

State Constitutional Law

17 - Property Rights

Takings

“...nor shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V.

Important Precedent:

Kelo v. City of New London

545 U.S. 469 (2005)

Kelo v. City of New London



“Public Use” Cases

City of Norwood v. Horney

853 N.E.2d 1115 (Ohio 2006)

Bd. of Cty. Comm’rs of Muskogee Cty. v. Lowery

136 P.3d 639 (Okla. 2006)

Goldstein v. New York State Urban Dev. Corp.

921 N.E.2d 164 (N.Y. 2009)

Questions to guide us for “public use” cases

What should qualify as permissible “public use”?

What are the benefits and drawbacks to stronger or weaker property rights protection against government takings?

How much should our understanding of “public use” depend on differences in the constitutional texts, history, tradition, geography, and demographics?

City of Norwood v. Horney

853 N.E.2d 1115 (Ohio 2006)

“All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.” Ohio Const., § 1, Art. 1.

“Private property shall ever be held inviolate, but subservient to the public welfare... where private property shall be taken for public use, a compensation therefor shall first be made in money... and such compensation shall be assessed by a jury...” Ohio Const., § 19, Art. 1.

Bd. of Cty. Comm'rs of Muskogee Cty. v. Lowery

136 P.3d 639 (Okla. 2006)

“Private property - Taking or damaging for private use.

No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as shall be prescribed by law.” Okla. Const., Art. 2, §23.

“Private property - Public use - Character of use a judicial question.”
Private property shall not be taken or damaged for public use
without just compensation... In all cases of condemnation of private
property for public or private use, the determination of the character
of the use shall be a judicial question.” Okla. Const., Art. 2, §24.

Goldstein v. New York State Urban Dev. Corp.

921 N.E.2d 164 (N.Y. 2009)

“[T]he legislature may provide ... for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas.” New York Const., Art. XVIII, § 1.

“Private property shall not be taken for public use without just compensation.” New York Const., Art. I, § 7.



Reconciling “public use” definitions

Bd. of Cty. Comm’rs of Muskogee Cty. v. Lowery
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Just Compensation

**Bayou Bridge Pipeline, LLC v. 38.00 Acres,
More or Less, Located in St. Martin Parish,
Et Al.**

320 So.3d 1054 (La. 2021)

“In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.” Louisiana Const., Art. I, § 4(B)(5)

Other Property-Related Rights

Patel v. Texas Dep't of Licensing

469 S.W.3d 69 (Tex. 2015)

“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

Texas Const., Art. I, § 19

A mess of standards of review

- 1) real and substantial
- 2) rational basis including consideration of evidence
- 3) no-evidence rational basis

A new standard

To find a statute unconstitutional under Art. I, § 19, plaintiffs must prove either:

- 1) the statute's purpose could not arguably be rationally related to a legitimate governmental interest; or
- 2) when considered as a whole, the statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the government interest

Similar federal standards

Rational basis: To survive judicial review, the law must serve a *legitimate* government interest and there must be a *rational connection* between the law's means and that interest.

Intermediate scrutiny: To survive judicial review, the law must further an *important* government interest and must do so by means that are *substantially related* to that interest.

Texas Department of State Health Services v. Crown Distributing LLC

647 S.W.3d 648 (Tex. 2022)