

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on March 1, 2007, in Room 123-S of the Capitol.

All members were present except:

Phil Journey arrived, 9:37 A.M.
Julia Lynn arrived, 9:37 A.M.
David Haley arrived, 9:37 A.M.
Barbara Allen arrived, 9:38 A.M.
Derek Schmidt arrived, 9:42 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Mike Taylor, Unified Government, Wyandotte County
Ashley Jones, Greater Kansas City Local Initiative Support Corporation
Sandy Jacquot, General Counsel, League of Kansas Municipalities
Dale Goter, City of Wichita
Erik Sartorious, City of Overland Park
Patrick DeLapp
John Todd
Karl Peterjohn, Executive Director, Kansas Taxpayers Network
Alan Cobb, Americans for Prosperity
Senator Dennis Pyle
Brad Harrelson, State Policy Director, Kansas Farm Bureau
Allie Devine, Vice President & General Counsel, Kansas Livestock Association
Mary Jane Stankiewicz, Kansas Grain & Feed; Kansas Co-op Council & Kansas Agribusiness Retailers Assn.

Others attending:

See attached list.

The hearing on **SB 296—Eminent domain; blighted property defined** was opened. The Chairman indicated that due to the large number of conferees, questions will be held until all testimony has been presented.

Mike Taylor appeared in support because the bill allows the use of eminent domain for economic development projects and eliminates urban blight (Attachment 1). Mr. Taylor indicated **SB 296** would allow cities to clean up neglected and abandoned properties and revitalize urban neighborhoods.

Ashley Jones spoke in favor, indicating **SB 296** is a critical tool in the redevelopment of blighted urban core neighborhoods and for nonprofit community developers (Attachment 2). Ms. Jones feels this bill will strike a balance between property rights and the existing residents in neighborhoods for the betterment of Kansas.

Sandy Jacquot spoke in support, stating this bill defines blight in a very narrow manner to include those kinds of properties typically found in declining urban areas of the state (Attachment 3). Ms. Jacquot explained that the bill includes a prohibition on property deemed blighted because of esthetic conditions and applies only to properties in need of rehabilitation due to public health, safety, and welfare concerns.

Dale Goter appeared as a proponent, relating that blight abatement is a top priority of the Wichita City Council and on rare occasions, the use of eminent domain is the only practical solution (Attachment 4). The remediation of slum and blight protect neighborhoods from the collateral impacts from crime. Cities are faced with the growing problem of long-term vacant or boarded up properties which present an opportunity for vagrants, drug dealers, prostitutes, gangs, and others to move into and affect the neighborhood with increased crime while lowering property values.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on March 1, 2007, in Room 123-S of the Capitol.

Erik Satorius testified in support, stating the Legislature should return to cities the ability to utilize condemnation for blighted properties and **SB 296** is a warranted correction of the 2006 eminent domain legislation ([Attachment 5](#)).

Patrick DeLapp spoke in favor, but voiced concern on the term “abandoned structures” on page 2, line 7, and suggested expanding the language regarding determination of fair market value ([Attachment 6](#)).

John Todd appeared in opposition, stating Kansas cities have the power they need to deal with blighted properties without further legislation and there is a free-market solution to addressing the problems of blight ([Attachment 7](#)).

Karl Peterjohn testified in opposition, stating that **SB 296** would expand governmental powers and reduce private property rights ([Attachment 8](#)).

Allan Cobb spoke in opposition, indicating concern as to what local governments may unfairly deem to be blighted in the name of economic development ([Attachment 9](#)). Mr. Cobb stated that cities currently have at least two options under Kansas law available to redevelop property.

Senator Dennis Pyle testified against **SB 296**, relating there are mechanisms in place that allow cities and municipalities to deal with unsafe and uninhabitable property ([Attachment 10](#)). Senator Pyle stated **SB 296** is redundant and is an abuse of governmental powers to seize property.

Brad Harrelson provided neutral testimony indicating support for the bill as drafted which includes an exclusion for agricultural properties ([Attachment 11](#)). Mr. Harrelson encouraged the committee to retain existing language.

Allie Devine testified as a neutral party, stating support for the bill as drafted ([Attachment 12](#)). The bill assures that agricultural operations within city limits will not be targeted for elimination through the use of eminent domain. Ms. Devine indicated the drafted language makes it clear that eminent domain cannot be used for economic development purposes against agricultural operations.

Mary Jane Stankiewicz, a neutral party, supports **SB 296** as drafted with the exemption for “agricultural land” from being deemed “blighted” ([Attachment 13](#)). Ms. Stankiewicz requested an amendment that includes grain warehouses and chemical retail facilities in the “agricultural land” exception.

The Chairman invited questions from the committee. During discussion, Senator Schmidt posed a hypothetical question to Sandy Jacquot, League of Kansas Municipalities. Senator Schmidt asked her to consider the situation of a neighborhood where one or two homes do not meet the definition of blight but the rest of the neighborhood is blighted. Do you believe **SB 296** grants the authority to condemn the one or two homes which do not meet the definition of blight, because the neighborhood is blighted? Ms. Jacquot responded, “No, I do not. I think that if the city wanted to acquire the homes for the same purpose they would have to acquire them by purchase. If the homes do not meet the definition of blight I think that the city would either have to come to the Legislature on those properties or acquire them by purchase.”

For the purposes of legislative history, the Chairman requested the question and response be reflected in the minutes.

Written testimony in support of **SB 296** was submitted by:

Cindy Cash, Kansas City, Kansas Chamber of Commerce ([Attachment 14](#))

Downtown Shareholder Inc., Kansas City, Kansas ([Attachment 15](#))

Mary Ontko, Greater Kansas City Local Initiative Support Corporation ([Attachment 16](#))

Luke Bell, Director of Government Relations, Kansas Association of Realtors ([Attachment 17](#))

Christy Caldwell, Vice President Government Relations, Greater Topeka Chamber ([Attachment 18](#))

Ashley Sherard, Lenexa Chamber of Commerce ([Attachment 19](#))

Whitney Damron, City of Topeka ([Attachment 20](#))

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on March 1, 2007, in Room 123-S of the Capitol.

Written testimony in opposition to **SB 296** was submitted by:

William Davit (Attachment 21)

Derrick Sontag, National Federation of Independent Business (Attapchment 22)

Patrick Wilbur (Attachment 23)

Rob Hodgkinson (Attachment 24)

Jason Peck, Vice Chair, Libertarian Party of Kansas (Attachment 25)

Sharon DuBois (Attachment 26)

There being no further conferees, the hearing on **SB 296** was closed.

The meeting adjourned at 10:31 A.M. The next scheduled meeting is March 5, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-1-07

| NAME | REPRESENTING |
|--------------------------|------------------------------|
| Shley Jones | Greater Kansas City LISE |
| Garby Jacquet | LKM |
| Ellie Johnson | Ks. Lumber Assoc. |
| Paul Peterjohn | Ks Taxpayers Network |
| Pat DeLisp | Public |
| BRAD HARRELSON | KFB |
| John Todd | Private Citizen |
| Walt Chappell | " " |
| Mark Gleason | Judicial Branch |
| MAN COBB | Americans for Prosperity |
| Aaron Cathri | Ks. Livestock Assn. |
| Dan Murray | Federico Consulting |
| Mary Jane Stankiewicz | KGFA |
| Lisli Kaufman | Ks Co-op Council |
| Matt Bryant | . |
| DICK CARTER | MANHATTAN CHAMBER |
| Jeff Boltzberg | Kansas Spooling |
| Asmay Seward | Unexa Chamber |



Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director
913.573.5565 mtaylor@wycokck.org

Senate Bill 296 Blight Definition for Use of Eminent Domain

Delivered March 1, 2007
Senate Judiciary Committee

The Unified Government of Wyandotte County/Kansas City supports Senate Bill 296 because it allows the use of eminent domain for economic development projects which eliminate blight and allow rebirth in urban areas.

There is a huge difference between use of eminent domain to take acres of farmland for construction of a shopping center by private developers and use of eminent domain to clear an inner-city block of boarded-up buildings and crack houses to allow development of affordable single family homes by a not-for-profit church group. Yet Senate Bill 323 passed by the 2006 Legislature sees no difference.

The law as passed allows the use of eminent domain only for acquiring property which is unsafe for human occupation, a definition much more restrictive than the current statutory definition of "blighted area." This ties the hands of local government officials trying to control crime and clean-up neglected and abandoned properties. It also punishes people who want to live in older inner city neighborhoods because it prohibits an important tool in revitalizing rundown areas. Senate Bill 323 treats slumlords, street gangs and crack addicts the same as responsible homeowners, merchants and farmers. Maybe that's what was intended, but I contend there is a difference.

All of the discussion about private property rights ignores the requirement for private property responsibility. Some property owners are so neglectful and irresponsible with property that it hurts the larger community, sometimes even placing its residents in danger. Eminent domain is often the only way to correct those situations where the abuse of individual private property rights treads on the rights of other citizens.

Also, the more difficult the law makes it to redevelop and revitalize urban neighborhoods, the more it will drive developers to suburban and rural areas. Protecting farms and ranches from encroachment will be even harder. And the inner city will suffer as well. The definition of blight in Senate Bill 296 is very narrowly drawn and the bill explicitly protects agriculture land and uses from the blight definition.

The Unified Government encourages the Kansas Legislature to approve Senate Bill 296 as a small and sensible step to protect the rights of citizens who will find themselves and their communities being hurt by the prohibitive language in Senate bill 323 which will take effect July 1.

Senate Judiciary

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Attachment 1

Mr. Chairman and Members of the Judiciary Committee,

I want to thank you for the opportunity to speak to you today. My name is Ashley Jones. I am Assistant Program Officer and I assist the Director of Policy for Greater Kansas City Local Initiative Support Corporation. Greater Kansas City LISC is a program area of the Local Initiatives Support Corporation, the nation's largest community development organization, dedicated to revitalizing urban core and rural neighborhoods.

Greater Kansas City LISC helps community development corporations (CDCs) rebuild urban core neighborhoods in the greater Kansas City area, including Kansas City Kansas. Over the years, Greater Kansas City LISC has supported 18 CDCs in developing \$180 million worth of affordable housing. In addition, Greater Kansas City LISC has helped CDCs develop:

- 5,593 single family new and rehabbed homes
- 4,809 minor home repairs
- 1,404,075 square feet of retail and commercial facilities
- 317,645 square feet of community facilities and sports fields

Greater Kansas City LISC is also spearheading and initially staffing the Kansas Housing Policy Network, which is currently working with numerous other agencies and organizations across Kansas to develop a statewide voice for housing and community development in Kansas.

Because LISC is located in 33 states, we had the ability to access a breadth of information on blight in the urban core. Using these resources, we were able to help craft the language of SB 296.

Eminent Domain is a critical tool in the redevelopment of blighted urban core neighborhoods, and for nonprofit community developers. Using the blight definition for Eminent Domain allows Cities to acquire properties which almost always are long-term problems for neighborhood residents, including structures that are used for drug/crack use, prostitution, and other illegal activities. The police can arrest the offending parties, but the owner of the structure can keep renting to new parties, thus the property becomes a revolving door which adversely impacts the surrounding neighborhoods. In addition, many times there are absentee owners who just don't care about fixing up their property, and the property continues to decline until it's to such a point as it is partially or completely abandoned.

In almost all cases, community development corporations are the developers of last resort. Most of the areas serviced by nonprofits have had severe disinvestment over a prolonged period of time. Working in such disinvestment is hard, time-intensive work. This work is made that much harder by the dilapidated structures and would be severely hampered without the blight Eminent Domain.

We understand the need to diligently protect private rights. But with those rights come responsibility. When the owners of blighted property infringe upon the rights of the nearby homeowners and neighborhood, actions must be taken to protect the rights of the many.

We believe SB 296 strikes a delicate balance of property rights and the rights of existing residents in the neighborhoods, and is a step in the right direction and the result of several organizations working together for the betterment of Kansas communities.

Greater Kansas City LISC strongly encourages you to allow eminent domain for the purpose of eliminating blight.

Senate Judiciary

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Attachment 2







League of Kansas Municipalities

300 SW 8th . . .ue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Judiciary Committee
FROM: Sandy Jacquot, Director of Law/General Counsel
DATE: March 1, 2007
RE: Support for SB 296

Thank you for allowing me to testify on behalf of the League of Kansas Municipalities and our member cities in favor of SB 296. Last year, SB 323 with an effective date of July 1, 2007, limited the ability of cities to use eminent domain for economic development. With some exceptions, almost all uses of eminent domain where the property is later transferred to another private property owner must have the approval of the Legislature. There was no provision in the bill for cities to acquire blighted properties and hand the property over to another entity to rehabilitate without seeking legislative approval. During the discussions of SB 323 last year at the end of the legislative session there was interest expressed by some legislators to allow for the use of eminent domain for blighted properties, but there was not time to craft an adequate definition for the bill.

