

Danaya C. Wright
352 Holland
Spring, 2025
T 1:15-3:15
Holland 355A

ADVANCED CONSTITUTIONAL LAW: THE TAKINGS AND DUE PROCESS PROPERTY CLAUSES OF THE CONSTITUTION

This will be an intensive course on the property clauses of the constitution, primarily the due process and takings clauses. As many of you know, the takings clause has become a popular vehicle for constitutional challenges to regulations that many believe are excessive infringements on economic and property rights. We will therefore begin by looking at the historical/theoretical bases of the property clauses. Then we will look at the nineteenth-century origins of due process and takings protections, before moving into the primary realm of regulatory takings cases.

Once we have the basics down, we will look at the progressive and Warren Court era rules in the takings arena to get a good sense of where the Court stood before its most recent foray into new territory. Hopefully that will take about one-third of the semester. Then we can look at the principal takings cases from 1987 onward and the relevant categories and balancing tests to try to make some sense of the recent reinvigoration of regulatory takings jurisprudence.

COURSE MATERIALS:

The reading material for this class will be nearly every takings case ever decided by the Supreme Court. I provide citations in this syllabus but you are required to locate them either on Westlaw, Hein Online, or Lexis and read the entire case. You may skim sections that are not particularly relevant – some of these cases are tremendously long so you will focus your reading on the sections that are relevant for each day's subject. Even if you have read the case before, please read it again. It is expected that you will spend at least 2 hours in preparation for each hour of class time.

COURSE REQUIREMENTS:

1. Attendance: Attendance is required and your grade will be reduced if you have too many absences.

2. Final Paper: There will be a final paper for this course – you will be required to write both a majority and a dissenting opinion of at least 25 pages total on a fact scenario that I will provide. You can pick your justices and your bench and your opinion is less important than how you present the decision. You will need at least 15 pages on the majority opinion and 10 pages on the dissenting opinion.

FINAL GRADE:

Your final grade will be 80% based on the final paper, and 20% based on class participation.

LEARNING OUTCOMES:

This is an advanced seminar on the takings and due process clauses as they relate to property rights. I anticipate that you will become absolutely fluent in this subject as regards the substantive legal issues. I also expect you to engage deeply with the different theories that the justices use and be prepared to deploy those in your final paper.

OFFICE HOURS:

I will hold regularly-scheduled office hours from 3:30-4:30 on Tuesdays and 10:30-12:00 on Wednesdays, but I am generally available whenever I am on campus, so simply email me to set up a time if you cannot make these times or just drop by.

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link:

<https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

READING ASSIGNMENTS:

INTRODUCTION – WHAT IS PROPERTY and DUE PROCESS PROTECTIONS DURING THE GILDED AGE

- Jan. 14 Constitutional Property Clauses (Takings and Due Process Clauses)
 Van Horne’s Lessee v. Dorrance, 28 F. Cas. 1012 (1795)
 Calder v. Bull, 3 U.S. 386 (1798)
 Murray’s Lessee v. Hoboken Land, 18 How (U.S.) 272 (1855)
 Munn v. Illinois, 94 U.S. 113 (1876)
 Mugler v. Kansas, 123 U.S. 623 (1888)
 Chicago, Milwaukee & S.P. Ry v. Minnesota, 134 U.S. 418 (1890)
 Lawton v. Steele, 152 U.S. 133 (1894)
 Lochner v. New York, 198 U.S. 52 (1905)

THE DEMISE OF ECONOMIC SUBSTANTIVE DUE PROCESS

- Jan. 21 Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926)
 Miller v. Schoene, 276 U.S. 272 (1928)
 Nectow v. Cambridge Realty, 277 U.S. 183 (1928)
 Nebbia v. New York, 291 U.S. 502 (1934)
 W. Coast Hotel v. Parrish, 300 U.S. 379 (1937)
 U.S. v. Carolene Products, 304 U.S. 144 (1938)
 Ferguson v. Skrupa, 372 U.S. 726 (1962)

ORIGINS OF REGULATORY TAKINGS

- Jan 28 Barron v. Baltimore, 32 U.S. 243 (1833)
 Pumpelly v. Green Bay Co., 80 U.S. 166 (1872)

