



PACIFIC LEGAL  
FOUNDATION



THE JOURNAL OF  
LAW, ECONOMICS  
& POLICY

# Call For Papers

## TOO FAR: IMAGINING THE FUTURE OF REGULATORY TAKINGS

Pacific Legal Foundation and George Mason University's Journal of Law, Economics and Policy seek papers for a symposium titled "Too Far: Imagining the Future of Regulatory Takings," to be held at George Mason University Antonin Scalia Law School in October 2024.

A century ago, Oliver Wendell Holmes, speaking for the Supreme Court, assured us that "[t]he general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." In the ensuing one hundred years, courts have struggled to draw the line defining "too far." Some still wonder whether such a line should even exist. As Justice Clarence Thomas recently said, "If there is no such thing as a regulatory taking, we should say so. And if there is, we should make clear when one occurs."

To date, many jurists and scholars have argued that the "too far" line is anything but clear. The regulatory takings doctrine is a hodgepodge of balancing and categorical tests alongside a scattered throng of exceptions, with little guidance on which tests or exceptions apply when, much less how to apply them in a principled and consistent manner. There are the categorical tests of *Lucas* ("total" takings) and *Loretto* ("physical" takings) and the amorphous balancing tests like the *Penn Central* ad hoc regime and the threshold "relevant parcel" test. Then there are vexing and unanswered questions about whether some restrictions on property are simply exempted from a takings analysis: When is a property restriction a "background principle" baked into the meaning of property itself as opposed to a restraint on a recognized property right? When, if ever, does a valid exercise of the police power operate outside of takings constraints? And, to top it all off, we still aren't settled on how to define "property."

Pacific Legal Foundation seeks papers that offer fresh ideas on how to make "too far" more just, more concrete, and more principled. We welcome proposals that look at this problem from legal, economic, political, historical, and related angles, including empirical and nonempirical approaches. Possible topics could include:

1. What is the originalist case for a regulatory takings doctrine?
2. Do restrictions on residential eviction or tenant selection cause a physical taking?
3. When does administrative delay cause a taking?

4. When do regulatory takings claimants have a right to a jury trial on liability?
5. Should a *Lucas* takings analysis look to loss of value or loss of use?
6. What is “property” within the meaning of the Fifth Amendment Takings Clause?
7. How should post-enactment acquisition of property or the degree to which a property use is already highly regulated affect the expectations analysis under *Penn Central*?
8. How should courts address relevant parcel questions following *Murr v. Wisconsin*?
9. How should the exercise of the police power affect the takings analysis?
10. What approaches to regulatory takings will maximize economic efficiency?
11. How can broader philosophical notions of justice, fairness, or natural law inform the regulatory takings doctrine?

### Proposal Submission Details

Please submit a brief proposal that describes your thesis and how your paper will contribute to the legal issues described above. **Proposals should be submitted by April 15, 2024, to Ethan Blevins at [eblevins@pacificlegal.org](mailto:eblevins@pacificlegal.org).** Early proposal submission is encouraged. Proposals will be reviewed on a rolling basis and approvals will allow authors to begin work early.

### Honorarium and Other Support

Authors of accepted papers will receive a \$2,500 honorarium. In addition, papers will be presented at a symposium in October 2024 and published in an issue of the *Journal of Law, Economics and Policy*. We will cover the cost of hotel accommodations and reasonable travel expenses to the symposium in Arlington, Virginia.

### Final Paper Submission Details

Papers should be roughly 5,000 words. Draft submissions are due two weeks before the symposium in October so we may circulate them to participants. Authors may revise their papers following the symposium, with final submissions due two weeks after the symposium in order to be published in the *Journal of Law, Economics and Policy*.

### Timeline

- **April 15, 2024:** Submission deadline for paper proposals. Proposals will be reviewed on a rolling basis. Authors are encouraged to apply early.
- **Early October 2024:** Deadline for draft papers, to be circulated to symposium participants.
- **October 2024:** Presentation of papers at a law symposium in Arlington, Virginia.
- **Spring 2025:** Copy edit review and publication of final papers in an issue of the *Journal of Law, Economics and Policy*.

### Contact Information

For questions regarding the call for papers, please contact Ethan Blevins at [eblevins@pacificlegal.org](mailto:eblevins@pacificlegal.org).