

Preservation Law Educational Materials . . .

Supreme Court Takings Cases at a Glance

The Takings Clause of the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides that private property “shall not be taken for public use, without just compensation.” In addition to the physical taking or confiscation of property, this provision has been interpreted by the United States Supreme Court to require just compensation when governmental regulation of private property goes “too far.” Compensation is required when there is a permanent occupation of the property, no matter how minor, or a regulation that results in a “total regulatory taking.” In instances where a total taking has not occurred, courts will look at: (1) the economic impact of the regulatory action on the owner; (2) the extent to which the regulation has interfered with “distinct investment-backed expectations;” and (3) the “character of the governmental action.” In addition, when a government requires the dedication or exaction of land as a condition of approval, there must be (a) a “nexus” between the governmental action and the objective being served, and (b) “rough proportionality” between the impact of the action being regulated and the conditions or exactions imposed by the government in response to that impact.

Pennsylvania Coal v. Mahon, 260 U.S. 383 (1922). Genesis for modern day takings jurisprudence. The Supreme Court established the principle that an unconstitutional “taking” under the Fifth Amendment may result from regulatory actions, stating that a taking will result if the regulation “goes too far.”

Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978). Landmark decision upholding the constitutionality of New York’s preservation ordinance, facially and as applied. The Supreme Court determined that the ordinance advanced a legitimate governmental interest and did not deny the property owner all beneficial use of its property. The Court formulated a three-part inquiry for analyzing regulatory takings claims, focusing on the (1) economic impact on the claimant; (2) effect on the claimant’s distinct investment-backed expectations; and (3) character of the governmental action. The Court also established the “parcel as a whole,” rule for analyzing takings claims, stating that reviewing courts must look at the entire parcel rather than just the portion affected by the regulation at issue, such as the air rights over the Grand Central Terminal.

Agins v. City of Tiburon, 447 U.S. 255 (1980). The Supreme Court reformulated the three-part inquiry for evaluating takings claims into a two-part disjunctive test. The Court stated that a regulation effects a taking if it (1) fails to substantially advance legitimate state interests; or (2) denies the claimant the economically viable use of his or her property.

Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985). *Ripeness case*. Where variance from regulation has not been sought, regulatory takings claim is not ripe for review because the governmental entity charged with implementing the challenged regulation had not reached a final decision.

McDonald, Sommer and Frates v. County of Yolo, 447 U.S. 340 (1986). *Ripeness case*. Takings claim resulting from denial of development plan is not ripe for review where less intensive development could be approved.

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987). The Supreme Court reaffirmed the "parcel as a whole" rule and "reasonable use" test set forth in *Penn Central* and *Agins*, ruling that a coal subsidence act, which required that fifty percent of the coal beneath certain structures be kept in place for support, was not unconstitutional since the claimant had not been denied all economic use of its property. The case also underscored the principle that mere diminution in value does not result in a regulatory taking.

First English Evangelical Church v. County of Los Angeles, 482 U.S. 304 (1987). Invalidation of governmental action resulting from an unconstitutional taking is not an adequate remedy under the Just Compensation Clause of the Fifth Amendment. Government must pay for the value of the temporary use of the land for the period in which the offending regulation was in place.

Nollan v. California Coastal Commission, 483 U.S. 825 (1987). In the context of a challenge to beach-front right-of-way conditions placed on a building permit, the Supreme Court ruled that there must be a "nexus" between the condition and the original purpose of the building permit.

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Denial of all economically viable, beneficial use of one's property amounts to a "categorical taking." However, if the regulation leaves some viable use, then the three-part, ad hoc inquiry under *Penn Central* applies.

Concrete Pipe & Products, Inc. v. Construction Laborers Pension Trust, 508 U.S. 602 (1993). Supreme Court reaffirms *Penn Central*'s "parcel as a whole" rule, unanimously rejecting an attempt to "shoe horn" a takings claim into a "total" taking of economic use under *Lucas*.

Dolan v. City of Tigard, 512 U.S. 374 (1994). Supreme Court announces a constitutional limitation on a municipality's power to "exact" land dedications for approval of developments having public impacts. Some degree of "rough proportionality" must be shown to exist between the required dedication and the impact of the proposed development.

Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725 (1997). *Ripeness case*. Takings claim based on the denial of permission to make use of owner's property where claimant had not attempted to make use of transferable development rights was ripe for review since (1) the agency had made a final determination that no development would be permitted; and (2) consideration of an application to approve the transfer of TDRs would not involve discretionary decisionmaking of the type generally involved in land use cases.

City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999). Question of liability for takings claim under 42 U.S.C. § 1983 may be put to the jury. "Rough proportionality" standard applies only to exaction cases, where conditions are imposed on the issuance of building permits, not to permit denial cases.

Palazzolo v. Rhode Island, 533 U.S. 606 (2001). Supreme Court clarified that the *Lucas* "categorical taking" rule only applies in the extreme situation where a "total wipeout" has occurred and confirmed that *Penn Central* is the controlling case for analyzing takings claims. Reaffirmed that the "federal ripeness rules do not require the submission of further and futile applications with other agencies."

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002). *Penn Central* principles once again reaffirmed. Court reiterates that impact of a

governmental action on property interests must be examined by looking at the entire parcel rather than discrete segments (including temporal segments), for purposes of determining whether a taking has occurred.

Lingle v. Chevron, U.S.A., Inc., 544 U.S. 528 (2005). Standard for determining a regulatory taking does not require consideration of whether the regulation “substantially advances a legitimate purpose,” the first prong of the two-part takings test set forth in *Agins v. City of Tiburon*, 447 U.S. 255 (1980)(see above), since that inquiry is relevant to due process rather than whether a taking has occurred. Decision provides a useful restatement of takings law.

Kelo v. City of New London, 545 U.S. 469 (2005). *Eminent Domain*. City’s exercise of eminent domain authority to seize property from local residential property owners for a major private development project expected to bring jobs and tax revenues to a city considered by its own municipal authorities to be “economically distressed” satisfies the Fifth Amendment’s “public use” requirement.