SB 296 defines blight in a very narrow manner to include those kinds of properties typically found in declining urban areas of the state. This will enable cities to rehabilitate entire neighborhoods or individual properties as the needs of the city dictate, without having to come to the Legislature to seek permission when it is necessary to use eminent domain. Within the language of the bill, there is a complete exclusion for agricultural property, the definition of which is very expansive. Also in the bill, is a prohibition on property being deemed blighted because of esthetic conditions. Thus, this new exception would truly apply to property that is in need of rehabilitation due to public health, safety and welfare concerns. For the above-cited reasons, the League of Kansas Municipalities urges the committee to report SB 296 favorably for passage.

www.lkm.org

Senate Judiciary

3-1-07

Attachment 3



WICHITA

Dale Goter
Government Relations Manager

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
dgoter@wichita.gov

Kansas Senate Judiciary Committee

Hearing on SB 296

March 1, 2007

The City of Wichita supports the enactment of Senate Bill 296 providing for the municipal authority to exercise eminent domain in certain instances involving blighted property.

The issue of blight abatement is a top priority of the Wichita City Council. Under the direction of the City Manager, Housing Director and other key personnel, the City of Wichita has crafted a neighborhood improvement program titled "StopBlight" which seeks to improve the quality of life of Wichita residents.

While there are high expectations of success from StopBlight, which is empowered by city ordinance and administrative regulation, there are some circumstances that defy resolution using existing resources.

On rare occasion, the use of eminent domain is the only practical resolution to housing conditions that threaten the lives, safety and general well-being of others who live in proximity to the problem area.

The abuses of eminent domain that led to last year's stringent restrictions on its use have little in common with the day-to-day battle against blight that is fought by every city in the state.

The remediation of slum and blight has been a traditional reason for cities to acquire property, including by eminent domain. This is particularly needed in the context of protecting neighborhoods from the collateral impacts from crime.

- Wichita, like other cities, faces a problem with long-term vacant or boarded-up properties in older or declining residential neighborhoods. These properties often have become dilapidated or have been burned out by the growing arson problem.
- These properties present an opportunity for vagrants, drug dealers, prostitutes, gangs, and other elements to move into the house and affect the neighborhood.
- The condition and existence of these properties are a blighting influence on surrounding properties, detract from the neighborhood, lower surrounding property values, and create serious public safety problem when used as crack houses, gang houses, or by vagrants.
- The Wichita Police Department has a number of POP ("problem oriented policing") projects in neighborhoods that are related to blight and environmental issues.
- Eminent Domain is an important tool to have available to address those properties where the owners cannot (or will not) be found or they live out-of town and will not respond to enforcement notices, court summons, or clean-up orders.

Senate Judiciary

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Attachment 4

Once acquired, these houses or properties can be demolished or renovated to remove the problems and could thereafter be redeveloped by public or private entities or individuals as part of a neighborhood revitalization in these declining neighborhoods.

Lack of funds for maintenance and upgrades leads to deterioration of property and eventually the neighborhood. This cycle can result in a reduction in the value in homes and a disincentive to make major investments. Cities need to be able to step in and protect neighborhoods from the decline and related growth in criminal activities.



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Overland Park, Kansas 66212
• Fax: 913-895-5003
www.opkansas.org

Testimony Before The
Senate Judiciary Committee
Regarding
Senate Bill 296
By
Erik Sartorius

March 1, 2007

The City of Overland Park appreciates the opportunity to appear before you in support of Senate Bill 296.

The legislature should return to cities the ability to utilize condemnation for blighted properties. Blight in a community negatively affects property values and causes broader image problems that deter future economic growth in the community.

In 2006, Senate Bill 323 narrowed the instances in which eminent domain can be used, requiring that a property be “unsafe for occupation by humans under the building codes.” We believe such a restrictive exception – which forces communities to wait until properties literally become physically dangerous before they can potentially address declining areas – does not reflect the best public policy. Senate Bill 296, meanwhile, provides reasonable eminent domain powers for instances where a property is blighted.

The City of Overland Park is a relatively new city in Kansas, incorporated in 1960, and as such, has not yet experienced blight. However, we do know that not far into the future we are going to face a stiff challenge to ensure that some of our residential and commercial areas remain a vibrant part of our community. By not having the tools found in SB 296 to address blight, we may be faced with the perception of our business owners and residents that some areas are in decline. Once such opinions are established, repairing a community can be quite difficult.

The City of Overland Park believes that restoring cities’ ability to utilize eminent domain to address blight is a warranted correction of the 2006 eminent domain legislation. We request that you recommend Senate Bill 296 favorably for passage.

Senate Judiciary

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Attachment 5

S 296 Eminent Domain

Dear Committee Members

I support the proposed changes being made to the law on Eminent Domain in this bill. It makes good sense. I have a slight concern about the word Abandoned Structures on page 2, line 7 of this bill but that arises out of people misuse of that word. Abandoned does not mean vacant, it means the last owner has given up all interest in the property.

I further would like to take this opportunity to see about adding other sections on this Eminent domain bill to correct some problems myself and other have with other parts of this law.

Specifically

1. -The ability to get ahold of a copy of the appraisal when its done by the entity wishing to use eminent domain. (Currently, federal laws requires it if federal moneys are involve. State does not require it.) People have the right to known how they arrived at the value of the property.

2. -The definition of Fair market value is determined by the use of comparable sales, cost or capitalization of income appraisal methods or any combination of such methods. (Problem here is that the easiest method is always used, comparable sales. In which paying someone this way may not be just compensation; Location, location, location)

SOLUTIONS:

1. In order correct the issue of everyone getting a copy of the appraisals one would only have to change KSA 26-518 (b). The change would insert the number 301 which refers to a section of federal uniform relocation assistance and real property acquisition policies act of 1970.

Currently, the state only follows part of the federal law. The addition of this number 301 would change this and owners would then be allowed to get ahold of the appraisal to check for accuracies. (See attachments)

2. As to the fair market value, change KSA 26-513e. It would be better to use the words " be the highest of the of comparable sales, cost or capitalization of income appraisal methods or any combination of such methods." It cost the same to build in a good part of town as it does in a moderate to lower income area. (See attachments)

Patrick DeLapp
1013 SW 11th
Topeka, KS 66604
(785) 357-6007



Senate Judiciary

3-1-07

Attachment 6

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26-513

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-513. Same; compensation required for taking and damage; determination.

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

(b) *Taking entire tract.* If the entire tract of land or interest in such land is taken, the measure of compensation is the fair market value of the property or interest at the time of the taking.

(c) *Partial taking.* If only a part of a tract of land or interest is taken, the compensation and measure of damages is the difference between the fair market value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) *Factors to be considered.* In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are:

- (1) The most advantageous use to which the property is reasonably adaptable.
- (2) Access to the property remaining.
- (3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.
- (4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.
- (5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.
- (6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.
- (7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.
- (8) Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.
- (9) Destruction of a legal nonconforming use.
- (10) Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.
- (11) Proximity of new improvement to improvements remaining on condemnee's land.
- (12) Loss of or damage to growing crops.

(13) That the property could be or had been adapted to a use which was profitably carried on.

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

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

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

History: L. 1963, ch. 234, § 13; L. 1969, ch. 196, § 2; L. 1999, ch. 111, § 3; Apr. 22.

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26-518

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

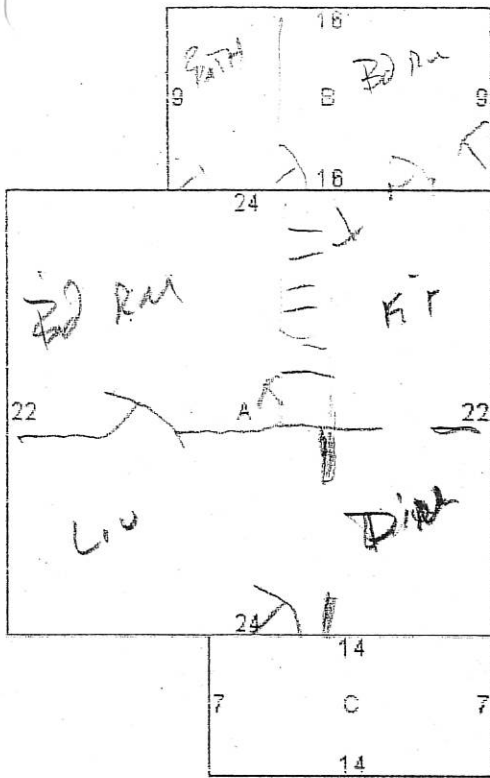
26-518. Acquisition of real property; duties of condemning authority. Whenever federal funding is not involved, and real property is acquired by any condemning authority through negotiation in advance of a condemnation action or through a condemnation action, and which acquisition will result in the displacement of any person, the condemning authority shall:

(a) Provide the displaced person, as defined in the federal uniform relocation assistance and real property acquisition policies act of 1970, fair and reasonable relocation payments and assistance to or for displaced persons.

(b) Fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203 and 204 of the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, shall be deemed fair and reasonable relocation payments and assistance pursuant to this section.

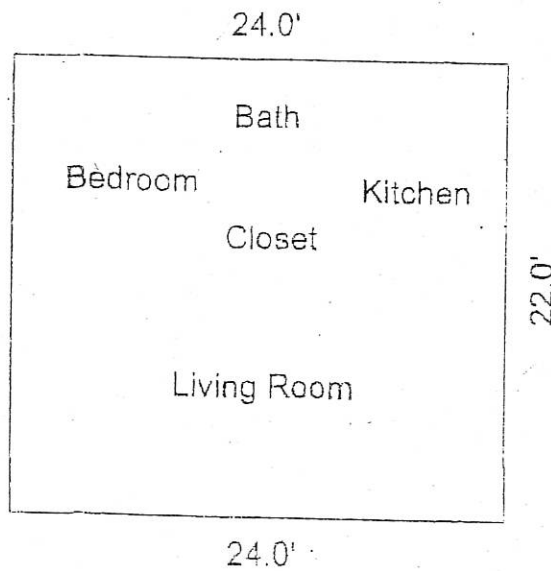
(c) Nothing in this section shall preclude the voluntary negotiation of fair and reasonable relocation payments and assistance between the displaced person and condemning authority. If such negotiations lead to agreement between the displaced person and the condemning authority, that agreement shall be deemed fair and reasonable.

History: L. 2003, ch. 106, § 4; July 1.



PAT DELAPP
 ← SKETCH OF HOUSE

APPRAISER
 ROBERT G. STEPHENS
 A.S.A.



1559 Payne
Wichita, Kansas 67203
March 1, 2007

Senate Judiciary Committee
Committee Hearing, March 1, 2007, 9:30 a.m., Room 123-S
State Capitol
Topeka, Kansas 66612

Subject: Testimony in **Opposition to Senate Bill #296 Eminent Domain/Blight**

Dear Committee Chair and Members,

My name is John Todd, and I live at 1559 Payne in Wichita, Kansas. I come before you as a concerned citizen and as a real estate broker and developer in opposition to Senate Bill #296.

I believe the Fight Blight program being initiated by the City of Wichita, is an attempt to resurrect the expensive and poorly performing urban renewal policies of the 1950's. And, in order for our city and other cities across Kansas to remove the undefined "blight" from our cities they will need expanded eminent domain powers. Timothy Sandefur, an attorney with the Pacific Legal Foundation explains that the "... legal definitions of 'blight' are often so broadly drawn that just about any property can qualify". In a case in Ohio, houses were declared blighted if they lacked two-car garages or central air conditioning. Please take a look at the pictures, that are included with my testimony, that were provided by the Castle Coalition of well-kept homes and small businesses City officials nationwide are condemning and declaring, "blighted".

Enclosed also is a copy of an article published in The Wichita Eagle on November 23, 2006 written by Wess Galyon, President of the Wichita Area Builders Association questioning the need for a city-owned, for-profit Redevelopment Authority.

Before you grant cities any additional powers, I would suggest you read Jane Jacobs classic book on urban planning, *The Death and Life of Great American Cities*. What she has to say about city "slums" and "cities" should be required reading for all urban planning officials in Kansas. This book would be a valuable resource for a summer- interim study committee.

