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Foundational Land Use Law Cases

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The following summaries of major land use cases in the U.S. were compiled by Planning and Law Division Daniel J. Curtin Fellow David Gest (Spring 2007) and updated in 2018 by Planning and Law Division Daniel J. Curtin Fellow Matt Norchi (Spring 2018) and Planning and Law Division Chair-Elect Evan J. Seeman.

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Pennsylvania Coal Co. v. Mahon

260 U.S. 393 (1922)

Facts
In 1878, Pennsylvania Coal Company granted a deed to homeowner Mahon for all surface property rights, but expressly reserved the right to mine coal beneath the surface, with Mahon waiving all rights to any damages caused. Mahon sued under Pennsylvania's Kohler Act (1921), which forbade mining activities that caused any homes to subside.

Discussion
The court focused on the constitutionality of the Kohler Act. Reviewing property rights broadly, it maintained that "[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." However, the court argued that since Mahon was only a single property owner, "A source of damage to such a house is not a public nuisance. ... The damage is not common or public." Therefore, "the statute does not disclose a public interest sufficient to warrant so extensive a destruction of the defendant's constitutionally protected rights."

Holding
The court held that the Kohler Act did not constitute an exercise of legitimate police power, because it would prevent the property owner (in this case, Pennsylvania Coal, the subsurface property owner) from its right to gain profit from the use of its property (by mining coal). In other words, "To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it." According to the court, "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."

Significance
For the first time, the U.S. Supreme Court indicated that regulation of land use, including regulation that destroys the economic value of a property, might constitute a taking.

Village of Euclid v. Ambler Realty Co.

272 U.S. 365 (1926)

Facts
In 1922, Euclid, a suburb outside of Cleveland, adopted "a comprehensive zoning plan for regulating and restricting the location of trades, industries, apartment houses, two-family houses, etc., the lot area to be built upon, the size and height of buildings, etc." Ambler Realty claimed that the zoning ordinance as applied to its individual property (which would mostly allow only residential, as opposed to industrial, uses) violated its constitutional property rights, and constituted an attempt to restrict and control the lawful uses of its land by confiscating and destroying much of its value.

Discussion
The court reviewed the history of nuisance law and zoning ordinances, the latter of which had been in effect throughout the country for about 25 years. Asserting that "[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard," the court supported deference to the legislative, arguing that generally "[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Although a zoning ordinance that is intended to restrict the location of nuisances may in fact also restrict non-nuisance properties, the court said that it is difficult to define what exactly constitutes a nuisance (e.g., an apartment building can be considered a nuisance if it causes increased traffic and noise), and this regulation of uses generally falls within the police power.

Holding
For a zoning ordinance to be declared unconstitutional, it must be clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. For claims such as Ambler's, which protest the general validity of the zoning ordinance, the court will defer to the legislature, although complaints about specific provisions of an ordinance may prove unconstitutional.

Significance
Established zoning as a valid exercise of police power by local government that in general does not violate the constitutional protection of the right to property.

Golden v. Planning Board of Ramapo

285 N.E.2d 291 (N.Y. 1972)

Facts
The Town of Ramapo, New York, enacted a concurrency ordinance prohibiting any proposed development unless developers obtained a special permit. Permits were awarded based on a point system that took into account available municipal facilities in the development area, including sewerage, drainage, roads, firehouses, park and recreation space, and public schools. The ordinance was designed to phase development over time — as long as 18 years — although developers could accelerate the approval process by constructing their own infrastructure. Golden protested the denial of a special permit to construct a residential subdivision.

Discussion
After confirming that the ordinance was permissible under the local zoning enabling act, the court asserted that the "restrictions conform to the community's considered land use policies as expressed in its comprehensive plan and represent a bona fide effort to maximize population density consistent with orderly growth." Furthermore, the court argued, the temporary nature of the growth controls allowed properties to be put to profitable uses within a reasonable time, meaning that the permit system did not qualify as a form of confiscation. In addition, property owners could develop their land if they provided their own infrastructure.

Holding
"...where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires, there is a rational basis for 'phased growth,'" validating the Ramapo ordinance.

Significance
Recognized growth phasing programs as valid exercises of police power.

