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Nuisance determination, property rights, procedural due process, substantive due process, takings claim, inverse condemnation, building inspector, demolition, Fourth Circuit, Sixth Circuit, McIntosh v. City of Madisonville, Danny Fox, Virginia law, public use, administrative hearing.

SPEAKERS

Joe Gay, Anthony Sanders, Christian Lansinger

A **Anthony Sanders** 00:10

I went into a house, and it wasn't a house. It had big steps in a great big hall, But it hadn't got a guard and a guard and a guard, And it isn't like a house at all. I went into a house, and it wasn't a house. It had a big garden and a great, high wall, But it hadn't got a matry, a matri, a maid tree. It isn't like a house at all. I went into a house, and it wasn't a house. Slow white petals from the May tree fall, But it hadn't got a blackbird, a blackbird, a blackbird. It isn't like a house at all. I went into a house, and I thought it was a house. I could hear from the May tree the blackbird call, But nobody listened to it. Nobody liked it. Nobody wanted it at all.Well, if we were to add another stanza to that sad poem by A. A. Milne from 'When We Were Very Young,' it might be a verse about a building inspector tearing the house down because he alleges it is a nuisance. We're going to discuss a couple recent cases where that actually happened in the federal courts of appeals, and we'll discuss whether that was constitutional, or whether a court can even say if it's constitutional. Today, on Short Circuit, your podcast on the federal courts of appeals, I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. We're recording this on Tuesday, January 28 2025 and yes, if you read the Short Circuit newsletter, you would notice last week that there were two cases from the Fourth Circuit and the Sixth Circuit where a house was alleged to be a nuisance and therefore is no longer a house anymore. To discuss this today, here are two IJ attorneys who very much are not nuisances themselves. We are happy to have them back on the show, and they are Christian Lansinger and Joe Gay. Welcome gentlemen.

C **Christian Lansinger** 01:56

Nice to be back, Anthony.

J **Joe Gay** 01:58

Thank you for having me, Anthony. And I will say I'm a bit lower brow than you are, but I thought for sure that your poetry this week was going to be the three little pigs and the Big Bad

Wolf.

A Anthony Sanders 02:10

You know? I thought about that. I thought about that. It just... it kind of didn't work. I also thought about the opening of The Hitchhiker's Guide to the Galaxy where, you know, they're going to tear his house down. But I actually did part of that recently in a different episode. And, you know, we don't want to be a one-trick pony here. We have done A. A. Milne before, though, so we'll have to broaden- broaden our horizons a little bit. Very much not lowbrow, I would say, though, to include The Three Little Pigs. So before we get to these lowbrow building officials- well, one could argue, I guess- we'll check about that. I just have a couple of announcements for our Short Circuit audience. One is, as you have heard in the last couple of episodes, we've been advertising a newsletter. It is our 10th anniversary, and so we're having a 10th-anniversary party. It is Thursday, April 3, 2025, in Washington, D.C., at the Studio Theatre. If you're in the area and would like to come, we'd love to have you. Tickets are free, but they may sell out, so click the link in the show notes to RSVP. We've got all kinds of big-name folks coming that you can see a couple of retired judges, our friend Eugene Volokh, and a few other folks. So please feel free to click the link in the show notes and RSVP. Also, many of you know about our legal history podcast, Bound by Oath, which covers the history of the Constitution and constitutional law. We are now in Season Three, which is focused on property rights. We had a number of episodes and then took kind of a mid-season break, but John Ross is back with some amazing episodes. We just had one in January on SWAT takings- very apropos of today's show- where the police basically destroy your house when they're looking for a suspect. We have an innocent property owner, and whether that is covered by the Takings Clause is a very hot issue right now. So check that episode out. Bound by Oath- you can find it on any platform. We'll put a link in the show notes to it. And then, hot off the press, by the time this episode goes out, we should have our latest Bound by Oath episode out, which is about rental inspections and the Fourth Amendment. We talk about this famous case called Camara, which is kind of the bedrock of any inspection law these days. It's from 1967, and we interview the guy who argued that case- interviewed him about Camara v. Municipal Court. So that'll be a really cool dive into some history that I don't even know has been written about much, let alone been on a podcast. So check that out. But right now, we've got this poor fellow in the Fourth Circuit who maybe was not the ideal plaintiff for a property rights case, although it seems like maybe his heart was in the right place- or he certainly could have been a little faster. So, Christian, let's see what happened to him.

