBREB") founded in 1889, is the oldest real estate trade organization in the United States, with over 8,000 members, who develop, finance, sell, manage, and own property across the Commonwealth and the nation. GBREB's mission is not only to serve its membership, but to play a role as a resource to the community regarding real estate issues, including the regulation of commercial property.

These cases interest *amici* because it exemplifies the all-too-common practice among land-use officials of using permitting and other regulatory processes to stonewall applicants and, by refusing to render "final" decisions, preventing their claims from ever becoming ripe for judicial review. Delays in the permitting process, combined with the unduly high exhaustion standards to which many courts subject challenges thereto, together impose substantial and measurable costs on housing growth across the United States. *See* Joseph Gyourko & Jacob Krimmel, *The Impact of Local Residential Land Use Restrictions on Land Values Across and Within Single Family Housing Markets*, 126 J. Urb. Econ. 103374, at 13 (2021). These costs impede housing growth everywhere and are among the major reasons why the nation's household-to-residence ratio is at an all-time high. *See* U.S. Dep't of Hous. & Urb. Dev., *New Housing in High-Productivity Metropolitan Areas: Encouraging Production* 11 (2021) ("The dropoff in new housing construction has kept upward pressure on house prices and rents. The shortfall in number of units produced since 2008 is estimated at 3 to 5 million").

INTRODUCTION AND SUMMARY OF ARGUMENT

Crafty land-use officials seeking to deny permissible but disfavored uses without compensating jilted applicants often attach *just* enough procedural hurdles and "next steps" to persuade overly deferential jurists that they simply cannot, in good faith, reach a final decision on the merits. Courts, wise to such schemes, have dubbed the practice a "governmental shell game" or, more poetically, "the shifting sands of zoning regulations." *See Donnelly v. Maryland*, 602 F. Supp. 3d 836, 842 (D. Md. 2022); *Sherman v. Town of Chester*, 752 F.3d 554, 557 (2d Cir. 2014). To the land-use applicants themselves, it is nothing less than attritional warfare—designed to demoralize them into retreating before the battle for their constitutional rights ever even begins. *Id.* at 563.

Property rights advocates hoped *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 478–79 (2021) (per curiam) would finally put an end to this pattern of abuse by requiring only a "relatively modest" showing of "*de facto* finality" in order to ripen one's claims. *Id.* at 478. Yet still the practice persists. Why?

In *Tedford's Tenancy*, an older married couple inherited a century-old building in the Gramercy neighborhood of Manhattan. Hoping to make long-overdue repairs, the couple sought to raise the rent on their rent-stabilized units—from a low of $200 a month (in an area where median rents often dwarf that ten, even twenty times over) to rates that could at least cover the building's operating costs, let alone the more than $1 million in repairs it needs. *Tedford* Pet. at 11.

A New York court dismissed their case as unripe because the two had not sought two statutory "hardship exemptions." Doing so would have been fruitless, however. First, the building is the target of pending tax proceedings, disqualifying it from the exemption. Second, even if the building was not disqualified, the ordinance measures the "need" for the exemption by reference to decades-old operating costs, without adjusting for inflation. Third, the exemptions hit a 6% ceiling, still leaving the allowable rent well below fair market value. None of this swayed the court, however. *Tedford* Pet. at i; *see Tedford's Tenancy, LLC v. City of New York*, No. 154082/2022, 2023 WL 7493254 (N.Y. Sup. Ct. Nov. 13, 2023), *aff'd*, 238 A.D.3d 624 (1st Dep't 2025), *lv. denied*, 44 N.Y.3d 911 (2026).

In Prince George's County, Maryland, Garnell Walls purchased a tract of land in 1978 and spent the next four decades as a mechanic repairing county vehicles. He hoped, one day, to build a modest home in which to spend his retirement. The County had other plans. After he spent tens of thousands to comply with its demands, the County informed Walls that it *could not* approve the well and septic system required to make his property code compliant. *See Walls v. Prince George's Cnty.*, No. 25-1121, 2026 WL 497988 (4th Cir. Feb. 23, 2026) (per curiam).

