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# Eminent Domain in the Aftermath of Kelo: A Research Guide

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## Eminent Domain in the Aftermath of Kelo: A Research Guide

### Guide Information

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## Introduction

### Abstract

Kelo v. City of New London, [545 U.S. 469 \(2005\)](#), was a case decided by the [Supreme Court of the United States](#) involving the use of [eminent domain](#) to transfer land from one private owner to another to further economic development. The case arose from the [condemnation](#) by [New London, Connecticut](#), of privately owned real property so that it could be used as part of a comprehensive redevelopment plan. The Court held in a 5-4 decision that the general benefits a community enjoyed from economic growth qualified such redevelopment plans as a permissible "public use" under the Takings Clause of the [Fifth Amendment](#).

The decision was widely criticized by American politicians and the general public. Many members of the general public saw the outcome as a gross violation of property rights and as a misinterpretation of the Fifth Amendment whose consequence would be to benefit large corporations at the expense of individual homeowners and local communities. Many have felt that in essence, through Kelo the U.S. Supreme Court removed federal constitutional protection from homeowners and threw the issue back to the states to decide if any state-level protection remains. This research guide collects and organizes legal materials that discuss current eminent domain law and the reaction of the states at the legislative level.

To view the full text of this case, courtesy of Findlaw, go to the following link: <http://laws.findlaw.com/us/000/04-108.html>

### Overview

Governments, both state and federal, have the right to take private property for public use, provided that just compensation is paid. The Fifth Amendment to the United States Constitution sets the legal standard for these propositions; this power is known as the right of eminent domain. In the landmark decision, Kelo v. City of New London, the Supreme Court held that the taking of a citizen's private property for economic development qualified as a public use within the meaning of the Fifth Amendment. The ruling has extended the government's power of eminent domain to unprecedented areas.

In Kelo v. City of New London, the U.S. Supreme Court considered whether a city's decision to take private property solely for the purpose of economic development satisfies the "public use" requirement of the Fifth Amendment. Kelo involved 90 acres of privately-owned land on which the City of New London, Connecticut wanted to develop for the stated purpose of "revitalizing an economically distressed city, including its downtown and waterfront areas." The City estimated that the development would create "in excess of 1,000 jobs" and increase tax and other revenues. The City purchased most of the property earmarked for the project from willing sellers and then initiated condemnation proceedings against those who refused to sell. Those owners sued, claiming, among other things, that the government's seizure of their properties violated the "public use" restriction in the Fifth Amendment's Takings Clause.

Writing for the majority, Justice Stevens concluded that a "public purpose" such as creating jobs in a depressed city can satisfy the Fifth Amendment. No prior decision by the U.S. Supreme Court has authorized taking of property by eminent domain solely for economic development purposes. Pursuant to Kelo, there is no longer any need for an area to be declared "blighted" before it can be taken pursuant to an economic development plan so long as the plan is deliberative and the case is made that the taking is for the public's purpose.

In a scathing dissent, retired Supreme Court Justice Sandra Day O'Connor voiced her dismay with the Court's Kelo decision stating that the ruling could be used to replace "any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

Congress has responded to the Kelo decision by introducing a number of new bills aimed at curtailing the reach of Kelo. State legislatures also have responded with new legislation, moratoriums on eminent domain, and proposals to amend state constitutions to preclude takings such as the one in Kelo.

Businesses have also reacted. The nation's ninth largest bank, the North Carolina based BB&T, announced that it will refuse to lend money to commercial developers who plan to build on land seized from private citizens in protest against the government's power to make compulsory purchases of land.

## About the Author

Kathryn Darden, as of Spring 2007, is a 3rd-year, part-time student at the Georgia State University College of Law. This guide was developed for Advanced Legal Research, taught by Professor Nancy Johnson, and was last updated April 10, 2007.

## Scope

In Kelo, the U.S. Supreme Court ruled that economic development is a valid public purpose for which private property can be taken, just as it can be taken for already recognized public purposes such as roads, bridges, and public buildings. The reaction to the removal of federal protection of property rights has had an unprecedented reaction. This annotation presents primary and secondary research sources regarding the change in eminent domain law in the aftermath of the Kelo decision.

## Disclaimer

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This annotation is not comprehensive and in no way should be understood to constitute legal advice. This annotation is intended to be a guide only and potential litigants should seek legal advice from an attorney or the appropriate state agency before relying on information provided here.

The author last updated this material Spring of 2007. Legal materials are constantly updated and news laws frequently passed. Users of this guide should therefore Keycite or Shepardize case law and statutes to ensure they are still good law. In addition, secondary sources frequently update annotations and add new ones, so users should verify they are using the most current edition of the publication and check the pocket parts.

Also, users should not rely on the author's interpretation of cases, nor the authors referenced in treatises and journals, but read each case before citing it.

The author hopes this guide will provide an informative starting point for the user's own research. The law library and its reference librarians will be an excellent source to determine where to proceed from there.

