



INSTITUTE FOR LOCAL GOVERNMENT LAWYERS
Wednesday, September 28, 2016

Resource Materials for Land Use

U.S. Supreme Court Cases

U.S. Army Corps of Engineers v. Hawkes (US 2016)

https://www.supremecourt.gov/opinions/15pdf/15-290_6k37.pdf

California Building Industry Association v. City of San Jose (US 2016)

https://www.supremecourt.gov/opinions/15pdf/15-330_1q24.pdf

Murr v. Wisconsin

<http://www.scotusblog.com/case-files/cases/murr-v-wisconsin/>

Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc. (US 2015).

http://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf

Reed v. Town of Gilbert (US 2015)

http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Tarrant Regional Water District v. Herrmann (US 2013)

http://www.supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf

Arkansas Game & Fish Commission v. U.S. (US 2012)

http://www.supremecourt.gov/opinions/12pdf/11-597_i426.pdf

Horne v. Department of Agriculture (US 2015)

http://www.supremecourt.gov/opinions/14pdf/14-275_c0n2.pdf

Horne v. Department of Agriculture (US 2013)

http://www.supremecourt.gov/opinions/12pdf/12-123_c07d.pdf

Koontz v. St. Johns Water Management District (US 2013)
http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Arlington v. FCC (US 2013)
http://www.supremecourt.gov/opinions/12pdf/11-1545_1b7d.pdf

Marvin M. Brandt Revocable Trust v. U.S. (US 2014)
http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Koontz Fallout

California BIA v. City of San Jose (Cal. Sup. Ct.) (endorsing inclusionary housing ordinances by ruling that they are legally permissible as long as it can be shown the ordinance is reasonably related to the public welfare).

<http://www.courts.ca.gov/opinions/documents/S212072.PDF>

<http://www.courts.ca.gov/opinions/revpub/H038563.PDF>

http://scholar.google.com/scholar_case?case=17931150985265517687&q=California+Building+Industry+Association+v.+City+of+San+Jos%C3%A9,+&hl=en&as_sdt=2,5

Commentary on ***Koontz*** (thanks to Rob Thomas at www.inversecondemnation.com for the list) [control and click to follow the link or go to www.inversecondemnation.com and search “Koontz”]:

Supreme Court Rules for Property Owner in Koontz v. St. Johns River Water Management District - lawprof Richard Frank, *Legal Planet*.

Supreme Court's Koontz Decision May Help Landowners Fighting Mitigation Payments
- from the *Massachusetts Land Use Monitor*.

Does Koontz also blow holes in Williamson County? - J. David Breemer, *PLF Liberty Blog*.

Koontz v. St. Johns River Water Management District: Of Issues Resolved - and Shoved under the Table - lawprof Richard Epstein, *Point of Law*.

Supreme Court ruling bolsters private property rights - from the *LA Times*.

Opinion recap: Broadening property owners' right to sue - from *SCOTUSblog*.

Koontz Decision: No Big Deal or Blow to Sustainable Development? - Jonathan Nettler, Planetizen.

Late to the Game: Koontz and whether you can have a takings claim without an actual takings - lawprof Jessie Owley, *Land Use Prof Blog*.

CAC Reacts to Supreme Court Decision in Koontz Takings Case - Constitutional Accountability Center.

Land Owners Complete a Clean Sweep at the U.S. Supreme Court - Brad Kuhn, *California Eminent Domain Report*.

A Few More Thoughts About Koontz - lawprof Eduardo Penalver, *PrawfsBlawg*.

Koontz' Unintelligible Takings rule: Can Remedial Equivocation save the Court from a Doctrinal Quagmire? - lawprof Rick Hills, *PrawfsBlawg*.

Koontz and Exactions: Don't Worry, Be Happy - lawprof Jonathan Zasloff, *Legal Planet*.

No Permit for You! - How Denying a Permit Could be a Taking - Jesse Souki, *Hawaii Land Use Law and Policy*.

