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1. County of Wayne v. Hathcock, (MI, July 30, 2004) (available on the Michigan Supreme Court website) (in a striking departure from U.S. Supreme Court precedent, the Michigan Supreme, overruling a court of appeals decision, and relying exclusively on the Michigan Constitution, ruled that the use of eminent domain to create a business and technology park projected to generate tens of thousands of jobs and hundred millions in tax revenues was not a taking for a "public use" because the individual properties within the park would eventually be converted to private ownership; in sharp contrast to the U.S. Supreme Court's position in the Berman and Midkiff cases, the Michigan court held that the legislature's judgment that a taking would serve a public use was entitled no judicial deference; the court ruled that the use of eminent domain when private parties ultimately acquire the property is permissible only (1) in a case of "public necessity of the extreme sort" (highways, railroads, etc.); (2) when the public retains continuing oversight authority over the use of the land; or (3) the property is selected based on "facts of independent public significance" (i.e., slum clearance); the court overruled its prior Poletown decision, which had sanctioned the use of eminent domain for private economic development purposes, while establishing a relatively demanding test for the exercise of such authority) (GELPI filed an amicus brief on behalf of the National Congress for Community Economic Development urging the Michigan Supreme Court not to overrule Poletown).

2. Rose Acre Farms, Inc. v. United States, 2004 WL 1460685 (Fed. Cir. June 30, 2004) (in a complicated decision, the U.S. Court of Appeals for the Federal Circuit vacated a $6,000,000 takings award based on the application of a U.S. Department of Agriculture regulation, designed to control Salmonella poisoning, that prohibited the claimant for approximately two years from selling eggs suspected of containing the Salmonella bacterium as table eggs (but not for other purposes); with respect to the regulatory taking under Penn Central analysis, the court ruled that under the parcel as a whole rule the economic impact of the regulation had to be assessed in relation to the entirety of the claimant's farms, not just the particular eggs affected by the regulation;

however, the court ruled that economic impact could properly be assessed based on either diminution in value of the relevant property or reduced profits, and remanded the case to the trial court to determine which measure provided the best standard in this case; the court equated the "character factor" in Penn Central analysis with the Nollan essential nexus test, but ruled that the trial court erred on the facts of this case in concluding the character factor supported a finding of a taking; addressing a separate claim, the court rejected the trial court's determination that the government effected a per se taking by seizing a small number of claimant's hens for testing).

3. Cashman v. Cotati, 2004 WL 1575238 (9th Cir. July 15, 2004) (the Ninth Circuit, building on its prior decisions upholding takings claims based on rent control laws in Richardson and Chevron, ruled that the district court erred in vacating a grant of summary judgment to the plaintiffs in a takings challenge to a municipal mobile home law; the court ruled that plaintiffs were entitled to summary judgment on their "substantially advance" taking claim based on the facts that incumbent tenants of the mobile home park could charge a premium to future mobile home occupants and that the ordinance contained no mechanism to prevent a premium transfer from incumbent mobile home owners to new tenants).

4. Leon County v. Glusenkamp, 873 So. 2d 460 (FL Ct. App. May 10, 2004) (in a significant case dealing with a takings challenge to a development moratorium, the Florida Court of Appeals reversed a trial court judgment that a county effected a taking by complying with a state court order barring the issuance of building permits pending the preparation of a mandatory storm water management element of the county general plan; the trial court rejected both a Lucas claim, (relying on Tahoe-Sierra) and a Penn Central claim (based on a thoughtful application of the three-factor Penn Central test); with respect to the Penn Central claim, the court emphasized that nothing in the record showed that the injunction barring issuance of building permits decreased the fair market value of the claimant's property and that, under the circumstances of the case, "any reasonable real estate investor or developer should have anticipated that future restrictive regulations were likely to be imposed and that

such governmental actions might adversely affect development plans").

5. Toews v. United States, 2004 WL 1621210 (Fed. Cir. July 21, 2004) (in yet another loss for the federal Rails to Trails program, the Federal Circuit affirmed a trial court decision that the conversion of a former railroad right of way in the city of Clovis, CA into a recreational path and a linear park effected a taking; focusing on the definition of the threshold property interest, the court ruled that the "shifting use" doctrine of California law allows a right of way for public transportation to be converted from one mechanical means of transportation to another, but that conversion of the use of the right of way from transportation to park and recreation uses was too great to fit within the scope of the shifting use doctrine; the court also ruled that since there was no "real doubt" about the proper application of state law to these facts, it would decline to refer the question of the definition of the underlying property interest under state law to the California courts; finally, while expressing some doubt about whether the issue had actually been presented in the case, the court ruled that the United States could not avoid liability on the ground that the trail and park development that produced the taking was implemented by the City of Clovis rather than the United States).