

State Private Property Protection Acts

The Impact of State Legislation on Local Control

Julian Conrad Juergensmeyer

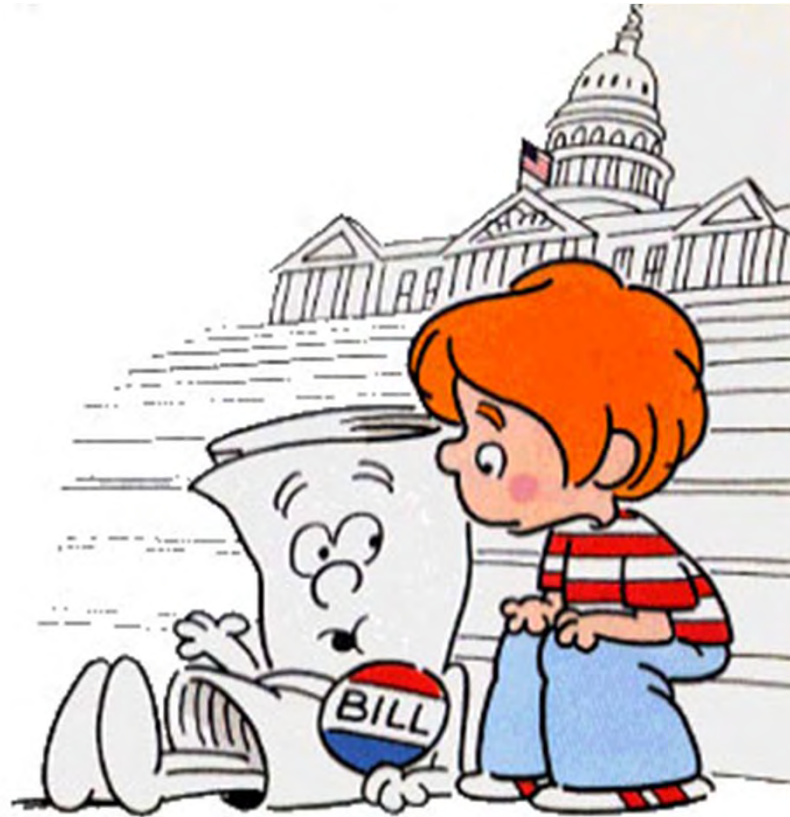
Professor and Director, Center for the Comparative
Study of Metropolitan Growth

