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SOUTH CAROLINA**Barnhill v. City of North Myrtle Beach, 511 S.E.2d 361 (S.C. 1999)**

(holding an ordinance restricting jet-ski landing on a public beach was within the city's police power, not preempted by state law, did not violate a state constitutional right to access navigable waters, was not a regulatory taking, and did not violate the equal protection clause).

Plaintiff-respondent, Bob Barnhill, operated a jet ski rental business. The City of North Myrtle Beach enacted an ordinance prohibiting launching and beaching jet skis between 9:00 a.m. and 5:00 p.m. from May 15 to September 15 annually on the beach where Barnhill operated his business. This ordinance effectively denied Barnhill's clientele the use of jet skis during the day throughout the duration of the summer. Barnhill bought a declaratory judgment action challenging the ordinance's validity and seeking an injunction against its enforcement. A special referee, upon reviewing the case, declared the ordinance invalid. The South Carolina Supreme Court reversed.

The supreme court addressed: (1) the purview of municipal police power; (2) potential state statute preemption of the ordinance; (3) potential inconsistencies between the ordinance and the state constitution; (4) whether the ordinance constituted a regulatory taking; and (5) the applicability of the equal protection clause.

When addressing the municipal police power argument, the supreme court held that municipalities have broad powers to enact ordinances promoting safety and that the exercise of the municipality's police power in enacting the ordinance had a reasonable relation to the protection of people on crowded beaches during the summer.

The court held that state statutes do not preempt the ordinance. The court determined that in order for a state statute to preempt a municipal ordinance, the two must be inconsistent or irreconcilable. The state statutes alleged by Barnhill to preempt the ordinance addressed only activities "on the water of the state" and failed to mention public beaches; therefore, the court held that the ordinance was neither inconsistent nor irreconcilable with the laws of the state because it addressed an area the state legislation failed to address.

After examining the language of the state constitution, the court held that even though the constitution required public access to the state's navigable waters, a municipality could constitutionally subject public access to reasonable regulation. The court interpreted reasonable regulation as regulation rationally related to a legitimate purpose. The court held that since some access remained, the restriction was reasonable and the government's purpose of safety was adequate to survive a constitutional challenge.

Additionally, the court held that a person does not have a private

vested right in a particular use of government property and therefore denied Barnhill's regulatory takings claim.

When addressing the equal protection claim, the court held that an equal protection claim is actionable if a municipality intentionally enforced a law discriminatorily. The court held the municipality did not enforce this ordinance discriminatorily. The ordinance survived all of Barnhill's challenges.

Amy W. Beatie

TEXAS

Brainard v. State, No. 98-0578, 1999 WL 795545 (Tex. Oct. 7, 1999)
(holding that the doctrines of riparian ownership, such as accretion, reliction, and erosion, apply to changes in a river's course due to artificial as well as natural causes for deciding boundary disputes).

In 1962, the United States Bureau of Reclamation constructed the Sanford Dam on the Canadian River to create a water supply for city members and to provide regional flood controls. Three years after the dam's completion, the Canadian River Municipal Water Authority ("CRMWA"), a state agency, took control of the dam. The dam reduced the flow of river water and encouraged more vegetation in the river's former riverbed.

Twenty years later, in 1985, the General Land Office ("GLO") announced its intention to determine the historical gradient line prior to the artificial changes caused by the dam. In 1987, the GLO sent a position paper to the people who owned land along the river ("Landowners"), claiming the former streambed was the State's property. The GLO's artificial change theory asserted that surveyors marking the gradient boundary of the river need not consider conditions on a river influenced by human activity, like the Sanford Dam's construction. The Landowners disagreed with the State's position. Although both parties agreed that the Landowners were riparian owners and that the State owned the bed of the Canadian River, each party sought a judicial declaration of the boundary between the State's riverbed and Landowner's riparian tracts. The parties also agreed that the gradient boundary methodology would determine the line between public and private ownership along the banks of a navigable stream.

The Landowners sued the State and the GLO to establish the boundary of the Canadian River. Both parties filed motions for summary judgment asking the trial court to rule on the correct survey to mark the boundary. The GLO asked for a ruling based on the artificial change theory, and the Landowners asked for the court to consider the present conditions. The trial court rejected the State's artificial change theory as a matter of law. The court held that the