

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 10:30 A.M. on February 3, 2006, in Room 123-S of the Capitol.

All members were present,

Donald Betts arrived, 10:35 a.m.  
 Terry Bruce arrived, 10:37 a.m.  
 Dwayne Umbarger arrived, 10:38 a.m.  
 Barbara Allen arrived, 10:45 a.m.  
 David Haley arrived, 10:50 a.m.  
 Derek Schmidt arrived, 10:53 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
 Helen Pedigo, Office of Revisor of Statutes  
 Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Charles M. Benjamin, Sierra Club  
 John R. Hamilton, Attorney  
 Allen Cobb, Americans for Prosperity  
 Karl Peterjohn, Executive Director, Kansas Taxpayers Network  
 David & Ginny Pfrang, Farmer & Rancher  
 Sally Howard, Chief Counsel, Kansas Department of Transportation  
 Beccy Yocham, Senior Assistant City Attorney, City of Lenexa

Others attending:

See attached list.

The hearing continued on:

**SB 323--Eminent domain; restricting government authority to take property**

**SB 446--Eminent domain; fairness in economic development act**

**SCR 1612--Eminent domain; proposed constitutional amendment restricting government authority to take property.**

**SCR 1616--Eminent domain; proposed constitutional amendment restricting government authority to take property**

Note: Due to hearing several eminent domain bills at one time some testimony will appear to be out of place, several conferees opposed one bill and supported other bills at the same time, others chose to simply address the issue of eminent domain.

Charles Benjamin spoke in favor of using eminent domain to alleviate blight in cities but also expressed concern that its' use for the purpose of economic and industrial development will increase urban sprawl (Attachment 1).

John Hamilton spoke with regard to fairness in eminent domain law. While in support of eminent domain for economic development he felt that **SB 323** and **SCR 1616** were too restrictive (Attachment 2). He indicated a need for reform to current state law to include a higher level of scrutiny and compensation reform. Mr. Hamilton provided a proposal to amend K.S.A. 26-513 to provide for meaningful compensation reform. The Supreme Court has found a number of factors that result in the reduction of value to property to be non-compensable, examples being "view" or "loss of value of a business". The suggested amendment will allow a victim of condemnation to be made whole.

Alan Cobb spoke as a proponent of **SCR 1616** indicating his belief that property should be taken by government rarely and only for such purposes as roads, schools, parks, and hospitals (Attachment 3).

Karl Peterjohn spoke in support of **SCR 1616** since it would protect property rights (Attachment 4). His concern is that Kansans are vulnerable to developers who would abuse the use of eminent domain for

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 10:30 A.M. on February 3, 2006, in Room 123-S of the Capitol.

economic development.

David and Ginny Pfrang spoke in regard to the abuse of eminent domain and requested protection of individual property rights (Attachment 5).

James Bolden, Jr. expressed his opinion that property taken by eminent domain is unjust. (No written testimony).

Sally Howard spoke in regard to **SB 323** and **SCR 1612**. She was concerned with language in the bills which will prohibit the Kansas Department of Transportation (KDOT) from continuing its current practice of allowing farmers to use KDOT right of way in a manner that is not inconsistent with the agency's use of the land (Attachment 6). Often land is acquired long before it is needed for construction or expansion and many times enters into lease agreements with farmers under which they can continue using the land. Current wording in **SB 323** and **SCR 1612** would prohibit continuation of this practice. Ms. Howard suggested adopting language in **SB 446** which would allow KDOT to continue its current practices.

Becky Yocham spoke in opposition to **SB 323**, **SCR 1612** and **SCR 1616** and in support of **SB 446** (Attachment 7). The city of Lenexa supports the enactment of procedural safeguards to ensure that the use of eminent domain for economic development is undertaken only after careful and deliberate consideration but opposes any legislation which would completely or effectively abolish this important tool.

Written testimony in support of **SB 398** was submitted by:  
James and Amy Bartle (Attachment 8)

Written testimony in support of **SB 446** was submitted by:  
Gary E. Rebenstorf, Director of Law and City Attorney, Wichita, KS (Attachment 9)

Written testimony in support of **SB 323**, **SCR 1612** and in opposition to **SB 446** was submitted by:  
Dana Hoffman, Producer Policy Specialist, Kansas Association of Wheat Growers (Attachment 10)

Written testimony in opposition to **SB 323** and **SCR 1612** was submitted by:  
Chris Wilson, Executive Director, Kansas Building Industry Association (Attachment 11)

Written testimony in general terms was submitted by:  
Chris Wright, Sedgwick County, KS (Attachment 12)

Following questions of the conferees, the Chairman indicated that he does not intend for the committee to take immediate action on any of these bills with the exception of **SB 398**. He asked Allie Devine, Kansas Livestock Association and Sandy Jacquot, League of Municipalities to facilitate a gathering of the interested parties together to possibly work out a proposal in the form of a compromise among the competing interests. The meetings are to be open to anyone interested. Senator Vratil expressed that in his experience, the solutions worked out by the parties themselves are more agreeable than solutions imposed by the legislature. The group will keep the Chairman informed of progress.

Senator Schmidt briefed the committee on his intentions for handling of this issue on the floor. There are two committees dealing with different aspects of the eminent domain issue, his preference for floor action would be to have both committees to complete their work and report results and have a single day in which to debate the eminent domain bills. This will give Senators a full picture with respect to what is before them allowing them to know the entirety of the list of vehicles that will be moving.

The Chairman closed the hearing on **SB 323, SB 398, SB 446, and SCR 1612**.

The meeting adjourned at 11:37 a.m. The next scheduled meeting is February 6, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-3-06

NAME	REPRESENTING
John Hamilton	Self
Gandy Jacquet	LKMA
Don Moler	LKMA
Bud Burke	Olathe
Jane Elledge	Westgate Center
David R. Corbin	KDOR
Bill Brady	Capital Strategies
David Phang	self
Ging Phang	self
Claudia Weaver	Bob Vancrum
Beccy Yocham	City of Lenexa
<del>Heather</del>	<del>WAT</del>
Sally Howard	KDOT
Elizabeth Birner	OSL
Kd Neal	LGR
ALAN COBB	Amer. ans for Prosperity
Karl Patejoh	KS Taxpayers Network
ROBERT RANDALL	KCPL

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-3-06

NAME	REPRESENTING
Allie Wines	K. L. Lintock Assoc.
DIANE Costello	Olathe Chamber
James J. Bolden Jr.	J B Carpet
Christy Caldwell	Topeka Chamber
ROGER Basinger	
Beth Wines	Hutgles Gov't Relations
Verde Hein	Hein Law Firm

**Charles M. Benjamin, Ph.D., J.D.**  
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**Testimony as a Proponent for restrictions or elimination of economic or industrial development as a "public use" in eminent domain**

Before the Kansas Senate Committee on the Judiciary  
**On Behalf of the Kansas Chapter of Sierra Club**  
January 31, 2006

Mr. Chairman, members of the Committee, thank you for the opportunity to testify on behalf of the Sierra Club, the oldest and largest grass-roots environmental organization in the world with over 750,000 members including over 4,000 in Kansas.

