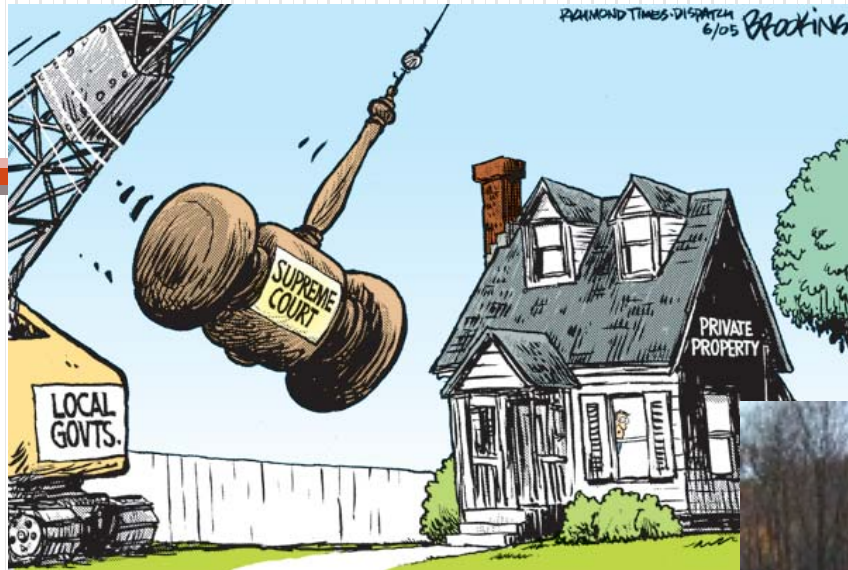


# The 'pipeline exception' to no eminent domain for economic development?

Dr. Elisabeth Chaves,  
School of Public and International Affairs

# The Pipeline Exception?



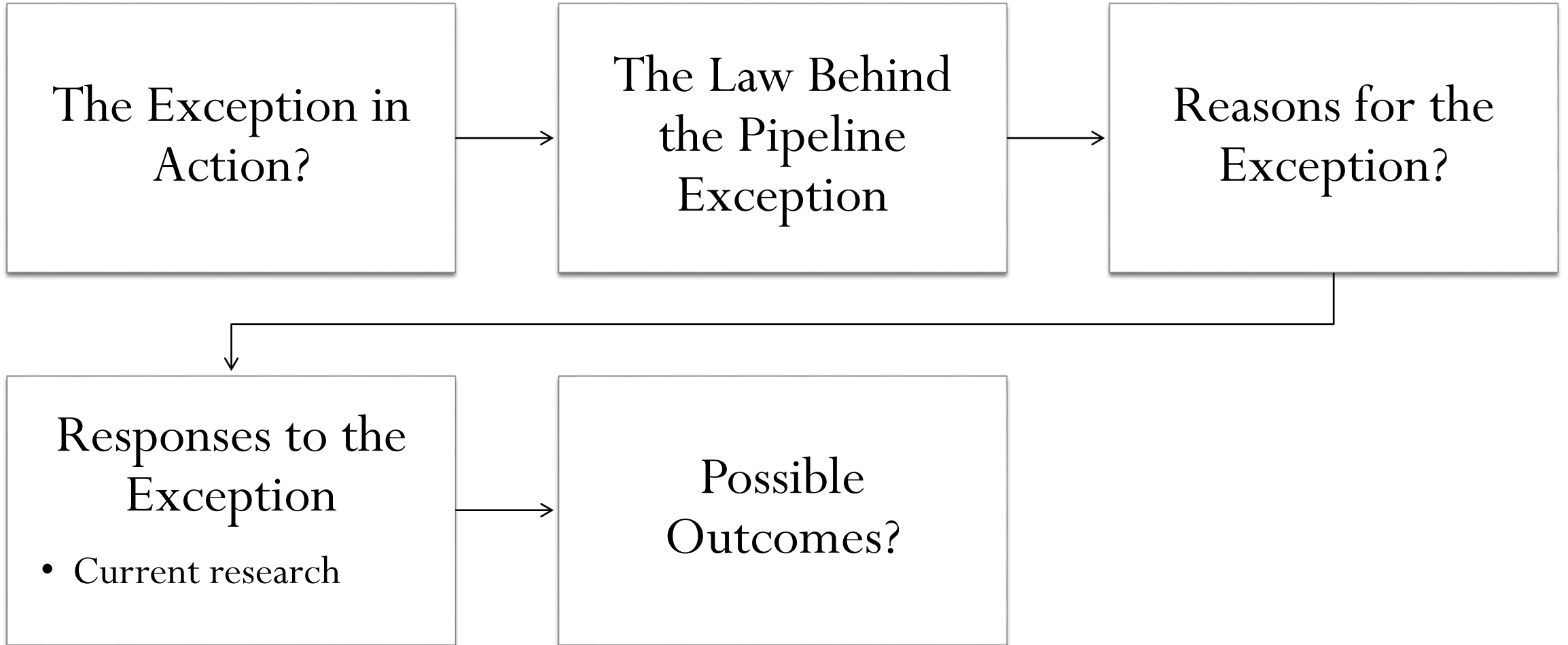
Source: Cartoonist Gary Brookings for  
*Richmond Times-Dispatch*, 6/23/05



