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BACKGROUNDER

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A Decade After *Kelo*: Time for Congress to Protect American Property Owners

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Abstract

In 2005, the Supreme Court held in Kelo v. City of New London *that the government can seize private property and transfer it to another private party for economic development. This type of taking was deemed to be for a "public use" and allowed under the Fifth Amendment of the U.S. Constitution. As a result, if a city claims that a certain privately owned property would generate additional tax revenue, create more jobs, or even simply make the city more attractive if owned by another private party, that city can use the power of eminent domain to seize the property. Private-property ownership has become a precarious proposition, subject to the economic development whims of the government. Thanks to* Kelo*, one's home is one's castle only until the government thinks someone else can build a better castle. Cronyism is bad enough when favors are provided to politically connected interests through subsidies and other special treatment.* Kelo *has made it easy for government officials to benefit their friends and politically connected businesses using the awesome power of eminent domain. States have responded by passing laws intended to provide protection from these economic development takings—but Congress has failed to take meaningful action in the decade since this landmark decision. At the tenth anniversary of* Kelo*, Congress should provide property owners in all states necessary protection against economic development and closely related takings, including abusive takings based on overly broad blight laws.*

On June 23, 2005, the United States Supreme Court held in *Kelo v. City of New London*[1] that the government can seize private property and transfer it to another private party for economic development. This type of taking was deemed to be for a "public use" and

Key Points

- In 2005, the Supreme Court held in *Kelo v. City of New London* that the government can seize private property and transfer it to another private party for economic development—whether it adds tax revenue, creates jobs, or merely makes a part of the city more attractive.
- Private-property ownership has become a precarious proposition, subject to the whims of the government. After *Kelo*, one's home is one's castle only until the government thinks someone else can build a better castle.
- *Kelo* made it easy for government officials to benefit their friends and politically connected businesses using the awesome power of eminent domain.
- Congress has failed to take meaningful action in the decade since this landmark decision—it should finally provide property owners in all states necessary protection against economic development and closely related takings, including abusive takings based on overly broad blight laws.

This paper, in its entirety, can be found at **http://report.heritage.org/bg3026**

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allowed under the Fifth Amendment of the United States Constitution.

As a result, if a city claims that a certain privately owned property would generate additional tax revenue, create more jobs, or even simply make the city more attractive if owned by another private party, that city can use the power of eminent domain to seize the property. Private-property ownership has become a precarious proposition, subject to the economic development whims of the government. After *Kelo*, one's home is one's castle only until the government thinks someone else can build a better castle.

States have responded by passing laws that are intended to provide protection from these economic development takings. However, Congress has failed to take meaningful action in the decade since this landmark decision.[2] At the tenth anniversary of the *Kelo* case, Congress should provide property owners in all states necessary protection against economic development and closely related takings.

Overview of *Kelo*

In the late 1990s, New London, Connecticut, was facing tough times, with an unemployment rate nearly double that of the state and the population at its lowest in nearly 80 years. To promote economic growth and revitalize the city, New London sought to redevelop its Fort Trumbull area. As proposed, the area would have included a new conference hotel, restaurants, shops, a renovated marina, and research and development office space. The large pharmaceutical company Pfizer had announced its plan to build a major research facility in the area, and the city's planned development was intended to capitalize on the company's arrival.[3]

To implement its plan, the city used eminent domain to seize multiple *non-blighted* properties for this economic development effort, including the home of Susette Kelo. The specific question that had to be answered in *Kelo* was whether the seizure of private property for economic development constituted a "public use" under the Fifth Amendment. The Takings Clause, found in the Fifth Amendment of the United States Constitution, restricts the government's ability to seize private property: "Nor shall private property be taken for public use, without just compensation."[4] In a 5–4 opinion, the Supreme Court held that New London's taking of Kelo's home and other properties was a public use and therefore a constitutional exercise of eminent domain.[5]

Implications of *Kelo*

Even before *Kelo*, the Supreme Court had interpreted "public use" more broadly than what the language would suggest. As might be expected, it does cover takings of property for "use by the public." This would include takings for public ownership, such as a road, and takings for private parties for use by the public, such as a utility.[6] However, before *Kelo*, the Supreme Court had also determined that "public use" should mean "public purpose."[7] This dramatic shift ignored express constitutional language that covers narrow situations and applied new language to cover very broad situations.