Surprise! Environmental Lawprof Dislikes Koontz – Robert Thomas
Inversecondemnation.com

And these:

Koontz Decision: No Big Deal or Blow to Sustainable Development? - Planetizen

<http://www.planetizen.com/node/63926>

A Legal Blow to Sustainable Development - Prof. Echeverria, Vermont Law School
http://www.nytimes.com/2013/06/27/opinion/a-legal-blow-to-sustainable-development.html?_r=1&

A Legal Blow to Cities That Want to Take Your Property - Cato Institute
<http://www.cato.org/blog/legal-blow-cities-want-take-property>

First decision post-*Koontz*:

Town of Ponce Inlet v. Pacetta, Ct. App. Fl. (July 5, 2013)
<http://www.5dca.org/Opinions/Opin2013/070113/5D12-1982.op.pdf>

Background cases:

Nollan v. California Coastal Commission
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0483_0825_ZS.html

Dolan v. Tigard
<http://www.law.cornell.edu/supct/html/93-518.ZS.html>

Lingle v. Chevron
<http://www.law.cornell.edu/supct/html/04-163.ZS.html>

Eastern Enterprises v. Apfel
<http://www.law.cornell.edu/supct/html/97-42.ZO.html>

Commentary:

John Baker and Katherine Swenson, ***Koontz v. St. Johns River Water Management District: Trudging Through a Florida Wetland with Nine U.S. Supreme Court Justices*** (May 2013)
<http://www.greeneespe.com/files/pdf/ReprintZPLR052013.pdf>

Ilya Somin, ***Two Steps Forward for the 'Poor Relation' of Constitutional Law: Koontz, Arkansas Game & Fish, and the Future of the Takings Clause***
Cato Supreme Court Review, pp. 215-243, 2012-2013 (Symposium on the 2012-13 Supreme Court Term), George Mason Law & Economics Research Paper No. 13-48
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325529

John D. Echeverria, ***Koontz: The Very Worst Takings Decision Ever?***
Vermont Law School Research Paper No. 28-13
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2316406

Justin R. Pidot, ***Fees, Expenditures, and the Takings Clause***
University of Denver Sturm College of Law
Date posted: July 26, 2013
Last revised: August 15, 2013
Working Paper Series
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2298307

John Ryskamp, ***Koontz Pulls the 'Trigger' on the Affordable Care Act***
Independent

Date posted: July 1, 2013

Working Paper Series

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2287280

Takings

Solida v. United States, 778 F.3d 1351 (Fed. Cir. 2015) (When a church that owned a camp sued the government for an alleged taking of property without compensation in both federal district court and in federal claims court, based upon a water diversion project by the Fish and Wildlife Service as part of its wildlife management mandate, the government moved to dismiss the federal claims court action for lack of subject matter jurisdiction (pursuant to the Supreme Court's holding in *United States v. Tohono* under which the United States Court of Federal Claims does not have jurisdiction over any claim against the United States when the plaintiff has a previously filed a case against the United States in another court in respect to the same claim(s) asserted in the Court of Federal Claims). The Federal Circuit Court of Appeals upheld the Federal Court of Claims's dismissal, emphasizing the binding precedent set forth in *Tohono*. In a concurring opinion, Judge Taranto points to potential holes in the *Tohono* rule, stating that "if restorative relief is incomplete, as by leaving a temporary taking uncompensated, questions would arise about whether tolling of the statute of limitations might be recognized to avoid unconstitutionality or whether the combination of remedy-depriving statutes is unconstitutional as applied").

<http://www.ca9.uscourts.gov/sites/default/files/opinions-orders/14-5058.Opinion.2-24-2015.1.PDF>

Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015) (finding statute limiting damages for agricultural nuisances does not authorize an unconstitutional private taking nor violate equal protection).

<http://law.justia.com/cases/missouri/supreme-court/2015/sc93816.html>

Kirby v. N.C. Dep't of Transp., 769 S.E.2d 218 (N.C. Ct. App. 2015) (The Map Act, a state statute which gives the North Carolina Department of Transportation the ability to designate hundreds of parcels for future highway use and prevent their development in the meantime for the avowed purpose of keeping the future acquisition price low, was held to effect a taking and property owners are entitled to compensation for such a designation).

https://scholar.google.com/scholar_case?case=17706063766671105645&q=Kirby+v.+N.C.+Dep+t+of+Transp&hl=en&as_sdt=8006

Irwin v. City of Minot, 860 N.W.2d 849, 2015 ND 60 (N.D. 2015) (The Court held that an issue of fact remains as to whether removing clay from the plaintiffs' property during a flood to build dikes, but without compensating the plaintiffs, occurred during an emergency that presented an

“imminent danger” giving rise to an “actual necessity” to take the clay and precluding compensation for the taking).

