EXHIBIT A

Appellate Division, First Department Docket No. 2024-00601
New York County Clerk's Index No. 2022-154082

COURT OF APPEALS
OF THE STATE OF NEW YORK

TEDFORD'S TENANCY, LLC,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, et al.,

Defendants-Respondents.

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT TEDFORD'S TENANCY, LLC'S APPLICATION FOR LEAVE TO APPEAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Court of Appeals Rule 500.1(f), amicus curiae hereby discloses that it does not have any corporate parents, subsidiaries or affiliates. Pursuant to Rule 500.23(a)(4), amicus curiae states that no party nor party's counsel participated in preparation of or contributed funds for the brief, and that no person or entity aside from amicus curiae contributed funds for the brief.

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PRELIMINARY STATEMENT

Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of the application for leave to appeal by Plaintiff-Appellant Tedford's Tenancy, LLC ("Tedford's Tenancy").

"Finality" is a necessary precondition to determining whether a government regulation is an unconstitutional taking of property rights under the Fifth and Fourteenth Amendments, and New York Const. art. I, § 7(a). The full extent of the regulation's impact upon the property must be known and concrete to ensure that the property owner's injury is not speculative and that the case is ripe for adjudication.

In this case, there is finality. Tedford's Tenancy, LLC ("Tedford's Tenancy") is subject to New York's rent control regulations. Those regulations are alleged to have stripped the property of substantial economic use to the extent that it is now rendered valueless and the property owner's reasonable investment backed expectations have been destroyed.

Pertinent to the issue at hand, there is no guesswork about how far the New York rent control regulation goes. The full scope of the regulation's impacts upon Tedford's Tenancy's property are clear and

fixed, there is finality as to the Respondent governments' position, and the court below had all of the information that it needed to determine whether the impact of this regulation upon this property effects a taking for which just compensation is constitutionally required. *See* J. David Breemer, *Ripening Federal Property Rights Claims*, 10 Engage: J. Federalist Soc'y Prac. Groups 54, 55 (2009) ("Final decision ripeness is not concerned with whether a property owner has a winning [denial of all use] claim; it is simply concerned with ensuring that a land use decision is concrete enough to allow a court to even consider whether it [causes] a taking.").

The existence of a hardship exception to the New York rent control regulation does not change finality. Tedford's Tenancy alleged that it was not eligible for the exception. But even if it were, the maximum rent increase under a hardship exception is strictly limited by statute and the ultimate result is exactly the same. To wit, if the 6% rent increase under the hardship exception is granted to Tedford's Tenancy, the property still remains stripped of substantial economic use, forever profitless, and with destroyed reasonable investment backed expectations. *See* Mot. 15 ("Even in the absolute best-case scenario, the 'relief' offered by a hardship

exemption is mathematically incapable of salvaging the Property's finances"); R. 33 (any possible rent increase would only have a de minimis impact). And thus, again, there is certainty as to the Respondent governments' position.

However, the Appellate Division, First Department discarded finality in favor of meaningless exhaustion. Despite the fact that the hardship exemption is circumscribed by statute and cannot change—i.e., a final determination as to how far the regulation goes—and despite the fact that any such hardship application would not be outcome determinative, the court below mandated administrative exhaustion simply for the sake of doing it.

The First Department's holding, which was supported by a case from this court, is contrary to well-established law from the U.S. Supreme Court. In multiple regulatory takings cases, the Supreme Court has explained that there is a material difference between "finality" and "exhaustion." Only finality is required; and it is a "modest" requirement, simply that the government's final position on the regulatory matter at hand is known to a degree of reasonably certainty. *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 478–79 (2021); *see also Knick v. Twp. of*

Scott, 588 U.S. 180, 189 (2019) (a taking occurs once "a local government takes private property without paying for it . . . without regard to subsequent state court proceedings."). Conversely, a property owner is not required to go through the unnecessary exercise of administrative exhaustion.