There was an interesting and recent story that played out on the pages of The Wichita Eagle about a "blighted" house at 10th and Volutsia that had frustrated neighbors for years. It was only after several members of the Sunflower neighborhood association people picketed the Wichita City Managers residence that the City of Wichita took care of the problem. The rest of the story that did not appear in The Eagle was the fact that the City needed no additional legislation from the State Legislature to solve this "blight" problem. As an interesting side note, the City Attorney is now prosecuting several Sunflower association people for "trespass", and city code officials have issued Housing Code Citations against them. Is this perhaps retaliation?

Last November the Wichita City Council voted to strengthened its housing code. It doubled fines for torn screens, flaky paint, and concrete tuck pointing from \$500 to \$1,000 per offence and allowed Municipal Court Judges to incarcerate violators for up to

Senate Judiciary

3-1-07

Attachment 7

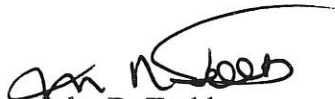
12 months in the Sedgwick County Jail. I personally know two people who have spent time in jail for housing violations. At the November 14th hearing before the Wichita City Council a woman described how a handicapped man she was trying to help had been arrested, handcuffed, and taken to jail for failure to make housing repairs he was incapable of performing. City Council members did not seem to be concerned about this incident, perhaps with the knowledge that our County Commission recently voted money to expand the Sedgwick County jail.

I believe the cities in Kansas now have all the power they need to deal with "blighted" properties without the need for additional legislation.

I also believe there is a free-market solution to addressing the problems of "blight" that would preclude the need for recreating urban renewal and making eminent domain land grabs another risk for owning property in cities across our state.

The proponents of SB #296 are using "blight" to eviscerate the eminent domain protections enacted in SB#323 by last year's legislature, and you should not let this happen.

Sincerely,


John R. Todd



CITIZENS FIGHTING EMINENT DOMAIN ABUSE

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- HOME

Is this property blighted? You be the judge.

City officials nationwide are condemning well-kept homes and small businesses by declaring them "blighted." In an effort to bring attention to this abuse, *CastleWatch* is featuring a property each week that has been formally declared blighted by the city or municipality in which it is located.

If your home or business has been declared "blighted" and you feel that's not the case, [send us a photo and details.](#)

"Blighted" Home of the Week

October 6, 2006



New York City, NY



Louisian Domain



IJ Will R Beach H



Long Br. File Suit Domain



Ohio Su To Prote Eminent



Featured Freedom Market Product:
New Book: *Opening the Floodgates; Eminent Domain Abuse In the Post-Kelo World*

Past Blighted Homes, Businesses, Pool and even a Lake!

September 29, 2006

CURR

LEGI



Tell the Eminent Now!

7-3

"Blighted" Properties



Lakewood, Ohio



Lakewood, Ohio



New York, New York



Long Branch, New Jersey



Norwood, Ohio



Lake Zurich, Illinois

"Blighted" Properties



Long Branch, New Jersey



Cleveland, Ohio



San Jose, California



Sunset Hills, Missouri



South Daytona, Florida



Clarendon Hills, Illinois

Posted on Thu, Nov. 23, 2006

Redevelopment groups already exist

A proposal by City Manager George Kolb that the City Council authorize establishment of a city-owned, for-profit Redevelopment Authority should give all residents of Wichita cause for concern.

While the idea of establishing such an authority may be appealing, the idea has not been well thought out.

Such an authority would operate under the state's urban renewal laws, and there are concerns as to whether such an authority should be granted the power of eminent domain -- or linked to the use of it in some fashion.

It is obvious that the City Council is having a difficult time coming to terms with what is being proposed and has a number of questions. Among those questions still unanswered:

- Who can grant powers to such an authority, and what is the structure of the entity and basis for it?
- What will be the experience and qualifications of staff, and who and how will that be decided?
- How will the staff be administered?
- What costs would be incurred by the authority, and how will they be funded?
- How will projects be selected and financed?
- And, most importantly, who pays for the failures if the authority's projects are not successful?

Mayor Carlos Mayans and the council are doing exactly what they should be doing to make sure that they have all the facts and background before deciding how to proceed. They should not be maneuvered into the position of feeling obligated to support the authority, the merits of which have not been validated.

What started out to be an authority with its primary mission being the "facilitation and development of underutilized property with an emphasis on affordable, market-rate housing and neighborhood-based, market-driven commercial revitalization" has evolved to one that "would have as its singular purpose and focus eliminating blight and replacing it with redevelopment which contributes to the health and vitality of the community."

While the most recent purpose and focus may be desirable, it falls short of justification for the establishment of an authority. The reason? Aside from its ability to issue debt (borrow money by selling debt and not having it counted in the city's debt limit), there is little that could not be accomplished presently if the political will exists to support proposals that would likely be advanced by area nonprofit community housing development organizations and other nonprofit and for-profit developers who recently formed the WeCare Alliance.

Desired results can be achieved by making money available to support initiatives of members of the alliance and other groups like it. It will require the city's willingness to eliminate barriers and to provide other meaningful incentives that would facilitate redevelopment of blighted and underutilized properties.

The ability, expertise and desire to respond to various types of needs is already in place within the allied partners and supporters of area nonprofit community housing development organizations. These organizations are engaged in neighborhoods, have a track record of success and a thorough understanding of what neighborhoods want. And their efforts will yield a significantly greater return on the investment of public dollars than would be the case with initiatives driven via an authority of the type proposed.

Before the City Council approves the establishment of a Redevelopment Authority that will in all likelihood compete with the existing, and future, members of the WeCare Alliance and other for-profit developers, it should increase the effectiveness of the existing nonprofit alliance entities that have a proven track record of performance.

*Wess Galyon is president and chief executive of the Wichita Area Builders Association.
Interested in writing for "A Business Perspective?" Contact Tom Shine at 316-268-6268 or tshine@wichitaeagle.com.*

7-6



AMERICANS FOR PROSPERITY K A N S A S

January 8, 2007

Mayor Carlos Mayans
City of Wichita
455 N. Main
Wichita, Kansas 67202

COPY

Subject: Don't use "blight" as an excuse to expand eminent domain abuse.

Dear Mayor Mayans:

The United States Supreme Court's decision in the eminent domain case of *Kelo v. the City of New London* was greeted with public outrage. And, an opinion poll conducted by Americans For Prosperity confirms that 90% of the Kansans surveyed oppose eminent domain abuse by government. The 2006 Kansas Legislature responded to the people by passing legislation to protect private property rights in Senate Bill 323 that is scheduled to take effect on July 1, 2007.

There appears to be a movement on the part of cities through the League of Kansas Municipalities to weaken the private property protection the people achieved in Senate Bill 323, and the vehicle they will use to eviscerate the statute is the "blight" argument to resurrect urban renewal programs that by their very nature requires greater eminent domain powers by local government.

Should the City of Wichita resurrect the failed urban renewal policies of the 1950's? The blight problem existed then and for some observers it continues to the present. The Wichita City Council recently passed a tougher code enforcement ordinance that gives city officials the tools they asked for to deal with "blighted" properties. The ordinance includes stiff fines and potential incarceration for up to 12 months for code offenders with no need for the city to take the owners property through the eminent domain process.

Enclosed are a couple of excellent resource books for you, courtesy of the fundraising efforts of the Wichita Chapter of Americans For Prosperity and the Kansas Taxpayers Network. Steven Greenhut's book: "Abuse of Power: How the government misuses eminent domain" provides valuable insight, and Jane Jacobs' book: "The Death and Life of great American Cities" is as described on the book liner, "A direct and fundamentally optimistic indictment of the shortsightedness and intellectual arrogance that has characterized much of urban planning in this century".

Nobel Prize winning economist Milton Friedman says, "In an economically free society, the fundamental function of government is the protection of private property and the provision of a stable infrastructure for a voluntary exchange system. When a government fails to protect private property, takes property itself without full compensation, or establishes restrictions (and follows policies) that limit voluntary exchange, it violates the economic freedom of its citizens."

Sincerely,

John R. Todd, Wichita Area Volunteer Coordinator
805 South Main, Suite 103, Wichita, Kansas 67213

Cc: Media and others

The Kansas Chapter of Americans for Prosperity (AFP-KS) is committed to advancing every Kansan's right to economic freedom and opportunity. AFP-KS is an organization of grassroots citizen leaders who engage in spreading the message of fiscally-responsible government, free market ideals and regulatory restraint to policymakers on the local and state levels.

KANSAS TAXPAYERS NETWORK

**P.O. Box 20050
Wichita, KS 67208**

March 1, 2007

web:www.kansastaxpayers.com

316-684-0082

Fax 316-684-7527

Testimony Opposing SB 296

By Karl Peterjohn, Executive Director

SB 296 would expand eminent domain powers and provide cities and other local units of government with a broad expansion of governmental powers and the broad reduction in private property rights and the private sector in this state. This bill is flawed at a number of levels and stands a good chance of being found unconstitutional since it would create two separate classes of private property in this state: agricultural land that is not touchable by the new governmental powers created by SB 296 and "...developed..." land that is at risk.

This bill would expand governmental powers and diminish the already poor rating that exists for protecting property rights in this state. A couple of years ago the Institute for Justice issued a book, "Public Power, Private Gain," by Dana Berliner that ranked all 50 states on the extent of eminent domain abuse in Kansas. This book's overview of how poorly Kansas performs begins with, "Unfortunately for the citizens of Kansas, their state is one of the worst abusers of eminent domain, especially in comparison to other states with similar population size...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."

SB 323 sought to redress some of the imbalances and affronts to property rights that were addressed last year. SB 296 would undo this and push the pendulum far into the direction of promoting eminent domain abuse and resurrecting some of the worst policies that required eminent domain from the urban renewal period from the late 1940's to the early 1970's.

Some cities in Kansas are trying to resurrect urban renewal in the form of redevelopment authorities. I am attaching with this testimony a letter that I sent to Wichita Mayor Carlos Mayans on this issue in January this year.

Kansas is becoming known as a state where arbitrary and capricious powers are possessed by the state and its subdivisions. Steven Greenhut's 2004 book, "Abuse of Power," spends six pages describing the eminent domain abuse that has been sanctioned in this state due to the Kansas Supreme Court's General Building Contractors and Robert Tolbert v. Board of Shawnee County Commissioners case.

Greenhut describes the hostile climate this way, "The justices (of the KS Supreme Court) not only affirm the county's right to take virtually any property they choose in the name of economic development, but they also show open disdain for the property owners who are challenging the taking of their properties."

(over)

Senate Judiciary

3-1-07

Attachment 8

The abuse of human and property rights in Kansas was blatant and harmful to a rule of law and freedom for Kansans from arbitrary and capricious actions by their government. "Americans in the other forty-nine states should be glad they aren't dependent on the Kansas Supreme Court's understanding of individual liberty. In the American founding experiment, the idea is simple: The government is granted certain limited powers. Otherwise, individuals are left to their own devices. If something is not specifically denied an individual, it is assumed that he is free to do it. In Kansas, this is turned on its head. Government might not expressly be granted the right to abuse property rights, but if it isn't specifically denied the right it can do what it wants. The founders wanted to give citizens wide latitude to pursue their freedom. They created a system that protected individuals from government. The Kansas Supreme Court, by contrast, seems to view itself as the guardian of government power and prerogatives."

This is very strong criticism that casts Kansas in a very poor light. The abuse of property rights by cities, counties, and other local units is not unique to Kansas. The attempt to consolidate power over private property requires sizable eminent domain powers. Greenhut's critique continues, "Without eminent domain, very little of the destruction could have taken place. But once the government had the right to take whatever it pleased in the name of the 'higher good,' then the sky was the limit."

SB 296 would expand the abuse of private property and the people who own non agricultural land in this state. Greenhut's description based upon the Kansas Supreme Court ruling is vivid and descriptive, "The justice's (of the KS Supreme Court) disregard of individual rights is breathtaking."

As is SB 296 today. There are a number of additional details contained within this legislation that favor the state and impinge on the natural rights of the people. If a government bureaucrat in a county office damages the recorded title (section d) on a parcel, this legislation would automatically put this property at risk if it is "developed" land.

There are several provisions of this statute that are vague and subjective. Here are two examples. Section d of this bill includes the phrase, "... which has defective or unusual conditions of title..." or g1B "...inadequate provisions for ventilation, light, air, or sanitation."

SB 296 expands the property rights problems that exist under current Kansas law and sends a clear signal that Kansas holds private property and private property rights in contempt. Kansas local units would then be free to confiscate property on a whim.