Chicago B & Q Rr Co. v. City of Chicago, 166 U.S. 226 (1897) (skim)
Hadachek v. Sebastian, 239 U.S. 394 (1915)
Penn Coal v. Mahon, 260 U.S. 393 (1922)
U.S. v. Causby, 328 U.S. 256 (1946)
Armstrong v. U.S., 364 U.S. 40 (1960)
Goldblatt v. Town of Hempstead, NY., 369 U.S. 590 (1962)

AD HOC BALANCING

Feb 4 Penn Central Transp. Co. v. NYC, 438 U.S. 104 (1978)
Kaiser Aetna v. U.S., 444 U.S. 164 (1979)
Hodel v. Irving, 481 US. 704 (1987)
Babbitt v. Youpee, 519 U.S. 234 (1997)
Murr v. Wisconsin, 582 U.S. 383 (2017)

FACIAL TAKINGS

Feb 11 Agins v. City of Tiburon, 447 U.S. 255 (1980)
Hodel v. Virginia Surface Mining Co., 452 U.S. 264 (1981)
Keystone Bituminous v. DeBenedictis, 480 U.S. 470 (1987)

PHYSICAL INVASION

Feb 18 Pruneyard Shopping Center v. Robbins, 447 U.S. 74 (1980)
Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)
Yee v. City of Escondido, 503 U.S. 519 (1992)
Bennis v. Michigan, 516 U.S. 442 (1996)
Horne v. Dept. of Agriculture, 135 S.Ct. 2419 (2015)
Cedar Point Nursery v. Hassid, 594 U.S. __ (2021)

LOSS OF ECONOMIC VALUE and RIPENESS

Feb 25 Andrus v. Allard, 444 U.S. 51 (1979)
Lucas v. S. Car. Coastal Comm'n, 505 U.S. 1003 (1992)
Williamson County Reg. Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985)
McDonald, Sommer & Frates v. Yolo County, 477 U.S. 340 (1986)
Suitum v. TRPA, 520 U.S. 725 (1997)
San Remo Hotel LP v. City & County of San Francisco, 125 S.Ct. 2491 (2005)
Knick v. Township of Scott, PA, 588 U.S. __, 139 S.Ct. 2162 (2019)
DeVillier, et. al., v. Texas, 601 U.S. __ (2024)

NEW PROPERTIES

Mar 4 Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155 (1980)
Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984)
E. Enterprises v. Apfel, 524 U.S. 498 (1998)
Phillips v. Wash Legal Found., 524 U.S. 156 (1998)
Brown v. Legal Found. of Washington, 538 U.S. 216 (2003)

Tyler v. Hennepin County, MN, 598 U.S. __ (2023)

TEMPORARY TAKINGS

Mar 11 First English Evang. Lutheran Church v. LA County, 482 U.S. 304 (1987)
Palazzolo v. R.I., 533 U.S. 606 (2001)
Arkansas Fish & Game v. U.S., 133 S.Ct. 511 (2012)

EXACTIONS AND MORATORIA

Mar 25 Nollan v. Ca. Coastal Comm'n, 483 U.S. 825 (1987)
Dolan v. City of Tigard, 512 U.S. 374 (1994)
Tahoe Sierra Pres. Council Inc. v. TRPA, 535 U.S. 302 (2002)
Koontz v. St. Johns River Mgmt. Dist, 133 S.Ct. 2586 (2013)
Sheetz v. County of El Dorado, CA, 601 U.S. __ (2024)

DUE PROCESS MEETS REGULATORY TAKINGS

Apr 1 San Diego Gas & Elec. Co v. City of San Diego, 450 U.S. 621 (1981)
Santa Monica Beach Ltd., v. Superior Court, 968 P.2d 993 (Cal. 1999)
City of Monterrey v. Del Monte Dunes Ltd., 526 U.S. 687 (1999)
Lingle v. Chevron USA, Inc., 125 S.Ct. 2074 (2005)

JUDICIAL TAKINGS/EQUAL PROTECTION/PUBLIC USE

Apr 8 Stop the Beach Renourishment v. Fl. DEP, 130 S.Ct. 2592 (2010)
Village of Willowbrook v. Olech, 528 U.S. 562 (2000).
Commun. Resources for Justice, Inc. v. City of Manchester, 154 N.H. 748
(2007)
Berman v. Parker, 348 U.S. 26 (1954)
Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984)
Kelo v. City of New London , 125 S.Ct. 2655 (2005)

CONCLUSION – MAKING SENSE OF THE NONSENSICAL

April 15