Southern Burlington County NAACP v. Township of Mount Laurel [Mount Laurel I]

336 A.2d 713 (N.J. 1975)

Facts
In 1964, the suburban community of Mount Laurel, New Jersey, adopted an ordinance zoning 29.2 percent of all land as industrial, 1.2 percent retail, and the remaining nearly 70 percent residential. Residential zones permitted only one detached, single-family dwelling per lot, with large minimums for lot size and building floor area. In 1968, a private nonprofit sought to build a subsidized multifamily housing development in a residentially zoned area of Mount Laurel, but zoning that required 20,000-square-foot lots effectively killed the project. The NAACP argued that the town's zoning ordinance discriminated against low-income families.

Discussion
The court asserted that the township had restricted multifamily housing in order to reduce the number of school children in its jurisdiction, and thus keep property taxes low by not paying for additional school facilities. This type of land use planning exhibited a "selfish and parochial interest" in attracting "sizeable industrial and commercial 'ratables'" to increase municipal revenues. Concerning the case at hand, the court sought to answer the question of "whether a developing municipality can validly, by a system of land use regulation, make it physically impossible to provide low and moderate income housing in the municipality for the various categories of persons who need and want it and thereby, as Mount Laurel has, exclude such people from living within its borders because of their limited income and resources."

Holding
The court held that every "municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing ... it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefore." The Mount Laurel ordinance "is presumptively contrary to the general welfare and outside the intended scope of the zoning power," and as such "no municipality may exclude or limit categories of housing" for fiscal purposes.

Significance
Formalized the concept of a regional "fair share" affordable housing burden.

Village of Arlington Heights v. Metropolitan Housing Development Corp.

429 U.S. 252 (1977)

Facts
A religious order operating in the mostly white, low-density suburban community of Arlington Heights outside of Chicago sought, with help from non-profit Metropolitan Housing Development Corp. (MHDC), to construct low- and moderate-income housing on some of its land. The Village's Board of Trustees denied MHDC's application for a variance to construct 20 two-story buildings with a total of 190 units on property zoned R-3 single-family housing, citing the community's desire to preserve single-family housing at the proposed location. MHDC filed suit against the Village, claiming racial discrimination and violation of the Equal Protection Clause.

Discussion
Citing its 1976 decision in *Washington v. Davis*, the court recalled that "[d]isproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination." The court asserted that "[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause. ... When there is a proof that a discriminatory purpose has been a motivating factor in the decision, [] judicial deference is no longer justified." Departures from normal procedural sequences and legislative or administrative history may be "highly" relevant to determine whether such intent exists.

Holding
Because the rezoning request progressed according to the usual procedures, the property in question had been zoned for single-family housing since the Village first adopted a zoning map, and the public comments of the Plan Commission and Board of Trustees did not support inferences of invidious purposes, the zoning decision was rationally determined and the plaintiffs failed to carry their burden of proving that discriminatory purpose was a motivating factor in the village's decision.

Significance
Established that discriminatory intent is required to invalidate zoning actions with racially disproportionate impacts.

Penn Central Transportation Co. v. City of New York

438 U.S. 104 (1978)

Facts

In 1965, two years after the demolition of historic Pennsylvania Station in Manhattan, New York adopted its Landmarks Preservation Law. The law established a Landmarks Preservation Commission, which among other duties regulated alterations to landmarked buildings, and included a provision allowing historic property owners to sell air development rights to owners of nearby parcels. Penn Central, owner of the historic landmark Grand Central Terminal, leased the building to a developer in 1968 in order to increase its income by building a 50-plus story skyscraper on top of the terminal. The Landmarks Commission denied building permits for the project, citing impact both to the historic resource and the surrounding viewshed. Claiming that the denial constituted both a taking and a violation of due process, Penn Central sought compensation from the City equal to the fair market value of the property's air rights.

