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Recent Cases

United States Supreme Court Upholds Ordinance Mandating Rents Ceiling On Mobile Homes

In *Yee v. City of Escondido*, 112 S.Ct. 1522 (1992), the United States Supreme Court held that an ordinance mandating a ceiling on rents mobile home park owners can charge does not constitute a Fifth Amendment taking by the government and, therefore, does not entitle the park owners to compensation.

Background

In 1978, the State of California enacted the Mobilehome Residency Law, which limits a mobile home park owner's ability to terminate the tenancy of a mobile home owner. Valid reasons for termination include: the nonpayment of rent, the mobile home owner's violation of law or park rules, and the park owner's desire to change the use of his land. The law also provides that when a mobile home is sold, the park owner may not disapprove of the purchaser if the purchaser has the ability to pay rent.

The law was enacted upon a legislative finding that mobile home owners needed unique protection from actual or constructive eviction because of the high cost of moving mobile homes, the potential for damage resulting from moving them, the requirements relating to the installation of mobile homes, and the cost of landscaping or lot preparation.

In 1986, the city of Escondido, California adopted a mobile home rent control ordinance. This ordinance set rents according to their 1986 levels and prohibited rent increases without the approval of the Escondido City Council.

John and Irene Yee ("the Yees") own two mobile home parks in the city of Escondido. A few months after the adoption of the rent control ordinance, the Yees filed suit in San Diego County Superior

Court. They alleged that the rent control law had the effect of depriving them of all use and occupancy of their property while granting to the tenants of mobile homes the right to physically and permanently occupy their property. The Yees sought \$6 million in damages, a declaration that the ordinance was unconstitutional, and an injunction barring the enforcement of the law.

The superior court dismissed the complaint, and the Yees appealed. The California Court of Appeals heard the Yees' case along with eleven other similar cases that had been dismissed. The court of appeals affirmed the dismissals, concluding that the Escondido ordinance in no way authorized a permanent physical occupation of the landlord's property and therefore did not constitute a taking under the Fifth Amendment. Eight of the twelve park owners, including the Yees, petitioned the United States Supreme Court for review, which the Court granted.

Government-Enforced Rent Control Is Not A Physical Taking

The Fifth Amendment's taking clause generally requires just compensation when the government authorizes a physical occupation of a person's property. The Yees contended that the rent control ordinance, in conjunction with California's Mobilehome Residency Law, amounted to a physical occupation of their property entitling them to compensation under the takings clause.

The Yees stated that as a result of the two laws, park owners could no longer set rents or decide who would be their tenants. They further argued that any reduction in the rent for a mobile home caused a corresponding increase in the value because the mobile home owner now owned, in addition to the mobile home, the right to occupy it at a rent below the value set by the free market. Furthermore, because the Mobilehome Residency

Law permitted the mobile home owner to sell the mobile home in place, he could receive a premium from the purchaser equal to this increase in value.

Thus, the Yees argued, the rent control ordinance transferred a discrete interest in land — the right to occupy the land indefinitely at a sub-market rent — from the park owner to the mobile home owner. The Yees argued that this transfer amounted to a transfer of the right of physical occupation of their land and thus entitled them to compensation.

The Supreme Court rejected the Yees' argument that a physical occupation had occurred. The Court stated that the Escondido ordinance, even when considered in conjunction with the California Mobilehome Residency Law, did not authorize a compelled physical invasion of property. Rather, the Yees voluntarily rented their land to mobile home owners.

Furthermore, neither the city nor the state compelled the Yees to continue to rent their property to tenants. The court relied on the fact that the Mobilehome Residency Law allowed a park owner who wanted to change the use of his land to evict his tenants, albeit with six or twelve months notice.

In response to the Yees' continued emphasis on the transfer of wealth from the park owners to the mobile home owners, the Court pointed out that other constitutional forms of land use regulation can also be said to transfer wealth from the one who is regulated to another. For example, zoning regulations can transfer wealth from those whose activities are prohibited to their neighbors. Thus, when a property owner is prohibited from mining coal on his land, the value of his property may decline but the value of his neighbor's property may rise. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more visible than in the ordinary case, but the trans-

fer of wealth did not in itself convert regulation into physical invasion.

