

App No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SYLVIA ZIKA

Petitioner Pro Se

v.

MATTHEW J. PLATKIN, IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF THE STATE OF NEW JERSEY

Respondent

On Application for an Extension of Time To File Petition
for a Writ of Certiorari Seeking Review of an Order of the
New Jersey Supreme Court's Denial of Discretionary Review
of the Appellate Division's July 5, 2022 Ruling and Appendix

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Samuel Alito, Circuit Justice for the Supreme Court of the United States for the Third Circuit.

Pursuant this Court's Rules 13.5, 22, 30.2 and 30.3, Petitioner Sylvia Zika respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended for 60 days up to and including October 17, 2023.

On May 16, 2023, the New Jersey Supreme Court issued its denial of discretionary review of the Appellate Division's July 5, 2022 Ruling. {Appendix (App. 1 & App.2) Absent an extension of time, the Petition for Writ of Certiorari would be due by August 17, 2023. Petitioner is filing this Application more than 10 days before that date. S.Ct.R. 13.5. This Court has jurisdiction over the matter under 28 U.S.C. 1254 (1)(2). Respondent consents to Petitioner's request for this extension.

BACKGROUND

Petitioner Sylvia Zika ("Sylvia" or "Dr. Zika") is the owner of commercial property purchased in 2000 located at 43 Hampton House Road, Hampton Township, Sussex County, New Jersey used as a dental office (herein referred to as "Property"). The Property existed since before 1945 with free and unimpeded access on State Route 206.

After more than 75 years with no complaints or vehicular accidents related to the access, on September 23, 2014, the New Jer-

sey Department of Transportation ("Department" or "DOT") decided to close the Property's only access to a public street. (App. 3)

The issue in this petition is a matter of first impression: Whether a property owner is entitled to compensation for loss of value in land caused by the *de facto* taking of property where government action, without physical invasion, but instead, by such severe regulatory restraints on its use and buildability, as to destroy all, or substantially all value in the property.

The Commissioner of Department of Transportation argued the State takes access under the State's police power, therefore, no compensation if due. (App 4)

Surprisingly, the Appellate Court said there was no regulatory taking because: 1) The remaining property has reasonable access to a public street by way of a private easement through another's property (App. 2 p.22-24); and 2) The Appellate Panel arbitrarily decided applicable portions of relevant statutory law contained in New Jersey's long-established the Municipal Land Use Law ("M.L.U.L.") do not apply to the State's revocation of access action, specifically, NJSA 40: 55D-35, NJSA 40: 55D-68 and NJSA 40: 55D-70d(2), which are at the heart of this case. (App. 5)

Notwithstanding the catastrophic economic damage upon the remaining property, the Court never demanded any explanation from New Jersey why elimination of the access is necessary given other

effective less restrictive means. The State failed to show any need for revocation of the access or that there is no less restrictive alternative for accomplishing DOT's purpose to prevent left-hand turns into and out of the access. U.S. v. Comley, 890 F.2d 539, 544 (1st Cir. 1989)

Petitioner does not dispute that DOT manages roads and access to state roads pursuant procedures stated in the State Highway Access Management Act, NJSA 27: 7-89 et seq. and the State Highway Access Management Code, NJAC 16: 47-1.1 et seq.

This case is **NOT** about revocation of the access *per se*, however, when DOT decided to close the access driveway on Route 206, which is the only public access to Petitioner's commercial property, they implicated another statute, M.L.U.L. N.J.S.A. 40:55D-35 that governs not the particular use of a driveway, but rather, the overall use of the property.

As a result of the Appellate Court's radical departure and contravention of the authority of the M.L.U.L., they did not discern the distinction between law relating to access *per se* and the totally separate and distinct issue of "causing other conditions on the property ***itself***, which may be compensable." State v. Van Nortwick, 260 N.J. Super., 555, 558-559 (App.Div. 1992).

Here, the revocation of access causes the ***other condition*** on the property ***itself***, which is a change in the legal status of the remaining property from an existing conforming lot to a non-

conforming unbuildable lot after the access is closed, a fact that is not changed by the alternative access imposed by DOT through adjacent private property. In other words, DOT's proposed alternative access does not cure harm caused to the Property by the revocation of access, and therefore, it cannot be reasonable.

Despite the Court's citing Van Nortwick, the Appellate Court failed to apply it to the facts of this case. Consequently, the Court's decision never reached the merits of the case.

This case presents important issues involving fundamental constitutionally protected rights of due process, equal protection under law and private property, which are faced by owners of private property nationwide and which were strongly protected by the framers of the Constitution.

For example, no steps were taken at all to timely notify Petitioner of DOT's determination to close the access. DOT admits the decision to close the access was made in 2005, (App 6), 9 years before notifying Petitioner in 2014, (App 3), thereby denying Petitioner opportunity to defend her property and property rights in a meaningful way and at a meaningful time.

