

CUNNINGHAM, VOGEL & ROST, P.C.

legal counselors to local government

**2008 CONSTITUTIONAL
INITIATIVE “EMINENT
DOMAIN” PETITIONS – *THE
GATHERING STORM***

Thomas A. Cunningham
September 8, 2008
MML Annual Conference

A dramatic, stormy sky with dark, swirling clouds and a bright light source on the left, creating a sense of tension and urgency.

WE WON!!!

**2008 CONSTITUTIONAL
INITIATIVE “EMINENT
DOMAIN” PETITIONS – *THE
GATHERING STORM***

November 2008:

Imagine . . .

Your City without:

- **Zoning & Subdivision**
- **Nuisance Regulation**
- **Building & Fire Codes**

November 5, 2008:

**Effective Date for Two
Constitutional Amendments**

Art. I §§ 26, 28 Art. VI § 21

- **Form of Petitions Approved**
 - **140,000+ Signatures Collected**
 - **Filed with Secretary of State**

Potential Effects:

Art. I §26

- Limit “Police Power” Authority
 - “Necessary for a Public Use”
 - After “Just Compensation”

No Exceptions for Health &
Safety, Local Criminal Laws

Potential Effects:

Art. VI §21

- **Eliminates Redevelopment**
- **Substitutes “Common Law” Nuisance**
 - **Court Determined**
 - **Process Could Require a Year or More for City Action**

Art. I §26:

- “That the power of eminent domain shall be vested in no other than the state, or political subdivisions of the state whose officials are **directly responsible** to elected officials and...”

Art. I §26 cont'd:

“...that private property, or the right to the use, sale or enjoyment of private property, shall not be directly or indirectly taken or damaged unless such taking is necessary for a public use and just compensation is rendered...

Art. I §26 cont'd:

“...The value of property may be determined by, but is not limited to, appraisal methods typical to the ordinary course of business and any evidence which would be considered by an appraiser in the ordinary course of business shall be relevant and admissible....”

Art. VI §21:

- “Laws may be enacted...which protect property owners from **public nuisances**, as defined by the **Common Law**. In the event that an owner of property is found by a court of competent jurisdiction to be harboring such a nuisance...

Art. VI §21 cont'd:

“...and has not fully abated the nuisance within a reasonable time **after** final judgment, any political subdivision of the state in which the nuisance exists may expend funds to abate the nuisance...”

Is This Intended?

- Amendments Characterized as “Eminent Domain”
- Ballot Title Language Similarly Limited

It's NOT About Eminent Domain
– It's About Local Police Power

The “Hidden” Agenda:

“the amendments supported by Missouri Citizens (for Property Rights) would apply the state constitutional protection against any uncompensated taking and damaging of property to situations **where government ‘indirectly’ takes or damages property.**”

- Brief Amicus Curiae of Missouri Citizens for Property Rights in *Reagan v. St. Louis County*, No. SC87968 (Mo. 2006) November 8, 2006 (emphasis added)

Will They Be Back?

- **You Can Count On It!**
- **When? Next “General Election”**

“...we should anticipate similar petitions in future years and expect them to continue to strengthen their efforts...”

Missouri Chamber of Commerce and Industry

What Should You Do in the Meantime?

- Educate Yourself
- Educate Your Citizens
- Don't Let "Facts" Go
Unchallenged
-- Spread the Word --

The Time Is *Now*....

News on Other “Fronts”

Clay County Realty Co. v. City of Gladstone - No. SC88924 (Mo. 2008) (en banc)

- “pre-condemnation damages”
- “condemnation blight”
- “aggravated delay” or “untoward activity”
- **Potential Defensive Tactics?**

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