KANSAS TAXPAYERS NETWORK

P.O. Box 20050

Wichita, KS 67208

316-684-0082 FAX 316-684-7527

www.kansastaxpayers.com

January 8, 2007

Mayor Carlos Mayans
Wichita City Hall
455 N. Main St.
Wichita, KS 67202

Dear Mayor Mayans:

The City of Wichita continues to be drifting towards some sort of redevelopment agency if the reports I am receiving from city hall continue to be correct. While everyone in this community would like to see this community and this city improve, we should try to avoid repeating past mistakes. The Kansas Taxpayers Network and Americans for Prosperity Wichita chapter have a strong interest in improving Wichita and making this city a model for the rest of the state and even the rest of the country.

Enclosed with this letter are three items. Two of these items are books. The first is a copy of Jane Jacobs' 1961 classic, "The Death and Life of Great American Cities." While this book is almost a half century old, it is important because it basically led to the end of urban renewal programs a decade after it was written. This book remains a guide of what should not be done to redevelop an area.

A very recent book is Steve Greenhut's "Abuse of Power," that outlines where efforts at redevelopment as well as resurrecting urban renewal have failed, have destroyed businesses and important sectors of some communities as well as destroyed property rights and diminished freedom in the affected cities.

The most recent item is the Castle Coalition, a project of the Institute for Justice's "Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse." This work is particularly important since claims have been made about the success of redevelopment in Las Vegas, Nevada. This Castle Coalition report provides details about two failures from Las Vegas redevelopment efforts.

As citizen activists, we know that providing two large books and a 16 page report to you, your city council colleagues, and the city manager is asking an awful lot from all of you. You are all busy and there are many demands for your time. Let me provide some key quotes from this material beginning with Ms. Jacobs:

"Our present urban renewal laws are an attempt to break this particular linkage in the vicious circles by forthrightly wiping away slums and their populations, and replacing

them with projects intended to produce higher tax yields, or to lure back easier populations with less expensive public requirements. The method fails. At best, it merely shifts slums from here to there, adding its own tincture of extra hardship and disruption. At worst, it destroys neighborhoods where constructive and improving communities exist and where the situation calls for encouragement rather than destruction.

Like Fight Blight and Conservation campaigns in neighborhoods declining into slums, slum shifting fails because it tries to overcome causes of trouble by diddling with symptoms. Sometimes even the very symptoms that preoccupy the slum shifters are, in the main, vestiges of former troubles rather than significant indications of current or future ills.

Conventional planning approaches to slums and slum dwellers are thoroughly paternalistic. The trouble with paternalists is that they want to make impossibly profound changes, and they choose impossibly superficial means for doing so. To overcome slums, we must regard slum dwellers as people capable of understanding and acting upon their own self-interests, which they certainly are. We need to discern, respect and build upon the forces for regeneration that exist in slums themselves, and that demonstrably work in real cities. This is far from trying to patronize people into a better life, and it is far from what is done today.”(1)

Improving a city is not easy. It is hard. There are direct and indirect consequences for actions taken. The unexpected consequences can be the biggest problem in trying to direct a top-down approach that is undertaken by government. Here is a warning:

“It is fashionable to supposed that certain touchstones of the good life will create good neighborhoods—schools, parks, clean housing and the like. How easy life would be if this were so! How charming to control a complicated and ornery society by bestowing upon it rather simple physical goodies. In real life, cause and effect are not so simple. Thus a Pittsburgh study, undertaken to show the supposed clear correlation between better housing and improved social conditions compared delinquency records in still uncleared slums to delinquency records in new housing projects, and came to the embarrassing discovery that the delinquency was higher in the improved housing. Does this mean improved shelter increases delinquency? Not at all. It means other things may be more important than housing, however, and it means also that there is no direct, simple relationship between good housing and good behavior, a fact which the whole tale of the Western world’s history, the whole collection of our literature, and the whole fund of observation open to any of us should long since have made evident.”(2)

All wisdom is not contained in one body, or one building. That includes the building that is city hall. Jacobs provides this warning and a need for older, non class “A” buildings.

“Cities need old buildings so badly it is probably impossible for vigorous streets and districts to grow without them. By old buildings I mean not museum-piece old buildings, not old buildings in excellent and expensive state of rehabilitation—although these make

fine ingredients—but also a lot of plain ordinary, low-value buildings, including some rundown old buildings.

If a city area has only new buildings, the enterprises that can exist there are automatically limited to those that can support the high costs of new construction. These high costs of occupying new buildings may be levied in the form of rent, or they may be levied in the form of an owner's interest and amortization payments on the capital costs of the construction. However, the costs are paid off, they have to be paid off. And for this reason, enterprises that support the cost of new overhead—high in comparison to that necessarily required by old buildings. To support such overheads, the enterprises must be either (a) high profit or (b) well subsidized.”(3)

A fair society is one that creates a level playing field for all participants of the community. Subsidizing “A” at the expense of “B” is inherently inequitable. In addition, the process of subsidies reduces freedom and collects unwarranted power with government. That leads to Steven Greenhut's 2004 book “Abuse of Power.”

Greenhut's book outlines the terrible problems occurring all over the U.S. as government has expanded its condemnation powers through an expansion of eminent domain. The situation in Kansas receives close attention by Greenhut due to the ruling by the 2003 Kansas Supreme Court in the case of General Building Contractors and Robert Tolbert v. Board of Shawnee County Commissioners.

Greenhut described the hostile Kansas climate this way, “The justices (of the KS Supreme Court) not only affirm the county's right to take virtually any property they choose in the name of economic development, but they also show open disdain for the property owners who are challenging the taking of their properties.”(4)

The abuse of human and property rights in Kansas was blatant and harmful to a rule of law and freedom for citizens from arbitrary and capricious actions by Kansas government. “Americans in the other forty-nine states should be glad they aren't dependent on the Kansas Supreme Court's understanding of individual liberty. In the American founding experiment, the idea is simple: The government is granted certain limited powers. Otherwise, individuals are left to their own devices. If something is not specifically denied an individual, it is assumed that he is free to do it. In Kansas, this is turned on its head. Government might not expressly be granted the right to abuse property rights, but if it isn't specifically denied that right it can do what it wants. The founders wanted to give citizens wide latitude to pursue their freedom. They created a system that protected individuals from government. The Kansas Supreme Court, by contrast, seems to view itself as the guardian of government power and prerogatives.”(5)

The range and scope of the ruling places tremendous power into the hands of Kansas government and at the cost of freedom for individual Kansans. “The justice's (of the Kansas Supreme Court) disregard of individual rights is breathtaking.”(6)

The City of Wichita's effort to resurrect urban renewal in the form of a new redevelopment authority will require eminent domain powers. That is a continuing battle for the legislature to resolve between local governments seeking to preserve and expand eminent domain powers and from individuals seeking to restore individual freedom and property rights.

"Without eminent domain, very little of the destruction could have taken place. But once the government had the right to take whatever it pleased in the name of the 'higher good,' then the sky was the limit."(7)

Greenhut on this same page warned that the advocates of the failed urban renewal programs from the 1960s are seeing similar folks in the same leadership positions advocating similar policies today. "Academics, journalists, community activists, business leaders and urban planners celebrated and advocated for these (urban renewal) programs in the 1950s and 1960s, and they continue to shill for their modern variations today."(8)

There are a large number of examples of the mistakes being made elsewhere by the advocates for resurrecting urban renewal. The Castle Coalition's "Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse," demonstrates that these projects fail much more often than they succeed. Two specific failures in Las Vegas were presented.(9)

In closing let me quote, "The argument is always the same: Tax-hungry bureaucrats and land-hungry developers claim that the use of eminent domain is necessary for economic development. They promise everything from high-rise condominiums to trendy shopping malls, all in the name of more taxes and jobs. There is a strong incentive for cities and developers to over-hype the benefits of individual private development projects involving eminent domain in order to garner political and public support. But it turns out that many of these projects are failures."(10)

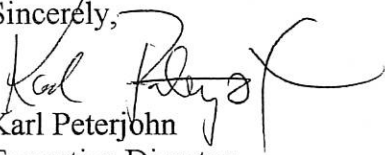
We don't need to resurrect past failed programs. There are too many government activities that hurt people's freedom and property rights. Wichita is struggling, but it is not because there is a shortage of government programs. Wichita is struggling because there is an excess of government programs, taxes, regulations, fees, charges, assessments, and various other bureaucratic burdens.

It is uncommon to write a letter containing footnotes. The unique circumstances that are behind this letter provide the need for the footnotes and serve as an introduction to the two books and the Castle Coalition report that accompany this letter. The footnotes from these three documents are below.

This is a compelling issue that requires you to examine at least a portion of the wealth of research and studies on this topic. The material cited here is literally the tip of a research iceberg that has been conducted over half a century on urban renewal and redevelopment. Let's look carefully at this material before we proceed.

For the good of Wichita, let's avoid repeating past mistakes.

Sincerely,


Karl Peterjohn
Executive Director
Kansas Taxpayers Network

Encl: The Death and Life of Great American Cities
Abuse of Power, How the Government Misuses Eminent Domain
Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse

Cc: Media and others

Footnotes

- 1) Jane Jacobs, "The Death and Life of Great American Cities," Vintage Books Edition, N.Y., N.Y., 1992, P. 270-1.
- 2) Ibid, P. 112-3.
- 3) Ibid, P. 187-8.
- 4) Steven Greenhut, "Abuse of Power, How the Government Misuses Eminent Domain, Seven Locks Press, Santa Ana, CA, 2004, P.149.
- 5) Ibid, P. 151-2.
- 6) Ibid, P. 152.
- 7) Ibid, P. 110.
- 8) Ibid.
- 9) The Castle Coalition, The Institute for Justice, "Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse," www.castlecoalition.com, Washington, D.C., P. 8-9.
- 10) Ibid, P. 1.



AMERICANS FOR PROSPERITY

K A N S A S

Mr. Chairman, members of the committee,

On behalf of the 6,000 Kansas members of Americans for Prosperity, we oppose, SB 296.

Despite an overwhelming response by our 2006 Kansas legislature to protect private property rights, in light of the *Kelo* U. S. Supreme Court case, local governments in Kansas want to revisit the issue.

As a reminder, in *Kelo vs. New London*, the Supreme Court ruled that government can take private property with the power of eminent domain for so-called “economic development” purposes. In the past, governments used this power only for truly public purposes such as roads, schools, bridges, parks, hospitals and the like.

Senate Bill 323 restricted the ability of government to transfer property taken by eminent domain to private parties. Essentially, SB 323 requires any such transfer to be approved by both the Kansas Senate and House and the governor. **It doesn't take effect until July 1 of 2007.**

The local government’s primary argument appears to be that they need more help with so-called “blighted” areas. The concern for many, including AFP, is that local governments may unfairly deem something to be blighted in the name of economic development. And in fact, even under SB 323, local governments can transfer land taken by eminent domain to a real estate developer in very limited circumstances including:

“... for the purpose of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated.”

With that said, a city does have an obligation to protect human health and safety - and state law, KSA 12-1750 et seq. **gives cities broad powers** to condemn and raze or repair properties meeting the dangerous structures definition in the law. Cities can act without even thinking eminent domain and there are oodles of due process built into the law.

Cities do have at least two options to have property redeveloped. (1) Outside organizations that want to refurbish abandoned property - KSA 12-1756a and (2) public building commissions - KSA 12-1757.

Poll question, 400 Sample, +/- 4.9%, January 2006

For years, governments have used the power of eminent domain to take control of private property and then using that property for schools, hospitals, roads, parks and other public services. Recently, the Kansas Supreme Court has expanded the government’s ability to use eminent domain to include taking control of private property and transferring it not for public services, but to other private interests such as shopping centers or car lots. Do you favor or oppose the increased use of eminent domain to include taking private property and transferring ownership to other private interests? (After response, ask:) Would you say you strongly (favor / oppose) or only somewhat (favor / oppose)?

| | |
|------------------|-----|
| Strongly favor | 3% |
| Somewhat favor | 4% |
| Somewhat oppose | 11% |
| Strongly oppose | 81% |
| Undecided (vol.) | 2% |

12-1751. Same; powers of governing body. (a) The governing body of any city shall have the power to cause the repair or removal of, or to remove any structure located within the city, which may have become unsafe or dangerous.

(b) The governing body of any city shall have the power to cause the rehabilitation of or to rehabilitate any abandoned property located within the city.

History: L. 1961, ch. 74, § 2; L. 1994, ch. 242, § 2; July 1.

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2979 KINGFISHER RD.
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(785) 296-7379

STATE OF KANSAS
SENATE CHAMBER



COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS & LOCAL GOVERNMENT
NATURAL RESOURCES
UTILITIES
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

Senator Dennis Pyle

Testimony against SB 296

Mr. Chairman, members of the committee, thank you for giving me the opportunity to testify concerning SB 296.

