

No. 25-464

IN THE
Supreme Court of the United States

PHILIP G. POTTER ,

Petitioner,

v.

INCORPORATED VILLAGE OF OCEAN BEACH, *et al.*,

Respondents.

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

**BRIEF *AMICUS CURIAE* OF THE
NEW CIVIL LIBERTIES ALLIANCE
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Petitioner alleges that a municipal government granted him a certificate of occupancy for his property but later revoked the certificate without providing him due process of law. All agree that the limitations period for bringing an action under 42 U.S.C. § 1983 for alleged violation of his constitutional due process rights is three years. The parties disagree regarding when that action first accrued.

Agreeing with Respondents, the Second Circuit held that a procedural due process claim accrues at the time that the claimant is deprived of his property right, and that Respondents revoked Petitioner's certificate of occupancy no later than 2018—five years before Petitioner filed suit. In contrast, Petitioner contends that his procedural due process claim did not accrue until 2021 at the earliest, when Respondents denied him the process to which he claims he was due under the Due Process Clause. The question presented is as follows:

Does a procedural due process claim arising in the land-use context accrue at the time that a local authority issues a final decision affecting land use (in this case, revocation of a certificate of occupancy), as the Second and Third Circuits hold; or does it accrue only after the local authority declines to provide the claimant with the due process to which he claims entitlement with respect to that decision, as the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits hold?

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INTERESTS OF *AMICUS CURIAE*

The New Civil Liberties Alliance (NCLA) is a non-partisan, nonprofit civil-rights organization devoted to defending constitutional freedoms from violations by the administrative state.¹ The “civil liberties” of the organization’s name include rights at least as old as the U.S. Constitution itself, such as jury trial, due process of law, the right to be tried in front of an impartial and independent judge, and the right to live under laws made by the nation’s elected lawmakers through constitutionally prescribed channels. Yet these self-same rights are also very contemporary—and in dire need of renewed vindication—precisely because Congress, administrative agencies, and even sometimes the courts have neglected them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints on the administrative state. Although Americans still enjoy the shell of their Republic, there has developed within it a very different sort of government—a type, in fact, that the Constitution was designed to prevent. This unconstitutional administrative state within the Constitution’s United States is the focus of NCLA’s concern.

¹ Pursuant to Supreme Court Rule 37.6, NCLA states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than NCLA and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. On October 31, 2025, NCLA notified counsel for the parties of its intent to file.

NCLA is disturbed when, as here, a governmental body deprives an individual of a property right, manipulates the adjudicative process to impede the individual's right to a hearing at which he can contest the deprivation, and then contends—when the individual is finally able to raise his federal due-process claims in a judicial proceeding—that those claims are barred because they should have been filed sooner. NCLA believes that the courts should adopt a standardized rule governing when such claims accrue so that property owners do not become enmeshed in the procedural labyrinth created by governmental bodies seeking to avoid liability for their violations of constitutional rights.

NCLA believes it is particularly important for the Court to grant review because the existing circuit conflict regarding accrual rules arises to a large degree from the Court's recent decision to substantially overrule *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), and thereby substantially streamline the steps a property owner must take in order to ripen a claim arising under the Fifth Amendment's Takings Clause. There is significant confusion within the federal appeals courts regarding whether those streamlined accrual rules should also apply to claims arising under the Fourteenth Amendment's Due Process Clause. NCLA is filing this brief to urge the Court to grant review in order to clear up that confusion.

STATEMENT OF THE CASE

In July 2010, Respondent Village of Ocean Beach issued a Permanent Certificate of Occupancy (the Certificate) to Petitioner Philip Potter for a newly constructed house located within the Village. Soon thereafter, Respondent initiated a series of actions designed to revoke the Certificate. Potter alleges that he possesses a constitutionally protected property interest in the Certificate. Amended Compl. ¶ 104.

It is uncontested that the Village did eventually revoke the Certificate, but the parties disagree as to when that event occurred and also when the Village informed Potter that it would provide him with no additional proceedings at which he could contest the purported revocation. Determining those two dates is critical to determining whether Potter's constitutional claim was filed out of time and thus is subject to dismissal under Fed.R.Civ.P. 12(b)(6) for failure to state a claim.

