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## Regulatory Takings: The Supreme Court Eliminates the Substantially Advances Test from Takings Jurisprudence. *Lingle v. Chevron U.S.A. Inc.*

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# REGULATORY TAKINGS: THE SUPREME COURT ELIMINATES THE SUBSTANTIALLY ADVANCES TEST FROM TAKINGS JURISPRUDENCE

*Lingle v. Chevron U.S.A. Inc.*<sup>1</sup>

## I. INTRODUCTION

In 1997, Chevron U.S.A., Inc. (“Chevron”) challenged a Hawaii rent control statute as a compensable taking in violation of the Fifth and Fourteenth Amendments.<sup>2</sup> The lower courts utilized the “substantially advances” test, which states that a regulation is considered a taking if it fails to substantially advance a legitimate state interest.<sup>3</sup> The Supreme Court reversed the decision of the lower courts, holding that the substantially advances test was no longer a valid method of identifying compensable regulatory takings.<sup>4</sup>

The Court’s decision to invalidate the substantially advances test brings some clarity to a lingering source of confusion in the courts. Also, the Court explains the holdings of previous “takings” decisions and provides a summary of the appropriate tests that property owners may use to challenge a government regulation as a compensable taking.<sup>5</sup> This note focuses on the reasoning behind the Court’s decision, how the decision affects future litigation, and most importantly, how the decision strengthens private property rights.

## II. FACTS AND HOLDING

In 1997, Chevron was the largest refiner of gasoline in Hawaii controlling sixty percent of the market.<sup>6</sup> Chevron sold most of its gasoline through independent lessee-dealer stations that paid a monthly rent to

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<sup>1</sup> 544 U.S. 528 (2005) [hereinafter “*Lingle*”].

<sup>2</sup> *Id.* at 533.

<sup>3</sup> *Id.* at 534-35.

<sup>4</sup> *Id.* at 536.

<sup>5</sup> *Id.* at 536-40.

<sup>6</sup> *Id.* at 532.

Chevron.<sup>7</sup> In June 1997, the Hawaii Legislature enacted Act 257 due to concerns about the effects of market concentration on retail gas prices.<sup>8</sup> The objective of the statute was to “protect independent dealers by imposing certain restrictions on the ownership and leasing of service stations by oil companies.”<sup>9</sup> Specifically, Act 257 capped the amount of rent that oil companies such as Chevron could charge the lessee-dealers.<sup>10</sup>

Consequently, Chevron sued the Governor and Attorney General of Hawaii (in their official capacity) thirty days after the enactment of Act 257 in federal court claiming that the statute’s rent cap provision was a taking of Chevron’s property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.<sup>11</sup> The Court granted summary judgment in favor of Chevron, holding that “Act 257 fail[ed] to substantially advance a legitimate state interest,” and thus constituted “an unconstitutional taking in violation of the Fifth and Fourteenth Amendments.”<sup>12</sup>

On appeal, the Ninth Circuit held that the District Court’s application of the substantially advances test was the correct legal standard to apply to Chevron’s takings claim.<sup>13</sup> However, the Court reversed and remanded because there was still a genuine issue of material fact regarding Act 257’s benefit to consumers.<sup>14</sup> On remand, the trial court ruled in favor of Chevron after both parties called competing economists to testify on the economic effects of Act 257.<sup>15</sup> The Ninth Circuit affirmed, and held that its prior decision “barred Hawaii from challenging the application of the “substantially advances” test to Chevron’s takings claim . . . .”<sup>16</sup> The Supreme Court reversed the Ninth Circuit’s decision and remanded,

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<sup>7</sup> *Id.* at 533.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 534.

<sup>13</sup> *Id.* at 535.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 535-36.

<sup>16</sup> *Id.* at 536.

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holding that the substantially advances test was not a valid method of determining if a regulatory taking had occurred.<sup>17</sup>

### III. LEGAL BACKGROUND

#### A. *The Substantially Advances Test*

The Supreme Court has used the “substantially advances” language throughout its takings jurisprudence.<sup>18</sup> The Court first used the test over 25 years ago in *Agins v. City of Tiburon*<sup>19</sup> as the first prong of a two-pronged takings test. In *Agins*, landowners claimed that a city’s zoning ordinance was an uncompensated taking in violation of the Fifth and Fourteenth Amendments.<sup>20</sup> The Court held that the statute was valid and did not constitute a compensable taking, and established the rule that “[t]he application of a general zoning law to particular property effects a

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<sup>17</sup> *Id.* at 545.

