

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
February 28, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Wednesday, February 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**GUEST LEGISLATORS PRESENT:**

William J. Raggio, Washoe County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bryan Fernley-Gonzalez, Committee Counsel  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Barbara Moss, Committee Secretary

**OTHERS PRESENT:**

Bruce L. Woodbury, Board of Commissioners, Clark County; Chairman, Regional Transportation Commission  
Jacob Snow, General Manager, Regional Transportation Commission, Clark County  
Kermitt Waters

Senate Committee on Judiciary  
February 28, 2007  
Page 2

Paul Lipparelli, Washoe County District Attorney's Office  
Chuck Gardner

Janine Hansen, Nevada Eagle Forum

Larry Bender, Manager, Redevelopment Division, Economic Development  
Department, City of North Las Vegas

Doug Busselman, Executive Vice President, Nevada Farm Bureau

Nicolas Anthony, City of Reno

David K. Schumann, Nevada Committee for Full Statehood; Independent  
American Party

John L. Wagner, The Burke Consortium

Susan Martinovich, P.E., Director, Director's Office, Nevada Department of  
Transportation

CHAIR AMODEI:

The hearing is opened on Senate Bill (S.B.) 85.

**SENATE BILL 85**: Prohibits use of eminent domain to acquire property for  
economic development. (BDR 3-9)

SENATOR WILLIAM J. RAGGIO (Washoe County Senatorial District No. 3):

I will read my prepared testimony ([Exhibit C](#)) on S.B. 85 which has been  
sponsored by almost all Legislators. No one wants to do away with eminent  
domain in situations of blight. There are examples of blight throughout Nevada,  
such as the Kings Inn in Reno, which has been sitting empty for 20 years. We  
must be careful when imposing restrictions.

I have great respect for Kermitt Waters and the group supporting the  
amendment and modification as well as Commissioner Woodbury and others  
concerned with certain aspects of the bill. The modification addresses use of  
land that might be acquired by an airport or courthouse and portions leased out  
for business purposes. I suggest one other exception in which portions of  
property acquired by an institution of higher education be leased out for  
business purposes. I hope the Committee is open to defining limitations on  
taking eminent domain as well as other modifications that should be considered  
under statute or another proposed amendment.

Senate Committee on Judiciary  
February 28, 2007  
Page 3

SENATOR CARE:

Mr. Wilkinson, there was a bill in the 2005 Legislative Session that addressed 4 of 11 factors to consider when a redevelopment agency takes property for reasons of true or real blight. Is S.B. 85 compatible with that legislation?

SENATOR RAGGIO:

Senate Bill 85 is intended as a vehicle for hearings and modifications, such as those agreed upon.

CHAIR AMODEI:

The hearing is opened on the informational hearing on eminent domain.

BRUCE L. WOODBURY (Board of Commissioners, Clark County; Chairman, Regional Transportation Commission):

I will read my prepared testimony ([Exhibit D](#)) regarding eminent domain.

JACOB SNOW (General Manager, Regional Transportation Commission, Clark County):

I have nothing to add.

BRAD WILKINSON (Chief Deputy Legislative Counsel):

I will read my prepared testimony ([Exhibit E](#)), which refers to legislation enacted during the 2005 Legislative Session regarding eminent domain.

BRYAN FERNLEY-GONZALEZ (Committee Counsel):

I will read my prepared testimony ([Exhibit F](#)) regarding the decision of the United States Supreme Court in *Kelo v. City of New London*, 545 U.S. 469 (2005).

SENATOR CARE:

Assembly Bill No. 143 of the 73rd Session and S.B. No. 326 of the 73rd Session were introduced in the 2005 Legislative Session prior to the *Kelo* decision. The impetus for the two bills was the *City of Las Vegas Downtown Redevelopment Agency v. Pappas*, 119 Nev. 429, 76 P.3d 1 (2003) in the Nevada Supreme Court. Mr. Wilkinson's background presentation did not list all factors necessary for blight in a redevelopment agency. *Pappas* was used as justification in the other jurisdiction regarding so-called economic blight as opposed to true physical blight, such as burned-out and abandoned buildings. My recollection is Nevada retired the notion of so-called economic blight for all time.

The U.S. Congress reacted to outrage following *Kelo*. What happened to the federal legislation that was introduced?

MR. WILKINSON:

I do not know what happened to the federal legislation.

