

U. S. House of Representatives Committee on Financial Services
Subcommittee on Housing and Community Development

Field Hearing: “Eminent Domain- Are Ohio Homeowners at Risk?”
Ohio University-Bennett Hall Auditorium
101 University Drive, Chillicothe, OH

Testimony of State Representative John Schlichter
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Thank you Mr. Chairman, and members of the Subcommittee on Housing and Community Development, for providing me with a forum in my home legislative district to express my outrage at the United States Supreme Court's recent decision on eminent domain – a decision that could very well jeopardize the homes and businesses of any one of us here today.

There is an old adage that says “a man's home is his castle.”

I always thought this was true. As it turns out, it was true – at least until June 23 of this year. That's the day the U.S. Supreme Court, in the case of *Kelo vs. City of New London*, granted exceedingly broad eminent domain powers to local governments for "economic development" purposes.

Eminent domain, a fancy term for the power of a government to acquire private property for a greater public purpose, is a longstanding legal and philosophical principle. The concept is protected in the U.S. Constitution, and the constitutions of all 50 states.

Specifically, the U.S. Constitution provides for the “taking” of private property for “public use,” provided that just compensation is paid to the property owner (*U.S. Constitution, Amendment V*) Similarly, the Ohio Constitution grants to its citizens the rights to acquire, possess, and protect property, and declares the rights of Ohio citizens to maintain property “inviolable, subservient only to the public welfare.” (*Ohio Constitution, Article I, Sections 1 & 19*)

Exactly what constitutes a “public purpose” for which the government may acquire private property has been the subject of heated debate for decades. Until recently, most state and local governments used their power to acquire private property only in cases where a road, library or park was involved, or in cases of urban renewal, and even then only as a last resort after negotiations with property owners proved unsuccessful.

A dangerous recent trend, however, has evidenced local governments pushing the boundaries of eminent domain beyond the typical road and bridge projects, and willing to use – or at least attempt to use – their eminent domain power to achieve much more ambitious, not to mention remunerative, public policy goals.

One example is the city of New London, Connecticut's condemnation of 15 private properties – in a non-blighted area – for a private waterfront development. City officials condemned and attempted to acquire these private homes and businesses to make way for an office building, retail shops and luxury condos and apartments. They reasoned that the new ownership would provide more jobs and greater tax revenue for the city, and thus, in their opinion, would constitute a public use.

Several property owners in the redevelopment area refused to sell their parcels, however, so the city initiated condemnation proceedings. In response, the property owners claimed that the condemnations of their properties were not for a public use. Instead, they claimed that because the property was to be transferred to, and developed by, a private, non-

governmental developer, that these transfers were “private” to “private,” and thus did not amount to a “public use.”

In a 5-4 ruling, however, split largely upon ideological lines, the court defined the concept of “public use” extremely broadly and ruled that when it comes to eminent domain, “public use” can include economic development, even private development, and even if the area is non-blighted, so long as it serves a “public purpose.”

In other words, a “public use” could simply mean “raising additional tax revenues,” and soon anyone's property could be in jeopardy of being acquired to pay for new and expanding services.

Retiring Justice Sandra Day O'Connor rightly warned in her dissent that “[u]nder the banner of economic development,” the majority opinion makes “... all private property ... vulnerable to being taken and transferred to another private owner; so long as it might be upgraded, ... nothing is to prevent the state from replacing ... any home with a shopping mall or any farm with a factory.”

Rest assured that we've taken notice in Ohio. We have already taken action, and have begun to craft a response to protect the hearths and homesteads across our great state.

In passing the Jobs for Ohio package – an economic development, investment and infrastructure proposal which will appear on the ballot before Ohio voters this November – the Ohio General Assembly made certain to include language that would adopt a more limited interpretation of a “public purpose” when recipients of public grant dollars exercise eminent domain. The purpose of this language is in direct response to the U.S. Supreme Court ruling and will ensure reasonable parameters and limitations for the use of eminent domain.

Other suggestions have also been made and will certainly receive legislative attention. We need to remember, however, that these are complicated issues. As outraged as I am at the Supreme Court's decision, in my opinion, we should avoid rushing into any kind of reactionary scheme or rigid ban.

An outright ban could have serious unintended consequences, which is why I firmly support the concept recently introduced in the Ohio Senate. Senate Bill 167, which has 26 co-sponsors in the 33-member chamber, would place an immediate 17-month moratorium (until December 31, 2006) on the use of eminent domain to acquire private property in private development projects, thereby easing fears and preventing new land grabs.

Furthermore, the legislation provides for the appointment of a 24-member task force, which would review the use of eminent domain and its impact on land-use planning in the state. This would allow the state to craft a long-term policy that would take into account Ohio's outdated planning statutes and the reasons behind the use of eminent domain.

This bipartisan panel, appointed by members of the Ohio House and Senate, would include legislators, homebuilders, land-use-reform advocates, farm interests, planners, preservationists and local governments.

We all know that economic development is necessary and inevitable. Accordingly, what we need to consider is not how to stop local governments from using eminent domain powers altogether, but rather how to ensure that the power is used sparingly and fairly.

A temporary moratorium, one that can be re-enacted before the end of this session of the General Assembly, and a land-use task force are the way to do that.

I thank you, again, for the opportunity to speak before you today on this issue.