**Sprawl Hurts Us All**

One of the major strategic campaigns for Sierra Club is the "Challenge to Sprawl Campaign" that works to fight poorly planned runaway development and promotes smart growth communities that increase transportation choices, reduce air and water pollution, and protect our natural places.

Sprawl spreads development out over large amounts of land; puts long distances between homes, stores, and job centers; and makes people more and more dependent on driving in their daily lives.

Sprawl pollutes our air and water. As reliance on cars and pavement of more and more roads increases, so does smog and pollution from water runoff. Today, more than half all Americans live in areas where the air is unsafe to breathe. Sprawl destroys more than two million acres of parks, farms and open space each year.

Sprawl increases traffic on our neighborhood streets and highways. Sprawl lengthens trips and forces us to drive everywhere. The average American driver currently spends the equivalent of 55 eight-hour workdays behind the wheel every year.

Sprawl wastes tax money. It pulls economic resources away from existing communities and spreads them out over sparse developments far away from the core. Taxes subsidize millions of dollars worth of new roads, new water and sewer lines, new schools and increased police and fire protection at the expense of the needs of the core communities. This leads to degradation of our older towns and cities and higher taxes.

**Eminent Domain for Economic & Industrial Development Will Encourage Sprawl**

Sierra Club is concerned that the use of eminent domain by state and local governments for the purpose of economic and industrial development will only increase problems with sprawl in Kansas and elsewhere. Here's why. Developers of big box retail stores or new housing developments typically go to the edge of towns where large amounts of

Senate Judiciary

2-3-06

Attachment 1

land, typically agricultural land, is available at less expensive prices than in town. The developer would normally have to approach a landowner and offer that landowner a price for her land. That landowner can accept the price or turn down the offer. That's the end of the matter. The use of eminent domain for economic and industrial development allows that same developer to go the city or county commission, if the landowner will not sell, and ask the city or county commission to condemn the landowner's land for "economic and industrial development."

The use of eminent domain for industrial and economic development is irresistible for city and county commissions. Land on the edge of town is typically valued as "agricultural land use" meaning that it does not generate a lot of property taxes. If the land becomes a big box or a residential development the real property taxes are then based on land that is appraised as industrial, retail or residential – all of which generate more property taxes than agricultural land uses. In addition, a big box development will also generate personal property taxes that land in agricultural uses does not generate. Finally almost every local jurisdiction has some sort of retailer's sales tax. Agricultural land or land devoted to open space does not generate sales tax revenue. In a word, condemnation of land for economic and industrial development is irresistible to city and county governments.

The Sierra Club has no problem with the use of eminent domain to alleviate blight. Sierra Club takes no position as to whether restrictions on eminent domain for economic and industrial development should be written into statute or into the state constitution.

On a personal note I have experienced the local economic development and condemnation processes from several different perspectives. I served for 16 years as a County Commissioner in Harvey County. During that time I was heavily involved with economic development efforts in the county. I know the pressures that local government officials are under to expand the tax base. That pressure has only become worse in the last nine years since I left office. I also voted in favor of the condemnation of private property for the expansion of road and bridge right of way. I know that most local government officials do not take condemnation action lightly.

I have also seen eminent domain from the other side. Two years ago I represented a couple who had 100 of their 170 acres in Linn County condemned for a public wholesale water supply lake. I took that case to a jury trial and was able to obtain more money for the couple. However, what they really wanted was for me to stop the condemnation of their land – which I was not able to do. Four years ago I represented a person in a complex contract dispute with a shopping center developer. That person told me that she was threatened with condemnation by the city manager and mayor if she did not sell her land to the developer.

I am willing to elaborate further on any of these experiences either before the whole committee or with individual members of the committee. My contact information is at the top of this testimony.

Thank you for your time and attention. I will stand for questions when appropriate.

**HAMILTON, LAUGHLIN, BARKER, JOHNSON & WATSON**

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LARRY E. GREGG  
(1948-1999)

January 30, 2006

Senate Judiciary Committee  
Senator John Vratil, Chairperson  
State Capitol  
Room 281-E  
Topeka, KS 66612

RE: SB 398, SB 323, SB 346, Concurrent Resolution 1612 and Concurrent Resolution 1616

Mr. Chairman and Committee members:

My name is John Hamilton. My practice primarily involves representing property owners in eminent domain cases. I was on the Eminent Domain Advisory Committee of the Kansas Judicial Counsel which drafted the language for K.S.A. 26-508. I am submitting this testimony as a lawyer concerned with fairness in eminent domain law and not on behalf of the Advisory Committee. I testified before this Committee in March 2003 and in my written testimony indicated,

"Section 2 specifically provides that when a notice of appeal is filed, the case will be docketed as a separate action and will require the payment of a docketing fee. This is the way condemnation appeals have been handled in most counties and is simply a clarification."

Phil Mellor submitted written testimony as follows:

"Section 2 is primarily a house-keeping provision. Where separate files for appeals cases are not created, the files become bulky and unmanageable containing all of the pleadings, including the discovery and depositions of several different appeals. Section 2 will codify the practice already existing in many districts to create a new case for each appeal."

I do not believe that anyone on the Eminent Domain Advisory Committee believed that failure to pay the docketing fee at the time of filing a Notice of Appeal would be considered jurisdictional. The passage of SB 398 will prevent a substantial injustice from occurring.

Senate Judiciary

2-3-06  
Attachment 2

I applaud your efforts to bring some reform to the current state of the law which allows governmental entities to acquire private property solely for the purpose of turning the properties over to private developers based upon a theory that the project will generate more revenue for the community. Obviously, there has been some abuse which was highlighted by United States Supreme Court ruling in *Keylo v. City of New London* and those abuses should be corrected. Senate Bill 323 would almost kill any inner-city redevelopment and probably goes too far. Senate Bill 446 will still allow the redevelopment for the purpose of eliminating slum and blight conditions. Senate Bill 446 also addresses compensation reform to a small degree by providing that "just compensation" shall be 125% of fair-market value as defined by K.S.A. 26-513. However, both Bills make reference to compensation as "just compensation". The Kansas Constitution requires payment of full compensation which I believe may very well mean more than fair-market value. Full compensation should mean making the property owner whole. Therefore, I would request that any legislation dealing with the amount of compensation reference "full compensation" rather than "just compensation".

I do not believe that amendments to the Kansas Constitution are necessary to correct the problem. However, if there is an amendment to the Kansas Constitution, the reference to "full compensation" should be maintained and not confused by adding amendments that provide for "just compensation".