As early as 2011, the Village began sending Potter correspondence expressing an intent to revoke his Certificate of Occupancy. In 2014, a hearing officer recommended that the Certificate be revoked, but the Village Board never voted to adopt that recommendation and instead voted in 2015 to table it indefinitely.

After the Village denied Potter's successive applications to rent his property in 2016, 2017, and 2018, Potter renewed his efforts to resolve the Certificate-revocation issue. Potter filed suit in New York state court in August 2019, seeking a declaration

that the Certificate remained valid. In support of its motion to dismiss, the Village Board argued that the suit was premature because it had not yet decided whether to revoke the Certificate and that a process was available to Potter by which he could seek resolution of the issue. Only in late 2020 at the earliest did the Village assert for the first time in state court proceedings that it had definitively decided to revoke the Certificate.

Potter filed suit under 28 U.S.C. § 1983 against Respondents (collectively, the Village) in U.S. District Court for the Eastern District of New York on August 23, 2023. As amended in 2024, the complaint alleged that the Village violated his right to procedural due process by revoking the Certificate without providing him the process to which he was due under the Fourteenth Amendment's Due Process Clause.² All agree that the limitations period for such § 1983 claims is three years, meaning that the complaint was timely filed so long as Potter's procedural due process claim did not accrue until on or after August 23, 2020.

The district court granted the Village's Rule 12(b)(6) motion to dismiss, concluding that any claims arising from the Village's actions with respect to revocation that occurred between 2011 and 2018 "occurred well outside the limitations period." App.15a. The court's decision included no discussion of the date on which it believed that Potter's

² The amended complaint also alleged violation of Potter's substantive due process rights, a claim he did not pursue on appeal.

constitutional claims accrued. *Id.* at 9a-20a.³

The Second Circuit affirmed. App.1a-8a. The appeals court conceded that, in light of the Village’s shifting positions over the past 15 years, it could not pinpoint the precise date on which Potter’s procedural due process claims accrued. The court stated that a 2011 letter to Potter from the Village Building Inspector did not suffice, but that “Potter did become sufficiently aware that the Village had taken a final position on the revocation of his CO [Certificate of Occupancy] to have brought this claim by at least 2020, rendering his claims based on the Village’s revocation of his CO time barred.” *Id.* at 7a.

The Second Circuit applied its longstanding position that the accrual rule for claims arising under the Fifth Amendment Takings Clause—established by this Court in *Williamson County*—also applies to procedural due process claims arising “in the land use context.” App.6a n.1. As modified by later Court decisions, *Williamson County* holds that a Takings Clause claim accrues when a government regulator “arrives at a definitive position on the issue that inflicts an actual, concrete injury” on the plaintiff property owner. 473 U.S. at 193. The Second Circuit held that the Village arrived at a “definitive position” that Potter’s Certificate of Occupancy should be revoked—and that Potter became aware of that

³ The court also ruled that the Village’s failure to comply with a 2021 state-court remand order (directing the Village to conduct a hearing) did not violate Potter’s constitutional rights. *Id.* at 15a-18a. Potter had not asserted such a claim and thus did not appeal that ruling.

position—more than three years before Potter filed his procedural due process claim in 2023. App.7a & n.1. Because of that delay in filing, the Second Circuit held that § 1983’s three-year statute of limitations barred Potter’s claim. *Ibid.*

The appeals court’s decision includes no discussion of the elements of a procedural due process claim, nor a discussion of this Court’s admonition that “a procedural due process claim is not complete” when a State deprives an individual of a liberty or property interest but rather only when “the State fails to provide due process.” *Reed v. Goertz*, 598 U.S. 230, 236 (2023).

SUMMARY OF ARGUMENT

The Petition raises an issue of exceptional importance. The courts of appeals are sharply divided over how to determine the accrual date for procedural due process claims arising in the land-use context. The resulting confusion can cause (and in this case, has caused) litigants’ procedural due process claims to be dismissed as time-barred based solely on the circuit in which their claims arise. Review is warranted to resolve the circuit conflict.