<http://www.ndcourts.gov/court/opinions/20140217.htm>

Koontz v. St. Johns River Water Management District

http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Powell v. County of Humboldt, 166 Cal. Rptr. 3d 747, 757 (Cal. Ct. App. 2014)

<http://www.californialandusedevelopmentlaw.com/files/2014/03/Powell-v.-County-of-Humboldt.pdf>

Lingle v. Chevron, U.S.A., Inc., 544 U.S. 528 (2005)

<http://supreme.justia.com/cases/federal/us/544/04-163/>

Lost Tree Vill. Corp. v. United States, 787 F.3d 1111 (Fed. Cir. 2015) (holding that the denial of a wetland fill permit constituted per se regulatory taking).

<http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/14-5093.Opinion.5-28-2015.1.PDF>

Lost Tree Village Corp. v. United States, (Fed. Cir. 2013)

<http://www.cafc.uscourts.gov/images/stories/opinions-orders/12-5008.pdf>

Gregory M. Stein, David. L. Callies, Brian Rider, *Stealing Your Property or Paying You for Obeying the Law? Takings Exactions after Koontz v. St. Johns River Water Management District 21* (American College of Real Estate Lawyers, March 2014).

<http://files.ali->

[cle.org/thumbs/datastorage/skoob/articles/BKAC1403%20TAB09%20Stein_Callies_Rider_Koontz_thumb.pdf](http://files.ali-cle.org/thumbs/datastorage/skoob/articles/BKAC1403%20TAB09%20Stein_Callies_Rider_Koontz_thumb.pdf)

Home Builders Ass’n of Central Arizona v. City of Scottsdale, 930 P.2d 993, 1000 (Ariz. 1997) (*Dolan* does not apply to a “generally applicable legislative decision by the city) (emphasis in original)

http://www.leagle.com/decision/1997666187Ariz479_1595.xml/HOME%20BUILDERS%20ASS'N%20v.%20CITY%20OF%20SCOTTSDALE

Parking Ass’n of Georgia, Inc. v. City of Atlanta, 450 S.E.2d 200, 203 n.3 (Ga. 1994), *cert. denied*, 515 U.S. 1116 (1995) (zoning-imposed landscaping requirement not subject to *Dolan* scrutiny);

Krupp v. Breckenridge Sanitation Dist., 19 P.3d 687, 695-96 (Colo. 2001) (rejecting *Dolan* for legislatively-enacted impact fee).

Courts applying *Dolan* to legislative enactments include *Sparks v. Douglas County*, 904 P.2d 738 (Wash. 1995) (en banc) (road dedication requirement);

Amoco Oil Co. v. Village of Schaumburg, 661 N.E.2d 380 (Ill. App. Ct. 1995) (land dedication requirement);

Schultz v. City of Grants Pass, 884 P.2d 569 (Or. Ct. App.1994) (street-widening right-of-way dedication requirement).

Lemire v. State Dept. of Ecology, 309 P.3d 395, 409 (Wash. 2013)
<http://www.courts.wa.gov/opinions/pdf/877033.pdf>

Merscorp v. Malloy (Conn. Super. Ct., 2013)
http://www.ctlawtribune.com/pdfwrapper.jsp?sel=/pdf/merscorp_malloy.pdf

Cerajeski v. Zoeller, 735 F.3d 577, 580 (7th Cir. 2013)
<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2013/D10-31/C:12-3766:J:Posner:aut:T:fnOp:N:1232851:S:0>

Canel v. Topinka, 212 Ill.2d 311, 288 Ill.Dec. 623, 818 N.E.2d 311, 324–25 (2004)
<https://www.courtlistener.com/ill/bTpL/canel-v-topinka/>

Cedar River Water & Sewer Dist., v. King Cnty., 315 P. 3d 1065, 1089 (Wash. 2013)
<https://www.courts.wa.gov/opinions/pdf/862931.pdf>

Marvin A. Brandt Revocable Trust v. United States, 134 S. Ct. 1257 (2014)
http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Hotze v. Sebellius, --- F.Supp. 2d ---, 2014 WL 109407
<http://www.larryjoseph.com/Dockets/Hotze-v-Sebelius/13-01318-SDTx-Decision.pdf>

