

## **BACKGROUND**

In June, 2005, in *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court upheld the use of eminent domain to acquire private property for the purpose of economic development. The Court determined that, under the facts presented, that the limitation in the Fifth Amendment to the United States Constitution (“[N]or shall private property be taken for public use, without just compensation”) did not limit the acquisition of private property by eminent domain for the purpose of economic development because economic development can be a valid “public use.”

The eminent domain power is a power that is inherent in the sovereign, whether that sovereign is the United States or an individual State. The federal constitutional limitation quoted above and addressed in *Kelo* acts as an initial limitation on the powers of each State to exercise eminent domain. However, each State may provide for additional limitations on its exercise of the eminent domain power. Some States currently have such limitations and others do not.

Leading up to the *Kelo* case, the Supreme Court’s decisions displayed a great deal of deference to the States to determine what does and does not constitute a “public use” under the federal Constitution. As a result, the threshold for a determination of whether a particular proposal is a “public use” under the federal Constitution has been rather low. In response to *Kelo* many State legislatures have begun to re-examine whether further limitations should be adopted.

## **EMINENT DOMAIN LAW IN CONNECTICUT AT TIME OF *KELO* DECISION**

The Connecticut Constitution provides that “[t]he property of no person shall be taken for public use, without just compensation therefor.” (Conn. Const. Article first, § 11) This language is similar to the language in the federal Constitution, and does not, by its terms, present any additional limitations on the eminent domain power of the State of Connecticut. But Connecticut’s statutory provisions concerning eminent domain are quite expansive. In particular, the State statute (Conn. Gen. Stat. § 8-186) specifically permits local municipalities to exercise the power of eminent domain for economic development, declaring economic development to be a public use.

The United States Supreme Court in its decision in *Kelo* determined that this legislative finding was sufficient under the federal Constitution, and the Connecticut Supreme Court in its *Kelo* decision below also determined that the Connecticut legislature’s finding was sufficient under the Connecticut Constitution.

## **COMPARISON OF OTHER STATES WITH CONNECTICUT**

With Connecticut’s eminent domain law as the point of comparison, the chart on the following pages compares the constitutional, statutory and case law governing the exercise of eminent domain in the other States, with the focus on how their eminent domain laws compare to Connecticut’s on the critical question of whether and to what extent they permit the use of eminent domain for economic development purposes.

**Key Distinction in the Chart: Blight Only.** The comparison of other States' laws on eminent domain with those of Connecticut focuses on the extent to which these other States permit the use of eminent domain for economic development purposes, *other than for the elimination of blight*. Although, the existence of blight is frequently an important factor in a government's decision to use eminent domain for economic development, it does not provide a meaningful basis to compare the various states on eminent domain. This is because every state has statutory enactments that permit the exercise of eminent domain by municipalities for the purpose of eliminating blight, sometimes described as "slum clearance". When this form of eminent domain is exercised, the condemning authority acquires private property and eliminates the blight, and then must put the property to a different use, frequently transferring the property to private property owners for development.

The cases that address the constitutionality of blight statutes uniformly hold that the act of eliminating blight itself constitutes a public purpose and a public use, even though the property may ultimately be transferred to a private property owner. This differs from the question presented in *Kelo*, which was whether the power of eminent domain can be exercised solely for the purpose of economic development, even though the land taken was not found to be blighted.

Two aspects of the *blight* decisions do assist in understanding the *Kelo* question. First, the definition of blight in many statutes can include unproductive or vacant property, and thus an eminent domain acquisition for economic development purposes can be squeezed into the definition of blight. The states have taken different approaches to this question.

Second, some states impose stricter requirements on the disposition of property acquired pursuant to blight statutes than others. Thus, where blight statutes are used to accomplish economic development, there may yet be an additional limitation on the property acquired, such as requiring assurances that the stated purpose for the condemnation will be maintained after transfer to a private developer.

For these reasons, in the chart the term **Blight Only** means that the particular state would permit eminent domain even if it ultimately has the effect of economic development, but *only if a finding of blight is made*.

## **KEY CODE**

The chart lists only those states that (a) outright prohibit the use of eminent domain for economic development, (b) lean towards a conservative approach to the issue, or (c) have recently adopted statutes on the issue, either *preKelo* or just after. The states are color-coded as follows:

### **Green: Connecticut - Explicitly Permits Eminent Domain For Economic Development Purposes.**

Connecticut, by express statutory provisions, explicitly permits the use of eminent domain to acquire property for economic development, without any resort to the blight statutes.