C Christian Lansinger 13:38

So, this house was in the City of Norfolk, which we've discussed before. But this man, Danny Fox, was an active-duty serviceman in the Navy. He bought a house in 2015, and due to his service, he wasn't exactly the best at keeping up with its maintenance. During the time he spent on two different deployments, he received several notices about his property not being up to code. It really started in the fall of 2016, when he got deployed. Around that time, the city conducted an initial inspection and began sending notices, stating that his property was, quote, "unsafe or unfit for human habitation." They sent multiple rounds of notices- it's somewhat disputed how many, but at least two or three- by mail and posted them on his property in Norfolk while he was deployed elsewhere. When he returned, there's no record evidence of whether he actually saw the notices. However, as he alleges, he did maintain the property,

made some repairs, and then got deployed again in April 2018. Unfortunately for Mr. Fox, soon after he left, a car crashed into the side of his house, causing further damage. The city conducted another follow-up inspection, took photographs, and reported piles of debris, missing ceilings and walls, and a general state of disrepair. The city then posted another notice. This time, when Mr. Fox returned from his second deployment, he saw it. He called the number listed and was told he needed to make repairs. In an email to the city, he outlined the repairs he planned to make. The city responded, saying they needed more detail. They had already given him significant time, and if he wanted another extension, he needed to provide a firm completion date and specifics on how he would complete the work. From that point, the record doesn't show any further communication from Mr. Fox. Between this last email and June 2018- when the city ultimately demolished his house- there was no indication that he took further action. The city posted another notice stating he had 30 days to repair the property or it would be demolished. It also informed him of his right to appeal within 14 days if he wanted to contest the nuisance determination. Again, there's no record that he did anything in response. Six months later, the city demolished his home. He was fully aware of it by December 2018. Yet, for whatever reason, it took him three years- until December 2021- to file a lawsuit. He filed multiple claims under Section 1983, the federal statute for civil rights violations. These included a procedural due process claim, a Fourth Amendment claim (which referenced the *Camara* case on inspections, though it may not have been entirely relevant), a takings claim under Section 1983, and a state takings claim under Virginia's inverse condemnation process. The takings clause states that property cannot be taken for public use without just compensation, and inverse condemnation is when a property owner argues that their property was taken without compensation. What makes Virginia unique is that after the Kelo decision- an IJ case that broadly interpreted public use to include redevelopment- many states, including Virginia, reformed their constitutions and statutes to better protect property rights. Virginia specifically defines public use, including eliminating blight. This matters because when Mr. Fox's case reached the district court, the court granted the city's motion for summary judgment. The federal claims- the Fourth Amendment, due process, and Section 1983 takings claims- were all time-barred, as he waited three years to file, whereas the statute of limitations is generally two years under state law. That left only his state inverse condemnation claim. However, the court ruled that the facts didn't matter because if his property was deemed a nuisance, Virginia law is clear that the government owes no compensation for nuisance abatement. On the other hand, if his property wasn't a nuisance, then under Virginia law, it wasn't a taking either, because there was no public use. The court concluded that he pursued the wrong legal remedy and should have either filed a due process claim or used the 14-day appeal process to contest the nuisance determination. The Fourth Circuit upheld the decision for the same reasons, stating that whether his house was a nuisance or not didn't change the outcome. As the opinion put it, "To the extent Fox now lacks a remedy, it is not because Virginia law is harsh, it's because he failed to timely pursue the available remedies." It's a sad case where someone may have had a valid constitutional claim, but by missing key deadlines and failing to take advantage of certain legal avenues, he was left with no recourse. So, Joe or Anthony, do you have any thoughts?

