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Supreme Court Takes on Tricky ‘Takings Clause’

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Supreme Court takes on tricky ‘Takings Clause’

Can the government confiscate your home? Can it enact a regulation that reduces your property value without paying for the difference? These questions raise the “Takings Clause” in the Constitution’s Fifth Amendment, which is the focus of a Supreme Court case being heard Tuesday.

That clause provides that private property shall not be taken for public use without just compensation. Like it or not, the Takings Clause does not prevent the government from confiscating private property. It merely places conditions on when a taking is permitted and provides for compensation to the property owner if a taking occurs.

The primary condition for a lawful taking is that it be for “public use.” The paradigmatic example is property confiscated to build a school or highway that the public will use.

But the Supreme Court has said there can be a “public use” even when the public will not use the seized property. It is enough if a taking serves a public purpose, and the Court generally defers to legislative judgments as to whether a taking does so. Indeed, the Court has said that a public use can exist when property is taken from one private owner and given to another for purposes of economic development.

Another major issue in interpreting the Takings Clause is what constitutes a “taking.” The most obvious examples are when the government confiscates or physically occupies a person’s property. Tricker problems arise when government regulations merely reduce property values. This might happen, for example, through the passage of zoning or environmental laws.

The Supreme Court has accepted that regulations can be so onerous as to be a taking that requires compensation (this is called a “regulatory taking”). Yet the Court also has recognized that governments could not function if they had to pay for every action that diminishes property values and has indicated that most regulations affecting property values are not a taking.

Whether a regulatory taking has occurred depends largely upon the impact of a regulation on a property owner’s legitimate investment expectations. But, usually, the mere reduction in property value will not amount to a taking if the owner is left with reasonable economically viable uses.

These are the rules for regulations that limit what property owners can do with their property. But what should happen when the government permits property owners to develop property but imposes conditions on a permit’s approval? That’s the issue in Tuesday’s case.

When plaintiff Coy Koontz purchased property in Florida in 1972, there were few restrictions on how he could develop it. But, over the years, Florida enacted environmental laws to control the use of property containing wetlands as Koontz’s does. Consequently, before Koontz could develop his property, he had to seek permission from the St. Johns River Water Management District.

In 1994, Koontz submitted applications to the district to develop 3.7 acres of his property, including 3.4 acres of wetlands. The district was not obligated to grant the permit, but it offered to do so if Koontz would meet certain conditions, including paying for wetlands mitigation on other district properties that Koontz does not own. Koontz refused and sued the district claiming that the denial of his permit constituted an unconstitutional taking requiring compensation.

Property rights groups want the Supreme Court to use this case to stop what they say are abusive practices of imposing permit conditions that bear no relation to the harm caused by proposed developments. They want the Court to adopt a stringent standard that makes the government bear the burden of showing why these conditions should not be considered a taking requiring compensation.

Those who support the district say permit conditions merely ensure that developers cover the societal costs of their actions. They want the Court to adopt a standard that defers to government and places the burden on developers to show why a condition should be considered a taking. They also say that no “taking” ever occurred because Koontz rejected the condition and therefore never paid for the off-site mitigation.

Now it’s the Supreme Court’s turn to have its say on what limits the Takings Clause imposes on these conditions.

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