Climate Change

Jennifer Peltz, Levees, Removable Walls Proposed To Protect NYC

Jun. 11 8:06 PM EDT

<http://bigstory.ap.org/article/mayor-discuss-prepping-nyc-warming-world>

Severance v. Patterson (Texas 2012 and 5th Cir. 2012)
<https://www.supreme.courts.state.tx.us/historical/2012/mar/090387.pdf>
<http://www.ca5.uscourts.gov/opinions/pub/07/07-20409-CV1.wpd.pdf>

Borough of Harvey Cedars v. Karan (New Jersey App. 2012; NJ Supreme Court 2013)
<http://njlaw.rutgers.edu/collections/courts/appellate/a4555-10.opn.html>
<http://njlaw.rutgers.edu/collections/courts/supreme/a-120-11.opn.html>

Stop the Beach Renourishment, Inc. v. Florida Dept. of Env. Protection, 560 U.S. 702 (2010)

Jordan v. St. Johns County (Fla. App.Ct. 2011, review denied)

Equal Protection

Warden v. City of Grove, Okla., 604 Fed.Appx. 755 (Mem) (10th Cir. 2015) (held that due process and equal protection claims brought by the developer of a mobile home park were not ripe for judicial review because the developer had "not even applied for a permit for his development, as [he] has not sought the approval of the Planning Commission, a prerequisite to applying for a permit[,] nor were there any 'evidentiary materials suggesting that [he] has sought a variance [from the Board]."

<http://www.ca10.uscourts.gov/opinions/14/14-5114.pdf>

Miller v. City of Monona, 784 F.3d 1113 (7th Cir. 2015) (holding that the approved condominium project was not suitable comparator for purposes of owners' class-of-one equal protection claim and the denial of owners' project was rationally related to persistent asbestos and building code problems on the property).

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2015/D05-01/C:13-2575:J:Tinder:aut:T:fnOp:N:1544912:S:0>

David Hill Development LLC v City of Forest Grove (D. Or. 2013)



00251339.PDF

<http://tinyurl.com/lstvd42>

Comprehnesive Plans

Apple Grp., Ltd. v. Granger Twp. Bd. of Zoning Appeals, --- N.E.3d ----, 2015 WL 3774084 (Ohio 2015) (holding that Township's comprehensive plan met all required factors and may be included within its zoning resolution instead of a separate and distinct document).

<http://supremecourt.ohio.gov/ROD/docs/pdf/0/2015/2015-Ohio-2343.pdf>

Concrete Nor'west v. W. Wash. Growth Mgmt. Hearings Bd., 185 Wash.App. 745, 341 P.3d 351 (2015) (The county council did not have a duty to amend its comprehensive plan and zoning map and designate plaintiff's property as mineral resource land).

<http://www.courts.wa.gov/opinions/pdf/D2%2045563-3-II%20Published%20Opinion.pdf>

RDNT, LLC v. City of Bloomington, 861 N.W.2d 71 (Minn. 2015) (The state supreme court held that the city acted within its discretion in denying a nursing home's application for a conditional use permit to expand its existing assisted living services by adding a third building to

its campus because the proposed mitigation conditions were insufficient. In a concurring opinion, Justice Anderson wrote that while he agrees with the majority's ultimate holding, he is "particularly struck by the willingness of the City to ignore the longstanding use of property by RDNT, a use that predates the arrival of the neighbors now complaining about traffic." He wrote separately "to address an alarming argument advanced by the City that the majority... [did] not reach in affirming the court of appeals. That argument is that the City may properly deny a conditional use permit when the proposed use is in conflict with its comprehensive plan. [His] concurring opinion [was] prompted by significant uncertainty in [the] statutory framework and confusion in [the] case law concerning the role of comprehensive plans... There are constitutional implications lurking behind that insistence of the City that a conditional use permit may be denied for any comprehensive plan violation").