### **Yellow: States That Permit Eminent Domain For Economic Development Purposes, But With Some Limitations.**

These States permit the use of eminent domain to acquire property for economic development, though without explicit provisions in the constitution or statutes. Some of these States have rather liberal interpretations of their blight statutes to permit economic development.

**Red: States That Explicitly Prohibit Eminent Domain For Economic Development Purposes.**

These States have explicitly prohibited the use of eminent domain to acquire property for economic development.

**Magenta: States That Generally Do Not Permit Eminent Domain For Economic Development Purposes.**

These States do not explicitly prohibit the use of eminent domain to acquire property for economic development, but a review of the case law shows that it is unlikely to be permitted except in the most limited of circumstances.

Connecticut	
<b>CONSTITUTIONAL PROVISION</b>	
	<u>Article First, § 11:</u> "The property of no person shall be taken for public use, without just compensation therefore."
<b>STATUTORY PROVISION(S)</b>	
	<u>Conn. Gen. Stat. § 8-186:</u> "It is found and declared that the economic welfare of the state depends upon the continued growth of industry and business within the state; that the acquisition and improvement of unified land and water areas and vacated commercial plants to meet the needs of industry and business should be in accordance with local, regional and state planning objectives; that such acquisition and improvement often cannot be accomplished through the ordinary operations of private enterprise at competitive rates of progress and economies of cost; that permitting and assisting municipalities to acquire and improve unified land and water areas and to acquire and improve or demolish vacated commercial plants for industrial and business purposes and, in distressed municipalities, to lend funds to businesses and industries within a project area in accordance with such planning objectives are public uses and purposes for which public moneys may be expended; and that the necessity in the public interest for the provisions of this chapter is hereby declared as a matter of legislative determination."
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>Economic development plans that the appropriate legislative authority rationally has determined will promote municipal economic development by creating new jobs, increasing tax and other revenues, and otherwise revitalizing distressed urban areas, constitute a valid public use for the exercise of the eminent domain power under either the state or federal constitution.</li> </ul>

<b>Alabama</b>	
CONSTITUTIONAL PROVISION	
	<p><b>Article I, § 23:</b> “That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use in the same manner in which the property and franchises of individuals are taken and subjected; <u>but private property shall not be taken for, or applied to public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner;</u> provided, however, the legislature may by law secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner; and, provided, that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporations, other than municipal, or for the benefit of any individual or association.”</p> <p><b>Article XII, § 235:</b> “Municipal and other corporations and individuals invested with the privilege of taking property for public use, shall make just compensation, to be ascertained as may be provided by law, for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid before such taking, injury, or destruction. The legislature is hereby prohibited from denying the right of appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise, but such appeal shall not deprive those who have obtained the judgment of condemnation from a right of entry, provided the amount of damages assessed shall have been paid into court in money, and a bond shall have been given in not less than double the amount of the damages assessed, with good and sufficient sureties, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party, be determined by a jury according to law.”</p>
STATUTORY PROVISION(S)	
	<p><b>SB68, effective August 3, 2005. Ala.Code 1975 § 11-47-170 (b), § 11-80-1 (b):</b> “Notwithstanding any other provision of law, a municipality or county may not condemn property for the purposes of private retail, office, commercial, industrial, or residential development; or primarily for enhancement of tax revenue; or for transfer to a person, nongovernmental entity, public-private partnership, corporation, or other business entity. Provided, however, the provisions of this subsection shall not apply to the use of eminent domain by any municipality, housing authority, or other public entity based upon a finding of blight in an area covered by any redevelopment plan or urban renewal plan pursuant to Chapters 2 and 3 of Title 24,</p>

	but just compensation, in all cases, shall continue to be first made to the owner.”
<b>CASE LAW</b>	
	None under new statute, <i>but see Gober v. Stubb</i> , 682 So.2d 430 (Ala. 1996). (the fact that private persons may receive benefit is not sufficient to take away from the enterprise the characteristics of a public purpose).