Moreover, the Second Circuit’s accrual rule for procedural due process claims is inconsistent with this Court’s precedents. The Second Circuit holds that such claims accrue as soon as a government regulator arrives at a definitive position on the issue that inflicts a concrete injury on the plaintiff property owner. App. 6a n.1. Applying that rule in this case, the appeals court held that Potter was injured (and thus that his

due process claim accrued) when he became aware that the Village had revoked his Certificate of Occupancy. But that rule fails to account for both elements of a procedural due process claim: (1) deprivation of a protected interest in life, liberty, or property; and (2) inadequate state process. *Reed*, 598 U.S. at 236. Deprivation of a property interest does not by itself give rise to an actionable claim. Rather, the property owner's procedural due process claim is "complete" and thus accrues only when the defendant has also failed to provide due process. *Ibid.* By applying its truncated rule, the Second Circuit affirmed dismissal of Potter's claim without ever considering whether and when the Village had failed to provide Potter with the process to which he was entitled.

The infirmity in the Second Circuit's accrual rule becomes evident when one considers the many occasions on which this Court has ruled that a government actor need not provide any process until *after* the plaintiff has been deprived of his liberty or property interest. In such cases, a procedural due process claim will never arise until some time after the plaintiff has suffered concrete injury due to the deprivation of his liberty or property interest.

The Second Circuit's accrual rule will often lead to unnecessary, duplicative litigation. It forces property owners faced with statute-of-limitations concerns to file federal court actions while simultaneously pursuing the processes made available to them in state judicial or administrative proceedings.

Review is particularly warranted because the lower courts' confusion has been exacerbated by this

Court's recent revision of accrual rules governing claims arising under the Fifth Amendment Takings Clause. The Second Circuit crafted its due-process accrual rule by applying this Court's Takings Clause accrual rule set out in its 1985 *Williamson County* decision. This Court substantially streamlined the *Williamson County* accrual rule in 2019, with the result that litigants can now bring their takings claims into federal court much more quickly. Because the Second Circuit and like-minded circuit courts continue to apply *Williamson County* (as revised) to procedural due process claims, there is an increased danger that individuals with meritorious due process claims could end up being time-barred from federal court.

Review is also warranted because the question presented is outcome-determinative. Regardless of the precise date on which the Village is ultimately determined to have revoked Potter's Certificate of Occupancy (a date the Second Circuit was unable to pinpoint), it is incontestable that the Village did not make clear until a later date that it was refusing to provide any sort of hearing to Potter. Potter's procedural due process claim would be deemed timely if judged under the accrual standard adopted by the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits and mandated by this Court in *Reed*.

REASONS FOR GRANTING THE PETITION

I. THE SECOND CIRCUIT’S ACCRUAL RULE FOR PROCEDURAL DUE PROCESS CLAIMS IS ON THE WRONG SIDE OF AN ENTRENCHED CIRCUIT SPLIT

The Petition well describes the sharp and entrenched circuit split regarding the accrual date for a procedural due process claim arising in the land-use context. The court below held that such claims accrue as soon as a government regulator conveys to the landowner a “final, definite decision” regarding his property. App.6a n.1.⁴

Five appeals courts—the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits—disagree. Unlike the Second Circuit, their accrual rules do not rely on the accrual rule adopted for Takings Clause claims by *Williamson County* but instead focus on the two elements of a procedural due process claim: (1) deprivation of a protected interest in life, liberty, or property; *and* (2) inadequate state process. Thus, for example, the Tenth Circuit in *Schanzenbach v. Town of La Barge*, 706 F.3d 1277 (10th Cir. 2013), sharply differentiated between a Takings Clause challenge and a due process challenge to revocation of a building permit. It applied the *Williamson County* accrual rule to dismiss the takings claim. 706 F.3d at 1281-82. But it held that the procedural due process challenge to the

⁴ Indicative of the entrenched nature of the Second Circuit’s accrual rule is the appeals court’s choice to affirm dismissal of Potter’s procedural due process claim by issuing an *unpublished* summary order.

revocation was ripe for review because the plaintiff had been deprived of his alleged property right in the building permit *and* had been denied the process to which he alleged he was entitled. *Id.* at 1283. The court explained:

Schanzenbach's procedural-due-process claim against Defendants is factually and conceptually distinct from his takings claim. Whereas the takings claim alleges that the town council deprived Schanzenbach of his property without just compensation when it revoked his building permit ..., the due-process claim relates to the denial of an opportunity to argue against revocation. The takings claim would be the same even if he had received notice of the meeting at which his permit was revoked and had been given an opportunity to argue against revocation. And the due-process claim does not depend on whether revocation of the permit constituted a compensable taking. ... [I]f the town council deprived Schanzenbach of his right to fair process by denying him notice and a hearing, he would be entitled to relief (albeit only a nominal recovery) even if it were certain that compliance with constitutionally required procedures would not have changed the council's decision.

Ibid.

Similarly, the Fifth Circuit held in *Bowlby v.*

City of Aberdeen, 681 F.3d 215, 223 (5th Cir. 2012), that “a procedural due process claim that is brought concurrently with a takings claim ... should be analyzed not under the principles of *Williamson County* but according to general ripeness principles.” The appeals court determined that the plaintiff’s procedural due process claim had accrued based on allegations that the defendant zoning board had: (1) deprived him of a protected property interest (a business permit); and (2) denied him his requested due process hearing. *Id.* at 225-26.⁵

At least as importantly, the Second Circuit’s accrual rule directly conflicts with this Court’s precedents, which make clear that the timeliness of procedural due process claims is not governed by the *Williamson County* accrual rule for claims arising under the Takings Clause. In *Reed v. Goertz*, the Court explained that determining the accrual date for a procedural due process claim requires a focus on each of the two elements of such claims: “(i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process.” 598 U.S. at 236. The Court emphasized that such a claim does not accrue unless *both* elements are satisfied. That is,

⁵ The conflicting decisions from other circuits cited by Potter focused principally on whether the challenge to a land-use decision was ripe for review (*i.e.*, the defendant alleged that the plaintiff’s due process claim had not yet accrued), while in this case the Second Circuit addressed the timeliness of the challenge (*i.e.*, the Village alleged that Potter’s due process claim was time-barred because it accrued more than three years before suit was filed). Both sets of cases nonetheless address precisely the same underlying issue: when does a claim for procedural due process accrue?

a procedural due process claim “is not complete” simply because the defendant has deprived the plaintiff of his liberty or property; rather “the claim is ‘complete’ only when ‘the State fails to provide due process.’” *Ibid.* (quoting *Zinerman v. Burch*, 494 U.S. 113, 126 (1990)). The Court held that the petitioner timely filed his claim that Texas officials failed to provide him with due process. Even though he filed his claim many years after the State deprived him of a constitutionally protected liberty interest, he filed less than two years (the relevant limitations period) after Texas completed the hearings that he deemed inadequate. *Ibid.*

In sharp contrast, the Second Circuit based its dismissal of Potter’s procedural due process claim solely on its finding that the Village’s deprivation of Potter’s property interest occurred more than three years before Potter filed suit. App.7a. It made no finding regarding the date on which the Village denied Potter the process to which he alleges he was due and thus failed to consider whether that denial occurred (as Potter alleges) less than three years before he filed suit.

The Second Circuit procedural-due-process accrual rule, by declining to consider whether and when the defendant failed to provide the process alleged to be due, fails to take into account the many cases in which this Court has held that no process is due until after the plaintiff has been deprived of his liberty or property interest. In those cases, a plaintiff’s due process claim will always be “[in]complete” (and thus unripe) until some time after he has been deprived of a constitutionally protected liberty or property interest. Yet under the Second Circuit’s

accrual rule, the limitations period begins to run on such claims well before the claimants are permitted to file suit.

The many cases in which the Court has determined that deferring the provision of all due process until after an individual has been deprived of a liberty or property interest satisfies the government's constitutional obligations include *Hudson v. Palmer*, 468 U.S. 527 (1984) (deprivation of property caused by state employee's unauthorized conduct); *Ingraham v. Wright*, 430 U.S. 651 (1977) (corporal punishment of student); and *Gilbert v. Homar*, 520 U.S. 924 (1991) (suspension without pay of police officer suspected of violating drug laws).