Discussion

To decide whether the Landmark Commission's action had effected a taking, the court focused on the "economic impact of the regulation ... [and] the extent to which the regulation [] interfered with distinct investment backed expectations," as well as "the character of the governmental action", i.e. whether the action "can be characterized as a physical invasion" versus "some public program adjusting the benefits and burdens of economic life to promote the common good." Citing *Euclid*, the court argued that diminution in property value alone cannot establish a taking, which must apply to an entire property, not just a "discrete segment" (in this case, air space). In addition, because the landmarks program, which benefited the public, applied to hundreds of properties, Penn Central was not solely burdened by the law. The court thus concluded that the Landmark Commission's action did not constitute a taking, that the Landmarks Law did not interfere with the "present uses" of the terminal, and that Penn Central could still obtain a reasonable return on its investment by selling its development rights.

Holding

"The restrictions imposed [by the Landmarks Law] are substantially related to the promotion of the general welfare and not only permit reasonable beneficial use of the landmark site but afford ... opportunities further to enhance not only the Terminal site property but also other properties."

Significance

Introduced a means-end balancing test for regulatory takings and validated historic preservation controls.

Metromedia, Inc. v. City of San Diego

453 U.S. 490 (1981)

Facts
In 1972, San Diego enacted an ordinance prohibiting all off-site outdoor advertising display signs, i.e. any signs not identifying the use, facility, or service located on the premises where a product was produced, sold, or manufactured. Under the ordinance, all existing signs had to be removed after an amortization period ranging from 90 days to four years, depending on the location and depreciated value of the sign. Metromedia, Inc., owner of many off-site billboards in the San Diego area, filed several complaints against the city, centering on the financial consequences of the ban for billboard companies. The Supreme Court considered the case after the Supreme Court of California held that the billboard ban fell within the police power of San Diego.

Discussion
The court began its analysis by discussing the communicative and non-communicative aspects of billboards, e.g. their publicly beneficial uses from political campaign ads to promotion of charities, and the difficulty posed by their size and immobility. Addressing the lesser Constitutional protection of commercial speech, the court then reviewed its 1980 *Central Hudson Gas & Electric Corp. v. Public Service Communication* decision, which established a "four-part test for determining the validity of government restrictions on commercial speech as distinguished from more fully protected speech." The ordinance passed the *Central Hudson* test because it followed substantial public interests — increasing traffic safety and improving the appearance of the city — and did not limit all speech via the medium of billboards.

Holding
Although San Diego met the constitutional requirements of *Central Hudson*, the court held that the ordinance violated First Amendment free speech protections by restricting noncommercial speech via billboards to a similar degree as its commercial restrictions. The court asserted that "[t]he city does not explain how or why noncommercial billboards located in places where commercial billboards are permitted would be more threatening to safe driving or would detract more from the beauty of the city."

Significance
Established a high standard for aesthetic regulation of billboards by providing First Amendment protection to commercial firms that advertise goods or services not available at the location of the sign.

Southern Burlington County NAACP v. Township of Mt. Laurel [Mount Laurel II]

456 A.2d 390 (N.J. 1983)

Facts
Despite the 1975 *Mount Laurel* decision, the New Jersey Supreme Court felt that the township had continued its exclusionary housing policies, and that not enough legislative action had been taken to mandate provision of affordable housing on a regional level throughout the state. This second case consolidated six exclusionary housing cases.

Discussion
In a lengthy discussion, the court reviewed the criteria for "fair share" housing distributions described in *Mount Laurel I* within the context of the new (1980) State Development Guide Plan (SDGP). This Plan provided "a statewide blueprint for future development" and its "remedial use in *Mount Laurel* disputes will ensure that the imposition of fair share obligations will coincide with the State's regional planning goals and objectives." In particular, the SDGP defined "growth areas" throughout the state, which the court asserted should be held to the *Mount Laurel* doctrine.

Holding
Among several rulings, the court concluded that:

1. "every municipality's land use regulations should provide a realistic opportunity for decent housing for at least part of its resident poor who now occupy dilapidated housing."
2. SDGP-defined "growth areas" must "provide a realistic opportunity for fair share of a region's present and prospective low and moderate income housing."
3. Litigation should reference specific numbers of units needed in a municipality, both immediately and for a reasonable period of time in the future.
4. A special three-judge panel would hear all *Mount Laurel* exclusionary housing cases.
5. Beyond elimination of obstacles to affordable housing, municipalities should use affirmative policies such as density bonuses and mandatory set-asides.
6. "Builder's remedies" may allow developers, given judicial approval, to circumvent local zoning decisions and build affordable housing units if a need has been established.

