

No. 24-311

IN THE
Supreme Court of the United States

PROTECT OUR PARKS, INC., ET AL.,
Petitioners,

v.

PETE BUTTIGIEG, SECRETARY OF THE U.S.
DEPARTMENT OF TRANSPORTATION, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit**

**BRIEF IN OPPOSITION OF THE BARACK
OBAMA FOUNDATION, CITY OF CHICAGO,
AND CHICAGO PARK DISTRICT**

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INTRODUCTION

Petitioner Protect Our Parks, Inc. has filed two lawsuits, three Seventh Circuit appeals, and two petitions for certiorari in its persistent effort to halt construction of the Obama Presidential Center in Chicago—which has been ongoing since August 2021, following a series of federal and local approvals authorizing the construction. Now, along with the other petitioners, it asks this Court to review six additional questions. None warrants certiorari.

Most of the petition is directed to questions of federal law that purportedly arise from various federal agencies' review of limited aspects of the Presidential Center development. The Seventh Circuit considered and reconsidered these questions through petitioners' two appeals, see Pet. App. A, Pet. App. C, and unanimously rejected petitioners' claims of error in the federal review process. Petitioners have identified neither any error in the Seventh Circuit's analysis nor any issue of importance, and the federal-law questions accordingly do not warrant this Court's attention. To avoid repetition, respondents the Barack Obama Foundation, the City of Chicago, and the Chicago Park District (the "non-federal respondents") refer the Court to the separately filed Brief in Opposition of the federal respondents.

The petition also asks the Court to review the Seventh Circuit's decision with respect to certain state-law claims. See Pet. ii (Questions 5 and 6). Neither question presents any significant issue of federal law. The petition should be denied.

STATEMENT OF THE CASE

The petition's Statement of the Case includes numerous factual inaccuracies. To clarify the record for the Court, the non-federal respondents identify pertinent inaccuracies and provide a corrected factual and procedural background below. See S. Ct. R. 15(2).

I. FACTUAL BACKGROUND

A. The Presidential Center and City Approval

The Presidential Center is presently under construction in Jackson Park in Chicago. Pet. App. 4a. It will feature a museum commemorating the life and legacy of President Barack Obama—the first President elected from Chicago—and First Lady Michelle Obama, as well as a public library and spaces for educational, cultural, and recreational activities.¹ *Id.* at 45a.

Before the Jackson Park site was chosen, the Chicago City Council in 2015 enacted an ordinance expressing the City's "robust commitment to bringing the Presidential Center to Chicago," in recognition of the immense public benefits the Presidential Center would offer. Pet. App. 4a. Contrary to petitioners' assertion that this ordinance delegated to the Foundation "uncabined discretion" to build the Presidential Center wherever it chose, Pet. 12, the 2015 ordinance did not authorize any construction, but instead provided that "a separate ordinance authorizing the development[,] construction and

¹ Although petitioners state that the Presidential Center will include a "private residence," Pet. 9, that is false. See Dist. Ct. Dkt. 29-2 at 8.

operation of the Presidential Center” in Jackson Park would be necessary if that site were selected. Pet. App. 105a.

The Foundation proposed the Jackson Park site, and in January 2018, applied to the City for the required municipal approvals. What petitioners describe as approval granted in “predetermined fashion . . . after a brief public hearing,” Pet. 12, was in fact a robust regulatory and legislative review by the City’s Department of Planning and Development, Chicago Plan Commission, and City Council, with numerous public hearings and extensive public participation. See *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 738 (7th Cir. 2020); Pet. App. 68a–69a. After the Plan Commission recommended approval of the Foundation’s application, the City Council unanimously enacted an ordinance (“the 2018 Ordinance”) authorizing the City to enter into agreements with the Foundation to develop the Presidential Center on the Jackson Park site. *Id.* at 6a–7a.

