

**SEVENTH & FOURTEENTH AMENDMENTS—42 U.S.C. § 1983—ACTION UNDER § 1983 ALLEGING A REGULATORY TAKING AND SEEKING LEGAL RELIEF IS AN ACTION AT LAW SOUNDING IN TORT AND CONFERRING A RIGHT TO JURY TRIAL—*City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 119 S. Ct. 1624 (U.S. 1999).**

The United States Supreme Court recently held that a suit seeking legal relief under § 1983 is an “action at law” within the meaning of the Seventh Amendment’s right to trial by jury. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 119 S. Ct. 1624, 1645 (1999). Moreover, the Court permitted a jury to decide whether a city affects a regulatory taking by repeatedly denying development proposals submitted to the city by a landowner. *See id.* The Court reasoned that an action alleging a regulatory taking under § 1983 is tortious in nature and presents a predominantly factual inquiry, thereby entitling the landowner to legal relief in the form of damages for the unconstitutional denial of just compensation. *See id.* at 1642. While the jury instructions only required a determination of whether the city followed its proffered legitimate public interests when making its decision, the Supreme Court’s holding may permit juries to second-guess the public land-use policies of municipal bodies.

Over a five-year period, respondent Del Monte Dunes persistently submitted site plans to the City of Monterey’s planning commission for the development of a 37.6 acre ocean-front parcel zoned for multifamily residential use. *See id.* at 1631-32. Although the developers’ initial submission conformed to the city’s zoning and general plan prerequisites, the city denied the proposal and required the developers to comply with more exacting demands. *See id.* at 1632. Thereafter, the city rejected each subsequent proposal by imposing additional conditions and requirements. *See id.* Del Monte Dunes’ final overture allocated only 5.1 of the 37.6 acres for constructing buildings and patios; the remaining acreage was designated for public use and the preservation of sand dunes, a frail buckwheat habitat and the home of the rare Smith’s Blue Butterfly. *See id.* The city denied this ultimate proposal, finding that the developers had not afforded sufficient access to the development, that the environment would be damaged by the plan’s design, and that the layout would upset the habitat of the Smith’s Blue Butterfly. *See id.* at 1633.

After Del Monte Dunes had drafted nineteen distinct site plans and the city formally denied their proposals on five separate occasions, the developers concluded that the city would not accept any proposed development and therefore, decided to litigate. *See id.* The respondents filed suit under § 1983 against the City of Monterey in the United States District Court for the Northern District of California. *See id.* The respondents asserted that the city’s denial of the final site plan violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment, resulting in an uncompensated regulatory taking. *See id.*

Finding the action unripe, the district court dismissed the claims because re-

spondents had not procured a final finding as to the level of construction permitted by the city. *See id.* Moreover, the district court criticized the respondents' failure to try to obtain just compensation in state court. *See id.* The Ninth Circuit reversed and remanded, finding that the city's rejections of Del Monte Dunes' successive attempts to develop the plot rendered the claim ready for review. *See id.* The court of appeals further determined that the respondents were not obligated to seek relief in state court, as a precondition to federal redress, because the State of California failed to establish a compensatory remedy for short-lived regulatory takings after the city's final denial. *See id.*

On remand, the district court presented the regulatory taking and equal protection claims to the jury, but retained the substantive due process claim for bench determination. *See id.* Respondents argued that the city's demands to preserve the buckwheat habitat on the property, in conjunction with the city's additional provisos, prevented development on the property. *See id.* Del Monte Dunes submitted extrinsic evidence, proving that the State of California had considered purchasing the subject property itself. *See id.* Furthermore, the respondents emphasized the arduous five-year process of submissions, rejections and subsequent revision demands that the city induced, which ultimately prevented development of the parcel. *See id.*

Following the presentation of evidence, the city propounded the basic nature of the jury instruction. *See id.* at 1634. First, the district court instructed the jury to find for the developers if the jury determined that the city's regulatory decision denied Del Monte Dunes all permissible, beneficial, and economically-feasible use of land. *See id.* Second, the instruction required that the jury find for Del Monte Dunes if a legitimate public purpose was not substantially advanced by the city for the rejection of the developers' final development plan. *See id.* The jury found for the developers on the regulatory takings and equal protection claims; however, the court ruled for the city on the substantive due process claim. *See id.*