<b>Arizona</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<u><b>Article II, § 17:</b></u> “Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. <u>No private property shall be taken or damaged for public or private use without just compensation having first been made</u> , paid into court for the owner, secured by bond as may be fixed by the court, or paid into the State treasury for the owner on such terms and conditions as the Legislature may provide, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.”
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Bailey v. Myers</i>, 206 Ariz. 224, 76 P.3d 898 (Ariz.App. Div. 1 2003). When a proposed taking for a redevelopment project will result in private commercial ownership and operation, the Arizona Constitution requires that the anticipated public benefits must substantially outweigh the private character of the end use so that it may truly be said that the taking is for a use that is "really public." The constitutional requirement of "public use" is only satisfied when the public benefits and characteristics of the intended use substantially predominate over the private nature of that use.</li> </ul>

<b>Arkansas</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article II, § 23:</b> “The State’s ancient right of eminent domain and of taxation, is herein fully and expressly conceded; and the General Assembly may delegate the taxing power, with the necessary restriction, to the State’s subordinate political and municipal corporations, to the extent of providing for their existence, maintenance and well being, but no further.”
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Little Rock v. Raines</i>, 241 Ark. 1071, 1083-84, 411 S.W.2d 486 (1967) Private property can be taken under the power of eminent domain only for a public use. For a use to be public it is necessary that the public shall be concerned in the use to be made thereof and the purpose for which the property is to be used must in fact be a public one. Whether or not a proposed use for which private property is to be taken, even with legislative sanction, is a public or private use is a judicial question which the owner has a right to have determined by the courts. The objectives must not only be public purposes, but public uses as well.</li> </ul>

<b>Colorado</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Article II § 14:</b> “Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.”</p> <p><b>Article II, § 15:</b> “Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.”</p>
<b>STATUTORY PROVISION(S)</b>	

	Blight only. <b><u>But see H.B. 1203, effective June 4, 2004, adding Colo. Rev. Stat. § 31-25-105.5</u></b> (property acquired from a private property owner cannot be transferred to another private property owner unless, among other factors, the property is determined to be blighted; adoption of a heightened standard for a determination of blight).
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• None</li> </ul>

<b>Delaware</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 8:</b> “No person shall for any indictable offense be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; and no person shall be for the same offense twice put in jeopardy of life or limb; <u>nor shall any person's property be taken or applied to public use without the consent of his or her representatives, and without compensation being made.</u> ”
<b>STATUTORY PROVISION(S)</b>	
	<p><b><u>SB 217, effective July 21, 2005, 29 Del. Code § 9505 (14):</u></b> “Notwithstanding any other provision of law to the contrary, the acquisition of real property through the exercise of eminent domain by any agency shall be undertaken, and the property used, only for the purposes of a recognized public use as described at least 6 months in advance of the institution of condemnation proceedings: (i) in a certified planning document, (ii) at a public hearing held specifically to address the acquisition, or (iii) in a published report of the acquiring agency.”</p> <p><i>See, also,</i> 31 Del. Code. § 4501: "Blighted area" means that portion of a municipality or community which is found and determined to be a social or economic liability to such municipality or community because of any of the following conditions: "(e) A growing or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein, tax or special assessment delinquency exceeding the fair value of the land, or the existence of conditions which endanger life or property by fire or other causes and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare; and</p>
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Wilmington Parking Authority v. Land With Improvements, Situate In City of Wilmington, New Castle County</i>, 521 A.2d 227 (Del. 1986). The underlying purpose--the motivating desire--of the public authority is the benefit to the general public. If</li> </ul>

	<p>a project is so designed that in fact private interests are the chief beneficiaries, a remedy is available. The trier of fact must examine the motivations of the condemning authority and the objective benefits that accrue to the general public versus private interests.</p> <p>• <i>Randolph v. Wilmington Housing Authority</i>, 37 Del.Ch. 202, 139 A.2d 476 (Del. 1958). The Court expressed “the very gravest doubt” that it would sustain a condemnation of private property to remedy certain kinds of “blight” under the state statute, such as “defective or inadequate street layout”, “diversity of ownership”, “tax or special assessment delinquency exceeding the fair value of the land”, “unusual conditions of title”, “improper subdivision” because they have no direct relation to public health, safety or morals. Such a condemnation would reflect the idea that the State may take A's property away from him for such diverse reasons as that it is not used in the most efficient or economical manner, or is in a district improperly or inartistically laid out, or is in an area including some properties having “diversity of ownership”, and may sell it to B so that B may develop it in a more efficient manner.</p>
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<b>Florida</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article X, § 6 (a):</b> “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<p>• <i>Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale</i>, 315 So.2d 451 (1975). A public body may not use its governmental authority and its public funds to acquire lands whether by purchase or eminent domain where the only purpose of the acquisition is to make the properties available for private uses. There must first be a showing of a public necessity or public use, in order for eminent domain to be utilized against private ownership. Public benefit is not synonymous with public purpose as a predicate which can justify eminent domain. While there may be indeed a desirable purpose in the eyes of some to clear away old areas in a city, the necessary prerequisites must be present for a necessary public purpose, which is not present where the dominant purpose will be for private use and the subsequent public adaptation to that use would be only 'incidental' thereto.</p>