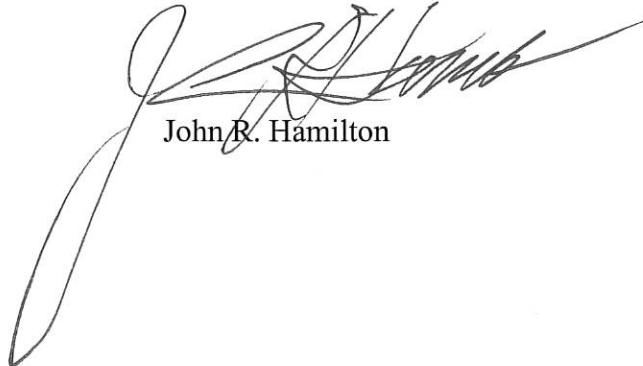
I am attaching a proposal which would amend K.S.A. 26-513 to provide for meaningful compensation reform. I realize that there is not a bill before you that would amend K.S.A. 26-513, but such an amendment could be incorporated within one of the eminent domain bills. Notwithstanding the fact that the Kansas Constitution requires payment of "full compensation", prior legislation has codified in K.S.A. 26-513 that "just compensation" is fair market value of the property or interest at the time of taking. Unfortunately, the Supreme Court has found a number of factors that result in the reduction of value to the property remaining to be non-compensable which means that the landowner has lost his or her property and does not receive full compensation for damages actually inflicted by the taking. One of those factors is "view". The Supreme Court has held that a property owner is not entitled to compensation for loss of view to the property from the adjoining roadway. You are only entitled to compensation for loss of view from the property remaining if that is a factor. Another non-compensable item under K.S.A. 26-513 is the loss of the value of the business as a growing concern. To be made whole, a property owner must be reimbursed reasonable attorneys' fees and professional fees.

I believe that what I have attached as a proposed amendment to K.S.A. 26-513 will allow a victim of condemnation to be made whole. If you add that the governmental entity would have the right to acquire property by eminent domain to redevelop only slum and blighted areas under very strict conditions and non-slum and blighted areas only if the court finds by clear and convincing evidence that there is no reasonable alternative to such taking available to satisfy the public purpose, you will have meaningful reform. The condemning authority should be required to prove the public



necessity for the taking of a blighted or slum area for economic redevelopment by clear and convincing evidence. A determination by the condemning authority to take property for economic redevelopment by the use of eminent domain should be subject to strict scrutiny by the court having jurisdiction. The burden of proof should be on the condemning authority rather than the property owner to establish the public necessity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Hamilton", written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

John R. Hamilton

JRH:mmg

1 AN ACT concerning eminent domain; relating to compensation for taking and damages;  
2 amending K.S.A. 26-513 and repealing the existing section.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5  
6 **K.S.A. 26-513. Same; Compensation required for taking and damage;  
7 determination.**

8 Section 1:

9 (a) *Necessity.* Private property shall not be taken or damaged for public use  
10 without ~~just~~ *full* compensation.

11  
12 (b) *Taking entire tract.* If the entire tract of land or interest therein is taken,  
13 the measure of compensation is the value of the property or interest at the time of the  
14 taking, *plus the reasonable attorneys fees and professional fees incurred by the property owner.*

15  
16 (c) *Partial taking.* If only a part of a tract of land or interest is taken, the  
17 compensation and measure of damages are the difference between the value of the entire  
18 property or interest immediately before the taking, and the value of that portion of the  
19 tract or interest remaining immediately after the taking, *plus the reasonable attorneys fees and*  
20 *professional fees incurred by the property owner.*

21  
22 (d) *Factors to be considered.* In ascertaining the amount of compensation and  
23 damages, *all factors which impact the value of the remaining property shall be considered, including as*  
24 ~~above defined,~~ the following factors, without restriction because of enumeration, shall be  
25 given consideration if shown to exist but they are not to be considered as separate items  
26 of damages, but are to be considered only as they affect the total compensation and  
27 damage under the provisions of subsections (b) and (c) of this section:

- 28  
29 1. The most advantageous use to which the property is reasonably adaptable.
- 30  
31 2. Access to the property remaining.
- 32  
33 3. Appearance of the property remaining, if appearance is an element of  
34 value in connection with any use for which the property is reasonably adaptable.
- 35  
36 4. Productivity, convenience, use to be made of the property taken, or use of  
37 the property remaining.
- 38  
39 5. View, ventilation and light, *including the view from the adjoining roadway to the*  
40 *property,* to the extent that they are beneficial attributes to the use of which the remaining  
41 property is devoted or to which it is reasonably adaptable.
- 42  
43 6. Severance or division of a tract, whether the severance is initial or is in  
44 aggravation of a previous severance; changes of grade and loss or impairment of access  
45 by means of underpass or overpass incidental to changing the character or design of an  
46 existing improvement being considered as in aggravation of a previous severance, if in

1 connection with the taking of additional land and needed to make the change in the  
2 improvement.

3  
4 7. Loss of trees and shrubbery to the extent that they affect the value of the  
5 land taken, and to the extent that their loss impairs the value of the land remaining.

6  
7 8. Cost of new fences or loss of fences and the cost of replacing them with  
8 fences of like quality, to the extent that such loss affects the value of the property  
9 remaining.

10 9. Destruction of a legal nonconforming use.

11  
12 10. Damage to property abutting on a right-of-way due to change of grade  
13 where accompanied by a taking of land.

14  
15 11. Proximity of new improvement to improvements remaining on  
16 condemnee's land.

17  
18 12. Loss of or damage to growing crops.

19  
20 13. That the property could be or had been adapted to a use which was  
21 profitably carried on.

22  
23 14. Cost of new drains or loss of drains and the cost of replacing them with  
24 drains of like quality, to the extent that such loss affects the value of the property  
25 remaining.

26  
27 15. Cost of new private roads or passageways or loss of private roads or  
28 passageways and the cost of replacing them with private roads or passageways of like  
29 quality, to the extent that such loss affects the value of the property remaining.

30  
31 16. *The loss of value of business as a growing concern.*

32  
33 (e) *Fair market value.* "Fair market value" means the amount in terms of  
34 money that a well informed buyer is justified in paying and a well informed seller is  
35 justified in accepting for property in an open and competitive market, assuming that the  
36 parties are acting without undue compulsion. The fair market value shall be determined  
37 by use of the comparable sales, cost or capitalizations of income appraisal methods or  
38 any combination of such methods.

39  
40 Section 2: 26-513 is hereby repealed.

41  
42 Section 3: This Act shall take effect and shall be in force from and after its publication in  
43 the Kansas Register.



# AMERICANS FOR PROSPERITY K A N S A S

February 3, 2006

Mr. Chairman and members of the committee:

I am Alan Cobb, representing the over 5,000 Kansas members of Americans for Prosperity.

We are in favor of SCR 1616.

The taking of private property by government should be rare and for true public purposes such as roads, schools, parks and hospitals.

The passage of SCR 1616 would ensure this.

- SB 446 is barely a speed bump for local governments. It simply delays the time for a local government to take private property for non-public use. This bill can hardly be called a compromise.
- While the intentions of SCR 1612 and SB 323 are good, the exceptions contained therein and how a court might interpret those are cause for concern.

The key language in SCR 1612 is “. . . except as the legislature may provide by law.” I assume the intent is to have SB 323 as that language. However, there is absolutely nothing to prevent a court from look at *any law* on the books, and who knows where that might lead us.

In addition, the legal definition of “waste” contained in SB 323 is potentially vague and broad too. A thorough review of Kansas case law would be in order, and even then as we’ve seen with our Supreme Court, that existing legal definition may or may not matter.

While some may say that government taking private property to transfer to another private party will help turn around Kansas’ struggling economy, **there is little data** to support that notion.

In fact, looking at the counties where economic development has been used as the pretext for eminent domain proves the point.

From 2000 to 2004, the population growth of all of these counties except Johnson, was less than the state average of 1.7%, which is hardly robust.