<sup>18</sup> See *Tahoe-Sierra Preservation Council, Inc., v. Tahoe Regional Planning Agency*, 535 U.S. 302, 334 (2002) (noting that petitioner might have argued “that the moratoria did not substantially advance a legitimate state interest”); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 704 (1999) (noting that jury instructions requiring “that a regulation substantially advance legitimate public interest outside the context of required dedications or exactions” was “consistent with our previous general discussions of regulatory takings liability”); *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) (“a land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land”); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1024 (1992) (“a land-use exaction does not effect a taking if it substantially advances legitimate state interests”); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 834 (1987) (“a land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land”); *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 126 (1985) (“the application of land-use regulations to a particular piece of property is a taking only if the ordinance does not substantially advance legitimate state interests”); *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980) (“the application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests”).

<sup>19</sup> *Agins*, 447 U.S. at 260.

<sup>20</sup> *Id.* at 257.

taking if the ordinance [1] does not substantially advance legitimate state interests or [2] denies an owner economical viable use of his land.”<sup>21</sup>

### B. Regulatory Takings

The Takings Clause of the Fifth Amendment, which is applicable to the states through the Fourteenth Amendment, states that private property shall not “be taken for public use, without just compensation.”<sup>22</sup> The rationale behind the government paying just compensation when private property has been taken for public use is to prevent “[the] [g]overnment from forcing some people alone to bear public burdens which . . . should be borne by the public as a whole.”<sup>23</sup>

*Pennsylvania Coal Co. v. Mahon*<sup>24</sup> was one of the first cases where the Court addressed regulatory takings. In *Pennsylvania Coal*, Justice Holmes reasoned that “property may be regulated to a certain extent, [but] if [the] regulation goes too far it will be recognized as a taking.”<sup>25</sup> This reasoning laid the foundation for analyzing regulatory takings, but provided little guidance to courts in determining what constitutes a “taking.”<sup>26</sup>

### C. Regulatory Takings Precedents

*Loretto v. Teleprompter Manhattan CATV Corp.*<sup>27</sup> and *Lucas v. S.C. Coastal Council*<sup>28</sup> both involved situations where the Court could find a per se taking. In *Loretto*, a New York statute requiring that landlords allow cable companies to install cable facilities in apartment buildings was challenged as a compensable taking.<sup>29</sup> The Court held that a physical invasion of property by the government, however small, requires

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<sup>21</sup> *Id.* at 260.

<sup>22</sup> *Lingle*, 544 U.S. at 536.

<sup>23</sup> *Id.* at 537 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

<sup>24</sup> 260 U.S. 393 (1922).

<sup>25</sup> *Lingle*, 544 U.S. at 537 (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

<sup>26</sup> *Id.*

<sup>27</sup> 458 U.S. 419.

<sup>28</sup> 505 U.S. 1003.

<sup>29</sup> *Loretto*, 458 U.S. at 421.

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just compensation.<sup>30</sup> In *Lucas*, a landowner purchased two residential lots that he intended to develop into residential housing.<sup>31</sup> The state later passed a law which barred the landowner from erecting any permanent habitable structures on the lots.<sup>32</sup> The landowner claimed that the law diminished the value of his lots and resulted in a compensable regulatory taking.<sup>33</sup> The Court held that a regulation that deprives a landowner of all “economically beneficial use” may be considered a taking.<sup>34</sup> Moreover, the Court used the substantially advances language in *Lucas* by stating that “the Fifth Amendment is violated when a land-use regulation does not substantially advance a legitimate state interest or denies an owner economically viable use of his land.”<sup>35</sup>

In *Nollan v. California Coastal Commission*<sup>36</sup> and *Dolan v. City of Tigard*<sup>37</sup> the Court created the “essential nexus” and “rough proportionality” tests, respectively, to evaluate regulations that require donations of private property as a condition of receiving a government issued permit. However, the Court also used the “substantially advances” language in both cases.<sup>38</sup> In *Nollan*, landowners brought suit to challenge a condition on a government issued permit requiring the landowners to grant the public an easement across their beachfront property.<sup>39</sup> The Court struck down the condition as unconstitutional utilizing the rule that a “land use regulation does not effect a taking if it substantially advances a legitimate state interest . . . .”<sup>40</sup> Justice Scalia reasoned that a regulation substantially advances a state interest only if there is an “essential nexus” between an exaction, and a state interest that the exaction is intended to serve.<sup>41</sup>

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<sup>30</sup> *Id.* at 430.

<sup>31</sup> *Lucas*, 505 U.S. at 1006.

