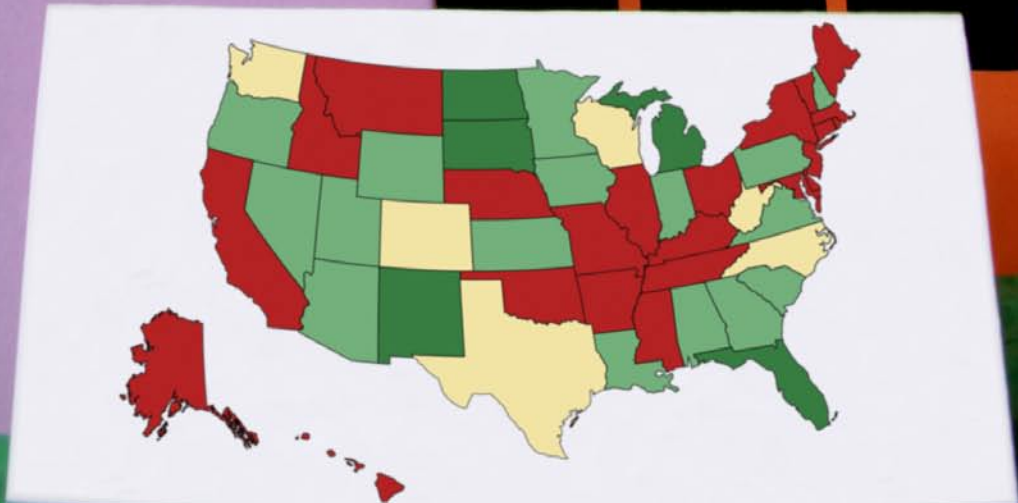
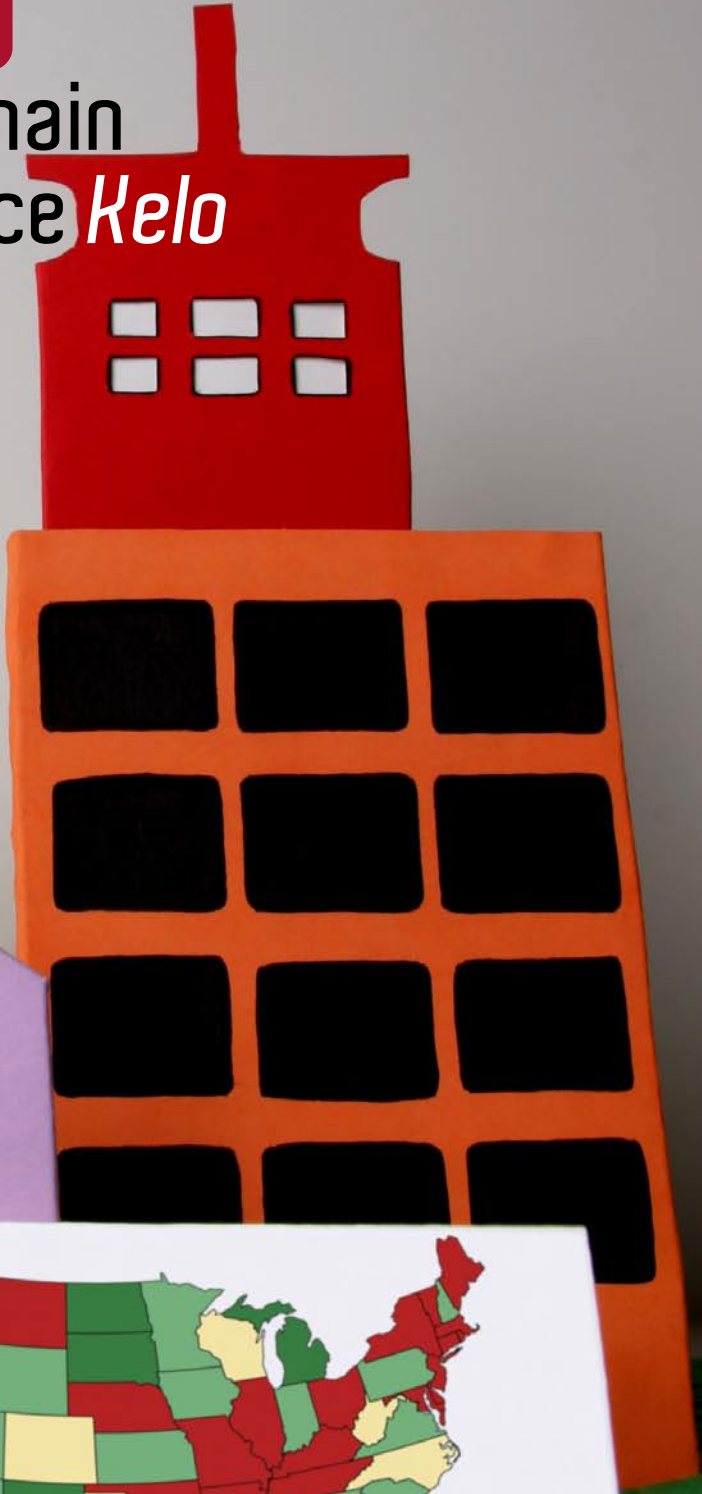


50state report card

Tracking Eminent Domain
Reform Legislation since *Kelo*



August 2007



table of contents & state grades

1	Synopsis	
5	Alabama	B+
6	Alaska	D
7	Arizona	B+
8	Arkansas	F
9	California	D-
10	Colorado	C
11	Connecticut	D
12	Delaware	D-
13	Florida	A
14	Georgia	B+
15	Hawaii	F
16	Idaho	D+
17	Illinois	D+
18	Indiana	B
19	Iowa	B-
20	Kansas	B
21	Kentucky	D+
22	Louisiana	B
23	Maine	D+
24	Maryland	D
25	Massachusetts	F
26	Michigan	A-
27	Minnesota	B-
28	Mississippi	F
29	Missouri	D

30	Montana	D
31	Nebraska	D+
32	Nevada	B+
33	New Hampshire	B+
34	New Jersey	F
35	New Mexico	A-
36	New York	F
37	North Carolina	C-
38	North Dakota	A
39	Ohio	D
40	Oklahoma	F
41	Oregon	B+
42	Pennsylvania	B-
43	Rhode Island	F
44	South Carolina	B+
45	South Dakota	A
46	Tennessee	D-
47	Texas	C-
48	Utah	B
49	Vermont	D-
50	Virginia	B+
51	Washington	C-
52	West Virginia	C-
53	Wisconsin	C+
54	Wyoming	B



50state report card

Tracking Eminent Domain
Reform Legislation since *Kelo*



In the two years since the U.S. Supreme Court's now-infamous decision in *Kelo v. City of New London*, 42 states have passed new laws aimed at curbing the abuse of eminent domain for private use.

Given that significant reform on most issues takes years to accomplish, the horrible state of most eminent domain laws, and that the defenders of eminent domain abuse—cities, developers and planners—have flexed their considerable political muscle to preserve the status quo, this is a remarkable and historic response to the most reviled Supreme Court decision of our time.

Of course, more work remains to be done, in both state legislatures and Congress, to protect homes, businesses, churches, and farms. Indeed, because some states have not passed reforms, and because many reforms are incomplete, it is important to take a step back and evaluate the work that has been done and is left to do. Some states have passed model reforms that can serve as an example for others. Some states enacted nominal reform—possibly because of haste, oversight, or compromise—and need to know what is left to fix. And finally, there are those states that have failed to act altogether, leaving home, farm, and business owners threatened by *Kelo*-type takings and beyond.

Eminent domain authority carries with it tremendous responsibility. Early in our nation's history, the U.S. Supreme Court even described it as "the despotic power." Quite simply, it is the power to remove residents from their long-time homes and to destroy small family businesses. Thus, as the Founding Fathers understood, it is a power that must be used sparingly and only for the right reasons. This understanding is reflected in the Fifth Amendment to the U.S. Constitution that states, "[N]or shall private property be taken for public use, without just compensation." Most states' constitutions have identical or similar language—language that is supposed to prevent the use of eminent domain for private benefit by restricting its exercise to only true public uses, like roads, fire stations, and schools.

For most of our nation's history, courts stayed true to the plain language and intent of the federal and state "public use" clauses, and prevented the taking of property for private benefit. However, those takings began to proliferate as public use was interpreted more broadly. The most significant

expansion of the term came with the incorporation of "blight" removal as a public use. At first, blight was used as a justification to remove properties that were real threats to public health and safety (what were historically considered public nuisances, the abatement of which was always allowed pursuant to the government's police powers). Over the past several decades, however, the definition of blight has become so expansive that tax-hungry governments now have the ability to take away perfectly fine middle- and working-class neighborhoods and give them to land-hungry private

developers who promise increased tax revenue and jobs.

Open-ended blight designations provide a way for local governments to circumvent the public use requirement. The *Kelo* decision then obliterated the federal public use requirement by equating "public use" with "private use." Under *Kelo*, local governments can condemn homes and



businesses and transfer them to new owners as long as government officials think that the new owners will produce more money with the land. As Justice O'Connor stated in her dissenting opinion, the result is that "[t]he 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."

The Supreme Court did get one thing right in *Kelo*: states are free to enact legislation that restricts the power of eminent domain. True eminent domain reform should start with states narrowing their laws' definitions of public use. State legislatures need to establish that a public use means that the government or the public at large owns, occupies, and has a definite right to use property acquired by eminent domain. The use of eminent domain to transfer private property from one party to another for "economic development" should specifically be excluded as a public use.

Ideally, state legislatures should enshrine the above definition of public use not only in their state laws, but also in their state constitutions. Eminent domain affects one of our most

fundamental rights—the right to own property. Thus, protections against its abuse should be anchored in state constitutions so that they will be secure from subsequent attempts by cities, developers, and others that benefit from eminent domain abuse to weaken them.

Of course, as noted above, blight is a device that allows local governments to abuse the power of eminent domain. Thus, any reform that fails to address the issue of blight is inadequate and leaves home and business owners at significant risk of being victims of abuse. State legislatures should either eliminate the use of eminent domain for blight or redefine the term narrowly so that it refers only to individual properties that directly threaten public health and safety. Unless open-ended definitions of blight are changed, blight designations can be applied to any neighborhood—no matter how nice—that politically connected developers desire.

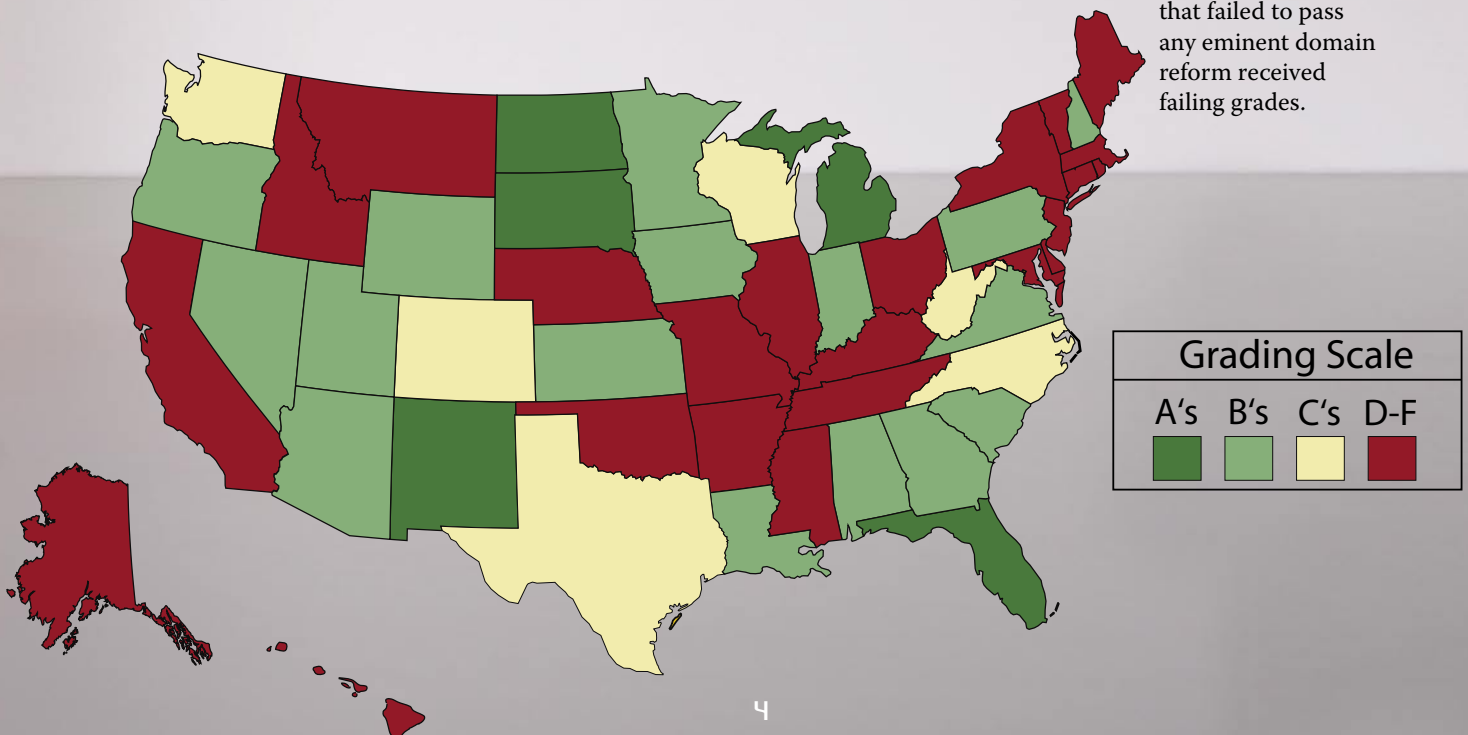
Also, since taking away someone's home or livelihood is such a severe act, when the government uses eminent domain, the burden should be on it to prove a legitimate public use. Instead

of giving deference to legislative determinations of public use, courts should make governments show that they are using eminent domain properly.

While other provisions—such as providing sufficient notice of takings—are helpful in reform legislation, the components of reform discussed above are the most important because they directly put the brakes on private-to-private transfers of property for private gain.

In this report card, we have evaluated the quality and strength of reforms that have passed in the states, both so that legislators can know what is left to do and so that citizens can find out if they are really protected from eminent domain abuse. In grading reforms in this report card, we have taken into account the criteria for good reform noted above, keeping in mind the basic question, "How hard is it now for the government to take a person's home or business and give it to someone else for private gain?" The states in which it is now impossible or extremely difficult get high marks; those in which it is easy

get low marks. States that failed to pass any eminent domain reform received failing grades.



