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COURT DENIES LANDOWNERS THEIR DAY IN FEDERAL COURT

(San Remo Hotel v. San Francisco)

The U.S. Supreme Court ruled yesterday that individuals claiming state or local government violation of their Fifth Amendment property rights have no right to insist that their claims at some point be heard in a federal court. The decision in *San Remo Hotel v. City and County of San Francisco* was a setback for the Washington Legal Foundation (WLF), which had asked the Court to overturn a lower-court decision that essentially barred assertion of Fifth Amendment claims in the federal courts and relegated such claims to the state courts. WLF filed its brief in the case on behalf of the Chamber of Commerce of the United States and a large number of property-rights organizations. A silver lining in the decision: a concurring opinion signed by four Justices indicated that they may be willing to overrule the 1985 decision that forces Fifth Amendment claimants to file their initial suit in state court.

"Congress has passed numerous laws to encourage those alleging violations of their federal constitutional rights to file their lawsuits in federal court, because Congress realizes that state courts are sometimes hostile to claims that state and local governments violated federal rights," said WLF Chief Counsel Richard Samp after reviewing yesterday's decision. "But some federal judges have displayed their hostility to property rights by throwing unwarranted roadblocks in the path of property owners who seek to use the federal courts to vindicate their rights. We are disappointed that yesterday's decision failed to remove one of those roadblocks," Samp said.

The case arose in connection with a San Francisco law that requires hotel owners to pay a large fee if they wish to convert their hotels to 100% tourist use. One hotel, the San Remo Hotel, historically had allocated nine of its 62 rooms for residential (*i.e.*, longer term) tenants. San Francisco officials in 1993 granted the hotel owners permission to rent all 62 rooms to tourists, but conditioned approval on the owners' payment of a $567,000 fee -- supposedly to compensate for the City's loss of housing units. The owners ("San Remo") paid the fee under protest, asserting that they should not be under any special obligation to use their property to alleviate the City's housing shortage.

San Remo filed suit in federal court in 1993, alleging that the forced payment of the $567,000 fee amounted to a taking of its property without just compensation, in violation of the Fifth Amendment's Takings Clause. The federal courts dismissed the claim on procedural grounds; they held that San Remo's Fifth Amendment claims were not yet ripe for review because San Remo had not yet sought compensation from San Francisco under state law, by filing a suit in state court.

San Remo then filed suit in state court, but raised only state-law issues and explicitly reserved its right to return to federal court to raise its Fifth Amendment claims. The California Supreme Court ultimately voted 4-3 to deny San Remo's compensation claims, holding that the California Constitution did not prohibit local governments from conditioning business permits on the payment of large exactions. San Remo then returned to federal court and attempted to re-raise its Fifth Amendment claims. The U.S. Court of Appeals for the Ninth Circuit ruled in 2004 that the doctrine of "issue preclusion" (also known as "collateral estoppel") barred San Remo from raising its Fifth Amendment claims. The appeals court held that San Remo should not be permitted a "second bite at the apple"; having had a fair opportunity to seek compensation in the state courts, San Remo should not be permitted to raise closely analogous federal claims in a subsequent federal court action, the appeals court ruled.

Yesterday, the Supreme Court affirmed, albeit it did not review the entire appeals court decision. The Supreme Court rejected San Remo's argument that, in light of the fact that it had filed suit in state court for the sole purpose of ripening its federal takings claims, an exception from normal rules of issue preclusion should be created. The Court declined to address a more basic argument: that the appeals court had misapplied normal issue preclusion rules and that under those rules, San Remo should have been free to raise its federal takings claims in federal court because those claims had never been passed on by any court. The Supreme Court held that that issue (alleged misapplication of issue preclusion rules) was not within the scope of the issues upon which the Supreme Court had granted review. Much of WLF's brief focused on the issue that the Supreme Court declined to address.

WLF is a public interest law and policy center that frequently litigates in support of the rights of property owners. In addition to the Chamber of Commerce of the United States, WLF's clients in this case are the Allied Educational Foundation, American Assoc. of Small Property Owners, National Taxpayers Union, Anthony Palazzolo, Property Rights Found. of America, South Carolina Landowners Assoc., Small Property Owners of San Francisco Inst., and United Lot Owners of Cambria.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.