### **Total Pop. Growth 2000 - 04**

Crawford -.05%  
Geary -10.1%  
Riley +.3%  
Shawnee +1.1%  
Wyandotte - .9%



While it is hard to argue with the success of Village West, we should be reminded that that property was not taken with eminent domain. In addition, the growth in other economic indicators in Wyandotte County and other areas where eminent domain has been abused is hardly robust.

**Rank, growth in average wage per job, 2003 - 2004**

- Kansas 4.11%
- Crawford 3.04%, #85
- Geary 4.22%, #61
- Riley 3.57%, #76
- Shawnee 4.85%, #47
- Wyandotte 4.16%, #63

Many publications report that Kansas is one of the states most frequently using economic development as a reason for the exercise of eminent domain power. Yet, we continue to struggle economically, even when compared to states in our region.

If state and local government want to make Kansas a more attractive place to do business, they can begin with our high state and local tax burden, and our high local government job growth.

Are we seriously talking about the abuse of eminent domain as the way out of our sluggish Kansas economy?

I suggest that **reducing** the growth of government would help our State's economy grow rather than **increasing** the government involvement by taking private property for non-public uses.

Though being involved in real estate development hardly seems something that our state's local government should be focused on, they can still purchase what property they want in an open market, even with the passage of SCR 1616.

SCR 1616 would prevent selected private developers from having the unfair advantage of eminent domain being their negotiating tool. Just the specter of a developer's possible use of eminent domain can alter the marketplace significantly and shifts considerable bargaining power to the developer – power received from government, not the marketplace.

KansasCity.com

Posted on Wed, Feb. 01, 2006

## Downtown leader honored

Chamber bestows Citizen of Year award on David Morris

By EDIE HALL  
The Kansas City Star

**"I've been able to use my God-given gifts of bringing people together."**

***Downtown Partnership Chairman David Morris, Shawnee chamber Citizen of the Year***

David Morris is nonchalant about his role in the revitalization of Shawnee's downtown.

To hear Morris explain, "I just do what I do," no one would know that his role as chair of the Shawnee Downtown Partnership includes donating thousands of hours of his time.

These are hours spent building relationships between the business community and the city and within the business community itself, attending a variety of meetings, and generally working to make the downtown area a better place.

"It isn't hard and it is fun, and you get to meet nice people," Morris said.

So when Morris was named the 2005 Shawnee Citizen of the Year at the Shawnee Chamber of Commerce's Annual Dinner Saturday, he was "overwhelmingly surprised."

"I'm thrilled with the award," Morris said. "I cannot be more proud. But to me, there are a lot of people behind me who make me look good.

"So this is not about me — it's about the Shawnee Downtown Partnership. It's as much an honor for the Shawnee Downtown Partnership as it is for me."

Shawnee citizens nominate one another for the Citizen of the Year honor, and a committee of past winners selects each year's recipient, said chamber president Linda Leeper.

"David has led the Shawnee Downtown Partnership and has been very involved in it," Leeper said. "We've all been very pleased with what he's been able to accomplish."

Morris, who owns David Morris Photography and works as an advertising photographer, moved to Shawnee in 1991 with his wife, Paula.

He first entered the public eye in 2000 when he helped organize neighborhood opposition to the proposed Gateway Project, a redevelopment plan that sought to improve the look of property along Shawnee Mission Parkway from the eastern city limit to Nieman Road. The plan was opposed because it initially included the destruction of homes in that area.

The project was abandoned, but Morris wasn't ready to give up on making Shawnee a more beautiful place.

"I just wanted to go in a positive direction from there," Morris, 46, said. "The city formed the downtown partnership, and I wanted to be a part of it and was asked to be a part of it."

Morris has served one three-year term as the partnership's chair and recently was reappointed to another three-year term, ending in 2009.

And although the recently completed \$2.3 million Downtown Streetscape project would seemingly be a feather in Morris' hat, he said he's most proud of the relationships business owners have established with each other, the city and the surrounding neighborhoods.

"I've been able to use my God-given gifts of bringing people together," Morris said. "The result of the Shawnee Downtown Partnership's work in building up those relationships has been the streetscape project."

The streetscape project revitalized the area between King and Bluejacket roads and 58th and 59th streets.

It included improvements to the Nieman Road and Johnson Drive intersection, installation of a decorative sidewalk, streetlights, a fountain area, and other streetscape items.

Morris said he looks forward to continuing the streetscape project — probably down Nieman Road to Shawnee Mission Parkway.

"We're pressing forward and I'm excited about that," he said.

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*To reach Edie Hall, Shawnee Neighborhood News reporter, call (816) 234-7725 or send e-mail to [ehall@kcstar.com](mailto:ehall@kcstar.com).*

3-4

# KANSAS TAXPAYERS NETWORK

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January 31, 2006

## Testimony Supporting SCR 1616 by Karl Peterjohn, Executive Director

Property rights need protection in Kansas. This became a national issue with the odious Kelo case issued by the U.S. Supreme Court in 2005 but Kansas has its own state supreme court decision that performs the same sort of limitation of property rights at the state level.

SCR 1616 is a constitutional amendment that would restore the property rights provisions that have traditionally been a part of American life until the advent of urban renewal in the 1950's. For the last 50 years property rights have been in increasing forms of jeopardy that varies on a state-by-state basis across the country.

In 2003 the Institute for Justice ([www.ij.org](http://www.ij.org)) examined the property rights situation as it regarded eminent domain in the 50 states. In this book, "Public Power, Private Gain," Kansas was ranked as second worst of the 50 states as having a high level of abuse impacting private property owners who have lost their property for a variety of economic development abuses. This book says in part about Kansas, "It looks like Kansas home and business owners just better hope that their property doesn't draw the attention of any covetous developers, because Kansas cities are more than willing to use eminent domain on developers' behalf."

When a small businessman loses his property, his business, and his livelihood due to eminent domain for so called "economic development" that is outrageous. The fact that this was nothing more than a tax grab makes this even more outrageous. The city in which Mr. Gross' property was located wanted this property in an attempt to expand its tax base.

National attention is focused on Kansas in other ways too. Steven Greenhut's book, "Abuse of Power, How the Government Misuses Eminent Domain," focuses on eminent domain abuses and a section of his book specifically examines the abuse of private property owners that has been codified by the activist Kansas Supreme Court in their 2003 ruling, "General Building Contractors and Robert Tolbert v. Board of Shawnee County Commissioners."

A number of statutory as well as constitutional remedies for the abuses of eminent domain laws have been proposed in Kansas. Statutes are changed annually by the legislature. Strengthening statutory protection against eminent domain abuses would be welcome and is needed this is not sufficient to solve this problem. A constitutional solution is also needed too. SCR 1616 is the best of the proposed amendments that have been introduced to stop this abuse of private property owners.

A statutory form of SCR 1616 should also be enacted to provide immediate protection until the time that voters can enact a constitutional measure like SCR 1616 is enacted. Enactment of SCR 1616 will move Kansas from near the bottom of the 50 states in protection this fundamental human right towards the top of future statewide property rights measurements.

Senate Judiciary

2-3-06  
Attachment 4



## News Releases

January 25, 2006

### **BB&T announces eminent domain policy**

WINSTON-SALEM, N.C. –

BB&T Corporation today said it will not lend to commercial developers that plan to build condominiums, shopping malls and other private projects on land taken from private citizens by government entities using eminent domain.