Despite this obviously final decision, the Fourth Circuit denied the septuagenarian access to relief until he asks the County Council to *change* the offending law, seemingly for his singular benefit. But what if the Council refuses? Petition the Maryland Legislature to withdraw the County's home rule unless it amends the ordinance? And after that? As this Court aptly put it in *Blanchette v. Connecticut*

General Insurance Corps., "where the inevitability of the operation of a statute against certain individuals is patent," the prospect of some future contingency—a legislature's change of heart included—is "irrelevant to the existence of a justiciable controversy." 419 U.S. 102, 143 & n.29 (1974).

ARGUMENT

I. LAND-USE OFFICIALS REGULARLY STRETCH PERMITTING PROCESSES IN ORDER TO AVOID GRANTING DISFAVORED USES WITHOUT THEN TRIGGERING LITIGATION

A. Despite *Palazzolo* and *Pakdel*, Some Courts Continue to Take Land-Use Officials at Their Word

This Court cannot be clearer: If the "submission of [a] proposal would not have clarified the extent of development permitted . . .," then a claimant has shown "ordinary finality [] sufficient" to ripen their case. *Pakdel*, 594 U.S. at 480–81 (citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 625 (2001)). Despite this directive, several courts continue taking officials at their word—an easier (though no less erroneous) doctrinal leap for those courts that treat ripeness as a prudential and therefore discretionary question. *See, e.g., Sansotta v. Town of Nags Head*, 724 F.3d 533, 545 (4th Cir. 2013); *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1089 (9th Cir. 2015); *Kolton v. Frerichs*, 869 F.3d 532, 534 (7th Cir. 2017); *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1227–29 (10th Cir. 2021);. Others, properly, view ripeness as a jurisdictional question and so, unsurprisingly, look *past* official rhetoric to determine when a final decision has been made and a concrete injury inflicted. *See Dillow v. Treasurer of Pa.*, No. 24-2004, 2025 WL 2813596, at *2 (3d Cir. Oct. 3, 2025); *Snaza v. City of Saint Paul*, 548 F.3d 1178, 1182 (8th Cir. 2008); *City of Las Vegas v. 180 Land Co., LLC*, 546 P.3d 1239, 1250 (Nev. 2024).

A few cannot make up their minds on how this Court reads the ripeness standard (again, despite this Court's clear directive), and so are often at a loss to determine where to draw the line of deference. *See Hendershot v. Stanton*, 162 F.4th 625, 628 n.1 (6th Cir. 2025) ("Whether that ripeness argument can square with [Knick] is an open question in our circuit."). Still others cannot even agree amongst themselves. *Compare Martin v. United States*, 894 F.3d 1356, 1360 (Fed. Cir. 2018), *with McGuire v. United States*, 707 F.3d 1351, 1358 (Fed. Cir. 2013); *Vandor, Inc. v. Militello*, 301 F.3d 37, 38–39 (2nd Cir. 2002), *with Sherman,* 752 F.3d at 561.

Lack of clear guidance from the courts emboldens officials to keep testing the limits of their obfuscatory powers, while permit-seekers increasingly exit (or never enter) the market as procedural obstacles mount. *See* Dana Berliner et al., *The Land Use Labyrinth: Problems of Land Use Regulation and the Permitting Process*, Reg. Trans. Proj., at 12 (2020) (noting how "some courts . . . will not even entertain an argument that a permitting authority had improper motives in denying an application").

Even before their nondecisions reach "prudential" judges, determined officials will often strive to maintain *some* nuance—a minimum of plausible deniability that their newest goalpost serves *any* purpose beyond attriting permit-seekers into quiet-quitting. *See State ex rel. AWMS Water Sols., L.L.C. v. Mertz*, 162 Ohio St. 3d 400, 410 (2020) (observing subterfuge and chiding the state for "creat[ing] moving targets" to continually delay a "final" decision). Some courts might be forgiven, then, for taking some of the more, say, "creative" officials at their word. *See Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1025 n.12 (1992) (noting that the dissent's view that "the test for required compensation is whether the legislature has *recited* a harm-preventing justification" means little if "such a justification can be formulated in practically every case," and thus "amounts to a test of whether the legislature has a stupid staff") (emphasis added).

