
Post-enactment Owners

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

Palazzolo Cont’d

Penn Central Analysis

• Lucas
• “Few crumbs of value”/token interest?
• Proper denominator in takings fraction (“conceptual severance”)
• Petitioner’s new argument
Palazzolo 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.

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

The site >

- 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)

*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,*


*Moratoria*

- Facial attack
- *Temporary* prohibition on development
- *Lucas?*
- Normal permitting delays
Tahoe Cont’d

Segmentation
• Physical
• Temporal
• Functional
• First English (case for next class)?

Tahoe Cont’d

Categorical Rules
• Loretto
• Lucas
• A new rule in Tahoe???
Palm Beach Isles Associates v. United States, 208 F.3d 1374 (Fed. Cir. 2000), p. 362

What is the Correct Denominator?

\[
\frac{50.7}{50.7} = 100\%
\]

\[
\frac{49.3}{50.7} = 97\%
\]

\[
\frac{50.7}{311.7} = 16\%
\]

Palm Beach Isles Cont’d

Background Principles of Law

• Wetlands protection - Clean Water Act
• Loveladies’ Timing
  • Property acquisition and development
  • Enactment and implementation of regulation
Palm Beach Isles Cont’d

Background Principles of Law
• Navigational servitude – Rivers and Harbors Act
• Commerce Clause
• Navigational purpose
• Remand

Segmentation

Let Us Recount the Ways
• Pennsylvania Coal
• Tahoe
• Palm Beach
125 S.Ct. 2074 (2005) (optional)

Clarification on Takings

• Agins v. City of Tiburon
• Imprecise
• Doctrinally untenable
• Practical difficulties

Lingle Cont’d

Takings Theories Post-Lingle

• Loretto
• Lucas
• Penn Central
• Nollan and Dolan
Stop The Beach Renourishment, Inc. v. Florida Dep’t of Environmental Protection
1305 S.Ct. 2592 (2010), p. 370

Beach Restoration as Taking?
- Beach and Shore Preservation Act (1961)
- Littoral property
- State-owned land
- Accretion
- Avulsion

Lucas Exception
- Florida property law principles
- Right to fill
- Avulsion (even if interrupting littoral owner’s contact with water)
- Burden of proof
Stop The Beach Renourishment, Inc. Cont’d

Judicial Takings?
• fair and substantial basis
• unpredictability test
• Concurring opinions – issue need not be reached.