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Press Release

Source: National Association of Home Builders

Supreme Court Clarifies Constitutional Property Rights in Lingle v. Chevron

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Upholds Key Legal Theory Used by Home Builders

WASHINGTON, May 23 /PRNewswire/ -- In a victory for property rights, the U.S. Supreme Court today clarified the circumstances under which land owners are due just compensation from the government for a "taking" of their property as defined by the Fifth Amendment.

The affirmation of key property rights precedents came in the case of Lingle v. Chevron, U.S.A., the first of the Supreme Court's three expected takings decisions this term. Justice Sandra Day O'Connor wrote the opinion for a unanimous Court.

"This decision provides much needed clarification for property owners who litigate takings claims and deserve monetary compensation when they are subject to excessive land use regulations," said Jerry Howard, executive vice president and CEO of the National Association of Home Builders (NAHB).

While the court reversed some prior decisions, the Lingle decision took pains to preserve major precedents that are often used by home builders to challenge excessive impact fees, exactions, and other unconstitutional conditions to development approvals. The Court affirmed the "essential nexus" and "rough proportionality" tests, which require that impact fees and other exactions be used to pay for some specific, stated public service and that they be proportional to the cost of the public service provided.

NAHB had weighed in with an amicus brief to persuade the Court to maintain the "essential nexus" and "rough proportionality" tests -- which the Lingle decision preserves.

Lingle clarifies that there are four independent tests that a property owner can use to obtain compensation from the government for a taking:

1. A physical invasion by the government, such as an appropriated public easement demanded from a property owner;

2. A "total," categorical taking where a regulation deprives a property owner of all economically beneficial uses of property, such as requiring a parcel to be set aside in its entirety as open space;
3. A balancing analysis, to be conducted where government regulations restrict the use of property to a degree (but do not eliminate all uses), that considers the land owner's expectations for investment and development, and the economic impact of the regulation on the land owner; and
4. A governmental imposition of unconstitutional conditions for approval of a development project in exchange for a permit. Under the doctrine of unconstitutional conditions, "the government may not require a person to give up a constitutional right - here, the right to receive just compensation when property is taken for public use - in exchange for a discretionary benefit (that is, a permit) conferred by the government where the benefit" is not connected or proportionate to the condition imposed.

The Lingle decision did remove one test from the takings landscape. In its own past decisions, the Court stated that a regulation that "fails to substantially advance a legitimate government interest" amounts to a taking. The Court declared that the "substantially advance" test is no longer appropriate for a takings analysis. However, Justice O'Connor made clear that a property owner could still assert a due process violation when government fails to advance its own interests through regulation.

While elimination of the substantially-advance test is not a victory for Chevron, it is the clarification of takings law and the preservation of the essential-nexus and rough-proportionality tests that is important to the home builders, Howard said. "The Supreme Court's affirmation of these precedents is a significant victory for property rights."

The facts of Lingle did not concern the uses of real estate. At issue was a Hawaii statute that imposed limits on rents that oil companies may charge to dealers who lease service stations owned by the companies. Chevron sued for a taking, arguing that the rent cap statute failed to "substantially advance a legitimate state interest" in controlling retail prices. Chevron won at the 9th Circuit Court of Appeals.

With the Lingle decision, the Supreme Court reversed the 9th Circuit. Justice O'Connor believed that the "substantially advance" test is an improper takings test because it does not address the effect of a regulation on property, but rather solely concerns whether the underlying regulation itself is valid. Because Chevron couched its takings claim under the substantial advancement theory -- which the Court said is no longer a valid takings test -- the Court dismissed Chevron's claim.

Source: National Association of Home Builders

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