<sup>32</sup> *Id.* at 1007.

<sup>33</sup> *Id.* at 1009.

<sup>34</sup> *Id.* at 1027.

<sup>35</sup> *Id.* at 1016 (quoting *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980)) (emphasis omitted).

<sup>36</sup> 483 U.S. 825.

<sup>37</sup> 512 U.S. 374.

<sup>38</sup> See *Dolan*, 512 U.S. at 385; *Nollan*, 483 U.S. at 834.

<sup>39</sup> *Nollan*, 483 U.S. at 827.

<sup>40</sup> *Id.* at 834.

<sup>41</sup> *Id.* at 834, 837.

Similarly, in *Dolan*, landowners brought suit to challenge a condition on a government-issued permit requiring them to dedicate some of their property for public use.<sup>42</sup> Once again, the Court used the substantially advances language in the decision,<sup>43</sup> but created a somewhat more stringent "rough proportionality" test.<sup>44</sup> Justice Rehnquist concluded that the exaction must be "roughly proportional" to the nature and extent of the project's impact.<sup>45</sup> He explained that "the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."<sup>46</sup>

In *Penn Central Transportation Co. v. City of New York* ("*Penn Central*"),<sup>47</sup> the Court created the "balancing test," which is used when government regulations restrict the use of private property.<sup>48</sup> In *Penn Central*, New York City's Landmarks Preservation Law impeded construction of any structure that would alter the character of the city's historical landmarks and neighborhoods.<sup>49</sup> The Court created a multi-factor balancing test which considers: (1) "[t]he economic impact of the regulation on the claimant;" (2) "the extent to which the regulation has interfered with distinct investment-backed expectations;" and (3) "the character of the governmental action."<sup>50</sup>

The Court also used the substantially advances language in *Penn Central*.<sup>51</sup> The Court reasoned that "[t]he restrictions imposed are substantially related to the promotion of the general welfare . . . ."<sup>52</sup> The Court also noted that a use restriction on real property may constitute a taking "if [it is] not reasonably necessary to the effectuation of a substantial public purpose or . . . if it has an unduly harsh impact upon the owner's use of the property."<sup>53</sup>

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<sup>42</sup> *Dolan*, 512 U.S. at 377.

<sup>43</sup> *Id.* at 385.

<sup>44</sup> *Id.* at 391.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> 438 U.S. 104 (1978).

<sup>48</sup> *Id.* at 124.

<sup>49</sup> *Id.* at 104.

<sup>50</sup> *Id.* at 124.

<sup>51</sup> *Id.* at 127.

<sup>52</sup> *Id.* at 138.

<sup>53</sup> *Id.* at 127.

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### IV. INSTANT DECISION

In the instant decision, the Court first explained why the substantially advances test is not a valid method of identifying regulatory takings.<sup>54</sup> Chevron argued “that the Takings Clause is meant ‘to bar [g]overnment from forcing some people alone to bear public burdens which . . . should be borne by the public as a whole.’”<sup>55</sup> However, the Court explained that the substantially advances test “reveals nothing about the magnitude or character of the burden a particular regulation imposes upon private property rights,” or “how any regulatory burden is distributed among property owners.”<sup>56</sup> Furthermore, this test does not help to identify regulatory takings because it is not linked to the “text of the Takings Clause[,] nor to the basic justification for allowing regulatory actions to be challenged under the Clause.”<sup>57</sup>

Next, the Court explained why the facts of this case illustrated the “flaws in the ‘substantially advances’ theory.”<sup>58</sup> Based upon the facts, it was unclear to the Court “how [much] Hawaii’s rent cap actually burden[ed] Chevron’s property rights,” especially when coupled with Chevron’s claim that it “would recoup any reductions in its rental income by raising wholesale gasoline prices.”<sup>59</sup> Therefore, Chevron failed to establish “that it had been singled out to bear any particularly severe regulatory burden.”<sup>60</sup> The Court concluded that “Chevron . . . does not seek compensation for a taking of its property for a legitimate public use, but rather an injunction against the enforcement of a regulation that it alleges to be fundamentally arbitrary and irrational.”<sup>61</sup>

The Court then explained how the holding in the instant case does not disturb any prior holdings.<sup>62</sup> While the substantially advances language has been used in previous takings cases, the Court noted that in

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<sup>54</sup> *Lingle*, 544 U.S. 528, 540 (2005).

<sup>55</sup> *Id.* at 542.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 543.