Significance
Created the model fair housing remedy for exclusionary zoning.

Nollan v. California Coastal Commission

483 U.S. 825 (1987)

Facts
The Nollans owned beachfront property in Ventura County, California, bordered on either side by publicly accessible beaches. Their lease required that upon purchase of the property, an existing bungalow on the lot be demolished. Similar to its decisions in other beachfront property cases, the California Coastal Commission (CCC) conditioned the Nollans' building permit application to demolish the bungalow and build a new home upon their allowing the public an easement to pass across a portion of their beachfront. The Nollans appealed the California Court of Appeal decision that the CCC action did not constitute a taking.

Discussion
The court asserted that a permanent physical occupation had occurred since the public was continuously allowed to pass through the Nollans' property without compensation. But does requiring the public easement as part of a condition still constitute a taking? Analyzing the CCC's motives, the court determined that in fact the legitimate state interests leading to the conditional approval centered on providing the public with visual access to the beach so as to reduce the psychological barrier against beach use — not on the physical use of the beach on the Nollans' property by the public.

Holding
The constitutionality of a building permit condition "disappears ... if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition." In other words, "the lack of [an essential] nexus between the condition and the original purpose of the building restriction converts that purpose to something other than it was" — a taking for a legitimate state interest, but without compensation. The building permit condition thus constituted a taking, and compensation must be paid.

Significance
Created "essential nexus" takings test for conditioning development approvals on dedications and exactions. There must be a strong relationship between the problem created by proposed development and the proposed exaction (or mitigation), or else compensation may be required.

Lucas v. South Carolina Coastal Council

505 U.S. 1003 (1992)

Facts
In 1986, Lucas paid $975,000 for two residential lots on the South Carolina coast, intending to build single-family homes. In 1988, the state enacted the Beachfront Management Act, which barred Lucas and other coastal property owners from erecting any permanent habitable structures, in order to prevent erosion. Lucas claimed that the regulation constituted a taking. The state trial court awarded $1.2 million compensation, but the South Carolina Supreme Court reversed, contending that the state could take property without compensation in order to prevent serious public harm.

Discussion
The court reviewed its previous rationales for takings requiring compensation: (1) any degree of permanent physical invasion, or (2) the denial of all economically feasible or beneficial use of property. While previous cases "suggested that 'harmful or noxious' uses of property may be proscribed by government regulation without the requirement of compensation," in this case the line between "harm-preventing" and "benefit-conferring" regulation was too blurred to justify a nuisance exception to these rules, requiring the creation of a new standard for regulatory takings.

Holding
"Where the State seeks to sustain regulation that deprives the land of all economically beneficial use ... it may resist compensation only if ... the proscribed use interests were not part of [the] title to begin with." In cases where property owners' titles included such interests, "Any limitation so severe [as to remove all economically beneficial use of the property] cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership." To determine whether such a "total taking" of economic value has occurred, courts must examine: (1) the degree of harm to public lands and resources, (2) the social value of the claimant's activities and their suitability to their locality, (3) the relative ease with which the alleged harm can be avoided, and (4) how long the use has been engaged in by similarly situated owners. The case was remanded to allow the state to determine "background principles of nuisance and property law" applicable to the case.

Significance
Defined categorical regulatory takings and an exception for regulations rooted in background principles of law; compensation to be paid to landowners when regulations deprive them of all economically beneficial land use unless uses are disallowed by title or by state law background principles of private and public nuisances.

Dolan v. City of Tigard

512 U.S. 374 (1994)

Facts

Dolan owned a plumbing and electrical supply store in Tigard's Central Business District (CBD). The town's Community Development Code required property owners in the CBD to reserve 15 percent of their property for open space and landscaping, and its Master Drainage Plan called for mitigation of flood damage around a creek that runs through the CBD. When Dolan applied for a permit to nearly double the size of her store, the local planning commission approved the application on the condition that she dedicate roughly 10 percent of her property, located in the creek's floodplain, toward a flood drainage system and a public pedestrian and bike path. Dolan appealed this exaction.

