

John R. Todd
1559 N. Payne Ave.
Wichita, Kansas 67203
(316) 312-7335 cell

February 2, 2016

Senator Julia Lynn
Senate Standing Committee on Commerce
Attn: Debbie Bartuccio in Senator Lynn's Office
Statehouse, Room 445-S
Topeka, Kansas

Subject: My OPPOSITION to Senate Bill No. 338 scheduled for public hearing in the Senate Standing Committee on Commerce on February 2, 2016 at 8:30 a.m. in Room 548-S. (Arrangements will be made to deliver 30 copies of this testimony to Debbie Bartuccio prior to the committee hearing.)

Dear Senator Lynn and members of the Committee on Commerce,

I will attempt to appear in person before your committee to offer testimony in OPPOSITION to Senate Bill No. 338; however, if I am unable to attend your hearing in person, please include this written testimony with other committee testimony.

In 2005 the United States Supreme Court decided a case, Kelo v. City of New London, involving the use of eminent domain to transfer land from one private owner to another to further economic development. The Kelo decision essentially left states like Kansas with little private property protection from eminent domain abuse. In 2006 the Kansas Legislature responded by passing a Statute to correct this inequity in Kansas that defined the process cities must follow to "take" private property. There was widespread enthusiastic public support for this private property protection from citizens from all over Kansas.

My professional career, before retirement, was that of a real estate broker and developer. It was through 30 plus years of hands-on experience that I

gained an appreciation of the importance of private property rights as enumerated in Amendment V of the U.S. Constitution, “No person shall be...deprived of (his or her) property, without due process of law; nor shall private property be taken for public use without just compensation”. I consider private property rights the bedrock for all of our liberties.

Here are some of the major problems I have with the proposed Senate Bill No. 338:

1. The total lack of compensation to the property owner for the deprivation or taking of his or her property is missing in the bill.
2. Allowing a city or their third party take possession of property they do not own and have not obtained legal title to is wrong.
3. Allowing a third party to collect rent on the property and keep the rent for their own benefit to the detriment of the legitimate property owner is wrong.
4. The definition of the term “blighted” has long been totally subjective. During the 2006 eminent domain hearings in Topeka, it was disclosed that a city in Ohio deemed single family dwellings to be “blighted” if they only had a one car attached garage rather than the more desirable two-car garage. Arguments for two-bath homes over one-bath homes have also been used, and a common reason used to declare a property as “blighted” was the lack of the property to meet modern zoning and platting standards. No one can protect their property rights when these types of “blighted” definitions are used, particularly those property owners living in older less affluent neighborhoods.
5. I have noticed that single family dwellings in lower-economic neighborhoods in Wichita with peeling paint, torn screens, and lack of tuck-pointing on foundations are more routinely sighted for Housing Violations with greater regularity than similar houses with similar violations in upscale neighborhoods that are routinely ignored. I fear this type of “selective-enforcement” of Senate Bill No. 338 if you allow it to become law.

It is not surprising that several cities in Kansas have worked tirelessly to weaken eminent domain private property protection in our state. Based on my observations of the City of Wichita over the last 15-20 years, I maintain that cities in Kansas already have all the power they need to deal with housing violation issues.

1. Over the last 10-15 years I have noticed that the City of Wichita has demolished literally hundreds of houses that failed to meet their building code requirements.
2. The city of Wichita has a Municipal Environmental Court that deals with housing violations. It is interesting to attend one of these court proceedings to learn how our city deals with mostly older people on limited fixed incomes who lack the financial as well as physical capacity (who don't need or deserve to be subjected to the mental strain) needed to deal with the mostly minor housing violations they are being prosecuted for. This court has the authority to levy thousands of dollars in fines and sentence people up to 12 months in the county jail. The court is not a court of record; the judge is appointed by the Municipal Court's Chief Judge who is appointed by the city council to adjudicate city council passed ordinances. The city prosecutor and building inspectors, as well as everyone in attendance at the court in prosecution of the case is on the city payroll. This clearly represents a lack of the separation of powers doctrine (executive, legislative, judicial) not to mention the violation of private property rights issues that are an important part of our system of government. I would suggest the Municipal Court system in Kansas is a subject your legislative committee should spend time investigating.
3. I have personally owned and handled hundreds of private real estate transactions over my career and have routinely dealt with numerous title problems that were solved through my efforts without the need for the quiet title action of a district court. Senate Bill 338 allows local government or their non-profit representatives to short-circuit or bypass the niceties of properly solving real estate title problems that could be identified through the purchase and use of private title insurance commitments coupled with the proper conveyance or

transfer of real estate title through a statutorily recognized deed. To do otherwise without a voluntarily agreed upon compensation amount for the conveyance by the property owner is an affront to private property protection.

4. I can't imagine allowing a community not-for-profit organization to take possession of privately owned single family dwellings, rent them, and pocket the money without compensating the private property owner.
5. The Bill mentions non-payment of real estate taxes. In Sedgwick County at least two tax-foreclosure auctions are handled yearly to sell properties with 3-4 years of unpaid taxes. The property parcels are sold for cash to the highest bidder on the day of the sale. In my opinion, this method of conveying property to the highest cash bidder on the day of the sale more closely reflects a market based transaction rather than a forced taking without compensation to a not-for-profit entities allowed in this Bill.

Cities in Kansas clearly have all the powers they need to deal with property issues with no need for the additional powers that Senate Bill No. 338 would allow.

The passage of Senate Bill No. 338 would allow cities and their appointed non-for-profit community redevelopment organizations to corrosively take privately owned properties without compensation in an involuntary manner that violates individual private property rights protection that is essential to liberty.

PLEASE OPPOSE THE PASSAGE OF SENATE BILL NO. 338!

Sincerely,

John Todd

Cc: Senator Michael O'Donnell

Government has no other end, but the preservation of property.—John Locke