<b>Illinois</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 15:</b> “Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.”
<b>STATUTORY PROVISION(S)</b>	
	<b>I.L.C.S. § 11-61-1:</b> “The corporate authorities of each municipality may exercise the right of eminent domain by condemnation proceedings in conformity with the provisions of the constitution and statutes of the State of Illinois for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare including property in unincorporated areas outside of but adjacent and contiguous to the municipality where required for street or highway purposes by the municipality.”
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Southwestern Illinois Development Authority v. National City Environmental, L.L.C.</i>, 199 Ill.2d 225, 263 Ill.Dec. 241, 768 N.E.2d 1 (2002), <i>cert. denied</i>, 537 U.S. 880, 123 S.Ct. 88, 154 L.Ed.2d 135 (2002). A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void. While economic development is an important public purpose, to constitute a public use, something more than a mere benefit to the public must flow from the contemplated improvement. The public must be to some extent entitled to use or enjoy the property, not as a mere favor or by permission of the owner, but by right. The condemnation was not for a public use because “[i]t is a private venture designed to result not in a public use, but in private profits.”</li> </ul>

<b>Indiana</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 21:</b> “No person's particular services shall be demanded, without just compensation. <u>No person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.</u> ”
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Daniels v. Area Plan Commission</i>, 306 F.3d 445 (7th Cir. 2002). Because the public benefit of the condemnation will not materialize absent any promised commercial development, a private party,</li> </ul>

	rather than the public, is the primary beneficiary of proceedings. While there may be some conceivable public benefit of some possible future use of the property, "public use" is to be determined at the time of the taking,
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<b>Kentucky</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Section 13:</b> "No person shall, for the same offense, be twice put in jeopardy of his life or limb, <u>nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.</u>"</p> <p><b>Section 242:</b> "<u>Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by them;</u> which compensation shall be paid before such taking, or paid or secured, at the election of such corporation or individual, before such injury or destruction. The General Assembly shall not deprive any person of an appeal from any preliminary assessment of damages against any such corporation or individual made by Commissioners or otherwise; and upon appeal from such preliminary assessment, the amount of such damages shall, in all cases, be determined by a jury, according to the course of the common law."</p>
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>City of Owensboro v. McCormick</i>, 581 S.W.2d 3 (1979). Unconditional governmental power to compel a citizen to surrender his productive and attractive property to another citizen who will use it predominantly for his own private profit just because such alternative private use is thought to be preferable in the subjective notion of governmental authorities is repugnant to the constitutional protections. No public use is involved where the land of A is condemned merely to enable B to build a factory or C to construct a shopping center.</li> </ul>

	<b>Maine</b>
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 21:</b> "Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it."
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Craig v. Kennebec Regional Development Authority</i>, 2001 WL 1715952 (Me. Super. 2001), citing <i>Opinion of the Justices</i>, 152 Me. 440, 131 A.2d 904 (1957). The test of public use is not the advantage or great benefit to the public. A 'public use' must be for the general public, or some portion of it, who may have occasion to use it, not a use by or for particular individuals. It is not necessary that all of the public shall have occasion to use. It is necessary that everyone, if he has occasion, shall have the right to use.</li> </ul>

	<b>Massachusetts</b>
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Part the First, Art. X:</b> "Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but <u>no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.</u> In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. <u>And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.</u> "
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Allydorn Realty Corp. v. Holyoke Housing Authority</i>, 304 Mass. 288, 297 (1939). Each case must be decided with reference to the objective sought to be accomplished and to the degree and manner in which that object affects the public welfare. A legitimate objective may present a double aspect in that it may in some respects result in conferring a benefit upon the public and in other respects it may result in conferring a benefit upon or in paying money to private</li> </ul>

