



Written by [Joe Wolverton, II, J.D.](#) on June 27, 2017

## Supreme Court: Bureaucracy Before Landowners

On June 23, the Supreme Court of the United States issued an opinion eroding property rights in the United States.

In a split decision, 5-3, the high court held that in cases pitting bureaucrats against landowners, the bureaucrats are to be favored and they do not have to compensate property holders appropriately if the regulations they issue severely devalue the property affected.



The case at bar was *Murr v. Wisconsin*. The controversy at issue arose from a dispute over the status of two plots located along the St. Croix river in Wisconsin. From this small, seemingly insignificant disagreement grew an enormous debate enclosing several other states and the future of the Fifth Amendment within its circumference.

Here's a brief summary of the case, as published by Pacific Legal Foundation, the attorneys for the Murr family:

The Murr family appealed to the Supreme Court after they had been effectively robbed by regulators of a family legacy — a vacant parcel along the St. Croix River purchased by their late parents decades ago as a family investment. They would like to sell the vacant parcel to fund repairs to their family cabin, which sits on an adjacent parcel that their parents bought several years earlier. But government officials — imposing regulations enacted after both parcels were purchased — have forbidden them from selling or making any productive use of the vacant investment parcel. To avoid liability for a taking of the vacant parcel, officials insisted on arbitrarily treating both lots as if they were a single, unified parcel — even though they were bought at different times and are legally distinct.

Some additional details, as published by Reason magazine online:

Those regulations effectively gutted the value of the Murrs' property. The property was appraised at \$400,000 before the Murrs tried to sell it. When the family came to the county, now the only eligible buyer, the county offered \$40,000.

The Murrs filed a lawsuit against the state and county, arguing that they should be compensated for the lost value of the property, arguing the Fifth Amendment of the U.S. Constitution guarantees governments must compensate property owners when land is seized or otherwise made un-useful for public purposes.

To avoid liability in the case, the state and county told the Murrs they could combine the two parcels of land for regulatory purposes. This meant that even though the two pieces of land were separate and the Murr family paid taxes on them separately, the family would be unable to make a takings claim for one of the two parcels.

In short, they could sell both lots together, but not one or the other.

The lower courts sided with the government and on Friday, June 23, the Supreme Court followed suit



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with its federal subordinates.

“Treating the lot in question as a single parcel is legitimate for purposes of this takings inquiry, and this supports the conclusion that no regulatory taking occurred here,” Justice Anthony Kennedy wrote for the majority. “They have not been deprived of all economically beneficial use of their property,” he added.

There was a dissent, and it was blistering.

Chief Justice John Roberts, joined by Associate Justices Clarence Thomas and Samuel Alito, issued a minority opinion describing the pro-bureaucrats, anti-property holder decision of their colleagues as one that “undermines that protection” provided to property owners by the Fifth Amendment’s Takings Clause.

Referring to the power of regulations to “take” value from property as much as any “direct government appropriation,” Roberts wrote for the dissent:

Governments can infringe private property interests for public use not only through appropriations, but through regulations as well. If compensation were required for one but not the other, “the natural tendency of human nature” would be to extend regulations “until at last private property disappears.”

Adding:

Put simply, today’s decision knocks the definition of “private property” loose from its foundation on stable state law rules and throws it into the maelstrom of multiple factors that come into play at the second step of the takings analysis. The result: The majority’s new framework compromises the Takings Clause as a barrier between individuals and the press of the public interest.

In another paragraph, Roberts quotes Alexander Hamilton’s description of property rights as one of the “great object[s] of government.” Our Founders and the men by whom they were inspired held the right to acquire and control property as one of the cornerstones upon which the whole of a free society was built.

John Locke was one of those thinkers who had a profound impact on the minds of our Founding Generation. Of particular influence was Locke’s views on the primacy of property, its relationship to liberty, and the right of the people to protect what is their from the ever-grasping fists of government. Locke wrote:

Whenever the Legislators endeavor to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. Whensoever therefore the Legislative shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavor to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty.

It’s too late for the Murrs, though. Locke can’t come back and rescue their family’s property from the regulators, and they’d probably lock up his ghost if he even made the attempt!

After the decisions was handed down, Donna Murr issued a statement through her attorneys.



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“It is our hope that property owners across the country will learn from our experience and not take their property rights for granted,” Murr said. “Although the outcome was not what we had hoped for, we believe our case will demonstrate the importance of taking a stand and protecting property rights through the court system when necessary.”

As it stands now, government bureaucrats — of which there are hundreds of thousands — may promulgate regulations effectively depriving citizens of the enjoyment of their property without compensating the landowner for his loss.

Finally, as this is a constitutional issue, I leave the last word to the “Father of the Constitution,” James Madison: “If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.”



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