J Joe Gay 13:40

When I was reading this, I almost felt like the court's reasoning was a bit too clever by half. Not to impugn any of the judges here, but in my head, I almost heard an evil cackle- like someone realizing, "Aha! If it's a nuisance, you don't have a remedy. But if it's not a nuisance, you also don't have a remedy." That direction frustrated me because the reasoning is based on post-Kelo reforms, which were meant to provide stronger protections for property owners by

narrowing the definition of public use. But here, the courts essentially flipped that reform around and used it to deny this property owner any remedy for what- whether or not you agree on the ultimate merits- is undeniably a significant deprivation of property rights. I also don't think the court's hyper-literal reading of Virginia's constitutional provisions was necessarily the right approach. They cited Virginia case law requiring a public use for an inverse condemnation claim, but that case law primarily deals with unauthorized government actions or negligence. The seminal case they relied on involved a situation nearby, in Arlington, where government failure to maintain a sewage system led to a backup in a grocery store. The grocery store's insurer sued, and the court reasonably held that negligence alone doesn't constitute a taking- you need some kind of purposeful government action. Here, I think the court took that language and applied it more broadly than the case law necessarily demands. Maybe that's the correct extension of the precedent, but they didn't really grapple with the fact that they were broadening it to a new kind of situation. And I would just point to the language of Section 11, which states that "the General Assembly shall pass no law where private property, the right to which is fundamental, shall be damaged or taken except for public use." The plaintiff here alleged a violation of that provision because, under his theory, the government damaged his property without a public use justification. Maybe you could quibble about whether that triggers the just compensation requirement, but to me, this presents a serious constitutional question that the panel didn't fully reckon with.

A Anthony Sanders 17:08

One thing that's not totally clear to me is whether Virginia's inverse condemnation statute is simply a statutory claim to effectuate the state takings claim or if it's a separate statutory claim from the state constitution- and maybe that distinction usually doesn't matter. But I think the court is suggesting that the inverse condemnation statute isn't a mechanism for enforcing the state constitution's public use clause, meaning that if the taking wasn't for a public use (or was for a private use, like tearing down this house), then the legislature simply hasn't created a remedy for that scenario. They've established a remedy for takings that involve public use, but not for securing compensation when the government takes action outside that framework. So, whatever the ultimate remedy might have been- whether saving the home, as in a typical public use clause case like Kelo, or obtaining compensation after the fact- the plaintiff just didn't pursue the right avenue. Maybe there's another way to raise a public use clause claim in Virginia after a house has been destroyed, but the court points to due process, which might just be a catchall. And of course, they're also referencing the U.S. Constitution, so there are some fine-grained details that could be worked out. But maybe the court didn't care much about those nuances because all these other constitutional clauses that could have helped were blocked by the statute of limitations. The best person to ask about this would probably be our friend Robert Thomas, a longtime property rights lawyer who has been on Bound by Oath- listeners can check out those episodes- and he also runs an inverse condemnation blog. I see he's blogged about this case, and we'll link to it in the show notes, but he didn't dig into this particular issue, which makes me wonder if that's because, in the end, there simply is no viable public use clause claim here. He did, however, mention something else from the end of the case: the property owner argued that this was really about redevelopment in the area, but the pleading on that was pretty vague, with little argument to support it. The court, unsurprisingly, didn't engage with that aspect of the case at all, and it's not even clear what claim he could have attached that argument to- so maybe it wasn't useful to him in the first place. But ultimately, it seems like the court just wasn't interested in that angle.