	<p>individuals. An expenditure is not necessarily barred because individuals as such may profit, nor is it necessarily valid because of incidental benefit to the public.</p> <ul style="list-style-type: none"> <li>• <i>Opinion of the Justices</i>, 341 Mass. 760, 778-80 (1960). Public-private partnerships designed to promote economic revitalization of blighted, decadent and substandard areas meet public purpose requirements when the legislation that gave rise to those partnerships provided appropriate controls and oversight to protect the primacy of the public interest.</li> </ul>
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<b>Michigan</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Const. 1963, Art. 10, § 2:</b> "Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record."
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>County of Wayne v. Hathcock</i>, 471 Mich. 445, 684 N.W.2d 765 (Mich. 2004). Public use is determined by whether (a) the condemning authority's very existence depends on the use of land that can be assembled only by the coordination central government alone is capable of achieving, (b) the project is subject to public oversight to ensure that the property continues to be used for the commonwealth after being sold to private entities, (c) the act of condemning itself serves the public good. The public purpose of "alleviating unemployment and revitalizing the economic base of the community" is not sufficient for the use of the eminent domain power.</li> </ul>

<b>Mississippi</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Section 17:</b> " <u>Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof</u> , in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public."
<b>STATUTORY</b>	

<b>PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Mayor v. Thomas</i>, 645 So.2d 940 (Miss. 1994). Although a public use can legitimately be served by involving private enterprise in the execution of public programs, there must be a primary and public purpose for a taking; the purported purpose must be direct and an indirect and speculative purpose is insufficient. There must be a showing that the public will directly benefit from the use of the land to be taken. Where a private actor is the primary beneficiary of the taking, or where the use of that land will be at the whim of a private actor, the private use is paramount, not incidental, to the public use and any public benefit from the taking will be speculative at best.</li> </ul>

	<b>Montana</b>
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article II, § 29:</b> “Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.”
<b>STATUTORY PROVISION(S)</b>	
	<b>Montana Code § 70-30-101:</b> “Eminent domain is the right of the state to take private property for public use.”
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Montana Power Co. v. Bokma</i>, 153 Mont. 390, 457 P.2d 769 (Mont. 1969). Montana adheres to the broad view of the term “public use”, and requires only a use conferring a 'public advantage' or a 'public benefit'. A public use is one which confers some benefit or advantage to the public. Such public use is not confined to actual use by the public, but is measured in terms of the right of the public to use the proposed facilities for which condemnation is sought. As long as every member of the public has an equal right with all others, on equal terms, to the use of the power produced, it matters not that every person is not actually benefited thereby.</li> <li>• <i>But see City of Bozeman on Behalf of Dept. of Transp. of State of Mont. v. Vaniman</i>, 271 Mont. 514, 898 P.2d 1208 1 (Mont. 1995). Condemnation permitted despite presence of private use within the public project, but private use not permitted to stand.</li> </ul>

<b>Nebraska</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, §21:</b> “The property of no person shall be taken or damaged for public use without just compensation therefor.”
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Burger v. City of Beatrice</i>, 181 Neb. 213, 147 N.W.2d 784 (Neb. 1967). To make a use a public one, a duty must devolve on the person holding property appropriated by right of eminent domain to furnish the public with the public use intended in pursuance of an existing enforceable public right. The condemnation was rejected because it was not intended to serve a public service corporation, nor to a private corporation obligated to serve the public, nor subject to any right of the public to compel a public use.</li> </ul>

<b>Nevada</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 8, cl. 6:</b> “Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.”
<b>STATUTORY PROVISION(S)</b>	
	Blight only. <i>See</i> SB 326, effective June 14, 2005 (strengthening criteria for blight determination).
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• None under new statute; <i>but see City of Las Vegas Downtown Redevelopment Agency v. Pappas</i>, 119 Nev. 429, 76 P.3d (Nev. 2003.) Possessory use by the public is not an indispensable prerequisite to the lawful exercise of the power of eminent domain. The rights of property owners are be constitutionally satisfied when they receive just compensation for their properties.</li> </ul>