Leave should be granted to reconcile this conflict of substantial public importance. *See* N.Y.C.R.R. 22, § 500.22. The Supremacy Clause demands that the protections afforded by the Constitution are universal and applied equally; and once the U.S. Supreme Court has ruled upon a particular constitutional issue, New York is obliged to follow it. But that did not happen here and consequently, property owners in New York state court have different, and lesser, Fifth Amendment protection as compared to elsewhere. That is because they are required by New York law, and New York law alone, to do more, spend more, and wait longer, for no discernable reason, as a condition precedent to enforcing their fundamental property rights under the Constitution. As the Court has

said, the "[p]eculiarities of local law may not gnaw at rights rooted in federal legislation." *S. Buffalo R. Co. v. Ahern*, 344 U.S. 367, 372 (1953).[1]

It is particularly important for this Court to address New York's devaluation of property rights when considering that property rights are "indispensable to the promotion of individual freedom" and empower people "to shape and to plan their own destiny in a world where governments are always eager to do so for them." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021); *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 544, 552 (1972) (property rights are "an essential pre-condition to the realization of other basic civil rights and liberties"). Leave to appeal should be granted.

INTEREST OF AMICUS CURIAE

PLF attorneys have participated as lead counsel in multiple landmark Supreme Court cases in defense of the right to make reasonable use of property and the corollary right to obtain just compensation when that right is infringed. *See, e.g.*, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Sackett v. Env't Prot. Agency*, 598 U.S. 651 (2023); *Wilkins v.*

[1] Plaintiff-Appellant did not invoke 42 U.S.C. § 1983 directly, but is entitled to its protection nonetheless. *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014).

United States, 598 U.S. 152 (2023); *Cedar Point Nursery*, 594 U.S. 139; *Pakdel*, 594 U.S. 474; *Knick*, 588 U.S. 180; *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725 (1997); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987). PLF also frequently participates as amicus curiae in cases that pertain to important property rights issues, including matters before this Court. *See James B. Nutter and Co. v. Cnty. of Saratoga*, No. APL-2022-00032 (N.Y. Ct. App.); *Hetelekides v. Cnty. of Ontario*, No. APL-2021-00111 (N.Y. Ct. App.). Consequently, Pacific Legal Foundation is uniquely suited to provide specialized assistance to this Court and to identify law and arguments that might otherwise escape the Court's consideration. *See* N.Y.C.R.R. 22, § 500.23(a)(4)(i).

ARGUMENT

The court below held that for regulatory takings claims under the Fifth Amendment, property owners must satisfy a pleadings standard that has been expressly abrogated by the U.S. Supreme Court. *Tedford's Tenancy, LLC v. City of New York*, 238 A.D.3d 624, 625 (N.Y. App. Div. 2025). The First Department's decision also relied upon a 1986 Court of

Appeals case, whose ripeness test was abrogated by a second U.S. Supreme Court case. *Id.* at 625 (citing *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 518 (1986)).

Therefore, it is in the public interest to grant leave to appeal in order to ensure that New York State courts provide property owners with the same Fifth Amendment protections that the federal court does. The U.S. Constitution represents the floor, not the ceiling; and while New York can certainly provide its citizens with greater protection of private property rights, it can never provide them with less. *See* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Felder v. Casey*, 487 U.S. 131, 142 (1988).

I. New York property owners must have the same Fifth Amendment rights as everyone else

Whether a regulation effects an unconstitutional taking under the Fifth Amendment requires courts to assess "how far is too far?" *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) ("The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."). The destruction of all economic use is certainly too far. *Lucas v. S.C. Coastal Council,* 505 U.S. 1003, 1019 (1992). Short of that, the court must conduct an ad hoc evaluation of all relevant facts and circumstances including the

regulation's economic impact, the owner's reasonable investment backed expectations, and the regulation's character. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

To make this determination, the court needs to know "how far" the regulation goes. *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 348 (1986). That is where the principle of ripeness comes in. Knowing "how far" requires finality by the government as to how the challenged regulation applies to the property at issue. Otherwise, the court cannot determine whether the regulation has crossed the Fifth Amendment's Rubicon.

The ripeness requirement is often traced to the Supreme Court's decision in *Williamson County v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), *overruled in part by Knick*, 588 U.S. 180. Therein, the Court held that property owners must show that the government had reached a "final, definitive position" on the regulation being challenged in order to have an actionable claim.[2] *Williamson Cnty.*, 473 U.S. at 191.

[2] This holding was left in place by *Knick*. 588 U.S. at 187–88 ("Knick does not question the validity of this finality requirement, which is not at issue here.")