<http://caselaw.findlaw.com/mn-supreme-court/1694937.html>

City of Portland, OR, Bureau of Planning and Sustainability:

<http://www.portlandoregon.gov/bps/article/465826>

Oregon's statewide planning program:

http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf

Involving the public in the planning process via an app:

<http://www.portlandbps.com/gis/cpmapp/>

Growing Smart Legislative Guidebook (American Planning Association)

<http://www.planning.org/growingsmart/>

Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 2001) (zoning inconsistent with plan, building constructed pursuant to zoning ordered torn down.)

http://scholar.google.com/scholar_case?case=9344086111461559402&hl=en&as_sdt=6&as_vis=1&oi=scholar

Griswold v. City of Homer, 186 P.3d 558 (Alaska 2008): Zoning passed by initiative inconsistent with plan, so invalidated.

http://scholar.google.com/scholar_case?case=4473075930033677947&hl=en&as_sdt=6&as_vis=1&oi=scholar

Haines v. City of Phoenix, 727 P. 2d 339 (Ariz. 1986): Plan had height limit of 250 feet, but court found 500 foot high building consistent.

http://scholar.google.com/scholar_case?case=6372077195414921944&hl=en&as_sdt=6&as_vis=1&oi=scholar

STATE OF CALIFORNIA GENERAL PLAN GUIDELINES
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH:

http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf

http://opr.ca.gov/docs/Update_GP_Guidelines_Complete_Streets.pdf

http://opr.ca.gov/docs/specific_plans.pdf

http://ceres.ca.gov/planning/plan_comm/

http://ceres.ca.gov/planning/open_space/open_space.html

http://opr.ca.gov/docs/SB244_Technical_Advisory.pdf

Robert L. Liberty, Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States, 22 ELR 10367 (1992)

<http://elr.info/store/download/25879/6111>

Preemption

City of Fort Collins v. Colo. Oil and Gas Ass'n

https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2015/15S_C668.pdf

Regulation

Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control, 401 S.C. 570 (2013)

<http://www.sccourts.org/opinions/HTMLFiles/SC/27065.pdf>

Religious Land Use and Institutionalized Persons Act

Trinity Lutheran Church of Columbia, Inc. v. Pauley

<http://www.scotusblog.com/wp-content/uploads/2015/11/trinity-op-below.pdf>

<http://www.scotusblog.com/wp-content/uploads/2015/11/Trinity-Lutheran-Cert-Petition.pdf>

Bernstein v. Vill. of Wesley Hills, Nos. 08-CV-156 (KMK), 12-CV-8856, 2015 WL 1399993 (S.D.N.Y. 2015) (Village did not impose or implement a land use regulation, within the meaning of the Religious Land Use and Institutionalized Persons Act, when they filed an action alleging that the town board's approval of the development of a religious corporation's property violated state environmental review laws, where the village had no capacity to impose or implement environmental review).

Candlehouse, Inc. v. Town of Vestal, New York (USDC ND NY 2013)

<http://rluipa-defense.com/docs/Candlehouse%20v.%20Town%20of%20Vestal.pdf>

DOJ Report Combating Religious Discrimination Today: Final Report (July 2016)

<https://www.justice.gov/crt/file/877936/download>

Wetlands

Final Compensatory Mitigation Rule

http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm

http://water.epa.gov/lawsregs/guidance/wetlands/upload/2003_05_30_wetlands_CMitigation.pdf

Adult Uses

Showtime Entm't, LLC v. Town of Mendon, 472 Mass. 102, 32 N.E.3d 1259 (2015) (held that pre-enactment studies and other evidence, e.g. of secondary effects, used by the town in developing regulations prohibiting the sale of alcohol at adult establishments demonstrated a "countervailing State interest" sufficient to justify the ban on the sale of alcohol at such businesses, but even though the ban was justified it was not adequately tailored because it not only banned the sale of alcohol in adult entertainment establishments but also banned it in any legitimate theater that happened to be in the adult entertainment overlay district and wanted to show a mainstream performance like the rock musical "Hair" or "Equus", neither of which is adult or sexually oriented and presumably would not be the source of the secondary effects that come from serving alcohol in places that do provide adult entertainment).

<http://masscases.com/cases/sjc/472/472mass102.html>

35 Bar and Grille v. San Antonio, (USDC WD Tx 2013)



139072525-Judge-s-
Entertaining-Order-in

Housing – Inclusionary Zoning

42 USC § 3601 <http://www.justice.gov/crt/about/hce/title8.php>

Metropolitan Housing Development Corporation v. Arlington Heights, 616 F.2d 1006 (7th Cir. 1980).

Mt. Holly Gardens Citizens in Action v. Township of Mount Holly, 658 F.3d 375 (3rd Cir. 2010)

<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-1507.htm>

Magner v. Gallagher, 619 F.3d 823 (8th Cir. 2010)

<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1032.htm>

Executive Order 12892 -

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EO12892

United States Anti-Discrimination Center of Metro New York v. Westchester County, Slip Copy, 2009 WL 970866 (S.D.N.Y.)