B. Use Agreement

The use agreement, one of the agreements authorized in the 2018 Ordinance, sets the terms of the Foundation’s use of the site. Pet. App. 7a. Contrary to the petition, see Pet. 9, 13, 19, the City neither transferred nor leased the Jackson Park property to the Foundation. Pet. App. 83a–84a, 106a. Instead, the use agreement authorizes the Foundation to use the property only for designated purposes and subject to explicit terms and conditions. In particular, the use agreement specifies that the Foundation will build the

Presidential Center at its sole expense,² the City will retain title to the land and acquire title to the buildings and site improvements upon completion, and the City may terminate the agreement if the Foundation ceases to use the Presidential Center for its authorized purpose. *Id.* at 7a, 83a–84a, 106a. The use agreement also specifies that the Presidential Center will maintain hours consistent with other museums located in Chicago’s public parks, and operate in accord with the free admission requirements of Illinois’s Park District Aquarium and Museum Act, 70 ILCS 1290/1 (“Museum Act”). Pet. App. 7a, 84a.

C. Federal Review

The Presidential Center is not located on federal property, and the federal government played no role in

² The petition states that “[n]o one knows whether the Foundation has sufficient funds dedicated to, or even available for, the actual costs of construction of the OPC,” and “mum is the word regarding the finances for the construction of this private project located on public trust property where the public is contributing nearly a quarter of a billion dollars.” Pet. 9. These statements are false. The use agreement explicitly provides that construction of the Presidential Center is to be paid for *solely* by the Foundation. Pet. App. 7a, 84a. The master agreement between the City and Foundation required the Foundation to provide written certification, before construction began, that it had adequate funds to pay construction costs. *Id.* at 7a. Further, the Foundation makes detailed information about its finances available to the public on its website, including its audited financial statements and Form 990s through 2023. See The Barack Obama Found., *Financial Information*, <https://www.obama.org/about/financials/> (last visited Dec. 9, 2024). Petitioners’ suggestion that the Foundation lacks sufficient funding to complete development of the Presidential Center is entirely baseless.

either the plan for the Presidential Center or selection of the Jackson Park site. Pet. App. 8a. Nonetheless, the City's approval of the Jackson Park site prompted five federal agency reviews: (1) one by the Federal Highway Administration under section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303; (2) a joint environmental assessment by the National Park Service and the U.S. Department of Transportation under the National Environmental Policy Act, 40 C.F.R. § 1501.4 (2019); (3) a review by the National Park Service under the Urban Park and Recreation Recovery Act, 54 U.S.C. §§ 200501–200511; (4) a review led by the Federal Highway Administration under section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108; and (5) a review by the United States Army Corps of Engineers of the City's requests for a section 408 permit, 33 U.S.C. § 408, and a permit to fill less than an acre of navigable waters temporarily, 33 U.S.C. § 1344(a). See Pet. App. 8a. After three years and numerous rounds of public participation, each of these federal agencies approved the individual actions they were reviewing. *Id.* at 46a–51a (summarizing agency determinations).

II. PROCEDURAL HISTORY

A. Prior Lawsuit

In 2018, petitioner Protect Our Parks and three individuals sued the City and Park District, contending the City's approval of the Presidential Center in Jackson Park violated federal and state law, principally Illinois's public trust doctrine. The district court granted summary judgment to the City and the Park District on all claims. *Protect Our Parks*, 971 F.3d at 729. The Seventh Circuit affirmed judgment on

the federal claims on the merits, *id.* at 737, but concluded the plaintiffs had failed to allege facts sufficient to establish Article III standing with respect to the state-law claims, *id.* at 738. Accordingly the court dismissed the state-law claims without prejudice. *Id.* The Seventh Circuit denied *en banc* rehearing, and this Court denied the plaintiffs' petition for certiorari, *Protect Our Parks, Inc. v. City of Chi.*, 141 S. Ct. 2583 (2021).

B. This Litigation

On April 14, 2021, Protect Our Parks and the other petitioners filed this lawsuit, once again seeking to block construction of the Presidential Center.³ In this iteration, petitioners brought challenges to the federal agency actions pursuant to the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, as well as eight state-law claims, Pet. App. 114a, many of which are identical to those dismissed without prejudice in the prior lawsuit.

