

AICP Exam Preparation Planning Law Concepts Review March 2022



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Overview

Legal Concepts:

A. Defined terms

B. Sources of Law

- Constitutional provisions
- Federal or state statutes
- Local regulations
- Court decisions

Essential Theme

Police power:

- Regulate private conduct
- Public welfare

Police Power and Local Land Use Regulation Requirements

- Must be within authority delegated by applicable enabling legislation (Dillon's Rule)
- Regulation will be afforded a presumption of validity
- Must be “reasonably related” to legitimate government purpose

Federal Constitutional Provisions

- First Amendment: Speech and religion
- Fifth Amendment: Takings
- Fourteenth Amendment: Due process and equal protection

Caselaw

Court Applies:

- Legal concepts
- Constitutional provisions
- Federal and State statutes
- Local Regulation

To:

- A case's specific fact pattern

Result:

- Caselaw

First Amendment

- Speech:
 - Signs and billboards
 - Adult entertainment
- Religion:
 - RFRA
 - City of Boerne v. Flores (1997)
 - RLUIPA (2000)

First Amendment - Speech Signs and Billboards

- Metromedia v. City of San Diego (1981)
 - Commercial speech
 - Noncommercial speech
- City Council of Los Angeles v. Taxpayers for Vincent (1984)
 - Ban of all signs on public property permissible
- Gilbert v. Reed (2015)
 - Noncommercial regulatory scheme improper; reaffirms Vincent

First Amendment - Speech Adult Entertainment

- Young v. American Mini-Theaters, Inc. (1976)
 - Can regulate and distinguish
 - Can't totally ban
- Buzzetti v. The City of New York (1998)
(2nd Circuit)
- Schad v. Borough of Mt. Ephraim (1981)

First Amendment - Religion

- City of Boerne v. Flores (1997)
 - Invalidated Religious Freedom Restoration Act (“RFRA”)
- RFRA replaced with Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”)

First Amendment - Religion

Religious Land Use and Institutionalized Persons Act (“RLUIPA”) test:

- Action is in furtherance of a compelling government interest; and
- Action is least restrictive means of furthering that compelling interest

Fifth Amendment - Takings

- Eminent Domain – Taking private property for public use
- Inverse Condemnation
 - Physical invasion
 - Regulatory taking
 - Exactions
 - Moratoria

Fifth Amendment - Takings: Eminent Domain

- Take private property for public good – permissible; but must compensate
- Berman v. Parker (1954)
 - “Public good” is broad and inclusive
 - Aesthetics can be valid reason (blight)
- Kelo v. City of New London (2005)
 - Reaffirmed Berman
 - Economic development can be a valid reason
- Horne v. Department of Agriculture (2015)
 - Taking can apply to personal property as well as real property as occurred in Berman and Kelo

Fifth Amendment - Takings **Inverse Condemnation**

Physical invasion of private property:

- Loretto v. Teleprompter Manhattan CATV Corp.
(1982)

Fifth Amendment - Takings **Inverse Condemnation**

Regulatory takings:

- Pennsylvania Coal Co. v. Mahon (1922)
 - Introduced regulatory taking concept
- Agins v. City of Tiburon (1980)
 - Introduced two-part test for taking:
 - (1) Property must be deprived of all economic viable use
 - (2) Must “substantially advance” a legitimate government interest
- Lingle v. Chevron USA (2005)
 - Eliminates second prong of Agins test
 - “Just compensation” equal to fair market value

Fifth Amendment - Takings

Inverse Condemnation

Regulatory takings (continued):

- First English (1987)
 - Temporary takings can occur
- Lucas (1992)
 - Exception to taking – prohibit nuisance under state law
- Del Monte Dunes (1999)
 - Multiple delays can result in taking; right to jury trial
 - “Nollan/Dolan” test does not apply to land use regulations
- San Ramos Hotel (2005)
 - Can go to state court for takings

Fifth Amendment - Takings **Inverse Condemnation**

Regulatory takings (continued):

- Stop the Beach Renourishment, Inc. v. Florida DEP (2010)
 - Littoral property owners
 - State filling of submerged land involved public, not private, land; therefore, not a taking of littoral owners' property rights
- Murr v. Wisconsin (2017)
 - Merger of two adjacent lots on St. Croix River
 - Creates a new “three-factor” test to determine denominator for possible takings claim; no taking found

Fifth Amendment - Takings Inverse Condemnation

Exactions:

- Nollan (1987)
 - Exaction must have a “rational nexus” to the permit
- Dolan (1994)
 - Magnitude of exaction must bear a “rough proportionality” to the impact of the development

Fifth Amendment - Takings **Inverse Condemnation**

Exactions (continued):

- Nollan/Dolan test (in addition to the “rational nexus” and “rough proportionality” requirements) must:
 - Make precise findings
 - Quantify actual impacts associated with proposal on public use
 - Generally should avoid dedication (open space), and concentrate on valid restrictions of use

Fifth Amendment - Takings **Inverse Condemnation**

Exactions (continued):

- **Koontz v. St. Johns River Water Management District (2013)**
 - Reaffirmed “Nollan/Dolan” test
 - Held can raise “improper coercion” with an application denial as well as with an improper approval
 - Off-site wetlands mitigation

Fifth Amendment - Takings **Inverse Condemnation**

Moratoria – is a permissible planning tool

- Tahoe – Sierra Preservation Council v. Tahoe Regional Planning Agency (2002)

Fifth Amendment - Takings

Ripeness – must have “finality” to enable one to litigate a taking claim.

- Williamson County (1985)
- Suitum v. Tahoe Regional Planning Agency (1997)
- Palazzolo v. Rhode Island (2001)

Fourteenth Amendment Due Process

Procedural:

- Herrington (1987) (9th Circuit)
 - Failure to provide notice of hearings and denial of right to be heard

Fourteenth Amendment Equal Protection

Substantive:

- Failure of regulation to advance legitimate government purpose (e.g., public health and safety)
- Village of Arlington (1977)
- Village of Willowbrook v. Olich (2000)

Federal Statutes

I. Fair Housing Act (reasonable accommodation):

- Group Homes: City of Edwards v. Oxford House (1995)

II. American With Disabilities Act (reasonable accommodation):

- Innovative Health Systems, Inc. v. City of White Plains
(2nd Circuit)

“Must Know” Cases

- I. Village of Euclid (1926) – grand daddy
- II. Village of Belle Terre (1974)
 - Definition of family – unrelated persons (federal constitution)
- III. Moore v. East Cleveland (1976)
 - Definition of family - grandparent
- IV. Penn Central (1978)
 - Historic preservation for aesthetic purposes is valid

Federal Statutes (continued)

III. Telecommunications Act of 1976 (“TCA”)

- City of Ranchos Palos Verdes v. Abrams (2005)

IV. Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”)

Growth Control Cases

- I. Construction Industry of Sonoma v. Petaluma (9th Circuit)
 - Cap on number of annual residential dwellings is valid
- II. Golden v. Ramapo (Ct. of App. N. Y. 1972); and Associated Homebuilders v. Livermore (CA Supreme Court)
 - Concurrency requirement is valid
- III. Mount Laurel (#s 1 and 2 – N.J. Supreme Court)
 - Fair share of affordable housing – can be required