Petitioner was treated differently. Paul Ignarri, supervising engineer who joined DOT in 1986 and made the decision to close the access, testified he is unaware of a single case where the Code was applied this way. How many times have these codes come up since they were adopted in 1992? Never, only here. (App. 7)

Sylvia appealed the DOT's decision. On July 5, 2022, the New Jersey Appellate Court ruled there is no taking for which compensation is due (App. 2 p.22-24).

Sylvia appealed. On May 16, 2023, the New Jersey Supreme Court denied Sylvia's Petition for Certification. (App 1)

The Appellate Court's ruling and the New Jersey Supreme Court's denial of discretionary review deprives Petitioner of the constitutional protections of Private Property, Due Process and Equal Protection contained in the United States Constitution and long-established by the U.S. Supreme Court.

Petitioner now appeals to the U.S. Supreme Court to protect the right of private property, which has served as the cornerstone of individual liberty and is the "guardian of every other right."

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. As the Court may be aware, Petitioner is self-representing in this appeal and has full personal knowledge of the facts set forth in this Application for an Extension of Time to file a Petition for Writ of Certiorari.

2. Petitioner has no formal training or experience as a lawyer and has never seen a Petition for Writ of Certiorari. Crafting legal argument and reducing it to paper may be routine

for lawyers, but it is horrendously difficult and takes a lawyer-son 10 times longer.

3. In addition, Petitioner has the added responsibility of managing a dental office to earn a living as she does not earn income from preparing legal writings as does a lawyer.

4. Further, Petitioner has no paralegal or staff to help with this work in her dental office that is not designed for legal work at all.

5. It will take considerable time for Sylvia to familiarize herself with this Court's Rules, prepare a concise petition and assemble a voluminous record into a cognizable Appendix maximally useful to the Court.

6. A significant prospect exists that this Court will grant certiorari and reverse the Appellate Court's decision based on a clear disregard of facts critical to the analysis and a derogation of relevant law in finding there is no compensable taking.

7. The U.S. Supreme Court has a different point of view.

8. In Cedar Point Nursery v. Hassid, 141 U.S. 2063 (2021) citing U. S. v. Dow, 357 U.S. 17, 26 (1958) the Court said:

"It makes no difference whether physical property is taken or its use restricted, it is a physical taking all the same."

In U.S. v. Causby, 328 U.S. 256 (1946), the Court held low flying military aircraft terrorizing poultry effected a taking and

in Portsmouth Harbor v. U.S., 260 U.S. 327 (1922), this Court held firing defense guns across private property constituted a taking.

9. So disfavored is the State's revocation action that it changes the legal category of the Property after access closure from conforming to nonconforming, thereby so severely restricting use of the property, as to destroy every cent of value in it. In short, this sets a bad precedent, further weakens property rights and insidiously undermines the foundation of freedom.

10. The Appellate Court's approach that because the Property is left with use as a dental office there is no regulatory taking, is interesting, but bears no resemblance to the reality that property is more than a dental office. Property is land and land has value, whether it's used as a dental office or a McDonalds. The State took that away when they revoked the access, which prohibits **all other permitted uses in the future** because the remaining property will be in a non-conforming condition.

11. Rule 10 explains a petition for a writ of certiorari will only be granted if the appeal presents questions of general public importance which have not been but should be settled by the Supreme Court.

12. Recently, the U.S. Supreme Court has applied a broad reading of property to include intangible interests, including the useful value of a parcel of land. Lucas v. S.C. Coastal Coun., 505 U.S. 1003, 1024-27 (1992).

In Cedar Lake Nursery v. Hassid, Chief Justice Roberts wrote:

"The Founders recognized the protection of private property is indispensable to the promotion of individual freedom. John Adams put it well: 'Property must be secured, or liberty cannot exist.'"

13. There are many constitutional issues in this appeal, however, the overriding question is whether government can, through access deprivation, destroy a property owner's ability to use his/her own property to such an extent that the result is a *per se* taking for which just compensation is due pursuant the 5th and 14th Amendments of the United States Constitution.

14. The Supreme Court has opportunity here to rescue property rights that should never have been taken in the first place and affirm the most fundamental aspect of ownership: the right to use and enjoy one's own property.

15. A century ago, Justice Wendell Holmes's declared: ". . . while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking." Penn Coal Co. v. Mahon, 260 U.S. 393 (1922).

Although the State has not confiscated property in the usual direct sense by eminent domain, it has imposed regulations so disruptive and restrictive they are the equivalent to a regulatory taking that "has (gone) too far."

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including October 17, 2023.

Respectfully submitted,

August 3, 2023
Date

Sylvia Zika
SYLVIA ZIKA