MR. FERNLEY-GONZALEZ:

Many proposals were introduced in the U.S. Congress addressing the *Kelo* decision, but I am unaware of what happened to them.

KERRITT WATERS:

I am co-author of the property owners' bill of rights, otherwise known as the People's Initiative to Stop the Taking of Our Land (PISTOL). I would like to explain to the Committee that *Kelo* is only the tip of the iceberg. You have no idea what is suffered by victims of eminent domain. The reason for eminent domain and the just compensation requirement in both the U.S. Constitution and the Nevada Constitution is that one landowner, or a few landowners, not bear a disproportionate amount of the cost of a public project and everyone shares in it equally.

Projects in southern Nevada and many in Reno are financed on the backs of landowners. Beginning in the 1990s, the Nevada Department of Transportation (NDOT) and several other agencies proposed legislation that nibbled away at constitutional rights by way in which property is valued. For example, would you sell your house at the most probable price? Let us say you had offers on your house for \$500,000, \$400,000 and \$300,000, and you sold it for \$400,000 because it was the most probable price.

Another example: NDOT indicates your house will be taken for a public project and you will be paid \$200,000, but you tell them you paid \$300,000. In response, NDOT says you paid too much and \$200,000 is all you will be paid. When you ask for the appraisal report, you are informed it will not be shown because you are not entitled to it. Unless a suit is filed and goes into discovery, NDOT will not let you see the appraisal report. If a suit is filed on condemnation and you contest it as public use, NDOT will take possession of your house and deposit an amount of money based upon a low appraisal. The money is deposited with the court and if you remove it, you waive your right to contest. Consequently, you own a home, it is taken from you, money is deposited and you are left with no money to purchase another home. In addition, you will not

earn interest on the money because it goes into the General Fund and the county earns the interest.

I cannot begin to enumerate the amount of abuses. A suit filed on eminent domain does not go to trial for up to two years. The government usually sets trial two months prior to completion of two years. The property is valued two years prior and the appraisers value at comparable sales four years prior to that.

You own five acres of property purchased to hold and sell later. If the street is widened and part of your property taken, you will not be paid because you must dedicate the land to the county if you want to develop it. If you explain you are not planning to develop the property and want to sell it at market price, you will be paid 5 cents on the dollar. This happens on a regular basis.

Environmental hearings are planned years in advance with plans A, B and C. A developer has 30 acres of property and is preparing to develop it. The developer asks NDOT which plan will be used because plan B may affect his plans. The developer is told, "We do not know." When asked when the plan will be in effect, the answer is, "We do not know." What does the developer do? He bought the property, hired staff, worked up plans and is ready to go. If he builds his plan and later it goes to trial, he is confronted with a document he signed at an environmental hearing five years earlier and told he built his plan knowing this project was coming. Therefore, he bought himself a lawsuit and wants the taxpayers to bail him out. There are many more examples of this type of abuse.

Mr. Woodbury was allotted \$500,000 to fight PISTOL as paid for by casinos and developers—\$100,000 from the Boyd Group, \$50,000 from Arnell and so forth—and we were threatened with \$1.5 million at the next election. We worked out a compromise. There is nothing wrong with PISTOL; they overreacted to it. They got a bureaucrat to come up with an unsigned and undated memorandum stating they would lose federal funds.

I provided the Committee with a letter dated January 11 from James D. Ray, Chief Counsel, U.S. Department of Transportation, Federal Highway Administration ([Exhibit G](#)), saying federal funds will not be jeopardized. Based on the memorandum, Mr. Woodbury's group hired an agency in Las Vegas to do a projected study on the impact based upon a false study. A few cases were impacted because they had low appraisals which projected into billions of lost

dollars. The compromise put everything in PISTOL the Nevada Supreme Court did not remove. A current date of value for eminent domain is required to prevent landowners from getting trapped in an inflationary market.

I intend to support PISTOL and get the public to pass it a second time. The proposed compromise created by Mr. Woodbury and myself cuts back some areas in PISTOL because they claim they will be hurt. I do not have a problem with it. I think PISTOL is fine. For example, PISTOL indicates they have five years to use a project, but nothing says a road has to be open with trucks driving on it. The project must be used in the master plan and a road graded and fenced. Due to their concern, time was extended to 15 years and the public will still be protected.

A story circulated that PISTOL was a boondoggle for trial lawyers. Eminent domain litigation is driven by abuses. If abuses are stopped, eminent domain litigation will drop substantially. I intend to pursue PISTOL further, as well as the proposed changes. PISTOL cannot be tampered with in ways that will damage people's rights.

