



 THE UNIVERSITY OF IOWA

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## Eminent Domain Legislation

In 2005, the Supreme Court ruled in *Kelo v. City of New London* that the community benefits of economic growth can justify the assertion of eminent domain over private land. More specifically, the Court maintained that an economic project that creates jobs, increases city revenues, or revitalizes a depressed area could qualify as “public use” under the taking clause of the Fifth Amendment. This court decision was immediately criticized as a misinterpretation of the Amendment that would benefit business at the expense of individuals.

The Supreme Court did leave power to the states to set more stringent eminent domain guidelines. Many states have responded with legislation toughening eminent domain requirements.

### **Current Legislation in Iowa**

The Iowa eminent domain bill, *House File 2351*, which limited the use of eminent domain, passed with a large majority in both the House (89-5) and the Senate (43-6) in May 2006<sup>1</sup>. Governor Tom Vilsack vetoed the bill, but the legislature overrode the veto in a special summer session. This newly enacted legislation “reforms the state’s eminent domain laws by prohibiting

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<sup>1</sup> “Bill puts too many limits on eminent domain.” [www.press-citizen.com](http://www.press-citizen.com). 13 July 2006.

local governments from taking homes and small businesses for economic development”<sup>2</sup> and clarifies the state’s blight laws. The bill also sets a standard of 75% blighted or slum conditions in order for a municipality to condemn an area. Municipalities are concerned that this new 75% requirement may be difficult to meet, hindering development by cities.<sup>3</sup>

Iowa law defines “blighted condition” as:

the presence of a substantial number of slum or deteriorated structures; insanitary or unsafe conditions; excessive and uncorrected deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or the existence of conditions which retard the provision of housing accommodations for low or moderate income families, or is a menace to the public health and safety in its present condition and use.

Iowa law defines “slum condition” as:

a condition conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, or detrimental to the public health and safety due to a predominance of buildings or improvements, whether residential or nonresidential, by reason of the following: by reason of dilapidation, deterioration that is excessive and uncorrected, age or obsolescence; by reason of inadequate provision for sanitation; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or by reason of any combination of such factors.<sup>4</sup>

### **Current Legislation throughout the Country**

Since the *Kelo* decision, 25 states have passed legislation designed to restrict the use of eminent domain. The breakdown of the type of legislation passed is shown in Figure 1 below.

Of the states that have restricted eminent domain, 11 states have outright banned its use for economic development: Alabama, Alaska, Colorado, Florida, Kansas, Nebraska, North Carolina, South Dakota, Texas, Utah, and Vermont. These states are show in Figure 1 in red.

There are 14 states that list blight as a proper reason for condemnation of private property for economic development: Georgia, Illinois, Indiana, **Iowa**, Kentucky, Maine, Minnesota, Missouri, New Hampshire, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. Those states are shown in Figure 1 in green and blue.

There are five states which provide a provision requiring an increase in public notice regarding projects using eminent domain for the acquisition of land: Georgia, **Iowa**, Minnesota, Missouri, and West Virginia. These states are shown in blue in Figure 1.

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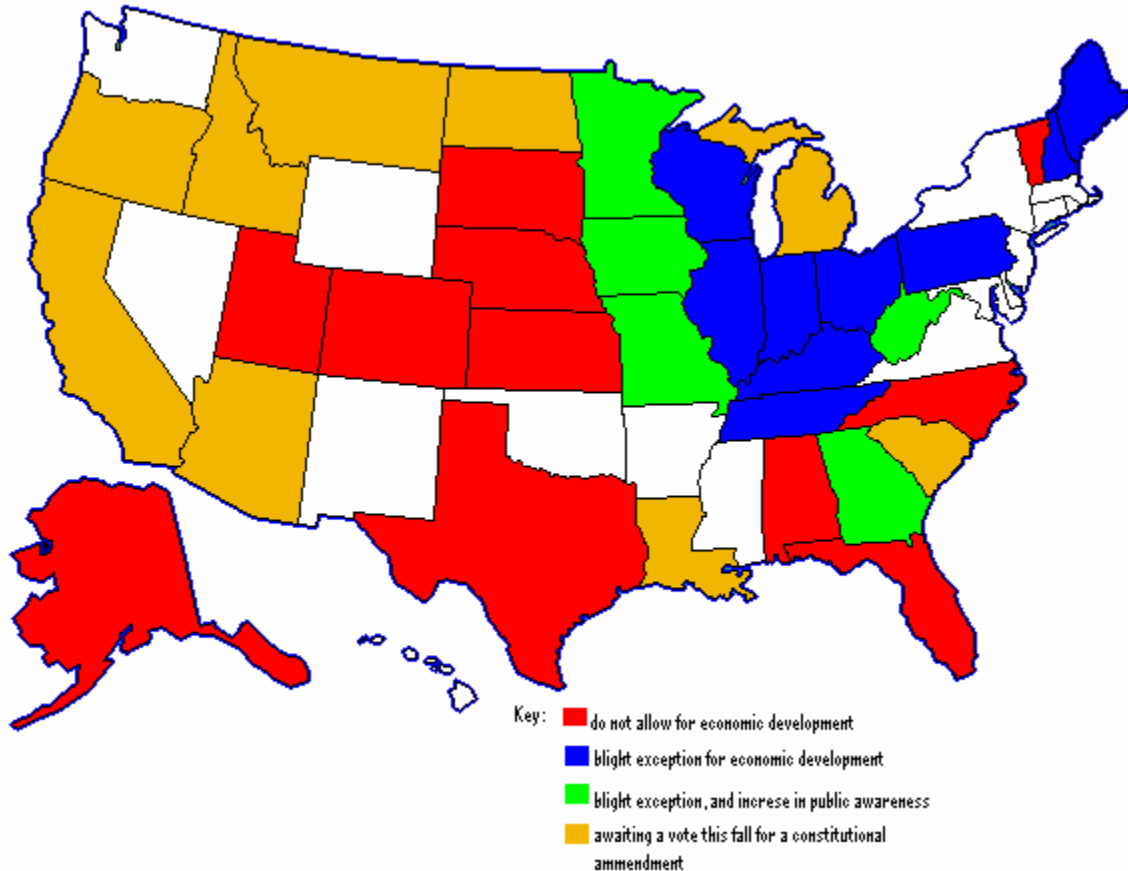
<sup>2</sup> “Iowa Legislature Overrides Eminent Domain Reform Veto.”

[http://www.castlecoalition.org/media/releases/7\\_14\\_06pr.html?actionID=270](http://www.castlecoalition.org/media/releases/7_14_06pr.html?actionID=270). 14 July 2006.

<sup>3</sup> Cityscape. “Legislature Overrides Veto of Eminent Domain Bill.” August 2006, Volume 62, #2.

<sup>4</sup> Iowa House File 2351, lines 3-27 through 4-13. <http://legis.state.ia.us>

**Figure 1**  
**Status of Eminent Domain Legislation as of September 2006**



**Source:** The National Conference of State Legislatures. Eminent Domain 2006 State Legislation. <http://www.ncsl.org/programs/natres/emindomainleg06.htm>  
The Castle Coalition. Legislative Center. <http://www.castlecoalition.org>

There are currently nine states waiting for mid-term elections where citizens will be allowed to vote on constitutional amendments restricting the use of eminent domain: Arizona, California, Idaho, Louisiana, Michigan, Montana, North Dakota, Oregon and South Carolina. These states are denoted in Figure 1 with an orange color.

### **State Responses**

Below are several examples of states that have recently addressed eminent domain. Chosen are states similar to Iowa, within close proximity to Iowa, or states that have addressed difficult eminent domain issues. Eminent domain has been an issue in both state courts and state legislatures.

### **State Court Rulings**

#### ***Ohio***

In July 2006, Ohio's Supreme Court addressed its first challenge of property rights laws since *Kelo v. New London*. In *Norwood v. Horney* (2006), the Court ruled that the city of Norwood

could not take private property for private development; specifically for a complex that was to be composed of chain stores, condominiums, and office space. The Court also ruled that state courts must “apply ‘heightened security’ to uses of eminent domain”<sup>5</sup> and emphasized that localities authorizing the condemnation of property cannot be vague in defining deterioration. *Norwood v. Horney* is one of the first cases since *Kelo* in which a state court has ruled to protect property rights from eminent domain.

### **Oklahoma**

In the 2004 case *Board of County Commissioners of Muskogee County v. Lowery*, Oklahoma’s Muskogee County sought to obtain rights to an easement for use in a private electric generation plant, citing economic development as one reason for building the plant. The Oklahoma Supreme Court ruled that “state constitutional eminent domain provisions [should] place more stringent limitation on governmental eminent domain power than the limitations imposed by the Fifth Amendment of the U.S. Constitution.”<sup>6</sup> Muskogee County was not allowed rights to the easement.

### **State Legislation**

#### **Missouri**

In June 2005, Missouri Governor Matt Blunt created a nine-member Missouri Task Force on Eminent Domain with the charge to research the issue of eminent domain and its various impacts on property owners, business owners, and the state of Missouri. The Task Force delivered its report to Governor Blunt in December, 2005. Its conclusions were broken into three categories: to redefine the scope of eminent domain, to improve the procedure and process required for exercising eminent domain, and to provide penalties for condemning authorities that abuse the eminent domain process.<sup>7</sup>

In response to the conclusions of the Task Force, Missouri House Bill 1944 was passed and signed by Governor Blunt in July 2006. The bill specifies that “private property may only be taken through the use of eminent domain after determining blight of the property or the taking is for a public use and not without just compensation.” It also states that a condemning authority cannot take private property by the use of eminent domain solely for the purpose of economic development, which is defined as “a piece of property which would provide an increase in the tax base, tax revenues, or employment for any political subdivision.”<sup>8</sup>

#### **Nebraska**

In April 2006, the Nebraska Governor Dave Heineman signed Nebraska Legislative Bill 924, which bans the use of eminent domain “if the taking is primarily for an economic development purpose” and adds that local governments cannot condemn agricultural property as blighted.<sup>9</sup>

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<sup>5</sup> Institute for Justice. “Ohio Supreme Court Rules Unanimously to Protect Property from Eminent Domain Abuse.” [www.ij.org/7/26/06](http://www.ij.org/7/26/06).

<sup>6</sup> Institute for Justice. “Legislative Action since Kelo.” 12 September 2006.

<sup>7</sup> Missouri Task Force on Eminent Domain. “Final Report” Dec. 30, 2005. <http://www.mo.gov/mo/eminentdomain/index.htm>. Accessed 15 September 2006.

<sup>8</sup> “Enacted Legislation.” <http://www.castlecoalition.org/legislation/passed/index.html>. Accessed 27 September 2006.

<sup>9</sup> “Vermont, Maine and Nebraska Enact Eminent Domain Reform, But More Reform is Needed in All 3 States.” [http://www.castlecoalition.org/media/releases/4\\_19\\_06pr.html](http://www.castlecoalition.org/media/releases/4_19_06pr.html). 19 April 2006. Accessed 17 September 2006.

## **Minnesota**

In May 2006 the state of Minnesota passed legislation that prohibits the transfer of private property for private commercial development. The blight exception requires that blighted properties pose an actual danger to “public health and safety”. The only way for a non-blighted property to be condemned as part of a project would be if that property was included in an area that was predominantly blighted and there is no way to eliminate the blighted conditions without redevelopment.<sup>10</sup>

## **Colorado**

In 1985, a group of private investors in Colorado formed the “Front Range Toll Road Company” in order to build a toll road through the state. The proposed highway, officially known as the Front Range Toll Road (FRTR), planned to run parallel to the north-south interstate 25, several miles to the east. This new highway was designed to relieve congestion on Colorado highways by providing an alternate route for big rig trucks and other commercial vehicles. The FRTR Company secured control of a 12-mile wide, 210-mile long strip of land and then waited 20 years before moving to construct the toll road, at which time local residents and environmental groups began to resist the proposed highway.

In response, the Colorado State Legislature passed wide-ranging reforms to its eminent domain laws. The reforms take the power of eminent domain from private companies, restricting it solely to the Colorado Department of Transportation. However, the DOT maintains the authority to act on behalf of private toll companies, such as the FRTR Company, in securing and condemning land to build new roads. The law strengthened environmental regulations, forcing private toll companies to conduct environmental studies to evaluate the impact of the road on the surrounding ecosystem. Approval from several more state regulatory agencies, such as the State Transportation Commission and the State Health Department, is also now required. Roads have been restricted to a three-mile wide strip, and firms must secure approval from local regional planning organizations. This legislation prevented FRTR Company from immediately beginning construction, but in recent months the firm has begun to follow the steps outlined in the new legislation to gain approval for the road.<sup>11 12</sup>

This report was prepared in September, 2006 by the Iowa Civic Analysis Network (I-CAN), a non-partisan public policy undergraduate research group at the University of Iowa. For additional research on this or other issues, please visit our website at <http://www.uiowa.edu/~ican> or contact us at [studorg-i-can@uiowa.edu](mailto:studorg-i-can@uiowa.edu)

<sup>10</sup> “Enacted Legislation” <http://www.castlecoalition.org/legislation/passed/index.html>. Accessed 27 September 2006.

<sup>11</sup> Kevin Flynn, “Parkway proposal is slap at Slab.” Rocky Mountain News. [http://www.rockymountainnews.com/drmn/local/article/0.1299.DRMN\\_15\\_3752809.00.html](http://www.rockymountainnews.com/drmn/local/article/0.1299.DRMN_15_3752809.00.html). 04 May 2005.

<sup>12</sup> “Proposed Toll Road Outrages Residents.” <http://www.thedenverchannel.com/news/9758489/detail.html>. 29 Aug 2006.