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## Primary Sources

### United States Constitution

The Takings Clause of the Fifth Amendment provides, "[N]or shall private property be taken for public use without just compensation." U.S. CONST. amend. V. That clause is made applicable to the states by the Fourteenth Amendment, and many states have similar provisions in their own constitutions. U.S. CONST. amend. XIV; Am. Jur. 2d, Eminent Domain §42 (the characteristic provision found in the constitutions of the several states is to the effect that property shall not be taken for the public use without compensation.)

A free version of the Constitution can be found on-line. Try viewing the United States Constitution at:

Findlaw: [www.findlaw.com/cascode/constitution/](http://www.findlaw.com/cascode/constitution/), or

at the GPO website: ([www.gpoaccess.gov/constitution/index.html](http://www.gpoaccess.gov/constitution/index.html)).

### State and Federal Legislation

State legislation can be found at:

Findlaw <http://www.findlaw.com/11stategov/>

National Conference of State Legislatures [www.ncsl.org/public/leglinks.cfm](http://www.ncsl.org/public/leglinks.cfm)

Federal legislation can be found at:

Thomas (<http://thomas.loc.gov/>) beginning with the 104th Congress

Findlaw ([www.findlaw.com/cascode/](http://www.findlaw.com/cascode/))

State Legislation:

The majority in Kelo wrote, "Nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power." Many state legislatures immediately seized upon the U.S. Supreme Court's invitation. For a state by state tracking of legislation, see the Castle Coalition website referenced at the end of this annotation.

Georgia

GA. CONST., art. I, § III, ¶ 1 (1983).

The Georgia Constitution specifically states that "private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid."

Helpful O.C.G.A. sections regarding eminent domain:

§ O.C.G.A. § 22-1-1 to § 22-1-8, General Provisions

§ O.C.G.A. § 22-2-1, Condemnation Procedure Generally

§ O.C.G.A. § 22-3-1, Executive Power for Special Purposes

§ O.C.G.A. § 22-4-1, Relocation of Persons, Businesses, Etc. Displaced by Federal Aid Public Works Project.

Governor Purdue's proposed legislation, The Landowner's Bill of Rights and Private Property Protection Act, passed on March 30, 2006, and was signed into law on April 4, 2006. The Act bans most "economic development" takings, but allows takings in limited situations for "blight" removal. In addition, the Act allows takings only for public uses and places the burden on the condemner to prove that it is a public use, and serves to limit the concept of public use to specifically defined public uses. The law imposes a very stringent test for takings to remedy blighted property and limits the taking to specifically identified blighted property, not blighted areas.

Follow this link to read a commentary on The Landowner's Bill of Rights and Private Property Protection Act published by Powell Goldstein LLP.  
([http://www.pogolaw.com/files/news-alerts/1890/Private+Property\\_04.06.pdf](http://www.pogolaw.com/files/news-alerts/1890/Private+Property_04.06.pdf).)

Ohio

I am listing specific information about Ohio because they were the first state to address the meaning of "public purpose" after the Kelo case, and many states followed Ohio's lead and passed similar legislation.

On November 16, 2005, Governor Bob Taft signed Substitute Senate Bill 167 imposing a one year moratorium banning the use of eminent domain to take property that is not within a blighted area, as determined by the local public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person. The Bill also set monetary penalties for prohibited takings, and established an eminent domain task force which has released an initial recommendation that a statewide standard of blight be established.

Additionally, some Ohio legislators are lobbied to amend Ohio's 1912 constitution which gave cities and villages the power of home rule (allowing them to set their own standards for the taking of private property) so as to require municipalities to follow state law when taking property.

Senate Bill 167 (2005), which was enacted last year, is a moratorium through Dec. 31, 2006, on taking non-blighted areas when the primary purpose is economic development that will result in private transfer. If the law is violated, municipalities will lose public funding on the project. Next year, the legislature needs to reform the state's blight laws so that the term "blight" is no longer overly broad and vague. A Legislative Task Force has been commissioned to study the use of eminent domain in the state and release its final recommendations to the General Assembly by August 1, 2006.

On July 26, 2006, the Ohio Supreme Court unanimously ruled that under the Ohio Constitution: 1) "economic development" is not, by itself, a public use that would justify the exercise of eminent domain powers; 2) Ohio courts must apply "heightened scrutiny" when reviewing statutes that regulate the use of eminent domain powers; 3) the use of the "deteriorating area" standard to justify a taking is unconstitutional "because the term inherently incorporates speculation as to the future condition of the property... rather than the condition of the property at the time of the taking." Ohio Supreme Court was the first state supreme court to hear an eminent domain abuse case after the U.S. Supreme Court in Kelo removed federal constitutional protection from homeowners and threw the issue back to the states to decide if any state-level protection remains.

Other States

In addition to Georgia and Ohio, 34 states passed new laws aimed at curbing the abuse of eminent domain for private use.

