

'Takings' Snapshots Volume 26, October 22, 1999

1. Greenbrier v. United States, 1999 WL 810638 (Fed.Cir., Oct. 4, 1999) (affirming trial court's rejection of contract and takings claims based on alleged denial of right to prepay mortgages on low-income housing (and thereby avoid restrictions on maximum rents), because (1) plaintiffs failed to demonstrate contract privity between themselves and HUD and (2) taking claim was not ripe because plaintiffs failed to exhaust administrative opportunities to obtain permission to prepay the mortgages).

2. Thomas v. Anchorage Equal Rights Commission, (9th Cir., October 19, 1999) (The Ninth Circuit Court of Appeals has ordered en banc review in this case; in an earlier panel ruling (165 F.3rd 692; Takings Snapshots Volume 19), the court ruled (2 to 1) that a prohibition against discrimination against unmarried couples in the rental of housing violated the free exercise clause; the panel based its decision in part on a so-called hybrid constitutional claim and the idea that the plaintiffs had stated a colorable taking claim under the physical occupation takings theory).

3. Hill v. Town of Conway, 1999 WL 773534 (1st Cir.1999) (affirming district court dismissal of section 1983 takings suit against local government for lack of subject matter jurisdiction based on Rooker-Feldman doctrine, where plaintiff's taking claim had been heard and rejected by the state court and the plaintiff was in effect asking the federal court to review the correctness of the earlier state court ruling).

4. Bass Enterprises Production Co. v. United States, 1999 U.S. Claims LEXIS 243 (Ct.Fed.Cl., October 12, 1999) (in a decision which conflicts with the essentially uniform precedent across the country upholding development moratoria against takings challenges, the court of federal claims ruled that the Bureau of Land Management effected a temporary taking of plaintiff's oil and gas leases by rejecting an application for a drilling permit pending an EPA recommendation on whether or not the drilling could go forward consistent with the development of a radioactive waste site in the vicinity).

5. Montecino v. Louisiana, 55 F.Supp. 547 (E.D. La., June 28, 1999) (rejecting suit based in part on the Takings Clause to block implementation of the results of state elections banning poker video machines; court ruled that Louisiana law defined poker licenses as privileges, and therefore plaintiffs could not point to any property interest to support their taking claim; court rejected separate Rooker-Feldman defense on the ground that the plaintiffs in the federal court suit were different from the plaintiffs asserting similar claims in earlier state court litigation).

6. Kinross Copper Corp. v. State of Oregon, 1999 WL 896698 (Oregon Ct. Apps., October 13, 1999) (the Oregon Court of Appeals rejected a petition for reconsideration of its earlier ruling in this case rejecting a taking claim; in the earlier ruling (Snapshots Vol. 22), the court rejected a taking claim based on denial of a permit to discharge wastewater into a river on the ground that the claimant had no protected property right to discharge the wastewater; on reconsideration, the court rejected the plaintiff's argument that it possessed a common law right to discharge as both untimely and incorrect on the merits).

7. Mills Land & Water Co v. City of Huntington Beach, 89 Cal. Rptr.2d 52 (Cal.Ct.Apps., Sept. 27, 1999) (reversing dismissal of regulatory taking claim brought by coastal property owner whose proposals to develop property were deferred during city's 20-year delay in adopting a Local Coastal Program in accordance with the California Coastal Act).

8. Troy v. Pierce County, 1999 WL 780997 (Wash. App.Div., Oct.1, 1999) (court of appeals affirmed trial court's dismissal of regulatory takings challenge to application of state's wetlands

laws, based primarily on the plaintiff's failure to exhaust administrative remedies and consequent absence of a ripe claim).

9. Sea Cabins on the Ocean IV Homeowners Association, Inc. v. City of North Myrtle Beach, 1999 WL 792493 (S.C. App., October 4, 1999) (in a rather complicated case, the South Carolina Court of Appeals embraced the idea that a viable temporary taking claim could be asserted based on the delay resulting from a city's invalid efforts to restrict/condition reconstruction of a pier damaged by a hurricane, but reversed the trial court's finding of a taking, on the ground that there was no denial of all economically viable use of the property as whole given that each association member's property interest consisted of their interest in their residential unit and an undivided common interest in the pier and other common property).

10. Emond v. DEM, R.I. Super Ct., No. PM96-4584 (October 5, 1999) (in a variation on the Lucas-type case, the Rhode Island Superior Court, in an oral bench opinion, held that the Department of Environmental Management's denial a permit under the state freshwater wetlands act for the construction of a single- family home on a one-half acre lot did not result in a taking, where DEM demonstrated that a smaller and differently sited building would have avoided or reduced adverse impacts on aesthetic values, wildlife habitat, and flood risks) (a copy on the opinion is on file with EPP).