C Christian Lansinger 20:06

I think the takeaway might be that, as Professor Thomas suggests in his blog, you should file your claim as timely as possible and pursue both a due process claim and a takings clause claim, especially when dealing with a state constitution where there might be some ambiguity, as Joe pointed out. The court dismissed a separate allegation that Article 1, Section 11 of the Virginia Constitution, which asserts property rights are fundamental and thus subject to strict scrutiny, doesn't actually apply in this case, leaving open the question of whether the takings clause or the due process clause is the proper remedy. The takings clause typically addresses lawful takings with the requirement for just compensation, but in situations like this, where the taking may be unlawful or lacking in process, the due process clause might be the relevant remedy, addressing the harm to property rights due to the lack of proper procedure. It's unclear whether both claims- due process and an expanded interpretation of the takings clause- could be valid here, as post-Kelo amendments to Virginia law were designed to protect property rights and allow takings claims to be raised. The case remains open-ended on whether there's a violation of the public use requirement or if a remedy is available, so it might be best to contest the issue at an administrative hearing and raise both due process and takings claims later. In the meantime, following Professor Thomas's advice to "take that last one and keep it in your file for future deployments" seems like the right approach for now.

A Anthony Sanders 22:52

Very well said. Well, one case where the plaintiffs deployed their arguments a little bit better, was this case in the Sixth Circuit, where they at least have a fighting chance now at trial. So Joe, tell us what happened with this opinion by Judge Sutton.

J Joe Gay 23:13

This case, McIntosh v. City of Madisonville, authored by Chief Judge Sutton and joined by Judges Bush and Murphy also has an interesting concurring opinion that I will turn to in a moment. This case involves Michael and Rebecca McIntosh, who own a small nine-lot mobile home park where they rent out mobile homes. They've been doing so for several decades, but starting in the fall of 2020, they had an issue with one of their tenants who complained about the condition of one of the mobile homes. A code enforcement officer inspected the property, followed by a building inspector from the city of Madisonville. Their descriptions of the property were not favorable for the McIntoshes, noting things like organic growth on the walls, soft floors in some areas, and unstable beams supporting the ceiling- conditions that could make it unsafe to live in. The McIntoshes disputed some of these claims, asserting that some of the damage was caused by the tenant, who allegedly sprayed water inside to make the conditions appear worse than they were. Regardless, after these inspections, the city sent a letter to the McIntoshes stating that the property was in violation of the International Property Maintenance Code, a widely used building code. They were given 30 days to submit a plan to fix the problems but were not told exactly what the issues were. The city also posted a notice on the unit stating "Warning: Condemned, Do Not Enter." Mr. McIntosh responded by sending a letter disputing the claims that the building was unsafe, and he also obtained a copy of the maintenance code, presumably to see what needed to be done to fix the issues. At this point, everyone seemed to agree on the sequence of events, but the story diverges as the McIntoshes claim they repeatedly reached out to the code enforcement officer to figure out how to fix the

unit. However, the officer allegedly refused to answer, instead pointing the finger at the building inspector. When they tried to contact the building inspector, they were told that the inspector was unreachable and that, if the McIntoshes disagreed with the decision, they should "just sue us." They were also told there was no board to appeal the decision. On top of this, the city turned off the power to the unit, making it even more difficult for the McIntoshes to make repairs. Mr. McIntosh claimed he fixed the source of the problems- the leaking water valve on the water heater- and was in the process of repairing the other damage caused by the leak. He also claimed to have communicated with city officials, but they reportedly disregarded his efforts and informed him that they would proceed with tearing down the house. The city's account of events differs, stating that while the McIntoshes did get a copy of the property maintenance code, they never took action to fix the issues. The city also claimed that they offered to work with the McIntoshes to address the problems, but the offer was rejected, and they disputed receiving some of the McIntoshes' communications about repairs. Furthermore, the city argued that after re-inspecting the property, they found only cosmetic repairs, not substantial fixes to the underlying issues. On the 30th day after the condemnation notice was issued, the city arrived to demolish the house. It's almost like the scene from the beginning of Hitchhiker's Guide to the Galaxy. They're there and they've got the equipment. He's calling everybody- the city attorney, other city officials- trying to figure out how to get them not to knock his house down.

