

STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON RESOURCES

REGARDING H.R. 3405

October 27, 2005

Presented by
Earl Hance
President of the Maryland Farm Bureau, Inc.

My name is Earl Hance and I am a corn and soybean producer from Port Republic, Maryland. I also operate several greenhouses. I serve as president of Maryland Farm Bureau, Inc., and serve on the Board of Directors of the American Farm Bureau Federation. I appreciate the opportunity to be here today to present testimony on behalf of the American Farm Bureau Federation. Farm Bureau is deeply concerned about the potentially devastating impacts of the recent *Kelo* decision on agriculture. We commend the committee for holding hearings on this important matter.

The *Kelo* decision has struck a raw nerve around the country. Congress responded swiftly to this outrageous decision through the introduction of H.R. 3405 and similar bills. H.R. 3405 and H.R. 3135 both have over 100 cosponsors and a companion bill in the Senate has more than 30 cosponsors. We fully support the efforts that have been taken thus far and we will work diligently to pass legislation to encourage states to limit their use of eminent domain to truly public uses.

Farm Bureau has a long history in support of private property rights. We have participated in property rights cases at the appellate and Supreme Court levels, including filing a "friend of the court" brief in the *Kelo* case in support of the homeowners.

Farmers and ranchers understand that there are legitimate public uses, such as roads and highways, which can have a claim on private land. However, we cannot understand – nor can we support – our land being taken for the profit of private corporations. The difference between legitimate uses of eminent domain and what is so objectionable in *Kelo* is the difference between building firehouses and factories, between courthouses and condominiums.

After *Kelo*, no property is safe. Any property can now be seized and transferred to the highest bidder. As Justice O'Connor said in her ringing dissent: "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz Carlton, any home with a shopping center, or any farm with a factory."

I would like to stress to the committee that agricultural lands are particularly vulnerable to these types of actions. The fair market value of agricultural land is less than residential or commercial property, making a condemnation of agricultural land less costly and more attractive. While agricultural lands are vital to the nation because they feed our people, they do not generate as much property tax revenue as homes or offices. As a result, they can easily become targets for being taken for any of these other uses. Finally, as municipalities grow, they naturally put pressure on farms and rural areas. There is nothing to stop farms that have been in families for generations from being taken for industrial developments, shopping malls or housing developments.

Development pressures are particularly acute in my state of Maryland, where land is already at a premium. As the areas surrounding Baltimore and Washington, D.C. continue to grow, planners and developers increasingly look to agricultural lands for their next housing development or shopping mall. The *Kelo* decision opens up a whole new avenue for them.

We are understandably concerned about the possible impacts of *Kelo* on farm and ranchlands across Maryland and the country. Reaction from our members has been swift and overwhelming. Farmers and ranchers from across the state are asking us to help them keep their property.

Farm Bureau has initiated a Stop Taking Our Property (STOP) Campaign, designed to educate the public about the impacts of the *Kelo* decision and to provide materials to help state Farm Bureaus address the issue. The Maryland Farm Bureau has fully embraced this campaign and made it a cornerstone of our legislative efforts.

There are several components to the Farm Bureau campaign. One element focuses on educating the general public and our members about the *Kelo* decision and its impacts. We have developed an educational brochure and web page for those interested in the issue. Another element focuses on encouraging state Farm Bureaus to seek changes to state laws to prohibit the use of eminent domain for private economic development. We have developed model state legislation

and supporting documents to help achieve those changes.

Another key element is to encourage and promote passage of H.R. 3405 or similar legislation. Since eminent domain is a creature of state law, substantive statutory change must be made at that level. Getting multiple state legislatures to act, however, is an uncertain and lengthy process. In addition, states interested in maximizing revenues may be reluctant to take action that might deny their municipalities the opportunity for increased property taxes.

That is why federal legislation is necessary. While eminent domain is defined by state law, Congress does have the authority and the responsibility to determine how our tax dollars are spent. Using federal funds to help municipalities take from the poor and give to the rich adds insult to injury to those who work hard for themselves and their families. As elected officials, you can appropriately respond to the *Kelo* decision by ensuring that states and local governments cannot use federal tax dollars to dispossess property for the benefit of another private entity.

All of the federal bills introduced thus far take this approach. The difference among them is the degree to which such funding is withheld. H.R. 3405 is the only one of the bills that would deny all federal economic development assistance to a state if there were any uses of eminent domain for economic development that transferred private property from one private entity to another.

We support the approach taken by all of these bills. Withholding all federal economic development funding from states where *Kelo*-type eminent domain is being used, whether or not it is used in the specific project, offers the greatest disincentive for states to continue using eminent domain for private economic development. By not tying the funds to any particular project, H.R. 3405 avoids the fiscal shell game of moving federal funds away from individual projects that use eminent domain for private economic development.

Though the Supreme Court said the Connecticut law was legal, not every Justice endorsed it as good policy. Even Justice Stevens, who wrote the majority opinion in *Kelo*, seems to disagree with the law he upheld. In a recent address to the Clark County (Nevada) Bar Association discussing the case, he said that "I was convinced that the law compelled a result that I would have opposed if I were a legislator."

We urge swift passage of legislation that would withhold federal funding to states and local governments that use eminent domain to take property from one private entity and transfer it to another for economic develop purposes.

Thank you for the opportunity to testify. I look forward to answering your questions.