



INSTITUTE FOR JUSTICE

Testimony of Scott Bullock
Senior Attorney, Institute for Justice
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I thank the chairman and the rest of the Connecticut legislature's Judiciary Committee for the opportunity to submit testimony about two legislative proposals that seek to reform Connecticut's eminent domain laws: Raised Bill No. 665 and No. 5810. As you know, my name is Scott Bullock and I am senior attorney at the Institute for Justice. The Institute for Justice is a non-profit law firm committed to defending individuals whose rights have been violated by the government and, as you further know, we represent the New London homeowners in the now infamous *Kelo v. New London* case. My schedule would not permit me to testify in person today so I am submitting this written testimony in advance of the hearing.

As I have testified before, Connecticut has perhaps the most sweeping law in the country authorizing the use of eminent domain for private commercial development (Chapter 132) and it is essential that the law be reformed to protect home and small business owners. Of the two bills under consideration today, one bill, No. 665, does virtually nothing to protect home and small business owners from eminent domain abuse, while another, No. 5810, goes a very long way toward stopping eminent domain abuse.

As this committee knows, under Chapter 132, two or more parcels of property can be condemned for a "business" purpose, which is defined as "any commercial, financial, or retail enterprise. . . ." C.G.S. § 8-187(10). Unlike condemnations for so-called blighted or redevelopment areas, which must meet statutorily-defined standards, the eminent domain power for economic development applies to *all* areas throughout the state and *all* types of property.

The primary flaw of No. 665 is its steadfast refusal to eliminate the use of eminent domain purely for private commercial development. We testify all over the country on the now over-45 legislative proposals to change state eminent domain laws. The one statement we hear over and over again by defenders of a particular state's eminent domain laws is "at least our state does not have the type of law [Chapter 132] at issue in the *Kelo* case." In other words, even the supporters of the use of eminent domain for private development in many other states, draw the line at defending Connecticut's breathtakingly broad authorization for the use of eminent domain for private commercial development. And yet, No. 665 retains this power.

No. 665 pretends to offer some protection from takings for economic development by stating that eminent domain cannot be used for the "sole" purpose of increasing tax

revenue. But that will not protect home and small business owners because economic development condemnations are *never* justified simply on the basis of increasing tax revenue. Even in the *Kelo* case, the condemnations were justified on the grounds of increased tax revenue, greater job creation, *and* improving the overall state of the local economy. So the condemnations in *Kelo* and virtually all others could easily satisfy the test established in No. 665.

No. 665 also does nothing to raise the standard *in court* for property owners facing private development condemnations. It only requires that the *legislative body* make certain determinations concerning public use. But if the legislative body has decided to condemn the property, it certainly follows that the body will make favorable determinations about, for instance, the respective public and private benefits or whether the takings were reasonably necessary to accomplish the project. There is no mechanism in the law, however, for an independent review *by a court* of these claims or for a greater burden of proof to be placed on government to justify these takings in court. Under No. 665, courts will still review such determinations under the incredibly deferential standards of current Connecticut law. Moreover, the standards in b(1) and b(3) of Section 1--that the public burdens must outweigh the private benefits and that the takings be "reasonably necessary"--are already a part of Connecticut law and would change nothing. The requirement under b(2) of Section 1--that a determination be made that the property cannot be "feasibly integrated" into the overall plan--is an improvement in Connecticut law, but, again, with the legislative body being the only entity that makes this determination, it does not offer meaningful protection to Connecticut property owners.

Furthermore, No. 665 does nothing to change or better define Connecticut's urban renewal laws and thereby leaves the door open for further abuse of those laws by local officials. No. 665 offers some additional albeit limited compensation to property owners faced with economic development condemnations. But additional compensation is very often cold comfort to owners who are happy where they are and simply do not want to give up their property only to see another private party make use of it. How could an extra 25% and some additional relocation costs compensate Fort Trumbull resident Wilhelmina Dery for the 88 years she spent in her home? She didn't want an additional 25%. She simply wanted to live out her remaining days in her home which, thankfully, she was able to do. (Mrs. Dery passed away on March 13, 2006.) How can an extra 25% compensate Susette Kelo for the loss of her dream home that she worked so hard to obtain--the little pink cottage where, as she puts it, she can have a millionaire's view of the water on a nurse's salary?

These additional compensation requirements also ignore the fact that even if more compensation is offered, many home and small business owners will simply be unable to challenge unjust takings in the first instance because of the enormous costs of challenging eminent domain in the form of attorney's fees, the hiring of experts, discovery, etc. Indeed, for many owners, the costs will quickly exceed the value of the property, making it financially impossible for most, apart from large businesses, to challenge takings for private commercial development. That is one of the most powerful weapons

governments and developers have at their disposal and it is one of the main reasons to eliminate eminent domain authority under Chapter 132.

Unlike the cosmetic procedural changes contained in No. 665, one important procedural provision that should be added to this law is a requirement that statements of compensation not be filed until after a determination is made as to the legality of the taking. This protects owners from facing the draconian situation that the New London property owners faced in *Kelo*: the government condemning their homes through the filing of a statement of compensation, title immediately transferring to the condemning authority, and then that authority being authorized to collect rent from the homeowners during the time of the litigation. Although the New London property owners were able to avoid this situation due to the negotiation of a pre-trial stipulation, this incredibly unfair power must be eliminated.

In contrast to No. 665, No. 5038 is solid eminent domain reform legislation. It does what should be the top priority for the legislature with regard to this issue: it eliminates eminent domain authority under Chapter 132, which, as noted, is one of the broadest authorizations for the use of eminent domain of any statute in the country. Another very good aspect of No. 5810 is that it better defines what are blighted or deteriorated properties under the urban renewal provisions of Connecticut law. As mentioned in my previous testimony, if a state chooses to have a redevelopment statute, it should require objective evidence of blighted conditions and public detriments, not broad terms that can easily be manipulated by a local government that can designate an area blighted and condemn simply because it would like to put something else there. No. 5810 actually directs that eminent domain can only be used against problem properties that pose substantial threats to public health and safety such as properties that are unsanitary, unsafe, vermin-infested or abandoned. These provisions will help ensure that blight elimination is not used as a backdoor way to gain property simply for private commercial development.

We also urge that whatever legislation is adopted that it be clear that it applies to everyone currently occupying property that has been subject to condemnation under either Chapter 130 or 132.

In sum, we advocate elimination of eminent domain under Chapter 132 and reform of the state's urban renewal laws so that eminent domain can be used only against properties that pose direct risks to public health and safety. No. 5810 goes a long way toward accomplishing those twin objectives. No. 665 fails utterly to protect home and small business owners from eminent domain abuse.

Thank you for considering this testimony and we are happy to answer any questions or concerns you may have.