

Establishing Ulster County Policy With Respect To Eminent Domain And Requesting The New York State Legislature To Limit The Use Of Eminent Domain By The State Of New York And Its Political Subdivisions For Public Purposes

Legislator Gerentine and Legislators Aiello, Alfonso, Busick, Cummings, DePew, Every, Felicello, Harris, Hathaway, Maloney, McAfee, Meyer, Noonan, Roberti, Stock, Tipp, Provenzano, and Zimet offer the following:

WHEREAS, the Takings Clause of the Fifth Amendment states “nor shall private property be taken for public use without just compensation,” and

WHEREAS, upon adoption, the Fourteenth Amendment extended the application of the Fifth Amendment to every state and local government, and

WHEREAS, the Takings Clause of the Fifth Amendment has historically been interpreted and applied by the United States Supreme Court to be conditioned upon the necessity that government assumption of private property through eminent domain must be for the public use and requires just compensation, and

WHEREAS, the opinion of the majority in *Susette Kelo v. City of New London* justifies the forfeiture of a person’s private property through eminent domain for the sole benefit of another private person rather than for public use, and

WHEREAS, the dissenting opinion upholds the historical interpretation of the Takings Clause and affirms that “the public use requirement imposes a more basic limitation upon government, circumscribing the very scope of the eminent domain power: government may compel an individual to forfeit her property for the public’s use, but not for the benefit of another private person,” and

WHEREAS, the dissenting opinion in *Susette Kelo v. City of New London* holds that the “standard this Court has adopted for the Public Use Clause is therefore deeply perverse” and the beneficiaries of this decision are “likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms” and “the government now has license to transfer property from those with fewer resources to those with more,” and

WHEREAS, all levels of government have a Constitutional responsibility and a moral obligation to always defend the property rights of individuals and to only execute the power of eminent domain for the good of public use and contingent upon the just compensation of the individual property owner.

Resolution No. 291 October 6, 2005

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RESOLVED, that it is the position of the Ulster County Legislature that:

(A) state and local governments should only execute the power of eminent domain for those public uses that comply with the Takings Clause of the Fifth Amendment, and

(B) state and local governments must always justly compensate those individuals whose property is assumed through eminent domain in accordance with the Takings Clause of the Fifth Amendment, and

(C) eminent domain should never be used to the advantage of one private party over another, and

(D) eminent domain should never be used solely for the purpose of economic development and/or to increase tax revenues, and

(E) eminent domain should be used solely to acquire private property for public use, and

FURTHER RESOLVED, that the Ulster County Legislature hereby establishes a policy to limit the use by the County of Ulster of eminent domain in accordance with the dissenting decision in *Susette Kelo v. City of New London* and prohibits the use of County funds, for eminent domain other than for public uses, and

FURTHER RESOLVED, the Ulster County Legislature hereby establishes a policy on the use, by any municipality in Ulster County or any agency of Ulster County, of any funds received directly from the County or funds administered by the County and received by a local municipality or agency from either the State or Federal government, which shall be limited in accordance with the dissenting decision of *Susette Kelo v. City of New London* and prohibits the use of such county funds or county administered funds for eminent domain other than for public uses, and