This "public purpose" approach led to great expansions of eminent domain power allowing private property to be transferred to other private parties. In 1954, the court held in *Berman v. Parker*[8] that non-blighted property could be seized in

1. *Kelo v. City of New London*, 545 U.S. 469 (2005), http://laws.findlaw.com/us/000/04-108.html (accessed June 10, 2015).
2. In 2005, Congress did add the "Bond amendment" to the fiscal year (FY) 2006 transportation/HUD spending bill. The amendment stated that no covered funds could be used for projects that used eminent domain in a manner not allowed under the amendment. It only prohibited funds for projects employing economic development takings that "primarily benefit private entities." As discussed later in this *Backgrounder*, being able to successfully make such a claim is almost impossible. This amendment has been added to other appropriations bills, including the "Cromnibus" bill (for FY 2015). To learn more about the amendment, see, for example, "Statutory Prohibition on Use of HUD Fiscal Year (FY) 2006 Funds for Eminent Domain-Related Activities; Notice," *Federal Register*, Vol. 71, No. 136, July 17, 2006, p. 40634, http://www.gpo.gov/fdsys/pkg/FR-2006-07-17/html/06-6258.htm (accessed June 10, 2015).
3. *Kelo v. City of New London.*
4. U.S. Constitution, Amendment 5, https://www.law.cornell.edu/wex/fifth_amendment (accessed June 10, 2015).
5. For a much more detailed discussion of *Kelo* and the history of eminent domain power, Heritage is releasing another paper concurrently with this paper. Paul J. Larkin, Jr., "Revisiting *Kelo*," Heritage Foundation *Legal Memorandum* No. 155, June 22, 2015, http://report.heritage.org/lm155.
6. *Kelo v. City of New London* (O'Connor dissenting).
7. *Kelo v. City of New London.*
8. *Berman v. Parker,* 348 U.S. 26 (1954), http://laws.findlaw.com/us/348/26.html (accessed June 10, 2015).

an alleged blighted area. In 1984, the court held in *Hawaii Housing Authority v. Midkiff*[9] that property could be seized to address an unusual land oligopoly situation where land ownership was extremely concentrated.

In her dissent in *Kelo*, Justice Sandra Day O'Connor claimed that those two cases were distinguishable from *Kelo* because the takings targeted property that was inflicting "affirmative harm on society."[10] While Justice O'Connor was trying to suggest a narrow application of the eminent domain power prior to *Kelo*, this is not a completely accurate characterization.

The *Berman* case in particular has far broader implications than she suggested, giving government the ability to abuse blight laws to seize private property. Regardless, the term "public use" still placed some limit on what could be seized. *Kelo* changed all of that. In *Kelo*, the court effectively deleted "public use" from the Fifth Amendment.

No Property Is Safe. Thanks to *Kelo*, if the government believes that another private party can make better economic use of a property, it can be seized. This problem is exacerbated because courts defer to government about whether something is a public use and whether a plan even makes sense. Justice O'Connor truly captured the extent of the problems with *Kelo* in her dissent, including this important point: "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."[11]

Those who will be harmed the most will be low-income individuals. There will be a "reverse Robin Hood effect." The government is not likely to go after valuable properties to help promote economic development and generate more tax revenue. Instead, it will seek out properties that are not generating the desired economic benefits (and cost less) and transfer those properties to private parties whom government officials think will provide the desired effects. Further, those with fewer resources are less able to challenge the seizures of property, making it easier for government to seize the property.