LEGISLATION REPORT CARD

State: **Alabama** B+

- *Original bill prohibited eminent domain for private development but left open the blight loophole.*
- *The following year that loophole was closed.*

In the wake of the U.S. Supreme Court's decision in *Kelo v. City of New London*, Alabama was the very first state to react legislatively to give its citizens stronger protections against the use of eminent domain for private profit. Senate Bill 68 (2005) specified that eminent domain could not be used for "private retail, office, commercial, industrial, or residential development; or primarily for enhancement of tax revenue; or for transfer to a person, nongovernmental entity, public-private partnership, corporation, or other business entity." The language was a good start to reforming the state's eminent domain laws.

But while in one clause the law gave home and small business owners, farmers, and ranchers the substantial protection they deserve, a different clause within the same law gave rise to another threat to citizens' property rights. SB 68 prohibited cities and counties from using eminent domain for private development or for enhancing tax revenue, but it left an exception for the seizure of so-called blighted properties. This would have allowed property to be condemned under blight law if it *might* become blighted in the future, or if the property

is deemed "obsolescent"—usually a code word for "We'd like to have something else here." And if the property was condemned for blight, cities could still turn it over to private interests.

House Bill 654 was passed in 2006 to pick up where SB 68 left off, significantly closing the blight loophole by narrowing the criteria by which property could be designated as blighted. Under HB 654, blight designations must be made on a property-by-property basis, which prevents vague and abusive blight designations that cover an entire neighborhood. The criteria to determine blight now ensure that only truly unsafe or neglected properties can be acquired and then given to a private developer.

Alabama has proved to be a national leader in eminent domain reform. It is important to note, however, that statutory reforms are at risk of amendment in future legislative sessions. Alabama has excellent constitutional language prohibiting eminent domain for private use. However, the state's property owners would be best protected if its constitution also included a traditional, narrow definition of public use.

Senate Bill 68

Sponsored by: State Senator Jack Biddle
Status: Signed into law on August 3, 2005.

House Bill 654

Sponsored by: State Representative Thad McClammy
Status: Signed into law on April 25, 2006.

LEGISLATION REPORT CARD

State: **Alaska** 

- *Prohibition against using eminent domain for economic development is based on intent, not action.*
- *Blight loophole remains.*

Alaska's state constitution contains almost the same language as the U.S. Constitution's Fifth Amendment: "Private property shall not be taken or damaged for public use without just compensation." For years, that statement protected property owners. The general public understood what public use meant and no one worried that his home, business, farm, or church might one day be suddenly taken from him so that a private developer could build a mall.

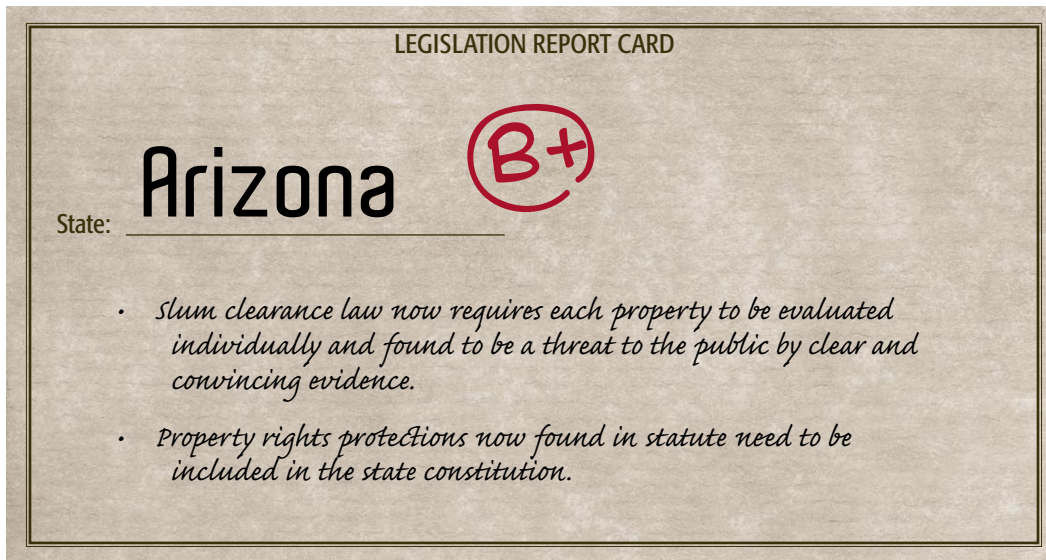
That all changed with the *Kelo* decision, as the constitutional provision that everyone trusted to protect their most fundamental of rights was suddenly ambiguous. After all, once the federal Takings Clause was interpreted to allow eminent domain abuses, Alaskans realized that their state's Takings Clause could be treated the same way. Under *Kelo*, since "public use" now also means "private use," Alaskans need more protection at the state level.

In 2006, HB 318 sailed through both legislative houses with unanimous support. The new law prohibits the use of eminent domain "to acquire private property from a private person for the purpose of transferring title to the property to another private

person for economic development purposes." Unfortunately, this language does not provide property owners solid protection. In order to prevent authorities from taking private property from one person and turning it over to another private entity, states need to ban all private-to-private transfers (with a few narrowly tailored exceptions for common carriers and the like). By focusing on the intent behind the transfer, rather than the transfer itself, Alaska's Legislature provided a ready-made excuse for authorities to say that a private transfer was not their purpose when they *originally* acquired the property.

Additionally, snowcats could still drive through the loophole of the state's blight statute. Alaska's vague definitions of "slum areas" and "blighted areas" are virtually identical to those that have been horribly exploited in many other states. As currently written, the factors to determine blight could apply to virtually any home. And since the designations are made by "area," only a few properties need to be blighted before officials can destroy an entire neighborhood.

House Bill 318
Sponsored by: State Representative Eric Croft
Status: Signed into law on July 5, 2006.



The Arizona Legislature responded to *Kelo* by passing House Bill 2675 (2006), an extremely strong piece of blight reform legislation. The bill would have required a condemning authority to prove by “clear and convincing evidence” that a property is maintained in a slum condition, and blight designations could be made only on a property-by-property basis. It also prohibited the use of eminent domain for economic development. Unfortunately, however, the governor vetoed the bill.

But the people of Arizona would not let their governor have the last word when it came to protecting their liberties. Proposition 207 was filed in response to the veto and the statutory reform was reborn through citizen initiative. The language, very similar to HB 2675, appeared on the ballot last fall and passed by a substantial margin.

The Private Property Rights Protection Act (§ 12-1136) accomplished many necessary eminent domain reforms. Most importantly, the initiative significantly limited the scope of activities that could qualify as a public use. Rather than creating an exhaustive list of approved uses, Arizona’s new definition of public use simply requires that the general public retain “possession, occupation, and enjoyment of the land.” With this approach

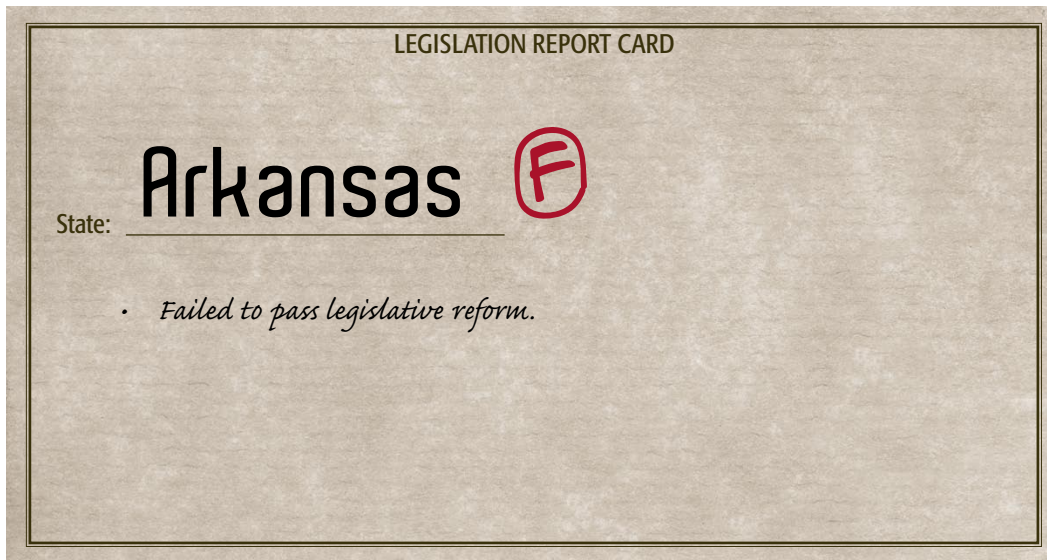
the statute encompasses the traditional uses of eminent domain, with allowances for acquisition of property to handle utilities, unsafe structures, or abandoned properties, but not for benefits from economic development. The next step is to include these protections in the state constitution.

Proposition 207 did not amend Arizona’s Slum Clearance and Redevelopment chapter, so extremely broad definitions of “blighted area” and “slum area” were not changed. But after the recent reforms, all eminent domain actions now require a judicial determination that the use is, in fact, “public.” In the case of slum clearance and redevelopment, the government must present clear and convincing evidence that each and every targeted parcel poses a direct threat to the public, such that eminent domain is necessary to eliminate the threat. With these new protections, as well as heightened compensation requirements, the citizens of Arizona have fought back against eminent domain abuse and can worry less about developers and city officials kicking them out of their homes.

Proposition 207

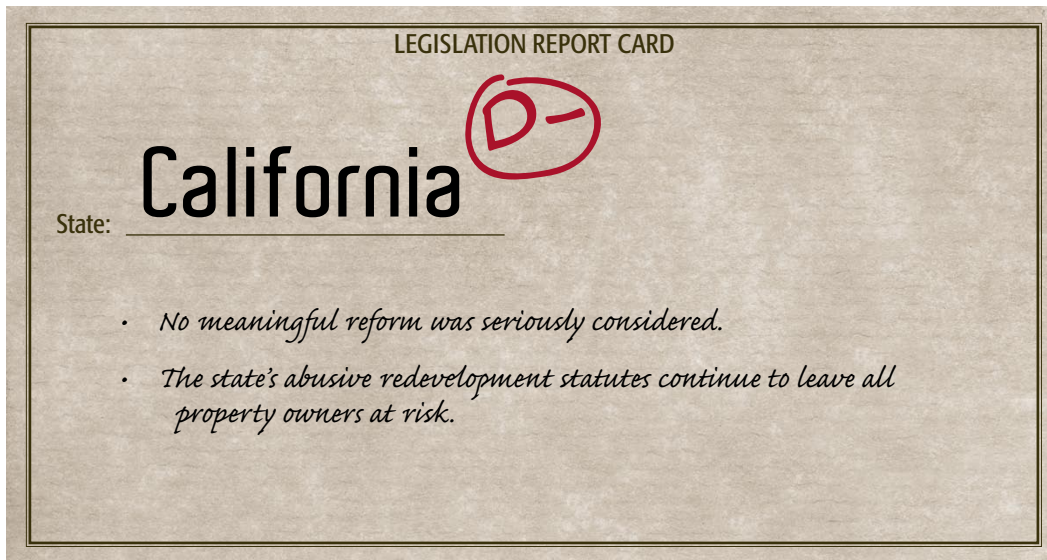
Sponsored by: citizen initiative

Status: Passed by voters on November 7, 2006.



The General Assembly was not in session in 2006. However, the state created a commission to study the use of eminent domain and ways of reining in abuse.

Unfortunately, when the legislature returned to session in 2007, it failed to pass any eminent domain reforms.



As citizens of an environmentally conscious state, Californians will be disappointed to know that the five eminent domain bills signed into law in 2006 were basically a waste of paper. In a state where *thousands* of properties have been threatened and/or condemned in the last decade, these bills scarcely hinder the rampant abuse of eminent domain.

California is the home state of Congresswoman Maxine Waters, one the champions of eminent domain reform at the federal level, yet the State Assembly dismissed more robust and permanent protections for private property rights and instead passed a package of five bills that do very little to ensure that citizens' homes and businesses are safe from tax-hungry government officials and land-hungry developers. Senate Bills 53, 1206, 1210, 1650, and 1809 create a few additional procedural hoops for condemning authorities to jump through, such as requiring more details about the proposed use of the targeted property and additional findings of blight when renewing a blight designation. These bills are mostly cosmetic and will not prevent determined

officials from taking private property for another private party's benefit.

Senate Bill 1206 came the closest to substantive reform by trying to address California's broad definition of blight, but it failed to make any significant changes. The state's redevelopment statutes still leave almost any property at risk of condemnation. If Californians' properties are truly going to be protected, the Legislature must ensure that properties may be taken only if they are an immediate threat to public health and safety, and that this assessment must be made on a property-by-property basis.

In November 2006, Californians considered Proposition 90, a ballot initiative that, if passed, would have addressed property rights protections in the state constitution. Unfortunately, even that proposed amendment lacked the strong public use language necessary to ensure the security of homes, businesses, farms, and houses of worship. Probably because of a highly controversial provision on regulatory takings, the measure narrowly failed.

Senate Bills 53, 1206, and 1650
Sponsored by: State Senator Christine Kehoe

Senate Bill 1210
Sponsored by: State Senator Tom Torlakson

Senate Bill 1809
Sponsored by: State Senator Michael Machado
Status: All signed into law on September 29, 2006.



Even before the Supreme Court handed down its decision in *Kelo*, Colorado municipalities had an unfortunate history of abusing eminent domain for the benefit of wealthy private developers. In 2006, the Colorado General Assembly improved the state's eminent domain laws by passing House Bill 1411, which amended the public use definition to “not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenue” and stated that “Private property may otherwise be taken solely for the purpose of furthering a public use.”

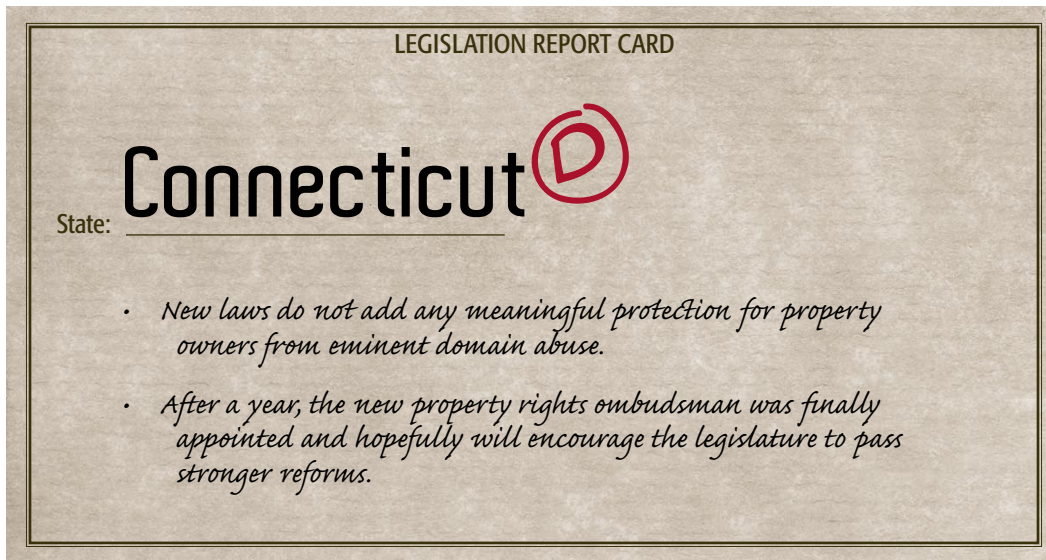
While it was definitely a step in the right direction, HB 1411 left some room for improvement. The new law allows municipalities to continue using eminent domain to seize so-called blighted properties, and the state's definition of blight is sufficiently vague to allow for considerable abuse. The good news is that in HB 1411, the legislature did take measures to tighten the blight loophole by requiring government officials to prove by clear and convincing evidence that “the taking

of the property is necessary for the eradication of blight.”

The General Assembly missed a golden opportunity, in that same session, when it considered but did not pass an amendment to the state constitution that would have prohibited the condemnation of private property for economic development. While the statutory protections it did eventually adopt will, for the time being, provide some increased protections from the government condemning people's homes, businesses, farms, and places of worship—unless condemnors convince a court that the property is in fact blighted—those protections may eventually be stripped away if the public fails to guard carefully against those who can find personal gain through the abuse of eminent domain. Hopefully the legislature will revisit the possibility of a constitutional amendment and Coloradans will have the chance to provide themselves with the most enduring type of protections for their fundamental right to keep what they properly own.

House Bill 1411

Sponsored by: State Representative Al White
Status: Signed into law on June 6, 2006.



Even though Connecticut is the state that gave us the *Kelo* case, the General Assembly was the 42nd state to pass eminent domain reform—and the legislation was not worth the wait.

In 2006 the legislature managed to pass a bill that merely creates a property rights ombudsman, and then failed to fill the position for a year. At the end of the 2007 session, the General Assembly passed Senate Bill 167 with nearly unanimous support. The bill was easy to agree on because it does almost nothing to curb eminent domain abuse in Connecticut. The bill purports to stop condemnations “primarily” for increased tax revenue and requires municipalities to pass approval by a “super-majority.”

Unfortunately, SB 167 offers no substantive property rights protections because when cities are determined to see a project approved, they can easily assert an alternative “primary purpose” for a condemnation and are usually of one mind when it comes to voting. Without stronger eminent domain reform, Connecticut continues to have some of the most broad and easily abused eminent domain laws in the nation.

Senate Bill 167

Sponsored by: State Senate Judiciary Committee

Status: Signed into law on June 25, 2007.



Delaware created a state commission to study the use of eminent domain and ways of reining in abuse, but the bill passed by the General Assembly and signed by the governor could hardly be considered substantive reform. Senate Bill 217 (2005) does no more than require that cities have a plan when condemning property and that the condemnations are for a “recognized public use as described at least six months in advance of the institution of condemnation proceedings.” The bill also changed the party that determines compensation for successful condemnation challenges from the condemning agency to the courts.

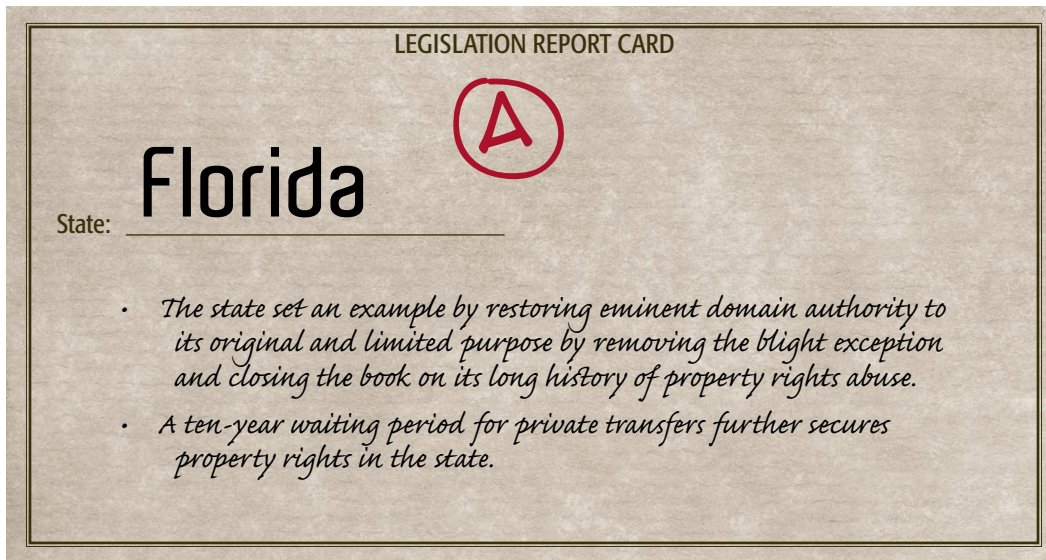
Although a condemning authority must declare its intended use for a property in advance of the condemnation, and is then limited to that specific use for the property, Delaware provides a sizeable catalog of public use options to pick from. The term is not clearly defined in state statutes and courts have elected

to open-ended interpretations. In the wake of *Kelo*, Delaware’s laws could easily accommodate the use of eminent domain for private economic development. Until the legislature enacts substantive reform aimed at instituting a limited definition of public use and forbidding condemnations for private use, Delaware home and business owners will remain very much at risk for eminent domain abuse.

Senate Bill 217

Sponsored by: State Senator Robert Venables

Status: Signed into law on July 21, 2005.



In 2006, the Florida Legislature proved that it understood the public outcry caused by the Supreme Court's abandonment of property rights. Florida created a legislative commission to study the use of eminent domain and ways of reining in abuse, then passed House Bill 1567 with an overwhelming majority. The new law signed by the governor requires localities to wait 10 years before transferring land taken by eminent domain from one owner to another—effectively eliminating condemnations for private commercial development. HB 1567 also forbids the use of eminent domain to eliminate so-called blight, instead requiring municipalities to use their police powers to address individual properties that actually pose a danger to public health or safety.

Not content with mere statutory protections, the Florida Legislature also put a constitutional amendment on the November ballot so that the state's citizens could make sure that these reforms could not easily be stripped away. The new amendment, which was approved in a landslide, requires a three-fifths majority in both legislative houses to grant

exceptions to the state's prohibition against using eminent domain for private use.

Thanks to these sweeping reforms, Florida has gone from being among the worst eminent domain abuse offenders to offering some of the best protection in the nation for homes, businesses, and houses of worship that formerly could have been condemned for private development. HB 1567 and Florida's new constitutional amendment should be models for other state legislatures. They prohibit takings for private benefit while still allowing the government to condemn property for traditional public uses such as roads, bridges, and government buildings.

House Bill 1567

Sponsored by: State Representative Marco Rubio
Status: Signed into law on May 11, 2006.

House Joint Resolution 1569

Sponsored by: State Representative Marco Rubio
Status: Passed by the legislature on May 4, 2006.
Approved by voters on November 7, 2006.

LEGISLATION REPORT CARD

State: **Georgia** **(B+)**

- *sufficiently narrows the definition of blight to apply to only unsafe property, parcel-by-parcel.*
- *Redevelopment projects must now be voted on by an elected body.*

Georgia is another state in which 2006 will be remembered as a banner year for the protection of private property rights. The Georgia General Assembly not only heeded citizens' calls for reform by passing important statutory reforms about the way that eminent domain may be used, but it also gave voters the opportunity to adopt a constitutional amendment requiring a vote by elected officials to precede the use of eminent domain for redevelopment.

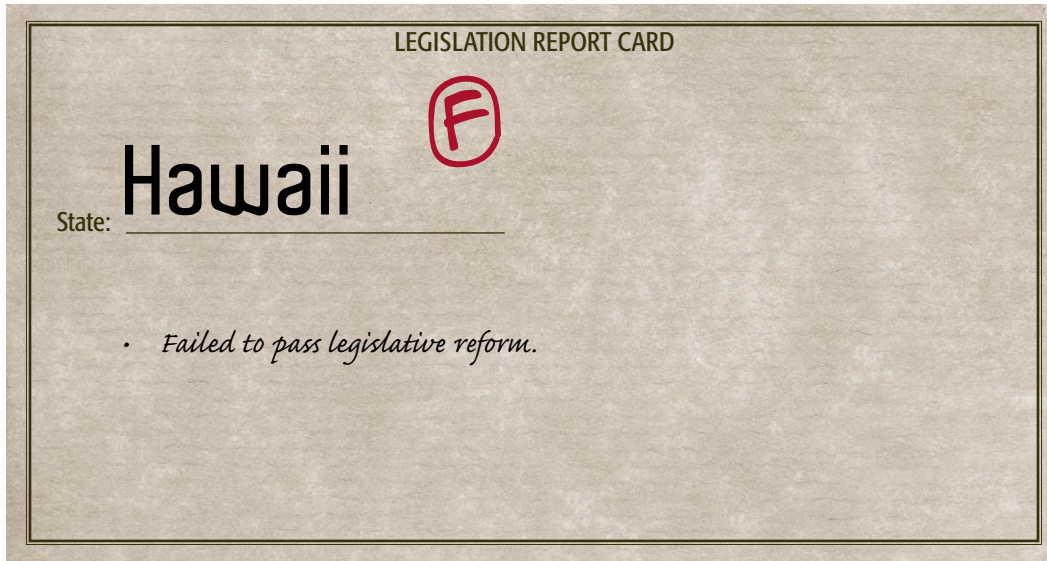
House Bill 1313 (2006) counters the *Kelo* decision by providing that economic development is not a public use that justifies the use of eminent domain. Just as importantly, the bill significantly tightens the definition of blight in Georgia's eminent domain laws. Now property can only be designated blighted if it meets two of six objective factors and "is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property." The bill also requires government officials to evaluate blight on a parcel-by-parcel basis in order for the properties to be subject to condemnation for private development. No longer can entire areas be

threatened with the wrecking ball based on the dilapidation of a few properties; now home and business owners can protect themselves by keeping their buildings well-maintained. The new law emphasizes, "Property shall not be deemed blighted because of esthetic conditions," and the government is given the burden of showing that a piece of property meets the criteria for blight. These changes go a tremendous way to protecting the freedoms of Georgia's citizens.

House Resolution 1306 (2006) became a constitutional amendment that was approved by nearly 85 percent of the voters. Unfortunately, the constitutional amendment was only a minor procedural requirement that before eminent domain can be used for redevelopment, it must be voted on by elected officials. (In most cases of eminent domain abuse, elected officials vote; the point of constitutional protections is to prevent citizens' rights from being voted away.) While any constitutional amendments strengthening property rights are good, Georgians would be better off if some of the strong reforms of HB 1313 made it into the state constitution.

House Resolution 1306
Sponsored by: State Representative Jeff May
Status: Passed by the legislature on April 4, 2006.
Approved by voters on November 7, 2006.


House Bill 1313
Sponsored by: State Representative Rich Golick
Status: Signed into law on April 4, 2006.



Hawaii produced a key court case in the history of eminent domain authority expansion and abuse. In *Hawaii Housing Authority v. Midkiff*, the U.S. Supreme Court upheld an expansive definition of the “public use” provision, essentially reading the public use provision to mean “public purpose,” as defined by the State Legislature.

Many bills were filed that attempted to address *Kelo*-style takings. Unfortunately, Hawaii missed the chance to be a national leader in restricting eminent domain abuse and the Legislature still needs to pass reform.

LEGISLATION REPORT CARD

State: **Idaho** 

- *The state constitution has an extremely weak definition of public use and the courts have made it even worse.*
- *Any reform in the legislation was voided by its exemption for “public and private uses ... provided in the constitution.”*

Unlike many states, Idaho has relatively weak constitutional language regarding the property rights guaranteed its citizens. While the Idaho Constitution does require that condemned property be taken for a public use, it also says “any ... use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use.” To the detriment of property owners in the state, the Idaho Supreme Court has further weakened property rights by adopting an interpretation of public use that is not tied to—and therefore not restrained by—any traditional understanding.

In 2006, the Idaho Legislature passed House Bill 555, which ostensibly adds to the state’s existing law by providing limitations on eminent domain for private parties, urban renewal, or economic development


purposes. Unfortunately, the Legislature left several loopholes, including one that allows condemnations for “those public and private uses for which eminent domain is expressly provided in the constitution of the State of Idaho.” Thanks to the aforementioned broad language of the Idaho Constitution and its interpretation by the state supreme court, the door to eminent domain abuse remains wide open.

In the November 2006 election, the state had a citizen initiative, Proposition 2, on the ballot that contained the same meager reforms contained in HB 555, but with the added (and very controversial) element that would have limited regulatory takings. In the absence of meaningful protection against eminent domain abuse and with the added confusion of the regulatory takings measure, the amendment failed to pass.

House Bill 555

Sponsored by: House Committee on State Affairs
Status: Signed into law on March 21, 2006.

LEGISLATION REPORT CARD

State: **Illinois** 

- *The state failed to close its blight loophole by continuing to allow blight designations by area using extremely vague factors.*
- *Agricultural land was protected from private development, but other properties remain at risk.*

Illinois presents another example of eminent domain reform that sounds more impressive than it really is. The Illinois General Assembly passed Senate Bill 3086 (2006), which purportedly limits the taking of private property for private development. This might be technically true, as the new law generally does prohibit government officials from condemning property for private development. But the legislature built in exceptions that significantly undermine the good that the bill otherwise might have done. The new law still allows the use of eminent domain to acquire property in a so-called blighted area. While at least five factors must be present for an area to qualify as blighted, the vague and illogical list of factors for a blighted area represent some of the worst examples in law, including “obsolescence,” “excessive vacancies,” “excessive land coverage,” “deleterious layout,” and “lack of community planning.” The bill also still allows

condemnations for private development, as long as economic development is a “secondary purpose” to the primary purpose of urban renewal “to eliminate an existing affirmative harm on society from slums to protect public health and safety.”

Since the state’s statutes still allow entire areas to be designated blighted on account of a few properties, the threat of eminent domain abuse still looms large in Illinois. SB 3086 did improve the situation by prohibiting the seizure of “production agriculture” for private development and by requiring the government to prove that an area is blighted before a condemnation can proceed. But unless citizens convince the General Assembly to create a tighter definition of blight and to assess properties on a parcel-by-parcel basis, Illinois will not avoid eminent domain abuse similar to that evidenced in *Kelo*.

Senate Bill 3086
Sponsored by: State Senator Susan Garrett
Status: Signed into law on July 28, 2006.

LEGISLATION REPORT CARD

State: **Indiana** 

- *The legislation strengthened the definition of public use and the criteria for condemnations.*
- *Unfortunately, an exception for certified technology parks means economic development is still prioritized over property rights.*

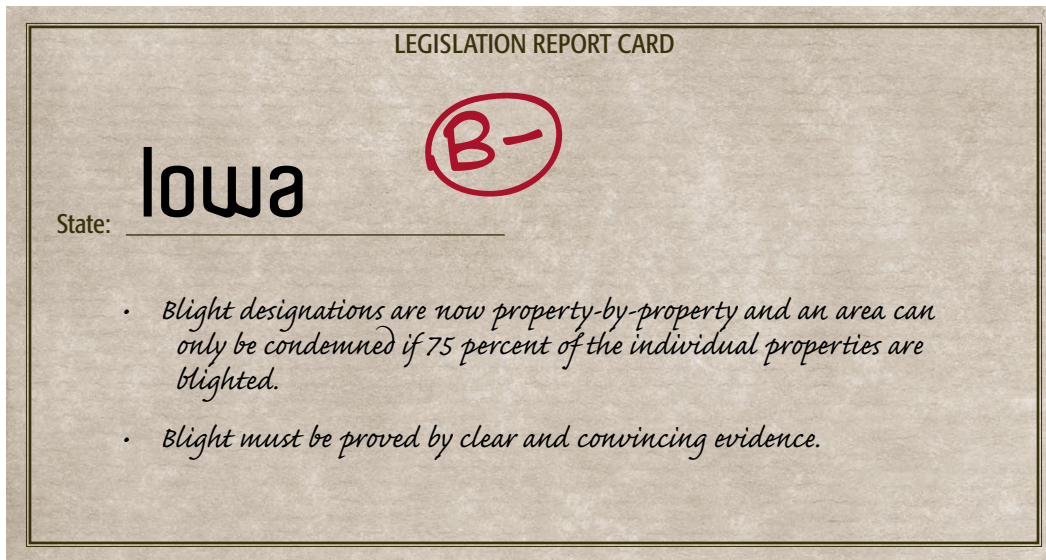
In an effort to make sure that Indiana's citizens would not have to fear the same kind of eminent domain abuse perpetrated in New London, Connecticut, the Indiana General Assembly acted quickly to create a state commission to study the use of eminent domain and ways of eliminating abuse. When all was said and done, the Legislature adopted House Bill 1010 (2006), which provides meaningful protection against abuse. Thanks to these concerted efforts, Indiana's reforms now provide lawmakers nationwide an example of the kind of common sense reform that can and should happen throughout the country.

House Bill 1010, which sailed through both legislative houses with overwhelming support, redefines public use and provides objective criteria for the acquisition of property in most situations. These steps are vitally important, because most abuses of eminent domain are enabled by standards for public use and blight that leave local governments ample room to craft their own definitions, which many courts

have been hesitant to overrule. By clearly stating when eminent domain may and may not be used, the Indiana General Assembly has given the state's property owners a significant measure of security against the unholy alliance of tax-hungry municipalities and land-hungry developers.

While this bill goes a long way toward preventing eminent domain abuse, there is still some room for improvement. Importantly, the legislature allowed an exception for certified technology parks, meaning that there are still ways for the state legally to take private property for another private party's benefit. This is a loophole that should be closed. And, as always, it is important to remember that statutory protections are not as permanent as constitutional ones. If Indiana is serious about forever guarding the fundamental rights of its citizens, the General Assembly should introduce a constitutional amendment to restrict any future legislature from changing the protections in this bill.

House Bill 1010
Sponsored by: State Representative David Wolkins
Status: Signed into law on March 24, 2006.



Even in the wake of the most reviled Supreme Court decision in decades, reform is not always an easy task. Iowa deserves special credit for the perseverance it showed in trying to impose restrictions on eminent domain abuse.

Convinced that it had an obligation to show greater respect for Iowans' constitutional rights, the Iowa General Assembly passed House File 2351 (2006) by a vote of 89-5 in the House and 43-6 in the Senate. The bill made it more difficult for government officials to label properties "blighted," and thereby to pursue eminent domain projects that would benefit private developers. Incredibly, Iowa's governor vetoed the bill, claiming that it provided too much protection for individuals' rights. Rather than agreeing to the governor's watered-down version of the bill, the General Assembly met in a special session and overrode the veto with a 90-8 vote in the House and a 41-8 vote in the Senate, thus securing important reforms to protect the state's citizens from eminent domain abuse. It was the first vote in Iowa to override a governor's veto since John F. Kennedy was in the

White House.

While not perfect, HF 2351 represents an important improvement in Iowa's protection of property rights. The new law changes how blight designations are used and requires a property-by-property assessment. Only when 75 percent of the properties in an Urban Renewal Project are blighted can the remaining non-blighted property be condemned. The new law also requires the government to prove blight by clear and convincing evidence, a significant shift away from the unthinking deference that has so long marked courts' consideration of blight designations by municipalities.

The Iowa General Assembly has shown its willingness to pursue these important reforms, even when opposed by the governor. Future legislative sessions must see these efforts continue so that Iowans may enjoy even more meaningful safeguards for their property rights.

House File 2351

Sponsored by: State Senator Bob Brunckhorst

Status: Governor's veto overridden on July 14, 2006.

LEGISLATION REPORT CARD

State: **Kansas** ⓑ

- *Condemned property cannot be transferred to a private entity except in very limited circumstances.*
- *Unfortunately, the prohibition against takings for economic development can be ignored as long as the Legislature expressly authorizes a project.*

Kansas is another example of a state that made great strides in 2006 to prevent further abuses of eminent domain for private benefit. Kansas' governor signed into law Senate Bill 323, which prohibits property from being acquired and transferred from one private owner to another except in certain very narrow circumstances, such as for utilities or in instances where the property has defective title or is objectively unsafe. According to the terms of the statute, blight designations may only be used for unsafe property and must be made on parcel-by-parcel basis.

The reforms were desperately needed in Kansas, where eminent domain had repeatedly been used for private benefit. These shady deals were also justified by the state's courts, creating

a persistent climate of abuse in the state. Now, under the new law, local governments face severe restrictions on their ability to take homes and businesses for the benefit of a private developer.

One area that will need to be addressed in future legislative sessions is a loophole that allows the use of eminent domain for economic development as long as the Legislature itself expressly authorizes the taking. The Kansas Legislature should have this exception removed before it is tempted to put it to use. Once it has done so, the state can stand as a proud example to the rest of the country.

Senate Bill 323
Sponsored by: State Senator Derek Schmidt
Status: Signed into law on May 18, 2006.

LEGISLATION REPORT CARD

State: **Kentucky** 

- *The state failed to pass any meaningful reform, leaving entire neighborhoods at risk of blight designation and condemnation.*
- *The state needs a clear definition of “public use” and extreme restraint, if not revocation, of condemnation authority based on “blight.”*

In 2006, Kentucky’s Legislature did pass a bill that modified the state’s eminent domain laws, but those changes did not fix even the most basic problems with its laws. Even after adopting House Bill 508, Kentucky still allows non-blighted property to be condemned even if the state does not intend to own or occupy the property, and its statutory language could even allow condemned property to be handed over to other private parties. In addition, Kentucky’s eminent domain laws leave in place the common blight loophole that, due to an extremely broad definition of what can be considered blighted or “slum” areas, could permit the taking of entire neighborhoods of well-maintained homes.

Without further reforms, Kentuckians


will continue to live under the threat that their homes, businesses, farms, and houses of worship could be taken for someone else’s private gain. The Legislature should more carefully hone the definition of public use to only include traditional public uses, close the blight loophole by adopting narrow and objective standards based on threats to the health and safety of the community, require blight to be assessed on a parcel-by-parcel basis, and adopt a constitutional amendment that defines public use and prohibits the use of eminent domain to transfer property from one private person to another.

House Bill 508

Sponsored by: State Representative Rob Wilkey

Status: Signed into law on March 28, 2006.

LEGISLATION REPORT CARD



State: Louisiana

- *Each piece of property must be a threat to public health and safety to be condemned for blight.*
- *Condemnations for industrial parks and port facilities are forbidden on residential property.*

In the midst of a heart-breaking year, Louisiana's citizens were more aware than ever of the fundamental importance of having homes, businesses, and houses of worship that cannot be taken away at the whim of a government official. Even as rumors swirled around the state that large sections of New Orleans and the surrounding areas might be taken away from their rightful owners because of the devastation caused by Hurricanes Katrina and Rita, the people of the state voted to make sure that the government had clear limits on how it could use eminent domain in the wake of the storms.

Senate Bill No. 1, ratified by Louisiana's voters on September 30, 2006, amended the state constitution to specifically prohibit the taking of private property for a private use. Under the amendment's terms—and with a few notable exceptions—localities are prohibited from condemning private property merely to generate taxes or jobs. Instead, the state's blight laws must now ensure that eminent domain can only be used for the removal of a threat to public health and safety caused by a particular property. All economic development and urban renewal laws currently on the Louisiana books

must conform to the limitations imposed by SB 1. The new amendment does not address the power of municipalities to use eminent domain for the benefit of industrial parks since that is specifically permitted in another provision of the Louisiana Constitution. It does, however, provide that a person's home cannot be taken for an industrial park or even for a public port facility.


House Bill 707 provides a "right of first refusal," requiring the government to offer any condemned property it no longer needs back to the original owner before selling it to any other private party.

The protections adopted in Louisiana's amendments are absolutely vital to ensure that citizens who are still trying to rebuild the homes, businesses, and communities shattered by the hurricanes will not have to face the additional trauma of losing those uniquely important places that they can call their own. As long as it is not a threat to the public health and safety, property is protected by the Louisiana Constitution from the greedy ambitions of those developers whose vision of New Orleans doesn't include its long-time residents.

House Bill 707 (Constitutional Amendment No. 6)
Sponsored by: State Representative Rick Farrar
Status: Passed by the legislature on June 19, 2006.
Approved by voters on September 30, 2006.

Senate Bill 1 (Constitutional Amendment No. 5)
Sponsored by: State Senator Joe McPherson
Status: Passed by the legislature on May 31, 2006.
Approved by voters on September 30, 2006.

LEGISLATION REPORT CARD

State: **Maine** 

- *Primary purpose and intent language mean the reforms to the public use definition offer no real additional protection for property owners.*
- *Additionally, “blight” continues to be a recognized public use and the state urban renewal laws’ broad language continues to leave the door wide open for abuse.*

The state of Maine edged toward providing stronger protections for its citizens’ property rights by passing Legislative Document 1870, which says that it is not a public use to condemn property “for the purposes of private retail, office, commercial, industrial or residential development.” The bill also specifies that eminent domain may not be used “primarily for the enhancement of tax revenue” or to “transfer to a person, nongovernmental entity, public-private partnership, corporation or other business entity.”

The use of qualifiers such as “primarily” means that the statute will be easy to circumvent, since local governments can assert some other primary purpose for private-to-private takings. Even worse, Maine’s new law also includes gaping exceptions for the acquisition of so-called “blighted” properties pursuant to the state’s ubiquitously broad urban renewal laws. Despite the state’s new, limited

definition of public use, the urban renewal laws, as currently written, allow perfectly fine properties to be designated as “blighted,” condemned, and handed over to private developers. It is particularly important that these problems be addressed in a traditional vacation destination like Maine, as recent trends have seen commercial developers cutting deals with local governments to wipe out poorer, older neighborhoods and replace them with projects that cater to the wealthy. Thus, the Legislature needs to change the definition of blight to ensure that properties are evaluated on a parcel-by-parcel basis and subject to condemnation only if they are a real threat to the health and safety of the community. Until the Legislature acts to close these loopholes, the state’s eminent domain laws will continue to allow local governments to condemn homes, businesses, and places of worship for private profit.

Legislative Document 1870
Sponsored by: State Representative Deborah Pelletier-Simpson
Status: Signed into law on April 13, 2006.

LEGISLATION REPORT CARD

State: **Maryland** 

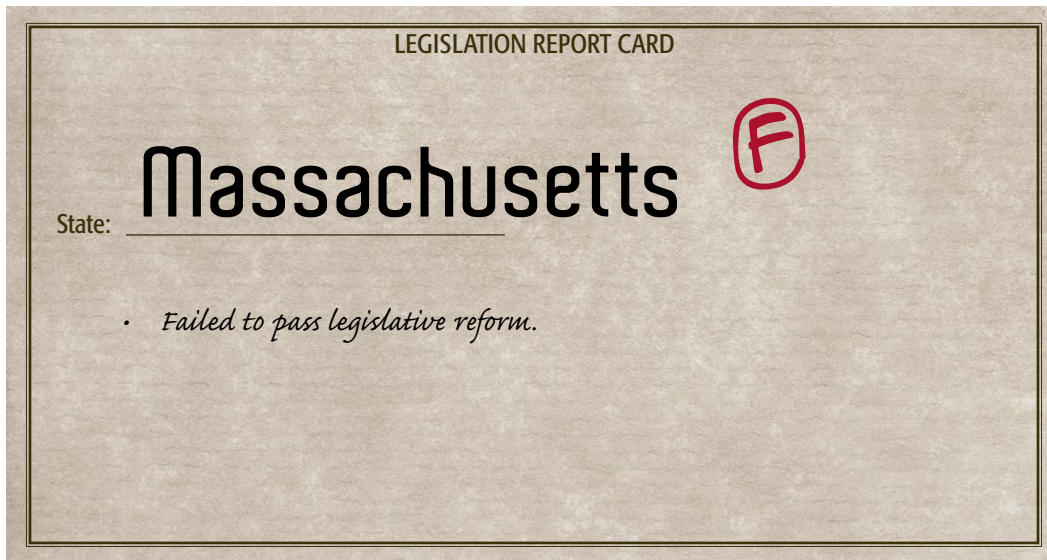
- *Condemnation authorization expires after four years.*
- *Increased compensation provisions.*

Maryland legislators filed more than 40 bills addressing eminent domain during the 2006 session. Legislation banning the use of eminent domain for economic development reached the floors of both chambers. However, when property rights advocates attempted to amend the bills to create legislation that offered real reform, the measures stalled and the General Assembly adjourned without passing any eminent domain reform.

In 2007, very few bills addressed eminent domain reform, and even fewer received a committee hearing. The only bill that passed was Senate Bill 3, which requires condemners to proceed within four years of authorization or the authorization expires. Additionally, the bill raises caps on various compensation arrangements.

An expiration on condemnation authorizations may reduce speculative and unnecessary condemnations, as well as help property owners avoid years of uncertainty surrounding a proposed project. However, Maryland needs much tougher reform, including stronger property rights protections in the state constitution.

Senate Bill 3
Sponsored by: State Senator James DeGrange
Status: Signed into law on May 8, 2007.



The Massachusetts General Court has seen a number of bills filed addressing eminent domain abuse and responding to the *Kelo* decision. Unfortunately, legislators filed relatively ineffectual legislation. Eminent domain abuse continues throughout the state, and although home rule allows local municipalities to pass their own eminent domain protections, the legislature must pass eminent domain reform to ensure uniform protection for home and business owners.

LEGISLATION REPORT CARD

(A-)

State: Michigan

- *A new, strong constitutional amendment fortifies good, recent caselaw and means property rights are safer than they have been in decades.*
- *Blight must now be proved on an individual property basis.*

Michigan is an example of a state that was not content to rest on its laurels. Just three years ago the Michigan Supreme Court set the standard for the rest of the country by emphatically rejecting the idea (which, ironically, the same court had championed in its earlier *Poletown* decision) that private commercial development is a constitutionally permissible justification for taking one private person's property and transferring it to another private party. In the wake of *Kelo*, however, the Michigan Legislature determined to act decisively to ensure that Michiganders would not have to worry about their rights.

The result of the Legislature's efforts was Senate Joint Resolution E, an amendment to the state constitution that prohibits "the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues." Moreover, the amendment changed so-called blight law within the state, requiring blight to be determined on a parcel-by-parcel basis and requiring the government to prove by "clear and convincing evidence" that a property's condition satisfies the definition of blight established by law. These were

Senate Joint Resolution E
Sponsored by: State Senator Tony Stamas
Status: Passed by the legislature on December 13, 2005.
Approved by voters on November 7, 2006.

House Bills 5818, 5819, and 5060
Sponsored by: State Representatives Steve Tobocman, Leon Drolet, John Garfield, and Glenn Steil
Status: All signed into law on September 20, 2006.

significant, important changes to the existing laws in Michigan.

The resolution passed the House by a vote of 106-0 and the Senate by 31-6. After being signed by the governor, the constitutional amendment was placed on the ballot for the November 2006 election, where more than 80 percent of Michigan voters approved the amendment.

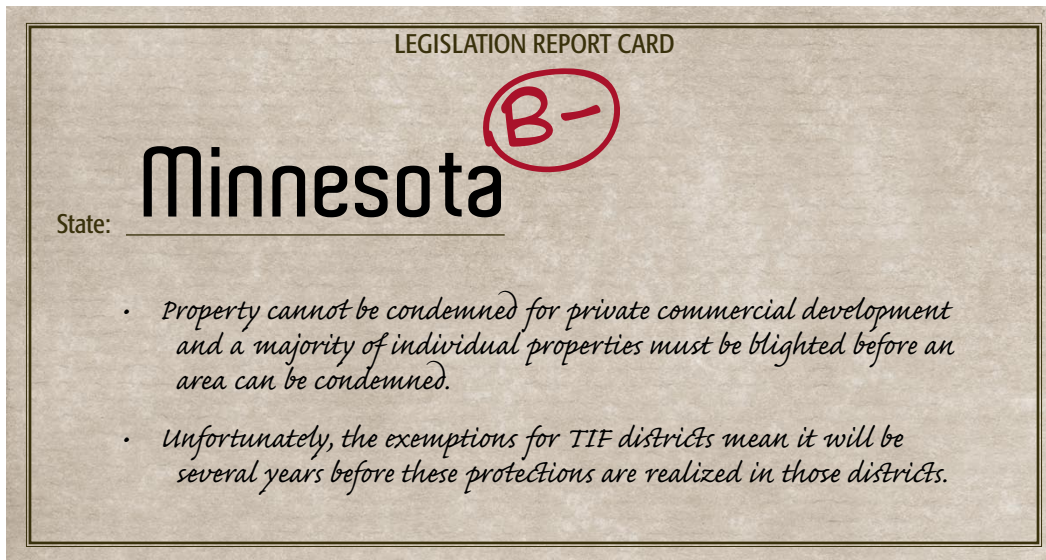
In addition to the constitutional amendment, Michigan's Legislature also adopted a number of bills that address condemnation procedure and compensation. House Bills 5817, 5818, and 5819 raised the cap on state-provided moving expenses for individuals (but not businesses), allowed low-income individuals to recover attorney's fees following an unsuccessful condemnation challenge, and outlined the process of surrendering property. House Bills 5820 and 5821 outlined procedures for determining and delivering compensation.

Finally, House Bill 5060 and companion Senate Bill 693 mirrored the language of the proposed constitutional amendment by altering the definition of public use to exclude economic development.

House Bills 5820 and 5821
Sponsored by: State Representatives LaMar Lemmons III and Bill McConico
Status: Both signed into law on October 3, 2006.

Senate Bill 693
Sponsored by: State Senator Cameron Brown
Status: Signed into law on September 20, 2006.

House Bills 6638 and 6639
Sponsored by: State Representatives Lamar Lemmons III, Steve Tobocman, and Leon Drolet
Status: Both signed into law on January 8, 2007.



In response to the U.S. Supreme Court's decision in *Kelo v. City of New London*, an amazing and diverse coalition of civil rights groups, religious leaders, trade associations, concerned citizens, and officials from Minnesota's major political parties worked together to reform the state's eminent domain laws. The coalition included representatives from the Institute for Justice, NAACP, Urban League, Hispanic Chamber of Commerce, Hmong Chamber of Commerce, Farmers Union, Farm Bureau, Teamsters, Minnesota Family Council, Minnesota Automobile Dealers Association, National Federation of Independent Business, other trade associations, ministers from local black churches, former Independent Party gubernatorial candidate Tim Penny, and individuals who had been threatened with takings of their property.

Bipartisan legislative reform was introduced in the first week of the legislative session and on May 19, 2006, the governor signed into law Senate File 2750, legislation that

protects homes, farms, and small businesses from eminent domain abuse. The law explicitly prohibits municipalities from using eminent domain to transfer property from one owner to another for private commercial development. It also requires that blighted properties be an actual danger to public health and safety to be condemned for private development. Non-blighted properties can be condemned only if they are in an area where the majority of properties are blighted and there is no feasible alternative to taking them to remediate the blighted properties.

Unfortunately, SF 2750 exempts more than 2,000 Tax Increment Financing districts, many of which are in the Twin Cities, for up to five years. It also includes exemptions for projects in Richfield and Minneapolis. While the end result is very strong reform that provides Minnesotans with significant protections, if the bill had passed without exemptions the State Legislature could have boasted enacting one of the strongest reforms in the country.

Senate File 2750 (House File 2846)
Sponsored by: State Senator Thomas Bakk
Status: Signed into law on May 19, 2006.



The 2006 legislative session saw two strong bills in the constitutional amendment of House Resolution 10 and the statutory reform of House Bill 100. Unfortunately, the bills were gutted through the committee process and during debate, resulting in bills not worth passing.

The legislature made even less progress in the 2007 session.

LEGISLATION REPORT CARD

State: Missouri



- *Prohibiting takings “solely” for economic development and failing to reform grossly abused blight statutes means property rights remain at risk.*
- *Only agricultural land is exempted from “blight” condemnations.*

Particularly after the Supreme Court’s decision in *Kelo*, Missouri is a state sorely in need of eminent domain reform. For years redevelopment agencies throughout the state have used bogus blight designations to acquire private property for private development. The General Assembly had the opportunity to dramatically improve its eminent domain laws, but let its citizens down by failing to adopt real, substantial reforms.

The state government did adopt House Bill 1944 (2006), which changes the law in several ways. The new law does specify that property cannot be condemned “solely” for economic development and it ends the prior practice of letting private developers initiate condemnations on their own behalf, but it continues to allow government agencies to take private property for the use of other private parties for any other justification, no matter how small or irrelevant. Conveniently for tax-hungry local governments and land-hungry developers, the law continues to let cities condemn whole neighborhoods as “blighted” based on vague, subjective factors such as “inadequate street layout,” “unsafe conditions,” and “obsolete platting.” While it is a marginal improvement that such blight designations must now occur on a property-by-property basis—at least until a

preponderance of the properties are blighted—the operational definition is so broad that any community could be at risk, no matter how well maintained. The new law says that blighted areas must be condemned within five years of their designations or else a new designation will be required, and farm land is specifically exempted from being declared blighted. HB 1944 also establishes an Office of Ombudsman in the Office of Public Counsel within the Department of Economic Development, which will ostensibly serve to assist property owners that are under threat of eminent domain.

When all of these minor changes are taken into account, however, the end result is not much different from the starting point. Almost every home, business, and house of worship in Missouri may still be taken by any municipality or government agency with a little patience, ingenuity, and a wealthy developer to provide the financial incentive. Citizens will only have meaningful protection against eminent domain abuse when blight can only be used to describe property that is an actual danger to public health or safety, and that means the state needs to amend the state constitution to remove Art. VI, Sec. 21, which currently allows condemnation of blighted areas.

House Bill 1944

Sponsored by: State Representative Steve Hobbs

Status: Signed into law on July 13, 2006.

LEGISLATION REPORT CARD

State: **Montana** 

- *Broad public use language was addressed but not sufficiently narrowed.*
- *Ambiguous definitions of blight mean that loophole remains open.*

The Montana Legislature was not in session in 2006, but citizens hoped to place a property rights initiative on the November 2006 ballot. However, Initiative 152 was challenged in court over issues regarding signature gathering and subsequently was struck from the ballot.

In 2007, the Legislature passed Senate Bills 41 and 363. These companion bills open up the two precise sections of code needing reform—the definitions of public use and blight. Unfortunately, the reform that passed barely increases property rights protections.

The Montana Code, like the statutes of almost every state prior to *Kelo*, provides a back door for municipalities to acquire private property through bogus blight designations. Unfortunately, SB 41 only rearranges a few words in the laundry list of vague criteria necessary to declare an area blighted. The bill was originally intended to prohibit the government from serving as a “pass through” (doing the dirty work of condemning property for private developers) with a strong provision prohibiting the transfer of condemned property to a private entity for ten years. Instead, the bill was amended to remove the time limit and add

“intent” language, making it an easy provision to work around.

SB 363 addresses public use but fails to remove old, problematic definitions such as “and all other public uses authorized by the legislature of the state.” The bill also attempts to limit the blight loophole by reducing the criteria that qualify an area as blighted, but “deterioration” and “age obsolescence” remain on the list.

Other language in the bill purports to stop the use of eminent domain when its “purpose” is increased tax revenue. Like the “intent” language of SB 41, this provision will be easy to get around since local governments can always claim a different reason for acquiring property, and courts will not question that assertion.

These bills represent a first step toward eminent domain reform, but the state has more work to do to ensure that every Montanan is protected against the abuse of eminent domain.

Senate Bill 41

Sponsored by: State Senator Jim Elliot

Status: Signed into law on May 8, 2007.

Senate Bill 363

Sponsored by: State Senator Christine Kaufman

Status: Signed into law on May 16, 2007.

LEGISLATION REPORT CARD



State: Nebraska

- *Primary purpose language means condemnations for economic development will not be meaningfully restricted.*
- *Agricultural property cannot be designated “blighted.”*

In 2006, the Nebraska Unicameral Legislature took only a baby step toward providing its citizens with much-needed protection for their property rights. Legislative Bill 924 prohibits the use of eminent domain “if the taking is primarily for an economic development purpose.” However, there is nothing stopping the condemnor from declaring one primary purpose for the taking and then changing the purpose after condemnation. The prohibitions do not apply, however, to “public projects or private projects that make all or a major portion of the property available for use by the general public” The bill clarifies that agricultural property cannot be designated as “blighted” by local governments and therefore cannot be subject to condemnation.

The effect of some aspects of this bill, such as the ability to use eminent domain for “private projects that make all or a major portion of the property available for use by the general public,” is uncertain. While the Unicam may have merely intended for this provision to allow condemnations for private museums or recreational centers—neither of which are traditional public uses—it also could be (and almost undoubtedly *will* be) argued that this exception will allow shopping malls or similar commercial ventures that allow a high degree of public access. If a court finds that this was

the legislative intent, the language restricting condemnations for economic development becomes worthless. The Unicam would have been better served to limit the use of eminent domain strictly to traditional public uses.


Another deficiency of Nebraska’s new law is that it retains a huge exception for the condemnation of properties designated as “blighted” under the state’s urban renewal laws, which may then be transferred to private developers. As is the case with many other states, Nebraska’s definition of “blight” is incredibly broad, allowing local governments the opportunity to affix the label to almost any neighborhood that a private developer might desire, regardless of the condition of the targeted buildings. Unless the Unicam acts to clarify that blight designations should only be meted out on a parcel-by-parcel basis where the properties are identified as posing a threat to the health or safety of the community, these loopholes will continue to allow local governments to condemn homes, businesses, and places of worship for private profit. In the future, Nebraska’s lawmakers should extend the same protection they gave to farmers to every property owner across the state. All Nebraskans—regardless of where they live or what they do—deserve protection from the abuse of eminent domain.

Legislative Bill 924

Sponsored by: State Senator Deb Fischer

Status: Signed into law on April 13, 2006.

LEGISLATION REPORT CARD

State: **Nevada** 

- *A pending constitutional amendment would be one of the strongest reforms yet, prohibiting “public use” for any transfer of property to a private party and placing the burden to prove public use on the government.*
- *Statutory reform in 2007 provides some of those protections immediately.*

Although the Nevada Legislature was not in session in 2006, the state’s citizens would not be deterred from presenting a strong constitutional amendment protecting private property rights. When the citizen initiative qualified for the ballot, it contained both a prohibition on private-to-private transfers and controversial regulatory takings language. Challenged in court, the “regulatory takings” element was taken off and the measure appeared on the ballot as a pure “public use” issue: “Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.” The amendment passed by a wide margin, but Nevada requires constitutional amendments to be approved in two successive general elections, so the measure must now appear again on the 2008 ballot.

When the Legislature convened for the 2007 session, it acted quickly to pass statutory reform that turns many of the protections from the citizen initiative into law immediately. Assembly Bill 102 contains the public use definition from the citizen initiative, but with exceptions for blight and relocation of those displaced by highway projects. Unfortunately,

Ballot Question 2

Sponsored by: citizen initiative
Status: Approved by voters on November 7, 2006, must be approved again in November 2008.

AB 102 also differs from the initiative’s five-year buy-back provision, by pushing that time limit to fifteen years and defining “use” so broadly that the very act of planning the project or condemning the property qualifies, effectively abolishing the buy-back provision. Despite these few weaknesses, AB 102 provides significant, immediate protection against eminent domain abuse. And if the initiative is approved again in 2008, Nevada will have even stronger language in a constitutional amendment.

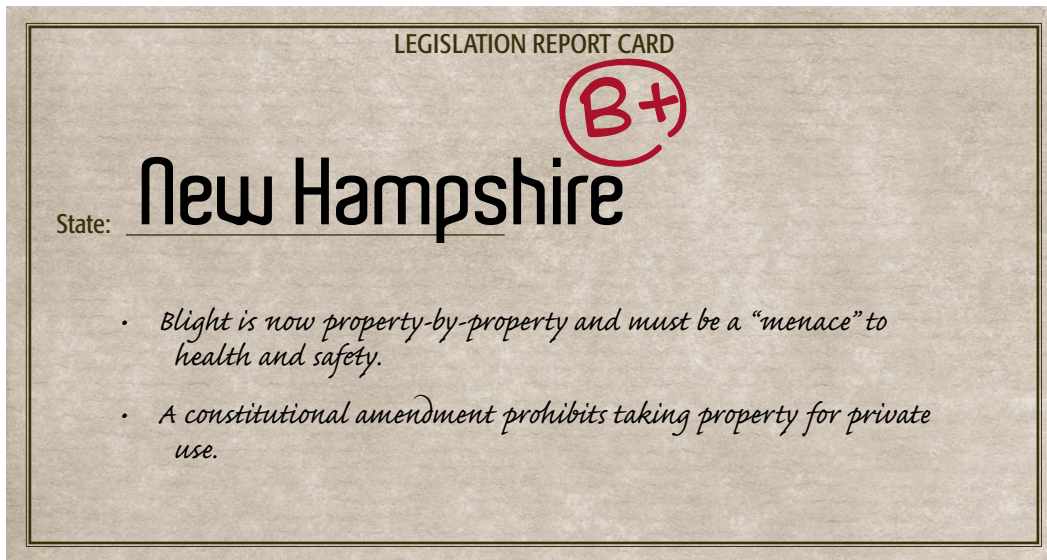
Assembly Joint Resolution 3 proposes the language of AB 102 in a constitutional amendment. The bill passed this year and must be approved again in the 2009 Legislature. If approved a second time, the amendment would appear on the 2010 ballot. If the initiative passes in 2008, voters would decide in 2010 whether to replace the constitutional property rights protections of the initiative with language like that of AB 102. Either way, Nevadans can be proud that when the U.S. Supreme Court brought their federal constitutional rights into question, they acted with haste and resolve to ensure that people in their state would remain free to enjoy what rightfully belongs to them.

Assembly Bill 102

Sponsored by: State Assemblyman William Horne
Status: Signed into law on May 23, 2007.

Assembly Joint Resolution 3

Sponsored by: State Assemblyman Joseph Hardy
Status: Approved by the 2007 Legislature, must be approved again by the 2009 Legislature and voters in 2010.



On Friday, June 23, 2006, exactly one year after the *Kelo* decision, New Hampshire Governor John Lynch signed into law Senate Bill 287, legislation that provides citizens with meaningful protection against eminent domain for private profit. The eminent domain reform bill, which sailed through both legislative houses, explicitly states, “Public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities.” Unfortunately, the bill continues to allow the use of eminent domain for the elimination of blight, and even though SB 287 requires that an individual property, as opposed to an area, be a “menace to health and safety,” the blight exemption still prevents New Hampshire’s reform from receiving the highest grade.

Knowing that statutes are easier to repeal than constitutional provisions, the New Hampshire General Court also made sure that the state’s citizens had the opportunity to vote

on a constitutional amendment that would guarantee the greatest possible protection for their property rights. CACR 30 was that proposed constitutional amendment, which said: “No part of a person’s property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.” In the November 2006 elections, more than 85 percent of New Hampshire voters cast their ballots in favor of this new provision.

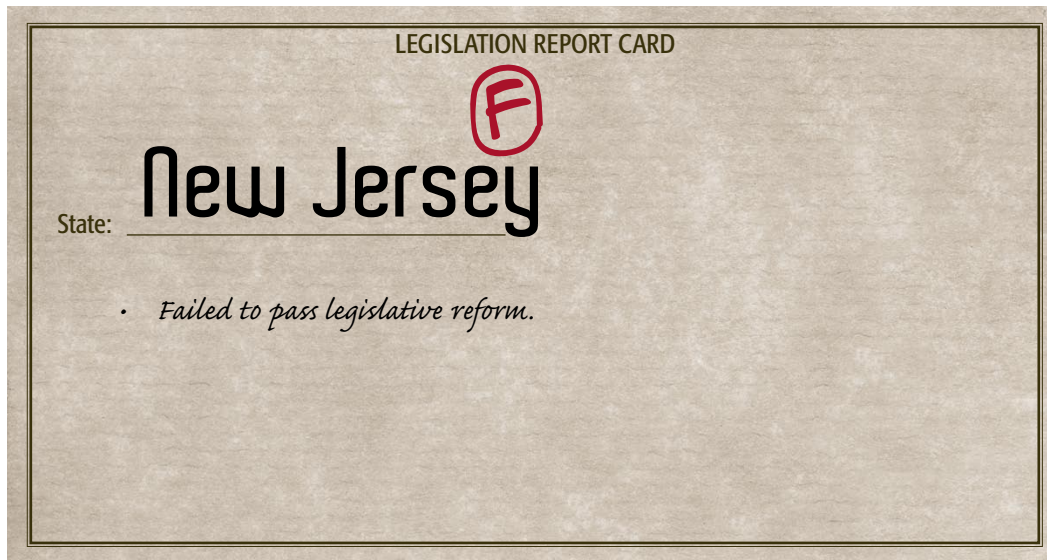
This is one of the strongest reform efforts mounted in response to *Kelo*. New Hampshire legislators understand what defenders of eminent domain abuse still do not—that *Kelo* created a big problem for the states to fix, that economic development will undoubtedly continue without eminent domain, and that every home, business, farm, and place of worship needed protection against condemnation for private gain.

Senate Bill 287

Sponsored by: State Senator Bob Odell
Status: Signed into law on June 23, 2006.

CACR 30

Sponsored by: State Representative Robert Giuda
Status: Passed by the legislature on April 20, 2006.
Approved by voters on November 7, 2006.



New Jersey desperately needs reform, as the State's Public Advocate admitted in his recent report. In particular, the criteria used to declare an area "in need of redevelopment," a designation that triggers the power of eminent domain, are so broad that most every New Jersey property is subject to acquisition.

There have been bills that purport to reform the Local Redevelopment Housing Law (LRHL) definition of "blight," but they fall short of the reforms necessary for true eminent domain protection in New Jersey. The new definitions contained the same vague and subjective criteria used by municipalities to take property for private development, such as "dilapidated," "obsolescent," and "lack of proper utilization." The definition for "detrimental to safety, health, or welfare of the community" appeared to have more objective criteria for residences, but businesses are left even more unprotected, since "lack of proper utilization" that leads to "stagnant or not fully productive" use of the land makes properties "blighted."

New Jersey is one of the nation's worst eminent domain abusers and is one of the states with the most work to do in the legislature.



In 2006 the Legislature passed good reform language in House Bill 746. Unfortunately, the governor vetoed the bill, and instead formed the Task Force on the Responsible Use of Eminent Domain. A majority of the Task Force members voted to recommend repealing the power of eminent domain for economic development, and lawmakers introduced several bills adopting the Task Force's recommendations.

This year, House Bill 393 removed the power of eminent domain from the state's Metropolitan Redevelopment Code—ensuring protection for New Mexico's home and small business owners from the type of eminent domain abuse seen in *Kelo*. By no longer allowing condemnations for blight, New Mexico passed some of the nation's strongest reform. An exception was made for so-called "antiquated platting" issues in Rio Rancho, but that amendment was narrowly written and does not affect the heart of the reform.

House Bill 393

Sponsored by: State Representative Peter Wirth
Status: Signed into law on April 3, 2007.

Senate Bill 401

Sponsored by: State Senator Steven Neville
Status: Signed into law on April 3, 2007.



As a state that is among the leaders in eminent domain abuse, it is not surprising that New York trailed far behind the other states in its response to *Kelo*. The only bill that seemed to have any traction did little more than create *another* study committee, yet the New York State Legislature failed to even pass that.

The state did pass legislation specifically targeting a large electric-line project, as well as a private golf club on Long Island. However, there is no momentum toward comprehensive reform, so the Legislature continues to allow the government to take homes and small businesses for private gain.

LEGISLATION REPORT CARD



State: North Carolina

- *The state revoked eminent domain authority for economic development.*
- *Unfortunately, although “blight” is designated on a property-by-property basis, it is still broadly defined and subject to abuse.*

North Carolina made important strides toward ensuring strong protections for property rights, but still has room for improvement. The General Assembly commissioned a Select Committee on Eminent Domain Powers to assess the use of eminent domain in the state. Rather than proposing a constitutional amendment to create a fairly permanent prohibition on the use of eminent domain for private economic development, the committee recommended only tweaking the state’s condemnation laws.

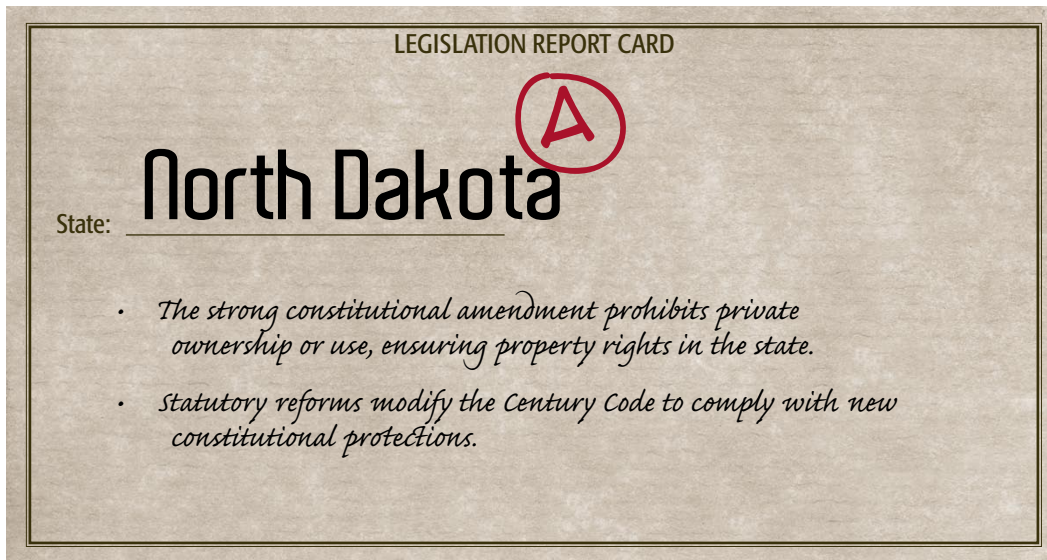
House Bill 1965, which was proposed by the committee and eventually passed by the General Assembly, repeals all laws allowing local condemnations for economic development, meaning that a municipality must go through the General Assembly if it wants to get eminent domain authority for economic development.

The bill did not narrow North Carolina’s broad definition of “blight,” although it does require blight designations to be assessed on a parcel-by-parcel basis.

The reforms thus adopted do provide modest protections for North Carolina’s homes, businesses, farms, and houses of worship, but they are still far from secure. In future sessions, the General Assembly needs to ensure that its blight laws only allow the condemnation of parcels that pose a threat to public health and safety. Furthermore, the state’s citizens should demand the opportunity to adopt a strong constitutional amendment that will enshrine a clear, narrow definition of “public use.” Without these changes, North Carolinians will not be completely free of the threat of eminent domain for private benefit.

House Bill 1965

Sponsored by: State Representative Bruce Goforth
Status: Signed into law on August 10, 2006.



North Dakota didn't even have a legislative session in 2006, yet it still managed to pass one of the nation's strongest constitutional amendments because of the hard work of concerned citizens. A citizen initiative placed an amendment on the ballot that declared, "a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business."

When this amendment was presented to voters during the November 2006 elections, it found overwhelming support. While North Dakota has not had nearly the problems with eminent domain abuse that have been characteristic in other states, residents can be proud that they have ensured the strongest possible protection for essential property rights. This state's successful reforms are a shining example to all American citizens of what is

possible when people resolve to stand up for their freedoms.

In 2007, Senate Bill 2214 was signed into law, amending the Century Code to reflect the changes made by Measure 2.

Ballot Measure 2

Sponsored by: citizen initiative

Status: Approved by voters on November 7, 2006.

Senate Bill 2214

Sponsored by: State Senators Stanley Lyson, Joel Heitkamp, and Aaron Krauter

Status: Signed into law on April 5, 2007.

LEGISLATION REPORT CARD



State: **Ohio**

- *The state passed a temporary moratorium on economic development takings and created a task force, but the result was weak eminent domain reform.*
- *The legislature needs to pass a statewide definition limiting blight to codify the state supreme court's *Norwood v. Horney* decision.*

Thanks to extraordinarily permissive laws, eminent domain abuse in Ohio has been widespread in recent years. Since the U.S. Supreme Court delivered the *Kelo* decision, Ohio has seen some major changes to its eminent domain laws—but the state legislature can claim precious little responsibility for these changes.

On July 26, 2006, the Ohio Supreme Court unanimously ruled in *Norwood v. Horney* that the Ohio Constitution does not permit eminent domain to be used solely for economic development, that Ohio courts must apply “heightened scrutiny” when reviewing governmental uses of eminent domain, and that cities could not constitutionally condemn non-blighted properties based on the idea that they might eventually become blighted. The Ohio Supreme Court’s holdings represent a dramatic improvement in the legal protections for home and business owners in the state.

The Ohio General Assembly commissioned a Legislative Task Force to study the use of eminent domain in the state, and imposed a statewide moratorium on taking properties in non-blighted areas when the primary purpose is economic development a (which expired on December 31, 2006).

In response to the Task Force findings, the 2007 General Assembly passed Senate Bill 7. Although the new law provides better notice for

Senate Bill 167

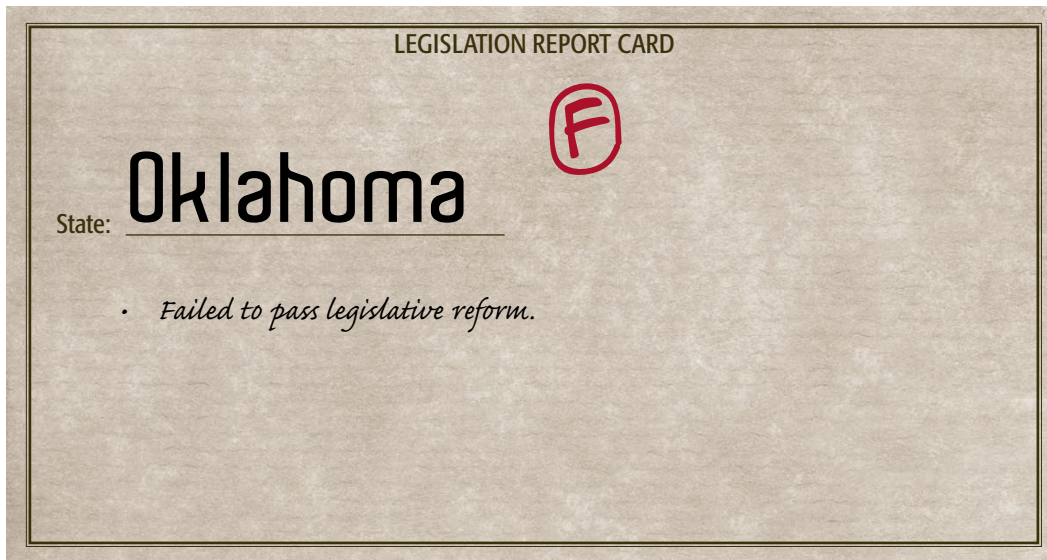
Sponsored by: State Senator Timothy Grendell
Status: Signed into law on November 16, 2005.

property owners when their land is under threat, and procedural and compensation changes, SB 7 will not stop eminent domain abuse. Ohio’s eminent domain law continues to allow a combination of subjective factors (such as age and obsolescence, dilapidation and deterioration, excessive density, faulty lot or street layout) to be used by condemning authorities to take property for private gain. Additionally, only seventy percent of homes must qualify under this ambiguous and expansive definition for an entire neighborhood to be condemned.

Now that the Ohio Supreme Court has emphatically articulated constitutional limits to the use of eminent domain in Ohio and instructed courts to carefully scrutinize local governments’ efforts to condemn the homes and businesses of their citizens, the Ohio General Assembly’s job is simplified considerably. In order to ensure that Ohioans no longer have to fear becoming the target of eminent domain abuse, and in the event the removal of blight remains a permissible reason to use eminent domain, the legislature needs a statewide definition of blight so that the term is given clear and limited meaning, as well as a constitutional amendment to give it effect in home-rule cities. Furthermore, blight designations need to be on a parcel-by-parcel basis, rather than threatening entire neighborhoods based on the condition of a few ill-kept houses.

Senate Bill 7

Sponsored by: State Senator Timothy Grendell
Status: Signed into law on July 10, 2007.



In response to *Kelo*, the Oklahoma Legislature formed several study committees preceding the 2006 session.

Then, in May 2006, the Oklahoma Supreme Court rejected the U.S. Supreme Court's *Kelo* decision that permitted eminent domain for private development, ruling instead in *Board of County Commissioners of Muskogee County v. Lowery* that economic development is not a constitutional reason to use eminent domain under the Oklahoma Constitution. The Court originally heard the case in 2004, before the *Kelo* decision. In *Lowery*, Muskogee County sought to take an easement for water pipelines for a private electric generation plant. The stated purpose of the condemnation was "economic development." Noting that the U.S. Supreme Court had explicitly reminded states that they did not have to follow the *Kelo* decision in interpreting their own constitutions, the Oklahoma Supreme Court concluded that "our state constitutional eminent domain provisions place more stringent limitation on governmental eminent domain power than the limitations imposed by the Fifth Amendment of the U.S. Constitution."

However, the Court said that its decision does not apply to condemnations for "blight." Unfortunately, the definition of "blight" under Oklahoma law is so broad that virtually any neighborhood would qualify. That means cities could switch to condemnations under the Neighborhood Redevelopment and Oklahoma Housing Authorities Acts.

Last year the legislature proposed an excellent constitutional amendment, House Joint Resolution 1057 (2006), that would have stopped this from happening. The bill made it all the way to conference committee only to die in the last days of session due to the confusion over the protections *Lowery* actually offers. The legislature failed to pass needed reform again this session. In fact, the only momentum was for *another* study committee. Until reform is passed, Oklahomans will still be vulnerable to eminent domain abuse.

LEGISLATION REPORT CARD



State: Oregon

- *Blight designations are by individual property, which must be a danger to the community's health and safety.*
- *Unfortunately, the prohibition on private transfers contains "intent" language.*

Oregon is another example of a state in which citizens were so dedicated to making eminent domain reform a reality that they took the matter into their own hands. The Oregon State Legislature did not have a session scheduled for 2006, so a group of passionate citizens organized to get a statute on the ballot that would limit the government's authority to use eminent domain for private benefit.

Measure 39, the statute proposed in the initiative, forbids government parties to condemn private property used as a residence, business establishment, farm, or forest operation "if at the time of the condemnation the public body intends to convey fee title to all or a portion of the real property, or a lesser interest than fee title, to another private party." Given the opportunity to vote on it, Oregonians approved the new law by nearly two-to-one. The new statute is particularly important because its language prohibits private-to-private transfers (although the use of "intends" makes that prohibition incomplete since it is always hard for a citizen to prove government intent). The initiative states that a blight designation

can be applied only to individual properties that constitute a danger to the health and safety of the community.

Even though Oregon now has valuable statutory limits on the use of eminent domain, they can still be reversed by future acts of the State Legislature. In order to ensure that these reforms are made as strong as possible, this state needs to adopt a constitutional amendment that will safeguard property rights by enshrining a narrow definition of "public use" in its organic law.

Ballot Measure 39

Sponsored by: citizen initiative

Status: Approved by voters on November 7, 2006.

LEGISLATION REPORT CARD

(B-)

State: Pennsylvania

- *The definition of blight now includes specific criteria and blight designations have an expiration date.*
- *Unfortunately, the largest cities and worst abusers of eminent domain may continue to condemn under previous blight designations for another seven years.*

In 2006, Pennsylvania responded to the U.S. Supreme Court decision in *Kelo v. City of New London* and the widespread abuse of eminent domain throughout the state by taking a giant step toward providing its citizens with the property rights protection that they deserve. Senate Bill 881, the “Property Rights Protection Act,” which was supported by a broad group of organizations, including the Pennsylvania State Conference of NAACP Branches, the League of United Latin American Citizens, the Mexican American Legal Defense and Education Fund, the Farm Bureau and National Federation of Independent Business, was adopted with near-unanimous support in the General Assembly. It prohibits the use of eminent domain “to take private property in order to use it for private enterprise,” while also significantly tightening the definition of “blight” in the state’s eminent domain laws and placing time limits on blight designations. The bill also provides that agricultural property cannot be “blighted” unless the Agricultural and Condemnation Approval Board determines the designation is necessary to protect the health and safety of the community.

These changes were absolutely imperative for a state that—in an example of the bizarre

extremes to which states had allowed their “blight” definitions to go—had previously allowed the condemnation of property for no better reason than that it was determined by a local government to be “economically or socially undesirable.” Also, the old law never allowed blight designations to expire, meaning that a property in a designated area could still be taken for private use years down the road, regardless of any improvements or other changes in circumstances.

The bill’s primary drawback—and it is a significant one—is that it includes a glaring exception that allows certain municipalities and counties (Philadelphia, Norristown, Pittsburgh, and Delaware County, among others) to condemn property in areas that have already been designated as “blighted” under the state’s urban renewal laws. (Those places cannot impose new blight designations under the old definition of “blight.”) This exception, which exempts the areas of the state most prone to eminent domain abuse, will expire after seven years, but it is still an unfortunate addition to an otherwise good bill.

House Bill 2054
Sponsored by: State Representative Glen Grell
Status: Signed into law on May 4, 2006.

Senate Bill 881
Sponsored by: State Senator Jeffrey Piccola
Status: Signed into law on May 4, 2006.



Senate Bill 2155 (2006) would have limited takings for economic development. After a lengthy struggle in the Senate, it finally moved to the House, where it died with the end of session on June 23, 2006. Rhode Island continues to need more substantive reforms than even that legislation would have provided, including a strong definition of public use and a narrow definition of blight.

LEGISLATION REPORT CARD

(B+)

State: South Carolina

- *Constitutional amendment declares that “blighted” property must be “a danger to public health and safety,” effectively eliminating bogus “blight.”*

When the 2006 election gave South Carolina’s citizens an opportunity to stand up and express their support for private property rights, they came through with flying colors. More than 85 percent of voters in South Carolina approved a constitutional amendment that provides home and business owners across the state with meaningful protection against eminent domain abuse. The amendment specifically prohibits municipalities from condemning private property for “the purpose or benefit of economic development, unless the condemnation is for public use.” It further requires that an individual property be a danger to public health and safety for it to be designated as blighted, closing a loophole that enabled local governments to use eminent domain for private use under the state’s previously broad blight definition. The amendment also removes provisions of the state constitution that had specifically allowed several counties to use eminent domain for private uses.

Before South Carolinians had their say, state law allowed government officials to take property for private use under the guise of blight removal, so what happened in the *Kelo*

case could have happened in South Carolina. The constitutional amendment fixed that problem and gave the state’s citizens some of the strongest protection in the country from eminent domain abuse, ensuring that so-called blight laws could not be used as a backdoor way of using eminent domain to take homes, businesses, farms, and places of worship for private profit.

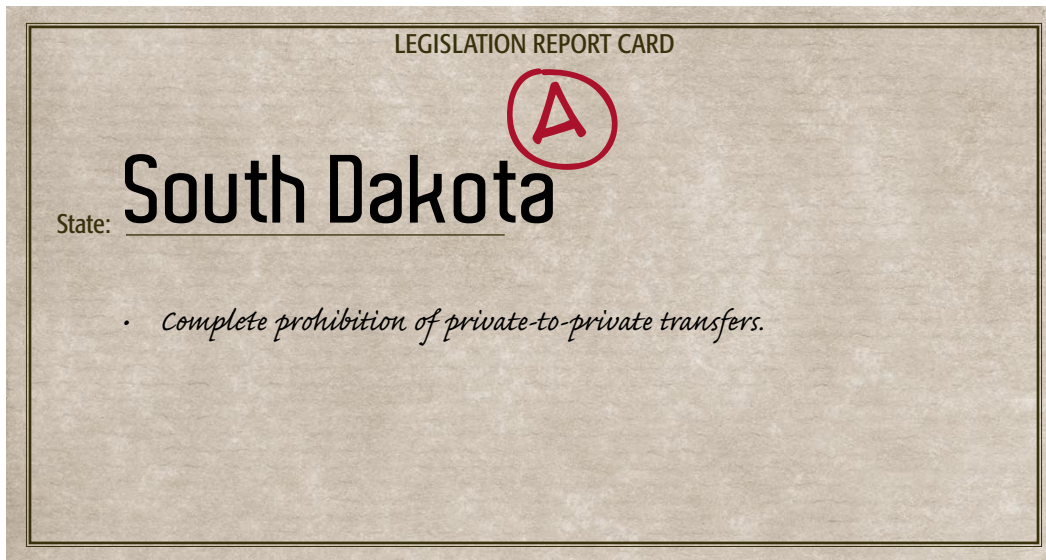
A constitutional amendment is unambiguously the most effective way to stop the abuse of eminent domain for private gain, and the passage and approval of this provision should effectively safeguard South Carolinians’ fundamental right to keep what they rightfully own.

Senate Bill 1031

Sponsored by: State Senator Chip Campsen
Status: Passed by the Legislature on June 14, 2006.
Approved by voters on November 7, 2006.

Senate Bill 155

Sponsored by: State Senator Chip Campsen
Status: Ratified by the Legislature on April 26, 2007.



While many state legislatures seemed uncertain about how to go about protecting their citizens' property rights in the wake of *Kelo*, in early 2006 South Dakota became the first state to strike right at the heart of the problem with a well-crafted eminent domain reform bill.


House Bill 1080 prohibits government agencies from seizing private property by eminent domain "for transfer to any private person, nongovernmental entity, or other public-private business entity." The act—which passed the House by a vote of 67-1 and the Senate unanimously—also stipulates that after seven years, if condemned land is not used for the purpose for which it was acquired, the original owner has right of first refusal to buy the property at current fair market price. By taking this approach, South Dakota lawmakers demonstrated their recognition that it is simply wrong for the government to take property from one person and give it to another private party.

Thanks to the state's broad restriction on the use of eminent domain for private development—which was done without leaving any loopholes or exceptions—every home, business, and ranch in South Dakota should finally be safe from eminent domain abuse.

House Bill 1080

Sponsored by: State Representative Larry Rhoden
Status: Signed into law on February 17, 2006.

LEGISLATION REPORT CARD



State: **Tennessee**

- *Failed to appropriately address the definition of “public use” or “blight.”*
- *Changes to notice requirements put property owners at a greater disadvantage.*

Just like several other states, Tennessee created a state commission to study the use of eminent domain and ways of reining in abuse. State legislators filed dozens of bills intended to make sure that Tennesseans would not have to worry about their own homes, businesses, farms, or houses of worship being condemned for someone else’s private benefit. But of all the possible eminent domain reform bills to choose from, the General Assembly ended up selecting two that did very little to improve the protection of property rights in their state.

House Bill 3450/Senate Bill 3296 made a slight improvement to the state’s definition of “blight,” yet the definition still remains too broad. The bills also provided some additional notice to property owners during the condemnation process. The bills did remove the power of eminent domain from certain parties and modified the state’s definition of “public use” to exclude economic development, but they still permit governmental entities to transfer property no longer being used for a public use to another public or private party and they expressly allow the government to condemn properties for the purposes of building “industrial parks.” House Bill 3700 actually

seems to be a bit of a regression, changing a previous requirement that condemning authorities publish notices (including a map of the targeted area) once a week for three consecutive weeks to a requirement that the condemning authority post the map of the targeted area for review in at least two locations. House Bill 3700 also removes a prior requirement that condemning authorities obtain approval from the governing body of the affected county unless the condemnations were pursuant to a redevelopment plan that utilized tax increment financing applicable to the county property tax levy.

These changes to Tennessee’s law should be deeply disappointing to the state’s citizens, especially since the General Assembly could have selected from any number of bills that would have offered real, substantial protections for citizens’ property rights. Due to the legislature’s failure to fix the state’s definition of blight, the issues will need to be revisited if Tennesseans are to be assured of the property rights protections they deserve.

House Bill 3450/Senate Bill 3296
Sponsored by: State Representative Joe Fowlkes
Status: Signed into law on June 5, 2006.

House Bill 3700
Sponsored by: State Representative Joe Armstrong
Status: Signed into law on June 27, 2006.



Texas acted fairly quickly, though incompletely, to curtail eminent domain abuse in the aftermath of the Supreme Court's *Kelo* decision. During a special session on another issue, the Texas Legislature passed Senate Bill 7 (2005), which has both positive and negative aspects.

On the positive side, the new law says the government or a private entity may not take property if doing so confers a private benefit, is pretextual, or is for economic development (unless economic development is secondary to the main objective of eliminating real "blight"). Additionally, courts are not to give any deference to a condemning authority's decision that a condemnation will be for a public use. These are important reforms that should go a long way to preventing future abuses in Texas.

On the down side, however, the bill created specific exceptions to those prohibitions so that they do not apply to utilities, port authorities, and other specific agencies and projects, including the new Cowboys stadium. And, as seen in other states, there is a specific exemption for blight removal. By failing to close the "blight" loophole, Texas is allowing local

governments to continue taking properties for private benefit—it is just requiring them to use different terminology.

The Texas Legislature was not in session in 2006, but in 2007, it passed a bill that redefined public use. Under House Bill 2006, condemnation only qualifies as a public use when it "allows a state, a political subdivision of the state, or the general public of the state to possess, occupy, and enjoy the property." The bill would have closed the blight loophole and effectively closed the chapter on eminent domain abuse in Texas—but the governor vetoed it.

House Bill 1495 did become law, requiring the state attorney general to summarize current eminent domain law into a "Landowner's Bill of Rights." This document will be available to the general public, and must be provided to any property owner facing condemnation. The new law educates the public on the law of notice, procedure, and compensation rights of a condemned party, but does not protect property owners from continuing eminent domain abuse.

The Texas Legislature does not return to session until 2009.

Senate Bill 7

Sponsored by: State Senator Kyle Janek
Status: Signed into law on September 1, 2005.

House Bill 1495

Sponsored by: State Representative Bill Callegari
Status: Signed into law on June 15, 2007.

LEGISLATION REPORT CARD

State: **Utah** 

- *The state led the nation in eminent domain reform with pre-Kelo legislation that completely removed eminent domain authority for blight.*
- *Unfortunately, the state became the first to roll back reform by re-instating a more limited blight authority and allowing a condemnation by a neighborhood majority vote.*

Utah demonstrated remarkable zeal in protecting its citizens' liberties by enacting eminent domain reform both before and after the *Kelo* ruling. Senate Bill 1841 (2005) removed the power of eminent domain from redevelopment agencies and has served as a model of excellent reform. Senate Bill 117 (2006) added approval and notice requirements for public use takings. The new law specified that the appropriate legislative body must vote to approve any taking of property by eminent domain, adding a layer of accountability for public officials who might otherwise be able to avoid taking responsibility if the takings power is utilized without appropriate restraint.

Unfortunately, in 2007 the Legislature passed and the governor signed House Bill 365, legislation that rolled back the state's prior eminent domain reform. The bill allows local governments to take private property for blight and allows property owners who own a large majority of property (in size or value)

to vote to force out neighbors who want to keep their homes or small businesses. That means property owners who merely want to be left alone to enjoy what is rightfully theirs are exposed to abuse.

This new law marks an unfortunate turn in the battle against the abuse of eminent domain. While eminent domain authority remains significantly restrained, it demonstrates that the beneficiaries of eminent domain abuse—local governments and developers—will not easily relinquish this powerful tool. Developers, unlike the public in general, hire well-paid lobbyists who patrol state capitals to expand their power to threaten ordinary homeowners and small businesses. The result is that Utah property owners, who once had one of the strongest protections against eminent domain abuse in the country, now risk losing their property to greedy local governments, developers, *and* neighbors.

Senate Bill 117

Sponsored by: State Senator Howard Stephenson
Status: Signed into law on March 21, 2006.

House Bill 365

Sponsored by: State Representative Stephen Urquhart
Status: Signed into law on March 20, 2007.



Like many other states, Vermont made a limited effort to address the concerns of citizens who were outraged over the *Kelo* decision, but it unfortunately fell well short of enacting real reform.

Senate Bill 246, passed by the Legislature and signed into law in April 2006, prohibits the use of eminent domain where “the taking is primarily for purposes of economic development” or confers a private benefit on a particular private party. While the Legislature at least acknowledged the need for eminent domain reform, the language adopted in this bill will be of little to no help to home and business owners forced to try to rebut a municipality’s claim that its primary purpose is something other than private development.

Even more importantly, the Vermont Legislature left in place the same kind of “blight” loophole that enables eminent domain abuse in other states, allowing condemning authorities to designate entire neighborhoods as blighted on the basis that a few individual properties meet vague and subjective criteria that have little to do with the health or safety of the surrounding community.

The Vermont Legislature needs to follow up Senate Bill 246 with substantial reforms that will close the “blight” loophole, clearly limit the approved public uses of eminent domain, and prohibit the transfer of private property to other private parties.

Senate Bill 246

Sponsored by: State Senator Wendy Wilton

Status: Signed into law on April 14, 2006.

LEGISLATION REPORT CARD

State: **Virginia** B+

- *Private property may be condemned for only traditional “public use.”*
- *Sufficiently narrows the definition of “blight” to apply only to unsafe property, parcel-by-parcel.*

The only eminent domain bill that passed the 2006 General Assembly, House Bill 699, made minor changes to the Housing Authorities Law, which continued to define “blight” so broadly that almost any property could be designated “blighted,” thus permitting eminent domain for private development. A bill that did provide property owners with important protections, sponsored by Del. Johnny Joannou, did not make it out of conference committee.

However, several new bills were introduced in 2007, and the General Assembly returned this year committed to protecting the commonwealth’s home and small business owners. House Bill 2954, sponsored by Del. Rob Bell, requires that private property be seized for only traditional “public uses,” like roads, schools and post offices. Importantly, it also tightens the Housing Authorities Law’s definition of “blight.” Local governments can still acquire properties that pose a real threat to public health or safety, but perfectly fine homes and businesses can no longer be seized using vague and subjective criteria like “deteriorated” and

“dilapidated,” nor can they be seized because they happen to sit within “blighted” areas.

HB 2954 received overwhelming support in both chambers, and Senate Bills 781 and 1296 were amended to mirror its language so that all three could be combined. The governor offered mostly nominal amendments to the legislation, leaving intact the bill’s strong protections, though one amendment does exempt the Norfolk Redevelopment and Housing Authority from the provisions of the bill until July 1, 2010, as the city builds a new public recreational facility. The General Assembly accepted the governor’s amendments and the new law will be effective on July 1.

Virginia’s Constitution is unique because it allows the General Assembly to define “public use,” so the reforms of 2007 may not be permanent. Thus, for complete reform, a constitutional amendment is required.

House Bill 2954

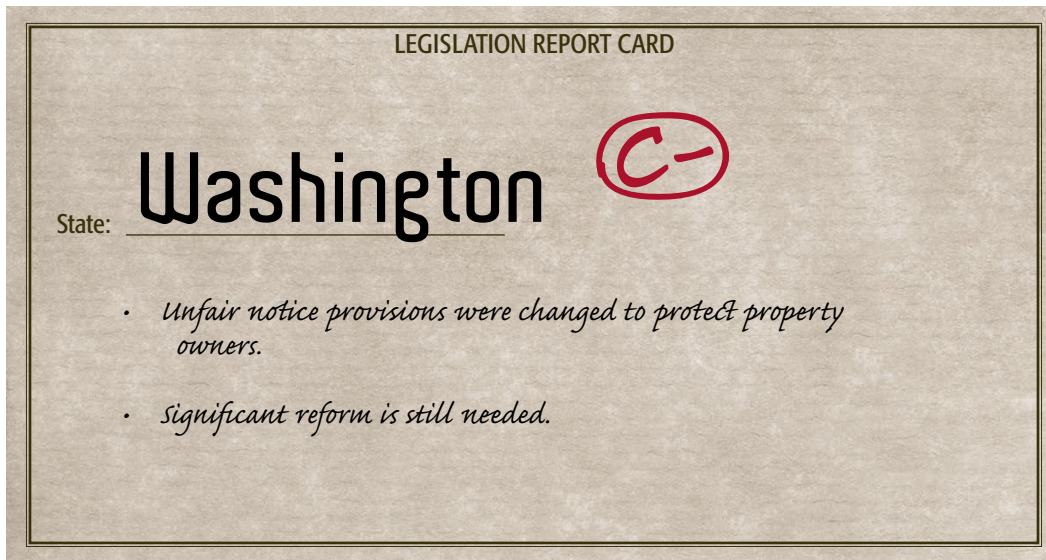
Sponsored by: State Delegate Rob Bell
Status: Signed into law on April 4, 2007.

Senate Bill 781

Sponsored by: State Senator Ken Cuccinelli
Status: Signed into law on April 4, 2007.

Senate Bill 1296

Sponsored by: State Senator Thomas Norment
Status: Signed into law on April 4, 2007.



The Washington Legislature intended to make eminent domain reform a priority of its 2006 session. The governor proposed legislation early in the session and the issue was the subject of significant hearings and debate. Unfortunately, the legislative process ended up polarizing interested parties and, as a result, the legislature did not pass a single eminent domain reform bill.

In 2007, House Bill 1458 was filed in response to Washington Supreme Court decisions holding that state and local governments could provide notice, on an obscure government website, of the public meeting where a final decision to condemn property would be made. Public meetings are vitally important because it is the sole opportunity a property owner has to provide evidence that his or her property is not necessary for the government's purported public use.

At the request of the governor and attorney general, HB 1458 was introduced with 54 co-sponsors and passed both houses of the Washington State Legislature by unanimous votes. The new law requires that a condemning authority in Washington notify affected property owners, by certified mail, at least 15 days prior to the public meeting at which a final decision on condemnation will be made.


Washington still has significant eminent domain reform to accomplish, but HB 1458 is a good first step and provides an immediate change to formerly unjust notice standards. Reform of other eminent domain laws is expected to remain on the agenda for next year's legislature and Attorney General McKenna announced that he would create a task force to thoroughly review Washington's eminent domain laws and recommend any necessary changes to the 2008 legislature.

House Bill 1458

Sponsored by: State Representative Kevin Van De Wege

Status: Signed into law on April 17, 2007.

LEGISLATION REPORT CARD



State: West Virginia

- *“Blight” is now determined on a property-by-property basis.*
- *Unfortunately, the definition of “blight” remains extremely broad and vague.*

Prior to the Supreme Court’s decision in *Kelo v. City of New London*, West Virginia’s eminent domain laws were among the worst in the country, as court decisions had given West Virginia localities sweeping power to condemn even non-blighted properties in redevelopment areas. The fact that the Legislature has been able to at least begin to place limits on how eminent domain may be used qualifies the state for a passing grade. But celebration of this initial step cannot obscure the fact that this state has a lot of ground to cover before it offers its citizens real protections against eminent domain abuse.

House Bill 4048, passed both houses of the Legislature on the last day of the session, makes it slightly more difficult for the government to seize non-blighted private property by eminent domain in so-called blighted areas. Cities must prove each individual structure is blighted, rather than allowing entire neighborhoods to be labeled as blighted. Despite this improvement, however, West Virginia’s definition of blight remains so broad that perfectly normal homes and businesses could be condemned

if a developer persuaded a local government to act on its behalf. An earlier version of the bill would have prohibited all use of eminent domain for private development, but this sweeping restriction was set aside in order to ensure the bill’s passage.

Eminent domain abuse in West Virginia is widespread. Historically, homes, small businesses, and churches have been especially at risk in West Virginia because blight designations never expire, so redevelopment agencies can condemn properties in a redevelopment area decades after the city originally declared them blighted. While the new law provides some well-deserved safeguards, it is important that lawmakers in West Virginia say no to the few remaining defenders of eminent domain abuse and completely address the overwhelming public outcry with meaningful reform legislation. The state’s citizens will not have meaningful protection against eminent domain abuse until “blight” can be used to describe only individual properties that are a danger to the public health or safety.

House Bill 4048
Sponsored by: State Delegate Kevin Craig
Status: Signed into law on April 5, 2006.



The state of Wisconsin made some significant improvements to its eminent domain laws by enacting Assembly Bill 657 in 2006. Wisconsin’s new legislation prohibits the government from designating large areas as “blighted” based on the condition of a small number of properties within that area. The bill provides some increased protection for residential properties by adding new factors to the legal definition of blight. Specifically, the law requires that residential property be “abandoned” or converted from single to multiple units and be in a high-crime area in order for it to be designated “blighted.” In addition, the bill contains a vital protection—the requirement that each specific residential property be blighted before it can be acquired and transferred to a private entity. These changes to the law make it significantly more difficult for governments to target residential property for private profit, though other types of property, like small businesses and farms, remain vulnerable. As the law currently stands for owners of these non-residential properties, blight designations may still be based on subjective and vague terms like “obsolescence” and “faulty lot layout.”

This law is a significant step forward, but the Wisconsin State Legislature should make a point of addressing the remaining problems in future sessions. A top priority should be replacing the subjective terms in the state’s blight definition with objective factors that can be conclusively demonstrated, so that property owners can take specific action to maintain their properties in such a way that they cannot be threatened with condemnation. Furthermore, the Legislature needs to extend the same protections it has afforded residential property owners to all of the state’s citizens.

Assembly Bill 657
Sponsored by: State Representative Mary Williams
Status: Signed into law on March 30, 2006.

LEGISLATION REPORT CARD

State: **Wyoming** 

- *Redefines “public purpose” to mean the “possession, occupation and enjoyment of the land by a public entity.”*
- *No transfer of property to private entities, unless condemned for “public health and safety,” determined parcel-by-parcel.*

The State Legislature was not in regular session in 2006. The Joint Agriculture Committee pledged to work toward two bills in 2007 that provide more protections for private property owners: one would focus on “urban” issues and one on rural issues.

House Bill 124 was one of the promised committee bills, but the reforms were incredibly meager. As drafted, the bill only increased notice and required the government to make an attempt at “good faith negotiations” before condemning private property, and early amendments seemed to weaken the bill further. However, property owners from across the state showed up at the Capitol to demand protection and their voices were heard, and Wyoming now has significantly stronger reform.

State, counties, and municipal corporations now may condemn only for public purpose, defined as “the possession, occupation and

enjoyment of the land by a public entity.”

Private transfer is prohibited except for “condemnation for the purpose of protecting the public health and safety,” and that condemnation is on a property-by-property basis. Municipalities are no longer allowed to delegate away condemnation authority, and if condemned property has not experienced “substantial use” ten years after the taking, the former owner may apply to the court to repurchase the property for the amount of the original compensation.

While this new law is a dramatic improvement, Wyoming property rights remain at risk under the state’s water, mining, and common carrier exceptions unique to the state, if not the West. Additionally, a constitutional amendment is needed to ensure property rights protection for generations to come.

House Bill 124

Sponsored by: State Joint Agriculture, Public Lands, and Water Resources Interim Committee

Status: Signed into law on February 28, 2007.

Grades of States that Passed

Florida	A
North Dakota	A
South Dakota	A
Michigan	A-
New Mexico	A-
Alabama	B+
Arizona	B+
Georgia	B+
Nevada	B+
New Hampshire	B+
Oregon	B+
South Carolina	B+
Virginia	B+
Indiana	B
Kansas	B
Louisiana	B
Utah	B
Wyoming	B
Iowa	B-
Minnesota	B-
Pennsylvania	B-
Wisconsin	C+
Colorado	C
North Carolina	C-
Texas	C-
Washington	C-
West Virginia	C-

Idaho	D+
Illinois	D+
Kentucky	D+
Maine	D+
Nebraska	D+
Alaska	D
Connecticut	D
Maryland	D
Missouri	D
Montana	D
Ohio	D
California	D-
Delaware	D-
Tennessee	D-
Vermont	D-

States receiving an “F” for failing to pass any degree of eminent domain reform.

Arkansas, Hawaii, Massachusetts, Mississippi, New Jersey, New York, Oklahoma, and Rhode Island.

Eminent Domain Reform Legislation