	<b>New Hampshire</b>
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Part First, Article 12a:</b> Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. <u>But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.</u> Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Merrill v. City of Manchester</i>, 127 N.H. 234, 499 A.2d 216 (N.H. 1985). The constitutionality of a proposed condemnation is gauged by "whether the expenditures will be primarily of benefit to private persons or private uses, which is forbidden, or whether they will serve public purposes for the accomplishment of which public money may properly be used." In determining whether the purpose for which property is being condemned is a public use, the extent to which the proposed project will benefit the public must be considered.</li> </ul>

	<b>New Jersey</b>
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 20:</b> "Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners."
<b>STATUTORY PROVISION(S)</b>	
	<b>See e.g. N.J. Stat. § 5:12-182 (b):</b> "In the event the Casino Reinvestment Development Authority finds it is necessary to complete a project in the city of Atlantic City, the authority may acquire any real property in the city, whether a fee simple absolute or lesser interest and whether for immediate use, that the authority may find and determine is required for public use, and upon such a determination, the property shall be deemed to be required for a public use until otherwise determined by the authority; and with the exceptions hereinafter specifically noted, the determination shall not be affected by the fact that such property has theretofore been taken for, or is then devoted to, a public use, but the public use in the hands or under the control of the authority shall be

	deemed superior to the public use in the hands or under the control of any other person, association or corporation.”
<b>CASE LAW</b>	
	<p>• <i>Casino Reinvestment Development Authority v. Banin</i>, 320 N.J.Super. 342, 727 A.2d 102 (N.J. Super. 1998). Property may be condemned by a public authority and transferred to a private entity provided that the condemnation is in furtherance of a valid public purpose. When the exercise of eminent domain results in a substantial benefit to specific and identifiable private parties, a court must inspect with heightened scrutiny a claim that the public interest is the predominant interest being advanced. The court must examine the underlying purpose” of the condemning authority in proposing a project as well as the purpose of the project itself. Here, the condemnation was not for a public purpose because there were no assurances that the public interest will be protected – the property was to be developed for a casino hotel and parking, and transferred to the casino operator, with no assurances that the stated purpose for the condemnation would be maintained for more than a reasonable time. As a result, the stated public purpose was nothing more than the assemblage of properties for a private developer that it could not obtain by itself.</p>

<b>Oklahoma</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Article II, § 23:</b> “No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.”</p> <p><b>Article II, § 24:</b> “Private property shall not be taken or damaged for public use without just compensation. Just compensation shall mean the value of the property taken, and in addition, any injury to any part of the property not taken.”</p>
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<p>• <i>City of Midwest City v. House of Realty, Inc.</i>, 100 P.3d 678, 2004 OK 56 (Okla., 2004), The power of eminent domain for an economic public purpose is tied to removal of blight when municipalities and public trusts jointly create such projects, and a municipality is not possessed with an unfettered discretion to condemn property for economic redevelopment projects outside of the scope of statutory schemes that the Legislature has provided for removal of blighted property.</p>

<b>Rhode Island</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Article I, § 16:</b> “Private property shall not be taken for public uses, without just compensation.”</p> <p><b>Article VI, § 18:</b> “The clearance, replanning, redevelopment, rehabilitation and improvement of blighted and substandard areas shall be a public use and purpose for which the power of eminent domain may be exercised, tax moneys and other public funds expended and public credit pledged. The general assembly may authorize cities, towns, or local redevelopment agencies to undertake and carry out projects approved by the local legislative body for such uses and purposes including the acquisition in such areas of such properties as the local legislative body may deem necessary or proper to effectuate any of the purposes of this article, although temporarily not required for such purposes, and the sale or other disposition of any such properties to private persons for private uses or to public bodies for public uses.”</p>
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Romeo v. Cranston Redevelopment Agency</i>, 105 R.I. 651, 254 A.2d 426 (R.I. 1969). Rhode Island has moved away from a rigid, unbending, absolute definition of “public use” towards an expanded and liberally construed definition of the term. This is particularly the case concerning constitutionally enabled redevelopment projects.</li> <li>• <i>O’Neill v. City of East Providence</i>, 480 A.2d 1375 (R.I. 1984). A redevelopment plan must meet the statutory requirements in order for it to be in furtherance of a proper public use under the Rhode Island Constitution.</li> </ul>

<b>South Carolina</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Article I, § 13:</b> “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.”</p>
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	