Neither Prince George's County nor New York City even attempted to pull the wool over the judges' eyes, evidently correct in their expectation (or at least lucky to find) that neither the Fourth Circuit nor the New York Appellate Division would hesitate to accept *any* further avenues of administrative (or apparently legislative) relief as nonfinal—no matter how oppressive or futile these alternatives were in practice. For the Fourth Circuit, this meant sweeping the entire legislative process into the quantum of local land-use "decisionmaking." *Walls v. Prince George's Cnty.*, 2026 WL 497988, at *3 (deeming the Council's "legislative amendment process" part of the "ordinary process[]" a takings plaintiff must complete). For the New York Appellate Division, the question came down to whether the City still offered other ways of saying "no." *Tedford's Tenancy*, 238 A.D.3d at 624–25. *But see Pakdel*, 594 U.S. at 480 ("To be sure, we have indicated that a plaintiff's failure to properly pursue administrative procedures may render a claim unripe *if* avenues still remain for the government to clarify or change its decision.") (emphasis in original) (internal citations omitted). Neither approach survives *Pakdel*—much less *Palazzolo*.

With respect to *Walls*, "[a] decision denying a variance is final, whereas a decision not to amend a law never is." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 911 F.2d 1331, 1345 (9th Cir. 1990) (Kozinski, J., dissenting). The Fourth Circuit has endorsed this logic, recognizing that a council's discretionary judgments represent "the exercise of political judgment" and cannot be recast as ordinary administrative process. *New Pulaski Co. Ltd. P'ship v. Mayor & City Council of Baltimore*, 217 F.3d 840 (Table), 2000 WL 1005207, at *4 (4th Cir. 2000).

Tedford's Tenancy rests on a different—though no less tortured—(il)logic. There the New York Appellate Division made the tautological argument that a next step is not truly "futile" until the applicant "personally experienced" the denial herself. 238 A.D.3d at 625. That view would render the concept all but toothless, however. If one must prove futility in every instance, then what incentive does the offending agency have in tempering such abusive practice? *See* William M. Hof, *Trying to Halt the Procedural Merry-Go-Round: The Ripeness of Regulatory Takings Claims After* Palazzolo v. Rhode Island, 46 St. Louis U. L.J. 833, 849 (2002) (noting that *Lucas* added a "pointlessness" corollary to the futility exception, that jettisoning the at-least-one application requirement and "allowing the exception to be invoked even where a landowner has filed no application"). What purpose, if any, does "futility" serve if it can never be invoked before a claimant endures the agency's obvious habit of "repetitive or unfair land-use procedures"? *Palazzolo*, 533 U.S. at 621.

Pakdel has not cleared the doctrinal haze. If anything, the ruling has only *deepened* the inter- and even *intra*-circuit confusion over when and under what circumstances a "final" land-use decision has been reached. *See, e.g.*, *River Landon LLC v. Hinkle*, 2026 WL 350770, at *7 (N.D. Cal. Feb. 9, 2026) (citing a pre-*Pakdel* case, *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496, 1501 (9th Cir. 1990), to define the "futility exception" as not necessarily requiring "resubmission"); *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1230 (10th Cir. 2021) (plainly stating that "the finality requirement does not require landowners to exhaust administrative procedures").

Rather than measure finality as *Pakdel* instructs—by scrutinizing official conduct against applicable law, independent of official narratives—some courts continue to hold that a decision is not "final" if there exists *any* next step, no matter how futile, oppressive, or pretextual it may be. By their lights, even claims that they acknowledge are justiciable can and should be dismissed because *some* administrative procedure (or in the case of *Walls*, the existence of lawmaking) remains untested or untried, however pointless its pursuit. *Contra Lucas*, 505 U.S. at 1012 n.3 (finding an initial application unnecessary because "such submissions would have been pointless").

B. For Now, Interminable Delay Serves as a Low-Risk, High-Reward Option in the Land-Use Official's Toolkit

Most of the ultimate power to control local land uses falls comfortably in the hands of established homeowners—"homevoters"—who, unlike new and aspiring market entrants (and many renters), can "use their local votes and other political activities to protect and promote the value of their owner-occupied homes"—even at the expense of much-needed development. William A. Fischel, *The Rise of the Homevoters: How the Growth Machine Was Subverted by OPEC and Earth Day*, in Lee Ann Fennell & Benjamin J. Keys, eds., *Evidence and Innovation in Housing Law and Policy* 19 (2017). Though only a small fraction of residents directly participate in land-use decisionmaking (though the vast majority do so indirectly, as voters), those who do wield an outsized influence.

