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Foreword

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In this, our third issue of Volume 22, the *Review* presents three Articles. The first, by San Francisco attorney Kingsley R. Browne, examines the constitutional and statutory legality of comparable worth plans based on sex classifications. These plans attempt to achieve equal compensation levels between female-dominated jobs and different, male-dominated jobs where the jobs require comparable levels of worker skill, effort and responsibility. The author argues that these sex-based plans, as species of sexual discrimination in employment, must satisfy the affirmative action standards of the equal protection clause and Title VII of the Civil Rights Act of 1964. After examining Supreme Court pronouncements on affirmative action, Mr. Browne concludes that the plans are constitutionally and statutorily infirm. The author asserts that employers could achieve job parity equally well by implementing sex-neutral comparable worth plans.

Our second Article explores the ever-expanding scope of liability for negligent misrepresentation. Professor Deborah A. Ballam predicts that courts will soon impose liability for the tort upon certain publishers who negligently print erroneous objective data when they know or should know that investors and creditors may rely on the data in making business decisions. The author arrives at her prediction by drawing an analogy between these publishers and accountants who have been held liable for negligently certifying erroneous financial information. Professor Ballam also analyzes the role that the first amendment's free-press clause may play in judicial analyses of publisher negligent misrepresentation.

The author of our third Article, practitioner Paul J. Nadel, reviews the development and current status of the California real estate law doctrine of vested rights. During the current "slow-growth" era, landowners and developers have been forced to halt or modify projects in progress to comply with land use restrictions imposed by regulators after work has commenced. Local governments retain authority to modify, control or disapprove a proposed development until the developer acquires a "vested right" to complete a project. The author demonstrates that the common-law vested rights rule is inadequate to assure that a developer will not be barred from completing a project as planned. Mr. Nadel explains how developers can obtain enhanced protection under two recently enacted statutes: the Development Agreement legislation of 1979 and the Vesting Tentative Map legislation of 1984. Finally, the au-

thor instructs how developers can challenge the effects of subsequently enacted land use regulations through the law of inverse condemnation.

We are also pleased to present three student-written pieces in this issue of the *Review*. Staff writer Stephen A. Meister examines the United States Court of Appeals for the Ninth Circuit's treatment of the "outrageous government conduct" defense in federal criminal prosecutions. The defense is asserted when conduct by law enforcement officials has been so egregious that it rises to the level of a due process violation. The author traces the development of the defense in Supreme Court cases and its application in the Ninth Circuit. He argues that the court of appeals has formulated an unwarrantedly narrow interpretation of the defense, which has effectively extinguished its use in the circuit. In conclusion, the author propounds guidelines for consideration by the court in future cases and proposes remedial congressional legislation to codify the defense.

Staff writer Brian S. Kabateck considers commercial speech and attorney advertising in his Note on *Shapero v. Kentucky Bar Association*. In *Shapero*, the Supreme Court of the United States held that state regulators may not absolutely ban attorneys from soliciting clients through direct-target mailings. The Note analyzes *Shapero* against the historical development of the commercial speech doctrine which culminated in the four-part commercial speech test of *Central Hudson Gas & Electric Corp. v. Public Service Commission*. The author contends that the *Shapero* Court misapplied the *Central Hudson* test, thereby diluting its usefulness as a guidepost for regulators who formulate rules governing attorney advertising. The author concludes by proposing specific regulations addressing direct-target mail solicitation that are consistent with both *Shapero* and *Central Hudson*.

In the final contribution to this issue, Articles Editor Patricia Y. Synn analyzes the reasoning and implications of another Supreme Court decision, *Nollan v. California Coastal Commission*. In *Nollan*, the Court held that governments may impose a condition on the granting of land use permits only when the condition bears an "essential nexus" with the state's purpose in conditioning the permit; imposing a condition unrelated to the state's purpose constitutes a taking of property demanding just compensation. The author posits that *Nollan* could be interpreted two different ways, leading to stunningly divergent results. Under the broader reading, *all* land use regulations must satisfy the essential-nexus test, with the regulation substantially advancing the state's interest in promulgating it. The narrower reading holds that the nexus should be required only in cases where the state seeks to impose by condition what

it could not impose outright without resorting to its eminent-domain power and payment of just compensation. The author urges that courts adopt the narrower reading. This would ensure both that governments retain the necessary latitude to impose important land use regulations and that landowners are protected from thinly disguised governmental takings.

The Editors