

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
September 20, 2005

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Ranking Member, Senate Judiciary Committee
Eminent Domain Hearing
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Mr. Chairman, Vermont was the first state to include a takings clause in its Constitution, so we Vermonters stand second to none in our respect for private property rights.

The language of the Vermont Constitution, and our U.S. Constitution, make clear there are times when private property can appropriately be used for public purposes - so long as the taking is for a truly "public use" and so long as the owners receive just compensation. The most difficult question is what constraints and procedures should control the exercise of this significant power.

But even where the justification is widely understood -- for example, to build a needed highway -- that will not alleviate the pain felt by property owners who are in the path of that highway. Multiply that pain over and over again when families are displaced from their homes.

Ms. Kelo, I am one of probably millions of Americans who were distressed when we learned your story and who are concerned about what happened to you.

I intend to work with others on this Committee to fashion some solutions - some better, fairer and more sensible ways for local governments to use, and not use, the significant powers they have over property owners.

It has been said that tough cases make bad law. It could also be said that bad law can lead to bad remedies. As we work on solutions, we must use care and caution and foresight, as well as hindsight.

I have heard about legislative proposals to address this decision which could potentially benefit land speculators wanting to make a quick buck or major corporations wanting to gain more power to seize private property to install pipelines, create utility rights of way, or even to build privately owned for-profit facilities such as baseball stadiums.

I am also concerned about people like Ms. Kelo even when their land is taken for completely legitimate public uses. The distress a family suffers from having their home condemned can be just as painful if it is taken to build a road or a school.

The Uniform Relocation Act, which applies to federal use of eminent domain powers, contains some useful ideas that could improve fairness and help affected families.

I have one final point, Mr. Chairman. When Congress exercises its power to impose new conditions on local and state governments in areas that local and state governments have traditionally handled, we should move cautiously to prevent unintended consequences.

I know that many, many states are already acting to impose additional restrictions and establish new procedures governing the use of the eminent domain power. As we act in Congress, we should do so with respect for and awareness of the remedies the states are also considering. I want to thank the members of this panel.

I hope that Professor Merrill of Columbia University Law School, Mayor Perez of Hartford, Connecticut, and Professor Eagle of George Mason University will help the Committee in figuring out solutions to the problems which will be highlighted by other members of the panel.