In conclusion, S.B. 16 will help people avoid being trapped in a two-year cycle or having their property valued six years earlier.

**SENATE BILL 16**: Revises the provisions pertaining to the deposit of money with a court in an action in eminent domain. (BDR 3-121)

SENATOR CARE:

In previous discussions on the superseding or alternative constitutional amendment, I promised Mr. Waters he could use S.B. 16 as an opportunity to propose amendments to *Nevada Revised Statutes* (NRS) 37. Mr. Gardner, in Las Vegas, will also testify on S.B. 16 and has proposed amendments. Senate Bill 16 is a result of an outcome of one of Mr. Gardner's cases.

PAUL LIPPARELLI (Washoe County District Attorney's Office):

I am here to provide the Committee information regarding litigation by the County involving Ballardini Ranch west of Reno. From the perspective of the County, NRS 37 is a navigable provision of state law. We made it through the process with a property owner who was well-financed, highly sophisticated and represented by aggressive, competent counsel. The trial was in May 2006, and the case was settled between the parties. The settlement is not yet entered due

to problematic details. The last order of the court with final resolution was issued in January. We are prepared to put the eminent domain case and related litigation involving the property to rest.

CHAIR AMODEI:

To the extent it is public knowledge, what can you tell us about the settlement?

MR. LIPPARELLI:

The settlement approved by the Washoe County Board of Commissioners at a public meeting is not confidential. The litigation involving the public road issue on the property and the eminent domain case are resolved. Evans Creek is the owner of Ballardini Ranch and their claims of civil rights violations in federal court were resolved by Washoe County paying \$13.5 million to the property owner, which was the total consideration for all provisions in the settlement. The settlement included the county stepping into the position held by Evans Creek to acquire other sections of the old Ballardini Ranch, which the County is doing currently. The settlement provided the County with the open space sought in the eminent domain lawsuit. The settlement provided damages to the property owner suffered during the pendency of litigation. There are other details of the settlement involving a covenant not to sue in the future and how the property owner can enforce provisions of a covenant placed against property to ensure it is used only for the open space purpose.

CHAIR AMODEI:

The hearing is opened on S.B. 16.

SENATOR TERRY CARE (Clark County Senatorial District No. 7):

In an eminent domain proceeding, money is deposited with the court. With the court's consent, a plaintiff, which is the city, county or state, may deposit a sum of money with the court similar to a bond. In fact, it is in lieu of a bond.

I distributed a copy of a *Las Vegas-Review Journal* article entitled "Eminent Domain: Fight moves from city to county" ([Exhibit H](#)), which arose from Mr. Gardner's case wherein money was deposited with the court. After a 12-year period and settlement, Mr. Gardner's client got the money, but did not receive earned interest. The district court judge in the case opined existing law might be unconstitutional. Therefore, S.B. 16 says in an eminent domain proceeding, interest earned on funds deposited with the court by the plaintiff

will follow the principal. If the landowner is entitled to the funds, or any portion thereof, he will receive interest that would attach to the principal.

CHUCK GARDNER:

I am an attorney who has been involved with eminent domain cases since 1994. The aforementioned case has been going on for 12 years. It was a redevelopment case in which the City of Las Vegas Redevelopment Agency took property surrounding the Stratosphere Las Vegas expansion area in order to give it to Stratosphere Las Vegas—one of the most radical abuses of eminent domain in the history of this county. At the outset, \$725,000 deposited with the clerk of court sat for 10.5 years before the principal was withdrawn.

It happened for a number of reasons. *Nevada Revised Statute 37*, which governs eminent domain, says if a person challenges public use, the money may not be removed. If the money is removed, the person forfeits the right to challenge public use in necessity, which had been done for 10 or 11 years in that case. My client could not touch the money, and the case was dismissed. We won a motion to dismiss the case but could not touch the money. The court was asked to give the client principal with interest and the court agreed, then vacated the order. Another motion was filed.

The problem arose out of NRS 355, which governs public investments. The question was whether the Legislature intended to effect taking cash money from a private owner out of an eminent domain deposit. I do not think that was Legislative intent. *Nevada Revised Statute 37.010* says the power to take private property for public use may only be done pursuant to NRS 37; yet this was done under NRS 355, which sets up a state board of finance, addresses investments and loans from school funds, discusses other authorized state investments and loans, and contains a subchapter called investments and loans by local governments. It is strictly limited to regulating the manner in which government invests public money. Taken out of context, the court decided the Legislature intended a single sentence in NRS 355 authorized counties to take part of the just compensation, which is interest the county earned on the money.