No Practical Protection from Takings for Private Use. The majority opinion asserted that private property still may *not* be seized for the sole purpose of transferring it to another private party nor can property be taken "under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit."[12]

This is nice in theory, but is a fallacy in practice. If the government seizes private property because government officials want to help a developer build a shopping mall, for example, the taking will still appear to have a public purpose because presumably it will have an alleged economic benefit. It is virtually impossible to determine whether a taking is for a private benefit or for a public purpose. As Justice O'Connor explained, "The trouble with economic development takings is that private benefit and incidental public benefit are, by definition, merged and mutually reinforcing."[13]

Cronyism at Its Worst. A developer can use the government as its middleman to seize properties and avoid paying what likely would be their true costs. Cronyism is bad enough when favors are provided to politically connected interests through subsidies and other special treatment. *Kelo* has made it easy for government officials to benefit their friends and politically connected businesses using the awesome power of eminent domain. A family's home could be demolished and their property rights trampled to help a developer. On top of that, the government can use this power in a haphazard manner, with the court unlikely to question the merits of the takings, regardless of how unnecessary or poorly conceived the takings might be.

Why Congressional Action Is Necessary

If the Supreme Court gutted First Amendment protections or other fundamental rights, there would be widespread outrage. While states could provide some protection, it is highly unlikely that the public or policymakers would deem this adequate in protecting *federal* constitutional rights. The same holds true for private property rights. This by itself is a reason to take action.

9. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), http://laws.findlaw.com/us/467/229.html (accessed June 10, 2015).
10. *Kelo v. City of New London* (O'Connor dissenting).
11. Ibid.
12. *Kelo v. City of New London*.
13. *Kelo v. City of New London* (O'Connor dissenting).

Most states have responded in some fashion to *Kelo*. Many of the reforms will likely be sufficient to address the unusual and rare situation, as in *Kelo*, where a city readily admits that it is seizing private property solely for economic development. However, most of these reforms are statutory, not constitutional, and therefore do not provide the level of protection that is warranted; a statute can generally be changed far more easily than a constitutional amendment. Further, the reforms do not properly address the way economic development takings usually happen, such as through overly broad blight laws.[14] There are post-*Kelo* abuses that illustrate that eminent domain abuse is alive and well.

In New York, private property was seized for office space and apartment towers.[15] In another New York project, property was seized for Columbia University, a private institution.[16] A Glendale, Colorado, carpet store could soon be seized and ownership transferred to a developer for an entertainment district.[17] These examples are all based on addressing so-called blight. New Jersey's Casino Reinvestment Development Authority, unrelated to any claim of blight, is seeking to seize a home to redevelop the surrounding neighborhood, even though it has no clear plans for the property.[18]

Blight Abuse. City officials do not usually admit that they are taking private property solely for economic development. They generally claim another reason to serve as a pretext for seizing property for economic development. Blight is one of the most frequent reasons.[19]

On the surface, the idea that government would be seizing property to address blight may not sound particularly bad. However, there are two critical ways that many state blight laws allow government to abuse eminent domain power.

1. Blight definition: The word "blight" suggests property that is unfit to live in or is somehow unsafe. However, blight laws generally do not use such a definition. Instead, the definition is often extremely broad, covering properties that are in perfectly fine condition, allowing almost

