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Public Good Meets Private Property: the Hydra-Headed Takings Clause

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RAHIMI: THE CHALLENGES OF SECOND AMENDMENT HISTORY AND TRADITION

By: Ravinder Arneja, IMLA Associate Counsel

The Supreme Court recently declared that constitutional questions are to be analyzed through the societal lens in effect when that seminal document was written. A current firearms case illustrates the complexity of applying Eighteenth Century norms in a contemporary context. An opinion later this Term should provide further insights into the Court's "history and tradition" jurisprudence.

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PRIVATE PROPERTY AND PUBLIC GOOD: THE HYDRA-HEADED TAKINGS CLAUSE

By: Erich Eiselt, IMLA Deputy General Counsel and Director of Legal Advocacy

America's founders enshrined in twelve words the principle that private property may not be taken for public use without just compensation. That tenet continues to spawn ever-increasing debate, challenging the meaning of property, the parameters of a Taking, and the character of use. Local governments are at the epicenter of that conflict.

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LISTSERV

By: BRAD CUNNINGHAM,
Municipal Attorney, Lexington, South Carolina

Looking Towards the Second Act

The news this spring from a longtime friend and colleague of a health issue and pending retirement has gotten me to thinking about the retirement issues many of our Listserv members are beginning to face. I have been attending IMLA seminars for just over twenty years now, and it is sad to see some of the faces disappearing… Unfortunately, some friends have passed away: there was my great colleague Brad Bailey…Susan Rocha…Ron McKinney, a mentor and comrade from here in my home state… And there are others.

Since I got onto the subject of retirement, many things have crossed my mind. There are folks like my late father, who probably decided to retire too late. Dad had announced his retirement on January 1. It was to be effective April 1. He passed away on February 16, with many plans for the future falling by the wayside. I think dad's health had been worse than he let on.

On the flipside, there is my old friend Tom who retired from the practice of law and found himself still full of energy but without anything to do. Tom decided to "unretire" but did not return to the practice of law. Instead, he dove into the insurance industry and established an insurance agency with a friend of his. Tom is about 83 now, but still going strong and making a great go of it in the insurance business.

While the answer is bound to be different for everyone and everyone has different considerations, one has to wonder "When is the right time to retire? And Why Do Lawyers Retire?"

According to the U.S. Census Bureau, the average retirement age is 65 for men and 63 for women. In the legal profession, however, people tend to be a little older when they retire. The American Bar Association's 2021 ABA Profile of the Legal Profession revealed that *nearly 14 percent of lawyers are working past the age of 65*.

InfoTrack cites an article by Jennifer Anderson regarding signs it might be time to retire. While we may not all reach these signs at the same time, there are a few things to look for according to the article by Anderson. These include:

Cognitive Decline – "It is somewhat disheartening to hear that for most people, thinking abilities peak at age 30 then slowly decline thereafter. Nonetheless, many people continue to function quite well into their 70s, 80s, and even 90s. Lawyers, in particular, tend to have higher cognitive abilities later in life than people in other professions. In fact, twice as many lawyers practice after age 65 than people in other careers. That said, there comes a time when even the best lawyers begin to falter. Signs of cognitive decline may include:

- Feeling overwhelmed when faced with relatively minor decisions.
- Not remembering recent conversations or events.
- Impulsivity.
- Missing deadlines or appointments.
- Inability to organize regular tasks.

Of course, we all have bad days. But if these symptoms are starting to occur with frequency, "it's probably time to undergo cognitive testing and consider stepping away from the practice of law," Anderson says.

You Don't Enjoy Practicing Anymore – Anderson cites recent studies that reveal over 50 percent of lawyers are frustrated with their careers, claiming that as you age, a lack of enjoyment in your career becomes more poignant. "The truth is life is short. And not to be morose, but three of the top five regrets people have on their death bed have everything to do with continuing on in a career they didn't enjoy: (1) regretting they worked so hard; (2) regretting they didn't allow themselves to be happier; (3) regretting they didn't have the courage to live a life true to their own desires."

If these kinds of thoughts and problems are weighing you down, maybe it's time to consider retiring from the law and living a life more focused on personal fulfillment, Anderson concludes.

Your Practice Is Impacting Your Mental Health – The practice of law, no matter what area in which you practice, can sometimes be a very stressful endeavor. Anderson describes some things to think about in this area:

"Unfortunately, over time, stress can cause all sorts of mental and emotional issues. Things like substance abuse,

anxiety and depression are rampant in the legal profession. While there are certainly ways to deal with those issues without walking away from your career, there may come a time when the mental costs of doing the job outweigh the benefits. When it comes to making that assessment, it's probably a good idea to meet with a therapist or career coach who understands the demands of your job and how those demands are impacting your life."

