

ShortCircuit259

Fri, May 31, 2024 4:15PM 39:41

SUMMARY KEYWORDS

qualified immunity, case, court, regulatory takings, police, rent, first amendment, talking, property, patrick, live streaming, sued, instance, takings, issue, law, argued, officers, streaming, distinction

SPEAKERS

Anthony Sanders, Suranjan Sen, Patrick Jaicomo

A

Anthony Sanders 00:00

"As a karate expert, I will not talk about anyone up here, because our children cannot afford to live anywhere. Nowhere, there's nowhere to go. Once again, why? You said it, the rent is too damn high." Well, that, as many of you might know, was Jimmy, the rent is too damn high McMillan who ran for Governor of New York. And that was from a debate he gave in 2010. We're going to be talking about issues such as the rent is too damn high later today on Short Circuit, your podcast on the Federal Courts of Appeals. I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. I have with me today a two colleagues of mine from the Institute for Justice, and they are going to be discussing two recent cases one about rent and the takings clause. And that's from the Second Circuit actually two cases that came out same time. The other is about a bit of a different issue, live streaming the police and qualified immunity. And if you know nothing else, except what I just said, and you're a regular Short Circuit listener, you probably know where this is going. So we're going to have one of our qualified immunity experts talking about that in a little bit Patrick Jaicomo, and then we're having we're having back on the show Suranjan Sen. Who is, is going to delve into our takings issues and paying the rent. But first, a couple of announcements. Now, one is, last week, we had a bit of a impromptu competition on decretal language. Now, decretal language has nothing to do with mortuary science. It is what appellate courts say when they like done with the case. And so we had a discussion about what's the difference between a reversal and a vacatur? And then we threw it out to you listeners and said, Well, okay, who's going to tell us the answer, and we'll we'll pick a winner. And I'm very happy to say today that we have a winner. And this person is has some IJ swag being sent to them as as we, as I speak. But I just like to read a couple of notes of what this person had to set. So the person said they're an appellate clerk. And so you have to know about these issues a bit if you're if you're working for an appellate court. And what they had to say is kind of what we said last week, in the the piece by Judge Newman, that we brought up, which is, and I'm reading now, from this email, in a nutshell, I would describe the difference between vacatur and reversal, is that vacatur means you did something wrong, or for some reason, your decision can't stand, cancel it, and go back and do things the right way. Whereas reversal means you did the wrong thing. This is the right thing. And there's nothing more to you for you to do. And this, of course, as the person points out, as we discussed, is kind of something more the reversal way is something more appellate courts do where there's full review of the issue de novo, as we lawyers like to say, whereas if

there's some discretion that needs to be done by the district court by the trial court, then it's more likely to be a vacatur. Like you need a new hearing for evidence, or you need to beat the sentencing of a defendant again, that's what the distinction often comes down to. But of course, it gets as we said, it gets messy. And I like this person says there are lots of areas where judges are sometimes imprecise or sloppy, very well put. So that thank you for playing. I look forward to more Short Circuit competitions in the future. Now something that is not a competition, but that you may want to want to go to if you live in the area are a couple of events that Patrick is actually going to be at. So Patrick, welcome to the show, and tell our listeners in Cleveland and Washington, D.C. how they might come and see you.

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Patrick Jaicomo 05:01

Hey, thank you. I'm here to plug my tour dates. On this Saturday, February 18. I will be in Cleveland, where IJ is hosting a comedy event called comedy is not a crime, to promote the fact that we've been litigating against First Amendment issues that are being thwarted by qualified immunity, which is a theme we'll talk about when I discussed the case earlier later in this podcast. Then, on March 6, Anya and I will be doing two qualified immunity events in the Raleigh-Durham area, one at Duke and the other at Campbell Law. And the day after that, March 7, IJ and Georgetown Center for the Constitution will be co hosting an event promoting qualified immunity giant, UCLA law professor Joanna Schwartz's new book Shielded, that will be a 10am to 5pm symposium talking all about the issues that prevent victims of police abuse from getting accountability from their abusers. So we've got a lot of stuff coming up in the next month or so.

