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WLF Urges Supreme Court to Clarify Key Regulatory Takings Rule

(*Bottini v. City of San Diego*)

“Judges cannot agree on how the Penn Central regulatory takings test works in cases of government delay. Property owners across the nation need the Supreme Court to step in and sort things out.”

—Corbin K. Barthold, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today filed an amicus curiae brief urging the U.S. Supreme Court to clarify when a government delay in granting a land-use permit turns into a constitutional taking.

A California couple have been engaged in a years-long struggle to obtain a building permit for their land. When their case went to court, both the trial court and the California Court of Appeal ruled that the city authorities had arbitrarily held up their building project. The courts further ruled, however, that the landowners are not owed just compensation for a taking. Applying the multi-factor “Penn Central” regulatory takings test, the courts concluded that the landowners could not recover from the government unless they knew, when they bought the land, whether they would keep a house already standing on it, or instead replace it with a new one.

In its brief, WLF explains that the lower courts are applying the Penn Central test in many inconsistent ways. The lower courts cannot figure out how government delay fits into the Penn Central test, or how bad-faith government conduct fits into an assessment of delay. They take differing stances on whether any specific length of delay is presumptively suspicious. They cannot agree on whether the Penn Central factors are considered in a certain order or all at once. They are not even sure what those factors are. This confusion arises, WLF argues, directly from tensions in the Supreme Court’s own precedents on this area of law. WLF therefore urges the Court to grant review and provide the lower courts some much-needed guidance.

Celebrating its 42nd year as America’s premier public-interest law firm and policy center, WLF advocates for free-market principles, limited government, individual liberty, and the rule of law.

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