HUD's Settlement Agreement with Westchester County -

<http://www.hud.gov/content/releases/settlement-westchester.pdf>

Logan, Jenny, "Otherwise Unavailable": How Oregon Revised Statutes Section 197.309 Violates the Fair Housing Act Amendments, *Journal of Affordable Housing*, Vol. 22-2, Winter 2014.

http://www.americanbar.org/publications/journal_of_affordable_housing_home/Volume_22_1.html

www.housinglandadvocates.org

AMG Realty Co. v. Warren Township, 207 N.J. Super. 388 (1984).(fair share formula)

Hills Development Company v. Township of Bernards, 103 N.J. 1 (1986). (Mt. Laurel III)(sustained the NJ Fair Housing Act as an alternative to Judicial Relief)

Holmdel Builders' Association v. Holmdel Township, 121 N.J. 550 (1990). (housing fees)

Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I)

Southern Burlington County NAACP v. Township of Mount Laurel II, 92 N.J. 158 (1983) (Mount Laurel II).

Toll Brothers, Inc., v. Township of West Windsor, 173 N.J. 502 (2002).(builder remedy still viable for non-COAH towns)

N.J.S.A 52:27D-301, et seq. (N.J. Fair Housing Act, setting up COAH)

Holmes, Robert C., *Southern Burlington County NAACP v. Township of Mt. Laurel, (1975), Establishing a Right to Affordable Housing Throughout the State by Confronting the Inequality Demon*, Chapter 3, in *Courting Justice, 10 New Jersey Cases That Shook the Nation*, Paul Trachtenberg Ed., (2013)

Robert C. Holmes, *The Clash of Home Rule and Affordable Housing: The Mount Laurel Story Continues*, *Connecticut Public Interest Law Journal*, Vol. 12 No. 2 2013.

Robert C. Holmes, *A Black Perspective on Mount Laurel II: Toward a Black Fair Share*, Seton Hall L. Rev. Vol. 14 No. 4 1984.

<http://njlaw.rutgers.edu/collections/courts/supreme/a-127-11.opn.html> (July 2013 N.J. Supreme Court opinion reversing Governor Christie's abolition of COAH)

<http://njlaw.rutgers.edu/collections/courts/supreme/a-90-10.opn.html> (Sept. 2013 N.J. Supreme Court opinion voiding growth share rules and setting deadline for new rules; the deadline has been extended to May, 2014)

<http://www.state.nj.us/dca/services/lps/hss/transinfo/reports/units.pdf> (link to site which says the Mt. Laurel/COAH programs had created about 60,000 new units and rehabilitated about 15, 000 units as of March, 2011).

[Douglas S. Massey](#), *“Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb,”* Princeton University Press (2013)

Housing – Distressed Properties

62-64 Main St. LLC v. Mayor & Council of Hackensack, 221 N.J. 129, 110 A.3d 877 (N.J. 2015) (Property owners challenged city’s classification of their lots as blighted. The state supreme court reversed the state appellate court’s holding that the houses were not blighted. The supreme court found that the properties were in various states of ruins, constituting blight, and a landowner’s desire to develop property does not militate against a blight declaration in New Jersey law).

The Center for Community Progress’ Building American Cities Toolkit.

- The section on problem property owners is: <http://www.communityprogress.net/problem-property-owners-pages-201.php>
- The section on reusing vacant properties is: <http://www.communityprogress.net/reusing-vacant-properties-pages-202.php>

Alan Mallach, *BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS* (2nd ed. 2010)

Alan Mallach, *Abandoned and Vacant Properties: Using Model Ordinances and Creative Strategies*, IMLA 2012 Code Enforcement Conference (Oct. 20, 2012).

“Vacants to Value” - vacantstovalue.org – the signature program of the Mayor Stephanie Rawlings-Blake of Baltimore dealing with vacant properties; contains many materials.

Julie A. Tappendorf & Brent O’ Denzin, *Turning Vacant Properties into Community Assets Through Land Banking*, 43 *The Urban Lawyer* 3 (Summer 2011).

Timothy A. Davis, *A Comparative Analysis of State and Local Government Vacant Property Registration Statutes*, 44 *The Urban Lawyer* 2 (Spring 2012).

