

The Burger Court Opinion Writing Database

Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City

473 U.S. 172 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

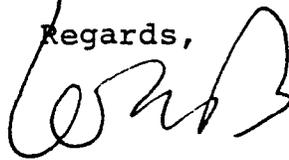
June 20, 1985

Re: No. 84-4 - Williamson County v. Hamilton Bank

Dear Harry:

I join your June 14 opinion.

Regards,



Justice Blackmun

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: JUN 19 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

**WILLIAMSON COUNTY REGIONAL PLANNING COM-
MISSION, ET AL., PETITIONERS v. HAMILTON
BANK OF JOHNSON CITY**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE BRENNAN, concurring.

The Court today discusses two methods for analyzing the constitutional injury that may result from the temporary application of government regulations denying property any economically viable use. The Court concludes that, under either approach, the respondent's claim is premature because the petitioner Williamson County Regional Planning Commission's 1981 disapproval of the respondent's preliminary plat did not constitute a final reviewable decision given the availability of a variance procedure that the respondent did not pursue. *Ante*, at 12, 26.

I join the Court's opinion without, however, departing from my views set forth in *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621, 636 (1981) (BRENNAN, J., dissenting). Because "[i]nvalidation unaccompanied by payment of damages would hardly compensate the landowner for any economic loss suffered during the time his property was taken," I believe that "once a court establishes that there was a regulatory 'taking,' the Constitution demands that the government entity pay just compensation for the period commencing on the date the regulation first effected the 'taking,' and ending on the date the government chooses to rescind or otherwise amend the regulation." *Id.*, at 653, 655. As the Court demonstrates in this case, however, "the Commission's

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

WILLIAMSON COUNTY REGIONAL PLANNING COM-
MISSION, ET AL., PETITIONERS *v.* HAMILTON
BANK OF JOHNSON CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
concurring.

The Court today discusses two methods for analyzing the constitutional injury that may result from the temporary application of government regulations denying property any economically viable use. The Court concludes that, under either approach, the respondent's claim is premature because the petitioner Williamson County Regional Planning Commission's 1981 disapproval of the respondent's preliminary plat did not constitute a final reviewable decision given the availability of a variance procedure that the respondent did not pursue. *Ante*, at 11-12, 26.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1985

84-4 - Williamson County Regional Planning
Commission v. Hamilton Bank of Johnson City

Dear Harry,

Please add at the bottom of your opinion that Justice White dissents from the holding that the issues in this case are not ripe for decision at this time.

Sincerely,



Justice Blackmun

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1985

Re: No. 84-4-Williamson County v. Hamilton Bank

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference



To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

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From: **Justice Blackmun**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

WILLIAMSON COUNTY REGIONAL PLANNING COM-
 MISSION, ET AL., PETITIONERS *v.* HAMILTON
 BANK OF JOHNSON CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

Respondent, the owner of a tract of land it was developing as a residential subdivision, sued petitioners, the Williamson County [Tennessee] Regional Planning Commission and its members and staff, in United States District Court, alleging that petitioners' application of various zoning laws and regulations to respondent's property amounted to a "taking" of that property. At trial, the jury agreed and awarded respondent \$350,000 as just compensation for the "taking." The ensuing judgment was affirmed on appeal. Petitioners and their *amici* urge this Court to overturn the jury's award on the ground that a temporary regulatory interference with an investor's profit expectation does not constitute a "taking" within the meaning of the Just Compensation Clause of the Fifth Amendment,¹ or, alternatively, on the ground that even if such interference does constitute a taking, the Just Compensation Clause does not require money damages as

¹"[N]or shall private property be taken for public use, without just compensation."

The Fifth Amendment's prohibition, of course, applies against the States through the Fourteenth Amendment. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 241 (1897); see also *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621, 623 n. 1 (1981).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 11, 1985

Re: No. 84-4, Williamson County v. Hamilton Bank

Dear Bill:

Thank you for your letter of June 10. I thought the case was a difficult one to write, but I shall do my best to gather a sufficient number of us together.

Your suggestion that we draw an analogy to Parratt v. Taylor is certainly satisfactory with me. I have formulated some material to insert in the proposed opinion. It goes to the printer today and should be circulated tomorrow. I hope you will find it acceptable.

