

**SUBSTANTIVE DUE PROCESS
OCTOBER 3, 2003 PANEL DISCUSSION**

***DEMYSTIFYING SUBSTANTIVE
DUE PROCESS***

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VIABLE CLAIMS UNDER THE SUBSTANTIVE DUE PROCESS CLAUSE

- Substantive Due Process Clause protects liberties
"deeply rooted in Nation's history and tradition."
Armendariz v. Penman, 75 F.3d 1311, 1319 (9th Cir. 1996).
- More recently Substantive Due Process has been based
upon the protection of property rights although viewed with
particular scrutiny.
Arroyo Vista Partners v. County of Santa Barbara, 732 F. Supp. 1046, 1050
(C.D. Cal. 1990).

PREREQUISITES TO ESTABLISHING A SUBSTANTIVE DUE PROCESS CLAIM

- Deprivation of a federally-secured property interest;

Board of Regents v. Roth, 408 U.S. 564, 577 (1972); and

- Deprivation, if any, was so arbitrary and capricious as to constitute egregious abuse of governmental power that shocks the conscience.

County of Sacramento v. Lewis, 523 U.S. 833, 845-49 (1998); Pearson v. City of Grand Blanc, (6th Cir. 1992) 961 F.2d 1211, 1222.

FEDERALLY-SECURED PROPERTY INTEREST

- Created only where procedural requirements were intended to operate as a "significant substantive restriction" on the agency's action.
 - Requires analysis of "the extent to which the statute limits the agency's discretion" in denying the application for a license or other entitlement, e.g., a development permit.
 - If discretion ultimately whether to approve the entitlement rests with the governing body, no federally-secured property interest can be established.

Groten v. State of California, 251 F.3d 844, 850 (2001).

ARBITRARY AND CAPRICIOUS ACTIONS

- The City's action must be "most egregious official conduct" that was "arbitrary in the constitutional sense."

County of Sacramento, 523 U.S. at 846.

- A true abuse of power that "shocks the conscience," or is "clearly arbitrary and unreasonable, having no substantial relationship to the public health, safety, morals, or welfare."

Pearson v. City of Grand Blanc, 961 F.2d at 1222.;

Armendariz, 75 F.3d at 1318.

CHALLENGES TO LEGISLATIVE ACTIONS

- Unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt.
 - Challenge to legislation based solely upon the argument that the government's end, itself, is illegitimate, will almost never succeed.
 - Judicial deference based on respect for the separation of powers. Court is neither super-legislature nor a zoning board of appeal.

Pennell v. City of San Jose (1988) 485 U.S. 1 (1988), 99 L.Ed.2d 1, 14.
Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 124 (1978).

CHALLENGES TO INDIVIDUAL GOVERNMENTAL ACTIONS

- Government officials must be guilty of grave unfairness in the discharge of their legal responsibilities.

Sinaloa Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 1398, at 1408.

- Only a "substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights, qualifies for relief under §1983."

Silverman v. Barry, 845 F.2d 1072, 1080 (D.C. Cir. 1986).

FACTORS THAT ARE GENERALLY CONSIDERED

- Need for the governmental action in question,
- Relationship between the need and the action,
- Extent of harm inflicted, and
- Whether the action was taken in good faith or for the purpose of causing harm.

Rutherford v. City of Berkeley, 780 F.2d 1444, 1446 (1986).

NO VIOLATION OF SUBSTANTIVE DUE PROCESS

- Denial based upon faulty reasoning or violation of state law or administrative procedures.
- Agency demands have exceeded its authority.
- Inadvertent errors, honest mistakes, agency confusion, errors in judgment, even negligence in the performance of official duties.

Sinaloa Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 1398, at 1407;
PFZ Properties, Inc. v. Rodriguez, 928 F.2d 28, 31 (1st Cir. 1991);
Estabrook, 680 F.2d at 833.

THE SUBSTANTIVE DUE PROCESS CLAUSE DOES NOT EXTEND TO AREAS COVERED BY EXPLICIT TEXTUAL PROVISIONS OF THE CONSTITUTION

- Substantive due process does not extend to areas addressed by other, more specific provisions of the Constitution.
- Any explicit textual source of constitutional protection ... preempts a more generalized substantive due process claim.

Armendariz v. Penman, 75 F.3d 1311, 1324-26 (9th Cir. 1996) (quoting Graham v. Connor, 490 U.S. 386, 395 (1989).)

IN LAND-USE DECISIONS TAKINGS CLAUSE GENERALLY FOUND TO PREEMPT SUBSTANTIVE DUE PROCESS CLAIMS

- Denial of property owner's subdivision application held to be preempted by Takings Clause.
Macri v. King County, 126 F.3d 1125, 1129 (9th Cir. 1997),
- Cancellation of development application held to be preempted by Takings Clause.
Esplanade Properties v. City of Seattle, 307 F.3d 978 (9th Cir. 2002),
- Issuance of Stop Work Order held to be preempted by Takings Clause.
Weinberg v. Whatcom County, 241 F.3d 746, 749 n.1 (9th Cir. 2001),
- Redesignation of property owners land use held to be preempted by Takings Clause.
Buckles v. King County, 191 F.3d 1123, 1138 (9th Cir. 1999).