

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 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.