
The Expansion of Taking Law

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Session Overview

- **Governmental Immunity**
- **Overview of Regulatory Taking Law**
- **Trends in Taking Law**



Governmental Immunity

Plaintiff must allege valid waiver of immunity.

For takings, the constitution waives immunity, but the plaintiff must allege a *viable* taking.

Failure to allege a viable taking deprives the court of subject matter jurisdiction.

Texas Tort Claims Act

Act must occur during performance of governmental function.

For property damage claims, damage must be caused by negligent act or omission and arise from operation of motor driven equipment.

Property damages capped at \$100,000.

It's in the constitutions.

“[N]or shall private property be taken for a public use, without just compensation.”

“No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made.”

The Miltonian Serbonian Bog

Physical

When gov't takes physical possession or occupies property it must compensate, even if temporary.

Regulatory

A restriction on use or a diminution in value resulting from regulatory action. Compensation is not automatic and depends on the circumstances.

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- *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393.
 - “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.”



It all began with coal.

One hundred years later...

Regulations that require property owners to suffer a physical invasion of property

Exactions

Regulations that deprive owners of all economically beneficial use of their property

Regulations that unreasonably interfere with reasonable investment backed expectations

Unreasonable interference?

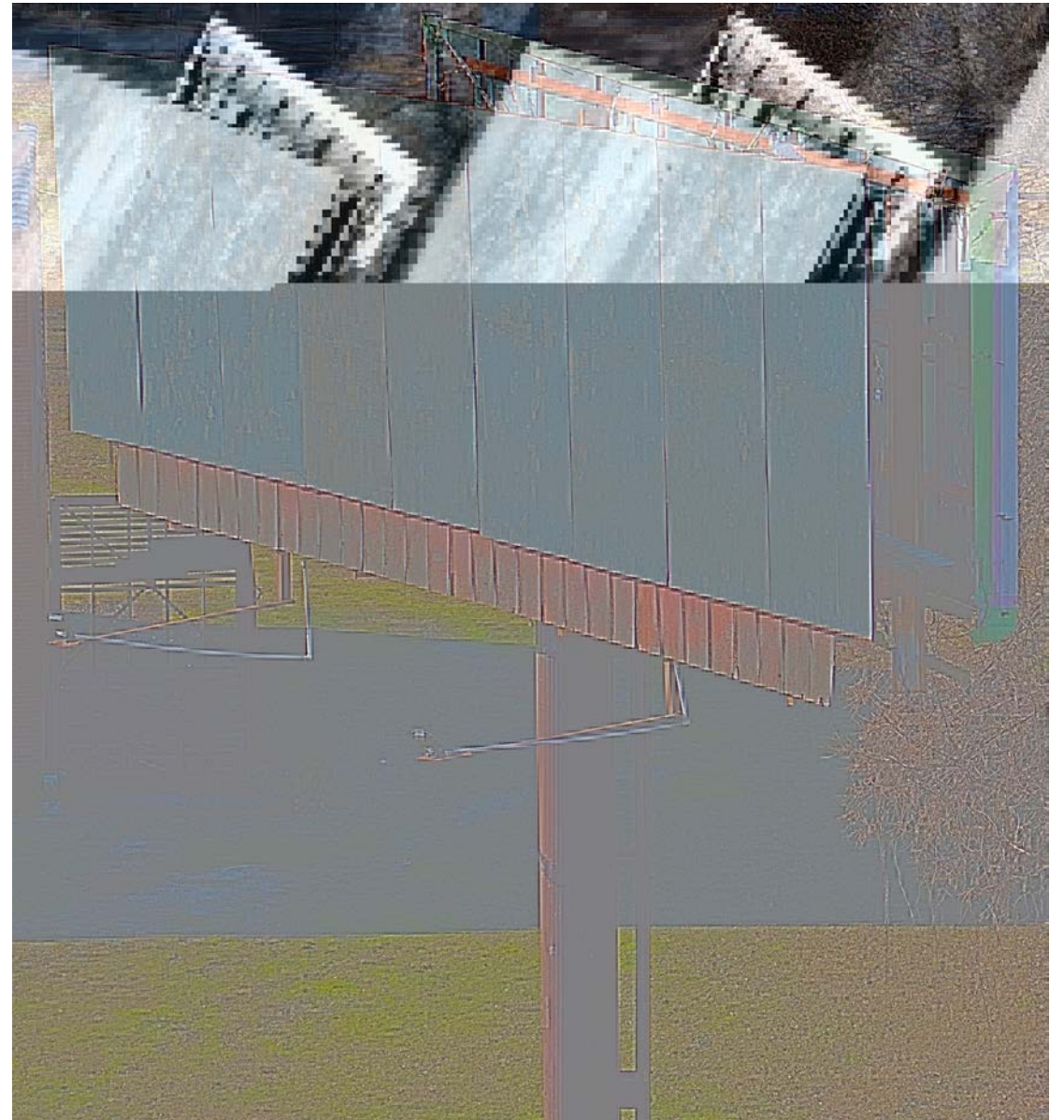
Economic impact

**Extent of
interference with
investment
backed
expectations**

**Character of
governmental
action**

City of Houston v. De Trapani

- Building official mistakenly interpreted sign ordinance.
- Plaintiff sued for taking and won.
- Court of appeals upheld jury award of \$500,000 for lost revenue and value of signs.



City of Houston v. Maguire Oil

- Inspector mistakenly issued stop work order and revoked permit for drilling oil.
- Plaintiff sued for taking and won.
- Jury awarded \$2 million.



Schrock v. City of Baytown

- Court of appeals twice held dispute over minor utility bill can be a taking.
- Taking claim was based on city's misapplication of state law and mistakes in collection efforts.
- Supreme Court granted petition for review.





City of Houston v. Carlson

- Texas Supreme Court: taking cannot be predicated on misapplication of the law.
 - Allegations that Houston made mistakes in the application of its regulations would “amount to nothing more than a claim of negligence. . . for which it is immune under the Texas Tort Claims Act.”
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Final Thoughts...

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