Seventeen (17) states have enacted a prohibition on private development and substantive blight reform:

Florida	Georgia	Alabama
Louisiana	South Carolina	Oregon
North Dakota	South Dakota	Utah
Arizona	Kansas	Minnesota
Wisconsin	Michigan	Indiana
New Hampshire	Pennsylvania	

The 17 states in this category improved, to varying degrees, protections against the use of eminent domain for private development:

Vermont	Maine	Delaware
Illinois	Ohio	West Virginia
Tennessee	North Carolina	Kentucky
Missouri	Iowa	Nebraska
Colorado	Texas	California
Alaska	Idaho	

Included within the two categories above are states whose legislatures passed constitutional amendments that will take effect now that they have been approved by the voters. These states include Florida, Georgia, Louisiana, Michigan, New Hampshire, and South Carolina. The legislatures of four of these states—Florida, Georgia, Michigan, and New Hampshire—also passed statutory reforms. Another four states, Arizona, Nevada, North Dakota and Oregon, had citizen initiatives that qualified for the ballot and were approved.

The Castle Coalition provides an update of legislative action in the 50 states regarding the issue of eminent domain laws passed since Kelo. It lists state by state the legislative action that has been passed and what has been proposed. Visit that site here: [www.castlecoalition.org/](http://www.castlecoalition.org/). Or, follow one of the links above for each state's legislation.

Federal Legislation

Congress included language in the Federal Appropriations Act, which has been signed into law for the 2006 fiscal year, precluding funding for projects that use eminent domain for economic development without a traditionally recognized public purpose.

Partly in response, the U.S. Conference of Mayors sent a letter to Congress asking that it move slowly and thoughtfully before enacting legislation that will alter the right of states and localities to determine the use of eminent domain and undermine the ability of state and local governments to promote economic development.

On November 3, 2005, the U.S. House of Representatives passed the "Protection Act of 2005," (H.R. 4128) sponsored by U.S. Rep. James Sensenbrenner (R-WI) and referred it to the U.S. Senate where it was considered by the Committee on the Judiciary. The bill states, "No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is subsequently used for economic development, if that State or political subdivision receives Federal economic development funds during any fiscal year in which it does so." It would also prohibits the Federal Government from condemning property for economic development. H.R. 4128 would prohibit state and local governments from exercising eminent domain for the purpose of economic development, and would cut federal funding for those who take land for economic development purposes. Link provided below to H.R. 4128, 109th Cong. (2005).

Companion bill to the Private Property Protection Act of 2005, S. 3873 would deny for two fiscal years economic development funds to state and local governments that use eminent domain for private economic development. H.R. 4128 passed the House in November 2005, but has been held up in the Senate Judiciary Committee. Hoping to bypass that committee, Senator James Inhofe introduced S. 3873, which mirrors the House bill. It is on the Senate Legislative calendar under general orders.

Link provided below to S. 3873, 110th Cong. (2006).

On November 30, 2005, H.R. 3058, sponsored by New Jersey Representative Scott Garrett, became law. It states that "(1) no funds shall be used to support federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use; and (2) public use shall not include economic development that primarily benefits private entities." Link provided below to H.R. 3058, 109th Cong. (2005).

Another Bill, entitled the "Protection of Homes, Small Business, and Private Property Act of 2005" (S. 1313), sponsored by Senator Cornyn (R-TX) was introduced in June 2005 just after the Kelo decision, was also referred to the Judiciary Committee. The Cornyn bill would define "public use to exclude economic development, restrict federal use of eminent domain to "public use" only, and prevent states or their political subdivisions from using federal funds in any way to exercise eminent domain for economic development purposes. Link provided below to S. 1313, 109th Cong. (2005).

Other bills are being considered by Congress including the "Private Property Defense Act of 2006" being drafted by Senator Arlen Specter (R-PA) who chairs the Senate Judiciary Committee which will decide the fate of the pending eminent domain legislation.

View H.R. 4128, 109th Cong. (2005): <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.04128:>

View S. 3873, 110th Cong. (2006): <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN03873:>

View H.R. 3058, 109th Cong. (2005): <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:H.3058:>

View S. 1313, 109th Cong. (2005): <http://thomas.loc.gov/cgi-bin/query/z?c109:s.1313:>

## Cases

### Supreme Court Cases

Listed below are pre-Kelo Supreme Court cases (in addition to Kelo) in order for the researcher to understand the previous property protections, and the unprecedented change brought about by Kelo. *Berman v. Parker*, 348 U.S. 26 (1954).

The Supreme Court upheld a redevelopment plan in the District of Columbia which required the acquisition of standard housing and areas of blight that were eventually turned over in part to private enterprises as the redevelopment plan needed.

*Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

The Supreme Court upheld a land reform act that broke up a concentrated land ownership system that had existed on the Hawaiian Islands since they were originally settled.

*Nollan v. California Coastal Com'n*, 483 U.S. 825 (1987).

Appellant landowners sought review of the decision of the California Court of Appeal, Second Appellate District, ruling that appellee coastal commission could condition the grant of a building permit on the transfer to the public of an easement across appellants' beachfront property. The judgment of the court of appeals was reversed because conditioning a building permit upon a grant of a public easement constituted a taking of appellant's property and required the state to compensate appellants.

*Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Petitioner appealed decision by the Supreme Court of Oregon that held that respondent city's decision to grant a permit to petitioner, conditioned on petitioner dedicating her land to respondent, was not a taking under U.S. CONST. amend. V because the dedication was reasonably related to the expansion of petitioner's business. The court reversed the judgment because respondent city failed to establish that in issuing a permit to petitioner, its property dedication requirement was roughly proportionate to its land use plan and the impact of petitioner's proposed development.

*Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005).

The Supreme Court upheld a condemnation transferring land from a homeowner to a private developer on the basis that economic development was a "public use" under the Fifth Amendment's "Takings" Clause, for purposes of the exercise of the eminent domain power.

The Court however stated that states could have stricter requirements in their own constitutions, statutes and case law.

*McCarran Intern. Airport v. Sisolak*, 127 U.S. 1260 (2007).

Clark County operated the primary commercial airport serving southern Nevada. The County adopted height restriction ordinances limiting the development of a landowner's airspace. As a resident of Nevada, the landowner held a property right in the useable airspace above his property up to 500 feet. The district court found that airplanes were flying through airspace at an altitude lower than 500 feet. Because the height restriction ordinances authorized airplanes to make a permanent, physical invasion of the landowner's airspace, a Loretto-type regulatory per se taking occurred, requiring an award of just compensation. The district court did not abuse its discretion by awarding prejudgment interest. Supreme Court denied writ of certiorari.

### Circuit Cases

## Second Circuit

Brody v. Village of Port Chester, 434 F.3d 121 (2nd Cir 2005).

Didden v. Village of port Chester, 173 Fed. Appx. 931 (2nd Cir. 2006).

## Fifth Circuit

Western Seafood. Co. v. City of Freeport, Texas, 346 F. Supp. 2d 892 (S.D. Tex. 2004).

Western Seafood Co. v. U.S., 202 Fed. Appx. 670 (5th Cir. 2006).

OVERVIEW: Summary judgment was granted to a city and its economic development company on a dock owner's claim that taking and transferring its docks to a private entity to build a private marina violated Tex. Const. art. I, § 17, the new Limitations on the Use of Eminent Domain Act, Tex. Gov't Code Ann. § 2206.001, 1 required remand for reconsideration.

## Ninth Circuit

Hsiung v. City and Country of Honolulu, 378 F. Supp. 2d 1258 (D. Haw. 2005).

Matsuda v. City and County of Honolulu, 378 F. Supp. 2d 1249 (D. Haw. 2005).

## Tenth Circuit

Tal v. Hogan, 453 F.3d 1244 (10th Cir. 2006).

## District of Columbia Circuit

Franco v. District of Columbia, 456 F. Supp. 2d 35 (D.D.C. 2006).

Franco v. District of Columbia, 422 F. Supp. 2d 216 (D.D.C. 2006).

George Washington University v. District of Columbia, 391 F. Supp. 2d 109 (D.D.C. 2005).

Rumber v. District of Columbia, 2005 WL 1903727 (D.D.C. 2005).

OVERVIEW: Court denied the property owner's complaint for injunctive relief stating that the Kelo Court's holding actually supports the taking in that it recognizes that economic revitalization is indeed a public use.

Southeast Land Development Associates, L.P. v. District of Columbia, 2005 WL 3211458 (D.D.C. 2005).

## State Cases

### Arizona

[League of Ariz. Cities & Towns v. Brewer](#), 146 P.3d 58 (2006).

OVERVIEW: Homeowners, who were real parties in interest, sought to place proposition on ballot that would limit use of eminent domain. League of public entities sought to enjoin proposition. Injunction was properly denied because alleged violation of Revenue Source Rule, Ariz. Const. art. IX, § 23 was not type of defect that could be reviewed pre-election.

### California

Citrus Heights, City of v. Morgan, 2005 WL 1793805 (Cal. App. 3d Dist. 2005).

### Florida

Fulmore v. Charlotte County, 928 So. 2d 1281 (Fla. Dist. Ct. App. 2d Dist. 2006).

OVERVIEW: Landowners' challenge to the Community Redevelopment Act of 1969, Fla. Stat. §§ 163.330-463, failed; some blight factors in § 163.340(8) were objective and quantifiable, showing that § 163.340(8) was not vague in all its applications or facially unconstitutional. As more than one blight factor was proven, Act was not unconstitutional as applied.

### Georgia

Talley v. Housing Authority of Columbus, 630 S.E.2d 550 (2006).

OVERVIEW: O.C.G.A. § 36-61-1 et seq. authorized housing authority to exercise eminent domain to acquire and redevelop urban property found to be "slum area." Housing authority's disposition of condemned property was allowed, and it was entitled to summary judgment on former owner's claim that it abandoned condemned property and sold it to private party.

[City of Stockbridge v. Meeks](#), 641 S.E.2d 584 (2007).