<sup>59</sup> *Id.* at 544.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 545.



no case did they find a taking based on this test.<sup>63</sup> Ultimately, the Court outlines three theories under which a claimant seeking to challenge a government regulation as an uncompensated taking of private property may proceed. These theories include alleging a “physical” taking, a “total regulatory taking,” or land-use exaction when the government requires a person to donate property to the public as a condition of obtaining a development permit.<sup>64</sup> For regulatory takings outside of these categories, several other factors should be considered, such as “the economic impact of the regulation on the claimant,” “the extent to which the regulation . . . interfere[s] with distinct investment-backed expectations,” and the “character of the government action.”<sup>65</sup>

## V. COMMENT

For nearly 25 years, courts have applied the substantially advances test to determine whether a government regulation was an uncompensated taking of private property.<sup>66</sup> In announcing its decision in *Lingle*, the

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<sup>63</sup> *Id.* at 546.

<sup>64</sup> *Id.* at 548.

<sup>65</sup> *Id.* at 538-39.

<sup>66</sup> See *Tahoe-Sierra Preservation Council, Inc., v. Tahoe Regional Planning Agency*, 535 U.S. 302, 334 (2002) (noting that petitioner might have argued “that the moratoria did not substantially advance a legitimate state interest”); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 704 (1999) (noting that jury instructions requiring “that a regulation substantially advance legitimate public interest outside the context of required dedications or exactions” was “consistent with our previous general discussions of regulatory takings liability”); *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) (“a land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land”); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1024 (1992) (“a land-use exaction does not effect a taking if it substantially advances legitimate state interests”); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 834 (1987) (“a land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land”); *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 126 (1985) (“the application of land-use regulations to a particular piece of property is a taking only if the ordinance does not substantially advance legitimate state interests”); *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980) (“the application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests”).

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Supreme Court eliminated the substantially advances test from takings jurisprudence, curtailed some *Lochner*<sup>67</sup> era litigation of state and federal regulations in the lower courts, and most importantly, provided some reassurance to property owners since the *Kelo v. City of New London*<sup>68</sup> decision, where the Court expanded the governments ability to acquire private property for “public use.”

### A. Was the Elimination of the Substantially Advances Test Necessary?

The Court should not have had to eliminate the substantially advances test because it claimed to have never found a compensable taking based on the test.<sup>69</sup> The Court also claimed that “in most of the cases reciting the ‘substantially advances’ [test], the Court merely assumed [a statute’s] validity when referring to it in dicta.”<sup>70</sup> However, for nearly 25 years, lower courts, litigants, and scholars have interpreted the substantially advances formula as a component of a regulatory takings analysis, and the Court has upheld the use of this test with its prior holdings.<sup>71</sup>

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<sup>67</sup> *Lochner v. New York*, 198 U.S. 45 (1905).

<sup>68</sup> 545 U.S. 469 (2005) (holding that a state may use its eminent domain power to transfer property from one private party to another if the purpose of taking is future use by public).

<sup>69</sup> *Lingle*, 544 U.S. at 546.

<sup>70</sup> *Id.*

<sup>71</sup> See *Tahoe-Sierra Preservation Council, Inc., v. Tahoe Regional Planning Agency*, 535 U.S. 302, 334 (2002) (noting that petitioner might have argued “that the moratoria did not substantially advance a legitimate state interest”); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 704 (1999) (noting that jury instructions requiring “that a regulation substantially advance legitimate public interest outside the context of required dedications or exactions” was “consistent with our previous general discussions of regulatory takings liability”); *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) (“a land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land”); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1024 (1992) (“a land-use exaction does not effect a taking if it substantially advances legitimate state interests”); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 834 (1987) (“a land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land”); *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 126 (1985) (“the application of land-use regulations to a particular piece of property is a

On the other hand, eliminating the substantially advances test for regulatory takings should mitigate some of the confusion in the lower courts. This was apparent in *Lingle* when the lower courts incorrectly applied the substantially advances test, and as Justice O'Connor stated, "took [it] to its logical conclusion, and in so doing, revealed its imprecision."<sup>72</sup> However, the Court has commonly used similar or identical tests for various Constitutional Clauses and Amendments with far less confusion.<sup>73</sup> For example, strict scrutiny tests whether a government action was necessary to advance a compelling state interest, and narrowly tailored to achieve that goal.<sup>74</sup> Courts apply this test to some First Amendment, Equal Protection, and Due Process claims.<sup>75</sup> Using similar or identical standards does not mean that the court has confused the First Amendment with Equal Protection or Due Process.<sup>76</sup> Nevertheless, in *Lingle*, the Court untangled due process and takings tests, and consequently eliminated some of the confusion in lower courts when analyzing regulatory takings.

