
Post-enactment Owners

- Distinct investment-backed expectations
- Background principles of state property law – “inhere in the title itself”
- Notice
- Remember the public trust doctrine

Palazzolo v. Rhode Island Cont’d

Penn Central Analysis

- Lucas
- “Few crumbs of value”/token interest?
- Proper denominator in takings fraction (“conceptual severance”)
- Petitioner’s new argument
Palazzolo v. Rhode Island Cont’d

Justice O’Connor’s Concurrence

• What role should timing (enactment of law v. acquisition of property) play in the Penn Central analysis?

• The regulatory regime in place at the time of acquisition helps to shape the reasonableness of the investment-backed expectations.

• Still only one factor among several - not dispositive.

Palazzolo’s Land in Westerly, Rhode Island on Winnapaug Pond

- Supreme Court of South Carolina
- U.S. Supreme Court
- Texas Private Real Property Rights Preservation Act
- Public Trust Doctrine

Texas Private Real Property Rights Preservation Act

- “Take Back Texas Day”
- Takings Impact Assessment
- Exceptions
- SOL
- Remedies
- Legal Costs
Texas Private Real Property Rights Preservation Act Cont’d

Bragg v. Edwards Aquifer Authority

• TIA

• “action taken by a political subdivision: . . . under the political subdivision’s statutory authority to prevent waste or protect rights of owners of an interest in groundwater” § 2007.003(b)(11)(C)

• “an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law” § 2007.003(b)(4)


Moratoria

• Facial attack

• Temporary prohibition on development

• Lucas?

• Normal permitting delays
**Tahoe Cont’d**

**Segmentation**

- Physical – geographic, metes and bounds
- **Temporal** – terms of years, perpetuity
- Functional – permitted uses
- *First English?*

**Tahoe Cont’d**

**Categorical Rules**

- Physical Invasion – *Loretto*
- [Permanent] Deprivation of all economically viable uses – *Lucas*
- A new rule? *Temporary* deprivation of all economically viable uses – *Tahoe?? NO.*