

Testimony As Proponent for HB2025, 3-Mile Rule Repeal

Dear Chair, Rep. Bergquist, Vice Chair, Rep. Blex, Ranking Minority Member, Rep. Featherston, Gentlemen and Gentlewomen of the Committee,

Thank you for this hearing and allowing this testimony.

I am here today to testify in favor of passing HB2025 out of this committee. Our founders understood that owning property was fundamental to freedom. They understood so well that they enshrined it in our U.S. Constitution, however as our country has grown those rights are being eroded away by our own government via laws, rules and regulations that strip property owners of these rights. That is called regulatory takings. The 3-mile rule is but one of the ways this has been done. There is nothing in our U.S. Constitution that says the people have private property rights unless you own property within 3 miles of a city limit.

This is a quote from the CATO Institute's Handbook for Policymakers:

America's Founders understood clearly that private property is the foundation not only of prosperity but of freedom itself. Thus, through the common law, state law, and the Constitution, they protected property rights — the rights of people to acquire, use, and dispose of property freely. With the growth of modern government, however, those rights have been seriously compromised. Unfortunately, the Supreme Court has yet to develop a principled, much less comprehensive, theory for remedying those violations. That failure has led to the birth of the property rights movement in state after state. It is time now for Congress to step in — to correct the federal government's own violations and to set out a standard that courts might notice as they adjudicate complaints about state violations.

The Constitution protects property rights through the Fifth and Fourteenth Amendments' Due Process Clauses and, more directly, through the Fifth Amendment's Takings Clause: "nor shall private property be taken for public use without just compensation." There are two basic ways government can take property: (1) outright, by condemning the property and taking title; and (2) through regulations that take uses, leaving the title with the owner — so-called regulatory takings. In the first case, the title is all too often taken not for a public but for a private use; and rarely is the compensation received by the owner just. In the second case, the owner is often not compensated at all for his losses; and when he is, the compensation is again inadequate.

Over the past three decades, the Supreme Court has chipped away at the problem of uncompensated regulatory takings, requiring compensation in some cases; but its decisions were largely ad hoc, leaving

most owners to bear the losses themselves. Thus, owners today can get compensation when the title is actually taken, as just noted; when the property is physically invaded by government order, either permanently or temporarily; when regulation for other than health or safety reasons takes all or nearly all of the value of the property; and when government attaches conditions to permits that are unreasonable, disproportionate, or unrelated to the purpose behind the permit requirement. But despite those modest advances, toward the end of its October 2004 term, the Court decided three property rights cases in which the owners had legitimate complaints, and in all three, the owners lost. One of those cases was *Kelo v. City of New London*, in which the city condemned Ms. Kelo's property only to transfer it to another private party that the city believed could make better use of it. In so doing, the Court simply brushed aside the "public use" restraint on the power of government to take private property. The upshot, however, was a public outcry across the nation and the introduction of reforms in over 40 states. But those reforms varied substantially, and nearly all leave unaddressed the far more common problem of regulatory takings.

At bottom, then, the Court has yet to develop a principled and comprehensive theory of property rights, much less a comprehensive solution to the problem of government takings. For that, Congress (or the Court) is going to have to turn to first principles, much as the old common law judges did. We need to begin, then, not with the public law of the Constitution as presently interpreted, but with the private law of property.

As cities have grown, so has the coveting of the property surrounding them grown. They found a need to control what people were doing on land next to the expanded city limits, so they have made laws, rules and regulations to allow them to do just that. They now can tell property owners what they can and cannot do with their property if that property lies within 3 miles of the city. The people who own the property do not get to vote for those who sit on city councils, zoning boards, etc., yet those same boards are making the decisions on what the property owners can use their land for. Some of these property owners may be generational farmers whose ancestors broke the ground and have been farming and ranching it since before Kansas became a state. Some are new farmers/ranchers who were in the rural area before the city expanded to their back door and others just moved to a rural area for the peace, quiet and enjoyment of having a large space around them for hobby farming or just for insulation from development. They have been stripped of the right to use their property in the manner they intended, and that they have been using the property for, by city governments. They have been restricted from doing business or just enjoying the property to the point they are unable to stay on the property any longer or harassed off by gross overregulation. Then the city jumps in, swallows that land and moves the 3-mile limit out another 3 miles. This happens again and again. If cities want to expand then

they have the right to make an offer to purchase the property. If the owner wishes to sell, then the city can expand but that decision must remain with the landowner and not with city officials who run roughshod over property owners.

HB2025 will go a long way toward restoring and protecting the private property rights as guaranteed in the U.S. Constitution. It is time to restore the private property rights to the property owners. Cities must contain city laws, rules and regulations within the city limits. County commissioners are elected by and governed by the property owners outside of the city limits. They are held accountable for the decisions that they make regarding the people's property rights. Without being able to vote for city commissioners, city zoning regulators, etc., the rural property owners have no say. They cannot hold the city responsible for the decisions it makes for their property. It is time to restore the constitutionally guaranteed rights to property owners.

We are not a group of highly paid lobbyists hired by the cities who want to regulate outside their limitations. We cannot afford those highly paid lobbyists. We are citizens here to express our concerns about being governed by boards and other officials without being able to vote for those officials. Please consider my concerns when contemplating your vote. We are Kansans speaking on behalf of Kansans.

Sincerely,

Beth Salmans
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