14. See, for instance, Ilya Somin, "The Limits of Backlash: Assessing the Political Response to Kelo," *Minnesota Law Review*, Vol. 93, No. 6 (June 2009), pp. 2100–2178, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976298 (accessed June 9, 2015).
15. *Goldstein v. New York State Urban Development Corp.*, 13 N.Y.3d 511 (2009), http://www.courts.state.ny.us/reporter/3dseries/2009/2009_08677.htm (accessed June 10, 2015).
16. *Kaur v. New York State Urban Development Corp.*, 15 N.Y.3d 235 (2010), https://www.courtlistener.com/opinion/2481399/kaur-v-urban-dev-corp/ (accessed June 10, 2015). See also Ilya Somin, "Let There Be Blight: Blight Condemnations in New York after Goldstein and Kaur," *Fordham Urban Law Journal*, Vol. 38, No. 4 (October 2011), pp. 1193–1219, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924518 (accessed June 9, 2015), and Robert Thomas, "New York Still Has 'Unfrozen Caveman Judges' Who are 'Frightened and Confused' by Eminent Domain Blight," InverseCondemnation.com, June 24, 2010, http://www.inversecondemnation.com/inversecondemnation/2010/06/new-york-still-has-unfrozen-caveman-judges-who-are-frightened-and-confused-by-blight.html (accessed June 9, 2015).
17. Nick Sibilla, "Eminent Domain Land Grab Would Wipe Out Small Business Owned for Over 25 Years," Institute for Justice, May 28, 2015, https://www.ij.org/eminent-domain-land-grab-would-wipe-out-small-business-owned-for-over-25-years (accessed June 9, 2015).
18. "*Casino Reinvestment Development Authority v. Charles and Lucinda Birnbaum et al.*: Atlantic City Eminent Domain," Institute for Justice, https://www.ij.org/atlantic-city-eminent-domain (accessed June 9, 2015).
19. Private property is also becoming threatened under a push for transit-oriented development. A legitimate public use, such as transportation, could be used as a pretext to seize private property for economic development around rail stations (even stations that do not exist yet or may never exist), even for areas a significant distance from stations. To learn more about this issue, see Daren Bakst, "Riding the Eminent Domain Rail: Triangle Transit Authority Is N.C.'s Case Study in Eminent Domain," John Locke Foundation, September 22, 2006, http://www.johnlocke.org/acrobat/spotlights/spotlight_296ttaemdomn.pdf (accessed June 9, 2015). Honolulu is currently engaged in a major rail project involving transit-oriented development. See Choon James, "Rail's Transit-Oriented Development an Assault on Private Property," *Honolulu Civil Beat*, November 2, 2012, http://www.civilbeat.com/2012/11/17545-rails-transit-oriented-development-an-assault-on-private-property/ (accessed June 9, 2015), and A. Kam Napier and Janis L. Magin, "Honolulu Rail Transit's Eminent Domain," *Pacific Business News*, May 27, 2015, http://www.bizjournals.com/pacific/print-edition/2015/03/27/honolulu-rail-transit-s-eminent-domain.html (accessed June 9, 2015). According to the Honolulu Rail Transit project site, "Transit oriented development around rail stations will sustain the demand for jobs in a variety of industries for many years into the future." Honolulu Rail Transit, "The Rail Facts," 2015, http://www.honolulutransit.org/rail-facts.aspx (accessed June 9, 2015). The cartoon at the following website captures the issue nicely: John T. Pritchett, "T.O.D. Transit Oriented Destruction," http://www.pritchettcartoons.com/tod-2.htm (accessed June 9, 2015).

any property to fall under the definition.[20] These broad and subjective definitions make it easier for cities to seize private property for economic development while pointing to "blight" as the justification. It also makes it easier to benefit private interests and exacerbate the cronyism problem.

2. Non-blighted properties in blighted areas: Even if a property is in pristine condition, the government might be able to seize it if it falls under a subjectively determined blighted area. Even if distinct boundaries could be established between a blighted area and a non-blighted area, this does not necessarily mean that a city could still not label all the properties as existing in one blighted area.

It is important to remember that courts generally do not scrutinize the actions and conclusions of the government when it comes to takings for blight. If a city claims that a property is blighted or in a blighted area, that usually suffices.

Urban renewal laws that address blight have caused serious harm, particularly among minority communities. A 2007 Institute for Justice Report found that:

> Under that act [Federal Housing Act of 1949], which was in force between 1949 and 1973, cities were authorized to use the power of eminent domain to clear "blighted neighborhoods" for "higher uses." In 24 years, 2,532 projects were carried out in 992 cities that displaced one million people, two-thirds of them African American.[21]

An amicus brief filed in *Kelo* by the NAACP, along with other organizations, argued:

> The history of eminent domain is rife with abuse specifically targeting minority neighborhoods. Indeed, the displacement of African-Americans and urban renewal projects were so intertwined that "urban renewal" was often referred to as "Negro removal."[22]

