

109TH CONGRESS
1ST SESSION

S. _____

To protect homes, small businesses, and other private property rights, by limiting the power of eminent domain.

IN THE SENATE OF THE UNITED STATES

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To protect homes, small businesses, and other private property rights, by limiting the power of eminent domain.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protection of Homes,
5 Small Businesses, and Private Property Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The protection of homes, small businesses,
9 and other private property rights against govern-
10 ment seizures and other unreasonable government

1 interference is a fundamental principle and core
2 commitment of our Nation’s Founders.

3 (2) As Thomas Jefferson wrote on April 6,
4 1816, the protection of such rights is “the first prin-
5 ciple of association, the guarantee to every one of a
6 free exercise of his industry, and the fruits acquired
7 by it”.

8 (3) The Fifth Amendment of the United States
9 Constitution specifically provides that “private prop-
10 erty” shall not “be taken for public use without just
11 compensation”.

12 (4) The Fifth Amendment thus provides an es-
13 sential guarantee of liberty against the abuse of the
14 power of eminent domain, by permitting government
15 to seize private property only “for public use”.

16 (5) On June 23, 2005, the United States Su-
17 preme Court issued its decision in *Kelo v. City of*
18 *New London*, No. 04–108.

19 (6) As the Court acknowledged, “it has long
20 been accepted that the sovereign may not take the
21 property of A for the sole purpose of transferring it
22 to another private party B”, and that under the
23 Fifth Amendment, the power of eminent domain
24 may be used only “for public use”.

1 (7) The Court nevertheless held, by a 5–4 vote,
2 that government may seize the home, small business,
3 or other private property of one owner, and transfer
4 that same property to another private owner, simply
5 by concluding that such a transfer would benefit the
6 community through increased economic development.

7 (8) The Court’s decision in *Kelo* is alarming be-
8 cause, as Justice O’Connor accurately noted in her
9 dissenting opinion, joined by the Chief Justice and
10 Justices Scalia and Thomas, the Court has “effec-
11 tively . . . delete[d] the words ‘for public use’ from
12 the Takings Clause of the Fifth Amendment” and
13 thereby “refus[ed] to enforce properly the Federal
14 Constitution”.

15 (9) Under the Court’s decision in *Kelo*, Justice
16 O’Connor warns, “[t]he specter of condemnation
17 hangs over all property. Nothing is to prevent the
18 State from replacing any Motel 6 with a Ritz-
19 Carlton, any home with a shopping mall, or any
20 farm with a factory”.

21 (10) Justice O’Connor further warns that,
22 under the Court’s decision in *Kelo*, “[a]ny property
23 may now be taken for the benefit of another private
24 party”, and “the fallout from this decision will not
25 be random. The beneficiaries are likely to be those

1 citizens with disproportionate influence and power in
2 the political process, including large corporations
3 and development firms. As for the victims, the gov-
4 ernment now has license to transfer property from
5 those with fewer resources to those with more. The
6 Founders cannot have intended this perverse result”.

7 (11) As an amicus brief filed by the National
8 Association for the Advancement of Colored People,
9 AARP, and other organizations noted, “[a]bsent a
10 true public use requirement the takings power will
11 be employed more frequently. The takings that re-
12 sult will disproportionately affect and harm the eco-
13 nomically disadvantaged and, in particular, racial
14 and ethnic minorities and the elderly”.

15 (12) It is appropriate for Congress to take ac-
16 tion, consistent with its limited powers under the
17 Constitution, to restore the vital protections of the
18 Fifth Amendment and to protect homes, small busi-
19 nesses, and other private property rights against un-
20 reasonable government use of the power of eminent
21 domain.

22 (13) It would also be appropriate for States to
23 take action to voluntarily limit their own power of
24 eminent domain. As the Court in *Kelo* noted, “noth-
25 ing in our opinion precludes any State from placing

1 further restrictions on its exercise of the takings
2 power”.

3 **SEC. 3. PROTECTION OF HOMES, SMALL BUSINESSES, AND**
4 **OTHER PRIVATE PROPERTY RIGHTS.**

5 (a) IN GENERAL.—The power of eminent domain
6 shall be available only for public use.

7 (b) PUBLIC USE.—In this Act, the term “public use”
8 shall not be construed to include economic development.

9 (c) APPLICATION.—This Act shall apply to—

10 (1) all exercises of eminent domain power by
11 the Federal Government; and

12 (2) all exercises of eminent domain power by
13 State and local government through the use of Fed-
14 eral funds.