The Ninth Circuit affirmed the district court's holding. *See id.* First, the court found that, because § 1983 afforded respondents a right to a jury trial, no error resulted from permitting the regulatory takings claim to be heard by a jury. *See id.* Second, the court held that the district court appropriately assigned to the jury the task of determining whether the city denied respondents all economically practicable use of the tract and whether the city's rejection of Del Monte Dunes' last proposal substantially furthered legitimate public interests. *See id.*

The United States Supreme Court granted *certiorari* to consider: (1) whether the Ninth Circuit mistakenly assumed that the rough-proportionality standard, used for exactions, issues applied to this case; (2) whether the circuit court impermissibly utilized a standard that permitted the jury to reevaluate the reasonableness of the City of Monterey's land-use decision; and (3) whether the jury was properly called to determine issues of liability on respondents' regulatory takings claim. *See id.* at 1635. Although the Court affirmed the appellate

court's decision, it did not concur with the findings of law advanced by the Ninth Circuit. *See id.*

The analysis of the plurality opinion, authored by Justice Kennedy, began by finding the rough-proportionality standard, utilized by the Ninth Circuit, inapplicable to a regulatory takings case. *See id.* (Kennedy, J., plurality) (citing *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994)). The Court explained that the rough-proportionality standard considered whether property grants, which are required as prerequisites to development, were commensurate with the developer's projected impacts. *See id.* The plurality further noted that this standard had not been extended beyond its application to the context of exactions, where land-use determinations reserve approval of site development on the grant of a portion of the tract to public use. *See id.* Justice Kennedy found that the total denial of development in the present case differed from an exaction, thereby making the rough-proportionality test inapposite in this situation. *See id.* The Court also observed that the jury instruction did not mention proportionality, and the circuit court's determinations, concerning the sufficiency of Del Monte Dunes' proffered evidence, rendered the Ninth Circuit's discussion of the rough-proportionality standard unnecessary to its affirmation. *See id.*

The opinion proceeded to address the city's contention that, under the legal standard espoused by the circuit court, it is improper to allow juries to reevaluate a city's public land-use policy for regulatory takings liability. *See id.* at 1636 (Kennedy, J., plurality). Justice Kennedy admonished the city's ability to challenge the accuracy of the jury instructions because the city itself proposed the essence of those instructions. Moreover, the plurality noted that the instructions conformed to the Court's general position on temporary, regulatory takings liability. *See id.* The Justice also refuted the city's contention that the Court of Appeals affirmed what was essentially the jury's evaluation of the city's general zoning laws or land-use administration. *See id.* To disprove this argument, the Court referred to the jury instructions and the legal argument upon which respondents tried the case. *See id.* First, the Court stated that the instructions required the jury to decide whether, based on the protracted history of development attempts, the city's decision to reject the final proposal conformed to the city's stated goal of advancing public interests; however, the jury was not asked to rule on the reasonableness of the city's zoning laws or land-use policies. *See id.* Second, Justice Kennedy maintained that the respondents did not challenge the city's right to regulate land but merely argued that the city made an improper land use decision based on the city's known objectives. *See id.* at 1637 (Kennedy, J., plurality).

Next, the plurality proceeded to address whether the jury should have determined the liability issue on Del Monte Dunes' regulatory takings claim. *See id.* Justice Kennedy explained that the underlying issue for determination was if, and to what extent, respondents held a statutory or constitutional interest in a jury trial. *See id.* The plurality held that § 1983 itself did not confer the right to

a jury trial, thereby mandating a review of the Seventh Amendment to disclose whether the right existed from the constitutional perspective. *See id.*