The commercial lending policy change comes in the wake of *Kelo v. City of New London*, a controversial Supreme Court decision in June that said governments can seize personal property to make room for private development projects.

The court's ruling cleared the way for an expansion of eminent domain authority historically used primarily for utilities, rights of way and other public facilities.

"The idea that a citizen's property can be taken by the government solely for private use is extremely misguided, in fact it's just plain wrong," said BB&T Chairman and Chief Executive Officer John Allison.

"One of the most basic rights of every citizen is to keep what they own. As an institution dedicated to helping our clients achieve economic success and financial security, we won't help any entity or company that would undermine that mission and threaten the hard-earned American dream of property ownership."

The high court, in a 5-4 ruling, held that 15 homes in a waterfront neighborhood in New London, Conn., could be acquired by the city, turned over to private developers and ultimately replaced by a luxury hotel, upscale condos and office buildings. The city justified the project as a way to generate tax revenue and jobs.

Critics charged that by letting local governments decide what constitutes a "public purpose," the court abdicated its duty to protect citizens from unconstitutional seizures of their property under the Fifth Amendment.

In a stinging dissent by Justice Sandra Day O'Connor, she wrote that, since the decision, "the specter of condemnation hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

But that may change. Thirty-eight states have recently passed or are considering laws that would ban the use of eminent domain for private development. A similar bill that would apply a federal ban has passed the House, and President Bush has voiced his support for such reform.

The bipartisan Private Property Rights Protection Act would revoke for two fiscal years all federal economic development financing – a significantly large amount of money for most localities and states – from local governments that condemn privately owned houses and other non-blighted property so that they can transfer it to private developers.

“While we’re certainly optimistic about the pending legislation, this is something we could not wait any longer to address,” said BB&T Chief Credit Officer Ken Chalk. “We’re a company where our values dictate our decision-making and operating standards. From that standpoint, this was a straightforward decision; it’s simply the right thing to do.”

Winston-Salem-based BB&T Corporation and its subsidiaries offer full-service commercial and retail banking and additional financial services such as insurance, investments, retail brokerage, corporate finance, consumer finance, treasury services, international banking, leasing and trust.

BB&T operates more than 1,400 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, D.C.

With \$109.2 billion in assets, BB&T Corp. is the nation’s ninth largest financial holding company. More information about BB&T Corp. is available at [www.BB&T.com](http://www.BB&T.com).

#####

For more information contact:

Ken Chalk  
Senior Executive Vice President,  
Chief Credit Officer  
(336) 733-2280

Bob Denham  
Senior Vice President,  
Public Relations  
(910) 914-9073

# KANSAS PROPERTY TAXES ARE BAD!

## HOW BAD? READ ON!

Kansans have largely been disenfranchised when it comes to tax hikes. In Missouri, Colorado, and Oklahoma the politicians have to get voter approval before taxes and bonds can be raised. That's not true in Kansas where property taxes are commonly raised two ways, by higher mill levies and appraisal hikes. Kansas voters seldom can vote on raising property taxes, or any state tax hikes either.

Kansas property taxes are high. This fits in a state that has no limits on raising property tax millage or limits on appraisals. Overall, Kansas state taxes are the second highest in our five state region according to the most recent federal government tax data (see federal government web site: [www.census.gov/govs/statetax/03staxrank.html](http://www.census.gov/govs/statetax/03staxrank.html)). Here's the state's most recent property tax data taken from Kansas Inc.'s report, "Business Taxes and Costs: A Cross State Comparison 2003 Update," page 72-3.

<i><b>Kansas</b></i>		<u>Effective Tax Rate</u>
Statewide	Residential	1.25%
"	Commercial/Industrial	2.69%
Metro	Residential	1.23%
"	Commercial/Industrial	2.66%
Non Metro	Residential	1.27%
"	Commercial/Industrial	2.76%
<i><b>Colorado</b></i>		
Statewide	Residential	0.66%
"	Commercial/Industrial	2.07%
Metro	Residential	0.72%
"	Commercial/Industrial	2.26%
Non Metro	Residential	0.49%
"	Commercial/Industrial	1.55%

(OVER)

		<u>Effective Tax Rate</u>
<b><i>Missouri</i></b>		
Statewide	Residential	1.04%
"	Commercial/Industrial	2.06%
Metro	Residential	1.13%
"	Commercial/Industrial	2.27%
Non Metro	Residential	0.80%
"	Commercial/Industrial	1.48%
<b><i>Nebraska</i></b>		
Statewide	Residential	1.80%
"	Commercial/Industrial	1.82%
Metro	Residential (2001 data)	1.87%
"	Commercial/Industrial(2001 data)	1.90%
Non Metro	Residential (2001 data)	1.65%
"	Commercial/Industrial(2001 data)	1.68%
<b><i>Oklahoma</i></b>		
Statewide	Residential	0.97%
"	Commercial/Industrial	1.07%
Metro	Residential	1.07%
"	Commercial/Industrial	1.17%
Non Metro	Residential	0.83%
"	Commercial/Industrial	0.92%

Voters get to decide tax hikes in three of the states in this region. Only Kansas and Nebraska do not. It is no surprise that Kansas and Nebraska have higher property taxes.

Taxpayers are protected in Colorado, Missouri, and Oklahoma by tax and or spending lids that limit government growth. Why not Kansas? We can't afford to continue to be the **high tax point on the prairie!**

## **KANSAS TAXPAYERS NETWORK**

**P.O. Box 20050**

**Wichita, KS 67208**

**[www.kansastaxpayers.com](http://www.kansastaxpayers.com)**

**316-684-0082**

Testimony for the Senate Judiciary Committee  
SCR 1616  
David Pfrang  
February 3, 2006

My name is David Pfrang. I am a farmer and rancher from Nemaha County where I live with my wife and our 3 little girls. As a past victim of eminent domain from a watershed board, I'm here today because of our concerns of the potential abuse of eminent domain.

Several years back Walter Adams, Jr. near Salina had his property taken by the threat of eminent domain. The watershed district in that area took far more land than was needed to build a lake on the property. Then they gave it to a realtor to sell as a hunting and fishing area for a profit.

Lloyd Doherty in Jackson County was coerced by the area watershed district to sell approximately 290 acres of his land. This is far more land than what is normally needed to put in an approximately 90 acre watershed pond.

Jim Donahue of Donahue Corporations was willing to donate 70 acres of his land if the watershed board would move the structure up so that he and his cattle could have access to the other side of the pasture. The watershed board refused, and then they wanted 160 acres~~90 acres more than what was requested originally.

A watershed dam was proposed 30 yards from Bev Nelson's 100-year old home near Lincoln, KS. The watershed board harassed Bev's father for 30 years to donate his easements of 120 acres. Following his death the board continued to harass Bev. Once again, 120 acres far exceeded the amount needed to build the structure.

Marc Marcoux in Pottawatomie County had around 300 acres taken by eminent domain by the watershed district board. The structure was built and is now the Pottawatomie State Fishing Lake. The remainder of land **that was not needed** for the structure was sold to a different landowner, and the rest was given to the State Lake & Park #3. Due to health reasons, Marcoux sold his share of the land. My brother and I now own the land, and to this day the pasture is still landlocked. It still makes me sick to think about the abuse of property rights in this situation.