Discussion

The court evaluated the proposed conditions using the *Nollan* standard, and determined that a nexus did indeed exist between the city's dual goals of minimizing development in the creek's floodplain and reducing traffic congestion in the CBD, and its proposed conditions dedicating a portion of Dolan's property to open space and a public pathway, respectively. However, the court sought to "determine whether the degree of the exactions demanded by the city's permit conditions bear the required relationship to the projected impact of [the] petitioner's proposed development." Reviewing several state laws regarding exactions, the court agreed that "the dedication should have some reasonable relationship to the needs created by the [development]."

Holding

"No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development" — a "rough proportionality" between the proposed dedication and the development's potential impact. In this case, because the city used vague standards to justify its conditions on development (the proposed landscaping could have been private, and traffic studies did not prove that the public pathway would alleviate traffic), taking 10 percent of Dolan's property was excessive compared to the potential harm of the building expansion.

Significance

Established a higher standard for takings by extending *Nollan*'s "essential nexus" test to require "rough proportionality" between development impact and conditions.

City of Edmonds v. Oxford House

514 U.S. 725 (1995)

Facts
The City of Edmonds, Washington, enacted a zoning ordinance that required single-family dwelling units to be inhabited only by a "family," which was defined as "an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons, who are not related by genetics, adoption or marriage." Oxford House-Edmonds, located in a single-family neighborhood and subject to the family definition, operated a group home for 10-12 persons recovering from alcohol and drug addiction. After learning of Oxford House's operation, the City issued criminal citations to the owner and a resident of the house on the ground that the occupants did not constitute a family. Oxford House requested a reasonable accommodation under the Fair Housing Act, 42 U.S.C. §3604 *et seq.* (a change in rules, policies, or practices when necessary to afford handicapped persons an equal opportunity enjoy the housing of their choosing) allowing it to operate as, but the City denied the request. The City sued Oxford House seeking a declaration that the FHA was inapplicable to the City's definition of family under the FHA's maximum occupancy exemption. The FHA exempts any "restriction[s] regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. §2607(b)(1). Oxford House filed a counterclaim, alleging that the definition of family was not exempt under the FHA, and that the City violated the FHA by denying Oxford House's request for a reasonable accommodation.

Discussion
The court distinguished between ordinances capping *the number of* individuals who may occupy a dwelling and ordinances limiting *who* may occupy a dwelling. Capping ordinances are meant to limit the total number of occupants in order to prevent overcrowding and generally do so in relation to floor space or the number and type of rooms. Ordinances defining family composition are intended to preserve the family character of a neighborhood rather than the total number of occupants.

Holding
The Court determined that the family composition ordinance does not cap the number of individuals who may occupy a dwelling. Rather, it describes who may live in the dwelling. The Court noted that the City had a separate ordinance which limited the number of occupants of a dwelling based on floor area. Accordingly, the ordinance was subject to the requirements of the FHA. The Court remanded the case to the lower courts to determine whether the ordinance was unlawful under the FHA.

Significance
Recognizes that definitions of "family" contained in zoning ordinances that limit who may occupy a dwelling are subject to the requirements of the FHA.

Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency

535 U.S. 302 (2002)

Facts
Nevada and California established the Tahoe Regional Planning Agency (TRPA) to study the impact of growth on Lake Tahoe and to create moratoria, one lasting two years and another for an ensuing eight months (for a total of 32 months), on all development in the Lake Tahoe Basin. The petitioners, the Tahoe-Sierra Preservation Council, Inc., representing about 2,000 owners of about 400 individual owners of vacant lots in the basin, filed suit in federal court, alleging that the moratoria facially violated the takings clause of the Fifth Amendment to the Constitution.

Discussion
The Court reviewed its historical treatment of takings issues, with particular focus on the distinction between physical takings, where a government physically acquires land, and regulatory takings, where a government restricts the use of a property so much that it renders the property economically or practically useless for a landowner. Relying on *Lucas v. South Carolina Coastal Council*, the petitioners contended that the Court should establish a bright line rule that a regulation that imposes a temporary deprivation of all economically viable use of property — no matter how brief — is an unconstitutional taking. The Court refused to do so, and found that claims of temporary deprivation are regulatory takings claims that should be analyzed under the multi-factor framework of *Penn Central Transportation Co. v. New York City*. The Court observed that creating a categorical rule that temporary deprivations always constitute a taking would run afoul of important planning principles advanced through moratoria.