Blight laws are still being abused to promote economic development. One important example is the Atlantic Yards project in New York. The government seized alleged blighted property for a basketball arena for the now Brooklyn Nets as well as property for apartment and office towers.[23]

In 2009, the highest New York court, the Court of Appeals, in *Goldstein v. New York State Urban Development Corp.* allowed a very broad definition of blight,[24] admitting:

> It may be that the bar has now been set too low—that what will now pass as "blight," as that expression has come to be understood and used by political appointees to public corporations relying upon studies paid for by developers, should not be permitted to constitute a predicate for the invasion of property rights and the razing

20. For a comprehensive and updated discussion of the blight issue (including state blight laws), state responses to *Kelo,* and more, see Ilya Somin, *The Grasping Hand:* Kelo v. City of New London *and the Limits of Eminent Domain* (Chicago: University of Chicago Press, 2015). To provide just one specific state example, see the definition of "blighted area" under the Colorado statutes, C.R.S. 31-25-103, http://www.lexisnexis.com/hottopics/Colorado/ (accessed June 10, 2015). See also these articles on how Colorado has been applying the blight statute: Nick Sibilla, "Don't Blight the Hand that Feeds You: Stop Eminent Domain Abuse," *The Denver Post* Idea Blog, April 10, 2013, http://blogs.denverpost.com/opinion/2013/04/10/dont-blight-the-hand-that-feeds-you-stop-eminent-domain-abuse/36683/ (accessed June 9, 2015), and Nick Sibilla, "Eminent Domain Land Grab Would Wipe out Small Business Owned for Over 25 Years," Institute for Justice, May 28, 2015, https://www.ij.org/eminent-domain-land-grab-would-wipe-out-small-business-owned-for-over-25-years (accessed June 9, 2015).
21. Mindy Thomas Fullilove, "Eminent Domain & African Americans: What Is the Price of the Commons?" Institute for Justice, *Perspectives on Eminent Domain Abuse* series, Vol. 1, undated, http://castlecoalition.org/eminent-domain-a-african-americans (accessed June 9, 2015).
22. *Kelo v. City of New London*, Brief of Amici Curiae, NAACP and AARP et al., https://www.ij.org/images/pdf_folder/private_property/kelo/naacp02.pdf (accessed June 10, 2015).
23. *Goldstein v. Pataki*, 516 F.3d 50 (2nd Cir. 2008), http://scholar.google.com/scholar_case?case=15428163128414072 37&hl=en&as_sdt=6&as_vis=1&oi=scholarr (accessed June 10, 2015), and Steven Silverberg, "New York Court of Appeals Upholds 'Atlantic Yards' Condemnation," New York Zoning and Municipal Law Blog, http://blog.szlawfirm.net/2009/11/new_york_court_of_appeals_upho_1.html (accessed June 9, 2015).
24. Ilya Somin, "Blight, Pretext, and Eminent Domain in New York," City Square blog, Fordham Urban Law Journal, March 12, 2012, http://urbanlawjournal.com/2-ilya-somins-reply-to-rick-hills-blight-pretext-and-eminent-domain-in-new-york/ (accessed June 9, 2015).

> of homes and businesses. But any such limitation upon the sovereign power of eminent domain as it has come to be defined in the urban renewal context is a matter for the Legislature, not the courts.[25]

The agency with the power to seize the property did not talk about blight until two years *after* the project was announced[26] and the developer paid for the blight study.[27] George Mason University law professor Ilya Somin has argued, "In *Goldstein v. New York State Urban Development Corp.*, the Court of Appeals adopted a virtually limitless definition of 'blight' that includes any area where there is 'economic underdevelopment' or 'stagnation.'"[28] In his dissent, Judge Robert Smith stated: "They [the state agency's consultants] did not find, and it does not appear they could find, that the area where petitioners live is a blighted area or slum of the kind that prompted twentieth century courts to relax the public use limitation on the eminent domain power."