Some argue that validating the application of the substantially advances test to regulatory takings cases would signal a return to the *Lochner* era.<sup>77</sup> The *Lochner* era was characterized by courts determining the viability of state and federal regulations, which as Justice O'Connor states, is "a task for which courts are not well suited."<sup>78</sup> Since the *Lochner* era, the Court has generally held that judgments concerning the efficiency of economic regulations are best left to the legislatures, not the courts, and upholding the substantially advances test would welcome a flood of economic litigation where courts would be asked to determine the

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taking only if the ordinance does not substantially advance legitimate state interests"); *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980) ("the application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests").

<sup>72</sup> *Lingle*, 544 U.S. at 548.

<sup>73</sup> R.S. Radford, *Of Course a Land Use Regulation that Fails to Substantially Advance Legitimate State Interests Results in a Regulatory Taking*, 15 FORDHAM ENVTL. L. REV. 353, 360 (2004).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Regulatory Takings – "Substantially Advances" Test*, 119 HARV. L. REV. 297, 302-03.

<sup>78</sup> *Lingle*, 544 U.S. at 544.

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economic viability of legislative acts. This was the case in *Lingle* where competing economists testified as to the economic effects of Act 257 and the court determined whether the challenged legislation substantially advanced a legitimate governmental interest.<sup>79</sup> Moreover, invalidating legislative acts on economic grounds ignores the fact that the legislature may have been pursuing a balance of social equity and economic efficiency in their legislation.<sup>80</sup>

### B. Strengthening Property Rights

Chevron's takings claim in *Lingle* did not concern land, but the decision was a step forward in preserving property rights in a post-*Kelo* America.<sup>81</sup> Even though *Kelo* involved eminent domain and not a regulatory taking, the Court's decision expanded the government's ability to take private property for "public use."<sup>82</sup> This decision left many property owners uneasy about this expansion in government power over private property. Eliminating the substantially advances test gives property owners more clarity and a higher level of predictability when challenging costly regulations that diminish their property rights. Perhaps the criticism and controversy surrounding the *Kelo* decision, coupled with the subsequent expansion in government power over private property, persuaded the Court to clarify its takings precedents and establish clearer, more stringent tests to evaluate compensable regulatory takings.

In *Lingle*, the Court stated that there are three distinct situations where a property owner could establish that a government regulation resulted in a compensable taking.<sup>83</sup> A property owner may proceed by alleging "a 'physical' taking," a "total regulatory taking," or a "land-use exaction" in exchange for some government benefit such as a building permit.<sup>84</sup> For regulatory takings outside of these categories, the court will

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<sup>79</sup> *Id.* at 535-36.

<sup>80</sup> *Regulatory Takings – "Substantially Advances" Test*, 119 HARV. L. REV. 297, 303 (citing Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350, 371 (1986)).

<sup>81</sup> See *Kelo v. City of New London*, 545 U.S. 469 (2005).

<sup>82</sup> *Id.*

<sup>83</sup> *Lingle*, 544 U.S. at 548.

<sup>84</sup> *Id.*

consider other factors such as “the economic impact of the regulation on the claimant,” “the extent to which the regulation . . . interfere[s] with distinct investment-backed expectations,” and the “character of the government action.”<sup>85</sup>

By eliminating the substantially advances test, the Court has taken a significant step in building upon the reasoning in *Pennsylvania Coal*, where Justice Holmes stated, “property may be regulated to a certain extent, [but] if [the] regulation goes too far it will be recognized as a taking.”<sup>86</sup> The tests outlined in the preceding section clearly outline situations where a regulation may go “too far.” Also, unlike the substantially advances test, these tests require an analysis of “the magnitude [and] character of the burden a particular regulation imposes upon private property rights,” and “how [the] regulatory burden is distributed among property owners.”<sup>87</sup>

## VI. CONCLUSION

The Court’s decision to eliminate the substantially advances test from takings jurisprudence might not have been necessary, but the decision provides guidance to lower courts in applying the law, and takes some litigation regarding the viability of state and federal regulations that affect private property out of the courts. Most importantly, the decision strengthens property rights by bringing a higher level of clarity and predictability to regulatory takings claims, which assists property owners and government officials when regulations are challenged as compensable takings.

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<sup>85</sup> *Id.* at 538-39.

<sup>86</sup> *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

<sup>87</sup> *Lingle*, 544 U.S. at 542 (emphasis omitted).