OVERVIEW: Given that a city's condemnation petition failed to plead a proposed taking for public use in compliance with O.C.G.A. § 22-2- 102.2(1) and (5), a trial court did not err by dismissing the city's condemnation petition.

### Massachusetts

Aaron v. Boston Redevelopment Authority, 850 N.E. 2d 1105 (2006).

Michigan

Wayne, County of v. Hathcock, 684 N.W.2d 765 (2004).

Minnesota

Housing and Redevelopment Authority of City of Saint Paul v. ExxonMobil Oil Corp., 2006 WL 997699 (Minn. Ct. App. 2006).

Nevada

McCarran Intern. Airport v. Sisolak, 137 P.3d 1110 (Nev. 2006).

New Jersey

Borough of Fort Lee, The v. Hudson Terrace Realty Management Corp., 2005 WL 3108187 (N.J. Super. Ct. App. Div. 2005).

Century Land Group, LLC v. Mayor and Council of Borough of Keyport, 2006 WL 2457846 (N.J. Super. Ct. Law Div. 2006).

Long Branch, City of v. Brower, 2006 WL 1746120 (N.J. Super. Ct. Law Div. 2006).

Mount Laurel Tp. V. MiPro Homes, L.L.C., 910 A.2d 617 (2006).

Mount Laurel Tp. V. Mipro Homes, L.L.C., 878 A.2d 38 (App. Div. 2005).

Spruce Manor Enterprises v. Borough of Bellmawr, 717 A.2d 1008 (Law Div. 1998).

New York

C/S 12th Ave. LLC v. City of New York, 815 N.Y.S.2d 516 (2006).

Ohio

Norwood v. Horney, 853 N.E.2d 1115 (2006).

**OVERVIEW:** In January 2006, the Ohio Supreme Court became the first state supreme court to address the issues of Kelo since the decision, and rendered the most important eminent domain decision in Ohio in 50 years. This case was highly monitored as the decision was anticipated to be the standard that other states might follow.

The facts of the case are similar to the facts of Kelo. In Horney, the First District Court of Appeals upheld the City of Norwood's authority to use eminent domain to take property for redevelopment purposes located in the Cincinnati suburb from unwilling sellers that was not blighted, but instead was in danger of "deteriorating" into blight. The Supreme Court of Ohio rejected this use of eminent domain as improper and reversed the District Court of Appeals decision.

Oklahoma

Board of County Com'rs of Muskogee County v. Lowery, 136 P.3d 639 (Okla. 2006).

Pennsylvania

Redevelopment Authority of City of Philadelphia, In re, 891 A.2d 820 (Pa. Commw. Ct. 2006).

Redevelopment Authority of City of Philadelphia v. Smith, 2006 Pa Commw. LEXIS 31 (Pa. Commw. Ct. 2006).

**OVERVIEW:** Commonwealth Court held invalid the taking of land that was blighted to give it to a private religious organization to build a school based in part on Kelo's pronouncement that a City cannot take land from one private person to give it to another private entity and that the redevelopment plan in Kelo benefited all residents as a whole and not only a private group.

Rhode Island

Rhode Island Economic Development Corp. v. The Parking Co., L.P., 892 A.2d 87 (R.I. 2006).

**OVERVIEW:** Superior court's order of condemnation pursuant to the quick-take provisions of R.I. Gen. Laws § 42-64-9 was declared void and the airport parking garage lessee's contract rights were restored because the taking did not meet the criteria for a legitimate public use where it was motivated by a desire for increased revenue, not for a public purpose. The court recognized that while Kelo upheld a taking for economic development, it stressed the condemning authority's responsibility of good faith, due diligence, and methodical, deliberative approach in formulating a development plan.

South Dakota

Benson v. State, 2006 SD 8, 710 N.W.2d 131 (S.D. 2006).

Virginia

Norfolk Redevelopment and Housing Authority v. C and C Real Estate, Inc., 630 S.E.2d 505 (2006).

Washington

The Seattle Monorail Auth., 121 P.3d 1166 (Washington, Sept. 2005).

OVERVIEW: City of Seattle sought to appropriate more land than was needed for the Seattle monorail despite the owner's assertion that only a leasehold interest should be taken in the remainder. The Washington Supreme Court upheld the taking and distinguished the case from Kelo stating that unlike the taking in Kelo the taking here was for a monorail, an "historic public use."

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## Secondary Sources

### American Law Reports

Michael A. Rosenhouse, J.D., Annotation, Application of Kelo v. City of New London, Conn., 125 S. Ct. 2655, 162 L. Ed. 2d 439, 60 Env't. Rep. Cas. (BNA) 1769, 35 Envtl. L. Rep. 20134, 10 A.L.R. Fed. 2d 733 (U.S. 2005), to "public Use" Restrictions in Federal and State Constitutions Takings Clauses and Eminent Domain Statutes, 21 A.L.R.6th 261 (2007).

This annotation collects and discusses the state and federal cases in which the courts applied Kelo to the "public use" doctrine. It is so recent that it provides very comprehensive coverage of the developments in case law since the Kelo decision. I highly recommend that the researcher read this A.L.R. if looking into the changes in eminent domain law since Kelo.

William J. Appel, Annotation, Eminent Domain: Industrial Park or Similar Development as Public Use Justifying Condemnation of Private Property, 62 A.L.R.4th 1183 (2007).

This annotation aggregates and discusses the state and federal cases which have considered whether and under what circumstances the taking of private property through the use of eminent domain for the purpose of creating an industrial park, for the purpose of "general industrial development," or with the intent to sell or lease the property to private industry, is for a public purpose.

L. A. Bradshaw, Annotation, Construction and Application of "Public Use" Restriction in Fifth Amendment's Takings Clause – United States Supreme Court Cases, 10 A.L.R. Fed. 2d 407 (2007).

This annotation collects and discusses the United States Supreme Court cases that discuss the Fifth Amendment's Takings Clause in regards to "public use."

Francis M. Dougherty, Annotation, Eminent Domain: Possibility of Overcoming Specific Obstacles to Contemplated Use as Element in Determining Existence of Necessary Public Use, 22 A.L.R.4th 840 (2007).

This annotation aggregates and analyzes state and federal cases in which the courts in eminent domain proceedings, in determining the existence of a necessary public use, have considered as an element of that determination the possibility of overcoming specific obstacles to the contemplated use.

C. C. Marvel, Annotation, Validity, Construction, and Effect of Statutes Providing for Urban Redevelopment by Private Enterprise, 44 A.L.R.2d 1414 (2007).

The scope of this annotation is the private enterprise aspects of redevelopment, and discusses blight as it relates to redevelopment.

Jonathan M. Purver, Annotation, What Constitutes "Blighted Area" Within Urban Renewal and Redevelopment Statutes, 45 A.L.R.3d 1096 (2007).

This annotation collects those cases which have dealt with the question as to what constitutes a "blighted area," "blighted and slum area," or the like, within the meaning of urban renewal and redevelopment legislation, employing the term "blighted," exclusively or in partial description, in the course of describing the kind of area subject to renewal or redevelopment.

Donald M. Zupanec, Annotation, Eminent Domain: Validity of Appropriation of Property for Anticipated Future Use, 80 A.L.R.3d 1085 (2007).

This annotation collects those cases involving the question of the validity of the condemnation of property which is not intended to be used immediately, but for which a specific future use is anticipated.

### ABA Articles

David L. Callies, Kelo V. City Of New London A Requiem For Public Use, 20 Probate & Property 11 (2006).

Thomas W. Merrill, Kelo V. City Of New London Six Myths About Kelo, 20 Probate & Property 19 (2006).

Thomas W. Merrill, Poletown Overruled: Recent Michigan Case Tightens The Reins On The Public Use Requirement, 19 Probate & Property 16 (2005).

Timothy Sandefur, Don't Mess With Property Rights In Texas: How The State Constitution Protects Property Owners In The Wake Of Kelo, 41 Real Prop. Prob. & Tr. J. 227 (2006).



## Books and Other Treatises

The following books and treatises can be found in the Georgia State University College of Law Library. A search of the library catalog (GIL), using the quick search for the phrase "eminent domain" will bring up 201 entries. Limiting the search to "eminent domain and Kelo" will narrow that search down to works since the Kelo decision. I have listed the 2 most recent below.

Alan T. Ackerman and Darius W. Dynkowski, *Current Condemnation Law : Takings, Compensation And Benefits* (2006). Call Number [KF5599.Z9 C87 2006](#)

Dwight H. Merriam and Mary Massaron Ross, *Eminent Domain Use And Abuse : Kelo In Context* (2006). Call Number: KF5599 .E45 200

## Encyclopedias

### American Jurisprudence

American Jurisprudence contains text discussions on various aspects of the exercise of the power of eminent domain. Look to American Jurisprudence, 26 AM. JUR. 2d Eminent Domain §§ 42 to 86.

26 AM. JUR. 2d Eminent Domain § 22 (2006).

This annotation discusses the nature and extent of power, the authority to exercise power, and federal power as limitation upon states.

26 AM. JUR. 2d Eminent Domain § 49 (2006).

This annotation discusses the nature and extent of power, uses or purposes for which power may be exercised, what constitutes public use or purpose, and public use or benefit where dominant purpose is private.

26 AM. JUR. 2d Eminent Domain § 67 (2006).

This annotation discusses eminent domain regarding the nature and extent of power, the uses or purposes for which power may be exercised, particular uses or purposes, and highways and parking.

26 AM. JUR. 2d Eminent Domain § 26 (2006).

This annotation discusses eminent domain in regards to the nature and extent of power, authority to exercise power, and delegation of power by legislature to municipalities, counties, or public corporations.

26 AM. JUR. 2d Eminent Domain § 1 (2006).

This annotation discusses eminent domain in regards to the general nature and extent of power.

26 AM. JUR. 2d Eminent Domain § 28 (2006).

This annotation discusses eminent domain in regards to the nature and extent of power, authority to exercise power, and delegation of power by legislature to private corporations and individuals, and public-service companies.