Monopolizing town halls and board meetings, homevoters regularly push land-use officials to reject development projects, no matter the broad-based benefits these are expected to provide. Levine Einstein, Katherine et al., *Who Participates in Local Government? Evidence From Meeting Minutes*, 17 Persp. on Pols. 28, 37 (2019). At a regional altitude, homevoter culture fuels an inter-jurisdictional race to the bottom, in which it becomes "commonplace for many neighboring localities within a region to *all* oppose new development." Kenneth Stahl, *Home Rule and State Preemption of Local Land Use Control*, 50 Urb. Law. 179, 180 (2020). "The cumulative result is an extreme shortage of regionally needed but locally undesirable land uses like gas stations, schools, jails, waste facilities, and especially housing." *Id.* at 180–81.

Pro-growth forces have long faced the classical collective-action dilemma, lacking either the organization or uniformity needed to conjure and sustain a meaningful response to well-orchestrated local opposition. *See generally* Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (1965) (explaining why small, concentrated groups organize effectively while large, diffuse ones do not); David Schleicher, *City*

Unplanning, 122 Yale L.J. 1670 (2013) (mapping the mismatch between concentrated neighborhood opposition and diffuse pro-housing interests in local land-use politics). Though technological advances and more concerted efforts have greatly (if gradually) reduced the informational and power asymmetry between hopeful outsiders and "YIMBYists" ("yes in my backyard") on the one hand, and insiders on the other, the latter are still the odds-on favorite in most cases. *See* N.R. Brouwer & Jessica Trounstine, *NIMBYs, YIMBYs, and the Politics of Land Use in American Cities*, 27 Ann. Rev. Pol. Sci. 165, 173–77 (2024) (surveying the literature on power dynamics in local land-use policymaking and noting continued homevoter dominance). While the balance might finally be starting to tip in the pro-growth direction, initial decisionmaking power—and thus the capacity to stay on offense more than defense—still greatly favors homevoters. *See generally* Limin Fang et al., *Homeowner Politics and Housing Supply*, 138 J. Urb. Econ. 103608 (2023) (using advanced machine learning to determine that homevoter pressure is still the most decisive factor in predicting how a local lawmaker will vote on housing-related bills).

C. Forms of Delay and Nondenial

Official inertia assumes many forms. One is "process-stacking": burying applicants beneath ever-mounting layers of red tape, each with its own sets of deadlines and milestones. Schleicher, *supra*, at 1696–1704. Environmental review is another powerful weapon in the homevoter arsenal. In California, for example, nearly anyone can bring construction to a screeching halt by filing a CEQA suit, meritorious or not, *see generally* Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's*

Housing Crisis, 24 Hastings Envt'l L.J. 21 (2018), while NEPA challenges attended 28% of major federal infrastructure projects requiring an environmental impact statement. *See* Michael Bennon & Devon Wilson, *NEPA Litigation Over Large Energy and Transport Infrastructure Projects*, 53 Envtl. L. Rep. 10836, 10840–43 (2023).

Historic-preservation laws can likewise slow the permitting process and increase the chances of exhausting permit-seekers *before* they have pursued all available (albeit futile) options. Vicki Been, et al., *Preserving History or Restricting Development? The Heterogeneous Effects of Historic Districts on Local Housing Markets in New York City*, 92 J. Urb. Econ. 16, 17–18 (2016). And researchers who tracked every sizable residential project across five Bay Area cities, for example, have documented multiple layers of discretionary review through which even code-compliant proposals must pass *after* proving full code compliance. Moira O'Neill et al., *Getting It Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process* (Berkeley Law, Working Paper, Feb. 2018).

II. DECISIONAL LIMBO WORSENS PERMITTING DELAYS, CONTRIBUTING SUBSTANTIALLY TO AMERICA'S LACKLUSTER HOUSING GROWTH

The two rulings below are not merely wrong, but emblemize the "decisional limbo" (for want of a better term) in which far too many land-use applicants continue to find themselves. And by keeping land-use officials from answering for chronic permitting delays, judicial over-deference to official definitions of "finality" contributes directly (and mightily) to the housing sector's chronically arrested development. An exhaustion standard that *rewards* local obstinacy does not just shield those jurisdictions from constitutional liability; it also serves to disincentivize expansion and in-fill construction in the first place.

