



INSTITUTE FOR JUSTICE

July 23, 2025

Joint Committee on the Judiciary
Kentucky General Assembly
Kentucky Capitol Annex, Room 149
702 Capital Ave,
Frankfort, KY, 40601

Re: Testimony before the Interim Joint Committee on the Judiciary

Chair Storm, Co-Chair Elliott, and Members of the Committee:

My name is Samuel Hooper, and I serve as Legislative Counsel at the Institute for Justice (IJ), a national nonprofit, public interest law firm dedicated to representing people whose rights are being violated by the government. Thank you for this opportunity to submit written testimony in support of strengthening protections for private property rights through meaningful eminent domain reform in the Commonwealth of Kentucky.

IJ is perhaps best known for representing the homeowner¹ in *Kelo v. City of New London*,² the now-infamous 2005 U.S. Supreme Court case in which the Court ruled, by a narrow 5-4 margin, that governments could seize perfectly habitable homes and businesses to hand over to private developers in the name of “economic development.” That decision sparked a nationwide backlash. Over 80 percent of Americans opposed it,³ and 47 states subsequently passed some form of eminent domain reform in its wake.⁴

Unfortunately, Kentucky offers some of the lowest levels of protection for property owners. Today, 20 years after *Kelo*, Kentucky law still does not provide sufficient protection for property owners against eminent domain abuse. That leaves homeowners, small business owners, churches, and farmers across the Commonwealth vulnerable to the same kind of unjust takings that devastated Susette Kelo’s neighborhood. And even states that enacted some measure of reform have not always stamped out eminent domain abuse. In many states, the reforms have been ineffectual because they allow eminent domain to be used to combat “blight,” a nebulous term that statutes too often leave undefined.⁵ As a

¹ Testimony of Ms. Susette Kelo (Sep. 20, 2005), https://www.judiciary.senate.gov/imo/media/doc/kelo_testimony_09_20_05.pdf

² *Kelo v. City of New London*, 545 U.S. 469 (2005)

³ Ilya Somin, *The political and judicial reaction to Kelo*, WASHINGTON POST (Jun. 4, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/06/04/the-political-and-judicial-reaction-to-kelo/>

⁴ Ilya Somin, *Assessing the State Reaction to the Supreme Court’s Undermining of Property Rights*, STATE COURT REPORT (Jun. 23, 2025), <https://statecourtreport.org/our-work/analysis-opinion/assessing-state-reaction-supreme-courts-undermining-property-rights>

⁵ Ashby Jones, *‘Blight’ Gunking Up Post-Kelo Eminent Domain Reforms*, WALL STREET. J. L. BLOG (Apr. 30, 2009), <http://blogs.wsj.com/law/2009/04/30/blight-getting-in-the-way-ofpost-kelo-eminant-domain-reforms/>.



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result, many municipal governments have declared certain areas to be blighted on the flimsiest of bases.

Under current Kentucky law, it is possible to take private property and transfer it to another private party merely because the new owner is expected to generate more tax revenue or economic growth. This is not a legitimate public use; it is private gain disguised as public benefit.

The Problem

Eminent domain is one of the most powerful and dangerous tools government possesses. It allows the state to seize a person's home, business, or farm, even if the owner does not want to sell, so long as it is for a "public use." But after *Kelo*, that term has been stretched to the breaking point.

Indeed, our research shows that *Kelo* opened the floodgates: The rate of eminent domain abuse tripled in the year after the decision was issued.⁶ With the high court's blessing, local government became further emboldened to take property for private development. Justice O'Connor's dissent quickly became a prophecy fulfilled: "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 center, or any farm with a factory."⁷

IJ's research has shown that eminent domain abuse disproportionately affects poor and minority communities. Local governments often designate whole neighborhoods as "blighted" based on subjective criteria and then clear them out for private development. These takings don't just strip people of their property; they uproot families, erase communities, and leave scars that can last for generations. One major study tracked down the former residents of Southwest DC who had been displaced by eminent domain, and the findings were heartbreaking. Five years after forced displacement, 25% of the former residents had yet to make a single friend in their new neighborhood.⁸

One obvious consequence of this kind of forced displacement is economic. The destruction of low-income housing increases demand in nearby areas, driving prices up. One study, for instance, found that 86% of people displaced by eminent domain end up paying more for housing after they resettle, and that median rent for them is almost double what it previously was. Many small businesses such as corner stores, restaurants, and barber shops are destroyed because it is impossible to relocate away from their historic customer base.

⁶ See Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in a Post-Kelo World* (2006), <http://ij.org/wpcontent/uploads/2015/04/floodgates-report.pdf>

⁷ 545 U.S. at 503.

⁸ See Daniel Thurst, *Where are they now?* (1966), https://openlibrary.org/books/OL5597277M/Where_are_they_now



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The Solution: Real Reform

In the wake of *Kelo*, IJ developed model legislation to end eminent domain abuses.⁹ The goal is to restore the constitutional meaning of “public use” by prohibiting takings for private development and tightening the definition of blight. We urge the Committee to consider legislation that incorporates the following key reforms:

1. **Ban takings for economic development.** No property should be condemned and handed over to a private party merely because the new owner might pay more taxes or create more jobs. That kind of taking benefits the politically powerful at the expense of the vulnerable.
2. **Close the “blight” loophole.** Many states have adopted vague, overbroad definitions of blight that let local governments condemn any property they deem “underutilized.” Real reform means defining blight objectively and requiring that any such designation be applied on a parcel-by-parcel basis – not entire neighborhoods at once.
3. **Ensure transparency and accountability.** Property owners should receive clear notice and have access to meaningful judicial review before any taking occurs. Agencies must be required to prove, with evidence, that a taking meets strict public use criteria.
4. **Enshrine protections in statute and (if possible) in the state constitution.** Strong statutory protections are vital, but constitutional reform can help safeguard property rights against future legislative erosion or judicial backsliding.

Conclusion

Eminent domain sounds like an abstract issue, but it affects real people. Real people lose the homes they love. Real people lose the businesses they count on to put food on the table. Real people lose their communities. And these forced transfers, often from the poor to the wealthy, are too often abetted and even subsidized by the government.

Using eminent domain so that another richer, better-connected person may live or work on the land you used to own tells Americans that their hopes, dreams and hard work do not matter as much as money and political influence. The use of eminent domain for private development has no place in a country built on traditions of independence, hard work, and the protection of property rights.

The twentieth anniversary of *Kelo* provides a timely opportunity for the Commonwealth of Kentucky to reaffirm the foundational principle that property rights are essential to individual liberty, community stability, and economic opportunity. Strong reforms will give Kentuckians the confidence that their homes, farms, and small businesses cannot be taken away for speculative redevelopment. By acting now, Kentucky can

⁹ Eminent Domain Act, <https://ij.org/model-legislation/model-eminant-domain-law/>



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safeguard the homes and livelihoods its citizens have built, while preserving the fabric of communities across the Commonwealth for generations to come.

Thank you for the opportunity to submit this testimony for the Committee's consideration.

Sincerely,

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