It is interesting that remediation of blight and the language surrounding the same is seemingly being incorrectly placed in statute. It is apparent, if truly needed, this language belongs in statutes dealing with condemnation procedures, not within statutes dealing with eminent domain.

True or False

Cities and municipalities can condemn property that is unsafe or uninhabitable?

There are limitations on what kinds of property cities can condemn? (Private, Residential, business, etc...)

My point is that there are already mechanisms in place that allow cities and municipalities to deal with unsafe and uninhabitable property.

Another point being made is that SB 296 is redundant to statutes already in place and isn't really needed, unless one is trying to obtain property rights they are unwilling to obtain in the marketplace.

Almost all property has a back entrance, whether it's a farm, home, or business. Senate Bill 296 is an attempt to use governmental power to steal property rights by using back door methods and abusing governmental authority. Cities and municipalities already have the authority to use the front door when property is unsafe or uninhabitable. Please see the attached documents.

Thank you, and I will be happy to stand for questions.

Senate Judiciary

3-1-07

Attachment 10

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

545N-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

February 23, 2007

To: Senator Dennis Pyle

Office No.: 120-S

From: Matt Spurgin, Fiscal Analyst

Re: Condemnation

Your intern had contacted me stating you needed some information on condemnations.

Unsafe or dangerous structures are covered in KSA 12-1750 through KSA 12-1768. These sections provide that a governing body has the power to cause the repair or removal of structures within a city.

The enforcing officer would file a statement that a structure was unsafe or dangerous. Proper notice would be given to the owner and lien holders of record, and a hearing would be held.

By statute, "structure" is defined as any building, wall or other structure.

I hope this provides you with a brief summary of the statutory sections covering the authority to condemn property. Please let me know if I can do anything further.

MAS/kal

PUBLIC POLICY STATEMENT

SENATE COMMITTEE on JUDICIARY

RE: SB No. 296 an act relating to eminent domain;
concerning blighted property.

March 1, 2007
Topeka, Kansas

Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations

Chairman Vratil, and members of the Senate Committee on Judiciary, thank you for the opportunity to appear today to convey our thoughts about the state of eminent domain law as it relates to blighted property and SB 296.

I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Our members have long been outspoken about intrusion and interference with private property rights by governments, especially when that action results in land being taken from one owner and subsequently conveyed to another under the auspices of economic development. KFB policy, developed at the grassroots level, clearly states that eminent domain procedures should be used only for legitimate governmental purposes. We applaud the Kansas Legislature for action taken last session to limit the taking of private property when the clear intent of the condemning authority is economic development and transference of property to another private entity.

Senate Judiciary

3-1-07

Attachment 11

There is a basic fairness issue at stake. As farmers and ranchers, we believe strongly in the American private enterprise system where property is privately owned, managed and operated for profit and individual satisfaction. We have real concern that government taking land from one businessperson and handing it to another weakens all of our Constitutional rights.

The citizens of Kansas, and our members spoke and the legislature clearly heard them. For these reasons, KFB supported passage of Sub. for SB 323 during the 2006 legislative session and look forward to it's full implementation.

As such, we have also committed to work with other interested parties to identify reasonable and responsible solutions to any legitimate deficiencies, should they arise. But, we are not interested in "undoing" what some find objectionable. Please do not be tempted into broadening a blight definition so as to invalidate the good work you've already done.

In previous testimony, we have encouraged the legislature to limit a blight definition to only those structures that are uninhabitable, abandoned or constitute a threat to public safety. Any definition should explicitly exclude agricultural lands and associated farm homes and structures. As drafted, we believe SB 296 addresses our concerns and therefore, Kansas Farm Bureau is not opposed to the bill.

Kansans, both urban and rural, deserve protection for the homes and land they have worked hard to acquire and develop. Your previous efforts to address this issue are sincerely appreciated. KFB stands ready to assist as you seek to preserve and protect property rights in Kansas.

Thank You.



Since 1894

TESTIMONY

To: Senate Judiciary Committee
Senator Vratil, Chair

From: Allie Devine
Vice President and General Counsel

Date: March 1, 2007

Re: SB 296

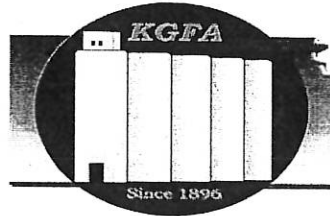
Good morning, my name is Allie Devine. I am representing the Kansas Livestock Association.

As many of you know and will recall, we were supporters of restrictions on the use of eminent domain for economic development. This bill provides an exception to those restrictions for areas considered "blight" within the corporate boundaries of a municipality.

Last year there was considerable debate and discussion among proponents and opponents regarding "blight" areas, generally referring to areas within cities where buildings have become hazardous, or unsafe. During those discussions, it was apparent to us that no one intended to use the power of eminent domain to eliminate agricultural operations within city limits.

To assure that agricultural operations such as agricultural land, feedlots, public livestock markets, or farm homes are not considered "blight" we asked that the definitions be added (P. 2 lines 29-41) and a clear exemption be made from what is considered "blight". We think this language makes it clear that eminent domain cannot be used for economic development purposes against these operations. With this language, KLA does not oppose the bill.

I appreciate the proponents' willingness to work with the agricultural community on this issue. I am happy to answer any of your questions. Thank you.



March 1, 2007

TO: Senator John Vratil, Chairman – Senate Judiciary Committee
Senate Judiciary Committee Members

FROM: Mary Jane Stankiewicz, Vice-President and General Counsel
Kansas Grain & Feed and Kansas Agribusiness Retailers Associations

Leslie Kaufman, Executive Director
Kansas Cooperative Council

RE: SB 296 – relating to eminent domain and blight.

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to appear today regarding SB 296. I am Mary Jane Stankiewicz and I appear before you today on behalf of the Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association, as well as on the behalf of Leslie Kaufman and the Kansas Cooperative Council. We knew your conferee list was numerous and considering our associations would be bringing forth very similar comments, we have combined them in a joint statement.

KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. The Kansas Cooperative Council is the statewide trade association for all types of cooperatively structured, member-owned and member-controlled businesses. Approximately half the membership is agriculture marketing and/or farm supply co-ops.

As you know, the bill before you seeks to clarify what "blight" means and exempts "agricultural land" from being deemed "blighted". Although our three organizations would likely be best categorized as a neutral conferee on the bill as a whole, we

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respectfully request an amendment that includes grain warehouses and agricultural chemical retail facilities within the "agricultural land" exemption.

Public grain warehousing and agricultural crop protection services are critical elements in the overall agricultural framework of this state. Our facilities are uniquely positioned in terms of their geography and that inter-relation to the bill before you now. Many of our facilities are located within the "city-limits". Those that are not are most likely adjacent to that boundary or within the "3-mile" limit of influence around cities. As towns have grown, all sorts of development has surrounded many of our elevators and crop protection facilities. Our facilities are heavily regulated on a multitude of fronts and safety is a paramount concern for all our members. The fact remains, though, that the handling of agricultural products carries with it certain inherent characteristics that some may find less than desirable. Traffic, large vehicles and machinery, certain noises and some types of dust are unavoidable. Because of these circumstances, we firmly believe inclusion of public grain warehouses and agricultural retail facilities is fully merited. Additionally, we see our situation very similar in philosophy to the inclusion of feedlots and public livestock markets.

We have attached a balloon amendment to our statement, indicating where we would suggest provisions for our industry be included. We have tried to narrow the wording by pulling from or incorporating concepts embodied in other existing statutes. We understand the Revisor may want to adapt our wording and we are certainly willing to work with staff on that, should the need arise.

We appreciate your consideration and respectfully request you act favorably on our request. Thank you.

SENATE BILL No. 296

By Committee on Federal and State Affairs

2-6

9 AN ACT relating to eminent domain; concerning blighted property;
10 amending K.S.A. 2006 Supp. 26-501b and repealing the existing
11 section.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 26-501b is hereby amended to read as
15 follows: 26-501b. On and after July 1, 2007, the taking of private property
16 by eminent domain for the purpose of selling, leasing, or otherwise trans-
17 ferring such property to any private entity is authorized if the taking is:

18 (a) By the Kansas department of transportation or a municipality and
19 the property is deemed excess real property that was taken lawfully and
20 incidental to the acquisition of right-of-way for a public road, bridge or
21 public improvement project including, but not limited to a public build-
22 ing, park, recreation facility, water supply project, wastewater and waste
23 disposal project, storm water project and flood control and drainage
24 project;

25 (b) by any public utility, as defined in K.S.A. 66-104, and amend-
26 ments thereto, gas gathering service, as defined in K.S.A. 55-1,101, and
27 amendments thereto, pipe-line companies, railroads and all persons and
28 associations of persons, whether incorporated or not, operating such
29 agencies for public use in the conveyance of persons or property within
30 this state, but only to the extent such property is used for the operation
31 of facilities necessary for the provision of services;

32 (c) by any municipality when the private property owner has acqui-
33 esced in writing to the taking;

34 (d) by any municipality for the purpose of acquiring property which
35 has defective or unusual conditions of title including, but not limited to,
36 clouded or defective title or unknown ownership interests in the property;

37 (e) by any municipality for the purpose of acquiring property which
38 is unsafe for occupation by humans under the building codes of the ju-
39 risdiction where the structure is situated;

40 (f) expressly authorized by the legislature on or after July 1, 2007, by
41 enactment of law that identifies the specific tract or tracts to be taken. If
42 the legislature authorizes eminent domain for private economic devel-
43 opment purposes, the legislature shall consider requiring compensation

1 of at least 200% of fair market value to property owners;
2 (g) by any municipality, within the corporate boundary of such mu-
3 nicipality, for the purpose of remediating blight. As used in this section,
4 "blighted property," "blighted" or "blight" means any developed property
5 which:

- 6 (1) Presents any of the following conditions:
- 7 (A) Uninhabitable, unsafe or abandoned structures;
- 8 (B) inadequate provisions for ventilation, light, air or sanitation;
- 9 (C) an imminent harm to life or other property caused by fire, flood,
10 tornado, storm or other natural catastrophe and the property owner has
11 failed to take reasonable measures to remedy the harm;
- 12 (D) a site identified by the federal environmental protection agency
13 as a superfund site pursuant to 42 U.S.C. § 9601, et seq., or environmental
14 contamination to an extent that requires remedial investigation or a feas-
15 ibility study;
- 16 (E) repeated illegal activities involving controlled substances, prosti-
17 tution or promoting prostitution on the individual property of which the
18 property owner knew or should have known; or
- 19 (F) the maintenance of the property remains in violation of state law
20 or municipal nuisance code requirements and has received at least three
21 notices for code violations within one year and such code violations have
22 been abated by the municipality, except that this paragraph shall not
23 apply to the removal or abatement of grass, weeds or other vegetation
24 from such property.

25 (2) Property shall not be deemed blighted because of esthetic
26 conditions.

27 (3) In no case shall land that is agricultural land be determined to be
28 in a blighted condition.

29 (4) For the purposes of this subsection:

30 (A) "Agricultural land" means any interest in real property that is
31 privately owned and satisfies any one of the following criteria:

32 (i) Is classified pursuant to article 11, section 1, of the Kansas con-
33 stitution as devoted to agricultural use;

34 (ii) is a feedlot, confined feeding facility or public livestock market;
35 or

36 (iii) is a farm home.

37 (B) "Confined feeding facility" means any lot, pen, pool or pond:

38 (i) Which is used for the confined feeding of animals or fowl for food,
39 fur or pleasure purposes;

40 (ii) which is not normally used for raising crops; and

41 (iii) in which no vegetation intended for animal food is growing.

42 (C) "Corporate boundary" means the jurisdictional boundary of the
43 municipality, specifically the city limits or county line, and does not in-

A) Agricultural Retail Facility means any facility operated by any person, entity or corporation that is licensed or registered with the Kansas department of agriculture to handle, process or sell fertilizer, anhydrous ammonia or any other agricultural chemical used in the production of agriculture.

(iv) public grain warehouse;
(v) agricultural retail facility.