A Anthony Sanders 29:15

He doesn't lay down in front of the bulldozer, though it seems that's maybe the one thing he didn't do.

J Joe Gay 29:21

But do you have any idea how much damage that would case to the bulldozer? Absolutely none. So anyways. in this case, the McIntoshes sued the city after their property was demolished, bringing a procedural due process claim, a substantive due process claim, and a state trespass law claim, along with a takings claim, though the takings claim wasn't pursued on appeal. He initially filed the case in state court, but the city removed it to federal court. After discovery, the district court granted summary judgment in favor of the city, citing a similar case involving a car wash owner's procedural due process claim being dismissed, despite no personal notice of demolition. And when I looked at the summary judgement order I was surprised because it was largely based on another district court decision that involved basically the same people doing the same thing to somebody else, except it involved a car was that the owner had been neglecting due to caring for a sick family member. The court in that case ruled the notice posted on the property was sufficient, even though the owner hadn't received direct notice. This persuasive authority made the McIntoshes' case a long shot at the trial court level, leading the court to rule in favor of the city on both procedural and substantive due process claims. The McIntoshes appealed to the Sixth Circuit, where they focused on their procedural due process claim. Fortunately for him there were no issues with timeliness. Judge Sutton's opinion concentrated on the procedural due process issue, citing Supreme Court and Sixth Circuit precedent which requires notice and the opportunity to be heard before a property is demolished, not after. The existing standard for notice, as outlined in the 1950 Supreme Court case Mullane v. Central Hanover Bank & Trust Company, is that the notice must be "reasonably calculated" to inform interested parties of the pending action and allow them to present

objections. I'll make a brief aside here. I took a look at Mullane v. Central Hanover Bank & Trust Company because I was curious about the decision. It involved relieving a trustee of certain obligations and discharging them of their trustee duties, and there were a lot of beneficiaries, some of whom were out of state. The issue was that giving notice to all of them was difficult, so the state chose to use publication. The court acknowledged that, ordinarily, you would want personal service or written notice, but given the circumstances, it wasn't practical. Since the beneficiaries were similarly situated, the court found that as long as most of them received notice, it would protect everyone's rights. This case, decided in 1950, established a more lenient approach to notice, acknowledging that it wasn't feasible to personally notify a large number of out-of-state beneficiaries. This concept has been upheld for over 75 years, suggesting that in cases like this, it might be acceptable if most interested parties are informed, even if personal notice isn't provided to every single individual.

A Anthony Sanders 34:12

Maybe you don't actually need to tell that person that you're about to knock that their property down. And so I think there is a slow drift here where some of our basic protections have, bit by bit, decision by decision, situation by situation, really been shipped away without us kind of like boiling the frog. You haven't really noticed over time, how far we've gotten from what you might have expected. I don't know if that precedent was involved, but one of the longest cases we've had at IJ was this case called Brody in the 2000s that was litigated in the Second Circuit. It was about our client not getting notice about a procedure that then led to his property being destroyed and redevelopment and eminent domain and all that. But it was primarily about this notice issue, and it went for years and years, before the in the settlement, the city eventually officially apologized to our client for what they had done to him. So I wasn't part of that case, and I remember the specifics and if this precedent was involved, but I think that very much is probably part of this boiling the frog that you're talking about.

J Joe Gay 35:37

I've definitely seen in other IJ cases where fines, for example, have been upheld, even if it's not clear that the person received notice or their right to appeal fines, but the courts have become very lackadaisical about actual notice based on this standard that has really expanded over the past few decades. But that's all in the side. Under the facts of this case, the panel says, here the notice requirement is satisfied. It's undisputed that he received the letter about the condemnation, and he did begin trying to repair his home. There's no dispute that he knew something was afoot. Doctrinally, the trickier question is whether the letter said what it needed to say to provide notice. The first problem was it didn't identify the specific problems with the home. That's problematic because if you're trying to repair your home, it's hard to decide whether to appeal or make a repair plan if you don't know what the problems are. The court waves that away and says, well, he had notice, so he knew how to act. I won't go into detail with my problems there, but I do think there were issues with saying somewhere in thousands of words of property maintenance code that you have violations but not specifying where they are. The second problem with the notice was it didn't tell him about his right to a hearing or what to do next. The problem here is the Supreme Court decision City of West Covina v. Perkins (1999), which said if there are publicly available statutes or case law, the notice doesn't have to tell you about your right to appeal. Here, the court says, all the McIntoshes had to do was open up the municipal ordinances, find Title 15, skim through Chapter 150, find Subsection 13,