Sincerely,



Justice Rehnquist

cc: The Conference

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- Stylistic changes, footnotes re-
numbered, and pp. 21-22, 23, 27 -

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: JUN 12 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

WILLIAMSON COUNTY REGIONAL PLANNING COM-
MISSION, ET AL., PETITIONERS *v.* HAMILTON
BANK OF JOHNSON CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1985

Re: No. 84-4, Williamson County v. Hamilton Bank

Dear Bill:

Thank you for your letter of June 12. I am at least pleased that you find the addition to the text itself what you had hoped for.

As to footnote 14, I encounter the usual cross-fire between your position and others who insist on the footnote's continued life. I would like to retain the footnote with the following changes, which I think should satisfy everyone (at least I offer them for consideration):

1. Eliminate the first four and one-half lines of the footnote and replace it with the following as you have suggested:

"The analogy to Parratt is imperfect because Parratt does not extend to situations such as those involved in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), in which the deprivation of property is effected pursuant to an established state policy or procedure, and the State could provide predeprivation process."

2. Change the final sentence of the footnote to read as follows:

"Thus, despite the Court's holding in Logan Brush, Parratt's reasoning applies here by analogy because of the special nature of the Just Compensation Clause."

Would this not alleviate most of your concerns?

Sincerely,



Justice Rehnquist

cc: The Conference

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STYLING CHANGES

+ p. 22

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor



From: Justice Blackmun

Circulated: _____

Recirculated: JUN 14 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

WILLIAMSON COUNTY REGIONAL PLANNING COM-
MISSION, ET AL., PETITIONERS *v.* HAMILTON
BANK OF JOHNSON CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1985

Re: Hold for 84-4, Williamson County Regional Planning
Commission v. Hamilton Bank

One case is held for Williamson County. It is No. 84-1292, Stearns Coal & Lumber, Inc. v. Kentucky Natural Resources, etc. I shall vote to DWSFQ. The fact situation, however, as in all of these "takings" cases, is complicated, and I set it forth in some detail (with apologies for the length):

In 1972, the Kentucky Legislature enacted the Wild Rivers Act, which prohibited commercial activity such as road construction, construction of new buildings, mining, and timbering in stream and river areas designated for protection. Appellant owns thousands of acres in southeastern Kentucky, including land through which two designated streams flow. Between 1973 and 1975, appellee began to implement the Wild Rivers Act by notifying appellant about the prohibited commercial activity and by posting signs along the streams inviting the public to the area. In June 1975, appellee obtained a state court injunction against one of appellant's lessees, prohibiting the lessee from drilling for oil and gas, constructing roads, and cutting timber on the designated land. Although the Wild Rivers Act contained a provision that "nothing in this Act shall be construed to deprive a landowner of his property or any interest or right therein without just compensation," and although appellee publicly announced its intentions to pay landowners for the State's interference with their property, appellee did not do so.

In August 1975, in a suit by another landowner whose activities had been enjoined by appellee, the Kentucky Supreme Court held that appellee could not maintain injunctions against private property owners until it designated the stream areas and initiated condemnation actions or otherwise compensated landowners for the property. Commonwealth, ex rel. Dept. for Natural Resources & Environmental Protection v. Stephens, 539 S.W.2d 303 (Ky. 1976). That holding prompted an amendment in the Wild Rivers Act, which allowed landowners to obtain a permit to deep mine or log the land upon a showing that the proposed activity is in accord with the purpose and intent of the act, and that the activity is in accord with a management plan to be developed by appellee. The amendments became effective June 19, 1976.

In April 1976, appellant notified appellee that it intended to develop the land in a manner that would include many of the activities prohibited by the Wild Rivers Act. After appellee attempted to interfere with the development, appellant brought

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1985

84-4 Williamson County v. Hamilton Bank

Dear Harry:

Please add at the end of the next draft of your opinion that I took no part in the decision of this case.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 25, 1985

Re: No. 84-4 Williamson County v. Hamilton Bank

Dear Chief,

I think my vote to affirm in this case may be misleading. I agree with Byron that we ought not to re-do the lower courts' finding of economic damage. But I don't think a "takings" clause analysis is proper when there has been no physical invasion and no effort to acquire by condemnation. I therefore disagree with the way in which damages were calculated and would therefore have to "remand." Perhaps, as Harry would say, I am "out in left field."

Sincerely,



The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

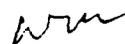
June 10, 1985

Re: No. 84-4 Williamson Planning Commission v.
Hamilton Bank

Dear Harry,

This was a tough case to be assigned the opinion to write, because as I recall we were split up all over the lot at Conference. I agree with the substance of almost everything you have written and will be happy to join your opinion if you would include a couple of sentences in Part III-B discussing the rather close analogy between your treatment of the Takings Clause and the Court's treatment of the Due Process Clause in Parratt v. Taylor, 451 U.S. 527 (1981). It seems to me that Parratt's separate treatment of the claim of deprivation of property from the denial of due process is very closely analogous to your separation of the claims that private property has been taken from the claim that it has been taken without just compensation. If I am right, I think it would be helpful to the opinion to point out this rather close analogy in Part III-B.

