



STATEMENT OF
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DEVELOPMENT IN DAYTON, OHIO

BEFORE THE
HOUSE FINANCIAL COMMITTEE,
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY



**Statement of Steven Nutt, Director of Strategic Development
City Wide Development Corporation of Dayton, Ohio
before the
House Committee on Financial Services
Subcommittee on Housing and Community Opportunity**

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Chairman Ney, thank you for the opportunity to appear before you this morning. I am honored to be here today and to be given the opportunity to discuss the experiences of economic development professionals. We hope our experiences can be an important source of information as you determine the future of eminent domain in Ohio and in Washington, DC.

My name is Steven Nutt, and I am the Director of Strategic Development for the Citywide Development Corporation of Dayton, Ohio. I also represent Steve Budd, the Board Chair of the International Economic Development Council (IEDC.) Steve is sorry he could not be with us today. IEDC is the premier membership organization dedicated to helping economic development professionals. Like you and your colleagues in Congress, IEDC's 4,000 members work every day to create high-quality jobs, develop vibrant communities and improve the quality of life in their regions.

I have a Masters Degree in Economic Development Planning from the University of Cincinnati. I've been working in inner city economic development for fifteen years. In my current role, my primary duties are to create economic development strategies for the city of Dayton. Dayton is a landlocked community without space for businesses to grow. As a result, they often choose to locate outside the city. Eminent domain is one of the few tools we have that enables us to create space to keep our companies in the city.

The judicious use of eminent domain is critical to the economic growth and development of cities, towns and rural areas throughout the country. Assembling land for redevelopment helps revitalize local economies, create much-needed jobs, and generate revenues that enable cities and rural areas to provide essential services. When used prudently and in the sunshine of public scrutiny, eminent domain achieves a greater public good that benefits the entire community.

The Ohio State legislature currently provides for the use of eminent domain for public use. The state constitution states that "[p]rivate property shall ever be held inviolate, but subservient to the public welfare . . . where private property shall be taken for public use, a compensation therefore shall first be made in money, or first secured by a deposit."

The state legislature determines who may use eminent domain in the Ohio Revised Code. Some grants are general grants of power that allow an entity to take private property for any public purpose. Other grants of authority are specific, allowing the entity to use eminent domain only for stated purposes.

The state legislation does not stipulate or limit the parameters of public use. Since it does not designate limits, there is no reference to economic development

purposes. The extent of public use, including for economic development purposes, and the definition of blight are currently in the hands of Ohio's local authorities. Although local authorities have the right to limit the understanding of public use and can prohibit the use of eminent domain for economic development purposes, none of them do at this time.

Proposed legislation in the Ohio General Assembly would prohibit the use of eminent domain for economic development. Ohio Senate Bill 167 calls for a moratorium, until December 31, 2006, on takings through eminent domain of private property in an unblighted area when the primary purpose for the taking is economic development and where a private person or entity will ultimately own the property.

The bill also calls for the creation of a legislative task force to study eminent domain and its impact on land use planning in the state. The task force must submit to the General Assembly (by not later than April 1, 2006) a report of its findings and recommendations. At this writing, 27 out of the 33 Senators have signed on as co-sponsor for the bill. The bill is expected to pass immediately upon the return of the General Assembly on September 7th.

Bill 167 comes in response to the Supreme Court decision in the case of *Kelo v. City of New London*. The Supreme Court's 5-4 decision in *Kelo* affirms that eminent domain is an important tool for local governments in the redevelopment and revitalization of economically distressed areas. The court stated in its opinion that the pursuit of economic development is a "public use" within the meaning of the Fifth Amendment's Takings Clause. The New London economic development project at issue in the case is similar to projects across the country aimed at revitalizing aging or depressed communities.

As a result of the Kelo decision, Ohio's General Assembly is concerned that the interpretation and use of the state's eminent domain law could be expanded to allow the taking of private property that is not within a blighted area and will ultimately result in private ownership.

Congress is also offering legislation in response to the Kelo decision that would prohibit the use of federal funds for economic development projects that involve the exercise of eminent domain. Should Congress or the General Assembly act to prohibit the use of eminent domain for economic development purposes, the economies of many Congressional districts will suffer. No municipality in America could use eminent domain to carry out an economic development project. One person could veto the redevelopment of an entire distressed community. This would have the practical effect of making such projects virtually impossible.

Legislators should not preempt or displace existing state laws that govern the local application of eminent domain. The Supreme Court's decision keeps the economic health of communities in the hands of local leaders who are not out to destroy communities, but rather who work for the best interests of their communities at large. State or federal bills prohibiting the use of eminent domain for economic development are job-killing pieces of legislation.