The Court traditionally weighs several factors in determining: (1) what procedural protections the Due Process Clause requires for individuals threatened with the loss of a liberty or property interest; and (2) when those protections must be provided:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976). The

Second Circuit considered none of those factors in determining that Potter's procedural due process claim accrued no later than 2018 and thus is time-barred.

Moreover, as the Petition explains, the Second Circuit's accrual rule will often lead to unnecessary duplicative litigation. Ever since 2011, when a Village official informed Potter of his intent to revoke the Certificate of Occupancy, Potter has been seeking an administrative hearing at which to contest revocation. In subsequent years, Potter had good reason to believe that the Village would conduct a hearing. Indeed, in response to the state-court proceeding filed by Potter in August 2019, the Village explicitly argued that the suit was unripe because an administrative process was available to Potter by which he could seek resolution of the revocation issue—and it even asserted that it had not yet decided whether to revoke the Certificate. Yet, under the Second Circuit's accrual rule, the limitations period for a deprivation-of-a-constitutionally-protected-property-interest claim begins to run without regard to whether the government is offering to provide legal process in connection with the claim.

To avoid being whipsawed by that accrual rule, property owners will likely deem it necessary to proceed simultaneously with two legal proceedings. An owner will file a procedural due process claim in federal court even as he proceeds with a due process hearing before local housing authorities or in state court. This Court has frowned on procedural rules that encourage parallel litigation, stating that they “run counter to core principles of federalism, comity, consistency, and judicial economy.” *Reed*, 598 U.S. at 237 (quoting *McDonough v. Smith*, 588 U.S. 109, 120

(2019)). The Court observed, “We see no good reason for such senseless duplication.” *Ibid.*

II. REVIEW IS PARTICULARLY WARRANTED BECAUSE THE LOWER COURTS’ CONFUSION OVER ACCRUAL RULES HAS BEEN EXACERBATED BY THIS COURT’S DECISION TO OVERRULE *WILLIAMSON COUNTY* IN SUBSTANTIAL PART

Until recently, the Second Circuit’s ill-conceived accrual rule almost never led to dismissal of procedural due process claims as time-barred. *Williamson County*, the decision upon which the Second Circuit based its due process accrual rule, created roadblocks that made it extremely difficult for property owners to ripen a Takings Clause claim. As a result, the difficulty faced by property owners seeking to file a procedural due process claim within the Second Circuit was postponement of the date on which their claim became ripe for review, not dismissal of the claim as time-barred.

Knick v. Township of Scott, 594 U.S. 180 (2019), dramatically altered the calculus. *Williamson County* had held that a Takings Clause claim was not ripe for review until after two events occurred: (1) the government’s decision depriving the claimant of his property right became “final”; and (2) he sought compensation by exhausting all post-deprivation procedures available to him in state court. 473 U.S. at 186-97. *Knick* left in place the finality requirement but overruled *Williamson County*’s second requirement, concluding that it excessively and inappropriately interfered with property owners’ ability to bring

takings claims into federal court. *Knick*, 594 U.S. at 194. The Court later made clear that “[t]he finality requirement is relatively modest” and imposes few obstacles for injured property owners seeking to file takings claims in federal court. *Pakdel v. City & County of San Francisco*, 594 U.S. 474, 478-79 (2021).

Despite this Court’s dramatic revision of the *Williamson County* accrual rule for Takings Clause claims, the Second Circuit has continued to apply *Williamson County* to procedural due process claims. In its decision below, the Second Circuit cited *Williamson County* as its basis for determining that a procedural due process claim “in the land-use context” ripens (and the limitations period begins to run) as soon as “the ‘landowner receives a final, definitive decision’ from the local authority charged with administering the local regulations.” App.6a n.1 (quoting *Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 350 (2d Cir. 2023)). The appeals court emphasized that its finality requirement for the accrual of due process claims is “relatively modest” and that “only *de facto* finality is required.” *Ibid.*