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Anthony Sanders 06:08

I didn't even know about the event in North Carolina. So you really do have have a tour going on? Well, we'll get to Patrick Stewart in a moment. But first, I'd like to just just say hello and introduce Suranjan Sen, who was on with us just a couple of weeks ago and is now back with the takings clause. How're you doing Suranjan?

S

Suranjan Sen 06:29

Hi, Anthony. I'm doing great. And thank you for having me back on here. And hi, everybody.

A

Anthony Sanders 06:35

We'll get to Patrick, in just a moment. Just one more thing. We, we also have this event coming up at the end of end of March that we'll be talking about more. It is on the 100th anniversary of Meyer v. Nebraska. And so we're going to be talking, we're going to be talking about that at the end of March. And you can sign up in a link in the show notes if you live in the D.C. area, or you can catch it on live stream if you do not. Okay, enough of this. We're getting on to the our favorite kind of live streaming, which is live streaming the police. So Patrick, can I do that? And if I do, and it doesn't work out, can I sue the cops?

Well, you can do it, if it doesn't work out, and you might not be able to see the cops. And that's sort of the tension at issue between qualified immunity and the First Amendment, in this case, *Sharpe v. Winterville*. So we're going like I will be in March to North Cackalacky. There police pulled some people over. One of the passengers in the car began live streaming the police interaction. The police tried to grab his phone, they told him he couldn't record they threatened to arrest him, he ultimately stopped recording, and then later filed a lawsuit against the city for its policy of preventing recording and live streaming, and then also sued the individual officers for violating his First Amendment rights. And this is a common way that we see these types of qualified immunity cases play out. But I think it's extremely illustrative of what the problem with qualified immunity is when it comes to constitutional accountability. Because what happened was this. The district court said there was no First Amendment issue here threw everything out granted the officers qualified immunity, but now we're in the Fourth Circuit. They look at this situation. They consider the live streaming of the police to be protected by the First Amendment. They state this very plainly. So that's good news. Thumbs up, they say that you can live streaming the police as a matter of the First Amendment. And the question becomes when you sue the city for its policy preventing live streaming of the police. Can the city then wants the burden flips survive strict scrutiny and explain why its prohibition on live streaming is narrowly tailored to match the appropriate amount of interest here, the court doesn't say whether we're talking about content neutral space speech or, or content focused speech. And I think the answer is clearly the second, but the court doesn't get into that. And here, the main issue, or at least the way that the police have framed it up, is that unlike recording, live streaming presents special concerns to officer safety because it broadcasts potentially the location of where the police interaction is taking place. And that is sort of where a lot of the work is done in this opinion. And what's left when the issue of whether this policy by the police department is or is not actually unconstitutional. So we don't know the answer to that the case is remanded on that point. I do think it's interesting. And we should pause for just a second on this safety of the officers issue, because obviously, this is something that comes up a lot when we're dealing with constitutional violations in the policing context. And the thing that I don't quite understand and the court doesn't have to get into this. Is this argument that somehow letting people know where the police interaction is happening is itself dangerous to police? And the reason that I think that that's particularly odd and the court doesn't pause on this at all? Is that press assumably many, if not most police interactions that involve traffic stops, but probably most arrest or detain moments take place somewhere public where people can see what's happening. And so the thought that the police need to be shielded or their location needs to be shielded is an interesting issue for the courts to say sort of revolves on police safety. And so I think that's something that we'll see come up more in the future as these issues are sussed out. But it's not something that we get an answer to here in *Sharpe*. Now, here's the twist. And here's why qualified immunity is so terrible. Notwithstanding the fact that the court is now just said, This is First Amendment protected activity, live streaming the police during a traffic stop is protected by the First Amendment. It turns out, you can actually enforce that right when it comes to the officers who violated it. And the reason is simple, qualified immunity trumps the First Amendment, just like it trumps many other constitutional rights whenever it applies, and it applies frequently. And the reason is this. The qualified immunity standard protects any government official who violates your rights, unless there's a clearly established law that lets them know, the courts say this provides fair notice that what they did was unconstitutional. And here, the court says, aha, there is clearly established law that says you can't record the police. But there's no clearly established law that says you can't live stream the police. And that distinction is sufficient for us to grant these officers qualified immunity. And we see this time and time and time and time again, where the way that this