1. District Court Proceedings

First, petitioners moved for a preliminary injunction based on their federal claims. Pet. App. 114a. The district court denied the preliminary injunction, concluding that petitioners failed to demonstrate they were likely to succeed on the merits. *Id.* at 113a–64a. The Seventh Circuit affirmed denial of the preliminary injunction on the same grounds. *Id.* at 43a–65a.

The district court then dismissed petitioners' state-law claims for failure to state a claim. Pet. App. 66a–

³ The district court concluded that petitioners' complaint in this case alleged sufficient facts to establish Article III standing. Pet. App. 72a–73a.

109a. As the court explained in dismissing the principal state-law claim under Illinois’s public trust doctrine, the use agreement “unambiguously provides that the City retains ownership over the OPC site,” and thus petitioners’ contention that the City had “essentially g[i]ve[n] the Obama Foundation the OPC site for free” could not support a claim. *Id.* at 82a–84a. Nor was there any public trust concern in the City’s authorization of the Foundation to develop and operate the Presidential Center on the City’s park land, as the Illinois legislature has explicitly determined that such use of public park land furthers the public interest. *Id.* at 81a. Specifically, the Museum Act “permits the City to contract with private parties to build a presidential center” in a public park. *Id.* The district court also denied petitioners leave to amend the complaint to include two additional claims, concluding that neither proposed claim would survive dismissal. *Id.* at 110a–11a.

Following the district court’s dismissal of plaintiffs’ state-law claims, and the Seventh Circuit’s decision affirming denial of a preliminary injunction, the parties stipulated to entry of judgment for defendants. Pet. App. 40a–42a. Petitioners “explicitly waive[d] any arguments, claims, or theories” as to the federal claims beyond those advanced in their motion for preliminary injunction. *Id.* at 41a.

2. Seventh Circuit Decision

The Seventh Circuit—in the third appeal by petitioner Protect Our Parks—unanimously affirmed. First, the court held that the district court properly denied leave to amend the complaint. Petitioners had sought to add claims that the master agreement, one of the contracts between the City and the Foundation,

had been breached. However, “[e]ven assuming” that there had been a breach, petitioners’ “breach-of-contract theory is still futile,” because “a cause of action based on a contract may be brought only by a party to that contract, by someone in privity with such a party, or by an intended third-party beneficiary of the contract”—but petitioners are none of these. Pet. App. 17a (quoting *Northbound Grp., Inc. v. Norvax, Inc.*, 795 F.3d 647, 651 (7th Cir. 2015)). And petitioners’ assertions that they had rights as municipal taxpayers to sue to enforce the contract did not accord with Illinois law. Pet. App. 18a–19a (discussing *Malec v. City of Belleville*, 891 N.E.2d 1039, 1042 (Ill. App. 2008); *Feen v. Ray*, 487 N.E.2d 619, 621 (Ill. 1985)).

With respect to the federal claims, the Seventh Circuit noted that its prior decision affirming denial of petitioners’ preliminary injunction motion—which evaluated the same claims on the same record—was law of the case. Pet. App. 20a–22a. Nonetheless, “[i]n the interest of completeness,” the Seventh Circuit considered whether petitioners had identified any basis to depart from its prior ruling. *Id.* at 22a–24a. Finding neither error in its prior opinion nor any relevant change in the law, the Seventh Circuit reached the same conclusion as before, for the same reasons. *Id.* at 24a–28a.

Finally, the Seventh Circuit affirmed dismissal of the state-law claims. The court held that petitioners failed to state a public trust claim because there was “no doubt that the Center falls within” the “legislative grant of authority” in the Museum Act, which explicitly authorized the City to contract with a private entity to develop a presidential center in a public park. Pet. App. 31a–33a. In the Seventh

Circuit’s words, “[i]t is not our role to second-guess the re-purposing of a portion of Jackson Park for [this] new use.” *Id.* at 34a. Additionally, the court found “no possible (let alone plausible)” delegation of legislative authority by the City to the Foundation: “the fact that the City ultimately approved the location is evidence that it, not the Foundation, exercised the legislative function of authorizing the proposed development.” *Id.* at 36a. The court held that petitioners had forfeited their remaining state-law theories by failing to support them with any pertinent authority. *Id.* at 37a–38a.