Source: <http://nhpipelineawareness.org/>

**“nor shall private property  
be taken for public use,  
without just compensation”**  
– Fifth Amendment, US  
Constitution

# Roadmap



# Some Recent Examples



## Mountain Valley Pipeline

- Natural Gas
- Virginia

## Keystone Pipeline

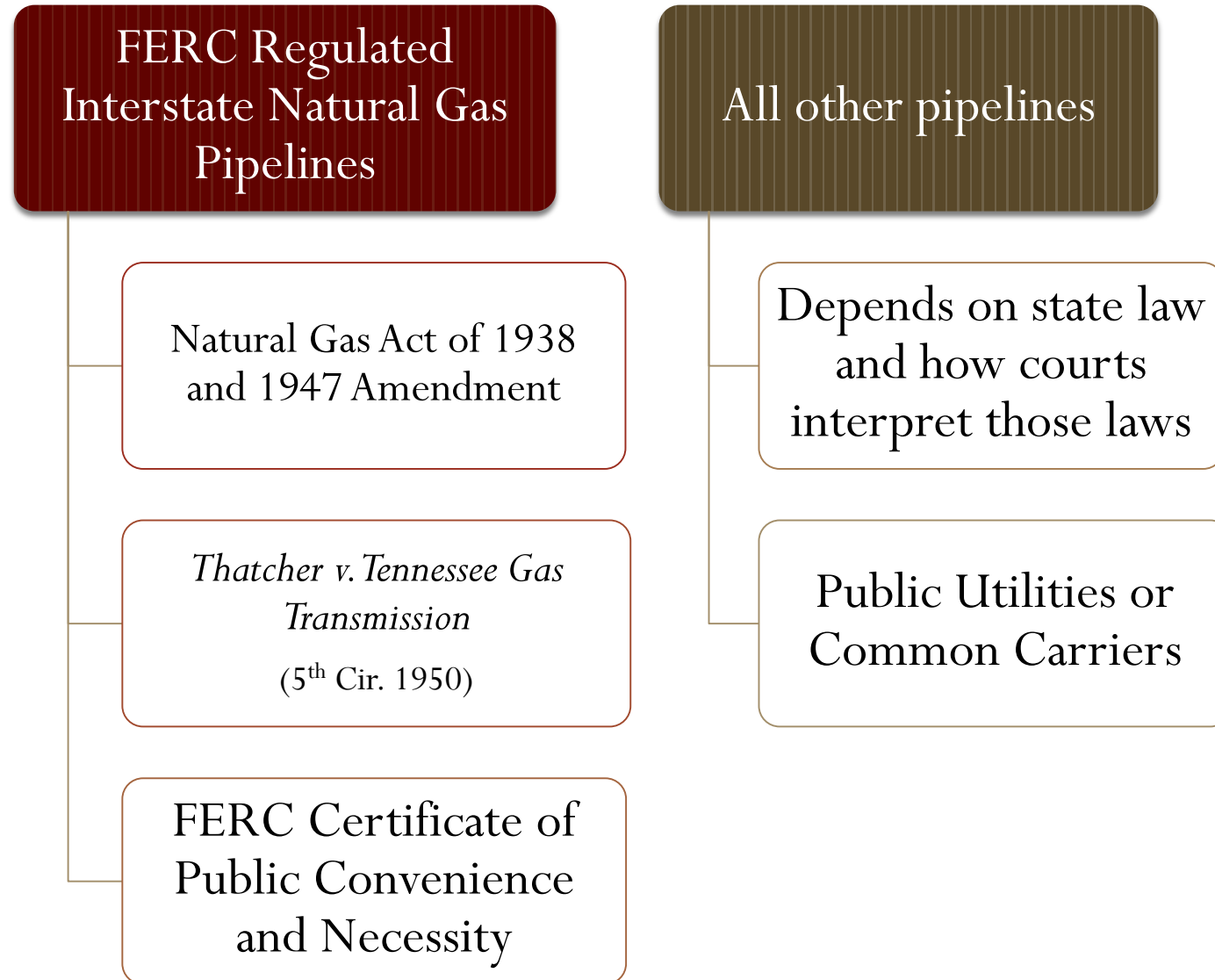
- Crude Tar Sands Oil
- Texas

## Mariner East Pipelines

- Natural Gas Liquids
- Pennsylvania

Exception in  
Action?

# Existing Legal Framework



The Law Behind  
the Pipeline  
Exception

# FERC 'Public Interest' Determinations

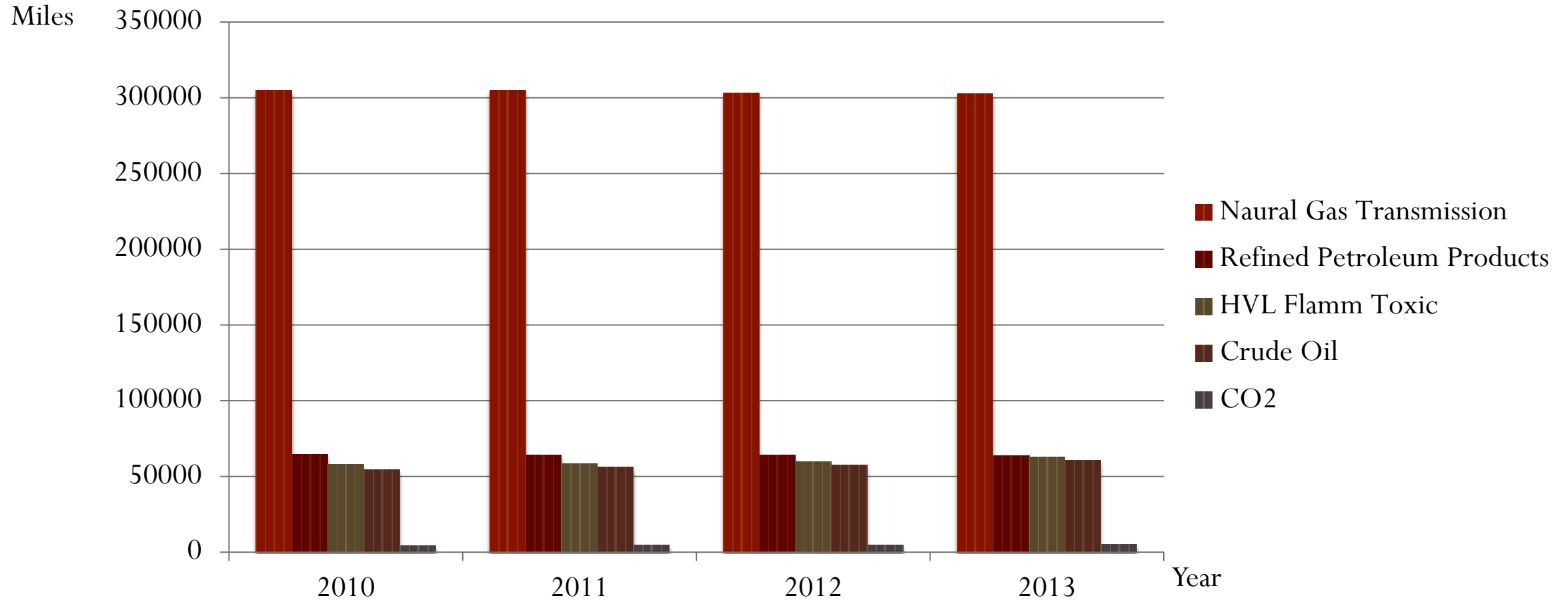
1. Whether project can proceed without subsidies from existing customers
2. Whether applicant has made efforts to eliminate/minimize adverse effects the project might have on existing customers, existing pipelines in market and their captive customers, or economic interests of landowners and communities affected by route of new pipeline
3. Balance evidence of project's public benefits against its residual adverse effects (economic decision)
4. Approve application for a certificate only if public benefits outweigh any adverse effects (Must also conduct environmental review)

The Pipeline  
Exception?

# The Pipelines

- Carbon-Based Fuel Pipelines
  - Dry NG, NGL, crude oil, refined petroleum products, by-products (CO<sub>2</sub>)
- Increasing growth/demand for pipelines
  1. 'Fracking' revolution
  2. Discovery of crude oil reserves in remote areas
  3. Replacing aging infrastructure

# Carbon-based Fuel Pipeline Totals



Source of data: US Department of Transportation Pipeline and Hazardous Materials Safety Administration



## A partial list of products made from Petroleum (144 of 6000 items)

One 42-gallon barrel of oil creates 19.4 gallons of gasoline. The rest (over half) is used to make things like:

Solvents	Diesel fuel	Motor Oil	Bearing Grease
Ink	Floor Wax	Ballpoint Pens	Football Cleats
Upholstery	Sweaters	Boats	Insecticides
Bicycle Tires	Sports Car Bodies	Nail Polish	Fishing lures
Dresses	Tires	Golf Bags	Perfumes
Cassettes	Dishwasher parts	Tool Boxes	Shoe Polish
Motorcycle Helmet	Caulking	Petroleum Jelly	Transparent Tape
CD Player	Faucet Washers	Antiseptics	Clothesline
Curtains	Food Preservatives	Basketballs	Soap
Vitamin Capsules	Antihistamines	Purses	Shoes
Dashboards	Cortisone	Deodorant	Football
Putty	Dyes	Panty Hose	Refrigerant
Percolators	Life Jackets	Rubbing Alcohol	Linings
Skis	TV Cabinets	Shag Rugs	Electrician's Tape
Tool Racks	Car Battery Cases	Epoxy	Paint
Mops	Slacks	Insect Repellent	Oil Filters
Umbrellas	Yarn	Fertilizers	Hair Coloring
Roofing	Toilet Seats	Fishing Rods	Lipstick
Denture Adhesive	Linoleum	Ice Cube Trays	Synthetic Rubber
Speakers	Plastic Wood	Electric Blankets	Glycerin
Tennis Rackets	Rubber Cement	Fishing Boots	Dice
Nylon Rope	Candles	Trash Bags	House Paint
Water Pipes	Hand Lotion	Roller Skates	Surf Boards
Shampoo	Wheels	Paint Rollers	Shower Curtains
Guitar Strings	Luggage	Aspirin	Safety Glasses
Antifreeze	Football Helmets	Awnings	Eyeglasses
Clothes	Toothbrushes	Ice Chests	Football
Combs	CD's & DVD's	Paint Brushes	Detergents
Vaporizers	Balloons	Sun Glasses	Tents
Heart Valves	Crayons	Parachutes	Telephones
Enamel	Pillows	Dishes	Cameras
Anesthetics	Artificial Turf	Artificial limbs	Bandages
Dentures	Model Cars	Folding Doors	Hair Curlers
Cold cream	Movie film	Soft Contact lenses	Drinking Cups

Source: <http://www.ranken-energy.com/products%20from%20petroleum.htm>

# Eminent Domain's Evolution

## Eastern & Midwestern States

Early 19<sup>th</sup> Century

- Broad view – ‘economic expansion’

Mid to late 19<sup>th</sup> Century

- Narrow view – ‘use by public’

Early 20<sup>th</sup> Century

- Return to broad view – ‘public purpose’ – but only for govt

Mid to late 20<sup>th</sup> Century

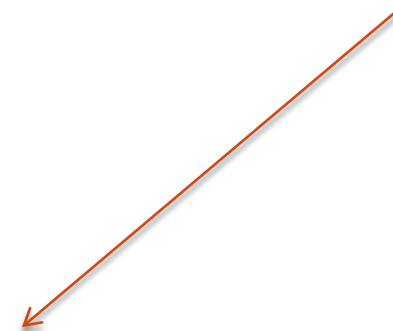
- *Berman v. Parker* (1954), *Hawaii Housing Authority v. Midkiff* (1984)

Early 21<sup>st</sup> Century

- *Kelo v. City of New London* (2005)

## Interior West States

- Broad view – want to develop states’ natural resources



## Privileged Position of Energy?

- ‘Fossil fuel mode of governance’
- ‘carbon democracy’

OR

Fossilized law of ‘public use’

Reasons for  
Exception?

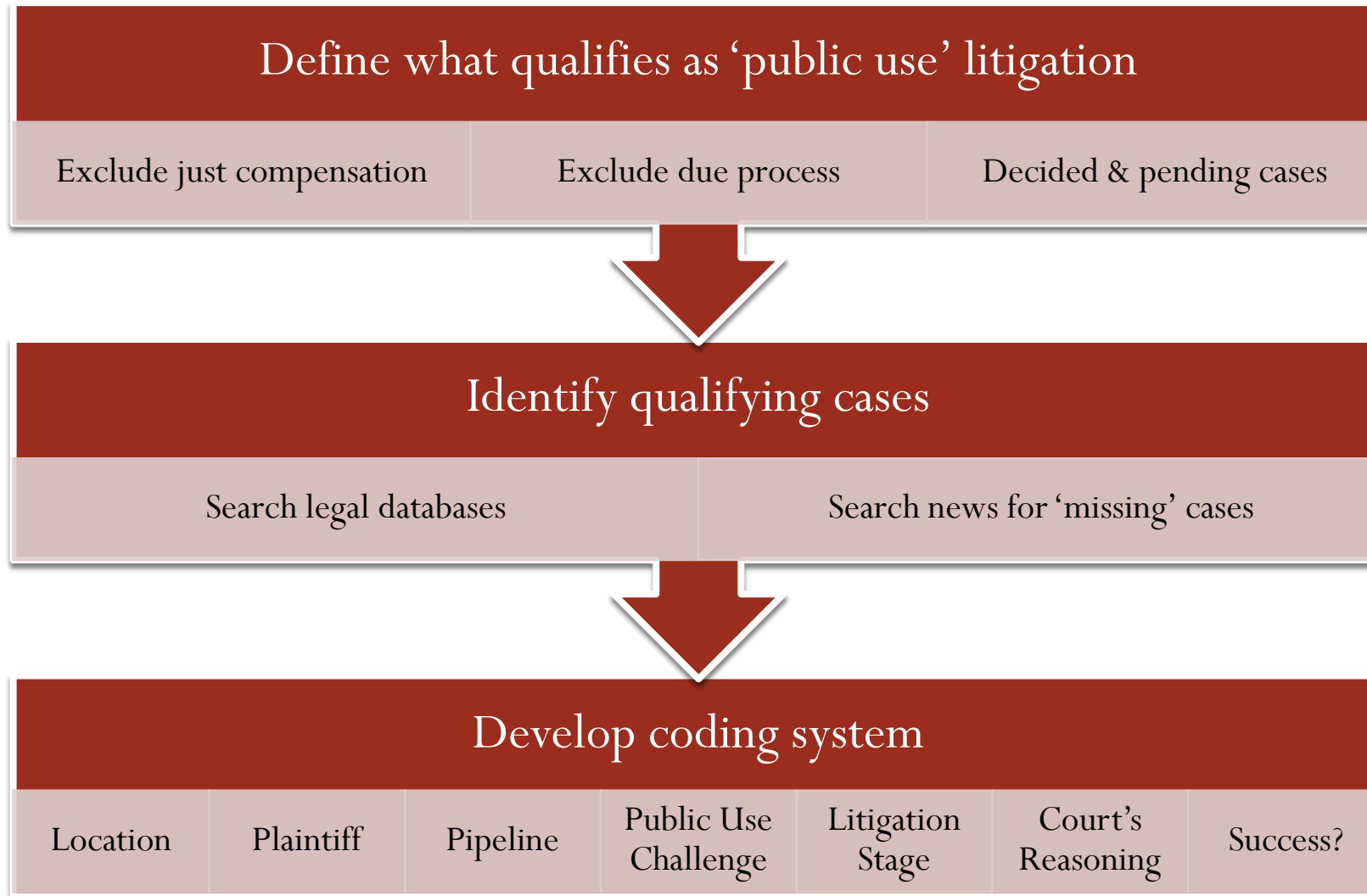
Pipeline  
Protests

Pipeline  
Litigation

Business  
as Usual

Responses to  
Exception

# Current Research – Review of Eminent Domain Litigation



Responses to  
Exception

## Pipeline Impacts

- Delaying projects?
- Driving up costs?
- Stopping projects?
- Forcing better route planning?

## Unforeseen Harms

- Harm to renewable energy efforts?
- Further restrictions on public powers?

## Legal & Policy Impacts

- Changing jurisprudence of 'public use'?
- Better integration of energy and envt issues?

Possible Outcomes?

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