always works. And the reason qualified immunity is more or less a doctrine of judicial grace, is that any court could split the hairs finally enough, or pull out far enough on the picture to either grant or deny qualified immunity in a lot of instances. And so, for instance, in the case that is actually going to be discussed on the Supreme Court's conference, probably the day that this airs February 17, called *Novak v. Parma*, which we're litigating. There, a man parodied his police department, they arrested him. He sued them, the court said, Well, of course, parodying itself is a protected speech. But he deleted comments to his parody posts on Facebook. And since there's no case that specifically says deleting comments is protected speech, and we're not going to decide it, the officers get qualified immunity. And that's the same thing that happened here, except, instead of deleting comments, we're talking about live streaming. Now, the interesting thing about this case is that it was well known that this was a live streaming event, he was saying he was on Facebook Live, and the police were interacting with him that way. And they specifically told him, You can't live stream, but you can record but I don't know how workable of a distinction this could be going forward. Because in a lot of instances, it seems impossible for police to be able to tell in the moment whether someone's just recording or whether they're live streaming. But again, that's not something that comes up I think that's going to be an issue in the future. So that's that's the big picture with the actual holding of the case and how the First Amendment protects things that actually turn out to be unenforceable in instances where qualified immunity swoops in and saves the government officials who violated the Constitution from accountability. Another interesting twist, though, in this case, is that we have a two to one decision with an concurrence from Judge Niemeyer. So I guess it's actually a unanimous opinion with a concurrence. But Judge Niemeyer basically, his whole concurrence goes on to say, well, here we have this overlap between the First Amendment in the Fourth Amendment because this recording took place in the context of a traffic stop, where the bystander is known to all police officers is in custody while the vehicle has stopped. And basically, he's saying, when you have this overlap between the First and Fourth amendments like this, he thinks that the Fourth Amendment should essentially control and override the more protected First Amendment. So he argues here, what we should be looking at is whether it was reasonable for the police to stop Mr. Sharpe from live streaming, not whether the issue would overcome strict scrutiny as a matter of the First Amendment. And if that's true, and there's some logic to it, I have to admit, it really does create a concerning situation where your rights are contingent on the context in which the court decides to address them. And so if it's a Fourth Amendment violation, all the police need to show is that they acted reasonably. And I think in the context of stopping someone from live streaming, that's a pretty low bar. But in the First Amendment context, you've got a much, much higher bar, we need to show that this serves some sort of compelling interest. And so that's that's just some food for thought. We've seen this happen in a number of other instances. And I don't think that the courts have really gotten to a satisfactory equilibrium when it comes to how they address competing First and Fourth Amendment violations when they're overlapping into the same factual scenario.

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Anthony Sanders 14:53

Suranjan, when you live stream your interactions with the police does does this happen?

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Suranjan Sen 14:58

One thing that I was wondering about is whether Patrick, does it seem clear from you that the police in this instance actually acted differently because they thought they're being liked live

streamed? Like, how do they know that versus that they're just being recorded?

P

Patrick Jaicomo 15:20

So I believe that the plaintiff was saying, like, we're on Facebook Live there. It doesn't seem from the discussion of the facts. There's no dispute that everyone knew this was being streamed to Facebook Live. And it was almost being said, presumably by the plaintiff as like a prophylactic measure like, Hey, you're being watched?

S

Suranjan Sen 15:36

Okay. And just to clarify for the listeners that the city with regard to their their policy that they had, that you were talking about to be in the getting that isn't that isn't subject to qualified immunity?

P

Patrick Jaicomo 15:53

Correct. And that's sort of the rub in these spaces. So when you're trying to sue a city, you don't have to deal with qualified immunity, because what you're doing is, is arguing the city itself violated the Constitution through a through a doctrine called Monell. But the problem then becomes in those cases, that you have to show that the city's policy directly violated the Constitution, not just that one of its agents did. And here we got over that hurdle with with this case, and so it will continue on that issue.

A

Anthony Sanders 16:18

It seemed like the court was hung up on whether the policy was the police departments, or the cities itself, which is usually not a worry, because the police department is an entity of the city, that if it creates policies, that would be the policy maker, did you follow what the issue was there, Patrick?

