

Georgia insight

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"She hath done what she could." Mark, 14:8a

March 17, 2006

H.B. 1313, Dangerous for Private Property

It's been through the governor's office, legislative committees, countless debates, adjustments and hearings. But with all its changes, H.B. 1313 is *still* a potential menace to owners of property that falls within the lustful gaze of developers that see it as prime targets for money-making or officials that want to grow the tax base by altering the landscape under their jurisdiction.

What happens when you couple the fact that the Georgia constitution and current law *allow* property to be taken for purposes other than public use *with* the outrageous 2005 U.S. Supreme Court *Kelo* decision allowing property to be condemned for the sole reason of economic development? The offspring of those two facts is a nightmare for property owners who want to hang onto their property even if it's being ogled by eyes that look past constitutional rights to see only dollar signs.

H.B. 1313 and the *Kelo* decision aren't needed to allow local governments in Georgia to redevelop communities or to sell property acquired by eminent domain to private enterprise for private uses. They can already do that. In fact, Georgia law and the constitution were and continue to be broader than the *Kelo* decision. While H.B. 1313 has magnified the language and disguised eminent domain dangers, it won't close the loopholes Georgia has now.

Although it's touted as a major problem for local government, blight wouldn't be a problem if regulatory powers and current laws were used in a timely fashion. When eminent domain is the method of choice for blight control, property owners are denied due process that protects them through code enforcement. Code enforcement requires issues to be worked through due process and property owners that fail to comply often have their property sold on courthouse steps. That's the legal and constitutional way to remedy blight.

Justice Clarence Thomas said this as he disagreed with the *Kelo* decision, "If the slums at issue [are] truly 'blighted,' then state nuisance law ... not the power of eminent domain, would provide the appropriate remedy. To construe the Public Use Clause to overlap with the States' police power [confuses] these two categories."

Obviously, redevelopers have had their way in H.B. 1313. The conspicuous marriage of H.B. 1313 and the *Kelo* decision belie claims that Georgians would have a strong law to protect their property – a law that would be a model for the entire country. Strong bills were introduced to limit eminent domain to acquisition of property for government buildings, roads and bridges, but they were left to die in committee. Eminent domain leaves property owners powerless while utility companies flex their muscle to take private property for *their* use . . . *not* for public use, but for *their* use to expand *their* reach and enhance *their* bank accounts.

Here's the point of contention. Local governments and developers, with whom the governor has sided, want eminent domain for money-making projects. Regular folks, simply, want to keep their property, enjoy their homes, run their businesses and have government butt-out.

Committee Recommendations: Presented & Over-ruled

Senate Study Committee recommendation:

Repeal laws and constitutional power allowing eminent domain for economic development and redevelopment.

When legislators realized a U.S. Supreme Court decision would come in mid 2005, the Senate Study Committee on Eminent Domain and Economic Development was appointed to research the issue and get citizen input for legislation to be introduced this session. Committee Chairman Senator Jeff Chapman explained what's wrong with H.B. 1313 and H.R. 1306, a proposed constitutional amendment. This is his report:

Our legislative recommendations have received the highest praise from the Institute for Justice (the national legal organization which argued the Kelo case before the U.S. Supreme Court), the Pacific Legal Foundation (a national foundation specializing in defending property rights and the U.S. Constitution), and the National Legal Foundation (a legal foundation which represents non-profit ministries from redevelopment takings).

The other legislative approach, H.B. 1313 and H.R. 1306, which both just passed the House leaves the power of eminent domain intact for redevelopment in instances of 'blight'.

The philosophical difference is that the Senate Study Report draws a distinct line for the use of eminent domain. In line with the Kelo dissent written by Justice Clarence Thomas, we believe government should use eminent domain only for traditional public uses as originally intended in the 5th Amendment of the Bill of Rights. The Senate Study Report and its resulting legislation do not support the U.S. Supreme Court's Kelo decision expanding public use to include public benefits associated with economic development or redevelopment.

Instead, blight can and should be remedied through Georgia's Nuisance Abatement Code, not through eminent domain that sidesteps due process of law. It is often said that eminent domain is needed as a remedy for 'crack' houses, but again that is part of the normal police powers of the state to confiscate property that has been used in the commission of a crime.

