Murr v. Wisconsin was a sleeper case decided by the Supreme Court last June. But it deserves a lot more attention than it has gotten. As I discuss in a new paper, *Murr* was a major defeat for property rights advocates and a big win for land use planners and environmentalists.

Murr has escaped much notice for two reasons. First, the facts were undramatic, involving a dispute about whether one of two adjoining lots on the shore of a river could be separately developed. Second, the main issue in the case was seemingly very technical, relating to what's called the "denominator problem" in takings law.

Before getting to the technical issues in the case, let me explain why the case was so important. A key factor in determining whether a regulation constitutes a "taking" of property is the impact of the property's value. For instance, if the property value goes down to zero, there's almost always a taking. *Murr* makes it harder for the owner to show a big loss of value. This issue could be important, for instance, when the government tries to limit what lots a big developer can build on near wetlands or coastal waters. The decision also addressed on a number of other issues, resolving all of them against the property owner. The terrain just got tougher for property owners challenging regulations. There is availability of waterfront homes for sale fort lauderdale as well.

In a way, the dissents were as bad for property rights advocates as the majority opinion. All three dissenters joined Chief Justice Roberts' dissent, which came out the other way on the valuation issue. But what's striking about the Roberts opinion is that it accepts so much of the conceptual framework of the majority opinion. It endorses the role that the baseline consists at a minimum of an entire lot, not portions of the owner's property rights. It endorses and praises the *Penn Central* balancing test – that's the default test for takings and its very unfavorable to property owners. It even indicates that the dissenters would only rule for the Murrs on this one issue but would probably rule for other reasons that there was basically no taking by the government. Justice Thomas's dissent was almost worse for property owners. While he joined the Roberts dissent, he also indicated that he might be ready to rethink the whole area of law, possibly exempting the federal government from property rights restrictions on its regulatory power. With friends like these, the property rights movement hardly needs enemies.

For those who are interested, here is a quick rundown of the doctrinal issues before the Court and how they were resolved in *Murr*:

1. When an owner possesses multiple tracts of land and only one is impacted by a regulation, is the relevant subject of analysis all of the lots or just the impacted one?

(This is the famous "denominator" problem I mentioned earlier.) The majority's answer is basically that it depends on the circumstances," whereas the dissent said only the impacted lot, apart from exceptional circumstances. On the facts of the case, the majority included an adjoining lot; the dissenters did not.

2. When determining the amount of value retained by the owner despite a regulation, should the analysis include only the impacted lot or also adjoining lots? The majority said the adjoining lot should also be included. So did the dissenters.
3. If an owner acquires property after a regulation is already in place, can that impact a possible takings claim? The majority says yes; the dissent also says yes, though less firmly.
4. Is it relevant in determining a takings claim that a regulation protects an important government interest? The majority finds it relevant, as does the dissent (though again, a little less firmly).
5. Is it at all troubling that the large majority of takings cases are decided under a multi-factored, ad hoc analysis (the *Penn Central* test) that often favors the government? The majority and dissenters are happy to accept the ad hoc analysis.

Would changes in the Court's membership change the result? Possibly. Justice Kennedy wrote the opinion of the Court, joined by the four liberals. Gorsuch did not participate, but his vote would not have changed the result. If Trump gets to replace Kennedy or another member of the majority, it's possible that the case could be at risk of being overruled. But the swing voter would then be Chief Justice Roberts. His dissent is strong but not impassioned, so it's not clear that he cares enough about the issue enough to vote for overruling. And even if the holding is overruled, Roberts clearly has no problems with *Penn Central* and not great desire to remake takings law. Thus, it would probably take multiple new appointments before property rights advocates could anticipate a major shift in their direction.

The Court has never been completely consistent in its rulings about regulatory takings, and it probably won't be in the future. We can expect to see individual rulings from time to time that will raise the hackles of regulators and environmentalists. But it seems unlikely that we will see, at least any time soon, a major onslaught that would challenge the overall constitutionality of land use and environmental regulations.