Georgia State University College of Law

The Private Property Rights Movement



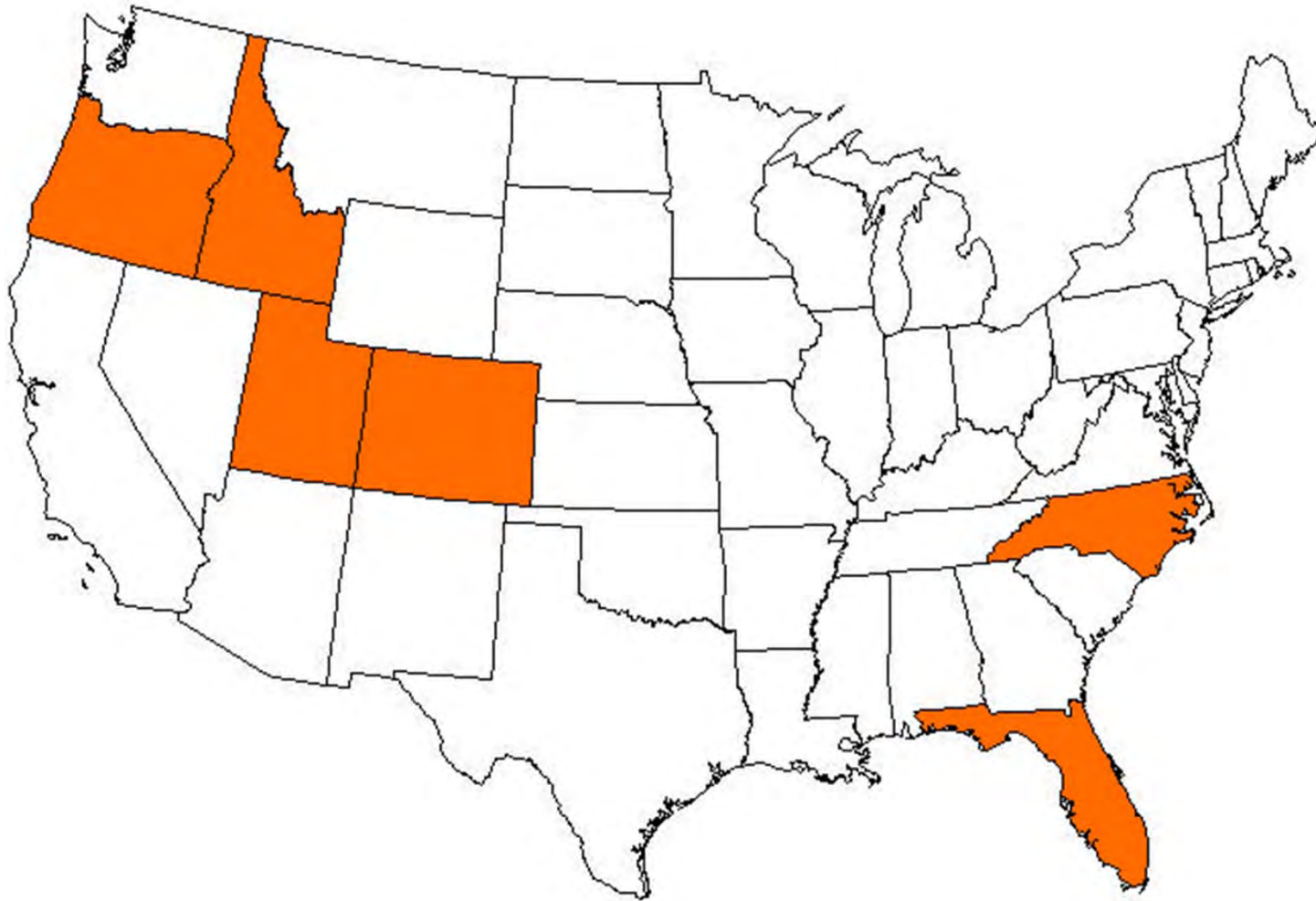
Types of Legislation



New Cause of Action with Flexible Standard



States with Flexible Standard



Florida - Bert J Harris Act



FL Statute § 70.001 - Bert J Harris Act

- 1) Applicable when “laws, regulations, and ordinances...inordinately burden, restrict, or limit private property rights without amounting to a taking”
 - “Separate and distinct cause of action from the law of takings”
 - “Provides for relief, or payment of compensation, when law, regulation, or ordinance...unfairly affects real property.”
- 2) “When a specific action of a governmental entity has *inordinately burdened an existing use* of real property or a vested right to a specific use of real property, the property owner...is entitled to relief”
- 3) Only applied prospectively from enactment in 1995

Oregon Measures 37 & 49

Measure 49

fixes the flaws of

Measure 37

Oregon Measure 37

- 1) Applied both to new and existing land use regulations
 - “If...restricts the use of private real property of any interest therein and has the effect of reducing the fair market value of the property...then the owner of the property shall be paid just compensation”
- 2) Very limited exceptions:
 - Restrictions which prohibit commonly and historically recognized public nuisances
 - Regulations such as building and fire codes which protect public health and safety

Oregon Measure 49

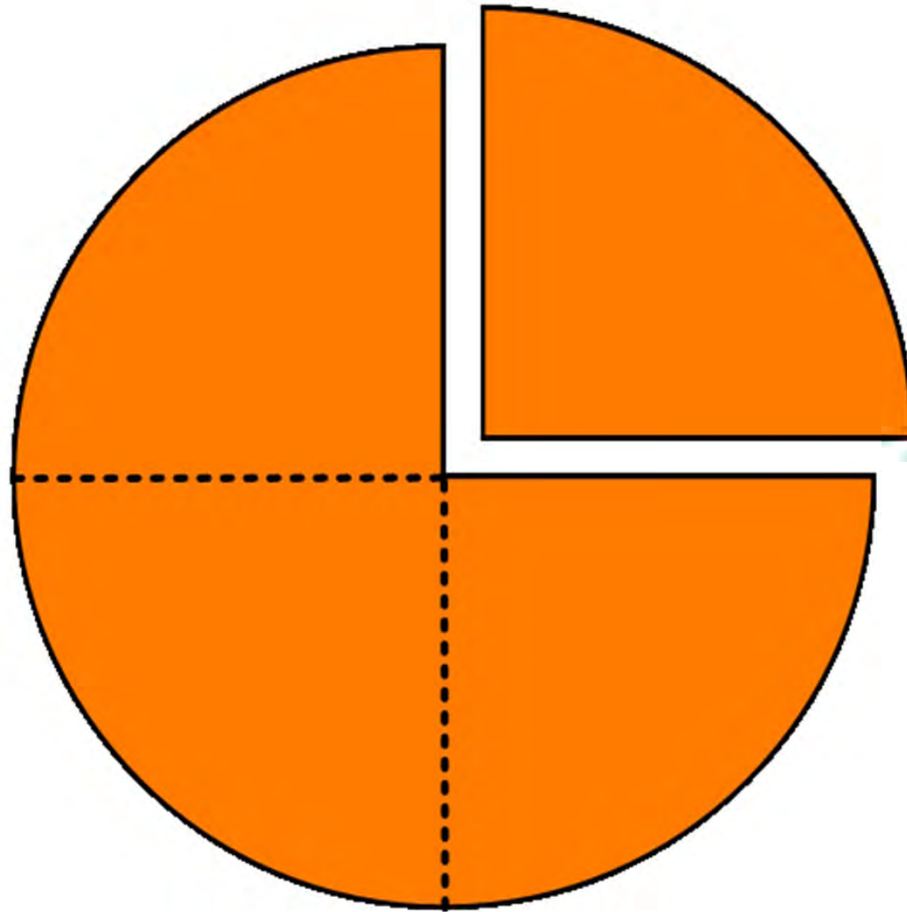
- 1) “If a public entity enacts one or more land use regulations that restrict *the residential use of private real property or a farming or forest practice* and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations”
- 2) Same exceptions:
 - Restrictions which prohibit commonly and historically recognized public nuisances
 - Regulations such as building and fire codes which protect public health and safety