Holding
The Court held that the moratoria did not constitute a taking. The Court noted that its ruling was narrow in that the petitioners had brought only a facial challenge, and that the petitioners did not challenge the moratoria under the *Penn Central* factors.

Significance
Recognizes that partial, temporary deprivations of property may constitute a taking under the Fifth Amendment, but must be analyzed on a case-by-case basis under the regulatory taking framework of *Penn Central*.

Lingle v. Chevron USA, Inc.

544 U.S. 528 (2005)

Facts
The difficulties presented by travel between the continental United States and the large number of islands comprising the state of Hawaii resulted in a small concentration of oil refineries and distributors in Hawaii. The unique circumstances in Hawaii led to most gasoline stations in the state operating under an independent lessee-dealer model. Chevron operated in the area predominately on the independent lessee model, charging monthly rent for lessees and stipulating that all gasoline from the stations under contract use Chevron oil. Concern that the concentration of industry under this model could inflate gasoline prices prompted the Hawaii state legislature to enact a law that capped the amount of rent that an oil company could charge lessee-dealers at 15 percent of a dealers gross profit from sales. Chevron sued the state, alleging that this law constituted a regulatory taking of its property under the Fifth Amendment. Chevron argued that the rent control statute was a regulatory taking because it failed to advance Hawaii's goal of protecting consumers against high gasoline prices. According to Chevron, the rent control statute failed to substantially advance a legitimate state interest and thus constituted an unconstitutional regulatory taking under *Agins v. City of Tiburon*, 447 U.S. 255 (1980).

Discussion
The Court reviewed its holdings in previous takings cases, noting that there were two situations where the government must compensate a landowner: (1) where government physically invades a landowner's land, no matter how small the intrusion; and (2) where regulations deprive a landowner of *all* economically viable use of the property. The Court noted that outside of these two set categories, regulatory takings claims should be evaluated under *Penn Central Transportation v. New York City* (1978). The Court found that the test established in *Agins* was more appropriate to due process claims, as whether a regulation substantially advances a legitimate state interest is irrelevant to whether that regulation affects a taking of property without just compensation.

Holding
The court overruled *Agins*'s "substantially advances a legitimate state interest" test to determine whether there has been a regulatory taking. The Court clarified that such a test is more appropriate in due process challenges. Instead, regulatory takings challenges that do not deprive a landowner of *all* economically viable use or property must be analyzed under *Penn Central*.

Significance
Recognizing that regulatory takings claims that do not deprive an owner of *all* economically viable use of land or property must be evaluated under the factors set forth in *Penn Central.*

Kelo v. City of New London

125 U.S. 2655 (2005)

Facts
Decades of economic decline and job losses had left New London, Connecticut, a "distressed municipality," as defined by the state. In the 1990s, the New London Development Corporation (NLDC) was reactivated to promote economic development in the city. NLDC devised a plan calling for construction of a research facility for the pharmaceutical company Pfizer on a site then containing 115 privately owned properties. As a means of creating jobs, generating tax revenue, and sparking downtown revitalization, NLDC proposed to use eminent domain to acquire the private properties, most of which were non-blighted single-family homes. Susette Kelo and eight other petitioners protested the city's use of eminent domain to acquire their properties.

Discussion
The court reviewed basic propositions of takings law, positing that the government "may not take the property of A for the sole purpose of transferring it to another private party B, even though A is paid just compensation," while it may "transfer from one private party to another if future 'use by the public' is the purpose of the taking," such as when land is condemned for construction of a passenger railroad. The court believed that the case hinged on whether the development plan served a "public purpose," and looked to the precedents of *Berman v. Parker* (approval of urban renewal project planned as a whole, even though some properties taken were not blighted) and *Hawaii Housing Authority v. Midkiff* (special case of taking to eliminate an oligopoly) to find the answer.

Holding
"Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us ... to resolve the challenges of the individual owners ... in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment." The well-researched nature of the city's "integrated development plan" further justified deference to local decision makers, in the court's opinion.

Significance
Upheld the use of eminent domain for economic development purposes.

Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection

560 U.S. 702 (2010)

Facts
Under Florida law, littoral owners have the right of access to the water, the right to use the water for certain purposes, the right to an unobstructed view of the water, and the right to receive accretions and relictions to the littoral property. In Florida, the littoral owner takes title to dry land added to his property by accretion, but formerly submerged land that has become dry land by avulsion continues to belong to the owner of the seabed (usually the State) because the property abutting the water belongs to the State. The mean high-water line is the ordinary boundary between private beachfront, or littoral property, and state-owned land. In 1961, Florida passed the Beach Shore Preservation Act which establishes procedures for "beach restoration and nourishment projects," under which a fixed erosion control line replaces the fluctuating mean high-water line as the boundary between privately owned littoral property and state property. When accretion to the shore moves the mean high-water line seaward, the property of littoral owners is not extended to that line (as the prior law provided). In 2003, the City of Destin, Florida, and Walton County, Florida, applied to the state to add a large quantity of sand to beach that had been eroded by several hurricanes. Beachfront property owners were upset by the decision and incorporated a nonprofit organization known as Stop the Beach Renourishment, Inc. to halt the action. The petitioners argued that the additional sand deprived the owners of their rights to accretion and a water boundary, and that the government action amounted to a taking of their land in violation of the Fifth Amendment.

Discussion
The Court began the opinion by reviewing the overarching principles of takings jurisprudence, including the principle that states effect a taking if they recharacterize private property as public property. The Court noted that state law defines property interests and therefore looked to Florida property law to determine whether beachfront landowners had a perpetual right for their property to touch the water. Under Florida law, the State has the right to fill its own seabed and that filled land will belong to the State.

Holding
The Court held that there was no taking because the submerged land at Florida's shoreline continued to belong to the State even after the State added new sand to extend the beach.

Significance
Recognizes that states may fill submerged land without constituting a taking on the rights of littoral property owners.

Koontz v. St. Johns River Management District

133 S.Ct. 2586 (2013)

Facts
Coy Koontz, Sr. owned 14.9 acres of land in Florida containing wetlands. He applied to the St. Johns River Management District to develop 3.7 acres. To mitigate adverse environmental impacts, Koontz offered to restrict future development on the remaining 11 acres with a conservation easement. The District considered the conservation easement for the 11 acres inadequate. The District Court stated that it would approve Koontz's development proposal only if he either: (a) reduced the size of his development to one acre and deeded a conservation easement on the remaining 13.9 acres, or (b) built on the 3.7 acres, deeded a conservation easement to the District on the remainder of property, and agreed to hire contractors to make improvements to District-owned land several miles away. Koontz sued because he believed that the District's demands for mitigation were excessive.
Discussion
The Court began its opinion by discussing the doctrine of unconstitutional conditions, which prevents the government from coercing individuals into giving up Constitutional rights. The Court discussed this doctrine as relating to its decisions in *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994), noting that the land use permitting process leaves permit applicants particularly susceptible to coercion from governments, but that proposed land uses often invoke costs on the public that dedications of land can offset. For instance, the Court noted that a development may cause more traffic congestion which can be offset by the permit for development being conditioned on the owner's agreement to deed land to widen the adjacent road. The Court then reiterated the principles established by *Nollan* and *Dolan* that the government is allowed to condition the approval of a permit on the dedication of property, so long as the property the government demands and the social costs of the development share a "nexus" and "rough proportionality." The Court wrote that the principles of *Nollan* and *Dolan* apply regardless of whether the government approved a permit on the condition that the applicant turn over property or denied a permit because an applicant refused to do so. Further, the Court discussed the rising trend of monetary exactions (such as those imposed on Koontz by the District) in land use, noting that they are a commonplace alternative to common alternatives to easements.

Holding
Government's demand for property from a land use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even where (a) the government denies the permit, and (b) the demand is for money. The Court remanded for further proceedings on the merits of Koontz's claims.

Significance
Recognized that monetary exactions are subject to the *per se* takings test of *Nollan* and *Dolan*.