C.J.S., Eminent Domain §§ 27 to 29

Section 27 discusses "public use".

### Georgia Jurisprudence

Georgia Jurisprudence is a very handy resource discussing Georgia Law on Eminent Domain, and giving research references for further reading, such as Georgia statutory, American Jurisprudence, A.L.R., and Digest references. Look to §§ 19:53 – 19:55 for coverage of "Public Purposes": Scope of Power to Condemn.

§ 19:53 Purposes for which eminent domain may be exercised, generally

§ 19:54 Urban redevelopment; takings for sale to private parties

§ 19:55 Effect of taking or damaging for non-public purposes

## Law Review Articles

There are over 50 articles that have been written in response to the Kelo decision in 2005. This is truly a hot topic. I have attempted to list the ones that seemed the most applicable, but if more are needed, a simple search limiting the dates to post June 2005 will produce many more to review.

Peter M. Agnetti, *Are You Still Master Of Your Domain? Abuses Of Economic Development Takings, And Michigan's Return To "Public Use" In County Of Wayne V. Hathcock*, 79 St. John's L. Rev. 1259 (2006).

Patricia J. Askew, *Take It Or Leave It: Eminent Domain For Economic Development - Statutes, Ordinances, & Politics, Oh My!*, 12 Tex. Wesleyan L. Rev. 523 (2006).

Kristi M. Burkard, *Current Public Law And Policy Issues: No More Government Theft Of Property! A Call To Return To A Heightened Standard Of Review After The United States Supreme Court Decision In Kelo V. City Of New London*, 27 Hamline J. Pub. L. & Pol'y 115 (2005).

H. Cole, Article: Why Kelo Is Not Good News For Local Planners And Developers , 22 Ga. St. U.L. Rev. 803 (2006).

Sara B. Falls, Waking a Sleeping Giant: Revisiting the Public Use Debate Twenty-Five Years After Hawaii Housing Authority v. Midkiff, 44 Washburn L.J. 355 (2005).

Robin M. Davis, GOD v. WAL-MART; The Battle Over the "Better Use" of Land: Has the Supreme Court Allowed for Economic Development at the Cost of Invaluable Religious Rights?, 111 Penn St. L. Rev. 239 (2006).

Judge David Alan Ezra, Symposium: Federalism Issues Following Kelo V. City Of New London: The Overreaching Use of Eminent Domain and the Police Power After Kelo , 28 Hawaii L. Rev. 349 (2006).

Ashley J. Fuhrmeister, In The Name Of Economic Development: Reviving "Public Use" As A Limitation On The Eminent Domain Power In The Wake Of Kelo V. City Of New London, 54 Drake L. Rev. 171 (2006).

Elizabeth F. Gallagher, Note: Breaking New Ground: Using Eminent Domain For Economic Development, 73 Fordham L. Rev. 1837 (2005).

Scott Griswold, PROPERTY RIGHTS VS. PUBLIC USE; Analyzing Tennessee's Response To Kelo Eminent Domain Ruling, 43 Tenn. B.J. 14 (2007).

Amanda W. Goodin, Note: Rejecting The Return To Blight In Post-Kelo State Legislation, 82 N.Y.U.L. Rev. 177 (2006).

Matthew Howsare, Kelo in South Carolina?: Economic Development Is Not a Public Use for Purposes of Eminent Domain in South Carolina, 57 S.C. L. Rev. 505 (2006).

Olga V. Kotlyarevskaya, "Public Use" Requirement in Eminent Domain Cases Based on Slum Clearance, Elimination of Urban Blight, and Economic Development , 5 Conn. Pub. Int. L.J. 197 (2006).

Scott P. Ledet, The Kelo Effect: Eminent Domain and Property Rights in Louisiana, 67 La. L. Rev. 171 (2006).

Patricia H. Lee, Symposium: Eminent Domain: In The Aftermath Of Kelo V. New London, A Resurrection In Norwood: One Public Interest Attorney's View, 29 W. New Eng. L. Rev. 121, (2006).

Julia D. Mahoney, Article: Kelo's Legacy: Eminent Domain And The Future Of Property Rights, 2005 Sup. Ct. Rev. 103 (2005).

Colin M. McNiece, A Public Use for the Dirty Side of Economic Development: Finding Common Ground Between Kelo and Hathcock for Collateral Takings in Brownfield Redevelopment, 12 Roger Williams U. L. Rev. 229 (2006).

Jonathan Michels, Kelo v. City of New London: Is the Response to Curb the Effect of the Supreme Court Decision Going Too Far?, 37 Seton Hall L. Rev. 527 (2007).

Carol J. Miller and Stanley A. Leasure, Post-Kelo Determination of Public Use and Eminent Domain in Economic Development Under Arkansas Law, 59 Ark. L. Rev. 43 (2006).

Carol J. Miller\* and Stanley A. Leasure\*\*

S. William Moore, "Blight" As A Means Of Justifying Condemnation For Economic Redevelopment In Florida, 35 Stetson L. Rev. 443 (2006).