	<ul style="list-style-type: none"> <li>• <i>Karesh v. City Council of City of Charleston</i>, 271 S.C. 339, 247 S.E.2d 342 (S.C. 1978); <i>Georgia Dept. of Transp. v. Jasper County</i>, 355 S.C. 631, 586 S.E.2d 853 (S.C. 2003). The public must have a definite and fixed use of the property to be condemned, independent of the will of the person or corporation taking title under condemnation, and that such use by the public is protected by law. Mere benefit to the public or permission by the owner for use of the property by the public are not enough to constitute a public use, but it must appear that the public has an enforceable right to a definite and fixed use of the property. The "public purpose" is not the same as a "public use," a term that is narrowly defined in the context of condemnation proceedings. However attractive or desirable from a planning point of view a proposed project may be, the use of the power of eminent domain for such purposes runs squarely into the right of an individual to own property and use it as he pleases.</li> </ul>
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<b>Tennessee</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>ARTICLE I, § 21:</b> "That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor."
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>City of Chattanooga, Tennessee v. Classic Refinery, Inc.</i>, 1998 WL 881862 (Tenn.Ct.App.). A taking by eminent domain must meet two criteria: 1) the property will serve a public purpose, and 2) the condemner has asserted that the property is necessary and essential for the purpose proposed. Both events must occur before the court orders the property delivered to the condemner. A condemning authority can not first condemn the property under the broad definition of a public project, and then later decide upon its public purpose without ever asserting the necessity of the taking.</li> </ul>

<b>Utah</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 22:</b> "Private property shall not be taken or damaged for public use without just compensation."
<b>STATUTORY PROVISION(S)</b>	

	Blight only. But see S.B. 184, effective March 21, 2005 (repealing power of eminent domain for redevelopment agencies).
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• None under new statute, <i>but see, Johnson v. Redevelopment Agency of Salt Lake County</i>, 913 P.2d 723 (Utah, 1995). Eminent domain may not be used if the purpose of the plan is economic development unless the area to be developed is first found to be blighted.</li> </ul>

<b>Virginia</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<b>Article I, § 11:</b> "That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, <u>nor any law whereby private property shall be taken or damaged for public uses, without just compensation</u> , the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination."
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Nichols v. Central Va. Power Co.</i>, 143 Va. 405, 130 S.E. 764, 767 (1925). The spirit of both the Virginia and the United States constitutions is in conflict with the view that private property can be taken for private uses under any conditions or stipulations. However, uses may benefit both the public and private sectors, and it is difficult at times to observe the line of demarcation between private benefit and public use. When the two are thus so blended, "the judicial practice in such cases is to approve the undertaking if it is capable of furthering a public use, and disregard the private benefit as mere incident." A use to be public must be fixed and definite. It must be one in which the public, as such, has an interest, and the terms and manner of enjoyment must be within control of the State, independent of the rights of the private owner of the property appropriated to the use. The use of the property cannot be said to be public if it can be gainsaid, denied, or withdrawn by the owner. The public interest must dominate the private gain.</li> </ul>

<b>Washington</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Article I, § 16:</b> “Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. <u>No private property shall be taken or damaged for public or private use without just compensation having been first made</u>, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: Provided, that the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.”</p>
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Manufactured Housing Communities of Washington v. State of Washington</i>, 142 Wash.2d 347, 13 P.3d 183 (Wash. 2000). A public purpose is not the same as a public use; a beneficial use is not necessarily a public use. The fact that the public interest may require it is insufficient if the use is not really public. Washington state courts thus provide Washington citizens with enhanced protections against taking private property for private use.</li> </ul>

<b>Wisconsin</b>	
<b>CONSTITUTIONAL PROVISION</b>	
	<p><b>Article I, §13:</b> “The property of no person shall be taken for public use without just compensation therefor.”</p>
<b>STATUTORY PROVISION(S)</b>	
	Blight only.
<b>CASE LAW</b>	
	<ul style="list-style-type: none"> <li>• <i>Town of Beloit v. County of Rock</i>, 259 Wis.2d 37, 657 N.W.2d 344 (Wis. 2003). While the difference between a public purpose and a public use may appear to be purely semantic, and the line between the two terms has blurred somewhat in recent years, a distinction still exists and is essential Eminent domain</li> </ul>

	<p>cannot be employed to take private property for a predominantly private use; it is, rather, the means provided by the constitution for an assertion of the public interest and is predicated upon the proposition that the private property sought is for a necessary public use.</p>
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