Unduly constraining eminent domain would thwart job creation by eliminating an entire category of projects from the redevelopment toolbox of local officials. At a time when nearly every business and community within our region is being confronted with intense competition from the global economy, and areas of our cities and rural areas are in decline, Congress and the Ohio General Assembly should be expanding its efforts to solve the problems of economic deterioration, not imposing restrictions on community growth.

The use of eminent domain is never the first choice of any community. Because the process is time consuming and expensive, it is the last resort pursued during a land assembly process. Many local authorities rarely exercise their power of eminent domain, and public officials who do use eminent domain comply with existing rules protecting individual property owners, and they have accountability to the citizens and voters.

It is IEDC's understanding, based on conversations with lawyers familiar with the decision, that the Supreme Court decision did not in any way expand the power of eminent domain. Rather, the Court simply upheld the long-standing inclusion of economic development as a 'public use.' It is therefore unlikely that the Supreme Court's decision will result in city officials exercising eminent domain randomly or without balanced consideration.

There is no question that eminent domain is a power that, like any government power, must be used prudently, and there are many built in checks. One such check is the public nature of the process. Probing questions should be raised about any complex undertaking financed by taxpayers, and nothing in local government attracts more scrutiny or more criticism than eminent domain.

Like Ohio, each state legislates its use of eminent domain, and a public purpose or benefit generally needs to be clearly demonstrated. Authorities who abuse this privilege risk creating volatile political situations. Few government or elected officials are willing to risk their position and political stability in pursuit of a project overwhelmingly opposed by the community.

In another check on abuse, the Fifth Amendment requires that anyone whose property is taken for a public use be fairly compensated, and in practice, most takings are compensated generously. In case after case, the majority of property owners willingly accept just compensation for their property in support of the development projects. According to our research, some are compensated as much as 25% above market value for their property allowing them to relocate with an equal or improved quality of life.

Critics of the *Kelo* decision have said that it authorizes seizing the property of one person merely to give it to another. While it is true that once the public entity acquires title to the property, it is conveyed to a developer to carry out the project, eminent domain is part of the land assembly process for redevelopment with the intent to remove blight and/or create jobs and/or create housing. The public sector intervenes so that the private sector can bring in much needed investment in a distressed area.

Eminent domain has been used successfully in Ohio. The city of Columbus used land acquisition powers and tax increment financing to facilitate the creation of the Arena District, a 75-acre, \$500 million mixed-use development. The centerpiece of the district is Nationwide Arena, home of the NHL's Columbus Blue Jackets; a mixture of residential, retail, and office space rounds out the district. Since its creation in 2000, the Arena District, bustling with round-the-clock activity, has become the northern anchor of downtown Columbus.

The private sector, led by Nationwide Realty Investments, a diversified insurance and financial services organization based in Columbus, funded the creation of the Arena District. Nationwide agreed to finance the construction of the 18,000-plus

capacity arena north of the city's central business district, if the National Hockey League guaranteed a franchise team for Columbus.

Government agencies are not and should not be in the private real estate development business; therefore, the assembled land is typically leased or sold to the private sector for redevelopment. As a matter of policy, cities should not be in the long-discredited practice of building redevelopment projects; rather they should facilitate the use of private capital and private management to achieve the same end.

This is exactly what happened with the Arena District project. In addition to the arena, Nationwide Realty developed plans to transform the 75 acres of underutilized space surrounding the arena, consisting primarily of gravel parking lots and an abandoned state penitentiary, into a lively urban quarter. Nationwide acquired the necessary parcels, targeting a 23-acre tract of city-owned land, a six-acre parcel owned by American Electric Power, and a handful of properties owned by surface parking lot operators. When purchase agreements failed for the parking sites, the Franklin County Convention Facilities Authority used its condemnation powers to acquire the land. The authority may acquire lands intended for 'convention facilities,' even if a private party develops the facility. Following acquisition, the authority leased the land to Nationwide provided that an arena be constructed on the grounds.

Currently, the Arena District employs 3,600 people in 40 businesses. The businesses located in the Arena District include financial consultants, creative companies, law firms and legal offices, restaurants, and government offices.

Judiciously used eminent domain is critical to the economic growth and development of cities and towns throughout our country. Assembling land for redevelopment helps revitalize local economies, create much-needed jobs, and generate revenues that enable cities to provide essential services. Eminent domain is used to breathe new life and give new hope to residents by providing new jobs.

Thank you once again for the opportunity to speak to you today.