P

Patrick Jaicomo 16:44

Yeah so the Fourth Circuit goes into a fair bit of attention on this issue of like what is the actual municipal actor here? Is it the police department? Or is it the city, where the city exists above the police department, the police department works for the city. It didn't draw those distinctions, as far from like a illegally relevant perspective, although we see this happen occasionally, where the courts will say, Oh, you know what, you sued the police department, but actually, who you should have sued was the city and since you didn't, you're going to lose. And here here, I don't think that there was any loss in the case, the court just kind of treated them like this, and sort of in an academic sense, commented on these distinctions. But that is something that comes up a lot. And because here, the officers were sued in their official capacity, which is sort of the pass through mechanism that you can get to the municipal actor, if you don't name them directly, although they did name the police department in the case. Another thing I need to point out is that IJ did file an amicus in this case, shout out to Tori Clark

and Will Will Aronin. And Tori actually just argued in the Eighth Circuit this morning. So shout out to her for that, and a great judicial immunity, Amicus capacity. But yeah, we have been highlighting these problems. And I want to zoom in on one last thing, which is one of the ways that you can show something's clearly established is through not controlling but consensus of persuasive authority. So here, we argued, well, there's six circuits that have said, recording the police is protected by the First Amendment that should have been good enough to let these officers know that they couldn't do this. And that is the argument that the court distinguished by saying actually, live streaming ain't recording. So that's enough of a difference for us. And that means the officers get the immunity.

A

Anthony Sanders 18:25

I should point out listeners may have heard a couple times a police siren in the background while Patrick was talking. That is not an interaction he is having with police. But because our headquarters where he is is blessed with a number of emergency vehicles that go by quite quite regularly.

P

Patrick Jaicomo 18:45

I don't believe in I don't believe in coincidences, Anthony.

A

Anthony Sanders 18:48

We'll leave that to I think our listeners imagination. But I do have one question. That's a bit of a devil's advocate question. But I think the court could have used it in sorting out what its thoughts are on this. And that's that. So they said live streaming, you know, is just different than recording. Because you can, you could you could bring up to the current location. And then I don't know you'd have a troop of you know, peasants with pitchforks, come and help you out or whatever. It's Elon Musk's assassination coordinates. I hadn't thought of that. But what if there was a rule? How would this come up if there was a rule that you can't like call somebody while you're having a police interaction, which I think is a much I mean, that's been around for a while longer than there's been Facebook Live. So how has that been treated? Either in the case law or just like what is the usual policy because I could see more like Don't be on the phone right now. You need to talk to me, you can call when I go back to my squad car and you know, whatever. And that really falls within a Fourth Amendment bucket than a First Amendment bucket. Because right you're not "broadcasting," you're just you're just talking to, you know, probably a family member or whatever.

P

Patrick Jaicomo 20:13

Yeah, I don't know what the law looks like in that space to be honest with you. But I do think this is goes exactly to what Judge Niemeyer's concurrence was getting at, we have all these ways that we're able to restrict people's rights. For instance, he says, you know, if if police are detaining you, for some reason, and you have a lawful firearm, they can take that away from you. And we don't consider that an independent Second Amendment violation, as long as it's reasonable within the confines of the Fourth Amendment. And he's saying essentially, the same

thing should apply when we look at recording. And I think that would have been a better example, for him to say, instead of live streaming, what if you were just saying, Hey, you're calling people, you get to have your cell phone and call people even though you're being detained? And I do think those are difficult questions that are not clear from the operation of the way the First and the Fourth amendment or the Second Amendment for that matter, interact. And so we don't really know but but like you said, I mean, you could see the argument going, well, if I'm allowed to live stream to an unknown number of people, why am I not allowed to get on the phone with my mom? And I don't have a good answer for that right off the top of my head.

A

Anthony Sanders 21:15

On top of all of this, the reason why we're even talking about it is because of qualified immunity, the actual constitutional issues are much more simple, which sounds weird, but unfortunately, it's true.

