

Tap the Power

Knowledge
is Power

These publications are available from the Wisconsin Legislature's Theobald Legislative Library

Eminent Domain and Property Rights

Compiled by Patricia Helgerson, January 2006

<http://www.legis.state.wi.us/lrb/pubs/tapthepower.htm>

In 2000, the city of New London, Connecticut, developed a plan to redevelop a tract of land to revitalize the economically distressed city. After acquiring most of the needed land, the city used the power of eminent domain to condemn the homes of Susette Kelo and others so the property could be turned over to private interests. The property owners' challenge of the city's use of eminent domain eventually went to the U.S. Supreme Court. On June 23, 2005, the Supreme Court's decision in *Kelo v. New London* upheld eminent domain for economic development purposes as a "public use" under Connecticut's statute. The Court also emphasized that the opinion does not block states from placing further restrictions on the exercise of takings power. This *Tap The Power* includes reactions to *Kelo*, the application of eminent domain for nonregulatory purposes, and background information.

***The Birth of the Property Rights Movement* / Cato Institute, June 26, 2001. (Policy Analysis, no. 404) (333.1/C29)** "The property rights movement has arisen in response to a growing web of confiscatory governmental regulations."—from p.2.

www.cato.org/pubs/pas/pa-404es.html

"The Complex Law of Takings: Three New U.S. Supreme Court Decisions" / Wisconsin Counties, August 2005, p.18-19,36. (352.9/W75/2005/v.69/no.8)

***Eminent Domain for Economic Development* / Connecticut General Assembly, Office of Legislative Research. August 5, 2005. (OLR Research Report 2005-R-0059). (347.31/C76a)** A summary of recent actions by states to restrict the use of eminent domain for economic development.

www.cga.ct.gov/2005/rpt/2005-R-0559.htm

"Eminent Domain for Private Development: An Irrational Basis for the Erosion of Property Rights" / Benjamin D. Cramer, *Case Western Reserve Law Review*, 2004, v.55, no.2. (347.31/C84)

***Eminent Domain: Public or Private Purposes?* / Wisconsin Legislative Reference Bureau. January 2006. (Wisconsin Briefs 06-1). www.legis.state.wi.us/lrb/pubs/index.htm**

"How Eminent Domain Ran Amok" / Carla T. Main, Hoover Institution. (Policy Review no.133). 2005. (347.31/M28)

***Kelo et al. v. City of New London et al. Certiorari to the Supreme Court of Connecticut* / U.S. Supreme Court. Slip Opinion; No. 04-108. Argued February 22, 2005 – Decided June 23, 2005.**

<http://a257.g.akamai->

tech.net/7/257/2422/23jun20051201/www.supremecourtus.gov/opinions/04pdf/04-108.pdf

***Kelo v. City of New London* / Connecticut General Assembly, Office of Legislative Research. July 26, 2005. (OLR Research Report 2005-R-0560).** Analyses the U.S. Supreme Court's decision in *Kelo v. City of New London*, 125 S. Ct. 2655 (June 23, 2005). www.cga.ct.gov/2005/rpt/2005-R-0560.htm

***Overcoming Poletown: County of Wayne v. Hathcock, Economic Development Takings, and the Future of Public Use* / Ilya Somin, George Mason University School of Law (Law and Economics Working Paper Series 05-04). 2005. (347.31/So5a)**

Poletown Neighborhood Council v. City of Detroit became synonymous with excessive condemnation. The Michigan Supreme Court's decision in *County of Wayne v. Hathcock* overruled *Poletown*. www.law.gmu.edu/faculty/papers/docs/05-04.pdf

***Policy Guide on Takings* / American Planning Association. Ratified April 11, 1995.**

www.planning.org/policyguides/takings.html

Post Kelo v. New London State Eminent Domain Legislation / National Conference of State Legislatures. Updated December 16, 2005. www.ncsl.org/programs/natres/post-keloleg.htm

"Property Rights: Should the Use of Eminent Domain Be Limited?" / Congressional Quarterly, Inc., *CQ Researcher*, March 4, 2005, v. 15, no. 9. (347.31/C761a)

Property Rights "Takings": Justice O'Connor's Opinions / Library of Congress, Congressional Research Service. Updated August 19, 2005 (CRS Report for Congress RS22227). (347.31/X)

www.ncseonline.org/NLE/CRSreports/05aug/RS22227.pdf

***Property Rights: The Key to Economic Development* / Cato Institute, August 7, 2003 (Policy Analysis no. 482) (333.1/C29a)** A world and historical perspective of property rights.

www.cato.org/pub_display.php?pub_id=1341

***Public Power, Private Gain: A Five-Year, State-By-State Report Examining the Abuse of Eminent Domain* / Institute for Justice. April 2003. (347.31/In7)**

www.castlecoalition.org/report/pdf/ED%5Freport.pdf

⇒

Eminent Domain and Property Rights

Continued

“Public Use” and Eminent Domain / Connecticut General Assembly, Office of Legislative Research. July 27, 2005 (OLR Research Report 2005-R-0570). (347.31/C76) Summary of eminent domain statutes from states that specifically refer to “public use”. www.cga.ct.gov/2005/rpt/2005-r-0570.htm

“Re-examining Eminent Domain: The Conflict Between Private Property and Economic Development” / Congressional Digest, v.85, no.1, p.1–32, January 2006. (347.31/C762) “Should Congress pass legislation to prevent abuse of eminent domain?” — from cover.

The Rights of Landowners Under Wisconsin Eminent Domain Law: Procedures Under Sec. 32.05, Wisconsin Statutes: Highways, Streets, Storm and Sanitary Sewers, Watercourses, Alleys, Airports, and Mass Transit Facilities / Wisconsin Department of Commerce. (347.31/W7c/2004)

<http://commerce.wi.gov/cd/cd-reloc-brochure.html>

Robin Hood in Reverse: The Case Against Taking Private Property for Economic Development / Cato Institute, February 21, 2005. (Policy Analysis no.535). (347.31/C29)

www.cato.org/pub%5fdisplay.php?pub%5fid=3678

State Policy and the Exercise of the Power of Eminent Domain / National Governors Association, Center for Best Practices (Issue Brief). 2005. (347.31/N21) How some states are reexamining eminent domain policy after the *Kelo* decision.

<http://preview.nga.org/files/pdf/05statepolicyeminent.pdf>

State Property Rights Laws: The Impacts of Those Laws on My Land / Lincoln Institute of Land Policy. 1999. (333.1/L63)

“Supreme Court Upholds Use of Eminent Domain for Economic Development” / *The Municipality*, August 2005, p.267-269. (352.1/M92/2005/v.100/no.8)

“Supreme Decisions” / *State Legislatures*, September 2005, p.19-21. (328.11/N214/2005/v.31/no.8)

Taking Eminent Domain Apart / Lee Anne Fennell, University of Illinois College of Law (Law and Economics Working Paper Series no. LE04-012). 2004. (347.31/F36) The scope of eminent domain is addressed after the Michigan Supreme Court’s decision in *County of Wayne v. Hathcock* that reversed the earlier *Poletown* decision. <http://law.bepress.com/uiuclwps/papers/art19>

“Takings and Private Property on the Rehnquist Court” / Eric R. Claeys, *Northwestern University Law Review*, 2004, v.99, no.1. (347.31/C51)

Takings: Balancing Public Interest and Private Property Rights / Wisconsin Legislative Reference Bureau. April 1998. (Wisconsin Briefs 98-2). (333.1/W7c2)

www.legis.state.wi.us/lrb/pubs/wb/98wb2.pdf

Takings Law in Plain English / National Trust for Historic Preservation. 2002. (333.1 [on order])

“U.S. Supreme Court to Address Condemnation of Property for Redevelopment” / *The Municipality*, November 2004, p.411. (352.1/M92/2004/v.99/no.11)

Wisconsin Constitution Article I, Section 13, Just Compensation Clause / Wisconsin Legislative Reference Bureau. January 2005. (Constitutional Highlights, v.5, no.1) (LRB/c) (noncirculating)

www.legis.state.wi.us/lrb/pubs/consthi/05consthiv1.htm

Related Web Sites:

www.planning.org/amicusbriefs/emdomain.htm – American Planning Association. Guide to Eminent Domain and *Kelo v. City of New London*. Includes links to Supreme Court syllabus, decision, and dissenting opinions related to the case.

www.cato.org/ccs/prop-rights-takings.html – Cato Institute. Constitutional Studies: 5th Amendment (property rights). Links to several studies, opinion and commentary, and congressional testimony and speeches.

www.realtor.org – National Association of Realtors. A search on “eminent domain” returns over 200 hits just on their site. Some are articles and press releases; access may be restricted in some cases.

www.ncsl.org/programs/natres/emindomain.htm – National Conference of State Legislatures. Links to state legislative response to *Kelo* decision, state statutes, and state case law related to *Kelo v. New London*.

www.nlc.org/issues/more_issues/6235.cfm – National League of Cities. Links to letters, articles, testimony, and NLC national municipal policy related to eminent domain.

www.rppi.org/emdomain/index.shtml – Reason Public Policy Institute. “[A] public policy think tank promoting choice, competition, and a dynamic market economy as the foundation for human dignity and progress.”

BadgerLink: www.badgerlink.net

Search the ProQuest Newspapers database and ProQuest’s *Wisconsin Newsstand*. Suggested search terms: “eminent domain”, “property rights”, “takings clause”, “takings law” combined with “property”, “fifth amendment” combined with “property” or “public use”.