



**National Association of Housing and Redevelopment Officials**

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September 12, 2005

The Honorable Christopher Bond  
Chairman  
Appropriations Subcommittee on  
Transportation, Treasury, the Judiciary,  
Housing and Urban Development,  
and Related Agencies  
United States Senate  
Washington, DC 20510

Dear Chairman Bond:

I am writing to share with you the National Association of Housing and Redevelopment Officials' (NAHRO's) thoughts on Congressional efforts to restrict State and local governments' ability to exercise eminent domain, a topic that has been much in the news of late. At an August meeting of the Senate Appropriations Committee, you announced your intent to introduce an amendment to your subcommittee's FY 2006 bill that would limit state and local actions in this area. At that time, you and other members of the committee engaged in a thoughtful discussion about the practical implications of such a limitation. You agreed to take up the matter again after further refinement and deliberation. In that spirit, I am writing to you to share with you our thoughts on the matter as well as the reasons why we oppose Congressional efforts to restrict State and local governments' ability to exercise eminent domain, which, although infrequently used, remains an important community development and job creation tool.

The recent decision of the U.S. Supreme Court in *Kelo v. City of New London* broke less legal ground than many reports in the popular media would have led the reader to believe. The decision did uphold the ability of local governments to exercise the power of eminent domain to achieve economic development. However, the opinion of the Court did not provide carte blanche authorization for governments to take private property merely to hand it over to other private owners. To the contrary, the Court emphasized that the property at issue was taken pursuant to a carefully considered plan that would act as a catalyst for much needed job creation and further development. The Court also made it clear that its decision would establish only the constitutional permissibility of such takings under the Fifth Amendment and, importantly, that

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States and local governments are free to narrow the circumstances under which the power of eminent domain may be exercised. Indeed, at least 31 States – including your own State of Missouri – have recently taken steps to avail themselves of that right.

As adopted by the House of Representatives, H.R. 3058, the FY 2006 Transportation, Treasury, Housing and Urban Development (HUD) Appropriations Act, includes language that would bar State and local governments from using funds provided under the Act to “enforce” the Kelo decision. While the technical meaning of this language is not entirely clear, inasmuch as the decision in Kelo is permissive rather than mandatory, its spirit is not unclear. To the extent the current language found in H.R. 3058 on this subject means that federal funding may not be used in any situation in which eminent domain is used to support economic development, the language is ill-advised and NAHRO opposes its inclusion.

It is essential that Congress not place new restrictions on traditionally permissible uses of eminent domain employed by State and local agencies for the purpose of community and economic redevelopment. Although it should be used prudently, eminent domain remains an important community and economic development tool that allows State and local governments to respond to community needs. In those rare instances in which State and local governments exhaust all other options and must resort to exercising eminent domain, private property owners will continue to enjoy those protections provided under the just compensation clause of the Fifth Amendment.

As the Senate prepares to consider FY 2006 appropriations for HUD, I will hope you will reconsider what I understand your position to be and withhold your support from efforts to add language to the bill placing new restrictions on the use of HUD funds for projects that involve eminent domain takings. Eminent domain will remain a technique of last resort for State and local governments, but it is a tool that must remain available to our nation’s housing and community and economic development professionals as they work to revitalize American communities.

Sincerely,

Saul N. Ramirez, Jr.  
Executive Director