P

Patrick Jaicomo 21:30

I think that's a good point to just emphasize before we move on, which is, if we just looked at the constitutional issues, we could decide them. But instead, we have to go through this weird gloss that sits on the top of them, that doesn't necessarily have anything to do with the constitutional violations. And that's where we spend all of our time and effort. And I think it really is a distraction from the development of the law in a way that's not really helpful to anybody.

A

Anthony Sanders 21:54

Something else that isn't helpful to much of anybody is rent control. Now rent control sounds good, because it keeps your rent controlled, especially if you think the rent is too damn high. But unfortunately, just about everyone these days, who's on the outside agrees that it has all this permission effects. We're not going to go into like all the economic stuff. But there's, there's all kinds of things you could read by economists across the board about why rent control is a bad idea. But we're going to talk today about the constitutional dimensions of it and how it's practiced in New York City. So Suranjan over to you in the Second Circuit, it seems when it comes to rent control on property, right?

S

Suranjan Sen 22:38

That's right, Anthony. So today we're going to talk about a pair of cases. One was the facial challenge. And one was an as applied challenge to New York's rent stabilization law or RSL, one large facet of New York's rent price control scheme. And they were takings challenges and due process challenges. But it's gonna require maybe a little bit of a background on on the takings context here. So of course, anybody's familiar with the work that IJ has done knows very much about eminent domain work stuff like like Kelo, where we all know that we're within the realm of takings, and it's just a question of is this a proper taking? Or is this is this the right amount of money is this, can the government take this property, but then there's in the realm of inverse

condemnation, you might call it, or what is another name for it is when the government is trying to do something, or has done something and the property owner says, Hey, this is, is a taking, effectively, that you you can't do without paying me money. And so if you've authorized somebody to, you know, occupy my property indefinitely, or if you've destroyed something, if you see something, you know, for the public good, and I'm an innocent owner, then you're supposed to to pay me. And so we have these cases that are, are more like, from the structure and context of like flood control cases and starch and in seizure cases. But then we have these cases that are called regulatory takings, which go from the early 20th century when, in these in a case, that was a Justice Holmes case in the 1920s, about when a regulation might be so onerous or be so restrictive on the property owner that it effectively is taking your property without compensation and in violation of the Fifth Amendment. And so with these cases here, they were arguing basically it's an interesting area of the law because it's rent control. And so there's elements of both a physical occupation and also a regulation. And so these these these plaintiffs were able to argue that these rent control laws, both were physical takings and regulatory takings, whichever way you slice it. And basically what these in starting in the after the World Wars, New York City had created this Rent Standards Board that would determine what permissible prices you could charge in rent, what would be permissible price increases every year. And they would look at various factors in the market, how much they thought was a reasonable rate of return, they would give landlords certain amount of allocations for property improvements, they had these various ways that you could sort of, graduate out of the rent, if you if the tenant started earning more than a certain amount of money, to where basically by now, it applies only to certain buildings in the city doesn't apply at all, all buildings, I think it's just buildings are built before some time in the 70s. And then to only like a certain network of units within those buildings, because of the way that some of them had graduated out of it. But there were ways basically, that if you were renting one of those controlled units, you could rent it indefinitely, at the rent controlled price. And then you would also have rights to renew it pretty much indefinitely, except for a few certain situations, like if you defaulted, or whatever they have. They amended the law recently, to remove even some of those ways that you could graduate out of it through like in earning more of income, or certain ways that owners could convert the properties back to their own use, or deregulate them, get them out of the rent control market. And so these two groups sued, saying that this, this was basically requiring them to submit to indefinite physical occupation of their property, which was basically giving up their property to a physical occupation. And then conversely, that it was violating the regulatory takings doctrine, because they had just gone too far was too restrictive on their ability to earn from their investments. The courts, basically in the facial claim, one said that they couldn't meet the standard of showing that it was unconstitutional in every single instance, they didn't buy the physical occupation argument is because there's a couple of ways that owners could still could still get out of lease like like, theoretically if they defaulted on the rent. There's a couple that because they didn't, in every instance, require an occupation. It wasn't a facial per se taking.

