

Perez v. County of Monterey

Court of Appeal of California, Sixth Appellate District

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H044364

Reporter

32 Cal. App. 5th 257 *; 243 Cal. Rptr. 3d 683 **; 2019 Cal. App. LEXIS 120 ***; 2019 WL 621483

HERIBERTO PEREZ et al., Plaintiffs and Appellants, v.
COUNTY OF MONTEREY et al., Defendants and
Respondents.

Prior History: [***1] Superior Court of Monterey County,
No. M131362, Thomas W. Wills, Judge.

Constitutional Law > The Judiciary > Case or
Controversy > Constitutionality of Legislation

Core Terms

roosters, ordinance, regulation, interstate commerce, bill of
attainder, regulatory taking, privacy, minors, right to privacy,
violates, no evidence, requires

[HN1](#) **Constitutionality of Legislation**

A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. To succeed on a facial challenge, a plaintiff must show that the law in question could never be applied in a constitutional manner; it is not enough to show that the law would be unconstitutional under some circumstances.

Case Summary

Overview

HOLDINGS: [1]-The appellate court concluded that a county ordinance limiting the number of roosters that can be kept on a property without a permit does not violate the Constitution; [2]-As there was no evidence on which to evaluate the economic impact of the regulation or the level of its interference with reasonable investment-backed expectations, plaintiffs' regulatory taking claim necessarily failed; [3]-Plaintiffs were unable to show that the burden imposed on interstate commerce outweighs the benefits of the regulation, and their Commerce Clause challenge failed; [4]-Because the county's stated objectives are legitimate and an exceptions for minors correspond rationally to achieving those ends, the appellate court rejected plaintiffs' equal protection challenge; [5]-The ordinance is not a bill of attainder; [6]-The ordinance does not violate the constitutional right to privacy.

Constitutional Law > The Judiciary > Case or
Controversy > Constitutionality of Legislation

Civil Procedure > Appeals > Standards of Review > De
Novo Review

[HN2](#) **Constitutionality of Legislation**

An appellate court uses its independent judgment to decide whether a challenged law is constitutional.

Constitutional Law > Bill of Rights > Fundamental
Rights > Eminent Domain & Takings

Outcome

Judgment affirmed.

[HN3](#) **Eminent Domain & Takings**

The [Fifth Amendment](#) prohibits the government from taking private property for public use without paying the owner fair

compensation. That prohibition applies to both real and personal property. It applies not only to a "taking" as that term is commonly understood - a direct appropriation of property - but also to situations where a government regulation goes so far as to deprive the owner of all economically beneficial or productive use of the property.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

[HN4](#) **Constitutionality of Legislation**

A regulatory taking claim - in contrast to a physical occupation or direct appropriation of property - requires evidence of how the regulation affects the property in question. Determining whether a statute constitutes a regulatory taking requires an ad hoc factual inquiry, necessitating the consideration of factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action. But when a statute is challenged on its face, the court considers only the text of the statute itself and not any other evidence.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Dormant Commerce Clause

[HN5](#) **Dormant Commerce Clause**

The Commerce Clause gives Congress the power to regulate commerce between the states. [U.S. Const., art. I, § 8, cl. 3](#). This affirmative grant of authority to Congress also encompasses an implicit or "dormant" limitation on the authority of the states to enact legislation affecting interstate commerce. A local regulation violates the Commerce Clause if it either discriminates against interstate commerce or imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits. A regulation that discriminates against interstate commerce is per se invalid, unless there are no other means to achieve a legitimate local interest. A non-discriminatory regulation, on the other hand, requires a balancing test - a regulation that serves an important local interest will be upheld unless the benefits of the regulation are clearly outweighed by the burden imposed on interstate commerce.

Constitutional Law > Equal Protection > Nature & Scope of Protection

Constitutional Law > Equal Protection > Judicial Review > Standards of Review

[HN6](#) **Nature & Scope of Protection**

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike. Age is not a suspect classification under the Equal Protection Clause, so laws may discriminate on the basis of age without offending the [Fourteenth Amendment](#) if the age classification in question is rationally related to a legitimate state interest. A law that discriminates on the basis of age is reviewed for a rational basis and will not be overturned unless the differential treatment is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government's actions were irrational.