In sum, the court wrote, “[c]onstruction of the Center is now well underway, and yet the plaintiffs demand that we put a stop to it and, we assume, order the defendants to restore the site. But they have failed to show that they are entitled to any relief relating to their overarching claim against the Center, no matter under what theory.” *Id.* at 38a–39a. No judge on the Seventh Circuit requested a vote on petitioners’ petition for rehearing *en banc*, which was accordingly denied. *Id.* at 166a.

REASONS TO DENY THE PETITION

The non-federal respondents defer to the federal respondents’ separate Brief in Opposition with respect to petitioners’ federal claims. Below, the non-federal respondents explain why none of petitioners’ state-law theories warrants this Court’s attention.

I. PETITIONERS HAVE FAILED TO IDENTIFY ANY DISAGREEMENT AS TO THE APPLICATION OF FED. R. CIV. P. 15.

The Seventh Circuit affirmed the denial of leave to amend petitioners’ complaint on the ground that the

proposed amendment was futile. Pet. App. 16a–20a. Petitioners contend that this ruling “upends Fed. R. Civ. P. 15.” Pet. 35. But they fail to allege any conflict between the Seventh Circuit and any other court regarding either the Rule 15 standard for granting leave to amend or the substantive state law applicable to the new claims that petitioners sought to bring. The petition seeks nothing more than error correction.

First, there is no conflict as to the standard the Seventh Circuit applied under Rule 15. Futility is a universally accepted basis for denying leave to amend. See *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Nor is there any basis for this Court to review the lower courts’ futility determination. Petitioners simply argue that the Seventh Circuit erred in reading the Illinois authorities. See Pet. 37–39. But “this Court normally follows lower federal-court interpretations of state law,” *Stenberg v. Carhart*, 530 U.S. 914, 940 (2000), as the lower federal courts “are better schooled in and more able to interpret the laws of their respective States,” *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 500 (1985). Whether petitioners’ proposed amended complaint stated viable claims under Illinois law is not within this Court’s purview.

There is no work for this Court to do here.

II. PETITIONERS’ NOVEL STATE-LAW THEORIES DO NOT WARRANT THIS COURT’S REVIEW.

Petitioners’ final question presented asks the Court to adopt novel theories of Illinois state law. Pet. 39–42. Citing academic commentary and a 19th-century New York state court ruling, petitioners contend that the Seventh Circuit should have adopted a new approach

to the Illinois public trust doctrine—one that incorporates fiduciary duties from private trust law into the public trust analysis. *Id.* at 40–41.

The Seventh Circuit appropriately rejected petitioners’ invitation to remake a state-law doctrine. Pet. App. 33a. The court explained that petitioners had “not directed us to any decision from an Illinois court recognizing this theory, nor have we found such a case.” *Id.* Instead, petitioners’ argument—supported (there as here) by only “a law review article that does not discuss the public-trust doctrine in Illinois and a decision from a New York state trial court”—could not prevail, as the Seventh Circuit is “bound to apply the existing law of Illinois, not whatever [petitioners] hope[] Illinois law may someday be.” *Id.* at 33a (citing 28 U.S.C. § 1652). The court held that there was neither a public trust violation nor an improper delegation of authority. The City properly exercised authority granted to it in the Museum Act to contract with the Foundation to develop the Presidential Center in Jackson Park. *Id.* at 32a–37a.

Finally, petitioners request that the Court certify these questions to the Illinois Supreme Court. Pet. 41–42. Certification is proper, however, only where there are no controlling state-law precedents and the resolution of a state-law question would aid this Court in deciding a federal question. *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 76 (1997); see also Ill. Sup. Ct. R. 20(a). Here, there *is* controlling Illinois precedent, which petitioners ask this Court to ignore. Further, petitioners seek certification as an end in itself, with no nexus to any federal-law issue. There is no warrant for this Court’s review.

CONCLUSION

For the foregoing reasons, as well as those set forth in the federal respondents' Brief in Opposition, the petition should be denied.

Respectfully submitted,

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