Stephen Whitaker and Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent and Foreclosed Property on Sales Prices of Neighboring Homes*, Federal Reserve Bank of Cleveland (Oct. 2011).

Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties*, 34 *Zoning & Planning Law Report* 1 (2011)

Jessica A. Bacher, *Addressing Distressed Properties: Legal Tools*, 39 *R.E.L.J.* 207 (2010);

Dwight H. Merriam, *Helping Development in a Down Economy*, 50 *Municipal Lawyer* 14 (2009).

Sorell E. Negro, *A New Tool for Vacant Properties: Land-Banking*, *Municipal Lawyer* (March/April 2012).

Sorell E. Negro, *You Can Take It to the Bank: The Role of Land Banking in Dealing with Distressed Properties*, 35 *Zoning & Planning Law Report* 9 (September 2012).

Medical Marijuana

City of Riverside v. Inland Empire Patients Health & Wellness Center, 300 P.3d 494 (Cal. 2013)

The Michigan Medical Marijuana Act (MMMA), MCL 333.26421 et seq.

Riverside v Inland Empire Patients Health & Wellness Ctr, Inc, 56 Cal 4th 729; 156 Cal Rptr 3d 409; 300 P3d 494 (2013),

Signs

Reed v. Town of Gilbert, 2015 WL 2473374, 576 U.S. __ (U.S. 2015) (holding that the provisions of a municipality's sign code that made content-based distinctions between "Temporary Directional Signs, Ideological Signs, and Political Signs" unconstitutionally discriminate against a particular kind of content) (text commentary based on blog postings 6/22/15 and 6/30/15 at www.RLUIPA-Defense.com authored by K. Chaffee, E. Seeman, and B. Connolly, with permission).

http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Courts will view content neutrality differently given the U.S. Supreme Court's 2015 decision in *Reed v. Gilbert*. Further, *Reed* makes clear that view-point neutral regulation is not synonymous with content-neutral regulation. Good News Community Church (Good News) claimed that Gilbert's sign ordinance made impermissible content-based distinctions between "Temporary Directional Signs, Ideological Signs, and Political Signs." Good News, which holds services at different locations from week to week, used signs directing congregants to each week's chosen location. Gilbert categorized such signs as "Temporary Directional." The Ninth Circuit disagreed with Good News, finding that the sign restrictions, including the distinctions among them, were content-neutral for purposes of free speech:

[T]he distinction between Temporary Directional Signs, Ideological Signs, and Political Signs are content-neutral. That is to say, each classification and its restrictions are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign. . . . It makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted. Accordingly, as the speaker and event determinations are generally "content-neutral," Gilbert's different exemptions for different types of noncommercial speech are not prohibited by the Constitution.

The Supreme Court disagreed. The Court's majority opinion, authored by Justice Thomas, started with the well-recognized principle: "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and maybe justified only if the government proves that they are narrowly tailored to serve compelling state interests." The Court found that the ordinance is "content based on its face." According to the Court, the ordinance regulates based on the message conveyed: Temporary Directional signs convey a message directing the public; Political Signs are designed to influence the outcome of an election; and Ideological Signs communicate a message or idea. By regulating the message, Gilbert regulated the "communicative content of the sign," making the ordinance content based and subject to strict scrutiny review. Even though the ordinance may have a content-neutral justification, "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech."

The Court went on to conclude that Gilbert's purported reasons for the regulation, preserving the Town's aesthetic appeal and traffic safety, were not adequate justifications to pass strict scrutiny review. Assuming that these interests were "compelling," the Court found the ordinance "hopelessly underinclusive" because the same restrictions were not placed on other types of signs. Thus, Gilbert failed to show that its ordinance was "narrowly tailored to further a compelling government interest."

The Court concluded the majority opinion by noting that its decision does not limit a municipality's ability to regulate signage, so long as the regulation is content neutral. For instance, "size, building materials, lighting, moving parts, and portability" may be regulated without reference to a sign's message. Further, "on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner."

The majority opinion does not cite to any of the majority opinions in the abortion clinic cases (including the 2014 decision in *McCullen v. Coakley*, where Chief Justice Roberts espoused a different view of content neutrality than the Court adopted in *Reed*), nor does it cite to some standard sign law precedents such as *Metromedia* and *Ladue*. The “secondary effects” cases relating to the regulation of adult business also go unmentioned. It may be difficult to reconcile the *Reed* majority opinion with some of the holdings in these prior cases, and it remains to be seen whether *Reed* was truly intended to cut back at any of these earlier decisions.