Because the Escondido rent control ordinance did not compel a landowner to suffer the physical occupation of his property, the Court concluded that it did not constitute a *per se* taking by the government and compensation was therefore not required.

Daniel Hynes

Second Circuit Finds That New York Cable Downgrade Fees Are Not Preempted By Federal Cable Act

In *Cable Television Association of New York, Inc. v. William B. Finneran*, 954 F.2d 91 (2nd. Cir. 1992), the United States Court of Appeals for the Second Circuit held that a federal cable communication law does not preempt New York regulations of cable television downgrade charges. The court found that Congress intended to preempt only state rules that regulate rates for the provision of cable services, and downgrade charges were not this type of rate within the meaning of the Cable Communications Policy Act of 1984 ("Cable Act"), 47 U.S.C. 521 *et seq.* (1992).

Background

On December 3, 1990, in response to customer complaints about \$40 to \$100 charges, the New York State Commission on Cable Television ("the Commission") adopted regulations limiting cable television companies' imposition of downgrade charges. Since consumers saved about \$10 per month by dropping to a lower level of cable service, the high downgrade fees tended to remove any incentive to switch to a lower tier of service. In addition, the cable companies' cost to downgrade service was either minimal, for newer cable-ready television sets, or between \$50 and \$75, for older sets requiring removal of a descrambler box.

The Commission's regulations define a downgrade charge as a fee imposed on a subscriber for a

change in service that results in a less expensive tier of service. The regulation did not prohibit downgrade charges entirely but limited the fee to the companies' actual downgrading cost if: the customer had been given adequate notice; and the existing service had not been maintained for the previous six months.

Downgrade charges were also permitted in order to prevent churning. Churning occurs when a customer signs up for a premium channel in order to watch a particular program, and soon after elects to downgrade to a cheaper service tier.

On December 26, 1990, the Cable Television Association of New York, Inc. ("Association") filed suit in the District Court for the Northern District of New York, seeking a declaration that the Cable Act of 1984 preempted the Commission's downgrade regulations. The district court found that the preemption provision of the Cable Act did not apply to the Commission's regulations. The Association appealed to the Court of Appeals for the Second Circuit.

Cable Act Does Not Preempt State Regulation

The Second Circuit began by examining whether Congress intended to preempt the entire field of cable television regulation when it passed the Cable Act of 1984. After a comprehensive examination of the Cable Act's history, the court of appeals noted that in 1984, the United States Supreme Court gave the Federal Communication Commission ("FCC") discretion to preempt virtually any state regulation of the cable industry. As a result of the Supreme Court's decision, Congress passed the Cable Act and thereby expressed its intent to create a comprehensive scheme for regulating cable television.

Despite this broad ability to preempt, previous case law had held that in the Cable Act, Congress did not preempt state regulation of downgrade charges. The court of appeals reasoned that if the FCC had meant to reverse this prior decision, it could have done so while issuing interpretations of

the Cable Act. The FCC's failure to do so strongly indicated that no such preemptive intent existed.

The Association argued that Congress must have intended to preempt state regulation of downgrade charges since the Cable Act effectively regulated other rates relating to the provision of cable services. Although the court of appeals agreed that state regulation of downgrade charges had some effect on the rates cable companies charged for general cable services, the court stated that to preempt every cost-imposing state regulation would conflict with the Cable Act's express authorization of state regulation.

Lastly, the court of appeals addressed the Association's argument that the regulations' impact on cable provision rates was sufficiently large to force the conclusion that Congress must have intended to preempt state regulation of downgrade charges. The court of appeals found no such congressional intent for two reasons.

First, the Cable Act expressly authorized state regulation in numerous fields that affected cable company service rates, and states were allowed to regulate charges associated with the complete disconnection of service.

Second, the language of the preemption clause at issue failed to evidence Congressional intent to carve out a wide area free from state regulation. The court held that Congress meant to preempt only state rules that regulated cable rates relating to providing customers with service, not all cable charges generally.

Downgrade Charges Are Not Rates

The Association also argued that downgrade charges fell under the definition of rates and accordingly were within the express preemption provisions of the Cable Act. The Association contended that a customer is provided with service when, in fact, cable access is being downgraded because cable service includes service of machinery that is necessary to facilitate programming. The court of appeals disagreed, finding that although cable

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