MR. WATERS:

What needs to be done is change NRS 37.010 to provide interest on money deposited with the court which belongs to the landowner, unless otherwise



ordered by the court. That would solve the problem. It is unfair for the landowner not to get interest on the money.

SENATOR CARE:

Mr. Waters, please present your amendment to S.B. 16.

MR. WATERS:

The proposed amendment to S.B. 16 ([Exhibit I](#)), regarding the date of valuation, is an item on which Mr. Woodbury and I did not agree. When a suit is filed on eminent domain, the date of value is frozen. If it goes to trial in less than two years, the court and jury value it based on the original two-year date of value; then comparable sales are used up to four years prior. Therefore, the property will be valued at comparable sales at six years, and the deposit does not mitigate that. The government now has the property, which is the reason the landowner needs the current date of value.

In a rapidly-ascending market, a landowner should have the option of using the original valuation date. Property in Las Vegas rose 30 percent, 40 percent and 50 percent in one year. If a landowner owns a home that is taken from him, he becomes a renter because he cannot purchase a similar house with the money he receives. That is unfair and unconstitutional. The only thing that solves the problem is the current date of value, which agencies do not like because they are trying to save money.

MR. GARDNER:

Other states have these types of statutes in public investments or public finance chapters. State courts have found these statutes do not apply when they appear in a public investment chapter. The intent was not to apply to the taking of public money. The taking of private cash money for public use without just compensation is unconstitutional. The U.S. Supreme Court said the same thing in the context of an interpleader deposit, which is not unlike eminent domain deposit. The court takes the money and the real owners fight it out to see who gets what.

I proposed an amendment ([Exhibit J](#)) that would amend subsection 3 and add subsection 4 to NRS 355.210 to the effect it does not take money belonging to private owners, and interest follows principal when money is deposited with the court for the benefit of private owners. There is also a proposed amendment to

NRS 37.100, which clarifies money is to be deposited with the pooled account and interest shall benefit the private landowner.

JANINE HANSEN (Nevada Eagle Forum):

I am testifying on S.B. 16, S.B. 85 and S.B. 130. The Nevada Eagle Forum supports the right to private property. We participated in the PISTOL campaign and promoted it in the Nevada Families Voter Guide. We also supported Senator Care's bill and other bills to preserve private property in the 2005 Legislative Session. We support the three bills in extending the right of private property and amendments suggested by Messrs. Waters and Gardner.

John Adams, one of our founding fathers, said,

The moment the idea is admitted into society that property is not as sacred as the laws of God and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be secured or liberty cannot exist.

Former U.S. Supreme Court Justice George Sutherland said,

It is not the right of property which is protected, but the right to property. Property, per se, has no rights; but the individual, the man, has three great rights, equally sacred from arbitrary interference: the right to his life, the right to his liberty, the right to his property ... . The three rights are so bound together as to be essentially one right. To give a man his life but deny him his liberty is to take from him all that makes his life worth living. To give him liberty but to take from him the property which is the fruit and badge of his liberty, is to still leave him a slave.

After *Kelo*, there was an uprising around the United States about this abusive decision forced on the American people. Since that time, 30 state legislatures passed laws, and 11, including Nevada, had ballot measures to protect property rights. These efforts have been slaps at local officials to increase taxes through eminent domain and included a reprimand to the Nevada Supreme Court in the *Kelo* decision, which endangered ownership of every home, business, church or farm. The Nevada Supreme Court thought they could evolve the United States Constitution's words "public use," which would include highway or public building, into "public purpose," defined as the transferring of private property of lower-income people to higher-income people who pay higher taxes and anything else that comes under the redevelopment plan.

The taking of private property to get more government money is not authorized by the United States Constitution or any statute. Justice Clarence Thomas wrote in his dissent on *Kelo*, "Something has gone seriously awry with this Court's interpretation of the Constitution." Since *Kelo*, more than 5,700 private properties have been threatened or taken by this power of eminent domain, which was a tremendous increase over the previous five years.