Timothy Niedbalski, Comment: Imminent Change: A Recommended Response For Missouri In The Wake Of The Supreme Court's Eminent Domain Decision In Kelo V. City Of New London, 25 St. Louis U. Pub. L. Rev. 449 (2006).

Eddie A. Perez, Symposium: The Importance Of Eminent Domain In Community Development Projects, 29 W. New Eng. L. Rev. 109 (2006).

Wendell E. Pritchett, Article: Beyond Kelo: Thinking About Urban Development In The 21st Century, 22 Ga. St. U.L. Rev. 895 (2006).

David Schultz, Economic Development And Eminent Domain After Kelo: Property Rights And "Public Use" Under State Constitutions, 11 Alb. L. Envtl. Outlook 41 (2006).

David Schultz, What's Yours Can be Mine: Are There Any Private Takings After Kelo v. City of New London?, 24 UCLA J. Envtl. L. & Pol'y 195 (2006).

Anastasia C. Sheffler-Wood, Commentswhere Do We Go From Here? States Revise Eminent Domain Legislation In Response To Kelo, 79 Temp. L. Rev. 617 (2006).

Eric L. Silkwood, The Downlow On Kelo: How An Expansive Interpretation Of The Public Use Clause Has Opened The Floodgates For Eminent Domain Abuse, 109 W. Va. L. Rev. 493, (2006).

Dale A. Whitman, Eminent Domain Reform in Missouri: A Legislative Memoir, 71 Mo. L. Rev. 721 (2006).

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## On-Line Research

### Westlaw

Westlaw is a structured, fee-based research system with access to billions of legal and news documents. It allows searching of federal and case law and statutory materials as well as secondary sources like law reviews and treatises. West's Key Number Digest is a unique feature in which West has assigned particular keys that correspond to issues relevant to eminent domain. By isolating these keys and narrowing the search to Georgia, you can uncover cases and statutes directly on point.

Some helpful Key numbers include the following:

Eminent Domain 3, 10(1), 13, 14, 15, 17, 18, 18.5, 61

### Lexis

Lexis is the other primary fee-based online research tool. Particularly useful feature of Lexis is its Shepherd's feature which automatically indicates whether a particular case is good law.

## Free Legal Research Sites

**Lexis-One**  
Lexis-One offers free case searching up-to-date through the last five years. Searching cases over the last five years will not result in thorough legal research. To stay up to date on new cases, though, it's not a bad choice for free research. Subscriptions are available as a lower-cost alternative to a full legal service like Lexis or Westlaw.

Visit their site at: [www.lexisone.com/caselaw/freecaselaw](http://www.lexisone.com/caselaw/freecaselaw)

**Casemaker**  
Casemaker is a free legal research tool available to all Georgia Bar members. It has a fairly nice search engine that allows access to state and federal materials. Casemaker includes historic to current cases, statutes, and regulations. Visit their site through the Georgia Bar Association website. ([www.gabar.org/](http://www.gabar.org/))

**Findlaw**  
Findlaw provides information about general legal topics. You can find online case law, free state codes, free federal codes, free legal forms, US Supreme Court briefs, opinions, orders, calendars and more. The drawback is that search capabilities are very limited; however it is a good place to start. Visit their site at: [www.findlaw.com/](http://www.findlaw.com/)

## Google

Search engines are a great way to jump start your research. You can find new articles written by lawyers, professors, students, and bloggers. While this is certainly not a source to be relied solely upon, it is an interesting and easy way to start research topics.

It is possible to do an advanced search which can be very useful in limiting the returns from a given search. Using an advanced search allows you to limit searches by terms, phrases, certain language, file format, dates, synonyms, etc.

See Google's advanced search here: [www.google.com](http://www.google.com)

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## Internet-Based Interest Groups

### The Institute for Justice

The Institute for Justice touts their organization as the only libertarian public interest law firm in the country. The organization fights on behalf of individuals whose basic rights are denied by the government, particularly their private property rights and states its mission is to advance a rule of law under which individuals can control their own destinies as free and responsible members of society.

Visit their site at: <http://www.ij.org/>

### Castle Coalition

The website is designed to give individuals ideas and tools to wage the battle against eminent domain abuse in the community in which they live. There is a link to organizations page that lists different grass roots organizations around the country currently fighting specific instances of abuse. Visit their site at: [www.castlecoalition.org/](http://www.castlecoalition.org/)

### Martindale-Hubbell

Martindale-Hubbell is an online directory of attorneys. Attorney's are rated by their peers and can be searched by location and area of practice. Visit their site at: [www.martindale.com/](http://www.martindale.com/)

### Owner's Counsel of America

Owner's Counsel of America is a voluntary network of eminent domain trial lawyers from every state of the nation in coalitions with environmental and land use lawyers. The goal of the counsel is to assist property owners in the exercise of their constitutional guarantees of private ownership. There is a search engine allowing a search by state. Visit their site at: [www.ownerscounsel.com/](http://www.ownerscounsel.com/)

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