Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LINGLE, GOVERNOR OF HAWAII, ET AL. *v*. CHEVRON U. S. A. INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–163. Argued February 22, 2005—Decided May 23, 2005

Concerned about the effects of market concentration on retail gasoline prices, the Hawaii Legislature passed Act 257, which limits the rent oil companies may charge dealers leasing company-owned service stations. Respondent Chevron U. S. A. Inc., then one of the largest oil companies in Hawaii, brought this suit seeking a declaration that the rent cap effected an unconstitutional taking of its property and an injunction against application of the cap to its stations. Applying *Agins* v. *City of Tiburon*, 447 U. S. 255, 260—where this Court declared that government regulation of private property "effects a taking if [it] does not substantially advance legitimate state interests"—the District Court held that the rent cap effects an uncompensated taking in violation of the Fifth and Fourteenth Amendments because it does not substantially advance Hawaii's asserted interest in controlling retail gas prices. The Ninth Circuit affirmed.

Held: Agins' "substantially advance[s]" formula is not an appropriate test for determining whether a regulation effects a Fifth Amendment taking. Pp. 6–19.

(a) The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property. See, *e.g.*, *United States* v. *Pewee Coal Co.*, 341 U. S. 114. Beginning with *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, however, the Court recognized that government regulation of private property may be so onerous that its effect is tantamount to a direct appropriation or ouster. Regulatory actions generally will be deemed *per se* takings for Fifth Amendment purposes (1) where government requires an owner to suffer a permanent physical invasion of her property, see *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, or (2)

Syllabus

where regulations completely deprive an owner of "*all* economically beneficial us[e]" of her property, *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003, 1019. Outside these two categories (and the special context of land-use exactions discussed below), regulatory takings challenges are governed by *Penn Central Transportation Co.* v. *New York City*, 438 U. S. 104, 124. *Penn Central* identified several factors—including the regulation's economic impact on the claimant, the extent to which it interferes with distinct investment-backed expectations, and the character of the government action—that are particularly significant in determining whether a regulation effects a taking. Because the three inquiries reflected in *Loretto*, *Lucas*, and *Penn Central* all aim to identify regulatory actions that are functionally equivalent to a direct appropriation of or ouster from private property, each of them focuses upon the severity of the burden that government imposes upon property rights. Pp. 6–10.

(b) The "substantially advances" formula is not a valid method of identifying compensable regulatory takings. It prescribes an inquiry in the nature of a due process test, which has no proper place in the Court's takings jurisprudence. The formula unquestionably was derived from due process precedents, since *Agins* supported it with citations to *Nectow* v. *Cambridge*, 277 U. S. 183, 185, and *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 395. Although *Agins*' reliance on those precedents is understandable when viewed in historical context, the language the Court selected was imprecise. It suggests a means-ends test, asking, in essence, whether a regulation of private property is *effective* in achieving some legitimate public purpose. Such an inquiry is not a valid method of discerning whether private property has been "taken" for Fifth Amendment purposes. In stark contrast to the three regulatory takings tests discussed above, the "substantially advances" inquiry reveals nothing about the *magnitude or character of the burden* a particular regulation imposes upon private property rights or how any regulatory burden is *distributed* among property owners. Thus, this test does not help to identify those regulations whose effects are functionally comparable to government appropriation or invasion of private property; it is tethered neither to the text of the Takings Clause nor to the basic justification for allowing regulatory actions to be challenged under the Clause. Moreover, the *Agins* formula's application as a takings test would present serious practical difficulties. Reading it to demand heightened means-ends review of virtually all regulation of private property would require courts to scrutinize the efficacy of a vast array of state and federal regulations—a task for which they are not well suited. It would also empower—and might often require—courts to substitute their predictive judgments for those of elected legislatures and expert

Syllabus

agencies. Pp. 10–15.

(c) The Court's holding here does not require it to disturb any of its prior holdings. Although it applied a "substantially advances" inquiry in *Agins* itself, see 447 U. S., at 261–262, and arguably in *Keystone Bituminous Coal Assn.* v. *DeBenedictis*, 480 U. S. 470, 485–492, it has never found a compensable taking based on such an inquiry. Moreover, in most of the cases reciting the *Agins* formula, the Court has merely assumed its validity when referring to it in dicta. See, *e.g., Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U. S. 302, 334. Although *Nollan* v. *California Coastal Commission*, 483 U. S. 825, 834, and *Dolan* v. *City of Tigard*, 512 U. S. 374, 385, drew upon *Agins*' language, the rule those cases established is entirely distinct from the "substantially advances" test: They involved a special application of the "doctrine of unconstitutional conditions," which provides that the government may not require a person to give up the constitutional right to receive just compensation when property is taken for a public use in exchange for a discretionary benefit that has little or no relationship to the property. *Ibid.* Pp. 16–18.

(d) A plaintiff seeking to challenge a government regulation as an uncompensated taking of private property may proceed by alleging a "physical" taking, a *Lucas*-type total regulatory taking, a *Penn Central* taking, or a land-use exaction violating the *Nollan* and *Dolan* standards. Because Chevron argued only a "substantially advances" theory, it was not entitled to summary judgment on its takings claim. Pp. 18–19.

363 F. 3d 846, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion.