

Testimony of Jeffrey Redfern
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Thank you for the opportunity to testify regarding eminent domain abuse, an important issue that has received significant national attention as a result of the U.S. Supreme Court's universally reviled decision of *Kelo v. City of New London*, in which the Court ruled 5-4 that eminent domain could be used to transfer perfectly fine private property to a private developer, based simply on the potential for increased tax revenue. This committee is to be commended for responding to the American people by continuing to examine this misuse of government power, and it is our hope that Congress will finally pass the Private Property Rights Protection Act.

My name is Jeff Redfern, and I am an attorney at the Institute for Justice, a national nonprofit public interest law firm, headquartered in Arlington, Virginia. We represent people whose rights are being violated by the government. One of the main areas in which we litigate is property rights, particularly in cases where homes or small businesses are taken by the government through the power of eminent domain and transferred to another private party. I am here with my client, Tina Barnes, a member of the Charlestown, Indiana city council, and a resident of a neighborhood called Pleasant Ridge, which has been targeted for *Kelo*-style redevelopment.

In my testimony today I would like to discuss (1) the *Kelo* decision and its aftermath (2) a few of the reasons why eminent domain for economic development is so pernicious, and (3) how this bill can make a big difference in curbing eminent domain abuse.

1. The road to *Kelo* and its aftermath.

Eminent domain, called the "despotic power" in the early days of this country, is the power to force citizens from their homes, small businesses, churches and farms. Because the Founders were conscious of the possibility that this power could be abused, the Fifth Amendment provides a very simple restriction: "[N]or shall private property be taken for public use without just compensation."

This limitation is one of the earliest building blocks of what we today think of as the rule of law. It dates back at least to the Magna Carta.¹ Before it was added to the U.S. Constitution, it existed in state constitutions and in the Northwest Ordinance. Even those few states that did not have an explicit takings clause in their constitutions routinely abided by its principles.² And courts in the 19th Century concluded that the Takings Clause was merely declaratory of an inherent limitation on all just governments.³

Historically, with very few limited exceptions, the power of eminent domain was used for things the public actually owned or used – schools,

¹ See PARKER OF WADDINGTON, LORD CHIEF JUSTICE OF ENGLAND, Foreword to A.E. DICK HOWARD, *THE ROAD FROM RUNNYMEDE: MAGNA CARTA AND CONSTITUTIONALISM IN AMERICA*, at x (1968) (noting that the Magna Carta “is in many ways the spiritual and legal ancestor of what we today call the ‘rule of law.’”).

² See James W. Ely, “*That due satisfaction may be made: the Fifth Amendment and the Origins of the Compensation Principle*,” 36 AM. J. LEGAL HIST. 1, 11–13 (1992).

³ See, e.g., *Parham v. Justices*, 9 Ga. 341, 349-50 (1851) (just compensation “was the law of the land in England, before Magna Charta. It came to us with the Common Law – it is part and parcel of our social polity – it is inherent in ours, as well as every other free government * * * as being founded in natural equity and of universal application”); *In re Public Highway*, 22 N.J. L. 293, 302 (1849) (just compensation “is a dictate of natural justice. It is founded in natural law. It has its origin back of political constitutions”); *Proprietors of the Piscataqua Bridge v. N.H. Bridge*, 7 N.H. 35, 66 (1834) (right to just compensation stems not only from state constitution but also is “a matter of * * * justice”); *Bristol v. New-Chester*, 3 N.H. 524, 535 (1826) (“[C]ompensation shall be made. And natural justice speaks on this point, where our constitution is silent.”); *Bowman v. Middleton*, 1 Bay 252 (S.C. Ct. Common Pleas 1792) (declaring that it would be “against common right, as well as against magna charta, to take away the freehold of one man, and vest it in another without any compensation”); *Bradshaw v. Rogers*, 20 Johns. R. 103 (N.Y. 1822) (Fifth Amendment’s prohibition of uncompensated takings is simply “declaratory of a great and fundamental principle of government” arising from “natural rights and justice”).

courthouses, post offices and the like.⁴ Over the past 60 years, however, the meaning of public use has expanded to include ordinary private uses like condominiums and big-box stores.

By 2005, when the U.S. Supreme Court decided *Kelo*, the use of eminent domain for private development had become widespread. We documented more than 10,000 properties either seized or threatened with condemnation for private development in the five-year period between 1998 and 2002. Because this number was reached by counting properties listed in news articles and cases, it grossly underestimates the number of condemnations and threatened condemnations. For example, in Connecticut, this method identified 31 properties, while the true number of condemnations was 543.

The *Kelo* case signaled that the U.S. Constitution provides very little protection for the private property rights of Americans faced with eminent domain abuse. Indeed, the Court ruled that it is acceptable to use the power of eminent domain when there is a mere *possibility* that something else could make more money than the homes or small businesses that currently occupy the land. It is no wonder, then, that the decision caused Justice O'Connor to remark in her dissent: "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping center, or any farm with a factory."⁵

Indeed, our research shows that *Kelo* opened the floodgates: The rate of eminent domain abuse tripled in the one year after the decision was issued.⁶ With the high court's blessing, local government became further emboldened to take property for private development. For example:

⁴ See generally ILYA SOMIN, *THE GRASPING HAND: KELO V. CITY OF NEW LONDON AND THE LIMITS OF EMINENT DOMAIN* 35-73 (2014).

⁵ 545 U.S. at 503.

⁶ See Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in a Post-Kelo World* (2006), <http://ij.org/wp-content/uploads/2015/04/floodgates-report.pdf>.

- Freeport, Texas: Hours after the *Kelo* decision, officials in Freeport began legal filings to seize some waterfront businesses (two seafood companies) to make way for others (an \$8 million private boat marina).
- Oakland, Calif.: A week after the Supreme Court's ruling in 2005, Oakland city officials used eminent domain to evict John Revelli from the downtown tire shop his family had owned since 1949. Revelli and a neighboring business owner had refused to sell their property to make way for a new housing development. Said Revelli of his fight with the city, "We thought we'd win, but the Supreme Court took away our last chance."
- Hollywood, Fla. For the second time in a month, Hollywood officials have used eminent domain to take private property and give it to a developer for private gain. Empowered by the *Kelo* ruling, City commissioners took a bank parking lot to make way for an exclusive condo tower. When asked what the public purpose of the taking was, City Attorney Dan Abbott didn't hesitate before answering, "Economic development, which is a legitimate public purpose according to the United States Supreme Court."
- Arnold, Mo. The St. Louis Post-Dispatch reported that Arnold Mayor Mark Powell "applauded the [*Kelo*] decision." The City of Arnold wanted to raze 30 homes and 15 small businesses, including the Arnold VFW, for a Lowe's Home Improvement store and a strip mall – a \$55 million project for which developer THF Realty would receive \$21 million in tax-increment financing. Powell said that for "cash-strapped" cities like Arnold, enticing commercial development is just as important as other public improvements.
- Sunset Hills, Mo.: Less than three weeks after the *Kelo* ruling, Sunset Hills officials voted to allow the condemnation of 85 homes and small businesses for a shopping center and office complex.
- New York, N.Y.: In 2010, the New York Court of Appeals – the state's highest court – allowed the condemnation of perfectly fine homes and businesses for two separate projects. First, a new basketball arena and residential and office towers in Brooklyn, and

then for the expansion of Columbia University – an elite, private institution – into Harlem.

- Philadelphia, Penn.: Starting in 2012, the Philadelphia Redevelopment Authority (PRA) sought to condemn the art studio of world-renowned artist James Dupree to pave the way for a new grocery store. The city initially seized his deed just four days before a loophole in the state’s post-*Kelo* eminent domain reform was closed, which would have protected the owner from the taking. After a long campaign of grassroots activism, the PRA finally relented and terminated the condemnation proceedings in early 2015.
- Atlantic City, N.J.: New Jersey’s Casino Reinvestment Development Authority (CRDA) has long abused its eminent domain powers for the benefit of casinos and continues to do so in a large swath of Atlantic City designated as the Tourism District. In spring 2014, CRDA filed condemnation papers against 62 properties in the South Inlet neighborhood near the Boardwalk, including the well-kept longtime family home of Institute for Justice client Charlie Birnbaum, in what appears to be a “bulldoze first, plan later” scheme. Unlike in *Kelo* – where there was a development plan for the proposed taking – CRDA admits it has no specific development plans for the area and merely says it is for a “mixed-use development” that is intended to “complement the new Revel Casino and assist with the demands created by the resort.” But the \$2.4 billion Revel Casino has filed twice for bankruptcy and closed in early September 2014. Despite this turn of events, CRDA is still trying to seize the Birnbaum house for unspecified and unknown “Tourism District uses,” even though the current residential use is a permitted use in the Tourism District. The Institute for Justice represented Mr. Birnbaum in litigation against the CRDA, winning in the trial court. The decision is now on appeal.
- West Haven, Conn.: The city of West Haven has teamed up with a private company – The Haven Group, LLC – to build an ultra-luxury shopping mall along the West Haven waterfront. The city has guaranteed the developer that it can have whatever properties

it wants, including the childhood home of Institute for Justice client Bob McGinnity. Unlike in *Kelo*, where Justice Kennedy emphasized that the development plan originated with the city and the “identities of most of the private beneficiaries were unknown at the time the city formulated its plans,” here the plans originated entirely with the private developer, which has directed the city government at every stage of the process. This case is scheduled for trial in July, 2017.

Because of this threat, there has been a considerable public outcry against this closely divided decision. Organizations spanning the political spectrum have united in opposition to eminent domain abuse, including the National Association for the Advancement of Colored People, Mexican American Legal Defense and Education Fund, League of United Latin American Citizens, the Farm Bureau, and the National Federation of Independent Business. Overwhelming majorities in every major poll taken after the *Kelo* decision have condemned the result.⁷ 44 states have reformed their eminent domain laws in the wake of the decision. Nine state supreme courts have made it more difficult for the government to engage in eminent domain abuse, and three of those have explicitly rejected *Kelo*.

Unfortunately, the reforms to date have not ended eminent domain abuse. In many states, the reforms have been ineffectual because they allow eminent domain to be used to combat “blight,” a nebulous term that the statutes often leave undefined.⁸ As a result, many municipal governments have shamelessly declared areas to be blighted on the flimsiest of bases. The Institute for Justice has drawn attention to some of these bogus blight determinations by hosting “blighted block parties,” inviting the wider community to see for themselves the neighborhoods that have been targeted for destruction.

⁷ The Polls Are In: Americans Overwhelmingly Oppose Use of Eminent Domain for Private Gain, <http://castlecoalition.org/the-polls-are-in>.

⁸ Ashby Jones, ‘Blight’ Gunking Up Post-Kelo Eminent Domain Reforms, WALL STREET. J. L. BLOG (Apr. 30, 2009), <http://blogs.wsj.com/law/2009/04/30/blight-getting-in-the-way-of-post-kelo-eminent-domain-reforms/>.

At the federal level, Congress passed the Bond Amendment shortly after the *Kelo* decision, which prohibits the use of federal funding to support state projects that abuse the power of eminent domain. But the Bond Amendment, while a laudable effort, has been largely ineffectual because it has no enforcement mechanism. This bill, on the other hand, has teeth. It was originally introduced in the 109th Congress where it passed the House by a vote of 376-38. It has been reintroduced repeatedly, but it has not been enacted.

2. Why is it wrong to use eminent domain for private development?

In *Kelo*, the stated “public use” of eminent domain was to promote economic development. When you litigate eminent domain cases, you inevitably get to see a lot of PowerPoint presentations about proposed developments. They often feature beautiful architectural rendering of mixed use developments, with things like trendy loft apartments, and high end fitness centers, and organic gelato shops. The city governments and redevelopment commissions that promote these plans always claim that they are portraying the revitalization of a neighborhood. But what they are actually portraying is the wholesale replacement of a poor neighborhood with a wealthy one. And what is always missing from these pictures is the fate of eminent domain’s victims.

Eminent domain is used almost exclusively in low income neighborhoods, and the people who live in those neighborhoods simply cannot afford to live in the kinds luxury housing that developers want to build.⁹ That’s precisely the situation we’re seeing in Charlestown, where Ms. Barnes lives. A developer is planning to replace homes worth tens of thousands of dollars with homes worth hundreds of thousands. Many of these

⁹ One Institute for Justice study found that eminent domain disproportionately impacts minorities, the less educated, and the less well-off. See Dick M. Carpenter & John K. Ross, *Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse*, (2007), https://www.ij.org/images/pdf_folder/other_pubs/Victimizing_the_Vulnerable.pdf; accord Dick M. Carpenter and John K. Ross, *Testing O’Connor and Thomas: Does the Use of Eminent Domain Target Poor and Minority Communities?*, 46 URBAN STUDIES, no. 11, Oct. 2009, at 2247–61, <http://www.thecyberhood.net/documents/papers/carpenter09.pdf>.

people have absolutely no idea where they are going to go because there is nothing else in the region that they can afford.

The consequences for people displaced by eminent domain are devastating. They lose not only their homes, but also their neighborhoods, their communities, and their support networks of friends, family, and church. These harms are too often invisible because victims of eminent domain are literally out of sight, displaced and dispersed. In fact, that is exactly the point of eminent domain – getting rid of undesireables.

The use of eminent domain for private development first took off during the “urban renewal” movement of the 1950s and 1960s. Urban renewal wiped out entire communities, typically African American, earning eminent domain the nickname “negro removal.”¹⁰ During this period, American cities went wild with eminent domain, bulldozing poor neighborhoods and in the process, displacing over one million people. Normally when a million poor people are driven from their homes, with no clear idea of where they will go, we’d call it a refugee crisis. But the public officials who wanted to raze these neighborhoods invariably said that they were doing it for the good of the residents.

For instance, the U.S. Supreme Court, in 1954, approved the use of eminent domain to redevelop Southwest Washington DC, holding that the elimination of slums constituted a valid public use that satisfied the Takings Clause. In that decision the Court said that living in that neighborhood could “suffocate the spirit” and “make living an almost insufferable burden.”¹¹ The burdens, however, of living in poor housing cannot compare to the burdens of being forced out of one’s home and neighborhood, however modest, with nowhere to go. Over 20,000 poor people lived in Southwest DC before it was seized through eminent domain. After redevelopment, when the dust settled there were only a few hundred lower income housing units in the entire area. Almost all of

¹⁰ See Mindy Fullilove, *Eminent Domain & African Americans: What is the Price of the Commons?* (2007), <http://ij.org/wp-content/uploads/2015/03/Perspectives-Fullilove.pdf>.

¹¹ *Berman v. Parker*, 348 U.S. 26, 32–33 (1954).

the former residents were gone. That was half a century ago, but the same story is has continued to play out around the country up to today.

There is a familiar word that public officials use to describe neighborhoods they want to tear down. The word is “blighted.” We are now accustomed to the term “blight” being used to describe structures and neighborhoods, but originally the word referred only to infectious plant diseases. Blight could spread from just a single plant to affect an entire field of crops, so it had to be eradicated. By using the word “blight” to refer to poor neighborhoods, the redevelopers were subtly encouraging people to think of poor neighborhoods as infected by a disease that could somehow spread to other neighborhoods. The solution, according to the redevelopers, was to cut out the blight so it could do no more harm.¹² Similarly, other officials referred to poor neighborhoods as “cancers” or “diseased tissues.” The same language continues to show up in development proposals even today. This language obscures the fact that what is really happening is a story as old as history: Wealthy and powerful people forcibly removing poor and marginalized people from their land. As one shrewd observer stated, “[t]he definition of blight is, simply, that ‘this land is too good for these people.’...It is an open-ended value judgment, based upon an open-ended aspiration for the given city.”¹³

One obvious consequence of this kind of forced displacement is economic. The destruction of low-income housing increases demand in nearby areas, driving prices up. One study, for instance, found that 86% of people displaced by eminent domain end up paying more for housing after they

¹² See Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 3 (2003) (“To secure political and judicial approval for their efforts, renewal advocates created a new language of urban decline: a discourse of blight. Blight, renewal proponents argued, was a disease that threatened to turn healthy areas into slums. A vague, amorphous term, blight was a rhetorical device that enabled renewal advocates to reorganize property ownership by declaring certain real estate dangerous to the future of the city.”)

¹³ SCOTT GREER, URBAN RENEWAL AND AMERICAN CITIES: THE DILEMMA OF DEMOCRATIC INTERVENTION 31 (1965).

resettle, and that median rent for them is almost double what it previously was.¹⁴ Many small businesses such as corner stores, restaurants, and barber shops are completely destroyed because it is impossible to relocate away from one's customers.

Other consequences are less quantifiable, but just as real. For instance, one major study tracked down the former residents of Southwest DC who had been displaced by eminent domain, and the findings were heartbreaking. Five years after forced displacement, 25% of the former residents had yet to make a single friend in their new neighborhood.¹⁵ Other studies have found that people displaced by eminent domain have a higher risk of stress-related diseases such as depression and heart attacks.¹⁶ Eminent domain doesn't just destroy low-income housing, it destroys communities and support structures that cannot simply be replaced.

3. Despite the nationwide revolt against *Kelo*, federal action is still needed, as federal law and funds currently support eminent domain for private development.

The Private Property Protection Act would make a real difference in limiting the abuse of eminent domain. Although federal agencies themselves rarely if ever take property for private projects, federal funds support condemnations and support agencies that take property from one person to give it to another. There has been improvement from state legislative reform, but not enough. Although eminent domain for private development is less of a problem in nearly half of the states in the wake of *Kelo*, it remains a major problem in many other states. Unfortunately, some of the states that were the worst before *Kelo* in terms of eminent domain abuse did little or nothing to reform their laws. New York remains the worst state in the country, and it has gotten even worse since *Kelo*. Missouri, also a major abuser, passed only weak reform, as did

¹⁴ HERBERT J. GANS, *THE URBAN VILLAGERS: GROUP AND CLASS IN THE LIFE OF ITALIAN AMERICANS* 380 (1962).

¹⁵ See DANIEL THURSZ, *WHERE ARE THEY NOW* 100–01 (1966).

¹⁶ See generally, Mark Boutros, *Is There Space for Place?: Forced Migration and the Psychology of Place* (2006) (dissertation, Columbia University).

Illinois. In other states, like Washington and Texas, the prospect of federal money for Transit Oriented Development has inspired municipalities to condemn enormous areas for private development (areas not needed for the actual transportation). Eminent domain abuse is still a problem, and federal money continues to support the use of eminent domain for private commercial development. A few examples of how federal funds have been used to support private development include:

- New London, Conn.: This was the case that was the subject of the Supreme Court's *Kelo* decision. Fifteen homes were taken for a private development project that was planned to include a hotel, upscale condominiums, and office space. The project received \$2 million in funds from the federal Economic Development Authority – and ultimately failed.
- Brea, Calif.: The Brea Redevelopment Agency demolished the city's entire downtown residential area, using eminent domain to force out hundreds of lower-income residents. The Department of Housing and Urban Development (HUD) launched an investigation into the potential misappropriation of federal development grants totaling at least \$400,000, which made their way to the city in the late 1980s and early 1990s. FBI agents investigated the Redevelopment Agency based on evidence that the Agency used coercive tactics to acquire property.
- Garden Grove, Calif.: Garden Grove has used \$17.7 million in federal housing funds to support its hotel development efforts – efforts that included, at least in part, the use of eminent domain. In 1998, the City Council declared 20 percent of the city “blighted,” a move that allowed the city to use eminent domain for private development. Using that power – and federal money – the city acquired a number of properties, including a mobile-home park full of senior citizens, apartment renters and small businesses, in order to provide room for hotel development.
- National City, Calif.: In 2007, the National City Community Development Commission, which receives significant federal funding, authorized the use of eminent domain over nearly 700 properties in its downtown area, calling the area “blighted.” One of

the planned projects was the replacement of the Community Youth Athletic Center, a boxing gym and mentoring program for at-risk youth, with an upscale condominium project. Fortunately after four years of hard-fought litigation by my organization, the Institute for Justice, we prevailed in getting the blight designation struck down.

- Normal, Ill.: Normal officials condemned the properties of Orval and Bill Yarger and Alex Wade, including the Broadway Mall, for a Marriott Hotel and accompanying conference center being built by an out-of-town developer. The town secured at least \$2 million in federal funding for downtown projects, and once the cost of the Marriott nearly doubled, approved giving the developer \$400,000 in Community Development Block Grant money.
- Baltimore, Md.: In December 2002, the Baltimore City Council passed legislation that gave the city the power to condemn about 3,000 properties for a redevelopment project anchored by a biotechnology research park. The development would contain space for biotech companies, retail, restaurants and a variety of housing options. HUD provided a \$21.2 million loan to the city. Many projects in Baltimore involving the use of eminent domain for private development are overseen by the Baltimore Development Corporation, which receives federal funding.
- Somerville, Mass.: In October 2012, Somerville authorized the use of eminent domain over a 117-acre neighborhood, identifying seven blocks with 35 properties to be acquired first. The Union Square Revitalization Plan is a transit-oriented development with residences, retail, restaurants and office space. The city has received at least \$29 million in stimulus funds and around \$35 million in other federal and state funding. The owner of a threatened gym said that he believes in the revitalization of Union Square: "That's why I purchased the property." He said it would be difficult to develop his business with "the threat of seizure hanging over our head."
- St. Louis, Mo.: In 2003 and 2004, the Garden District Commission and the McRee Town Redevelopment Corporation demolished six square blocks of buildings, including approximately 200 units of

housing, some run by local non-profits. The older housing was to be replaced by luxury housing. The project received at least \$3 million in Housing and Urban Development (HUD) funds, and may have received another \$3 million in block grant funds as well.

- Elmira, N.Y.: Eight properties – including apartments, a garage, carriage house and the former Hygeia Refrigerating Co. – were condemned and six were purchased under the threat of eminent domain for Elmira’s South Main Street Street Urban Development project. HUD funds were used to create a 6.38-acre lot for development.
- Mount Vernon, N.Y.: In October 2012, this suburb of New York City declared almost eight acres in a neighborhood that is 90 percent black “blighted” and subject to condemnation. The blight study was paid for by the developer who wants to build there. Threatened properties include homes, churches, and businesses including a daycare with a well-maintained playground, a nail salon, delis, a Jamaican restaurant, and small grocery stores. Mount Vernon received at least \$1.7 million in CDBG and HOME funds in 2012.
- New Cassell, N.Y.: St. Luke’s Pentecostal Church saved for more than a decade to purchase property and move out of the rented basement where it held services. It bought a piece of property to build a permanent home for the congregation. The property was condemned by the North Hempstead Community Development Agency, which administers funding from HUD, for the purpose of private retail development. The land remained vacant for at least six years.
- New York, N.Y.: Developer Douglas Durst and Bank of America enlisted the Empire State Development Corporation to clear a block of midtown Manhattan for their 55-story Bank of America Tower at One Bryant Park. The ESDC put at least 32 properties under threat of condemnation and initiated eminent domain proceedings. All of the owners eventually sold. Durst had abandoned the project prior to 9/11, but an infusion of public subsidies – including \$650 million

in the form of Liberty Bonds – and a \$1 billion deal with Bank of America put plans back on track.

- Ardmore, Pa.: The Ardmore Transit Center Project had some actual transportation purposes, but Lower Merion Township officials also planned to remove several historic local businesses, many with apartments on the upper floors, so that it could be replaced with mall stores and upscale apartments. The project received \$6 million in federal funding, which went to the Southeastern Pennsylvania Transit Authority. But for a tirelessly waged grassroots battle – which no American should have to wage to keep what is rightfully theirs – that ultimately stopped the project, the federal government would be complicit in the destruction of successful, family-owned small businesses.
- Washington, D.C.: The National Capital Revitalization Corporation received \$28 million in HUD funds to buy or seize up to 18 acres of land for a private developer to replace old retail with new retail. Over the course of seven years, affected business owners challenged the District in a dozen different eminent domain cases – but the city won or settled every dispute.

The use of government subsidies for eminent domain is especially pernicious because many of these projects would not be viable without direct government support. It is quite a stretch to characterize such subsidized projects as promoting economic development, unless the term “economic development” is taken to refer to any time a shovel breaks earth.

The *Kelo* decision continues to cry out for Congressional action, twelve years later. Even Justice Stevens, the author of the opinion, stated in a speech that he believes eminent domain for economic development is bad policy and hopes that the country will find a political solution. Some states did, but those reforms not embedded in state constitutions will always be subject to repeal or exception whenever a pie-in-the-sky project catches the eye of state legislators or local officials. Congress needs to finally make its opposition heard on this issue, and the sponsors of this bipartisan legislation are all to be commended for their efforts to provide protections that the Supreme Court denied in 2005.

Funding restrictions will not be effective unless they are enforced. There should be a private method of enforcement, whether through an agency or court, so that interested parties – such as homeowners, small business owners, or tenants – can alert the proper entity and funding can be cut off as appropriate. The diligence of ordinary citizens in the communities where governments are using eminent domain for private development, together with the potential sanction of lost federal funding, will most certainly serve to return some rationality to state and local eminent domain policy – especially in the absence of substantive eminent domain reform that effectively protects property owners.

This legislation also allows cities and agencies to continue to receive federal funding when they acquire abandoned property and transfer it to private parties. When the public thinks about “redevelopment,” it is most concerned with the ability to deal with abandoned property. With this legislation, cities can continue to clear title to abandoned property and then promote private development there without risking losing their federal funding. Additionally, the clear and limited exception for taking property to remove “harmful uses of land provided such uses constitute an immediate threat to public health and safety” will discourage cities from taking perfectly fine homes and businesses as is common practice under some state’s vague blight laws.

Congress’s previous efforts to restrict the use of certain federal funds for eminent domain (from the Departments of Transportation, Treasury and/or Housing and Urban Development) have unfortunately been ineffective. There does not seem to be any way for individuals to enforce this restriction. Nor does it appear that any of these departments have ever enforced this spending limitation or even investigated a possible violation of the limitation. Instead, the local governments that receive the funds are expected to understand and apply the prohibition. In other words, the fox is guarding the hen house. The same local governments that are planning to use eminent domain are also expected to limit their own funding, despite the fact that there is no prospect of enforcement. It is therefore not surprising that the funding restriction has not protected the rights of people faced with eminent domain.

Given the climate in the states as a result of *Kelo*, congressional action would do even more to both discourage the abuse of eminent domain nationwide and encourage sensible state-level reform. Reform at the federal level would be a strong statement to the country that this awesome government power should not be abused. It would restore the faith of the American people in their ability to build, own and keep their homes and small businesses, which is itself a commendable goal.

It should also be noted that development occurs every day across the country without eminent domain, and it will continue to do so should this committee act on this issue, which I recommend. Public works projects like flood control will not be affected by any legislation that properly restricts eminent domain to its traditional uses since those projects are plainly public uses. But commercial developers everywhere need to be told that they can only obtain property through private negotiation, not government force and that the federal government will not be a party to private-to-private transfers of property. As we demonstrate in a recent study, restricting eminent domain to its traditional public use in no ways harms economic growth, so congressional action will not stop progress.¹⁷

Conclusion

Congress should not send scarce economic development funds to projects that not only abuse eminent domain and strip hard-working, tax-paying home and small business owners of their constitutional rights, but projects that may ultimately fail. Let New London be a lesson: After \$80 million in taxpayer money spent, years tied up in litigation and a disastrous U.S. Supreme Court ruling, the Fort Trumbull neighborhood is now a barren field home to nothing but feral cats. The developer balked and abandoned the project, and Pfizer – for whom the project was intended to benefit – also left New London.

Eminent domain sounds like an abstract issue, but it affects real people. Real people lose the homes they love. Real people lose the businesses they count on to put food on the table. Real people lose their communities. And

¹⁷ See Dick M. Carpenter and John K. Ross, *Do Restrictions on Eminent Domain Harm Economic Development?*, *ECONOMIC DEVELOPMENT QUARTERLY* 24(4), 337–351 (2010).

these forced transfers, often from the poor to the wealthy, are also frequently subsidized by the government. Federal law currently allows expending federal funds to support condemnations for the benefit of private developers. By doing so, it encourages this abuse. Using eminent domain so that another richer, better-connected person may live or work on the land you used to own tells Americans that their hopes, dreams and hard work do not matter as much as money and political influence. The use of eminent domain for private development has no place in a country built on traditions of independence, hard work, and the protection of property rights.

Again, thank you for the opportunity to testify before this subcommittee.