Sincerely,



Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1985

Re: No. 84-4 Williamson County v. Hamilton Bank

Dear Harry,

I have read your recirculation of June 12th, and appreciate your expanding your treatment of the "Takings Clause" question to include a discussion of Parratt v. Taylor in the text. This is just what I had hoped for.

Unfortunately, however, I cannot say as much for footnote 14. I really do not see the necessity for such a footnote at all, for reasons that can be best encapsulated in your lining out of the phrase "like that involved here" from the text of the footnote. The footnote discusses situations that are not like that involved in the present case. Of course, if you as the author of the opinion feel there should be such a footnote, I accept your judgment and suggest revisions in the following paragraph.

I think the first sentence of the footnote states more broadly than is warranted by your opinion in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) a limitation on Parratt. I should think if you rephrase that sentence in the following manner, you would leave the law pretty much as it is now:

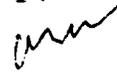
"The analogy to Parratt is imperfect because Parratt does not extend to situations such as those involved in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) in which the deprivation of property is affected pursuant to an established state policy or procedure, and the State could provide pre-deprivation process."

The final sentence of the footnote is an even broader statement of what Parratt "does not extend to ...," and is not acceptable to me. The Court has never limited Parratt in the manner stated in that sentence, although conversely it has of course never extended the doctrine of Parratt to the situation described there. But to me that leaves the

question an open one which certainly ought not to be foreclosed in a footnote such as this.

If you can see your way clear to accommodate my suggestions, I will be happy to join.

Sincerely,



Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 13, 1985

Re: No. 84-4 Williamson County v. Hamilton Bank

Dear Harry,

Thank you for your efforts at fine tuning footnote 14 of your most recent draft. I am happy to join that circulation.

Sincerely,

Justice Blackmun

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 7, 1985

Re: 84-4 - Williamson Co. v. Hamilton Bank

Dear Harry:

Although I am in complete agreement with your conclusion that the judgment of the Court of Appeals must be reversed, I am presently inclined to believe that the record is adequate to enable us to reject categorically the "temporary taking" theory that underlies the \$350,000 damage judgment. I am inclined to think that the finding that there was no violation of procedural due process requires that the damage judgment be set aside.

In all events, I will try to write my thoughts out. I may find that your proposed disposition is the best one and end up by joining you, but I am inclined to think that it will be a concurrence in the judgment.

Respectfully,



Justice Blackmun

Copies to the Conference

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Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

WILLIAMSON COUNTY REGIONAL PLANNING COM-
MISSION, ET AL., PETITIONERS *v.* HAMILTON
BANK OF JOHNSON CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE STEVENS, concurring in the judgment.

Zoning restrictions are a species of governmental regulation that may impair the value of private property. The impairment may occur in one of two ways. The substance of a restriction may permanently curtail the economic value of the property. Or the procedures that must be employed, either to obtain permission to use property in a particular way or to remove an unlawful restriction on its use, may temporarily deprive the owner of a fair return on his investment. For convenience, I will refer to the former category as "permanent harms" and the latter as "temporary harms."

Permanent harms fall into three subcategories. They may be impermissible even if the Government is willing to pay for them.¹ They may be permissible provided that the property owner is compensated for his loss.² Or they may be permissible even if no compensation at all is paid.³ The permanent harm inflicted by the zoning regulations at issue in this case is

¹For example, even if the State is willing to compensate me, it has no right to appropriate my property because it does not agree with my political or religious views.

²See *e. g.*, *United States v. 50 Acres of Land*, — U. S. —, — (1984).

³See, *e. g.*, *Penn Central Transportation Co. v. New York City*, 438 U. S. 104 (1978).

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STATISTICAL CHANGES THROUGHOUT
SEE - 813

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: JUN 21 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-4

WILLIAMSON COUNTY REGIONAL PLANNING COM-
MISSION, ET AL., PETITIONERS *v.* HAMILTON
BANK OF JOHNSON CITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[June —, 1985]

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 14, 1985

Re: 84-4 Williamson County Regional Planning Commn.,
et al. v. Hamilton Bk. of Johnson City

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference