

February 13, 2019

Electronic Written Testimony in Favor of PHB 5123 An Act Prohibiting the Use of Eminent Domain for Commercial Purposes - for the Public Hearing scheduled for February 13, 2019 in the Planning and Development Committee - Submitted by Patricia Bollettieri, West Haven CT

Dear Members of the Planning and Development Committee;

Thank you for the opportunity to submit this testimony.

I would like to voice my support for PHB 5123-An Act Prohibiting the Use of Eminent Domain for Commercial Purposes.

This bill will protect property owners by helping to prevent unjustified condemnations. There are no real limits to the use of Eminent Domain in Connecticut and no protection for property owners from gratuitous takings.

The Constitution allows the government to take private property, for public use and with just compensation. But the key term is for "public use". Common sense has always interpreted public use in an objective way- a school, a firehouse, or a public highway are "public use". But over time, this clear, common-sense definition has become completely subjective and is therefore open to abuse. PHB 5123 will help curb the egregious abuse of so-called 'economic development' takings.

Key Eminent Domain court cases such as *Berman v Parker* (1954) and *Kelo v City of New London* (2005) affirmed that the legislature is best able to determine what is Public Use. Once the decision is made on the goal, any means (including Eminent Domain) can be used to achieve the goal. This concept, called Legislative Deference, implies that the judiciary should not interfere or second-guess what the legislature has determined. But this also means that now there are no standards at all governing when someone's property can be taken. Our property can be taken for virtually any reason.

Economic development takings of the kind addressed by *Kelo v City of New London* are particularly subject to abuse. Judge Sandra Day O'Connor, who wrote the dissenting opinion in *Kelo*, recognized that a Motel 6 could now be taken and replaced with a Ritz-Carlton, and "...any property may now be taken for the benefit of another private party...the beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. "

In *Kelo v City of New London*, the United States Supreme Court allowed the Fort Trumbull neighborhood of New London to be turned over to a private developer for the purpose of economic development. A prime beneficiary was the Pfizer Corporation, whose needs and desires were given priority in the Comprehensive Plan which was written to justify the condemnation. The neighborhood was not blighted, and many homeowners were making substantial investments in their properties to improve them. But the takings approved by the New London Development Corporation were upheld to be a public use, and Susette Kelo lost her Little Pink House.

As long as a Municipal Development Plan(MDP) in Connecticut quotes appropriate boilerplate from state statute, it can be used to take people's property for any reason. There is an entire cottage industry of consultants dedicated to writing these plans so that they are 'compliant' with the letter, but not the spirit, of Connecticut state law. The plans themselves can become instruments of abuse if they become tools of developers or other private parties to advance their own goals.

This is how the process works and is abused: State law prohibits the taking of private property for the primary purpose of increasing local tax revenue. So the plan makes this statement: "The primary purpose of this plan is not to increase local tax revenue". State law also mandates that in an economic development taking, the public benefits must outweigh the private benefits. So the plan makes this statement: "The public benefits resulting from this project will outweigh any private benefits". The statements don't have to be substantiated-they just need to be declared. This is exactly what happened in West Haven in 2015, when the Haven South Municipal Development Plan (HSMDP) forced over 50 families and businesses out of their homes and properties to make way for a shopping center. The neighborhood was not blighted. But the HSMDP had all the required statements to make it compliant with state law and hence able to invoke Eminent Domain.

A good case can be made that these plans are 'pretextual'- and such pretextual takings are not allowed, even under the judgment in *Kelo*. Judge Stevens stated in his majority opinion in *Kelo*: "Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit." It is, however, virtually impossible to prove a pretext-which is why economic development takings should not be allowed.

Connecticut state law as it now exists does not afford property owners any protection from having their property seized for any reason. The small business owner of a diner can see his property seized and given over to a corporately owned hotel. The owner of a single-family home can have her property seized and turned over to a corporately owned chain store. The only requirement is a properly-worded Comprehensive Plan.

This bill will prevent the abuses that go hand-in-hand with economic development takings. Now when people buy a home or start a business in Connecticut, they won't have to worry whether their home or business will be taken away and turned over to a developer who may pay more taxes or want to gentrify the neighborhood. The uncertainty which goes hand in hand with the threat of losing your home causes people to stop investing in their property- thereby leading to further decline. And property rights violations generally target poor or middle-class areas where residents lack the resources to fight back.

PHB 5123 will protect these residents and will provide security for all residents.