

No.

IN THE
Supreme Court of the United States

PETERS SAUERS,
Petitioner

v.

TOWNSHIP OF LOWER SOUTHAMPTON

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

When the Township granted a variance that effectively changed a neighboring property's zoning from "C2 - Heavy Commercial" to "R2 - Residential" without first notifying him, did it deprive Appellant of rights secured by the United States Constitution, i.e.,

(a) his right to substantive and procedural due process under the Fourteenth Amendment to the United States Constitution,

(b) his right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution,

(c) his right under the Fifth Amendment to not be deprived of property without due process of law, and

(d) his right under the Fifth Amendment to not have his property taken for public use without just compensation?

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit [App. 1a- 6a] is unreported but is available at 2018 U.S. App. LEXIS 507 and 2018 WL 327246. The District Court's Memorandum and Order [App. 7a-18a] is unreported but is available at 2016 U.S. Dist. LEXIS 173751 and 2016 WL 7319679.

JURISDICTION

The Order denying Rehearing and Rehearing *En Banc* was entered by the United States Court of Appeals for the Third Circuit on March 6, 2018. Pursuant to Supreme Court Rule 13.3, the ninety-day period expires June 4, 2018. Jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same

the United States Constitution, his right under the Fifth Amendment to not have his property taken for public use without just compensation and his right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

STATEMENT

Statement of Facts

Petitioner/Plaintiff, Peter Sauer, is an adult person who, for many years, has owned a house located at 32 N. Westview Avenue on a residential street located in the Township of Lower Southampton, County of Bucks, Commonwealth of Pennsylvania.

Respondent/Defendant, Lower Southampton Township, is a municipality and a political subdivision of the Commonwealth of Pennsylvania.

Since 1955, Petitioner's property—located at 32 N. Westview Avenue—and another property located four doors away on the same street—i.e., 8 N. Westview Avenue—were both zoned as "R2 - Residential."

On September 4, 2012, Respondent/Defendant Lower Southampton Township, enacted Ordinance No. 558, a Zoning Ordinance. Pursuant to that ordinance, a large piece of real estate located to the rear of both 8 and 32 N. Westview Street was zoned as "C2 - Heavy

On June 7, 2016, Respondent/Defendant, Lower Southampton Township filed a Motion to Dismiss.

On June 17, 2016, the District Court conducted a pretrial conference.

On June 21, 2016, the District Court entered an Order finding the Motion to Dismiss to be “moot” and permitting Plaintiff/Appellant to file an Amended Complaint.

On July 15, 2016, Petitioner/Plaintiff filed an Amended Complaint.

On August 5, 2016, Respondent/Defendant filed a Second Motion to Dismiss. On October 5, 2016, Petitioner/Plaintiff filed an Answer to the Second Motion to Dismiss. On November 8, 2016, the District Court conducted Oral Argument on the Motion to Dismiss.

On December 15, 2016, the District Court issued an Order and Opinion dismissing the Amended Complaint.

On January 9, 2017, Petitioner/Plaintiff filed a Notice of Appeal to the Third Circuit Court of Appeals.

On January 9, 2018, the Third Circuit Court of Appeals filed an Opinion in which it affirmed the District Court’s decision.

Petitioner filed a timely Petition for Rehearing, which the Third Circuit denied on March 6, 2018.

elements a plaintiff must plead to state a claim." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011) (citation and internal quotation marks omitted). Then the court must determine if a claim has facial plausibility, a threshold that can be reached only when a plaintiff pleads factual content—as opposed to mere conclusions—allowing the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although the court "must accept the allegations in the [c]omplaint as true, [it is] not compelled to accept unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)) (internal quotation marks omitted).

I. Substantive and Procedural Due Process

Petitioner properly pled the allegation that the Township deprived him of his rights to substantive and procedural Due Process. The District Court held that the public record shows that in 2012, the Township afforded its residents, including Petitioner, with proper notice of the enactment of the Zoning Ordinance:

The public record shows that the Township afforded its residents (including Petitioner) with the constitutionally required fair and due process. Specifically, the

"C2 - Heavy Commercial" or the Township's grant of those variances in 2015. Petitioner alleged that he was never advised of these applications or of the dates and times of the allegedly public meetings at which they would be discussed.

The law provides that state and municipal officials are constitutionally obliged to offer a means by which individuals may challenge zoning restrictions and other adverse land use decisions. *Maple Props., Inc. v. Twp. of Upper Providence*, 151 F. App'x 174, 177-78 (3d Cir. 2005), *citing DeBlasio v. Zoning Bd. of Adjustment*, 53 F.3d 592, 596-97 (3d Cir. 1995); *Rogin v. Bensalem Township*, 616 F.2d 680, 694-95 (3d Cir. 1980). The process that is "due" in a given situation necessarily differs based on the particular circumstances. *Id.*; *see also Rogal v. Am. Broad. Cos., Inc.*, 74 F.3d 40, 44-45 (3d Cir. 1996). At its core, procedural due process is the "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Perano v. Twp. of Tilden*, 423 F. App'x 234, 237-38 (3d Cir. 2011) (upholding the grant of a motion to dismiss a procedural due process claim where there existed adequate state-based "judicial remedies for challenging administrative land use decisions").

Petitioner insisted that he was given no notice of the variance applications and, therefore, no opportunity to be heard to challenge them. Although the Township alleged that it gave the notice required under state law, it did not cite to that law or provide any evidence that it followed its

ordinances that do not classify by race, alienage, or national origin, will survive an attack based on the Equal Protection Clause if the law is " 'reasonable, not arbitrary' and bears 'a rational relationship to a (permissible) state objective.' " *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8 (1974). However, land use regulations must possess a legitimate interest in promoting the public health, safety, morals, and the general welfare of its citizens in order to pass scrutiny. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926) (citation omitted). Land use ordinances will be deemed "irrational" when a plaintiff demonstrates either that the state interest is illegitimate (an ends-focus) or that the chosen classification is not rationally related to the interest (a means-focus). *Congregation Kol Ami v. Abington Twp.*, *supra*, 309 F.3d at 133 (3d Cir. 2002).

Petitioner has alleged that the Township did, in fact, treat similarly-situated properties differently when it granted a variance to build a driveway on the property located at 8 N. Westview Avenue. No such permission was granted to any other property on the street. This Court should agree that Petitioner has alleged that the Township deprived him of his right to equal protection under the law. It should, therefore, grant a Writ of Certiorari.

IV. Takings Claim

The United States Constitution prohibits the government from taking property for public use without just compensation. Property for just compensation purposes means "the group of rights inhering in the citizens' relation to the physical thing, as the right to possess, use and dispose of it." *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). The District Court erroneously dismissed Plaintiff's "takings" claim. Plaintiff insists that by rezoning a neighboring property, the Township has lowered the value of his property and has, therefore, engaged in a "taking." See, e.g., *Bormann v. Bd. of Supervisors*, 584 N.W.2d 309, 311 (Iowa 1998) (holding that when it enacted a statute immunizing farmers from nuisance suits, the legislature exceeded its authority by authorizing the use of property by the applicants in such a way as to infringe on the rights of neighboring landowners by allowing the creation of a nuisance without the payment of just compensation). Similarly, in the case at bar, when it authorized the construction of a townhouse development adjacent to Petitioner's property, the Township lowered the value of his land without the payment of just compensation. This Court should grant a Writ of Certiorari and overturn the dismissal of Petitioner's "takings" claim.