The *Reed* decision does not mention the distinction between noncommercial and commercial speech. Older cases, including *Metromedia*, held that commercial speech gets less First Amendment protection than noncommercial speech. In the 30-plus years since *Metromedia*, however, commercial speech has received increasing protection. The 2011 case of *Sorrell v. IMS Health* reviewed commercial speech regulations under a time, place, and manner noncommercial speech analysis. It may prove to be that the Court’s approach in *Reed*, the heavy citation to *Sorrell* in the *Reed* majority, and failure to mention the commercial speech doctrine suggests a gradual phasing-out or weakening of the commercial speech doctrine.

Although the decision was unanimous, the Justices filed three separate concurring opinions. Justice Alito, joined by Justices Kennedy and Sotomayor added “a few words of further explanation.” Justice Alito stressed that municipalities are not powerless to enact sign regulation, and provided a non-inclusive list of content neutral criteria:

Lamar Advertising v. Zoning Board of Rapid City

<http://ujs.sd.gov/Uploads/opinions/26254.pdf>

Riya Cranbury Hotel, LLC v. Zoning Bd. of Adjustment of the Township of Cranbury (N.J. Sup. Ct. 2013)

<http://www.njlawarchive.com/20130201101013470672563/>

Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment (N.H. 2013) <http://www.courts.state.nh.us/supreme/opinions/2013/2013031bartlett.pdf>

Brown v Town of Cary, 2013 WL 221978 (4th Cir.

2013) <http://www.ca4.uscourts.gov/Opinions/Published/111480.P.pdf>

Subdivisions

Town of Hollywood v Floyd, (S.C. 2013)

<http://www.sccourts.org/opinions/HTMLFiles/SC/27252.pdf>

Variances

Bartlett v. City of Manchester (N.H. 2013)

<http://www.courts.state.nh.us/supreme/opinions/2013/2013017bartlett.pdf>

Hydraulic Fracturing

Anschutz v. Dryden (NY App. Div. May 2, 2013)

<http://earthjustice.org/sites/default/files/Dryden-Decision.pdf>

John R. Nolon & Steven E. Gavin,

HYDROFRACKING: STATE PREEMPTION, LOCAL POWER, AND COOPERATIVE GOVERNANCE

<http://law.case.edu/journals/lawreview/Documents/63CaseWResLRev4.pdf>

David L. Callies,

FEDERAL LAWS, REGULATIONS, AND PROGRAMS AFFECTING LOCAL LAND USE DECISION
MAKING: HYDRAULIC FRACTURING

The American Law Institute - Continuing Legal Education

Land Use Institute: Planning, Regulation, Litigation, Eminent Domain, and
Compensation

August 14 - 16, 2013

http://files.ali-cle.org/thumbs/datastorage/skoobesruoc/pdf/CV003_chapter_33_thumb.pdf

Cooperstown Holstein Corporation v. Town of Middlefield

In the Matter of Mark S. Wallach, as Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden

<HTTP://WWW.NYCOURTS.GOV/CTAPPS/DECISIONS/2014/JUN14/130-131OPN14-DECISION.PDF>

Robinson Township v. Commonwealth of Pennsylvania

<HTTP://WWW.PACOURTS.US/ASSETS/OPINIONS/SUPREME/OUT/J-127A-D-2012OAJC.PDF?CB=1>

State ex rel. Morrison v. Beck Energy Corp. No. 2013-0465, 2015 WL 687475, 2015-Ohio-485 (2015) (The Court held that a town ordinance prohibiting oil and gas drilling violated the Ohio State Constitution, which does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations that the state has permitted. The Court determined the ordinance to further be an exercise of police power and in conflict with state statutes addressing oil and gas drilling).

<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2015/2015-Ohio-485.pdf>

<https://www.sconet.state.oh.us/rod/docs/pdf/9/2013/2013-ohio-356.pdf>

Masone v. City of Aventura and City of Orlando v. Udowychenko

http://www.floridasupremecourt.org/decisions/2014/sc12-644_Corrected.pdf

CTS Corp v Waldeburger

http://www.supremecourt.gov/opinions/13pdf/13-339_886a.pdf