and at Subsection C, see they had to appeal to the local board of appeals. The court says the notice is fine. It then turns to the second issue, which is the opportunity to be heard. The court says there has to be some kind of hearing before the state destroys the property, or at least an opportunity for a hearing. The Municipal Code said there was a right to appeal the building inspector's decision to the local appeals board. But when Mr. McIntosh called and asked how to appeal, the city employee said there was no board. In the deposition, the building inspector said there was no local board and that they didn't feel it was necessary to have one to appeal demolition decisions.

A Anthony Sanders 39:22

Even though it's in the code!

J Joe Gay 39:25

Yeah. Their view was that, while there is an informal procedure to resolve disputes with the city, such as talking to the city attorney, the Sixth Circuit rejects this. Even assuming the procedure might be adequate, it wasn't written down and only existed in the minds of city officials, which the court finds problematic. The quibbles I had earlier with notice were that, while the McIntoshes could look to a public code to figure out what to do to appeal, they were still faced with the same issue if the procedure was only in the minds of city officials, which doesn't pass muster under West Covina. The court concludes that this procedure was not adequate because the McIntoshes weren't informed about it, and it didn't provide any meaningful notice. Based on this, the court reverses the district court's summary judgment in favor of the city, sending the claim back to trial. The plaintiffs didn't move for summary judgment on their own end, so the case is presumably set for trial. The court briefly addresses the substantive due process claim, dismissing it because the demolition didn't meet the threshold for shocking the conscience. They also discuss the trespass claim, which the trial court had dismissed, and suggest that it may be revived because the procedural due process claim is still live. This seems like a positive outcome for the property owners. Judge Murphy's concurrence presents a more complex view. He begins by arguing that an evolving standards approach to constitutional interpretation can erode rights just as much as it can create them. Initially, I thought this would be an attack on modern procedural protections, but I agree with the bottom line he's drawing. Judge Murphy argues that, as originally understood, due process of law had robust protections for a narrowly considered set of historic property rights, and the due process clause incorporated these baseline common law procedural protections. Historically, the government was not allowed to deprive someone of property without the involvement of a neutral court, and applying that standard here would have made this case an easy decision. He cites historical authorities that say decisions about condemning property should involve a court. Judge Sutton's analysis, in contrast, points to the expansion of due process rights in the 1970s to include new property interests, such as wealth, in cases like Goldberg v. Kelly and Matthews v. Eldridge. This modern balancing test is now often used in these kinds of cases. Judge Murphy argues that expanding procedural due process protections to cover all types of property can burden the system, leading to the dilution of these rights. While I'm not fully convinced by the causal thesis here, I do think the bottom line is right: demolishing property or trespassing on someone's land should have judicial oversight. Despite

my disagreements with how Judge Murphy frames the issue, I agree with his conclusion that we need to reconsider when and why local officials can demolish homes without judicial review. Christian?