1 *clude an urban growth area or area designated by a planning or zoning*
2 *commission in accordance with K.S.A. 12-754, and amendments thereto.*

3 (D) *"Farm home" means any tract of land which contains a single-*
4 *family residence, is adjacent to agricultural land and is occupied by an*
5 *individual or individuals engaged in farming operations.*

6 (E) *"Farming" means the cultivation of land for the production of*
7 *agricultural crops, the raising of poultry, the production of eggs, the pro-*
8 *duction of milk, the production of fruit, sod, or other horticultural crops,*
9 *grazing or the production of livestock.*

10 (F) *"Feedlot" means a lot, yard, corral, confined feeding facility or*
11 *other area in which livestock are fed for slaughter and are confined and*
12 *such additional acreage as is necessary for the operation of the feedlot.*

13 (G) *"Livestock" means cattle, sheep, swine, horses, mules, asses,*
14 *goats, aquatic animals, domesticated deer, all creatures of the ratite family*
15 *that are not indigenous to this state, including, but not limited to, os-*
16 *triches, emus and rheas, and any other animal which can or may be used*
17 *in and for the preparation of meat or meat products.*

18 ~~(g)~~ (h) *This section shall be part of and supplemental to the eminent*
19 *domain procedure act.*

20 Sec. 2. K.S.A. 2006 Supp. 26-501b is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the Kansas register.

(H) "Public grain warehouse means an elevator or other building in which grain is received for storage or transfer for the public."



**THE KANSAS CITY KANSAS AREA
CHAMBER OF COMMERCE**

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TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: CINDY CASH, PRESIDENT/CEO
KANSAS CITY KANSAS AREA CHAMBER OF COMMERCE

DATE: FEBRUARY 27, 2007

The Kansas City Kansas Area Chamber of Commerce supports the changes currently proposed in Senate Bill 296 which mitigates the current Eminent Domain legislation slated to go into effect on July 1, 2007. The currently proposed SB 296 allows local communities to take property through eminent domain for the purposes of remediating blight.

We see this as a step in the right direction for local municipalities to be able to retain some portion of this economic development tool. We need this economic development tool in our community as we work to bring all areas of our community up to the very best possible level of economic prosperity and quality of life. The inability to take property that has long term neglect, unremediated Brownfield conditions, unsafe and dangerous conditions and/or use as a drug house will hinder these efforts.

We urge you to please support and pass SB296 out of committee.

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DOWNTOWN SHAREHOLDERS

TESTIMONY TO THE SPECIAL JOINT INTERIM COMMITTEE ON JUDICIARY

February 27, 2007

Dear Committee Members,

The Downtown Shareholders, Inc., of Kansas City, Kansas would like to enter the following testimony with regard to the issue of eminent domain.

The Downtown Shareholders formed as a grassroots effort in 2003 to be a unifying voice for Downtown and to support revitalization activities in Downtown Kansas City, Kansas. Our membership organization represents a wide spectrum of businesses, residents, property owners, development entities, neighborhood organizations, social services, government agencies and non-profit organizations. We have partnered with the Unified Government to complete a new Master Plan for Downtown that will be adopted this spring. Our mission is to stimulate, promote and encourage the revitalization of the downtown area as a thriving and profitable center of business, commerce, culture, residence, entertainment and other activity. One of our most important strategies for our success is the redevelopment of property within the boundaries of our downtown. On the fourteen blocks of our principal commercial corridor Minnesota Avenue, every single block has vacant storefronts, deteriorating buildings, owners who have bench warrants for severe codes violations, or buildings that owe years of back taxes but evade tax sale. These types of properties can present great obstacles to redevelopment that at times can only be surmounted by the judicious decision of the local government to intervene.

We acknowledge some believe eminent domain may have been misapplied in some circumstances. However, we firmly believe it is indispensable for revitalization and redevelopment of urban commercial districts and neighborhoods and must be available to be used by local governments as a tool of last resort.

We strongly support a wider definition of blight. Eminent Domain simply must be available for local governments to eliminate the roadblocks to revitalization, in order to restore their downtown blocks, commercial districts and neighborhoods to productive, economically viable uses for the good of the entire community.

The Downtown Shareholders, Inc.
Kansas City, Kansas

P. O. Box 171337 Kansas City, KS 66117

President: Cindy Cash Vice President: Pat Jordan
Secretary: Ed Rust Treasurer: Bob Hughes



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My name is Mary Ontko and I am a senior program officer at the Local Initiatives Support Corporation, the country's largest non-profit community development organization.

As a resident of Wyandotte County, I see every day the tragic barrier that blighted property poses to community revitalization. While many residents and property owners are trying earnestly to maintain their properties and breathe new life into their neighborhoods, some absentee landlords and others have abandoned their responsibility to keep their properties clean and safe.

Community developers are developers of last resort, generally working in blighted areas in which the private sector for generations has declined to invest. In Kansas, community developers have precious few tools in their belts to use in their work. In partnership with local governments, eminent domain has been one of these tools. This July, that rarely used but necessary tool will be eliminated in the urban core, unless Senate Bill 296 is adopted.

SB296 addresses the need for including the power of eminent domain in the community development toolkit, narrowly and precisely defining what blight IS and specifically outlining what blight is NOT. With these definitions, only properties that represent a significant danger to the health and safety of the community could be considered blighted. I believe this adequately safeguards against potential abuses of eminent domain power while allowing community revitalization in TRULY blighted areas to continue.

I urge you to support Senate Bill 296. Thank you.



To: Senate Judiciary Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: March 1, 2007
Subject: **SB 296** – Concerning Eminent Domain and Blighted Properties

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to submit testimony on behalf of the Kansas Association of REALTORS® in support of **SB 296**. KAR is a trade association which has faithfully represented the interests of over 10,000 real estate professionals in the state of Kansas for the last 85 years.

In 2005, the United States Supreme Court held in *Kelo v. City of New London* that a local government could use eminent domain to acquire private property for the purpose of transferring that property to another private property for economic development purposes. In response to the Supreme Court's decision in *Kelo*, the Kansas Legislature passed **SB 323** during the 2006 legislative session which placed numerous restrictions on the ability of local governments to use eminent domain to acquire property for economic development purposes.

The ownership of private property is one of the most fundamental rights of citizenship and government should always endeavor to protect the security of private property. As a consequence, the Fifth Amendment serves as an important protection against unfair governmental intrusion upon private property ownership by providing important safeguards against excessive, unpredictable or unfair use of the government's eminent domain power.

The Fifth Amendment of the United States Constitution provides that "private property shall not be taken for public use without just compensation." Therefore, government may compel an individual to forfeit his or her property for public use, but not for the benefit of another private person. In her dissent in the *Kelo* case, Justice O'Connor summarized the three categories of takings that comply with the public use requirement under the Fifth Amendment.

First, the government may transfer a private property to public ownership – such as for a road, hospital or a military base. Second, the government may transfer private property to private parties, often common carriers, who make the property available for the public's use – such as with a railroad, a public utility or a stadium. Third, under certain exigent circumstances, takings that serve a public purpose also satisfy the Fifth Amendment even if the property is destined for subsequent private use.

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In *Berman v. Parker*, 348 U.S. 26 (1954), the United States Supreme Court upheld takings within a neighborhood that had become burdened with uninhabitable structures and inadequate provisions for light, air and sanitation. In *Berman*, the Supreme Court made the determination that the conditions in the neighborhood had become so detrimental to the public health, safety and welfare that it was necessary to eliminate the blighted conditions using all means necessary, including the use of eminent domain.

SB 323 adequately protected the first two categories of takings that comply with the public use requirement under the Fifth Amendment. In the statute, it is clearly specified that a government may use eminent domain to acquire and transfer private property to another private party if the property will be used for a public purpose such as a road, bridge or public improvement project or by a common carrier such as a public utility, railroad or gas gathering service.

However, **SB 323** did not adequately protect the third category of takings that comply with the public use requirement. In this respect, **SB 323** did not provide local governments with all the necessary tools to remediate and redevelop blighted areas into livable and safe communities. In *Berman*, the Supreme Court recognized that blighted housing conditions do more than harm public health and safety. When a property owner allows his or her property to fall into a state of disrepair and ignores the prevalence of unsafe conditions and repeated illegal activities on the property, this inflicts harm on the community as a whole.

Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They also may suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river. *Berman* at 26.

In situations like this, government intervention to seize private property is justified when the use of private property has veered to such an extreme that the public is being harmed by the inappropriate and unsafe use of that property. Allowing cities to acquire blighted properties through the use of eminent domain allows local governments to acquire and remediate properties which are being used in a manner that endanger public health and welfare.

In many cases, these properties have been long-term hazards for community residents and local government public officials, including properties that have been used as havens for the use of illegal substances and prostitution. As a private property owner, you are under an obligation to use and maintain your property in a manner that will not unduly harm the safety, health and welfare of the community as a whole.

If you fail to maintain your property in a manner that will protect the safety, health and welfare of the community, then local governments should have the ability to use all means necessary, including the use of eminent domain, to properly remediate the harm caused to the community by the negligent use of your property.

SB 296 would simply provide local governments with all the necessary tools to acquire and remediate blighted properties for the purpose of protecting the safety, health and welfare of the community. For these reasons, KAR would urge you to support **SB 296**.

Written Testimony: SB 296 – Eminent Domain – Concerning Blighted Property
Senate Judiciary Committee
March 1, 2007
By: Christy Caldwell, Vice President Government Relations
Greater Topeka Chamber of Commerce
ccaldwell@topekachamber.org

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Senator Vratil and Members of the Committee:

The Greater Topeka Chamber of Commerce would like to express our support for SB 296 which would allow municipalities the ability to utilize eminent domain in order to remediate blighted property within the corporate boundaries.

As we all remember, legislation was approved last session which will soon limit the ability of cities to exercise eminent domain to very few instances other than public infrastructure projects. Our chamber, along with others interested in Kansas local economies and the future of our cities are concerned with local government's restricted ability to use eminent domain after July 1, 2007.

As a business organization, our chamber is exceedingly respectful of individual property rights. We understand the commitment and investment business owners and individuals make to their businesses and homes, sometimes with a conviction they will never leave that location. In most instances business owners and homeowners works diligently to maintain and improve their property, but there are those occurrences when property owner allow properties to become blighted and/or crime infested.

As a business organization, we observe declining properties within our community which sequentially lead to urban flight as business owners and individuals move away from those areas fearing the decline will reduce their property values and affect their customer base. We see in these declining areas a propensity for increasing crime, driving more people from the area and resulting in growing neighborhood decline and more blight. In the best of all worlds, individuals – given the means, do not let their property decline and redevelopment is the norm. But we live in the real world where these declining neighborhoods and commercial areas do exist. Once urban blight is evident it is difficult to stop the decline. Communities try their best to stem the tide of blight and turn neighborhoods around, but unfortunately it does not always work. Sometimes it takes more drastic measures which may create the need to exercise eminent domain in order to assure the redevelopment of a blighted structure.

In Topeka, city government has worked to increase code enforcement, community organizations involve themselves in cleaning-up blighted neighborhoods, volunteers offer their time refurbishing other's homes, the city has increased policing and made concerted efforts to positively turn the deterioration around. We all celebrate their successes but when it doesn't work, the entire community suffers.

This is why we believe SB 296 is appropriate; allowing local elected officials this authority is a proper role for local governing bodies. Cities can and should be trusted to utilize eminent domain in situations where blight exists and the likelihood of reversal without intervention is remote. SB 296 outlines clearly those situations where cities can determine the use of eminent domain is the correct action to take to eradicate blight and alter neighborhood decline.

Circumstances do arise when private interests and local government partner in efforts to reclaim blighted areas. This involves purchasing declining property and rebuilding from the ground up; we have such a project going on in Topeka now. In a few instances owners of blighted property may choose to hold out and not sell their property. At that moment, when all efforts to acquire the property through negotiations have been exhausted, decisions must be made to persevere or to let it remain in decay. Locally elected officials best understand the issues in their community and can make relevant, timely and fair decisions. Waiting for the legislative session and requiring the state legislature to make the decision regarding eminent domain, in a city where they may have little knowledge of the issue and the facts surrounding the case, may well deter advocates from even attempting the legislative process. The remaining property owners near the blighted property lose, the neighborhood loses, the community loses and the process has enabled blight to continue and grow.

SB 296 clearly protects property owners from overreaching decisions; it protects agricultural land, feed lots and farm homes. The bill assures these interests that their feared consequences are not possible. Blight is a concern cities contend with; resolving the issue of blight should remain in the hands of Kansas municipalities and their elected officials.

Chairman Vratil and Committee we ask that you consider favorably SB 296.

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The Historic Lackman-Thompson Estate
11180 Lackman Road
Lenexa, KS 66219-1236
913.888.1414
Fax 913.888.3770

TO: Senator John Vratil, Chairman
Members, Senate Judiciary Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: March 1, 2007

RE: **Support for SB 296 – Eminent Domain Blight Exception**

The Lenexa Chamber of Commerce would like to express its strong support for SB 296, which would amend the eminent domain legislation approved by the Kansas legislature in 2006 to recognize an exception for blighted areas.

We strongly believe the legislature should revisit the use of eminent domain in blighted areas. While the power of eminent domain cannot be taken lightly, in appropriate instances its use can be clearly for the greater good and we believe this proposed revision restores some needed workability to this important community tool.