Allowing blight to be a loophole to use eminent domain powers will only create more bureaucracy, more legal battles, and more heartache for the people who can least afford it. This encourages a predatory economic model that preys on the weak. We have an historic opportunity to restore a bedrock foundation stone in our Constitution that has been eroded by the courts over the past 50 years. For those who truly appreciate the wisdom and sacrifice of our Founding Fathers, this is not a time to lose courage and stop halfway to the goal.

The Senate Study Committee expected strong legislation to restrict eminent domain to what the U.S. Constitution, actually, provides. But H.B. 1313 and H.R. 1306 are contrary to committee recommendations and demands of citizens. Property rights opponents are (a) governments that want to plan communities for growth, (b) developers that want to grab land for a pittance of market value and (c) officials that favor business over fellow citizens and their neighbors.

ACTION – Oppose H.B. 1313 & H.R. 1306 unless they are amended to delete blight as reason for eminent domain.

(1) Contact the Governor at 404 656-1776. Ask that he delete blight as a reason for using eminent domain power.

(2) Ask Senate Judiciary to delete blight. Contact Senators P. Smith, Ch., 404 656-0034, psmith@legis.state.ga.us; Harp, V-Ch., 463-3931, setharp@aol.com; Hill, Sec., 656-0150, judson@judsonhill.com; Adelman, 463-2376, dadelman@legis.state.ga.us; Brown, 656-5035; Carter, 463-1363, joseph@josephcarter2004.com; Hamrick, 656-0036, bhamrick@legis.state.ga.us; Meyer von Bremen, 656-0037, mmeyer@legis.state.ga.us; Reed, 463-1379, kreed@legis.state.ga.us; Weber, 463-2260, djweber@bellsouth.net; and Wiles, 657-0406, john@johnwiles.com.

(3) Ask your representative to disagree with Senate changes. That puts bills in a joint conference committee.

(4) Ask House committee chairmen to disagree with Senate version. Phone numbers are listed under P.S., p. 3.

Legislation Poised to Pass Needs Your Contacts

S.B. 603 redefines the term “practitioner” to mean various medical personnel – pharmacists, physicians and nurses – and their work places. To that list of practitioners is added “advanced practice registered nurses”. Such nurses have a master’s degree, national board certification, a Georgia advanced nursing license and use A.P.R.N. as proper professional identification.

It requires all medical practitioners and applicants for licensure or reinstatement to provide their classifiable fingerprints and consent to a criminal background check. Physicians may contract with four full-time advanced practice registered nurses at any one time and authorize them to write prescriptions; receive and give professional samples to patients; order diagnostic studies but *not* interpret them; do patient review, evaluation and follow-up. However, they are not allowed to do abortions or prescribe Schedule I or II controlled substances or drugs intended to cause abortions or allow refills of any drug for more than 12 months. They *may* prescribe birth control pills, hormone replacement therapy or prenatal vitamins and refill for 24 months.

ACTION – Support. Contact House Judiciary Non-Civil Committee Representatives listed under S.B. 456 below.

S.B. 316 prohibits anyone from giving minors a prepaid Internet access product (PPP card) that would allow them to electronically access material illegal for anyone under age 18. This kicks in whether the person providing the card knows or should have known the recipient is a minor. Violators will be guilty of a misdemeanor of a high and aggravated nature.

S.B. 541 requires electronically transmitted obscene material sent from a computer in Georgia to another computer in Georgia to be labeled ADV:ADLT on the first subject line. Violators would be guilty of a felony, could be fined half-million dollars and sent to prison for one to 20 years. Anyone offended by such material could recover half-million dollars in damages.

S.B. 456 makes it illegal to sell/disseminate mobile phone records without subscriber consent.

ACTION – Support S.B. 316, S.B. 541 & S.B. 456. They’re all in the same committee. Contact House Judiciary Non-Civil Committee Representatives Ralston, Ch., 404 656-5943, dralston1@tds.net; Mumford, V-Ch., 656-0254; Setzler, Sec., 656-0126, lesetzler@mactec.com; Abdul-Salaam, 656-0325; Bearden, 656-0287, bearden4house68@aol.com; Bordeaux, 656-6372; Cooper, 656-5024; Franklin, 656-5087; Jacobs, 656-0325, mike@meetmikejacobs.com; Knox, 656-6831, tknox@legis.state.ga.us; Millar, 656-0188; Randall, 656-0109, nrandall@legis.state.ga.us

S.B. 596 provides funding to collect and store afterbirth tissue and fluid that accompanies every baby’s birth. Their stem cells can be extracted for use in research and medical treatment.