A. Empirical Research Demonstrates the Substantial Costs Land-Use Permitting Delays Impose on the Housing Market

The data paint a stark picture of the costs overregulation imposes on housing development. The priciest measurable cost is from regulatory compliance, which, according to the NAHB, accounts for $131,734 of the average final home price of $499,500. Paul Emrath, *Government Regulation in the Price of a New Home*, Nat'l Ass'n Home Bldrs., at 1 (2026). *See also* Mark Skidmore & Michael Peddle, *Do Development Impact Fees Reduce the Rate of Residential Development?*, 29 Growth & Change 383, 397–98 (1998) (analyzing more than two dozen suburbs in DuPage County, Illinois, and finding that adoption of impact fees reduced the rate of new residential development from 4.3% to 3.0% per year—a nearly 25% drop). Too often, these burdens do not offset any of the externalities new development generates, instead operating as "a one-time excise tax that produces no benefits to the taxpayer." Vicki Been, *Impact Fees and Housing Affordability*, 8 Cityscape 139, 150 (2005); Duncan Assocs., *National Impact Fee Survey* (2019) (estimating average impact fees at $13,627 per new build) (available at: https://tinyurl.com/cszwbs9j).

Economists surveying permitting times in the City of Los Angeles recently found that among multifamily housing projects permitted between 2010 and 2022, a 25% reduction in "expected approval times . . . could have increased the rate of housing production by a full 23.7%." Stuart Gabriel & Edward

Kung, *Development Approval Times and New Housing Supply: Evidence From Los Angeles*, 154 J. Urb. Econ. 1, 15 (2026) (forthcoming version). Recent analysis from the RAND Corporation likewise showed that the wide gap between housing growth rates in Texas (among the highest) and California (among the lowest) largely turned, to little surprise, on the former's state law "requir[ing] that counties review and issue or deny a building permit within 30 days," versus the latter's average turnaround range of 11 to 48 months. Jason M. Ward & Luke Schlake, *The High Cost of Producing Multifamily Housing in California: Evidence and Policy Recommendations*, RAND Ctr. on Hous. & Homelessness 37 (2025).

While the largest builders can amortize protracted permitting delays across vast portfolios, most of the smaller players, those who would most likely animate "missing middle" development, cannot. *See* Ryan Winterberg-Lipp, *Finding the Middle: Overcoming Challenges to Building Missing Middle Housing*, 135 Metroscape 25, 28 (2022) ("In infill contexts, most missing middle developers today are smaller firms."). This stops many from ever entering the market, and hastens the exit of those who do. *See* Amy Love Tomasso, *Building Missing Middle Housing: Recommended Tools Beyond Policy Reform*, Joint Ctr. for Hous. Studs., Harv. Univ., 9 (2025) (noting that "there is no critical mass of small-scale builders or construction economies of scale around this home type," in large part due to "the heightened financial pressures on smaller outfits and widespread community resistance to infill housing"); David Garcia et al., *Making Missing Middle Pencil: The Math Behind Small-Scale Housing Development*, Terner Ctr. for Hous. Innovation, at 4 (2024) (noting how small-scale projects—the duplexes, triplexes, and modest infill on which sustained housing affordability depends—are the first to become infeasible as procedural costs mount).

Amici's own research attests to the strains and constraints both state and local inertia place on housing development. *See* Rosen Consulting Grp., *Housing Is Critical Infrastructure: Social and Economic Benefits of Building More Housing*, Nat'l Ass'n of Realtors, at 3 (2021) (identifying a national "underbuilding gap" of 5.5 to 6.8 million housing units accumulated since 2001); Paul Emrath & Caitlin Sugrue Walter, *Regulation: 40.6 Percent of the Cost of Multifamily Development*, Nat'l Ass'n Home Bldrs. & Nat'l Multifamily Hous. Council, at 4 (2022) (finding that regulation imposed at all levels of government accounts for an average of 40.6% of multifamily development costs, with neighborhood opposition alone adding 5.6% to costs and 7.4 months of delay).