States with % Diminution Standard



Texas Private Real Property Rights Preservation Act



Texas Private Real Property Rights Preservation Act

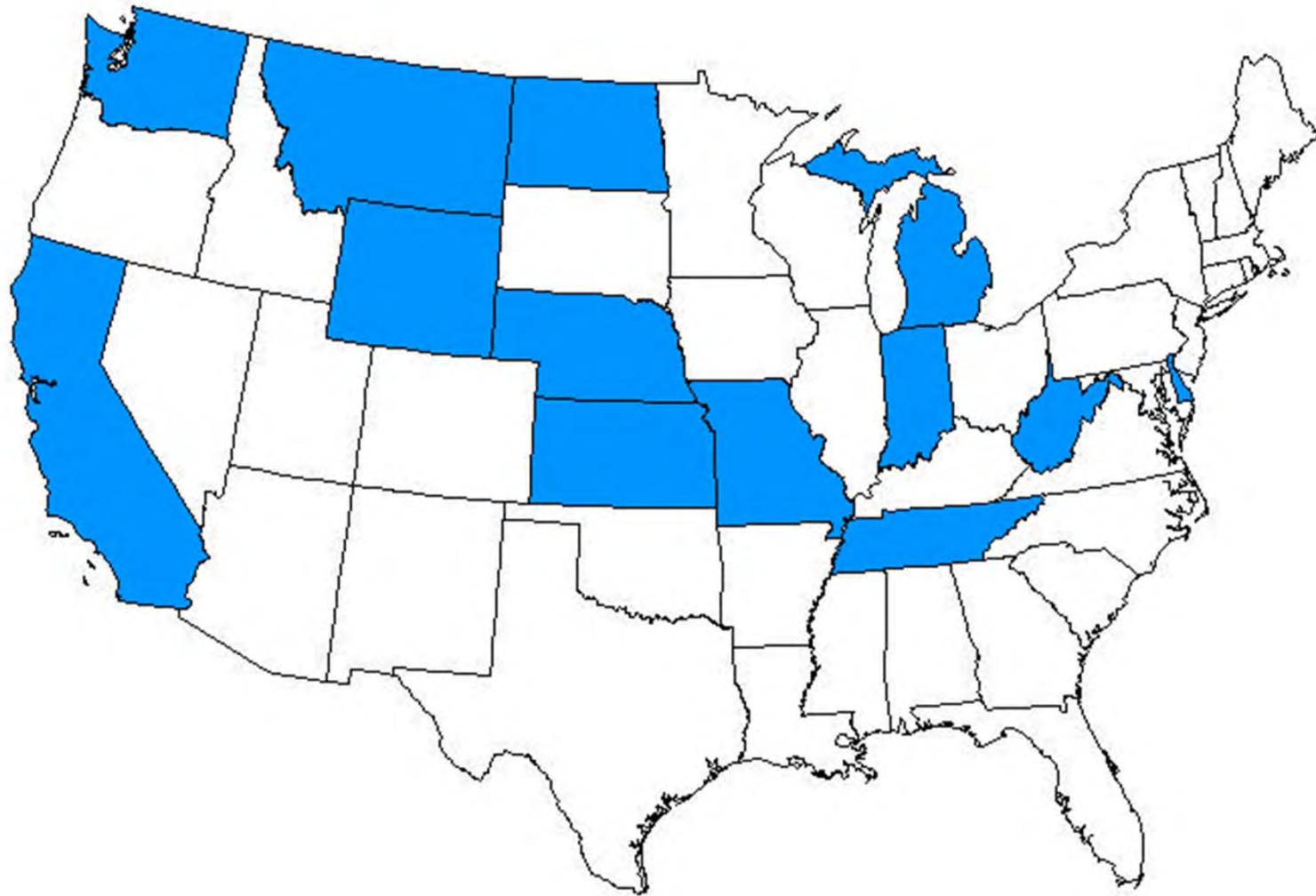
Defines “taking” as:

- a) A Constitutional taking; or
- b) “A governmental action that:
 - 1) affects an owner’s real property...in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the governmental action; and
 - 2) “is the producing cause of a reduction of at least 25% in the market value of the affected private real property” determined by comparing the market value of the property with and without the governmental action

Impact Assessment



States with Impact Assessment



Example Impact Assessment Language

North Dakota Code § 28-32-09. Takings assessment

1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property which:
 - a. Assesses the likelihood that the proposed rule may result in a taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the budget for any ordered compensation.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation.

Eminent Domain Restrictions



Eminent Domain Restrictions



The Effect

- State legislation has had an impact on local government authority
- “Chilling Effect”
- Impact varies widely from state to state

Impact on Local Regulatory Authority