C Christian Lansinger 47:11

It seems like some of concurrence may be more directed to what attorneys on this podcast have brought up, which is the Matthews test. Considering the burden on the government and the government's interest, when you're evaluating whether someone's constitutional rights violated to that level where you're just saying, "all right, whose interest matters more?" It can be dangerous when it comes to somebody's home. I know in this case, we're talking about a landlord owning several mobile homes, but either way, at least it opens the door for a watering down. As the Judge Murphy put it, of various property rights that we hold dear at the same time, even under Matthews, you'd like to think that a house would be seen paramount of the different interests. Apart from the procedural due process issues, I think when you take this case, along with the case out of the Fourth Circuit, the concern of relying on due process is kind of this one and only way to challenge something like this with a nuisance determination, we saw the substantive due process claim, and whether it shocks the conscience. And so all it really takes is an expansion of nuisance law to say that, "well, what the government doesn't like and thinks can pose any kind of a at least decent enough risk to public health and safety, well, then we're going to go ahead and just call it a nuisance and demolish it." We already know in the federal takings clause context, in the Lucas case, they talk about how takings claims are limited by these same background principles of the state's law of property and nuisance. And in that case, Judge Blackman talks about nuisance being a "impenetrable jungle." And so there's kind of a broader issue here, which is, even if there's adequate process, and we can actually kind of discuss in front of a neutral arbiter whether something's a nuisance or not; and how we actually analyze that and make sure that it's taken seriously when it comes to something as important as someone's home. But that was just something I saw when I was thinking about how these cases kind of come together.

A Anthony Sanders 49:36

Well, something lurking in the background in both cases, is what actually is a nuisance and what is a constitutional enforcement action if there is a nuisance on behalf of the city. There's other case law out there where you actually have a city council pass a resolution saying this is a nuisance, and that is really hard to fight back against. There's public nuisances and private nuisances. And so with public nuisances, city can kind of do whatever it wants, because that's impacting other property owners. And private nuisance is kind of a little bit different. But it's all, as you said, Christian a thicket that's hard to cut through, so here the city didn't have those on its side, because it was just one building inspector saying it's a nuisance. But even when push comes to shove, if this becomes an issue at trial, there unfortunately, is going to be some deference to the city official about what's a nuisance. In both of these cases, I started thinking, "Okay, say it really is a nuisance. Is the remedy to tear it down?" Maybe in some cases, it is- like the first property, right? It had a car that hit into it. Maybe it had a big hole in its side. Maybe it was about the fall down and there's a property right next to it. Well, maybe there's a property remedy of tearing it down if the property owner never did anything. But if it's just a mobile home sitting there and no one's living there, why do you need to tear it down? Maybe you could say it's an attractive nuisance and some child is going to go play in and get mold or

something. One other, but it's completely different issue. One other small point is that I am just amazed about how they don't have a board that sits to review these issues. And I when I read that, I thought, this must be some tiny little town of like 150 people, and this just doesn't come up. I looked it up and it's a city with 20,000 people. And they've never had their board sit? I think the guy either was lying, because property disputes in a city of that time size come up all the time, or they really just have, like a good old boys kind of, put the screws to people network that that is able to to not have to do that. We litigated a case in a nearby city in Indiana that was only about 10,000 people, and it wasn't a great city. Its government was totally awful, but their board would sit. The city attorney knew how to run the the board, and yet, like they don't even do it here. What is going on in that city hall?

J Joe Gay 52:35

And as I mentioned, there was that other summary judgment decision where they had done the same thing to another car wash owner. The same building inspector and the same lack of an appeal board. And these are just the people who chose to fight back. So I think these two cases are really just the tip of the iceberg of what is probably nationwide problem with cities. I think, responding to the housing crisis from 2008 and feeling pressure to do something about some distressed properties, but cutting a lot of corners to do it in very problematic ways.

A Anthony Sanders 53:15

Well, that's kind of what the Constitution is there for, is to not allow city officials to cut corners. But, when you give them precedents like we've talked about today, they're going to, they're going to boil that frog to bring everything together and to tear the house down. Well, thank you both for coming on and tearing these issues down. I think, I think you did a great job with that, everyone should go check out. Bound by oath. Sign up for our anniversary party. If you're in the area, all the other things we've talked about. And in the meantime, please be sure to follow short circuit on YouTube, Apple podcast, Spotify, and all other podcast networks, and remember to get engaged you.