Afterbirth tissue and fluid from 130,000 babies delivered in Georgia this year will be thrown in the garbage although it could be used for research and medical treatment of countless health problems. This bill creates the Newborn Umbilical Cord Blood Initiative and Blood bank to collect and store the placenta, umbilical cords and fluids mothers of newborns may donate for scientific research and medical treatment.

ACTION – Support. Ask your representative to vote YES. The Senate passed it 54 to 0 with two not voting.

❖ **P.S. More contacts for property rights:** In addition to contacts listed on page two, ask these House committee chairmen to stand fast for private property rights and delete blight from H.B. 1313 and H.R. 1309. Chairmen are powerful legislators.

House Committee Chairmen Representatives McCall, 656-5115; Harbin, 463-2247; Mills, 656-5099; Manning, 656-7868; T. Smith, 656-5105; Yates, 656-5126; Stephens, 656-5122; Coleman, 656-9210; Lane, 656-5115; Scott, 656-5132; Cooper, 463-8142; Hembree, 656-5146; Walker, 656-5139; Coan, 656-6801; Heard, 657-8441; Knox, 656-6831; Forster, 656-3947; Williams, 656-3904; Willard, 656-5125; Ralston, 656-5943; Chambers, 656-3949; Sims, 656-0287; L. Smith, 656-7149; Day, 656-5096; Lewis, 656-9198; Franklin, 656-5087; Graves, 656-0109; Bridges, 656-5143; Ehrhart, 656-5141; Amerson, 657-8443; Barnard, 656-5138; V. Smith, 656-7153; O’Neal, 656-5103.

To 38 Senators, She's Hanoi Jane

It's true that getting a bill passed is like pushing a rubber band up-hill, but some things sneak through that offend the person with the strongest stomach. That happened March 15th during a ho-hum procedure routinely used to pass resolutions that don't have the force of law. But one that passed in the bunch that day caused blistering reactions that forced a reconsideration vote and an attempt to withdraw the thing before it could be crushed by another vote.

So why all the fuss? It was S.R. 1189 introduced to honor Jane Fonda, called Hanoi Jane by members of the military. Honoring Hanoi Jane offended former military Major and now Senator John Douglas who moved for reconsideration and the next day explained his objections in a speech before the Senate. This is part of what he said.

First, he addressed Vietnam and Vietnam Era Vets by saying, *"Yesterday, this Senate passed S.R. 1189 as it would any other privileged resolution, without fanfare or debate. But as the gavel came down and I heard the name of Jane Fonda, I immediately knew that we had made a terrible mistake that stained the honor not only of this Senate, but of this entire state.*

"I can think of no living American who is less worthy of this recognition than Jane Fonda. She is as guilty of treason as was Benedict Arnold and Tokyo Rose. She betrayed her country in wartime, she worked for our defeat, she visited American POWs not to help them, but as the guest of the enemy and she betrayed them by not reporting back to our government what she had seen. She was photographed in enemy anti aircraft guns aiming at our own pilots, wearing parts of the enemy uniform. ...

"In 1973 about our returning Prisoners of War, she said they were liars, they were not beaten, they were not starved, they were not brainwashed."

Then to the Senate he said, *"Ladies and Gentlemen of the Senate, honoring Jane Fonda, no matter how much good work she might be doing now, would be the equivalent of this Senate spitting on each person who has ever worn the uniform of this country. Let's honor every Georgian who answered the call of our nation to serve in Vietnam and every other war, and never, never forget those who did not return. We cannot, we must not allow this resolution to stand unchallenged. We have a stellar track record of supporting our troops and veterans. Let's not throw all of that away. Please vote YES for reconsideration."*

Someone said Jane Fonda sent word to withdraw it, but under Senate rules it was too late to avoid a reconsideration vote. At the end of the day, they *did* rescind their vote and un-honored Jane Fonda, regardless of her community service since the Hanoi incident. Only one senator voted for it, while 38 others agreed with Senator Douglas and soundly defeated S.R. 1189.

Senator Douglas was swamped with reporters and was featured on the 5:00 and 6:00 o'clock news that afternoon. Earlier that day, Senator Douglas was asked by a radio station, "Isn't it time to forgive Jane Fonda for what she did so long ago?" He replied, *"I'll leave the forgiving to someone else."* Did he mean only God can forgive such a despicable act? Probably.

Georgia Insight is a conservative publication financed entirely by its recipients.