Constitutional Law > Congressional Duties & Powers > Bills of Attainder & Ex Post Facto Clause > Bills of Attainder

[HN7](#) **Bills of Attainder**

Bills of attainder are prohibited by the United States Constitution. [U.S. Const., art. I, § 10](#). A bill of attainder is an ancient practice once engaged in by the Parliament of England to punish without trial specifically designated persons or groups. Historically, bills of attainder generally named the persons to be punished. However, the singling out of an individual for legislatively prescribed punishment constitutes an attainder whether the individual is called by name or described in terms of conduct which, because it is past conduct, operates only as a designation of particular persons. However expansive the prohibition against bills of attainder, it was not intended to serve as a variant of the equal protection doctrine, invalidating every act of Congress or the states that legislatively burdens some persons or groups but not all other plausible individuals.

Constitutional Law > Substantive Due Process > Privacy

[HN8](#) **Privacy**

The diverse and somewhat amorphous character of the

privacy right under *Cal. Const., art. I, § 1*, necessarily requires that privacy interests be specifically identified and carefully compared with competing or countervailing privacy and nonprivacy interests in a balancing test. Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest.

Constitutional Law > Bill of Rights > Fundamental Rights

[HN9](#) Fundamental Rights

Regarding the right to possess property, while property ownership rights are indeed constitutionally guaranteed, they must be subordinated to the rights of society. It is now a fundamental axiom in the law that one may not do with his or her property as he or she pleases; his or her use is subject to reasonable restraints to avoid societal detriment.

Headnotes/Summary

Summary

[*257] CALIFORNIA OFFICIAL REPORTS SUMMARY

Plaintiffs brought a declaratory judgment against a county, seeking to invalidate as unconstitutional a county ordinance limiting the number of roosters that can be kept on a property without a permit. The trial court found that the ordinance does not violate the Constitution and entered judgment for the county. (Superior Court of Monterey County, No. M131362, Thomas W. Wills, Judge.)

The Court of Appeal affirmed the judgment. The court concluded that the ordinance does not violate the Constitution. As there was no evidence on which to evaluate the economic impact of the regulation or the level of its interference with reasonable investment-backed expectations, plaintiffs' regulatory taking claim necessarily failed. There was also no evidence regarding whether either plaintiff was eligible for a rooster keeping permit, had been granted or denied one, or had even applied for one. The extent to which the ordinance affected plaintiffs depended on whether they had a rooster keeping permit. Without evidence on that point, the court was further unable to determine whether a regulatory taking had occurred. Plaintiffs were unable to show that the burden imposed on interstate commerce outweighs the benefits of the regulation, and their commerce clause challenge failed. Because the county's stated objectives are legitimate and the exceptions for minors correspond rationally

to achieving those ends, the court rejected plaintiffs' equal protection challenge. The ordinance is not a bill of attainder and does not violate the constitutional right to privacy. The ordinance is a valid exercise of the county's police power. (Opinion by Grover, J., with Greenwood, P. J., and Danner, J., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#) (1)

Constitutional Law § 17—Constitutionality of Legislation—Facial Challenge.

A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. To succeed on a facial challenge, a plaintiff must show that the law in question could never be applied in a constitutional manner; it is not enough to show that the law would be unconstitutional under some circumstances.

[CA\(2\)](#) (2)

Eminent Domain § 10—Regulatory Taking—Fair Compensation—Economically Beneficial or Productive Use.

U.S. Const., 5th Amend., prohibits the government from taking private property for public use without paying the owner fair compensation. That prohibition applies to both real and personal property. It applies not only to a “taking” as that term is commonly understood—a direct appropriation of property—but also to situations where a government regulation goes so far as to deprive the owner of all economically beneficial or productive use of the property.

[CA\(3\)](#) (3)

Eminent Domain § 10—Regulatory Taking—Ad hoc Factual Inquiry—Reasonable Investment-backed Expectations—Limit on Number of Roosters.

A regulatory taking claim—in contrast to a physical occupation or direct appropriation of property—requires evidence of how the regulation affects the property in question. Determining whether a statute constitutes a regulatory taking requires an ad hoc factual inquiry, necessitating the consideration of factors such as the economic impact of the regulation, its interference with

reasonable investment-backed expectations, and the character of the government action. But when a statute is challenged on its face, the court considers only the text of the statute itself and not any other evidence. Thus, in a case in which plaintiffs sought to invalidate as unconstitutional a county ordinance limiting the number of roosters that can be kept on a property without a permit, plaintiffs' regulatory taking claim necessarily failed, where there was no evidence on which to evaluate the economic impact of the regulation or the level of its interference with reasonable investment-backed expectations.

[[Cal. Forms of Pleading and Practice \(2018\) ch. 247, Eminent Domain and Inverse Condemnation, § 247.208.](#)]

[CA\(4\)](#) [↓] (4)

Commerce § 2—Dormant Commerce Clause—Local Regulation—Balancing Test.

The commerce clause gives Congress the power to regulate commerce between the states ([U.S. Const., art. I, § 8, cl. 3](#)). [*259] This affirmative grant of authority to Congress also encompasses an implicit or “dormant” limitation on the authority of the states to enact legislation affecting interstate commerce. A local regulation violates the commerce clause if it either discriminates against interstate commerce or imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits. A regulation that discriminates against interstate commerce is per se invalid, unless there are no other means to achieve a legitimate local interest. A nondiscriminatory regulation, on the other hand, requires a balancing test—a regulation that serves an important local interest will be upheld unless the benefits of the regulation are clearly outweighed by the burden imposed on interstate commerce.

[CA\(5\)](#) [↓] (5)

Constitutional Law § 81—Equal Protection—Suspect Classification—Age—Rational Basis.

The equal protection clause of U.S. Const., 14th Amend., commands that no state shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike. Age is not a suspect classification under the [equal protection clause](#), so laws may discriminate on the basis of age without offending [U.S. Const., 14th Amend.](#), if the age classification in question is rationally related to a legitimate state interest. A law that discriminates

on the basis of age is reviewed for a rational basis and will not be overturned unless the differential treatment is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government's actions were irrational.

[CA\(6\)](#) [↓] (6)

Constitutional Law § 17—Constitutionality of Legislation—Bills of Attainder.

Bills of attainder are prohibited by the United States Constitution ([U.S. Const., art. I, § 10](#)). A bill of attainder is an ancient practice once engaged in by the Parliament of England to punish without trial specifically designated persons or groups. Historically, bills of attainder generally named the persons to be punished. However, the singling out of an individual for legislatively prescribed punishment constitutes an attainder whether the individual is called by name or described in terms of conduct which, because it is past conduct, operates only as a designation of particular persons. However expansive the prohibition against bills of attainder, it was not intended to serve as a variant of the equal protection doctrine, invalidating every act of Congress or the states that legislatively burdens some persons or groups but not all other plausible individuals.

[CA\(7\)](#) [↓] (7)

Privacy § 3—Right—Competing Interests—Balancing Test.

The diverse and somewhat amorphous character of the privacy right under [Cal. \[*260\] Const., art. I, § 1](#), necessarily requires that privacy interests be specifically identified and carefully compared with competing or countervailing privacy and nonprivacy interests in a balancing test. Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest.

[CA\(8\)](#) [↓] (8)

Constitutional Law § 67—Property Ownership Rights—Reasonable Restraints.

Regarding the right to possess property, while property ownership rights are indeed constitutionally guaranteed, they must be subordinated to the rights of society. It is now a fundamental axiom in the law that one may not do with his or her property as he or she pleases; his or her use is subject to

reasonable restraints to avoid societal detriment.

Counsel: Lynne Marie Patterson for Plaintiffs and Appellants.

Charles J. McKee, County Counsel, Michael J. Whilden, Deputy County Counsel, Defendants and Respondents.

Judges: Opinion by Grover, J., with Greenwood, P. J., and Danner, J., concurring.

Opinion by: Grover, J.

Opinion

[**686] **GROVER, J.**—Plaintiffs Heriberto Perez and Miguel Angel Reyes Robles appeal a defense [**687] judgment in their action for declaratory relief against the County of Monterey (County). Plaintiffs sought to invalidate as unconstitutional a county ordinance limiting the number of roosters that can be kept on a property without a permit. We agree with the trial court that the ordinance does not violate the Constitution and will therefore affirm the judgment.

The challenged ordinance provides that no one may keep more than four roosters on a single property without a rooster keeping operation permit. (Monterey County Ordinance No. 5249 added chapter 8.50 to title 8 of the Monterey County Code; unspecified citations are to this code.) A permit can be obtained by application [***2] to the county Animal Control Officer. (§ 8.50.040.A.) The application must include a plan describing the “method and frequency of manure and other solid waste removal,” and “[s]uch other information that the Animal Control Officer may deem necessary to decide on the issuance of the permit.” (§ 8.50.040.C.3–4.) A permit cannot be issued to anyone who has a criminal conviction for illegal cockfighting or other crime of animal cruelty. (§ 8.50.060.F.1.) And permitted rooster keeping operations [*261] must comply with certain minimum standards, such as maintaining structurally sound pens that protect roosters from cold and are properly cleaned and ventilated. (§§ 8.50.080.B, 8.50.090.C.1.a.–b.) The ordinance includes four exemptions from the permit requirement: for poultry operations (defined as raising more than 200 fowl for the primary purpose of producing eggs or meat for sale); poultry hobbyists (a member of a recognized organization that promotes the breeding of poultry for show or sale); minors who keep roosters for an educational purpose; and minors who keep roosters for a Future Farmers of America project or 4-H project. (§§ 8.04.010, 8.50.110.)

Plaintiffs sued to challenge the validity of the rooster keeping

ordinance, seeking a declaratory judgment that the law is unconstitutional. [***3] The complaint also alleged causes of action for damages based on civil rights violations, but plaintiffs agreed to limit the scope of their suit to the issue of whether the ordinance is valid on its face. Accordingly, no evidence was introduced at trial other than the text of the ordinance and some related legislative documents. The trial court found that the ordinance does not violate the Constitution and entered judgment for the County.

Standard of Review

[HNI](#)[↑] [CA\(1\)](#)[↑] (1) “A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual.” (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 [40 Cal. Rptr. 2d 402, 892 P.2d 1145].) To succeed on a facial challenge, a plaintiff must show that the law in question could *never* be applied in a constitutional manner; it is not enough to show that the law would be unconstitutional under some circumstances. (*Ibid.*) [HNI](#)[↑] We use our independent judgment to decide whether the challenged law is constitutional. (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 628 [209 Cal. Rptr. 3d 532].)

Constitutional Challenges

Plaintiffs challenge the ordinance on a variety of constitutional grounds. They argue it (1) takes property without compensation in violation of the *Fifth Amendment to the United States Constitution*; (2) infringes on Congress’s authority to regulate [***4] interstate commerce; (3) violates the *equal protection clause of the Fourteenth Amendment to the United States Constitution*; (4) is a prohibited bill of attainder; [**688] and (5) violates the rights to privacy and to possess property guaranteed by the California Constitution. As we will explain, the arguments lack merit.

[*262]

1. *Fifth Amendment Taking*

[HN3](#)[↑] [CA\(2\)](#)[↑] (2) The *Fifth Amendment* prohibits the government from taking private property for public use without paying the owner fair compensation. (*Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617 [150 L. Ed. 2d 592, 121 S. Ct. 2448].) That prohibition applies to both real and personal property. (*Horne v. Department of Agriculture* (2015) 576 U.S. [192 L. Ed. 2d 388, 135 S.Ct. 2419, 2426] (*Horne*).) And it applies not only to a “taking” as that term is commonly understood—a direct appropriation of

property—but also to situations where a government regulation goes so far as to deprive the owner of all economically beneficial or productive use of the property. (*Id.* at p. ___ [135 S.Ct. at p. 2427].)

[CA\(3\)](#)^[↑] (3) Plaintiffs allege in their complaint that the rooster keeping ordinance is a regulatory taking, one that deprives them of all beneficial use of their property. The complaint expressly frames the taking claim as an “as applied” challenge: it alleges that the way the ordinance applies to plaintiffs’ property results in a regulatory taking in violation of the [Fifth Amendment](#). When plaintiffs agreed to limit the scope of the issues tried to solely whether the ordinance is valid on its face (and accordingly did not [***5] present evidence of how the ordinance affected them) it was fatal to their regulatory taking challenge. That is because [HN4](#)^[↑] a *regulatory* taking claim—in contrast to a physical occupation or direct appropriation of property—requires evidence of how the regulation affects the property in question. As the Supreme Court has instructed, determining whether a statute constitutes a regulatory taking requires “an ‘ad hoc’ factual inquiry,” necessitating the consideration of “factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action.” (*Horne, supra*, 576 U.S. ___ [135 S.Ct. 2419, 2427].) But when a statute is challenged on its face, we consider only the text of the statute itself and not any other evidence. (And the record here contains no evidence for us to consider, since plaintiffs pursued only the facial challenge in the trial court.) As there is no evidence on which to evaluate the economic impact of the regulation or the level of its interference with reasonable investment-backed expectations, plaintiffs’ regulatory taking claim necessarily fails.

There is also no evidence regarding whether either plaintiff is eligible for a rooster keeping [***6] permit, has been granted or denied one, or has even applied for one. The extent to which the ordinance affects plaintiffs depends on whether they have a rooster keeping permit. Without evidence on that point, we are further unable to determine whether a regulatory taking has occurred. (See [Williamson Planning Comm’n v. Hamilton Bank \(1985\) 473 U.S. 172, 191 \[87 L. Ed. 2d 126, 105 S. Ct. 3108\]](#) [the relevant considerations “simply cannot be evaluated until the administrative agency has arrived at a final, [*263] definitive position regarding how it will apply the regulations at issue to the particular land in question.”].)

2. Interstate Commerce

[HN5](#)^[↑] [CA\(4\)](#)^[↑] (4) The commerce clause gives Congress the power to regulate commerce between the states. ([U.S. Const., art. I, § 8, cl. 3.](#)) “[T]his affirmative grant of authority to Congress also encompasses an implicit or

“dormant” limitation on the authority of the States to enact legislation [***689] affecting interstate commerce.” ([Ferguson v. Friendfinders, Inc. \(2002\) 94 Cal.App.4th 1255, 1261 \[115 Cal. Rptr. 2d 258\]](#).) A local regulation violates the commerce clause if it either discriminates against interstate commerce or “imposes a burden on interstate commerce that is ‘clearly excessive in relation to the putative local benefits.’” ([C & A Carbone, Inc. v. Clarkstown \(1994\) 511 U.S. 383, 390 \[128 L. Ed. 2d 399, 114 S. Ct. 1677\]](#).) A regulation that discriminates against interstate commerce is per se invalid, unless there are no other means to achieve a legitimate local interest. A nondiscriminatory regulation, on the [***7] other hand, requires a balancing test—a regulation that serves an important local interest will be upheld unless the benefits of the regulation are clearly outweighed by the burden imposed on interstate commerce. (*Id.* at pp. 390–392.)

Plaintiffs assert the rooster keeping ordinance imposes a burden on interstate commerce. The burden, as they describe it, is that, “The ordinance forces rooster owners to immediately divest themselves ... of all but four of their roosters A major portion of the roosters[] sold will likely be interstate commerce.” To begin with, plaintiffs do not accurately characterize what the ordinance requires—it does not force all rooster owners to “immediately divest” themselves of all but four roosters; it merely requires a permit to keep more than four roosters on a single property. Plaintiffs have provided no evidence to support their assertion that the ordinance will result in roosters being sold, nor have they provided evidence of how that would affect interstate commerce. Plaintiffs therefore are unable to show that the burden imposed on interstate commerce outweighs the benefits of the regulation, and their commerce clause challenge fails.

3. Equal Protection

[HN6](#)^[↑] [CA\(5\)](#)^[↑] (5) “The [Equal Protection Clause of the Fourteenth Amendment](#) commands that no State [***8] shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” ([Cleburne v. Cleburne Living Center, Inc. \(1985\) 473 U.S. 432, 439 \[87 L. Ed. 2d 313, 105 S. Ct. 3249\]](#).) Plaintiffs contend the ordinance violates the [equal protection clause](#) because it [*264] treats minors more favorably than adults, in that there are two exceptions to the permit requirement which apply only to minors: minors keeping roosters for an educational purpose, and minors keeping roosters for a Future Farmers of America or 4-H project. But “age is not a suspect classification under the [Equal Protection Clause](#),” so laws “may discriminate on the basis of age without offending the [Fourteenth Amendment](#) if the age classification in question is

rationally related to a legitimate state interest.” (*Kimel v. Florida Bd. of Regents* (2000) 528 U.S. 62, 83 [145 L. Ed. 2d 522, 120 S. Ct. 631].) A law that discriminates on the basis of age is reviewed for a rational basis and will not be overturned unless the differential treatment “‘is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government’s] actions were irrational.’” (*Id.* at p. 84.)

