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November 28, 2000

COURT ASKED TO REQUIRE COMPENSATION FOR TAKING OF PRIVATE PROPERTY

(Palazzolo v. Rhode Island)

Last week the Washington Legal Foundation (WLF) filed a brief with the U.S. Supreme Court on behalf of itself and the Allied Educational Foundation, asking the Court to affirm that the Constitution requires the government to pay "just compensation" when a regulation has the effect of taking "private property."

This case arose from Anthony Palazzolo's repeated efforts to develop his land. For more than 40 years Mr. Palazzolo has tried to develop his coastal property, which lies in Westerly, Rhode Island. The state government blocked those efforts by denying him permission to build, because it deemed most of his property wetlands. Mr. Palazzolo then took his case to court, claiming that the state's denial of permission had the effect of "taking" his property without "just compensation," in violation of the Fifth Amendment to the Constitution. The Rhode Island Supreme Court denied his claim, finding that he lacked "reasonable investment backed expectations" in developing property that he acquired after the wetlands regulation was enacted. One of the questions presented to the Supreme Court is whether such a claim is always barred when an owner acquires property after a regulation is enacted.

In its brief filed with the Supreme Court, WLF argued that the Court should consider revisiting a major part of its Takings Clause jurisprudence. In particular, WLF urged the Court to largely abandon its reliance on a property owner's "reasonable investment backed expectations," in determining whether a taking occurred. WLF showed that inquiring into an owner's "reasonable investment backed expectations" has bred uncertainty, incoherence, and unfairness in regulatory takings decisions. WLF also pointed out that the phrase "reasonable investment backed expectations" has little relation to the words of the Fifth Amendment. Those words say, "nor shall private property be taken for public use, without just compensation." The word "expectations" includes both more and less than the more precise term "private property." And there is no warrant in the language of the Fifth Amendment, WLF maintained, for narrowing the range of constitutional protection by adding the words "investment backed." For these reasons, WLF urged the Court to disregard

Mr. Palazzolo's expectations, reasonable, investment backed, or otherwise, when deciding whether acquiring property after the enactment of a regulation *always* bars an owner's constitutional claim for "just compensation."

"The Constitution requires government agencies to fairly compensate any owner whose property is taken due to regulation," said Shawn Gunnarson, WLF's Senior Counsel for Litigation Affairs. "The Supreme Court has agreed to decide whether acquiring property after a regulation is enacted entirely destroys an owner's constitutional right to compensation. We trust that the language of the Fifth Amendment and the Court's own decisions will guide it toward a decision that affirms the constitutional guarantee of 'just compensation.'"

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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