P

Patrick Jaicomo 28:06

And I thought, there was this crazy portion there. That's for anyone who doesn't live in New York City is shocking, which is that you don't realize that people can essentially inherit these rent controlled apartments. And so a lot of this analysis, is the court saying, Well, you invited them in you selected these people, essentially, the vampire theory of occupation, you invited them in, and now their whole family for eternity essentially, could theoretically continue inheriting these places.

S

Suranjan Sen 28:39

There's a couple of recent Supreme Court cases that strengthen the idea of physical takings, and when when an occupation when the government requires that you allow somebody to stay on your property, when that can be the government can't do that, or at least has to pay you for it. And basically, the courts analysis rested, like you said, Patrick, on, well, you, at one point, sign one lease with them, and therefore, basically, you're stuck. You can be stuck. practically forever.

P

Patrick Jaicomo 29:09

Yeah it's interesting. They didn't talk much about it. But you kind of draw this distinction when they talk about Cedar Point, for instance. And they say like, well, obviously the government can't force you to accept people to come into your property in the first instance, without it being a taking. But as soon as you open that door and let them in, like, getting them out, that's basically not for us to weigh in on from the takings perspective.

S

Suranjan Sen 29:29

Yeah. And then the regulatory taking side again, they faulted them for bringing the facial claim for saying, we're using regulatory takings doctrine, which I'm not gonna get all toward all the factors, the regular takings actions just now or just at any way that they required you to look at its effect on any given property and its effect at any given investors expectations and that you you effectively can't really do that with regulatory takings jurisprudence and then with the law as applied they fault them for basically not being even more specific with some of these provisions. And it was it a lot of it really, it was a whole mess. I think that the case could be a good vehicle for the Supreme Court to clean up some of its takings jurisprudence here, because you first this Supreme Court seems to be more willing to do some of that cleanup work just in the last few years. They've gotten rid of some really asinine procedural hurdles that they cleaned up just in the last few years. And what this case really goes down I think, on especially the regulatory taking side, is that it shows why the Penn Central Test, which was test from the 1970s, just needs to be revamped on the regulatory taking side to look at the character of the governmental action needing to really control here, because the way I look at it here is that if you look at regulatory takings, as being just the government is trying to commandeer your property through ways other than just directly through indirect means, what's going on here in New York is that they're trying to have private property owners provide a form of public housing. And the problem is that we know that on the one hand government needs to be able to define the boundaries of landlord tenant relations and protect tenants, potentially vulnerable tenants, that there is a line somewhere where that turns into trying to just conscript housing for public use.

P

Patrick Jaicomo 32:05

So Suranjan, the thing that kind of struck me and I'm wondering what you think is, you read the Community Housing Case, which is the facial case, and they go through all this analysis about, how this facial standard is so high, you have to show basically, in almost every instance, this

would be unconstitutional. And then you jump to the other case, where that's not an issue. And they're like, Oh, you still lose for all these 10,000 reasons. So like, what, why are we going through this ridiculous rigmarole to be like, well, you know, the official standards very difficult to meet. And then of course, in the case, when it doesn't apply, they're like, Oh, well, you still lose for reasons one through 25.

S

Suranjan Sen 32:38

I think, again, it's problems with these regulatory takings cases where there's one of the prongs that they lost on for the as applied challenge was a ripeness problem, because there was a hardship exemption that they could, that they could ask to change. And I think part of the problem is, I'm trying to avoid talking about the factors that regulatory takings analysis. You need to so you have the these three factors called the character of the governmental action, and then the reasonable expectation of investments returns being second factor. And then the third is the the economic impact on the property owner. And I think that what this case could be used to establish is that really what matters is the character the governmental action, because really, what a lot of the court is saying through here is that you can't you have to show with each individual property, what the economic impact was on each individual property. And it's really saying you can only apply just as just each property owners basis, to say what the effect has been on this property determine if it's gone too far for regulatory takings case?

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Patrick Jaicomo 33:49

I thought it was interesting and kind of amusing, in the expectations context where the court citing, you know, Amicus briefing and other court decisions, more or less as the sort of scorpion and the frog approach to New York City, landlord ownership, which is like, you knew the scorpion was a scorpion when you gave it a ride across your back. And so you should have expected that they would screw you over at some point, because that's just how New York landlord tenant law works.