All of these factors were still not enough for the New York Court of Appeals to block the takings. Even worse, the federal Second Circuit Court of Appeals upheld the taking,[29] stressing the need for deference just like the New York Court of Appeals.[30]

What Should Congress Do?

At a minimum, the immediate response, in light of the tenth anniversary of *Kelo*, should be to address economic development and closely related takings. There are many ways that legislation can address these takings, but there are some important considerations that Congress should remember. The devil is in the details; the way any protections are drafted is critical and can make the difference between real protection and the mere perception of protection. Government will seek to find end runs around any prohibitions. It is vital that these end runs are addressed.

There is no question that drafting language to provide clear protections from these economic development takings can be challenging. Critics will likely claim that language is either over-inclusive or under-inclusive in terms of when property may not be seized. While well-established takings consistent with a "use by the public," such as for utilities and common carriers, should not be prohibited, it is better to be over-inclusive than under-inclusive when prohibiting takings. Individual rights should easily trump the government's power to use eminent domain.

Creating a Burden of Proof. Often, prohibitions are drafted in a manner that a taking is prohibited "for" a particular reason. Such a prohibition requires courts to examine the subjective intent of why a city or other governmental body seized private property.

If language states that the government may not take property for economic development, then that may seem like economic development takings are prohibited. However, the government will simply assert a non-economic development reason for taking private property, and courts are unlikely to try

25. *Goldstein v. New York State Urban Development Corp.*, 13 N.Y.3d 511 (2009).
26. *Goldstein v. New York State Urban Development Corp.*, 13 N.Y.3d 511 (2009) (Smith dissenting), and Damon Root, "The Majority Is Much Too Deferential to the Self-Serving Determination by Empire State Development Corporation," Reason.com, November 24, 2009, http://reason.com/blog/2009/11/24/the-majority-is-much-too-defer (accessed June 10, 2015).
27. See, for instance, *Goldstein v. New York State Urban Development Corp.*, 13 N.Y.3d 511 (2009); Somin, *The Grasping Hand*, Chapter 7; and news release, "New York High Court Upholds Eminent Domain for Private Gain," Institute for Justice, November 24, 2009, https://www.ij.org/new-york-high-court-upholds-eminent-domain-for-private-gain (accessed June 9, 2015).
28. Somin, "Blight, Pretext, and Eminent Domain."
29. *Goldstein v. Pataki*, 516 F.3d 50 (2nd Cir. 2008).
30. This entire concept of broad deference in determining what constitutes a proper "public use" is problematic. As Justice Clarence Thomas pointed out in his dissent in *Kelo*: "There is no justification, however, for affording almost insurmountable deference to legislative conclusions that a use serves a 'public use.' To begin with, a court owes no deference to a legislature's judgment concerning the quintessentially legal question of whether the government owns, or the public has a legal right to use, the taken property. Even under the 'public purpose' interpretation, moreover, it is most implausible that the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provisions of the Bill of Rights. We would not defer to a legislature's determination of the various circumstances that establish, for example, when a search of a home would be reasonable." *Kelo v. City of New London*, 545 U.S. 469 (2005) (Thomas dissenting). Courts have generally taken deference way too far; imagine a court deferring to a legislature on what constitutes a reasonable search and seizure, without the courts stepping in except in rare and unusual circumstances. This would be viewed as an abrogation of judicial duties. The same should hold true for a "public use." As for the *Goldstein* case, the courts took the deference to an extreme.

to figure out whether this is merely a pretext for economic development takings.

As a result, if language has this type of subjective element, burden of proof language is essential. Both Michigan[31] and Nevada[32] in their post-*Kelo* state constitutional amendments created such language. The purpose is to require that the government prove that a taking is for a proper public use. Since there may be multiple reasons for taking property, the government should ideally prove that it would have seized the property even if there was no economic development benefit.

Addressing Blight Abuse. Any legislation should expressly address the abuse of blight laws. "Blight" should not be so broadly defined to cover almost anything. For property to be considered blighted, it should pose a concrete and imminent risk to public health and safety. Only property that itself is blighted should be allowed to be taken; non-blighted properties should not be seized on the grounds that they are located in an alleged blighted area.