These are just a few cases that we stumbled upon in our 4 year fight against eminent domain. We are still against eminent domain. Our concern today is the **abuse** of eminent domain~~when more acres are taken than are needed.

We learned much from *our* experience with eminent domain. We proved that the engineer involved in the project beefed up the numbers to make the project appear feasible. After all, an engineer is paid to *build* and not to *not build*.

Basically it all boils down to one thing~~ Someone has something that someone else wants. How far will some people go to get what they want??!! You as a committee alone have the opportunity to protect the rights of the owner.

While the issue of eminent domain is on table, let's clean up the entire thing. It doesn't matter if it's economic development or the abuse from watershed districts. Right now Kansas needs to do a better job of protecting individual property rights.

# KANSAS

DEPARTMENT OF TRANSPORTATION  
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

### REGARDING SENATE BILL 323 AND SENATE CONCURRENT RESOLUTION 1612 RELATING TO EMINENT DOMAIN

FEBRUARY 1, 2006

Mr. Chairman and Committee Members:

Good morning. My name is Sally Howard, Chief Counsel for the Kansas Department of Transportation (KDOT). I appreciate the opportunity to testify on Senate Bill 323 and Senate Concurrent Resolution 1612.

Both Senate Bill 323 and Senate Concurrent Resolution 1612 are intended to prohibit a governmental authority from taking private property if the intent is to transfer it to another private entity. KDOT takes no position with respect to the policy decision to restrict the use of the powers of eminent domain. However, the agency is concerned that the current wording in both Senate Bill 323 and Senate Concurrent Resolution 1612 will prohibit KDOT from continuing its current practice of allowing farmers to use KDOT right of way in a manner that is not inconsistent with the agency's use of the land.

The language of concern is:

"The taking of private property with the intent to or in anticipation of selling, leasing or otherwise transferring any interest in the property to any private entity is not a valid public use and is prohibited except as the legislature may provide by law."

There are many instances where KDOT acquires right-of-way that is not immediately needed for construction of a highway project. KDOT will also acquire right-of-way in anticipation of the future need to expand a given highway. When KDOT acquires land in advance of highway construction, it many times enters into a lease agreement with farmers under which they can continue using the land as farm ground. KDOT also issues haying permits to individuals to allow them on our right-of-way. In both instances, KDOT is leasing the land to a private entity. KDOT benefits because the land is actively used and the farmers benefit from using the land.

Clearly, the primary purpose of KDOT's acquisition of this right-of-way is to preserve the ability to properly expand the state highway system as needs arise and funding becomes available. KDOT's lease of property is simply a way for it to manage the property until such time as the land is needed for highway expansion.

Senate Judiciary

2-3-06

Attachment 6

Senate Judiciary Committee  
SB 323 and SCR 1612  
February 1, 2006  
Page 2

The current wording of Senate Bill 323 and Senate Concurrent Resolution 1612 would prohibit KDOT from continuing its practice of leasing KDOT right-of-way. We respectfully request the Committee consider adopting the language contained in Senate Bill 446 which prohibits the taking of private property where the **primary** purpose is with the intent to sell, lease or otherwise transfer the property to a private entity. KDOT believes the inclusion of the phrase, "primary purpose," will accomplish the goal of prohibiting the use of condemnation to acquire a person's land for the sole purpose of transferring it to another private entity, but will also allow KDOT to continue its practice of allowing farmers to use KDOT right-of-way until such time as the property is needed for highway construction.

Thank you for your consideration. Mr. Chairman, I would be pleased to respond to questions.



**TESTIMONY IN SUPPORT OF SENATE BILL NO. 446**

To: Members of the Senate Judiciary Committee

From: Michael A. Boehm, Mayor

Date: February 1, 2006

RE: Eminent Domain Legislation

Thank you for the opportunity to present testimony on the various legislative proposals affecting the use of the eminent domain for economic development. The City of Lenexa supports Senate Bill No. 446 and opposes Senate Bill No. 323 and Senate Concurrent Resolutions Nos. 1612 and 1616.

The City of Lenexa has never used eminent domain for economic development purposes. Moreover, it is the policy of the City to first negotiate in good faith for the purchase of private property prior to the institution of eminent domain procedures for any purpose and as such, good faith negotiations would certainly precede any future use of eminent domain for economic development. The City supports the enactment of procedural safeguards to ensure that any use of eminent domain for economic development is undertaken only after careful and deliberate consideration of the benefit to the community at large, but opposes any legislation which would completely or effectively abolish this important tool.

SB 446 provides a fair and balanced approach, which preserves the ability of condemning authorities to utilize eminent domain for economic development, but only after the governing body has conducted a public hearing on the proposed project and thereby provided a full opportunity for public input into the proposal. In addition, the governing body must consider the benefit to the community as a whole; the economic benefit of the proposal and whether the size and scope of the project is reasonably necessary to accomplish the purpose. The bill also recognizes the unique and subjective value of an individual's home by providing for 125% of fair market value as compensation for owner-occupied residential properties and operating farm land.

The City of Lenexa shares the concern raised by the City of Overland Park regarding the potential unintended consequences of any measure which would completely abolish the ability of cities to utilize eminent domain for economic development purposes. In addition to providing certain tax benefits to sellers, eminent domain is also a necessary tool for clearing clouded property title on key parcels, the absence of which could prevent an economic development project from coming to fruition simply because the private market is powerless to address the problem.

The City of Lenexa urges your support of SB 446. Please do not hesitate to contact me or Senior Assistant City Attorney Beccy Yocham (913/477-7628 or byocham@ci.lenexa.ks.us) should you desire any additional information or assistance on this matter. Thank you for your consideration.



## Senate Judiciary Committee

Senate Bill No. 398  
Testimony of James and Amy Bartle  
January 31, 2006

Dear Senator Vratil and Members of the Committee:

Thank you for the opportunity to submit written testimony in support of Senate Bill No. 398. This bill would legislatively overrule the Kansas Supreme Court's decision in *Miller v. Stranger Valley Land Company* and make clear that a landowner's appeal in an eminent domain proceeding "shall be deemed perfected upon the filing of the notice of appeal." The bill will apply both prospectively and retroactively and make clear that payment of a docket fee, while still required, is not jurisdictional.

We are residential homeowners who have had a portion of our property taken by eminent domain. As explained below, passage of Senate Bill No. 398 is needed in order for us to be fully and justly compensated for the taking of our property.

In 2003, the Kansas Department of Transportation (KDOT) condemned our property for use in connection with a highway improvement project. Prior to filing the condemnation petition, KDOT provided us with a publication containing a statement of our rights as property owners. That publication, *Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges*, stated that we could appeal the amount of compensation awarded by the court-appointed appraisers by filing a notice of appeal within 30 days from the date of their report. Significantly, these instructions made no mention of the need to pay a docket fee within the 30-day period.

The court-appointed appraisers awarded us the sum of \$32,000 and, as previously instructed by KDOT, we appealed their determination within the 30-day period. However, it was not until later, at the time our appeal was docketed, that we paid the \$111 filing fee to the Clerk of the District Court.