A

Anthony Sanders 34:16

It wasn't just that, like the city's a bad place to invest. You should have known that it was like, not only are the laws when you bought the property bad, but you knew they were going to make them worse in the future, because it's New York, come on. And so that actually goes into the analysis.

P

Patrick Jaicomo 34:31

It was very much like your expectation here should have been that the law would have been incredibly volatile and changing all the time and that you couldn't rely on anything.

S

Suranjan Sen 34:41

I've heard the criticism that the courts, regulatory takings jurisprudence, really sounds like some sort of due process jurisprudence, and and it would be nice to see the court really try to

some sort of due process jurisprudence, and and it would be nice to see the court really try to make the distinctions between between the two a little more clear in this kind of regard, because you're right, like the fact that you should have known that we are a place that doesn't really care about property rights shouldn't therefore mean that you lose property rights.

A

Anthony Sanders 35:13

I mean, it is in the United States. So you would think there'd be some some kind of protection there.

P

Patrick Jaicomo 35:18

It seems like not. We've just we can't untie the Gordian knot here. So, you know, it's New York City, if you can make it there, you can make it anywhere, but you might not be able to make it there.

A

Anthony Sanders 35:28

Well I do remember when one of these cases was filed. Probably about two, three years ago now. Don't quote me on that. And I think I, I remember hearing from the attorneys at the time, they kind of knew they would lose at the Second Circuit. And when it they got that far. And so I think, you know, this is in the long run for this case, it's either going to be a footnote, it's another challenge to rent control. There's been many others before as the court, it is happy to point out in its ruling, but it's not really set up for the Second Circuit, the rule on perhaps to have the Supreme Court take a stab, as you said, Suranjan. So we will see if we'll how high I'm sure they will try to get higher, but how high this case gets in the coming months. So we'll keep watch on that case. It may get too damn high in some people's minds.

P

Patrick Jaicomo 36:35

Well, I have a criticism of this opinion to the Community Housing decision. The court takes 22 pages before it tells you what it's doing in the case. So to very careful readers, there's kind of like this little synopsis at the beginning that says we affirm but that's it doesn't, in its opinion, tell you until page 22 what it's doing. And I find that very frustrating as a as a reader of court opinions, especially if it's your case that comes out, first thing you want to do is click it open, see what happened here, you got to read the whole darn thing before you have any idea of what the court is actually holding?

S

Suranjan Sen 37:13

Well I think if you read through the whole main part of the opinion, or the factual background, it gives more of just a history of this. And its emphasis is that you know, that New York City that lots and lots of people have done have have looked at this. And we're not going to like, we're not going to start messing with it now.

P

Patrick Jaicomo 37:32

All I'm asking for is a roadmap in the intro that says here's what we're doing. And here's why. And then they can spend 20 pages explaining.

A

Anthony Sanders 37:38

Yes, something I have become more very much a believer in recent years that I probably should have believed better when I actually helped write opinions in my clerkship, is opinions are not mystery novels, you put at the beginning what's going to happen, you even put a little reasoning in the first couple paragraphs, and then you go on. Even at the Supreme Court, there are certain Justices you read opinion, you don't after the first couple paragraphs, you do not know even what's like even where the arrow is pointing in reversed or affirmed or vacated. And so you get, you know, like two thirds of the way through the opinion, it's not that hard to put it in a paragraph or two at the beginning. This isn't Agatha Christie, you can save it for that genre, if you want to write that way. But if you're writing an opinion, it can be a great opinion with all kinds of you know, snappy pop culture references even, but just have a little roadmap. As Patrick says.

P

Patrick Jaicomo 38:41

We're singing from the same hymn book here.

A

Anthony Sanders 38:44

All right. Well, I think this sermon is over. Thank you guys for coming. I think you're right the rent is too damn high. But that's why you all should be YIMBYs. And Patrick's also right that we have a right to live stream to police. So go follow Patrick on his roadshow if you guys are roadies, and you want to bring him some snacks or beer or whatever it is.

P

Patrick Jaicomo 39:14

No, no brown m&ms in the bowl.

A

Anthony Sanders 39:16

Okay, got that and everyone else. We will see you next time. And in the meantime, I hope that all of you get engaged.