The Second Circuit’s accrual rule continues to ignore the elements of a procedural due process claim. In particular, accrual does not depend on whether the government has denied the process that the claimant contends is constitutionally required. But the accrual rule has been dramatically loosened by the appeals court’s adherence to what it continues to term the *Williamson County* standard, despite this Court’s revision of that standard in *Knick*. Under the Second

Circuit’s new, hair-trigger accrual rule, the limitations period for a procedural due process claim can begin to run based on nothing more than a “*de facto*” decision to revoke a land-use permit, even if (as here) local government officials never officially announce that decision and never make *any* decision regarding the claimant’s request for pre- or post-deprivation due process. While the Second Circuit’s former accrual rule almost never resulted in due process claims being dismissed as untimely, untimeliness dismissals are a serious threat under the new rule. That is particularly true when, as here, government authorities never clearly articulate their position and the landowner is forced to guess whether statements constitute a *de facto* revocation of his property right.

The Second Circuit has adhered to an erroneous accrual rule for procedural due process claims for several decades. But the consequences of that error have become much more severe since 2019, when *Knick* substantially revised the *Williamson County* accrual rule for Takings Clause claims. That revision has placed in jeopardy the procedural due process rights of landowners in the Second and Third Circuits, who now must face the prospect of timeliness-based dismissals of their otherwise meritorious claims. Review is warranted to determine whether the Court really intended its *Knick* decision to have those consequences.

III. THE QUESTION PRESENTED IS OUTCOME-DETERMINATIVE

This case provides an excellent opportunity to resolve the claim-accrual issue that has sharply

divided the lower federal courts. Because the courts below dismissed the Amended Complaint on the pleadings, no factual issues require resolution. As the Second Circuit noted, the only issue here is whether “it is clear from the face of the complaint, and matters of which the court may take judicial notice, that the plaintiff’s claims are barred as a matter of law.” App.3a-4a (quoting *Michael Grecco Prods., Inc. v. RADesign*, 112 F.4th 144, 150 (2d Cir. 2024)). There is no dispute that Potter has suffered a significant economic loss and that the federal courts properly asserted subject-matter jurisdiction over his claims. Because the only issue in dispute is the timeliness of Potter’s filing, the case is a good vehicle for addressing the proper standards governing timeliness.

Moreover, resolution of the Question Presented is outcome-determinative. If the accrual rule for procedural due process claims is as held by the Second and Third Circuits, then Potter’s claim was properly dismissed as untimely. If, on the other hand, such claims accrue only after government defendants have denied the landowner the process to which he is constitutionally entitled (as five other federal appeals courts have held), then the courts below erred in dismissing Potter’s claims. There is no indication on “the face of the complaint” that the Village gave any indication to Potter (at least until well after the date on which the Second Circuit held that the three-year limitations period began to run) that it had denied Potter’s requests for a hearing on whether his Certificate of Occupancy should be revoked.

If Potter prevails on the Question Presented, at the very least he would be entitled to a remand to the

district court for a factual determination of when, if ever, the Village indicated to him that it would not be providing a hearing on the revocation issue. Moreover, the Amended Complaint alleges that any such indication by the Village came late enough to render timely Potter's filing of the Complaint on August 23, 2023. Indeed, in response to the state-court proceeding filed by Potter in August 2019, the Village explicitly argued that the suit was unripe because an administrative process was available to Potter by which he could seek resolution of the revocation issue. Not until much later did the Village abandon that position; and, of course, the limitations period could not even begin to run until Potter's claim ripened.

One issue that may arise on remand is whether Potter was entitled to pre-deprivation due process and, if so, when a claim for pre-deprivation due process first accrued. But without regard to whether any such claim is timely, an individual deprived of a property right is constitutionally entitled to due process—and if he has received no pre-deprivation process, he is certainly entitled to post-deprivation process. The facts as alleged by Potter demonstrate that he filed suit well within three years of the date on which the Village informed him that it would not provide a hearing on revocation of the Certificate of Occupancy.

In sum, Potter is entitled to prevail if the Court adopts the procedural due process accrual rule adopted by five federal appeals courts and rejected by the Second Circuit. The outcome-determinative nature of the Question Presented confirms the appropriateness of granting review in this case.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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