TAKINGS: A CASE STUDY IN CURRENT ISSUES

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TX. V. U.S. CONSTITUTION

DOES THE TEXAS CONSTITUTION PROVIDE GREATER TAKINGS PROTECTION THAN THE FEDERAL CONSTITUTION?

- **Interpretations of U.S. Const. not binding on interpretation of TX. Const., but can be persuasive.**

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TX. V. U.S. CONSTITUTION

- **5th Amendment: "nor shall private property be taken for public use without just compensation."**

- **Art. 17, Sec 1: "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made . . . ."**

TX. V. U.S. CONSTITUTION

- **1869 TX. Const. : "No person's property shall be taken or applied to public use without just compensation being made . . . . ."**

- **Current (1876) TX. Const.: "No person's property shall be taken, _damaged or destroyed_ for or applied to public use without adequate compensation being made . . . ."**

TX. V. U.S. CONSTITUTION

- Before *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), 5th Amendment's Takings Clause only applied to a direct appropriation of property.

- Did not cover "regulatory takings."

- Current (1876) TX. Const.: Added "damaged or destroyed" to provide for regulatory takings protection.

TX. V. U.S. CONSTITUTION

- Now that Federal and TX. Constitutions both provide the same protections, there is no real historical basis to support greater rights under the TX. Const.

- Texas cases follow interpretations of the Federal Constitution in Takings Cases since no one has asserted otherwise.

Title search: Takings: A Case Study in Current Issues

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