An earlier panel of 44 metropolitan areas found that land-use regulation significantly slows the rate of new construction, with the most heavily regulated markets seeing up to 45% fewer housing starts, and price elasticities of supply more than 20% lower, than their less-regulated counterparts. Christopher Mayer & C. Tsuriel Somerville, *Land Use Regulation and New Construction*, 30 Reg. Sci. & Urb. Econ. 639, 640 (2000). It should surprise no one that "housing prices and rents are indeed higher in cities with more stringent regulation of development and land use." John M. Quigley & Steven Raphael, *Regulation and the High Cost of Housing in California*, 95 Am. Econ. Rev. 323, 325 (2005). In California—its cities often among the country's worst offenders—every new land-use regulation adopted reduces permit grants for multifamily housing by roughly six percent in the affected jurisdiction. Kristoffer Jackson, *Do Land Use Regulations Stifle Residential Development? Evidence from California Cities*, 91 J. Urb. Econ. 45, 54 (2016).

More recent analysis shows that these correlations continue and were more, not less, pronounced in the last two decades versus the two prior. *See, e.g.*, Edward L. Glaeser & Joseph Gyourko, *America's Housing Supply Problem: The Closing of the Suburban Frontier?*, NBER Working Paper Series No. 33876, at 42 (2025) (calculating that "if the housing stock had grown by the same rate between 2000 and 2020 that it did between 1980 and 2000, then America would have 15 million more housing units") (available at: https://tinyurl.com/3vct4ceh).

B. Judicial Deference to Official Narratives Exacerbates the Large-scale Costs of Permitting Delays

The longer some courts insist on accepting official narratives with little to no independent analysis, the more difficult it becomes for the entire federal judiciary to mold the post-*Knick* caselaw. And while decisional limbo remains widespread, the deeper America continues sinking into a house-to-household disparity with no bottom in sight. *See, e.g.*, Gabriel & Kung, *supra*, at 15; Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply*, in 5B *Handbook of Regional and Urban Economics* 1289 (Gilles Duranton et al. eds., 2015) (surveying the empirical literature tying regulatory stringency to slower, costlier housing production); Edward L. Glaeser & Bryce A. Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston*, 65 J. Urb. Econ. 265 (2009) (documenting sharply lower rates of new construction in Greater Boston municipalities with more restrictive land-use rules).

This makes eminent sense. The more cover courts offer, the more comfortable land-use officials become in delaying the processing of permits, and then permanently eschewing a "final" decision when all else fails. *See, e.g.*, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 698 (1999) (recounting how, "[a]fter five years, five formal decisions, and 19 different site plans," the owner "decided the city would not permit development of the property under any circumstances"); *Sherman*, 752 F.3d at 557–63 (documenting a decade of ever-shifting zoning requirements without a single formal denial).

The solution to less housing is more housing, and to achieve it requires a concerted and sustained campaign to declutter land-use controls at every level of government. Great progress has been made on these fronts, though there is still much work to be done. Pro-growth policies are finally beginning to break through, but they remain concentrated in those jurisdictions that already favor high-density residential. *See* S.R. Miller, *Prospects for a Unified Approach to Housing Affordability, Housing Equity, and Climate Change*, 46 Vt. L. Rev. 463, 468–70 (2022) (discussing Rolf Pendall et al., *Shifts Toward the Extremes: Zoning Change in Major U.S. Metropolitan Areas from 2003 to 2019*, 88 J. Am. Plan. Ass'n 55, 55–66 (2022), for the proposition that "compared with smaller jurisdictions, places with higher populations were less likely to adopt or retain anti-density regulations and more likely to adopt and retain pro-density measures," and that "[c]ounties also tended not to adopt pro-density zoning if they did not allow it already").

While all of the foregoing barriers to more housing are solvable at the democratic and policymaking levels, few will be permanent—that is, resilient to pendular anti-growth reactions—unless courts that have not, begin scrutinizing proclaimed justifications for challenged land-use controls with the constitutional rigor they deserve. Essential to this is a *widening* of owner access to judicial relief—something that cannot be achieved, at scale, so long as so many courts, both state and federal, continue delaying relief, often interminably, virtually on the sole word of the offending officials themselves.

CONCLUSION

Despite *Palazzolo* and now *Pakdel*, lower courts continue to invoke the "prudential" label to defer ruling on otherwise cognizable claims, leaving this Court to play yet another round of doctrinal whack-a-mole. There are also broader social and economic implications should the Court decline to rein in the longstanding practice among land-use officials of drawing out approval requests until applicants are attritted into ditching their efforts without cognizable constitutional claims in hand. For these reasons, and those set forth in the Petitions, *amici* respectfully request the Court grant certiorari in both cases, and reverse in accordance with *Palazzolo* and *Pakdel*.

Respectfully submitted,

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