

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 99–2047

ANTHONY PALAZZOLO, PETITIONER *v.*
RHODE ISLAND ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE
ISLAND

[June 28, 2001]

JUSTICE BREYER, dissenting.

I agree with JUSTICE GINSBURG that Palazzolo’s takings claim is not ripe for adjudication, and I join her opinion in full. Ordinarily I would go no further. But because the Court holds the takings claim to be ripe and goes on to address some important issues of substantive takings law, I add that, given this Court’s precedents, I would agree with JUSTICE O’CONNOR that the simple fact that a piece of property has changed hands (for example, by inheritance) does not always and *automatically* bar a takings claim. Here, for example, without in any way suggesting that Palazzolo has any valid takings claim, I believe his postregulatory acquisition of the property (through automatic operation of law) by itself should not prove dispositive.

As JUSTICE O’CONNOR explains, under *Penn Central Transp. Co. v. New York City*, 438 U. S. 104 (1978), much depends upon whether, or how, the timing and circumstances of a change of ownership affect whatever reasonable investment-backed expectations might otherwise exist. Ordinarily, such expectations will diminish in force and significance—rapidly and dramatically—as property continues to change hands over time. I believe that such factors can adequately be taken into account within the *Penn Central* framework.

Several *amici* have warned that to allow complete

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regulatory takings claims, see *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003 (1992), to survive changes in land ownership could allow property owners to manufacture such claims by strategically transferring property until only a nonusable portion remains. See, e.g., Brief for Daniel W. Bromley et al. as *Amici Curiae* 7–8. But I do not see how a constitutional provision concerned with “fairness and justice,” *Penn Central*, *supra*, at 123–124 (quoting *Armstrong v. United States*, 364 U. S. 40, 49 (1960)), could reward any such strategic behavior.