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## COURT REJECTS TAKINGS CLAIM IN COAL MINING CASE (*Machipongo Land and Coal Co., Inc. v. Pennsylvania*)

The Pennsylvania Supreme Court reversed a lower court decision and rejected a takings claim filed by a coal company alleging that restrictions on coal mining constituted a regulatory taking entitling the company to just compensation under the Fifth Amendment. Nevertheless, the Court remanded the case to the lower court for takings analysis with respect to several parcels of the property. The Washington Legal Foundation (WLF) had filed a brief with the Court on behalf of itself and the Pennsylvania Chamber of Business and Industry, urging the Court to affirm the lower court decision.

This case arose from a Pennsylvania regulation that allows the Commonwealth to declare certain areas unsuitable for coal. Acting on a petition filed by local environmental activists, Pennsylvania declared several hundred acres of coal fields in an area called Goss Run unsuitable for coal, thereby preventing the companies from extracting the coal from their own property. The owners brought a lawsuit against the Commonwealth on several grounds, including a claim for compensation under the Takings Clause of the Fifth Amendment. After several years of litigation, the Commonwealth Court largely invalidated the regulation as applied to the owners, finding that the restriction on mining amounted to a taking of the owners' property, for which the Fifth Amendment to the Constitution requires "just compensation." The Commonwealth of Pennsylvania then appealed to the Pennsylvania Supreme Court.

In its brief filed with the Pennsylvania Supreme Court, WLF raised three arguments. First, it argued that the Takings Clause, on which the owners rely for relief, actually reflects the widely-held belief by the Founders that a good government must secure property rights. Second, WLF argued that the U.S. Supreme Court has curbed the discretion of land use authorities by reinvigorating the Takings Clause. The Court's decisions have repudiated an earlier legal regime that was hostile to property rights that allowed land use authorities to run roughshod over the rights of property owners. Third, WLF urged the Pennsylvania Supreme Court to rule that eminent domain proceedings cannot provide adequate relief to the property owners. As WLF pointed out, once a regulation has been declared a taking, as in this case, nothing more remains to be done to establish the liability of the government. No further proceedings are necessary to show that

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Pennsylvania owes the owners “just compensation” for the losses they have suffered while they have been prohibited from extracting their coal.

In its 44-page opinion, the Pennsylvania Supreme Court reversed the lower court's ruling that a regulatory taking had occurred, and remanded the case to the Commonwealth Court for further proceedings. The Court was sympathetic to the property owner's argument that the restriction on coal mining "had the same effect as if the Commonwealth had mined the coal and hauled it away." However, the Court noted that the coal was not mined, and that the property owners still owned the coal, even though they could not mine it.

Nevertheless, the Court expressed concern about the way the lower court conducted its takings analysis with respect to certain parcels, and the environmental impact the proposed mining would cause on the surrounding watershed. Accordingly, the case was remanded to conduct further proceedings under prior takings cases, including determining whether the mining of the coal would constitute a nuisance. If a nuisance were created by the mining, no compensation would be due under the Fifth Amendment.

The property owners may ask the Court to reconsider its decision, conduct further proceedings in the trial court, or seek further review in the U.S. Supreme Court.

The Washington Legal Foundation is a public interest law and policy center with supporters in all fifty states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights. WLF has participated in many landmark takings cases, and is currently litigating a major takings case on behalf of its client before the South Carolina Supreme Court in *McQueen v. South Carolina*.

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