Enforcement. While most economic development and closely related takings are on the state and local level, the law should also apply to the federal government. To address takings by state and local governments, the law should make states and local governments that engage in prohibited activities ineligible to receive certain federal funds (as opposed to simply prohibiting funds for use in a prohibited activity). The relevant funding should at least cover federal economic development funds, including Community Development Block Grants.[33]

Private Right of Action. Private property owners should be able to challenge takings under any new law in court. In addition, reasonable attorney's fees and related incurred costs should be available to reimburse a property owner who wins his case.

Bipartisan Support for Reform

Addressing economic development takings is far from a partisan issue. Just last year, the U.S. House of Representatives passed the Private Property Rights Protection Act of 2014[34] by an overwhelming 353-to-65 vote.[35] The legislation attempted to prohibit economic development takings and had several important provisions,[36] including a private cause of action and a burden of proof requirement requiring the government "to show by clear and convincing evidence that the taking is not for economic development." The legislation though does not *appear* to properly address the problems with blight takings, at least not in an express manner.[37]

Congress Has a Real Chance to Pass a Meaningful Law. When the City of New London seized private property for economic development, that was bad enough. But those takings served no purpose.

31. State Constitution of Michigan, Article X § 2, 1963, http://www.legislature.mi.gov/(S(cimoywhkpau1kjrcakyuhugj))/mileg.aspx?page=GetObject&objectname=mcl-Article-X-2 (accessed June 10, 2015). The burden of proof language was added in 2006: "In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use."
32. The Constitution of the State of Nevada, Article I § 22, 2008, https://www.leg.state.nv.us/const/nvconst.html (accessed June 10, 2015). Burden of proof language: "In all eminent domain actions, the government shall have the burden to prove public use."
33. Federal funding for transit projects should be conditioned on governments not improperly abusing eminent domain in connection with the project. These projects have been the source of abuse.
34. Private Property Rights Protection Act of 2014, H.R. 1944, 113th Cong., 2nd Sess., https://www.congress.gov/bill/113th-congress/house-bill/1944 (accessed June 9, 2015).
35. Private Property Rights Protection Act of 2014, H.R. 1944, 113th Cong., 2nd Sess., Final Vote Results for Roll Call 67, February 26, 2014, http://clerk.house.gov/evs/2014/roll067.xml (accessed June 9, 2015).
36. The legislation addresses both the conveyance of ownership and lease interests, which is an important way of ensuring that the government does not simply circumvent a prohibition by owning property and leasing it back to a private party.
37. State and local governments may not use eminent domain for property to be used for economic development. The term "economic development" does not include "removing harmful uses of land provided such uses constitute an immediate threat to public health and safety." This indicates that states and local government can address legitimate blighted properties, which is appropriate. Even though properties with broad definitions of blight, and non-blighted properties within blighted areas, are not expressly allowed to be seized, it appears they still *could* be seized. It is *possible* that the government could seize broadly defined "blighted" properties or non-blighted properties in blighted areas by showing that the reason for the taking was to address these vague blight issues and not for economic development.

Empty fields now sit where the seized homes used to stand.[38] The abuse of blight laws has allowed arrogant government officials to seize people's homes and neighborhoods simply because they think their vision for a community trumps the rights of the individuals who live in that community.

It is easy to see why there is such wide support for addressing *Kelo*. This support, in conjunction with the 10th anniversary of the infamous case, should give Congress a real chance to enact protections for property owners. The American dream of owning a home should no longer be threatened by the nightmare of eminent domain abuse.

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38. Jeff Jacoby, "Eminent Disaster: Homeowners in Connecticut Town were Dispossessed for Nothing," *The Boston Globe,* March 12, 2014, http://www.bostonglobe.com/opinion/2014/03/12/the-devastation-caused-eminent-domain-abuse/yWsy0MNEZ91TM94PYQIh0L/story.html (accessed June 9, 2015).