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ROUND THREE !!!



2009 “CPR” CONSTITUTIONAL AMENDMENTS:
EMINENT DOMAIN OR *SLUMLORDS’ BILL OF RIGHTS?*

TALKING POINTS - SELF EDUCATION



PREPARED AND PRESENTED BY:
THOMAS A. CUNNINGHAM, ESQ.
CUNNINGHAM, VOGEL & ROST, P.C.
legal counselors to local government
75 W. LOCKWOOD, SUITE ONE
ST. LOUIS, MISSOURI 63116
314.446.0800
tom@municipalfirm.com
www.municipalfirm.com

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**ROUND THREE!!! 2009 “CPR” CONSTITUTIONAL AMENDMENTS:
EMINENT DOMAIN REFORM OR A SLUMLORDS’ BILL OF RIGHTS?**

This latest set of so-called “eminent domain” initiative amendments to our state constitution are *really* a **stealth attack** on local property value protections

- Under the guise of “eminent domain reform,” two radical amendments will require that local regulatory actions that protect property values:
 - **Must first be determined by a court to be “necessary for a public use” (e.g., highways, sewers, etc.)¹ and, even then**
 - **Must be paid for with taxpayer dollars, prior to initiating any remedial action²**
- Among the local protections Missourians could lose:
 - ✓ **Zoning controls: No more limits on **adult entertainment uses, feed lots, junkyards, landfills**, etc.;**
 - ✓ **Nuisance regulations: Dangerous buildings, weeds, debris, junked cars? – Good luck, neighbors! You are “on your own;”**
 - ✓ **Building & Fire Codes: Buyer beware when purchasing a home!**
- These amendments instead limit local protections to “public nuisances, as defined by the Common Law.³” This means that, even if a city could take action:
 - **First, a court would have to agree that a nuisance is present;**
 - **Then, a final judgment would have to be rendered and all appeals would have to be exhausted;**
 - **And even then, a “reasonable time” after the final judgment would have to pass...**

In other words, more than a year would pass before any relief could be provided.

- **And, this same determination would have to be made for each protective measure challenged by a “reformer.” Result? Delay and taxpayer costs.**

¹ So far, courts have viewed the term “public use” as synonymous with “public purpose” (e.g., regulation for the public benefit such as zoning, building and fire codes). This view is the basis of the holding in *Kelo v. City of New London* — the very holding that proponents of these measures seek to overturn! Applying these new amendments, the traditional “public purpose” test could be tossed aside and only those laws that are necessary to further a traditional public use (such as highways, sewers, and other physical infrastructure) would be permitted. No health and safety regulation could survive this approach. Note that this is the precise result the “reformers” advocate in their literature.

² Amendments provide that “Until a final legal determination of the legitimacy of the taking is established and until compensation shall be paid to the owner,...the property shall not be disturbed.”

³ These “reformers” know that there is no such thing as a “common law public nuisance.” By definition, a “public nuisance” is established by ordinance or statute not by “common law” judges. The resulting confusion provides advocates for slumlords and other “bad neighbors” arguments to blunt or eliminate all nuisance protections.

CPR CONSTITUTIONAL INITIATIVE AMENDMENTS: A SLUMLORDS' BILL OF RIGHTS?

- You might wonder, “Why here in Missouri?” These self-styled “property rights advocates” tell us this radical action is *necessary* because Missouri is the worst state for eminent domain abuse. But look at the facts:
 - ✓ Even these advocates admit that Missouri currently has more provisions restricting eminent domain than any other state!
 - ✓ Since the 2006 eminent domain reforms and the *Centene* decision in 2007 -- only eight relevant cases⁴ in three years have been reported State-wide!⁵
 - ✓ Missouri actually allows awards of money damages for pre-condemnation damages -- Even before an eminent domain action is filed!
- Is THIS justification for a constitutional amendment? Why, then, the sustained drumbeat year after year? Who does all this benefit?

....No one, it seems, but Slumlords and other “bad neighbors!” *Could this be what is really intended?* Here, then, are the real results of these so-called “reforms:”

- Bad neighbors will turn every local action to protect property values into a Condemnation Lawsuit (local governments would have to replace code enforcement officials with lawyers!)
 - Even if permitted to do so, under these amendments no local government could afford to protect our property values⁶
 - To protect their property, owners would have to bear the costs of their own private nuisance lawsuits
- These radical proposals are, in fact, a “**wolf in sheep’s clothing**” - under the cloak of reform, we are seeing a “stealth attack” on our local property values and protections

What can you do? Protect yourself and your property! Tell your Neighbors!

DON'T LET THIS SLUMLORD SMOKESCREEN STEAL OUR PROPERTY VALUES!

Don't sign -- Vote NO!

⁴ By “relevant,” we mean those reported cases that question the legality/authority of a municipality’s exercise of eminent domain for economic development or redevelopment purposes to acquire fee interests in property (e.g., entire parcels) within “blighted” areas. Although many more municipal condemnation cases are filed annually in Missouri, the vast majority involve public roads, sewers, etc. (which “reformers” characterize and accept as “truly public” uses) or simple easements in which the property owner retains the fee interest. The remaining cases are straightforward disputes over the amount of compensation to be paid.

⁵ Of the 8 reported “redevelopment” condemnation cases between 2007 & present, 6 involved determinations of “blight” (5 were determined by reviewing courts to meet statutory “blight” definitions), 1 determined the authority of third class cities to exercise such condemnation powers, and 1 recognized claims for “pre-condemnation” damages.

⁶ Think it can’t happen? Think again. A similar Measure 37 passed in Oregon in 2004 with the support of these same groups (containing measures so draconian that Oregon voters two years ago all but repealed most of the provisions) have resulted in a single claim (not the largest) of \$850,000 and total claims filed and approved of nearly \$20 Million!