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Lucas v. South Carolina Coastal Council: **Colloquium**

The Pace Center for Environmental Legal Studies held a colloquium entitled "*Lucas v. South Carolina Coastal Council* — Implications on Environmental Law," prior to the Supreme Court's decision in the case. The colloquium consisted of four panelists: Cotton C. Harness, III, General Counsel for the South Carolina Coastal Council; John A. Humbach, Professor, Pace University School of Law; John R. Nolon, Charles A. Frueauff Research Professor, Pace University School of Law; and Judith M. LaBelle, Corporate Counsel, National Audubon Society. The panelists discussed the history of takings law, the issues in *Lucas*, and the potential implications of the Court's decision.

Pace Environmental Law Review is proud to publish articles based on the speeches presented at the colloquium. The authors have had the opportunity to revise their speeches in light of the *Lucas* decision.

Cotton C. Harness, III puts the *Lucas* case in historical perspective and argues that the economic agenda of some members of the modern Supreme Court "threatens to supplant traditional views of the individual's relationship to the community and the Court's relationship to the legislature." Mr. Harness explains that the Court's shift in philosophy may adversely impact future environmental regulation for several reasons. First, because it focuses more on the rights of individual property owners and less on the effect a property owner's use of land may have on the surrounding community.

Second, because it attempts to effect a balance between the rights of individuals and government through an impractical and historically untested use of the Fifth Amendment. Finally, because it suggests a return to the *Lochner* era, wherein the Court acted as a "super-legislature" and exercised its own independent judgment instead of deferring to the legislative judgment.

John A. Humbach discusses the debate surrounding "property rights:" the right of state and local governments to control the development of property, often in an effort to protect the environment or the rights of others, versus the rights of private property owners who are, understandably, interested in protecting their own economic interests. Professor Humbach puts the Takings Clause into historical perspective, beginning as a doctrine that took due account of social obligation, and resisted compensation for land use restrictions that advanced the public good. Professor Humbach then examines the modern doctrine which focuses on the rights of private property owners, to whom compensation is owed in cases where a use-restriction "goes too far." He discusses whether certain public interests justify the denial of compensation for diminished values, under a so-called "nuisance exception," and whether even the strongest public interests will support regulations that deprive property of *all* economic value.

John R. Nolon examines land-use regulations and the "takings" issue from the point of view of the property owner, advocating both fairness in drafting regulations and a collaborative effort in establishing a balance between individual property rights and the public interest. Professor Nolon discusses the inherent rights of property owners to use their land subject only to the limitation that such use not interfere with the rights of others. He concludes that property rights are not "absolute," and that property is held subject to reasonable land-use regulations. Professor Nolon argues that the rights of property owners and the needs of society should be balanced in the creation of regulations, recognizing an owner's "reasonable investment-backed expectations" in an effort to effect "maximum fairness." Professor Nolon then addresses "the wisdom of judicial usurpation of legislative discretion" in *Lu-*

cas and criticizes the Supreme Court's exclusive reliance on judicial, rather than legislative, definition of what constitutes a nuisance. Finally, Professor Nolon discusses the limited applicability of *Lucas*, and examines the process by which courts decide regulatory takings cases ending with an endorsement of better land-use planning as a method of protecting regulations from constitutional challenge.

Judith M. LaBelle examines the "muddle" of takings jurisprudence in the prevailing political, social and economic climate. Ms. LaBelle argues that our current focus on growth as the indicator of economic good health is fundamentally flawed, because it fails to recognize the limitations of the resources which are the basis for that growth, and fails to address the environmental costs of economic growth. Ms. LaBelle states that land should not be viewed as just another form of capital, and advocates coordinated public and private efforts aimed at taking the "sting" out of land-use regulations by adopting policies which are both fair and equitable. Finally, Ms. LaBelle suggests a rethinking of the relationship between individuals and their communities, the deterioration of which she suggests may have much to do with the current attitudes toward compensable takings and the vigorous pursuit of individual property rights.