On two occasions, District Judge Michael J. Malone denied KDOT's attempts to have our appeal dismissed for failure to comply with K.S.A. 2004 Supp. 26-508. The issue of just compensation was subsequently tried to a jury which awarded us \$40,342.95, an increase of 26% over the amount previously awarded by the court-appointed appraisers.

After the Kansas Supreme Court ruled in *Stranger Valley* that timely payment of a docket fee in an eminent domain appeal is jurisdictional, KDOT's attorneys asked us to agree to a settlement "which cancels the increase granted by the jury." [See attached letter from Gates, Biles, Shields & Ryan dated Dec. 13, 2005.] This letter also warned that KDOT would seek to have attorneys' fees and costs assessed against us if we refused to comply.

We believe KDOT is both legally and morally obligated to respect the jury's determination of just compensation, particularly since we followed their instructions regarding the manner in which to file an appeal. But unless *Stranger Valley* is overturned, KDOT appears unwilling to pay more than \$32,000 for property worth over \$40,000.

In Kansas, payment of a docket fee has never been regarded as a mandatory jurisdictional requirement, not only in eminent domain appeals but in all other civil actions as well. Even the Kansas Supreme Court seemed to acknowledge that the 2003 Kansas Legislature did not intend to create an exception to this general rule when it amended K.S.A. 26-508. Justice Robert E. Davis, in his concurring opinion in *Stranger Valley*, stated: "making payment of the docketing fee jurisdictional may have been unintended."

We urge this Committee to act favorably on Senate Bill No. 398 in order to correct the unfortunate and unintended consequences arising out of the *Stranger Valley* decision and the 2003 amendments to K.S.A. 26-508.

If you have questions or require further information please feel free to contact us at the address below. You should also feel free to speak with Jane M. Eldredge, an attorney with the Barber Emerson law firm, who is familiar with our case and intends to testify at the hearing on this bill.

Respectfully submitted,

Mr. & Mrs. James Bartle  
701 Fox Chase Court  
Lawrence, KS 66049  
(785) 843-4505

Attachment

# GATES, BILES, SHIELDS & RYAN, P.A.

A PROFESSIONAL CORPORATION

Attorneys at Law

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\*ALSO ADMITTED TO PRACTICE IN MISSOURI

Facsimile No: (913) 491-6398

E-MAIL: jrobinson@gsrlaw.com

December 13, 2005

VIA FACSIMILE & REGULAR MAIL

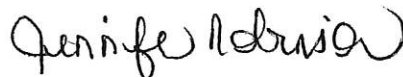
James Bartle  
Attorney at Law  
P.O. Box 1074  
Lawrence, KS 66044

**Re: Miller v. Bartle  
Douglas County District Court  
Case No. 04 C 155**

Dear Mr. Bartle:

Enclosed is a copy of the *Stranger Valley Land Co.* decision decided by the Kansas Supreme Court on December 9, 2005. I would ask that you please review this case and then consider dismissing your appeal and agreeing to a settlement which cancels the increase granted by the jury. If you decide not to dismiss your appeal despite the *Stranger Valley Land Co.* decision, my client will request both attorneys' fees and costs from the Supreme Court when the suit is dismissed. I appreciate your consideration in this matter.

Very truly yours,



JENNIFER L. ROBINSON, ESQ.

For

GATES, BILES, SHIELDS & RYAN, P.A.



February 1, 2006

Chairperson John Vratil  
And members of the Senate Judiciary Committee  
Room 123-S  
State Capitol  
Topeka, Kansas

Re: Testimony on Eminent Domain Legislation

The City Council of the City of Wichita has adopted the following statement on Eminent Domain legislation:

The City of Wichita supports reasonable use of eminent domain for the purpose of economic development. Special care must be used not to limit eminent domain in such a way that it would inhibit government's ability to provide needed services to its citizens.

Upon review of the legislation before you today, I believe that most of the proposals are not reasonable and in fact inhibit cities' ability to provide needed services to its citizens. The City of Wichita concurs in and supports the testimony you have received from the cities of Overland Park, Manhattan and Roeland Park in support of Senate Bill No. 446 and in general opposition to those bills in both the House and Senate which attempt to limit cities powers of eminent domain when done for economic development purposes.

The bills that have been put forth to limit cities' powers of eminent domain for economic development create ambiguity and uncertainty that threatens the ability of cities to acquire property for core purposes – streets, water and sewer lines and facilities, drainage, and the siting and construction of public facilities. Restrictions on subsequent sale of property to third parties, while well intentioned, can be an economic burden on cities when it makes economic sense to acquire an entire ownership even when the land needed for public purposes is less than the entire ownership. In these cases, cities are able to reduce the costs of the land acquisition element of public projects by declaring land acquired but not necessary to the project as surplus and available for sale in the private sector.

**Department of Law**

Gary E. Rebenstorf, Director of Law and City Attorney

City Hall • 13th Floor • 455 North Main • Wichita, Kansas 67202-1635

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Senate Judiciary

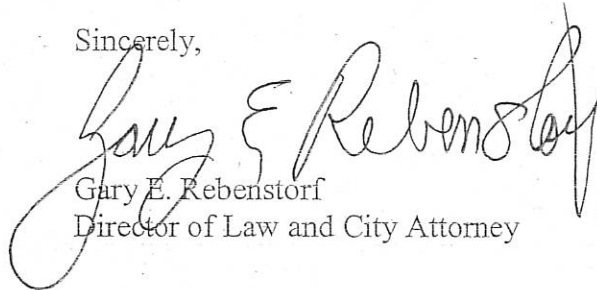
2-3-06  
Attachment 9

In addition, it is of vital importance to cities that they retain the ability to address blight and the consequences of a depressed downtown or central business district through the formation of districts within which properties may be acquired and then dedicated to a public use or a private use that is consistent with an adopted redevelopment plan. Oftentimes cities are forced to utilize eminent domain in these circumstances because the owner or owners of the properties that are blighted or abandoned are absent, unknown, or unable to be contacted to conduct negotiations to acquire the property. Existing statutes that provide for public hearings, legislative findings and, in some cases, opportunity for objection by the electorate, are sufficient to protect against overreaching and misuse. There is no showing of a need for new or amended legislation at this time.

In the event the legislature considers it necessary to pass legislation to protect property owners when cities exercise eminent domain in connection with economic development projects, the City of Wichita supports the provisions of Senate Bill No. 446. That bill contains provisions that provide due process protections against overreaching and, in addition, provide for an enhanced compensation over fair market value as that term is defined in the existing statutes.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Gary E. Rebenstorf". The signature is written in dark ink and is positioned above the printed name and title.

Gary E. Rebenstorf  
Director of Law and City Attorney

GER:JAL:ba



**KANSAS ASSOCIATION OF WHEAT GROWERS**

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2630 Claflin Rd • Manhattan, KS 66502 • (785) 587-0007 • FAX (785) 539-8946

February 1, 2006

Written Testimony Submitted to

**Senate Judiciary Committee**

Regarding  
**Eminent domain**

Chairman Vratil and Committee Members:

Thank you for the opportunity to submit testimony on behalf of the Kansas Association of Wheat Growers (KAWG). The KAWG supports SCR 1612 and SB 323 and opposes SB 446 in regards to eminent domain.

