

Guggenheim v. City of Goleta

Brief of CATO Institute As Amicus Curiae In Support Of Petitioners

From: [Cato Institute](#)

Summary: Just a decade ago in *Palazzolo v. Rhode Island*, the Supreme Court rejected the idea that those who buy property subject to burdensome regulations lose the right the seller otherwise has to challenge those regulations. The Court ruled that the Takings Clause does not have an "expiration date." Sadly, not all government authorities or courts took *Palazzolo* to heart. In 1997, Daniel and Susan Guggenheim bought a mobile home park which, at the time of purchase, was in "unincorporated territory" of Santa Barbara County, California. The Guggenheims did not challenge the county's 1979 rent control ordinance but instead challenged the 2002 adoption of that ordinance by the City of Goleta when the city incorporated the Guggenheims' land. The Ninth Circuit essentially limited *Palazzolo* to its particular facts and circumstances, deciding to convert the established three-factor test for regulatory takings (*Penn Central*) into a one-factor test focused solely on "investment-backed expectations." The court did this largely on the premise that the Guggenheims did not present an "as-applied" challenge — as *Palazzolo* did — to the ordinance's application to their mobile home park, but instead filed a facial challenge to the constitutionality of the ordinance itself. As a result, the Ninth Circuit turned two Supreme Court precedents on their head and put that "expiration date" on the Takings Clause in this case. Significantly, the Ninth Circuit isn't alone in its misapplication of *Palazzolo*; the Federal Circuit in *CRV Enterprises v. United States* (in which Cato will also be filing a brief) also recently issued an opinion severely narrowing *Palazzolo*'s scope and deepening a circuit split. Cato filed an amicus brief supporting the Guggenheims' request that the Supreme Court review the Ninth Circuit decision and reaffirm its decision in *Palazzolo*. The brief argues the Supreme Court should review the case because: (1) a rule that allows the transfer of title to immunize government regulation from constitutional or other legal challenge expands government power and diminishes property rights; (2) the Ninth Circuit "flouts" the rule of *Palazzolo*; and (3) this case — as well as *CRV Enterprises* — indicates the need for the Supreme Court to settle the spreading confusion about *Palazzolo*. Otherwise, the existence of a "post-enactment" rule will create a "massive uncompensated taking" from small developers and investors that would preserve and enhance the rights of large corporations. The ability of property owners to challenge government interference with their property is essential to a proper understanding of the Fifth Amendment; the Court must reestablish the principle that transfer of title does not diminish property rights.

Please see full legal brief below for more information.