Current legislation allows the use of eminent domain by any municipality for the purpose of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated – an exception far narrower than the statutory definition of “blighted area” under K.S.A. 12-1770a. We believe this intended exception for blight, which forces communities either to wait until properties literally become physically dangerous before they can potentially address declining areas or to seek legislative approval to use eminent domain, is overly restrictive and does not reflect the best public policy.

We would encourage legislators to expand this exception to be more workable for communities. Although we believe it remains overly restrictive, SB 296 represents an important step toward striking a balance between protecting individual property rights and allowing communities to continue to address problem areas in a meaningful way.

I appreciate the opportunity to provide our input on this important issue and urge you to recommend SB 296 favorable for passage. Thank you.

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SUBMITTED TESTIMONY

TO: The Honorable John Vratil, Chair
And Members of the
Senate Committee on Judiciary

FROM: Whitney Damron
On behalf of the
City of Topeka

RE: Comments in support of SB 296;
Use of Eminent Domain authority for areas of blight.

DATE: March 1, 2007

Chairman Vratil and Members of the Senate Committee on Judiciary:

The City of Topeka respectfully requests your support of SB 296 that would provide municipalities with the ability to utilize eminent domain authority to address areas of blighted property.

The City of Topeka is sensitive to the concerns raised during the debate over municipal use of eminent domain authority held in 2006 by the Kansas Legislature and the legislature's reluctance to revisit this issue again in 2007 before the law enacted last year has even taken effect. However, we believe those involved with the debate last year recognized there could be instances where the use of eminent domain authority by a municipality would be an appropriate exercise of this power under certain, limited circumstances. Accordingly, commitments were made to attempt to address the issue of blight this year and that is what we have before the committee today with SB 296.

Significant restrictions were placed upon the use of eminent domain in our state with the passage of SB 323 in 2006, including legislative approval for the use of this authority for economic development purposes. We do not believe providing a limited authority to municipalities to utilize eminent domain authority in these extremely challenging situations would significantly weaken the law approved last year and if abuses do occur, we expect the Legislature will not hesitate to revisit this issue very quickly.

In closing, we believe SB 296 is a reasonable and carefully-drafted piece of legislation that will help cities and counties address situations of blight when no other alternatives are available to them. We encourage your support of SB 296.

Kansas City Business Journal - February 26, 2007

<http://kansascity.bizjournals.com/kansascity/stories/2007/02/26/story5.html>

BUSINESS JOURNAL

BUSINESS PULSE SURVEY: Should states mandate that teenage girls receive the cervical cancer vaccine?

Kansas eminent domain law may gain blight exception

'Well-crafted compromise' could provide vital avenue

Kansas City Business Journal - February 23, 2007 by Chris Grenz Staff Writer

Kansas lawmakers are poised to give local governments something they desperately want — a definition and exception for "blight" when it comes to eminent domain.

Groups on both sides of the eminent domain debate have agreed on a narrow definition of blight that might pass with little opposition. The bill would allow local governments to deal with abandoned, unsafe and crime-ridden property without first getting approval from the Legislature.

"It's a very well-crafted compromise," said Sen. John Vratil, R-Leawood. "I think it achieves the desired purpose and will allow cities to deal with blighted situations in a way that current law does not allow."

Vratil is chairman of the Senate Judiciary Committee, which expects to take up the matter within a couple of weeks.

A U.S. Supreme Court ruling that appeared to give local governments broad authority to take private property for economic development prompted legislative action last year. Property rights advocates, led by farming interests, pushed for an outright ban in Kansas.

Legislators passed a law requiring local governments seeking to take private property from one private owner and transfer it to another to first gain approval from the Legislature. Left out of that law, set to take effect July 1, was any exception to deal with blight.

"A majority of people don't want to see the taking of one person's property for the economic benefit of another," said Rep. Tom Burroughs, D-Kansas City, the sponsor of the House version of the blight bill. "But when it comes to absentee landlords, abandoned property, criminal activity — we need a process to address how to turn these properties back into being a viable part of our community fabric."

Cindy Cash, CEO of the Kansas City Kansas Area Chamber of Commerce, said that modifying last year's eminent domain bill will be crucial to the success of a new community master plan for her community. The plan's downtown portion will be ready in about a month, she said.

"This could virtually shut down or greatly stall redevelopment plans for our community by not having some mitigation of last year's legislation," Cash said. "The blight definition is certainly a great starting point."

Critics say last year's bill will hurt economic development throughout Kansas.

The Legislature won't have time to consider all the proposals, they say, and lawmakers won't be up to speed on each community's needs.

"I didn't like it last year, and I don't like it any more this year," Vratil said. "It is going to hurt the state of Kansas and Kansas taxpayers because it's going to discourage economic development.

"But a majority of the Senate and a majority of the House and the governor all approved it. I'm not going to try that debate again."

Instead, supporters of eminent domain worked during the summer to craft a definition of blight that was acceptable to such groups as the League of Kansas Municipalities, the Kansas Farm Bureau and the Kansas Livestock Association.

"It's livable," said Sandy Jacquot, general counsel for the League of Kansas Municipalities. "The



Dave Kaup | KCBJ
Eminent domain has removed the abandoned truck stop on 18th Street in Kansas City, Kan., just north of Interstate 70. State Rep. Tom Burroughs, D-Kansas City, says he hopes blighted properties to the north also will be improved soon.
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bottom line is, we can get (blighted property) into the hands of an entity that is going to do something with the property to benefit the community in general. The language is very narrow. We're hopeful that there isn't a lot of opposition to this."

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Brad Harrelson, state policy director for the Kansas Farm Bureau, said the group participated in talks hoping that a compromise on blight wouldn't introduce a loophole that would undermine last year's bill, which the group supported.

"We'll not be opposed to the bill, provided it stays as introduced," Harrelson said. "But we'll not be knocking down doors trying to get it passed, either."

That's good enough for Burroughs, who said he isn't wild about this year's bill either but would support the legislation as drafted.

"It's an emotional issue," he said. "It's an issue that can really divide people. But I truly believe that if you can get people on opposite sides of an issue to sit down and work out an agreement, that's probably the best solution."

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20-3

Testimony of William T. Davitt before Senate Judiciary Committee of Kansas Legislature at 9:00 A.M. on Thursday, March 1, 2007 **AGAINST** amending BLIGHT into Kansas Statutes as an excuse for **EMINENT DOMAIN**.

My name is William T. Davitt from Wichita. Everything I say is my opinion, belief and understanding.

Last August I went to a meeting called by Wichita City Manager. See attached page. 250 people in the room. Fancy buffet with salmon sandwiches along the wall.

Up on the stage 2 members of Wichita City Council show color slides on large screen. "Oh, look at the beautiful swimming pool, manicured lawn, attractive apartments! It is so wonderful that we are going to have all this in Wichita REDEVELOPMENT!"

Standing at the microphone, big developer from St. Louis explains that he will continue owning these new apartments and collecting the rent. Says he is going to KNIT together churches and schools, city and county government, taxpayers and philanthropists.

Question from audience: "What if we don't want to sell our land to you?" Answer of developer: "We'll RAKE IT with **EMINENT DOMAIN** ... clean up Wichita's BLIGHT!"

And BLIGHT is why we are here today. They want the legislature to nail BLIGHT in Kansas Statutes so they can use BLIGHT as an excuse to destroy our homes and places of business with a bulldozer, take our land away from us, turn our land over to big developer from St. Louis so he can build rental apartments and scoop in millions of dollars in profits for himself.

Senate Judiciary

3-1-07

Attachment 21

Well, you say your home is so beautiful that they can never declare your home BLIGHTED. Don't kid yourself.

BLIGHT is going to be whatever the Kansas Supreme Court says it is following the argument of BIG LAW FIRMS representing BIG DEVELOPERS . . . because every judge on Kansas Supreme Court owes his job to a handfull of BIG LAW FIRMS.

That is why we desperately need an amendment to our Kansas Constitution taking selection of these judges away from BIG LAW FIRMS and requiring these judges to be confirmed by Kansas Senate as is done in the federal.

We also desperately need an amendment to our Kansas Constitution that will protect our homes and places of business from **EMINENT DOMAIN**.

What more can I say?

LIBERABUS DOMINE.

William T. Davitt

William T. Davitt
1205 Bitting
Wichita, Kansas 67203
Phone 316 263-9850

Please see attached page marked THS ISSUES.

Note that Wichita City Council member Carl Brewer **IS** in favor of creating a REDEVELOPMENT AUTHORITY.

Wichita Mayor Carlos Mayans **IS NOT** in favor of creating a REDEVELOPMENT AUTHORITY.



August 14, 2006

To: Visioneering Committee

On Tuesday evening, August 22, 2006, the City of Wichita will proudly host a **Public Forum on Community Revitalization**, featuring Richard Baron, Chairman and CEO of McCormack Baron Salazar (MBS). This forum is a part of the City's commitment to and participation in a prisoner reentry initiative to help transform not only the lives of returning ex-offenders, but also to transform the communities/neighborhoods into which they will return.

You are cordially invited to attend this forum, to hear Mr. Baron describe the life and community changing initiatives he has directed in St. Louis and other parts of the country. Mr. Baron's visit is designed to help our community dream 'big' and to put us on track to attract national foundation support for accomplishing our dreams.

Baron is nationally recognized for his major transformation initiatives. In 2004 he received the Urban Land Institute (ULI) J.C. Nichols Prize for Visionaries in Urban Development. In its announcement, ULI noted that this recognition was due in part to the holistic approach Baron's organization takes to build communities. His credits include development of mixed-income housing and successful partnerships with local schools, as well as significant commercial redevelopment.

The public forum will be held on Tuesday, Aug. 22 in the **Sudermann Commons Room** at the Wichita State University Hughes Metropolitan Complex, located at **5015 E. 29th Street North** (29th & Oliver), from **6:00 pm to 8:00 pm**.

I look forward to having you join this dialogue, and to be a part of this important community building initiative. Please confirm your availability with my Executive Assistant, De Nelson, at 269-4704 or by email: dnelson@wichita.gov.

Sincerely,

George R. Kolb
City Manager

C: Mary K. Vaughn – Director, Housing & Community Services

City Manager's Office

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THE ISSUES

| | Do you support the creation of a redevelopment authority to improve blighted neighborhoods? Why or why not? | What should Wichita do to improve its public image and attract new businesses? |
|----------------------------|---|--|
| Carl Brewer | We have not yet found the structure that's right for Wichita. As mayor, I will continue to work with our community partners to create a redevelopment authority that works for Wichita. | As mayor, I will hold regular town hall meetings so there is investment, ownership and pride in Wichita, and I will be a lead promoter of Wichita's good news. I will also provide the collaboration needed to implement the goals of Visioneering Wichita and work with the business community to attract new jobs and businesses. |
| King David Davis | No, I do not. | Get out of the way of our citizens. Let them do what they do best. Demonstrate our ability to capitalize on our resources. Showcase our city as one of opportunity, diversity, government friendly and Wichita is much bigger than you think. |
| Darrell E. Leffew | We need to act fast and firm on enforcing current anti-blight ordinances and perhaps toughen laws to clean up our neighborhoods. But we need to be uniform and fair across all areas of the city. | Wichita should avoid trying to copy other cities and take advantage of what we are, a diverse community of neighborhoods working together, living together and playing together. We should celebrate our differences equally while promoting a clean, safe, friendly and fun place to live. |
| Carlos Mayans | I support the nonprofit organizations in our community that have worked tirelessly to improve our community by helping citizens move from rentals to home ownership and by increasing the affordable housing stock in our neighborhoods. Creating a new bureaucracy will have the effect of the city competing with our existing efforts. | We must continue our work force development efforts in order to attract and retain business. We must continue to compete for conventions and visitors. We must sell others on our quality of life and affordable housing as one of the best communities in America. |
| James D. Mendenhall | I do support an authority capable of gathering large tracts of land to support smart growth. | Make new construction consider designing to reduce new barriers related to the special conditions of an aging population. Establish a method to certify our restrooms are sanitary and are nationally recognized as such. Seek new industries with growth potential. |
| Randy Pace | Yes, but it should be comprised of citizens with a strong determination to improve all of Wichita. | Emphasize its great people and true center of the U.S. (ideal location) |
| Larry White | Yes, I support such a plan, but only if the mayor and City Council have the final authority. I have no problems with advisory boards, as long as the ultimate authority remains with our duly elected officials. | The mayor needs to lead the way in projecting the good aspects of Wichita, and to be the catalyst in correcting any areas that might need improvement. Bureaucracy must be kept to a minimum to promote new businesses and to maintain the existing businesses. Public expenditures must be limited to what is vital for the good of the city. Keep taxes low. |

EMINENT DOMAIN violates the Commandments that Almighty God gave to Moses on Mount Sini.

