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FOREWORD

In late 2009, the Supreme Court granted certiorari to address whether a court's ruling could amount to a taking of private property. In other words, could a court, like a legislature, take one's property without providing just compensation? "Judicial takings"—a topic that has long perplexed the academic and legal communities—is the moniker given to those cases that appear to rest on uncertain precedent and result in a dramatic change in a property owner's rights. To the disappointment of many, however, the U.S. Supreme Court left the issue of judicial takings largely unresolved. In *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, the Court unanimously held (8–0) that the Florida Supreme Court's ruling did not result in a taking of Florida property owners' land because the ruling was consistent with preexisting state property law. Although the Court may have resolved the narrow issue in the case before it, many feel that broader questions raised by *Stop the Beach Renourishment* remain unanswered. Participants in the *Duke Journal of Constitutional Law & Public Policy's* sixth annual symposium attempted to identify and provide insight into these unresolved issues. This issue—*Judicial Takings: Exploring the Boundaries of the Fifth Amendment*—is the product of that symposium.

The articles in this issue, like the symposium's panel topics, explore the idea of judicial takings and the implications for courts recognizing their existence. As in the Supreme Court's plurality opinion in *Stop the Beach Renourishment*, these articles respond to the ramifications generated by the Florida Department of Environmental Protection's efforts to "renourish" the Florida coastline. After years of erosion, the Department decided to rebuild the beaches by dredging sand and creating new dry land. Florida claimed that it, as opposed to the beachfront residents, now owned the new dry land that lay adjacent to privately owned properties. An association of Florida property owners, Stop the Beach

Renourishment, Inc., sued the Department, alleging that Florida's appropriation of the new dry land resulted in a taking of their property by the legislature. When the Florida Supreme Court held that the property owners did not, in fact, have a right to this land, the property owners appealed to the U.S. Supreme Court, arguing that now the state judiciary, in addition to the legislature, had taken what was rightfully theirs.

That Court, however, did not agree. In June 2010, the Supreme Court affirmed, holding that the Florida Supreme Court did not take its residents' property without just compensation in violation of the Fifth and Fourteenth Amendments. Despite an endorsement of the notion of judicial takings by a plurality of the court, the Court failed to provide a majority opinion (or any opinion at all) on many aspects relevant to the case: Does the Takings Clause in fact apply to all three branches of the government? What standard of review should federal courts use to evaluate a claim that a state court has misapplied a question of its own property law? Each article in this edition attempts to explore more deeply the doctrine of judicial takings and to ask why the Supreme Court may have reached the proper result, but for the wrong reasons.

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