

International Municipal Lawyers Association
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Washington, DC

Work Session II: What's New in Takings Law and Storm Water Regulation: *Arkansas Game & Fish Commission v. U.S., Koontz v. St. Johns River Water Management District and Virginia Department of Transportation v. EPA.*

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The Takings Clause in the U.S. Supreme Court

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Data on Takings Cases in the Supreme Court, 2003 -2013

The Takings Clause at the Jurisdictional Stage

-- the Court received at least 81 petitions for certiorari between 2003 and 2013.

-- 79 petitions were filed by takings claimants

-- 7 petitions granted

-- Horne v. USDA

-- Koontz v. St. John's Water Management District

-- Arkansas Game & Fish Commission v. United States

-- Stop the Beach Renourishment, Inc. v. Florida DEP

-- San Remo Hotel, LP v. City and County of San Francisco

-- Kelo v. City of New London

-- 2 petitions were filed by government defendants

-- Lingle v. Chevron USA, Inc.

-- Mining and Minerals Div. of New Mexico Energy Minerals & natural Res. Dept. v. Manning

-- 1 petition filed by the government granted

-- Lingle

The Takings Clause at the Merits Stage

-- Four government wins: Lingle, Kelo, San Remo, Stop the Beach.

-- One property owner win: Arkansas Game & Fish Commission

-- Two pending cases; Koontz, Horne

Data on NEPA Cases in the Supreme Court, 1970 to 2100

NEPA Cases at the Jurisdictional Stage

-- the Court received approximately 115 petitions between 1970 and 2010

-- the U.S. filed 21 petitions seeking to reverse a lower court ruling that an agency had violated NEPA.

-- 15 petitions granted

-- -- business interests filed in 25 cases seeking to reverse a lower court ruling that an agency had violated NEPA

-- 2 petitions granted

-- environmentalists and others filed about 110 petitions seeking reversal of a lower court ruling that NEPA was not applied with sufficient stringency.

-- granted 1 time, but case subsequently remanded based on mootness

NEPA Cases at the Merits Stage

-- Court has decided 17 NEPA cases on the merits

-- the United States has won, or supported industry victor (two times), in every case.

-- NEPA claimants have won no case.

Source: Richard Lazarus, "NEPA in the U.S. Supreme Court," 100 Georgetown Law Journal 1507 (2012).