



Lawyers ask Supreme Court to look at Anne Arundel development fees case

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August 15, 2018

An Annapolis man has filed a petition asking the U.S. Supreme Court to overturn Maryland court decisions limiting scrutiny on development fees.

Williams Dabbs Jr. has been fighting Anne Arundel County for years over impact fees, most recently arguing the fees disfavor individuals with larger homes and could violate the U.S. Constitution's Fifth Amendment. He is the class action representative in a suit that could change how the county collects money for roads, transportation and public safety.

His request before the Supreme Court is called a petition, meaning the court has not yet agreed to hear the case. It will likely make the decision in September. It was filed in July.

A victory at the Supreme Court would require governments prove there is a need for the impact fee and that the property owners directly benefit from that fee, said John Greiber Jr., Dabbs' attorney.

"Otherwise why are you assessing some people a specific individual tax for a benefit that is received by the public in general," Greiber said

County officials said the impact fees don't fall under the previous court cases dealing with Fifth Amendment issues because they are general taxes on new developments.

Greiber and Dabbs' other attorneys have asked Maryland courts to review those fees using prior Supreme Court cases that limit government's ability to enact permits or fees when uses are not related to the proposed development.

But Maryland courts have ruled against Dabbs, saying those previous Supreme Court cases are for ad hoc decisions — typically a single parcel of land — and not for broad legislative actions.

Historically the Supreme Court has sided with landowners when local governments require land-use permits that don't advance a government purpose or that purpose is not linked to the development request. The Fifth Amendment requires the government provide "just compensation" when taking or using private land for public use.

Impact fees are collected by the county as part of the development process. Different square feet sizes of homes require different values toward schools, transportation and public safety. Larger homes pay more. Smaller homes pay less.

Dabbs' filed the petition in July and received a response from county lawyers last week.

Ham Tyler, deputy county attorney, said the case has languished so long because Dabbs and his attorneys continue to appeal despite the county winning each case.

“The county’s position is the (precedents) do not apply because they are a means for the court to test whether an individual property owner has had his property owner taken without compensation,” Tyler said. “It is a direct link to the government’s demand and a specific piece of property. These are general taxes imposed by the county for new developments.

The Cato Institute and the Reason Foundation have jointly filed an amicus brief in support of Dabbs' case. They are think tanks that advocate for greater individual liberties.

Amicus briefs are arguments to convince the Supreme Court to take up the case. It could be months before the justices make a decision on Dabbs' petition.

The court has considered this question before, but declined to take up the case, said Reilly Stephens, a legal associate with the institute.

“If the government wants to raise funds for schools and all things the government does, it should be a general tax burden,” Stephens said.

The Dabbs' case was called a “litigation saga” by a Maryland Court of Appeals judge. It dates back to Halle, et al. v. Anne Arundel County, which started in 2001. This case found the county failed to appropriately handle collected impact fees.

The courts ordered a refund, though both sides disagreed about the scope of that refund. The refund was initially ruled to be \$4,719,359, but was reduced to \$1,342,360 in subsequent appeals.

Dabbs filed a second class action lawsuit — separate from the Halle case — in which he argued the county owed a refund for money collected between 1997 and 2002. But county changes to the law — were applied retroactively, and the courts sided with the government. His case continued on the federal constitutional claim that is now being presented to the Supreme Court.