But at the same time, the ripeness doctrine is only about knowing where the government stands, not forcing plaintiffs to run the gauntlet. If the mere fact that the government can exercise some modicum of discretion precludes an owner from having its constitutional claim heard by a court of law, then the government has a unilateral power that can bar entry into the courthouse steps in perpetuity. It can create byzantine application procedures, compel owners to endure an endless loop of back-and-forth negotiations, and delay any final determination until all hope is lost.

Consequently, the Supreme Court makes a sharp distinction between "exhaustion" and "finality." *Williamson Cnty.*, 473 U.S. at 191. In order to have a justiciable claim, a property owner only needs to satisfy the "relatively modest" requirement of *de facto* finality which "ensures that a plaintiff has actually been injured by the Government's action and is not prematurely suing over a hypothetical harm." *Pakdel,* 594 U.S. at 478–79; *Williamson Cnty.*, 473 U.S. at 193 (exhaustion is not required because the goal is only to ensure that "the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual,

concrete injury"); *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 504 (1982).

It is analogous to the ascertainability requirement in the class action certification context, which simply requires "a clear sense of who is suing about what." *In re Petrobas Sec.*, 862 F.3d 250, 269 (2d Cir. 2017). And it also reflects the "de facto" nature of the ripeness inquiry. "*De facto*" means "Actual; existing in fact; having effect *even though not formally or legally recognized*." *De facto*, Black's Law Dictionary (12th ed.) (emphasis added). That is, a "de facto" assessment looks at the situation *regardless* of any formal government action on a formalistically submitted application. Thus, in *Doe v. City of Butler*, 892 F.2d 315, 322 (3d Cir. 1989), the Third Circuit acknowledged the *de facto* reality that "no prospective operator of a transitional dwelling is likely to spend the time, effort and expense required to initiate a project which is patently barred by the ordinance."

A. <u>*Tedford's Tenancy pled finality*</u>

In this case, Tedford's Tenancy complaint has plausibly alleged finality. *See, e.g.*, *Tax Equity Now N.Y. LLC v. City of New York*, 42 N.Y.3d 1, 12 (2024) ("New York's liberal pleading standard requires only

that the nonmovant be placed on notice of the legal claim asserted."). The economic use of its real property is controlled by the City's rent control regulations. (R. 31, *et seq.*). The impact of those rent control regulations caused such a substantial economic loss (R. 20–22, 26–31) that the property will be *forever* profitless. (R. 22, 33). And the City's rent control regulations also destroyed the owner's reasonable investment backed expectations. (R. 37). Based on those allegations, the court knew exactly how far the regulation goes.

B. The First Department contravened established federal law by mandating exhaustion

In dismissing Tedford's Tenancy's regulatory takings claim on ripeness grounds, the First Department held that finality is not enough. Instead, it compels property owners to needlessly spend substantial amounts of money[3] and substantial amounts of time[4] (potentially up to a

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[3] In *Burns v. Wiltse*, 303 N.Y. 319, 323 (1951), this Court held that the government need not include a candidate on the ballot if that candidate is ineligible to hold office because "it does 'seem reasonable to suppose that the election machinery, which is run at such a great expense to the public, is for the purpose of doing a useful and not a useless thing.'") (citation omitted). Property owners also should be excused from engaging in "a useless thing" at "great expense."

[4] Michael K. Whitman, *The Ripeness Doctrine in the Land-Use Context: The Municipality's Ally and the Landowner's Nemesis*, 29 Urb. Law. 13, 39 (1997) (futility doctrine exists because "a plaintiff property owner should not be required to waste his time and resources in order to obtain an adverse decision that it can prove would have been made if subsequent application were made."). The government has

decade (R. 550)), to exhaust an administrative remedy that, by its own terms, cannot provide relief from the constitutional infirmities at issue. Nevertheless, the First Department's version of ripeness requires the property owner to "personally experience[] repetitive or unfair procedures." *Tedford's Tenancy, LLC*, 238 A.D.3d at 625. That is not the law.

1. *Tedford's Tenancy is not required to exhaust an administrative remedy that it is ineligible for*

The mere existence of the regulation's hardship exemption does not alter the finality analysis. Tedford's Tenancy alleged that, for several reasons, it was ineligible to apply for any such exception. (R. 33). The court must accept this pleading as true[5] and as such, the hardship exception is a legal irrelevancy.

The Respondents also have no discretion to change the eligibility requirements.[6] Thus, any hardship application would have been no more

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infinitely more time and money than owners who simply seek to make reasonable use of their own land.

[5] "On a motion to dismiss, the complaint must be construed in the light most favorable to plaintiff and all factual allegations must be accepted as true; '[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss.'" *Burrows v. 75-25 153rd St., LLC*, Nos. 2021-04654, 2022-02533, __ N.E.3d __, 2025 WL 863241, at *3 (N.Y. Mar. 20, 2025) (citations omitted).

[6] The regulation itself identifies several reasons why a property owner is ineligible for relief, advising the owner to "STOP" pursuing a hardship exemption if any of those

than a futile gesture. "The law does not force [plaintiffs] to take on hopeless causes," *Herr v. U.S. Forest Service*, 803 F.3d 809, 823 (6th Cir. 2015), and compelling Tedford's Tenancy to apply for a rent increase for which it is categorically and statutorily ineligible is "pointless."[7] *Herr*, 803 F.3d at 822; *see also Settles v. United States Parole Comm'n*, 429 F.3d 1098, 1102 (D.C. Cir. 2005) (commission imposed "an unduly restrictive standard, which would have required Settles to engage in a futile act: to go through the motions of obtaining representation when he knew that the relevant regulations precluded him from having representation"); *S.D. Mining Ass'n v. Lawrence Cnty.*, 155 F.3d 1005, 1008–09 (8th Cir. 1998) (plaintiffs had standing to challenge a county ordinance that prohibited issuance of new permits even though they had not applied for a permit because any application would have been futile); *Sporhase v.*

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reasons apply. *See* New York State Division of Housing and Community Renewal, *Instructions for Filing an Owner's Application for Rent Increase Based on Alternative Hardship*, https://hcr.ny.gov/system/files/documents/2022/08/rtp-45.2-alternative-hardship-instructions_0.pdf (visited July 14, 2025); *see also* Complaint ¶¶ 67–72 (allegations that plaintiff is challenging tax bills, a reason for ineligibility).

[7] This Court may also take judicial notice of the FOIL responses establishing the lack of hardship exemptions granted. N.Y.C.P.L.R. § 4511. (R. 61 and Exhibit D annexed to the Affirmation of Gregory Byrnes). A court may take judicial notice of facts at any point in a proceeding, including on appeal. *Hunter v. New York, O. & W.R. Co.*, 116 N.Y. 615, 621 (1889). An appellate court may take judicial notice of public records. *People v. Sowle*, 68 Misc.2d 569, 571 (Fulton Cnty. Ct. 1971) (citing *Hunter*, *supra*). This Court also may take judicial notice of material derived from official government web sites. *LaSonde v. Seabrook*, 89 A.D.3d 132, 137 n.8 (N.Y. App. Div. 2011).

Nebraska ex rel. Douglas, 458 U.S. 941, 944 n.2 (1982) (plaintiffs had standing[8] to challenge Nebraska water laws even though they had not applied for a permit because the permit clearly would not have been granted and the application would have been futile).

For example, in *United States v. Greene*, 516 F. Supp. 3d 1, 22 (2021), an inmate who was "categorically ineligible for relief" under the governing statute, was not required "to undertake the futile gesture" of seeking that relief and waiting for the agency "to provide its negative response" before proceeding in court. *See also United States v. Hardman*, 297 F.3d 1116, 1121 (10th Cir. 2002) (Native Americans charged with violating the Eagle Act could make an as-applied challenge to the Act's permitting system without applying for permits if they demonstrated that "it would have been futile . . . to apply for permits;" the defendants were not members of a federally recognized tribe, and were therefore explicitly forbidden from applying because "the application itself

[8] Takings cases frequently combine analysis of standing and ripeness. *See* Nora Coon, *Ripening Green Litigation: The Case for Deconstitutionalizing Ripeness in Environmental Law*, 45 Env't Law 811, 838 (2015); *Tyler*, 598 U.S. at 637 ("At this initial stage of the case, [a takings plaintiff] need not definitively prove her injury or disprove the County's defenses. She has plausibly pleaded on the face of her complaint that she suffered injury from the County's actions, and that is enough for now.").

require[d] certification of membership" and therefore they need not apply to ripen their case).

2. *Tedford's Tenancy is not required to exhaust an administrative remedy—assuming it was eligible—that would still result in an unconstitutional regulatory taking*

Even to assume that Tedford's Tenancy could apply for a hardship exception, the government's discretion is highly circumscribed. The rent increase that it can grant is capped and even if exercised to its fullest extent, it is still alleged to be an unconstitutional regulatory taking. Thus, the requirement of finality has been satisfied because the court knows exactly how far the regulation goes.

More specifically, the Respondents' discretion to grant hardship relief was constrained by statute to a maximum of 6%. (R. 33). A 6% increase would only increase gross income by $1800 per year (R. 60) and would have absolutely no impact upon whether the rent control regulation is an unconstitutional taking, because the property would still be bereft of economic use and perpetually losing money; just $1800 less than before. (R. 33). *See Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121, 2136 (2025) ("commonsense economic principles" can be "useful" in determining elements of justiciability.). The government

presented no information to counter this allegation. *Cf. Biafora v. United States*, 773 F.3d 1326, 1337 (Fed. Cir. 2014) (ripe claim where "government made only generalized assertions that [relief] was possible for properties in general, but its argument was not tied to . . . the factual circumstances of those properties").

Considering the above, ripeness is not controlled by the mere presence of governmental discretion but whether the exercise of that discretion can change the effect of the challenged regulations on the subject property. *Pakdel*, 594 U.S. at 480; *Blanchette v. Conn. Gen. Ins. Corps. (Reg'l Rail Reorganization Act Cases)*, 419 U.S. 102, 143 & n.29 (1974) (the finality requirement of the ripeness doctrine is abused "where the inevitability of the operation of a statute against certain individuals is patent," and any particular future contingency was "irrelevant to the existence of a justiciable controversy"); *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (under Article III, "an allegation of future injury may suffice if the threatened injury is certainly impending or there is a substantial risk that the harm will occur.") (internal quotation marks omitted).

Regulatory discretion only impacts ripeness if it is so flexible, and of such a high degree, that the government's position is unknown. *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 738 (1997) (the finality requirement applies to "the *high degree of discretion* characteristically possessed by land-use boards in softening the strictures of the general regulations they administer.") (emphasis supplied); *ibid.* (the finality requirement applies when the agency exercising the discretion is a "singularly flexible institution"), quoting *MacDonald, Sommer & Frates*, 477 U.S. at 350.

By comparison, the futility of seeking an exemption here is distinct from more typical land use applications, such as variances. A variance seeks "official permission to do something other than what is normally allowed" or "official authorization to depart from a zoning law." *Variance*, Black's Law Dictionary (11th ed. 2019), cited in *BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595, 602–03 (2d Cir. 2024). A variance can be open-ended and the request for one is just an opening prelude to ongoing negotiations. In this case, however, the hardship exemption law has known and intractable boundaries, and defined results when those boundaries are reached.

Accordingly, the First Department's exhaustion requirement is contrary to well-established Supreme Court precedent. Tedford's Tenancy's regulatory takings claim is ripe for adjudication because the Respondents' position with respect to the regulation at issue is a final determination that reflects, to a reasonable degree of certainty, exactly how far the regulation goes. Therefore, it was inapposite to force Tedford's Tenancy to exhaust administrative remedies just so that they can say that they have. *Pakdel*, 594 U.S. at 480 ("[A]dministrative exhaustion of state remedies is not a prerequisite for a takings claim when the government has reached a conclusive position."). Once the government's position is known, the case is ready to go. *Id.* at 479 ("the Ninth Circuit's contrary approach—that a conclusive decision is not final unless the plaintiff *also* complied with administrative processes in obtaining that decision—is inconsistent with the ordinary operation of civil-rights suits"); *Palazzolo v. Rhode Island*, 533 U.S. 606, 620–21 (2001) (the ripeness requirement is not to force property owners to run a procedural gauntlet for its own sake; a takings claim is ripe "once it becomes clear . . . [that] the permissible uses of the property are known to a reasonable degree of certainty[.]"); *Lucas v. South Carolina Coastal*

Council, 505 U.S. 1003, 1012 n.3 (1992) (the owner did not have to submit a "pointless" application in order to ripen his claim).

