



Photo: William A. Fischel

David Lucas' Beachfront Property and Integrity

Handout A: Narrative

BACKGROUND

With respect to property rights, the Fifth Amendment to the U.S. Constitution provides that “No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” “Eminent domain” has long been recognized as a legitimate government power that can take private property when necessary. For example, if a community needs a new road, park, or school, but the best location for that new facility is private property, the government may force the owner to sell the property in order to build the new structure for the use of the community as a whole.

The Fifth Amendment’s “Takings Clause” assures that government must deal with the property owner fairly. In a “regulatory taking,” a government regulation limits a property owner’s use of the property in ways that do not confiscate the property, but reduce its value to the owner. In this situation, if the government passes laws that limit the effective use of the property, should the government be required to compensate the owner for that lost value?

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According to the 1977 Coastal Zone Management Act, owners of land in certain “critical areas” of South Carolina’s coastline were required to receive permits from South Carolina Coastal Council before they built structures or otherwise changed the use of their land. The law’s purpose was to prevent erosion and destruction of barrier islands. In 1986, David H. Lucas, a real estate developer, purchased two beachfront lots on Isle of Palms, just north of Charleston, South Carolina. These lots were not defined as “critical areas,” and Lucas intended to build single-family homes on his property. Lucas’s neighbors on both sides had already built large houses on their lots.

In 1988, the South Carolina legislature enacted the Beachfront Management Act, which effectively prohibited his plans by redefining areas where new homes could be built. The Isle of Palms beach was known to be particularly unstable, having frequently required emergency sandbagging in recent years to protect property there. Lucas believed the new law amounted to a regulatory taking that deprived him of the use of his property without fair compensation, in much the same way as if the state had seized his lots through eminent domain. As a real estate agent, he had invested in the two lots in order to build houses and then sell the property. The new law deprived him of the opportunity to earn a return on his investment. He filed suit against the Coastal Council, maintaining that the 1988 law resulted in a taking of his property without just

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compensation. He believed it was reasonable for him to be able to use his property in the same way his neighbors had, and that the new law deprived him of something that was rightfully his as a property owner. The Coastal Council asserted that the Beachfront Management Act was a valid exercise of the police power of the state, not a taking, and therefore Lucas was not entitled to compensation.

In 1992, Lucas' case reached the Supreme Court. Justice Scalia delivered the opinion of the Court in the 6 – 2 decision for *Lucas v. South Carolina Coastal Council*.

“Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner’s estate shows that the proscribed use interests were not part of his title to begin with... Where “permanent physical occupation” of land is concerned, [which was not the case here] we have refused to allow the government to decree it anew (without compensation), no matter how weighty the asserted “public interests” involved... We believe similar treatment must be accorded confiscatory regulations, *i.e.*, regulations that prohibit all economically beneficial use of land.”

In calling the 1988 Beachfront Management Act, a “confiscatory regulation,” the Court’s majority agreed with Lucas that the law deprived him of all economically beneficial uses of the land that he had bought two years earlier. While South Carolina did not physically take the land away from Lucas, the new law had the same effect as if it had, and South Carolina would have to pay Lucas for his loss. Justice Scalia also pointed out that other landowners all along the beach had already done what Lucas intended to do—build a house on the property.

Justice Blackmun wrote a dissent in which he noted that Lucas had lived on Isle of Palms for eight years before purchasing the property in question. He hinted that Lucas should have known that this particular area of the beach was susceptible to frequent flooding. For this reason, the new law should not have been a surprise to Lucas. Blackmun explained that the South Carolina legislature had “the power to prevent any use of property it finds to be harmful to its citizens, and that a state statute is entitled to a presumption of constitutionality.” He found no evidence to support the premise that the restrictions preventing Lucas from building homes on his property made it totally valueless. Since South Carolina’s law was, in Blackmun’s view, a reasonable exercise of the police power of the state, Lucas was not entitled to compensation for his property’s loss of value.

After he won his case and was duly compensated for his property, Lucas went on to establish the Council on Property Rights, whose goal is to support state laws protecting property rights and educate the public regarding their property rights. “The case took five years out of my life to try to get back what the Constitution and plain old common sense says that I should never have lost in the first place...Even though the professed goals of certain regulations may be worthy, sometimes these regulations can have unforeseen negative consequences,” Lucas said. “The wakeup bells have sounded. Innocent men, women, and children all over this nation are having their lives ruined by one-sided laws that ignore private property rights,” Lucas emphasized. Since the Lucas decision, several states have enacted laws providing a higher level of protection for individual property rights in regulatory takings cases.