No. 7 You shall not STEAL.

No. 10 You shall not COVET anything that belongs to your neighbor.

COVETOUSNESS is one of the seven capital sins.

Oh, corrupt politicians will deceive you that **EMINENT DOMAIN** is fine and dandy because it cleans up BLIGHT and creates ECONOMIC DEVELOPMENT.

Listen. The end never justifies the means. It is Christian teaching that **an evil act may not be committed to accomplish a good.**

During January of 2007 a member of Wichita Council died and was buried. He was 64. Life is short. None of us know how much time we have left.

When we die, Almighty God will inquire, "Well, what did you do with the gift of life that I gave to you? And why did you violate my Commandments when it came to **EMINENT DOMAIN?**"

City Managers. City Councils and County Commissions, League of Municipalities, Kansas Supreme Court, Kansas Legislature. None of us are going to **BULL SHIT** Almighty God with blab and idle prattle about BLIGHT and ECONOMIC DEVELOPMENT.

William T. Davitt

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The Voice of Small Business®

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**Legislative Testimony
Derrick Sontag, NFIB State Director
Senate Bill 296
March 1, 2007**

Mr. Chairman and members of the committee:

Thank you for the opportunity to appear before you in opposition to Senate Bill 296.

As you may know, NFIB/KS determines its' legislative agenda by balloting the more than 5,400 NFIB members in Kansas. A large majority of those balloted must respond on the prevailing side, in order for NFIB to support or oppose the issue in question. This process allows the organization's legislative agenda to be determined by the thousands of Kansans who are operating small and independent businesses on a daily basis.

Specific to this issue, the members of NFIB have made it clear that they oppose the taking of private property for the purpose of transferring it to another private entity.

In the weeks leading up to the 2006 session, members were asked to respond to a ballot survey containing the following question:

Should the government's power of eminent domain be restricted to use for public purposes and projects?

Results: Yes – 91.1% No – 5.6% Undecided – 3.4%

As you can see, an overwhelming majority supported the taking of private property for solely, public purposes. Comments from NFIB members centered on the belief that condemning private property on behalf of private entities gives rise to abuse and that it is generally unfair to those who lose their property. Small businesses and small property owners often times, are disproportionately impacted, and the benefits of condemnation only go to a few people.

A survey by the Institute for Justice found nearly 10,000 instances of eminent domain being exercised to benefit private parties in the last five years alone. Small businesses cannot afford to defend themselves against condemnation proceedings, and the "just compensation" settled upon rarely equals what the property owners would have gotten had the buyer engaged in a regular real estate deal.

During the 2006 legislative session, NFIB worked for a complete prohibition of the taking of private property for the transferring to a private entity. While the legislature came short of prohibiting this action, the end product went a long ways in defending private property rights.

However, concerns existed with the summer of 2007 enactment date and the possibility of this providing a loophole for local units of government to exploit. It appears that SB 296 is an attempt to take advantage of this loophole.

The Honorable John Vratil
Chair, Kansas Senate Judiciary Committee
Members of the Kansas Senate Judiciary Committee

Dear Senator Vratil and Members of the Committee:

Thank you for the opportunity to submit testimony regarding Senate Bill 296. I want to express my opposition to this bill and encourage the committee to reject passage to the full legislature. I have two major problems with this bill which I will address in detail below.

The first problem with SB 296 is the loose definition of blight and the private-to-private transfer provision. An open definition of blight basically nullifies any protections offered by last year's legislation. It has been well documented that the blight exception has been used to seize property that is actually in good shape. A property that is in the midst of repair or is simply older should not be deemed as blight by any municipality. SB 296 would give government carte blanche to seize any property it wanted. In addition, the language regarding transfer of private property to other private entities is a very dangerous. Lines 43-44 state "the legislature shall consider requiring compensation of at least 200% of fair market value to property owners." The "consider" language means the legislature is not required to present a tangible offer to the property owner. The definition of "fair market value" has also been contentious in many proposed transfers.

The second problem with SB 296 is the "end run" around last year's action (SB 323). Although the legislation passed last year is not perfect, it does offer increased protection for property owners. Last November voters cast their ballots trusting that this law would take effect as scheduled and intact on July 1, 2007. Passage and implementation of SB 296 would be nothing less than a violation of trust between the legislature and its constituents.

The 5th amendment of the U.S. Constitution allows for the use of eminent domain for private-to-public transfers. However, it is clearly stated that the property will be acquired for *public* use. Private development and private/public partnerships were not intended to be part of the eminent domain equation. If you truly value property rights I trust you will do the right thing and reject SB 296.

Respectfully

Patrick Wilbur
Treasurer
Libertarian Party of Kansas
521 Durham Court
Lawrence, KS 66049
785-841-8801

Senate Judiciary

3-1-07

Attachment 23

PUBLIC POLICY STATEMENT

SENATE JUDICIARY COMMITTEE
Re: SB 296 — Concerning Eminent Domain

March 1, 2007
Topeka, Kansas

Testimony provided by:
Rob Hodgkinson
Stilwell Kansas

Chairman Vratil and members of the Senate Judiciary Committee,

Thank you for the opportunity to present this written testimony today to share my opinion regarding eminent domain powers. My name is Rob Hodgkinson and I serve as Chair of Libertarian Party of Kansas. I am also a small business owner in Johnson County and resident of Stilwell.

I am writing you today to express my opposition to SB 296.

Let's remember that the eminent domain power was power claimed by kings. The theory was that the king owned all property and only allowed others the use of that property. The king could, on a whim, revoke the right to that property. This is precisely the kind of power that this bill will provide to the government entities using it.

This bill re-opens the floodgates of eminent domain abuse in Kansas that has been rampant in the past. With exception after exception, Senate Bill 296 would open property owners to a wide array of continuing eminent domain abuse in Kansas by adding an open definition of blight. In effect, this bill renders the previously passed SB 323 toothless, as was planned by the delayed implementation date set for SB 323 in 2006.

There is substantial evidence nationally that these open type of blight definitions lead to rampant abuse. Local government simply decides to give other people's property to a private developer and then proceeds to designate the area as blighted, in order to justify taking the property. With the outcome predetermined, cities will find a way to label anything blighted, using preposterous justifications for their designation. In Kentucky, a neighborhood with \$200,000 homes is blighted. Englewood, New Jersey, termed an industrial park blighted that had one unoccupied building out of 37 and generated \$1.2 million per year in property taxes. Richfield, Minnesota, labeled buildings blighted that did not have insulation that met Minnesota's rules for energy-

efficient construction of new buildings. Lakewood, Ohio, calls homes blighted that do not have two-car attached garages.

Most blight statutes provide a list of vague criteria that can establish blight. The clauses in SB 296 blight definition are no different and are completely subjective and easily manipulated. This proposed statute is typical. Areas are blighted if they have "Uninhabitable, unsafe or abandoned structures" or "inadequate provisions for ventilation, light, air or sanitation" or "an imminent harm to life or other property caused by fire, flood, tornado, storm or other natural catastrophe and the property owner has failed to take reasonable measures to remedy the harm".

Unsafe, unsanitary, inadequate dwellings and abandoned structures, or imminent harm to life sound like a problem. However, who decides these things and/or who has the authority to specify these conditions? Any area can have inadequate ventilation or inadequate light, or inadequate air if some current city planner wants to say so. With definitions like these in SB 296, municipalities can claim almost any home or business is blighted. Then, once an area has been labeled blighted (no matter how petty the justification), it magically transfigures into the most derelict area imaginable. With a blight designation, any action — razing it to the ground or giving it to a private developer — is presumed legal for the public purpose of eliminating this terrible public nuisance.

A blight designation places all properties in the area at the mercy of both bureaucrats and developers. Residents should therefore view any proposed blight designation as the first move in a coming land-grab. The government entity that wants the property will do anything to manipulate the zoning or codes so that they can then "legally" take your property. Anybody that believes differently is naive.

In the many months since the Kelo decision, I have been an outspoken champion for eminent domain reform in Kansas. I have been quoted in the press all across Kansas. I traveled all over the state of Kansas in my role as Libertarian Party State Chair and as a statewide candidate and accordingly have been talking to the public. One of the main topics of 2006/2007 has been the fact that Kansas has one of the worst records in the nation of eminent domain abuse in the nation. I have easily talked to over one thousand Kansans on this subject to date and none of them would back adding a definition of blight. In fact they want more protection from government eminent domain abuse, not less.

I have made a public stand for the people of Kansas – will you?

Please, defeat this legislation in committee, before you have to try to explain this fraud against Kansans and Kansas property rights that SB 296 is.

Thank you for your time.

The Honorable John Vratil
Chair, Kansas Senate Judiciary Committee
Members of the Kansas Senate Judiciary Committee

Dear Senator Vratil and Members of the Committee:

Private property rights are the corner stone of American freedom. Without the right to own and seek refuge in private property, all of our individual rights are subjugated to second class status. Individual freedom hinges on the ability to shape one's own destiny, regardless of the whims of the state, or a tyranny of the majority. Individual liberty cannot exist without the full right to own private property. Karl Marx knew this all to well, which explains why he made the abolition of private property the first plank in his communist manifesto.

There are instances where seizure by eminent domain is necessary (as allowed by the original intent of the 5th amendment of the U.S. Constitution). The need to acquire private property for such infrastructure necessities such as railroads, roads, bridges, and waterways is a legitimate need of any state. Reasonable people everywhere recognize this need; however when the state seeks to acquire property for the sole purpose of transferring it to another private entity, a very serious line has been crossed.

Since the U.S. Supreme Court handed down their narrow decision in "Kelo v. City of New London", many states have quickly adopted statutes to limit the powers of eminent domain seizure. Although Kansas' version of these restrictions was weak, it was passed. Now that the election cycle is over, we see a new legislature, less concerned with the bad publicity associated with loosening these restrictions, eagerly seeking to weaken the law even further.

We must not allow SB 296 to pass. Voting for SB 296 is a vote for the erosion of one of the most essential individual freedoms in our society. It used to be said that a man's home was his castle. If SB 296 passes, we will need to add even more caveats to that timeless wisdom.

Jason E. Peck
Vice Chair
The Libertarian Party of Kansas
jason.peck@lpks.org / 913-439-1688

Senate Judiciary

3-1-07

Attachment 25

February 27, 2007

The Honorable John Vratil
Chair, Kansas Senate Judiciary Committee
Members of the Kansas Senate Judiciary Committee

Dear Senator Vratil and Members of the Committee:

I am writing in opposition to Senate Bill 296. This legislation has been proposed for the sole purpose of defining "blighted property" so that such property can be taken by eminent domain "for the purpose of selling, leasing, or otherwise transferring such property to any private entity...."

Few people will argue that the taking of private property for public use, as specified in the U.S. Constitution, is an occasional and unfortunate necessity.

When, however, legislation is proposed which states openly that it is to be used for the taking of private property to be transferred to another private entity, it is time for the Kansas legislature to stand up for the property rights that the citizens of this state cherish.

I realize that there is great temptation to believe that economic development is "for the common good," or is "public use" in some sense. In fact, when private property – whether it is a vacant lot, a house, or cash – is taken from one individual and given to another, we cannot know whether there will be a net gain to the community. The recipient of the property may produce something that will bring in more tax revenue than the current use by the original owner, but there is no way to know what use the first owner might have made of the confiscated property.

In January of this year the Federal Reserve Bank of St. Louis released a report, "The Taking of Prosperity," by Thomas Garrett and Paul Rothstein. In it, the authors write that the "...taking of private property from one person and giving it to another for economic development...is unlikely to create a net benefit to society. It is more likely to create economic inefficiencies and to reduce economic growth." The report concludes that "...eminent domain used for private economic development will likely result in a zero-sum gain and may actually hinder economic development in the local areas...rather than help." The report can be viewed at www.stlouisfed.org/publications/re/2007/a/pages/prosperity.html.

When the 2006 Kansas Legislature, in response to the U.S. Supreme Court's Kelo decision, passed legislation defending private property rights in our state, it appeared to be a genuine attempt to uphold one of the foundations of our Republic.

Making the legislation effective as late as the summer of 2007, however, raised suspicions that loopholes were forthcoming.

Senate Bill 296 is obviously that loophole. It paves the way for municipalities to trample the rights of Kansans into the ground, and then take that very ground and give it away.

I urge you to defeat this bill.

Sharon DuBois
5412 SW 23rd St
Topeka

Senate Judiciary
3-1-07
Attachment 26