On July 26, 2006, the Ohio Supreme Court handed down a unanimous decision against the \$125-million project development in suburban Cincinnati. The city hoped to get \$2 million a year in new taxes from property owners, but the Ohio Supreme Court concluded economic benefits alone, such as increased taxes, do not justify the taking of private property. The court stated Ohio has always considered the right of property to be a fundamental right, and property rights are believed to be derived from a higher authority and natural law.

We support these efforts to protect private property from current abuses. It should be clear in eminent domain laws condemning authority may not take possession of property until appeals have been exhausted. In the Ohio case, Joy Gamble was forced out of her home. By the time the Ohio Supreme Court made its decision, Ms. Gamble had been out of her home for 1.5 years. In that time, power was turned off, the home was vandalized and possessions stolen. People's homes should be protected until the final appeal. We encourage you to protect our constitutional right of private property under the Nevada Constitution.

LARRY BENDER (Manager, Redevelopment Division, Economic Development Department, City of North Las Vegas)

The Economic Development Department of the City of Las Vegas is neutral on S.B. 16 and could live with the provision should it become law.

SENATOR WASHINGTON:

The hearing is closed on S.B. 16 and continues on S.B. 85.

**SENATE BILL 85**: Prohibits use of eminent domain to acquire property for economic development. (BDR 3-9)

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau):

We support S.B. 85 and believe it protects Nevada's private property rights.

NICOLAS ANTHONY (City of Reno):

The City of Reno supports the efforts of this body and bills passed in the 2005 Legislative Session. We look forward to working with the Committee to come to an agreement on this issue.

DAVID K. SCHUMANN (Nevada Committee for Full Statehood; Independent American Party):

The Independent American Party supports S.B. 16 and S.B. 85. Justice Clarence Thomas, after the *Kelo* decision, said the Supreme Court amended the Constitution by substituting the word "purpose" for the word "use." It was a simple thing—going from use to purpose, the purpose being to raise income. A goal of the redevelopment people is to increase income to local government. Justice Thomas recognized that the Constitution cannot be amended without a laborious process. The Nevada Supreme Court, as well as other courts, has no business amending the Nevada Constitution.

JOHN L. WAGNER (The Burke Consortium):

Two things I have learned—the first is to listen when Senator Raggio speaks. His testimony on S.B. 85 was excellent and needed. I supported PISTOL and look forward to decisions coming out of committees. The second thing is to count votes. I see more than enough voters present in support of S.B. 85 to pass it out of this Committee. I fully expect the version coming out of the Assembly will go into conference; either way, you are doing the right thing. I favor private property and private property rights.

MS. HANSEN:

The Nevada Eagle Forum supports S.B. 85.

MR. BENDER:

The City of North Las Vegas reiterates our ability to live with the provisions in S.B. 85 and would like to be involved in the process as it moves forward.

SENATOR WASHINGTON:

The hearing is closed on S.B. 85 and opened on S.B. 130.

**SENATE BILL 130**: Repeals the prospective expiration of the provision relating to the use and sale of certain property acquired by a governmental entity through eminent domain. (BDR S-588)

SUSAN MARTINOVICH (P.E., Director, Director's Office, Nevada Department of Transportation):

Senate Bill 130 repeals language in legislation that took effect during the 2005 Legislative Session. The NDOT received a letter from the Federal Highway Administration indicating Nevada's federal funding would be in jeopardy without this exception. Subsequently, NDOT received a second letter from the Administration to the contrary and decided to resolve the issue through Assembly Joint Resolution (A.J.R.) 3. Therefore, NDOT respectfully removes the repeal request in S.B. 85 because A.J.R. 3 should address the concerns.

**ASSEMBLY JOINT RESOLUTION 3**: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

SENATOR CARE:

Regarding Mr. Shumann's testimony, NRS 37.010, which is the scope of power on eminent domain, begins by using the words "public purposes." I would like Committee Counsel to identify those statutes regarding eminent domain where the words "public purpose" are used, as opposed to "public use." The words "public use" are used in the Fifth Amendment.

SENATOR WASHINGTON:

The clarification will be made. The hearing is closed on S.B. 130.

Ms. Eissmann, when the Committee addresses S.B. 85 in work session, please make a note to amend it and add my name to the sponsorship.

Senate Committee on Judiciary  
February 28, 2007  
Page 14

There being no further business to come before the Committee, the hearing is adjourned at 10:25 a.m.

RESPECTFULLY SUBMITTED:

---

Barbara Moss,  
Committee Secretary

APPROVED BY:

---

Senator Mark E. Amodei, Chair

DATE: \_\_\_\_\_