Leave should be granted to resolve this significant issue of public importance. For constitutional claims under the Fifth Amendment, New York does not have the liberty to impose pleading requirements that are in excess of those determined by the Supreme Court. *See, e.g.*, *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 367 (1990) ("[T]he Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws the supreme Law of the Land, and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure."); *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 53 (2015) (state courts must follow U.S. Supreme Court determinations regarding federal law). It cannot be that constitutional claims under the Fifth Amendment are governed by "exhaustion" in New York, but "finality" everywhere else.

II. The Court of Appeals decision that the First Department relied upon is on questionable legal grounds and in conflict with another Court of Appeals decision

In holding that the regulatory takings claim of Tedford's Tenancy was not ripe, the First Department found support in the Court of Appeals'

determination in *Church of St. Paul. Tedford's Tenancy,* 238 A.D.3d at 625 (citing *Church of St. Paul*, 67 N.Y.2d at 519). Therein, although the Plaintiff church had met the necessary pleadings requirements, *id.* at 514, this Court held that its regulatory takings claim was not ripe because it had not satisfied the two-part prudential ripeness test of *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967): "First[,] whether the issues tendered are appropriate for judicial resolution, and second to assess the hardship to the parties if judicial relief is denied." *Church of St. Paul*, 67 N.Y.2d at 519.

This discretionary judicial screener is patently contrary to the court's "virtually unflagging" obligation to hear and decide justiciable constitutional claims. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). But even more directly, within the context of regulatory takings claims, the U.S. Supreme Court has expressly abrogated the two-part *Abbott Laboratories* test that *Church of St. Paul* relied on (and by extension, the First Department below). *Suitum*, 520 U.S. at 744. It was held to be "not on point," because the two-part test pertains to challenges to the validity of an administrative regulation, not the payment of just compensation for those regulations

that a property owner is lawfully subject to. *Id.* Consequently, the *Church of St. Paul*'s two-part ripeness test for regulatory takings matters must be reconsidered by this court in light of contrary U.S. Supreme Court precedent.

Church of St. Paul and the First Department below are also in tension with the Court of Appeals decision in *Matter of Ward v. Bennett,* 79 N.Y.2d 394 (1992). In that case, the owner claimed that that the City's rejection of a demapping application was a regulatory taking. Although the owner could have additionally pursued demapping pursuant to the City Charter, *id.* at 398–99, the Court of Appeals held that the case was ripe for adjudication. Said the court, "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. Indeed, we have said such a requirement might create a 'bureaucratic nightmare' and undue hardship." *Id.* at 400–01. While the procedure at issue in *Ward* was arguably, but not definitively, more cumbersome than filing a hardship application under New York's rent control laws, the principle holds: ripeness requires only finality, not exhaustion.

Pointedly, in the regulatory takings case of *Ward,* the Court of Appeals did not subject the property owner to the two-part ripeness test that was applied in the regulatory takings case of *Church of St. Paul.* Thus, in addition to the fact that *Church of St. Paul*'s ripeness test was abrogated by *Suitum*, and the conflicting underlying legal principles as between *Church of St Paul* and *Ward*, there is also a disconnect within these two Court of Appeals decisions about which body of law to apply. Leave to appeal should be granted to resolve these conflicts.

CONCLUSION

Stalemates over property rights are why landowners must rely on access to courts. It is the courts' duty "to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing." Federalist No. 78 (Alexander Hamilton).[9] Fundamental rights are paper promises unless a judicial forum exists to enforce them. *Ramos v. Louisiana*, 590 U.S. 83, 98, 100 (2020) (It "can't be right" that a right established by the Constitution could "be reduced to an empty promise"; enshrined rights

[9] https://founders.archives.gov/documents/Hamilton/01-04-02-0241.

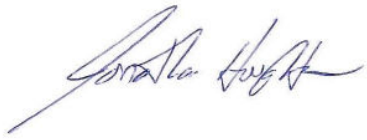
reflect "hard-won liberty" and courts "are entrusted to preserve and protect that liberty, not balance it away.").

For the reasons set forth herein, leave to appeal should be granted pursuant to N.Y.C.R.R. 22, § 500.22.

DATED: July 29, 2025

Respectfully submitted,

PACIFIC LEGAL FOUNDATION



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CERTIFICATE OF COMPLIANCE

Under this Court's Rule 500.13(c), I certify that:

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