After learning about the recent Supreme Court decision on the utilization of eminent domain, Kansas Association of Wheat Growers voted to oppose the use of eminent domain for private economic development. We hold the protection of private property rights as a crucial right of Kansans, including wheat producers.

Throughout our history Kansans have held private property and entrepreneurship in business in high regard. Homesteaders flocked to our state to develop farms, communities and the economy on the basis of owning and fairly acquiring property. This economic development from the fair and equitable exchange of property has fueled increasing property values, and resultantly our economy and public systems.

Kansas is rich with families that have passed values and property from generation to generation. This exchange through the generations is key to ensuring a consistent and stable economy. Furthermore, as many of the committee may well realize, the land and other property held in agricultural production in many cases may involve tenant operators. This intricate web of property use increasingly weights the impact of your decision.

The property value to property owners after transfer of the property through several generations can be quite substantial. Defining this value can be quite difficult and would likely heavily involve the legal system. However this value could be equated with business goodwill as the goodwill provided to the local economy and community by the generational agricultural

Senate Judiciary

2-3-06

Attachment 10

business. The California Eminent Domain Handbook<sup>1</sup> defines business "goodwill" in their state Eminent Domain Law as:

"The benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in the probable retention of old or acquisition of new patronage."

If we were to accurately enumerate the just compensation for the business goodwill of generational family farms that form the foundation of our state's economy the resulting value of the business goodwill may be thousands of millions of dollars. The just compensation of 125% of fair market value as provided in SB 446 would not be adequate for numerous generations of exchange through a family and the reputation and dependability of that family business to the local community. If the value of business goodwill would be considered into property acquisition offers, as would any other value such as hunting, mineral or water, then the offer might more accurately reflect the true value of the property to the owner.

Development of innovative businesses, including all sizes of agricultural producers, relies on the fair and equitable exchange of property. The exchange of property on the basis of public benefit rather than public use cuts into the entrepreneurial spirit that drives innovators. If a business would like to enter a market then they should fairly and justly acquire property to strive toward their vision. The abuse of eminent domain powers by a public entity in acquiring the property and subsequently transfer to the business is purely dishonorable.

In conclusion, the KAWG supports SCR 1612 and SB 323 to ensure the fair and equitable transfer of property with all its value.

If you have questions, please contact me at the information provided below.

Dana Hoffman, Producer Policy Specialist  
Kansas Association of Wheat Growers  
2630 Claflin Rd, Manhattan, KS 66502  
Office: 785-587-0007  
Mobile: 785-770-7347  
Email: [dhoffman@kswheat.com](mailto:dhoffman@kswheat.com)

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<sup>1</sup> California Eminent Domain Handbook, <http://www.eminentdomainlaw.net/index.html>. California Eminent Domain Law Group, APC, 3429 Ocean View Blvd., Suite L, Glendale, California 91208

**STATEMENT OF KANSAS BUILDING  
INDUSTRY ASSOCIATION**

**TO THE SENATE JUDICIARY COMMITTEE**

**SENATOR JOHN VRATIL, CHAIR**

**REGARDING S.B. 323 and SCR 1612**

**FEBRUARY 3, 2006**

Chairman Vratil and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). KBIA is the organization of the state's residential construction industry, with over 2300 members. We are proponents of S.B. 323 and SCR 1612.

Our position on eminent domain is: KBIA supports legislation to prevent federal, state and local governments from abusing the power of eminent domain provided by the Fifth Amendment to the U.S. Constitution; KBIA also supports the use of eminent domain, with just compensation, when a governmental entity will maintain ownership or control over the property (1) if the development or redevelopment of the property will be used by members of the general public or (2) if the project addresses infrastructure necessities, like public utilities or roads; KBIA also supports eminent domain, when a private party will maintain ownership or control over the property when the development or redevelopment plan meets the requirements of state slum, blight, contamination site, nuisance, or other similar statutes.

The KBIA position mirrors that of the National Association of Home Builders, of which we are a state affiliate. NAHB has over 230,000 members nationwide.

SCR 1612 is needed to provide for a constitutional amendment in Kansas with regard to takings that is similar to the federal constitution and those of 48 other states. We believe that protection of private property is a strongly held principle of the Kansas and American people and should be reflected in the Kansas Constitution.

SB 323 protects traditional condemnations for roads, schools and parks while providing private property protection. It has been reviewed by NAHB staff members who are reviewing all the legislation being considered in states and at the federal level with regard to eminent domain. They have found it to be one of the best proposals nationwide.



This bill could effectively limit blight to 5-year unoccupied properties, unsafe habitations, and "statue of disuse sufficient to constitute waste." That may be in some conflict with the current definition of blight found at KSA 12-1770a.

*(c) "Blighted area" means an area which: (1) Because of the presence of a majority of the following factors, substantially impairs or arrests the development and growth of the municipality or constitutes an economic or social liability or is a menace to the public health, safety, morals or welfare in its present condition and use: (A) A substantial number of deteriorated or deteriorating structures; (B) predominance of defective or inadequate street layout; (C) unsanitary or unsafe conditions; (D) deterioration of site improvements; (E) tax or special assessment delinquency exceeding the fair market value of the real property; (F) defective or unusual conditions of title including but not limited to cloudy or defective titles, multiple or unknown ownership interests to the property; (G) improper subdivision or obsolete platting or land uses; (H) the existence of conditions which endanger life or property by fire or other causes; or (I) conditions which create economic obsolescence; or (2) has been identified by any state or federal environmental agency as being environmentally contaminated to an extent that requires a remedial investigation; feasibility study and remediation or other similar state or federal action; or (3) previously was found by resolution of the governing body to be a slum or a blighted area under K.S.A. 17-4742 et seq., and amendments thereto.*

Two important areas of condemnation are artfully addressed in this bill: the standard of review and the consideration of reasonable alternatives. Clear & convincing evidence is a judicial standard similar to the one advocated by NAHB in the *Kelo v. City of New London* case before the U.S. Supreme Court. Private property owners are better protected if a court must look at local government decisions with more scrutiny. The statutory requirement to review and discard all other alternatives also is a good provision for the protection of private property rights.

KBIA believes that private property right protection, while still providing for exceptions for public use, is the direction Kansas needs to move, and that is accomplished through SB 323 and SCR 1612.

2-1-06

To: Ks. Senate Judiciary Committee *Feb. 1, Hearing*

My name is Chris Wright and I'm a citizen of Sedgwick County, Ks.  
The reason I'm writing today is because I don't like to see residents of cities get kicked out of there homes and local governments takes there properties for economic development.

A good example of eminent domain being used around the Wichita/ Sedgwick County area is the Downtown Arena. I don't want to see this eminent domain issue get "out of control" like the arena did.

Also with this issue, they didn't know where they were building the arena and know they are tearing down historical buildings to construct the arena building.

Ladies & Gentlemen this was all done through eminent domain and we must stop local governments taking properties from private citizens.

Please vote in opposition of eminent domain.

Sincerely  
concerned citizen,

Chris Wright

*Chris Wright*

My phone #: 316-409-2535

Senate Judiciary

2-3-06

Attachment 12