

Statement of Congressman C.L. "Butch" Otter

Committee on Resources

Legislative Hearing on H.R. 3405 (Bonilla),
Strengthening the Ownership of Private Property Act of 2005 (STOPP)

October 27, 2005

Thank you, Mr. Chairman.

While I am no longer a member of the committee, I appreciate you holding this hearing today and allowing me to testify. I also appreciate Mr. Bonilla's leadership on this issue and am pleased to join him as a co-sponsor of H.R. 3405 the STOPP Act.

"... nor shall private property be taken for public use without just compensation." Mr. Chairman, all of us here know that simple 12-word phrase in the Fifth Amendment to the Constitution. We all know it was pointedly intended to limit the new national government's power over the people.

How then, did a 5-4 majority of the United States Supreme Court rule on June 23 that such a straightforward phrase actually grants government nearly unfettered authority to strip citizens of their homes, farms and businesses?

I believe it ranks among history's most outrageous examples of constitutional revisionism.

The immediate murmurs of criticism from a few people in response to the court's ruling in ***Kelo v. City of New London*** has turned into a widespread public outcry of frustration and even despair as people realize the implications: No one is safe.

As Justice Sandra Day O'Connor put it succinctly in her sharply worded 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 mall, or any farm with a factory."

The leaders of New London, Connecticut, almost certainly would have failed if the land in question had been the habitat of an endangered plant or animal. Instead, it was a neighborhood of working-class people unwilling to give up their homes for a private development that the city determined would provide a greater public benefit.

They counted on the Constitution to protect them, but the court let them down.

Each state constitution, including Idaho's, imposes restriction on the power of eminent domain. However, each state constitution is required to fall within the essential principle that government is subordinate and accountable to the individual citizen, not the other way around. Put more simply, our constitutions are designed to ensure that government remains the servant, not the master.

That's why the Framers insisted on the clear words "public use" in the Fifth Amendment. We all thought we understood what it means; there was no disagreement or confusion. Now we find ourselves with a narrow majority on the highest court in the land willing to simply erase the rights of private property owners, the foundation of our freedom and prosperity and the beacon of individual liberty that has drawn generations to our shores.

It is unthinkable that the Framers of a Constitution designed to "secure the blessings of liberty to ourselves and our posterity" would intend that private property be subject to government confiscation – and confiscation it is, for how can "just compensation" be possible when government wields the power to define "public use" so broadly?

Mr. Bonilla's bill, H.R. 3405, goes a long way toward addressing the problems created by the Kelo decision by creating economic disincentives for the taking of private property for the purpose of private economic development.

I believe the Kelo decision woke America up to the fact that over time, our property rights have quietly been eroding the same way a stream of water slowly but surely erodes its banks.

Fortunately, this erosion has not gone unnoticed by westerners or those they've sent here to represent them.

Private property rights have long been held dear by families and landowners in the West, and for good reason. Their farms and ranches have been their livelihood and part of our national heritage since the frontier was closed and the West was settled.

Today many westerners not only have to fight for their economic survival but also have to worry whether their property will be around for them to pass on to their children and future generations. The federal government owns more than half of all land in the West – almost two-thirds in Idaho – and populations in the region continue to grow.

I am a member of the Congressional Western Caucus, and we count among our core principles *the necessity to protect private property*. It is the Caucus' position that property rights are the foundation of a free society; that landowners **MUST** be justly compensated when their land is taken or when regulations deprive them of the use of their property.

Immediately after the *Kelo* decision the Caucus asked me to chair the Property Rights Task Force. With the aid of many in the property rights community, we have created a comprehensive property rights package we call CPR2, the Comprehensive Property Rights Reform Act. We believe this bill, in addition to H.R. 3405, will help breathe life into property rights reform.

The Western Caucus property rights bill will formalize the policy of the federal government with respect to all private property, that the government should protect private property and exert eminent domain only when absolutely necessary. The bill will ensure that when property is taken, the government will avoid or minimize the extent of the taking and provide just compensation for loss of value at any level.

The bill also includes creation of a property rights ombudsman, bars use of eminent domain for economic development, ensures direct access to federal courts for takings claims, and provides several mechanisms for protecting what little private property remains in the West.

The property rights issue is not a class issue. It's not a partisan issue. It's an issue of the most fundamental importance to America's future, and one on which none of us can afford to be what Thomas Paine called "sunshine patriots."

Thank you again Mr. Chairman for holding this hearing, and I look forward to working with the committee on this important issue.