Your Practice is Impacting Your Physical Health – In addition to mental health, the practice of law and the stress of being a lawyer can be a hindrance to one's physical health as well. The ABA indicates, for example, that attorneys are more likely to encounter heart disease than other professionals

Anderson states: "To add insult to injury, the sedentary nature of an attorney's work increases the chances of things like obesity, diabetes, colon cancer, and high blood pressure. Those of us who've faced serious health challenges know that there's nothing to make you rethink early retirement like learning that your job is threatening your life. If you think your health is starting to suffer because of your practice, it's time to talk to your doctor about how retirement might improve your future." Anderson offers some solid practical advice if you do indeed find it is that time:

"If you've made the decision that it is time to retire from practicing law, don't despair. The truth is, there are all sorts of things you can do. We're not going to presume you need a list from us of all the fun things you can do in retirement (like traveling, volunteering, and pursuing hobbies). You might, however, need some ideas for ways you can continue to make money." She adds a few popular post-law occupations:

- Writer: Lawyers are very well-suited to become professional writers. Whether you want to be a journalist, novelist, or freelance content creator, the opportunities are endless.
- Entrepreneur: Lawyers have been trained to understand every aspect of their clients' business (in addition to the business of lawyering). It's not surprising then that lawyers frequently found their own start-ups.
- Teacher: Let's face it: lawyers know a lot of things about a lot of things. We also have that fancy doctorate degree that buys us entry into several teaching arenas. While teaching can undoubtedly be stressful, it can also be very personally rewarding.
- Recruiter: Just because the practice of law isn't working for you anymore doesn't mean you can't spot a good legal hire from a mile away. Lawyers tend to make wonderful legal recruiters because they understand the business and its demands like no one else.

She concludes: "We understand that the decision to retire from the practice of law is one of the biggest decisions you'll ever make. Be sure to give yourself grace and patience in weighing this option. Talk to your friends, family, and colleagues. Seek professional help if you need or want to. And then, should you decide to step away, try to find a new occupation that feeds your heart and soul, whether it's a new career or a meaningful life pursuit."

In my own situation, I lean toward finding a "retirement career" that requires (to put it bluntly) "a lot less thinking and worrying." There is some merit after all these stressful years to finding a retirement job that not only is lower on the stress scale, but that you can also "leave at the office" when you head home for the day. A former colleague who has retired within the past year is now working for an hourly wage. I saw him in the grocery store not long ago and asked him how his "retirement job" was going. He replied that it was allowing him to do things he had not done in forty years like "my wife and I watching an entire movie without being disturbed by a phone call."

While I do have a few years to go, I have given some thought to what I might like to do as a "post legal" career. Many of you know that I was a beach bum before going to law school. My days were spent fishing, swimming, walking on the beach and working four days a week at a golf course. I am currently finding that scenario more to my liking every day. Then, of course, I can't help but laugh and think to myself "What have I accomplished here? That's exactly what I was doing before I went to law school. Did I really have to work this hard to return to what I was doing in the first place?"

My post legal career thoughts revolve around something with much less stress than that which is described in the Anderson article. Back to the golf course? Sell lemonade on the beach? Revive my radio broadcasting career? Find some other position in the sports industry? I do have a little experience as a football scout… Hmm… I feel another article coming soon on this topic.

What is your ideal "retirement job?" Let me know and I may include

Continued on page 37



Bradford T. Cunningham is the Municipal Attorney for the Town of Lexington, SC. He earned a B.S. in Finance, and a J.D., both from the University of South Carolina. He is licensed to practice law in South Carolina and Georgia, and worked in Banking before earning a law degree. He is the Past President of the South Carolina Municipal Lawyer's Association, and an IMLA Board Member and State Chair for South Carolina. Brad is a recipient of the Joseph I. Mulligan Award for Distinguished Public Service, and has been received multiple awards for his service to the community. He is a self-professed beach bum who has survived several hurricanes, and is also a local radio sportscaster.

LISTSERV *cont'd from page 25*

you in a future article. After all, not one of us is a "one trick pony." We all have talents and backgrounds that would allow us to do many different things.

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Another true story from the wonderful world of Municipal Court. A lawyer was charged in our court with unlawful use of the median. Whatever it may be called in your state code, we are talking about the area in the middle of the roadway that has double yellow lines on both sides. It is usually reserved for the passage of emergency vehicles, and you are only allowed to "cross it" when making a left turn. It is not intended as an express lane to pass a long line of cars to get to your destination more quickly. Lastly, you *are* allowed to use it for brief travel if the regular travel lane is "impeded by an obstacle."

The officer explained the infraction: there was a long line at a traffic signal; the defendant entered the emergency lane with his left turn signal on, passing between fifteen and twenty cars before arriving at the traffic light which was red. The officer then pulled the driver over and cited him for illegally using the median--or "emergency travel lane" if you prefer.

The defendant took the stand and cited the portion of the statute that allows emergency lane travel to avoid an obstruction in the roadway. The following conversation ensued between the Judge and the defendant:

Judge: "You are telling me there was an obstruction in the roadway that prevented your normal travel in the roadway."

Defendant: "Yes, your honor, there was."

Judge: "What was the obstruction, sir?"
Defendant: "The obstruction was between fifteen to twenty cars, as testified to by the officer, that prevented me from reaching the traffic signal in the normal lane of travel."

Judge: "Seriously? Your defense is that the other cars on the road constituted an obstacle, allowing your use of the emergency lane for travel?"

Defendant: "Yes, your honor."

Judge: (breaks out in a Cheshire Cat grin) "Do you have anything else to say?"

Defendant: "No, your honor."

Judge: "I find the defendant guilty."

Defendant: "Your honor, that statute does not define obstacle."

Judge: "Go try that argument on appeal. Next!"

The prosecution rests, your honor. ML

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