Upon reviewing its previous analysis of the Seventh Amendment, the plurality maintained that the Amendment applies to both common-law actions and statutory causes of action similar to common-law actions decided in Eighteenth Century English law courts. *See id.* at 1638 (Kennedy, J., plurality) (quoting *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 348 (1998)). The plurality noted that the government can lawfully take property and render just compensation with the proper authorization. *See id.* at 1639 (Kennedy, J., plurality). However, the taking is lawful only because the government shoulders a constitutionally-imposed duty to provide just compensation; a breach of that duty is a tortious violation of the United States Constitution. *See id.* at 1641 (Kennedy, J., plurality). After recognizing the general rule that § 1983 actions sound basically in tort, Justice Kennedy determined that, because respondents demanded monetary relief as just compensation for the invasion of a right protected by federal law, they sought a legal remedy in a tort action. *See id.* at 1638-39 (Kennedy, J. plurality). The plurality concluded that this amounted to an action at law and therefore, respondents deserved the right to a jury trial under the Seventh Amendment. *See id.* at 1639 (Kennedy, J., plurality).

Although both causes of action arise under the Fifth Amendment, the plurality rejected the city's attempt to analogize the respondents' § 1983 claim to a condemnation claim, which is heard by the bench. *See id.* at 1640 (Kennedy, J., plurality). Distinguishing condemnation actions from § 1983 actions seeking redress for an uncompensated taking, Justice Kennedy explained that in condemnation actions, the landowner's right to just compensation is conceded by the government; however, in the § 1983 context, the main issues are whether the landowner was entitled to just compensation, and whether the government was liable for its failure to compensate. *See id.* The plurality further stressed that, under a § 1983 claim, the onus fell on the landowner to take affirmative action to obtain just compensation, thereby forcing the landowner to find a forum to obtain relief. *See id.* at 1641 (Kennedy, J., plurality). Reviewing historical practice and early Takings Clause cases, the plurality found that when the government seized property, without furnishing an adequate method for securing redress, actions to obtain just compensation were construed as common-law tort actions. *See id.*

The plurality concluded its examination by finding that the issues of liability were properly placed before the jury under the Seventh Amendment. *See id.* at 1642 (Kennedy, J., plurality). Although the Court had never addressed the proper burden allocation in regulatory takings cases, Justice Kennedy reviewed precedent and acknowledged that the issues involved present predominantly factual questions which are normally assigned to the jury. *See id.* at 1643 (Kennedy, J., plurality). Accordingly, the Justice found it appropriate that the jury decided the respondents' regulatory taking and equal protection claims. *See id.*

The plurality explained that the history of the “regulatory takings doctrine” revealed that the determination of whether a regulation of land amounted to an exercise of eminent domain powers depended on the particular facts, especially regarding whether the landowner had been denied all economically feasible use of the land. *See id.* at 1644 (Kennedy, J., plurality) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922)). Justice Kennedy then discerned that the question of whether a city’s land-use decisions substantially advanced legitimate public interests was a mixed question of law and fact, and under the specific factual circumstances of the case at bar, the question was essentially factual in nature and properly deemed a question for the jury. *See id.*

In a concurring opinion, Justice Scalia concluded that all § 1983 actions fall under the Seventh Amendment right to a jury trial when monetary relief is sought. *See id.* at 1645 (Scalia, J., concurring). The concurring Justice argued that § 1983, as a “unique federal remedy,” should be analyzed as a whole to determine if a § 1983 suit warrants a jury trial. *See id.* at 1646 (Scalia, J., concurring). Therefore, Justice Scalia reasoned that reviewing specific causes of action under § 1983, to determine if a jury should assign liability under each individual type of § 1983 suit, failed to answer the relevant question. *See id.* Justice Scalia declared that the Court had previously determined, for the purposes of a statute of limitations issue, that every § 1983 suit should be characterized similarly, and this determination should pertain to the Seventh Amendment issue for the sake of simplicity and uniformity. *See id.* (citing *Wilson v. Garcia*, 471 U.S. 261 (1985)).