In pressing their equal protection challenge, plaintiffs correctly observe that the ordinance treats people differently based on age. But they do not articulate how the differential treatment [***9] completely fails to advance a legitimate government purpose. The ordinance includes a statement of “findings and purpose” (§ 8.50.010, capitalization & boldface omitted), explaining that the County “desires to allow the keeping of roosters in a manner that addresses the treatment of roosters and environmental and health and safety impacts [**690] of keeping roosters, while discouraging the raising of roosters for illegal purposes,” and “recognizes that students legitimately raise roosters for 4-H, Future Farmers of America, and other educational projects.” (§ 8.50.010.F.–G.) The ordinance therefore “serves the public health, safety and welfare by establishing a comprehensive approach to the keeping of five or more roosters that balances promotion of agriculture and agricultural education with prevention of operations that are unsanitary, inhumane, environmentally damaging, and potentially conducive of illegal conduct.” (§ 8.050.010.J.) In our view, the County’s stated objectives are legitimate and the exceptions for minors correspond rationally to achieving those ends. We therefore reject plaintiffs’ equal protection challenge.

4. Bill of Attainder

[HN7](#)[↑] [CA\(6\)](#)[↑] (6) Bills of attainder are prohibited by the United States Constitution. (*U.S. Const., art. I, § 10.*) A bill of attainder is an ancient practice [***10] once engaged in by the Parliament of England to punish without trial “‘specifically designated persons or groups.’” (*Selective Service v. Minn. Public Int. Res. Gp.* (1984) 468 U.S. 841, 847 [82 L. Ed. 2d 632, 104 S. Ct. 3348].) “Historically, bills of attainder generally named the persons to be punished. However, ‘[t]he singling out of an individual for legislatively prescribed punishment constitutes an attainder whether the individual is called by name or described in terms of conduct which, because it is past conduct, operates only as a designation of particular persons.’” (*Ibid.*) Of course, “[h]owever [**265] expansive the prohibition against bills of attainder, it surely was not intended to serve as a variant of the equal protection doctrine, invalidating every Act of Congress or the States that legislatively burdens some persons or groups but not all other plausible individuals.” (*Nixon v.*

Administrator of General Services (1977) 433 U.S. 425, 471 [53 L. Ed. 2d 867, 97 S. Ct. 2777], fn. omitted.)

That the ordinance in question does not burden all people (only those who want to keep more than four roosters on a property) does not make it a bill of attainder. The ordinance prospectively regulates the keeping of roosters. It does not single out a person or group for punishment based on conduct predating its enactment. It is therefore not a bill of attainder.

5. Rights to Privacy and to Possess Property

[CA\(7\)](#)[↑] (7) [Article I, section 1 of the California Constitution](#) states: [***11] “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” Plaintiffs contend the ordinance violates both the right to privacy and to possess property. Regarding the right to privacy, we note it is not absolute. (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 961 [56 Cal. Rptr. 3d 477, 154 P.3d 1003].) [HN8](#)[↑] “‘The diverse and somewhat amorphous character of the privacy right necessarily requires that privacy interests be specifically identified and carefully compared with competing or countervailing privacy and nonprivacy interests in a “balancing test.” ... [¶] Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest.’” (*Ibid.*) Plaintiffs make no effort to identify a specific privacy interest implicated by the ordinance, much less explain why any purported invasion of privacy is not outweighed by the County’s competing interest in establishing humane and sanitary standards for the keeping of roosters. We [**691] perceive no violation of the constitutional right to privacy.

[CA\(8\)](#)[↑] (8) [HN9](#)[↑] Regarding the right to possess property, while [***12] property ownership rights are indeed constitutionally guaranteed, they “must be subordinated to the rights of society.” (*People v. Byers* (1979) 90 Cal.App.3d 140, 147 [153 Cal. Rptr. 249].) “It is now a fundamental axiom in the law that one may not do with his property as he pleases; his use is subject to reasonable restraints to avoid societal detriment.” (*Ibid.*) The rooster ordinance does not deprive plaintiffs of the right to own property; it regulates their use of it. We conclude the ordinance is a valid exercise of the County’s police power. (See *Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 206 [56 Cal. Rptr. 2d 732]. [“The police power is the authority to enact laws to promote the public health, safety, morals and general welfare.”].)

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The judgment is affirmed. The parties shall bear their own

costs on appeal.

Greenwood, P. J., and Danner, J., concurred.

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