Reed v. Town of Gilbert

576 U.S. ___ (2015)

Facts
The Town of Gilbert, Arizona, had a sign code that imposed different requirements on ideological signs, political signs, and temporary directional signs. Ideological signs included any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, or a sign owned or required by a governmental agency." Of the three categories, the sign code treats ideological signs most favorably in terms of allowable size, location, and duration. Political signs included any "temporary sign designed to influence the outcome of an election called by a public body." The sign code treated political signs more restrictively than ideological signs in terms of allowable size, location, and duration. Temporary directional signs relating to a qualifying event included any "temporary sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.'" A qualifying event is any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." The sign code treated temporary directional signs more restrictively than political signs.

Clyde Reed is the pastor of Good News Community Church. As a small, cash-strapped entity, the church holds services at a variety of locations. The church relies on temporary directional signs to inform the public about where it will hold services. The Town of Gilbert issued two citations to the church for violating the sign code's durational limits and for failing to include the date of the events on the signs. The church and Reed sued to challenge the Town's sign code as an abridgment of their freedom of speech.

Discussion
The Court began by discussing the concept of content-neutrality, a central tenet of First Amendment law, that requires the government to regulate speech without regard to its content, subject matter, or message. If a law is considered content-based, it triggers strict scrutiny, under which government can prevail only if it the challenged law furthers a compelling interest that is narrowly tailored. A law can be content-based either on its face or, if facially neutral, with respect to its governmental purpose. But governmental purpose cannot be used to justify a law that is content-based on its face. Content-based discrimination occurs where the speech regulations target specific subject matter, even if they do not differentiate among viewpoints within that subject matter. Finally, the Court stated that sign codes may regulate many aspects that have nothing to do with a sign's message, including size, building materials, lighting, moving parts, and portability.

Holding
The Court held that the sign code was content-based on its face because it targeted specific subject matter: temporary directional signs were treated worse than ideological or political signs. The sign code failed strict scrutiny because it was underinclusive. While the Town of Gilbert argued that the sign code was meant to advance the compelling governmental interests of aesthetics and traffic, political

signs and ideological signs affected these alleged interests the same as temporary directional signs but were treated better.

Significance
Recognized that subject matter distinctions are facially content-based and subject to strict scrutiny, and clarified the relevance of governmental purpose in enacting the challenged law.

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Murr v. Wisconsin

137 S.Ct. 1933 (2017)

Facts
In the 1960s, the parents of Joseph Murr and his siblings purchased two adjacent lots, Lots E and F, along the St. Croix River in Troy, Wisconsin. Lot E was transferred from the Murr parents to their children (Joseph Murr and his siblings) in 1994, while Lot F was transferred to the children in 1995. State and local regulations prohibited the sale of adjacent lots under common ownership unless each lot has at least one acre of land suitable for development. The regulations allowed a merger of adjacent lots including for a single residential dwelling extending over both lots. Lot F was developed with a small cabin and Lot E remained undeveloped. Though both of the lots were over one acre in area, the topography of the Murrs' property meant that each lot had under one acre suitable for development. Because the lots were under common ownership, the regulation precluded the Murrs from selling or developing one of the adjacent lots. The Murrs wanted to move the cabin on Lot F and sought to sell Lot E to fund the project. They applied for a variance to allow the separate sale or use of the lots, but were denied. The Murrs sued alleging that the regulations constituted a regulatory taking in violation of the Fifth Amendment.

Discussion
The issue is whether for purposes of a regulatory taking analysis the focus should be on the single Lot E or both Lot E and Lot F together (that is, what is the property unit that is being taken, known as the "denominator"). The court created a three-factor test to analyze the denominator: (a) whether state and local law treats the land as a single parcel or separate parcels; (b) the physical characteristics of the property; and (c) the value of the property under the challenged regulation, with special attention to the effect of the burdened and on the value of other holdings.

Holding
The court applied the three-factor test to conclude that the regulations did not amount to a regulatory taking, focusing on Lots E and F a single property unit. First, the court noted that under state law, Lots E and F merged. Second, the court noted the physical characteristics of the property (contiguous along their longest edge with rough terrain and along the St. Croix River, which was regulated under federal, state, and local law). Third, the restriction was mitigated by the benefits of using the property as a single unit, including increased privacy and recreational space, and the value of the lots taken as a single unit is greater than the value of each lot individually.

Significance
Created a new test to determine the property unit (the denominator) for a regulatory takings analysis.