The concurrence stressed that all § 1983 claims sound in tort and that at common-law, jury trials were available for tort actions seeking monetary damages. *See id.* at 1647-48 (Scalia, J., concurring). However, the concurring Justice noted that respondents were not entitled to have a jury decide every issue of the § 1983 claim; although the jury should decide primarily factual issues, the judge must resolve legal issues. *See id.* at 1649 (Scalia, J., concurring). Justice Scalia found that in the present case, it was proper for the judge to decide whether the city’s proffered basis for its challenged decision represented a valid state interest because that was a question of law. *See id.* The concurrence also found that it was appropriate for the jury to determine, first, whether the city’s action deprived Del Monte Dunes of any economically viable use of the tract, and second, whether the legitimate state interest asserted was advanced by the city’s rejection of respondents’ final proposal. *See id.* at 1649-50 (Scalia, J., concurring). Because each question required a determination based on the facts of the case, the concurrence preferred to assign both questions to the jury. *See id.*

Justice Souter, joined by Justices O’Connor, Ginsburg and Breyer, authored an opinion concurring in part and dissenting in part. *See id.* at 1650 (Souter, J., concurring in part and dissenting in part). Justice Souter’s disagreement with the plurality stemmed from differing analyses of respondents’ right to a jury trial.

*See id.* The dissent posited that a direct condemnation claim is more closely related to the challenged action than a tort claim because both a regulatory takings proceeding and a direct condemnation claim involve questions of the Fifth Amendment and the government's power of eminent domain. *See id.* at 1651 (Souter, J., concurring in part and dissenting in part). Justice Souter urged that the issues of proper financial appraisal of the taken property and just compensation to be recovered, are the focal points in each action, respectively. *See id.* at 1650-51 (Souter, J. concurring in part and dissenting in part). Additionally, Justice Souter declared that case law has established that eminent domain proceedings do not contain a constitutional jury right. *See id.* at 1651-52 (Souter, J., concurring in part and dissenting in part) (quoting *United States v. Reynolds*, 397 U.S. 14, 18 (1970)). Because Justice Souter considered the above analogy more appropriate than that advanced by the plurality, and since condemnation proceedings did not carry a right to a common-law jury trial at the time the Seventh Amendment was enacted, the Justice concluded that there was no jury right implicated by the challenged action in the present case. *See id.* at 1653 (Souter, J., concurring in part and dissenting in part).

The dissent further opposed the plurality's position which permitted the jury to decide issues similar in nature to judicially-resolved, substantive due process claims. *See id.* at 1658-59 (Souter, J., concurring in part and dissenting in part). Justice Souter noted that the jury question regarding the propriety of the city's rejection of the development plan, in light of the city's stated objectives, was similar to the judge's role in finding whether the city's objectives were legitimate. *See id.* at 1660 (Souter, J., concurring in part and dissenting in part). In conclusion, the dissent opined that courts are often called upon to review governmental decisions with appropriate deference and limited scrutiny. *See id.* However, jurors are not customarily chosen to scrutinize the legal grounds for governmental action to determine the advancement of legitimate public aims. *See id.* (quoting *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388 (1996)).

## ANALYSIS

This case demonstrates that local governments making land-use decisions have the responsibility to establish zoning and land-use policy, evaluate the municipality's concerns, and weigh those concerns against proposals made by developers. It appears that the local government's determinations are to be treated deferentially. It further seemed clear that the standard regarding these decisions requires a challenged action to be sufficiently related to a valid public purpose. However, by placing the City of Monterey's determination in the hands of the jury, the standard changed.

Instead of allowing a judge, who is accustomed to making deferential determinations, to apply the appropriate standard of review to the challenged action,

the court permitted the jury to examine the decision made by the City of Monterey. Therefore, the jury was given the power to disagree with the challenged action if it determined that the decision was unreasonable. The changing of the standard has two major effects. First, establishing the reasonableness of a challenged action is much more difficult than showing that an action was sufficiently related to a legitimate public purpose. Second, a juror is typically not prone to evaluate decisions based on a deferential view of the decision. As the dissent noted, this is often the province of a judge. *See id.* (Souter, J., concurring in part and dissenting in part).

The plurality did not adequately address the dissent's argument regarding the competency of jurors to make decisions about the applicability of city policies without encroaching upon the city's right to make policy. Courts may not examine the merits of local government policies, thereby substituting their own judgment for municipal decisions regarding land use regulations. Instead, courts are required to employ deferential standards of review and demand only that there be some basis to support the local government's decision. However, the Supreme Court allowed these standards to be cast aside by permitting juries to reexamine the reasonableness of a city's land-use decisions.

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