

'Takings' Snapshots Volume 37, October 16, 2000

1. Palazzolo v. State of Rhode Island, U.S. No. 99-2407 (On October 10, 2000, the U.S. Supreme Court granted the petition for certiorari in this case in which the Rhode Island courts rejected a takings claim based on denial of a permit to fill 18 acres of coastal wetlands. The Court granted review to consider three questions: (1) Whether a regulatory takings claim is categorically barred whenever the enactment of the regulation predates the claimant's acquisition of the property?; (2) Where a land-use agency has authoritatively denied a particular use of property and the owner alleges that such denial per se constitutes a regulatory taking, whether the owner must file additional applications seeking permission for 'less ambitious' uses in order to ripen the takings claim?; (3) Whether the remaining permissible uses of regulated property are economically viable merely because the property retains a value greater than zero?')

2. State of New York v. Sour Mountain Realty, Inc., 2000 WL 1470439 (NY AD, October 2, 2000) (NY DEC had authority under State ESA to require owner to remove snake-proof fence from border of property in order to preserve endangered rattlesnakes' access to natural habitat; order did not result in a regulatory or physical taking and, in any event, the state's action was justified by the 'venerable principle' that the state has broad authority to protect publicly owned wildlife).

3. Montgomery v. Carter County, 2000 WL 13355022 (6th Cir., September 18, 2000) (taking claim against county based on county's declaration that a road was a public road, which allegedly was only designed to benefit one of plaintiff's neighbors, was 'ripe' for adjudication in federal court, because the alleged taking was administratively final and plaintiff was not required to seek compensation in state court before bringing this type of taking for a 'private use' claim in federal court; related substantive due process claim was also ripe (though, in general, lack of ripeness of regulatory takings claim cannot be circumvented by asserting a due process violation); raising but not resolving the question of whether regulatory takings doctrine, when it applies, displaces the due process clause).

4. City of New York v. Consolidated Edison Co. of New York, 2000 WL 1298055 (N.Y.A.D., September 14, 2000) (granting city's motion for summary judgment and dismissing claim that city effected a taking by requiring utility to bear the cost of protecting facilities installed on the utility's private right of way from the adverse effects of city's construction of sewer and water facilities).

5. Kittay v. Giuliani, 2000 WL 1280912 (SDNY, September 7, 2000) (dismissing takings (and due process, equal protection, and first amendment) challenge to new land use restrictions in New York city's watershed area designed to protect NYC drinking water supply; court held that as applied takings claim was not ripe given the absence of concrete information about how the regulations applied to plaintiff; facial takings claim failed because plaintiff could not show that regulations would eliminate all economic use of the property given the availability of various permitting and variance options).

6. Thornbury Noble Ltd v. Thornbury Township, 2000 WL 1358483 (E.D.Pa., September 20, 2000) (dismissing Fifth Amendment regulatory takings claim because plaintiff failed to allege that township's denial of permit to construct supermarket denied owner 'all use' of property; however, court ruled that plaintiff stated a valid due process claim because complaint contained specific allegations of township's alleged 'improper motive' (despite fact that plaintiff also alleged facts that pointed to a benign explanation for the township's action); in addition, court ruled that plaintiff asserted a valid claim for intentional interference with contractual relations under Pennsylvania law and that individual members of the township board were not immune from suit based on this claim given the allegations that they reached the wrong decision knowing it was wrong, acted with a corrupt motive, or otherwise engaged in wilful misconduct).

7. Crow v. City Springfield, 2000 WL 988246 (SD Ohio, March 16, 2000) (city's removal of tire debris from private property pursuant to nuisance-abatement ordinance was not a taking because debris had been determined to be a nuisance and no owner has a constitutionally protected right to maintain a nuisance).

8. Boyce v. Augusta-Richmond County, 2000 WL 1262451 (S.D. Ga., August 22, 2000) (rejecting takings claim brought by farmer claiming that county's disposal of sewage sludge on plaintiff's property resulted in contamination of property with various metals; court ruled that taking claim was not ripe in federal court because Georgia courts provide adequate mechanism for seeking compensation for a taking; in any event, claim failed on the merits because the allegations involved a possible breach of contract, but not a taking).

9. Bradshaw v. United States, No. 98-708L (Fed.Ct. Cls., September 15, 2000) (in response to a government motion to dismiss claim on ground the plaintiff lacked property interests sufficient to support a takings claim, court of federal claims ruled that plaintiff rancher lacked property interest in federal grazing permit or historic grazing rights, but that plaintiff did have a property interest in state water rights; court also dismissed takings claim based on damage caused by feral horses because, even if plaintiff had a relevant property interest, damage to private property by federally protected wildlife does not constitute a taking).

10. Watt v. Planning and Zoning Commission, 2000 WL 1342560 (Conn.Super Ct., September 5, 2000) (court dismissed as unripe regulatory takings challenge to denial of development approval based in part of applicant's failure to make adequate provision for open space; court ruled that claim was not ripe because commission had not made a specific exaction and also because plaintiff raised the argument alleging a lack of need for open space for the first time on appeal).

11. Traficanti v. United States, 2000 WL 1275885 (4th Cir., September 8, 2000) (penalty imposed on owner and operator of convenience store who violated rules governing federal food stamps program not a taking).