

PRESENTATION OF CHIEF DEPUTY ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE'S TESTIMONY

THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS

IN RE: BILL NO. 36-0070

**COMMITTEE ON DISASTER RECOVERY, INFRASTRUCTURE,
AND PLANNING**

JUNE 16, 2025

Good afternoon, Chairperson Senator James, Committee on Disaster Recovery, Infrastructure, and Planning members, non-committee Senators in attendance, legislative staff, and the viewing and listening audience. My name is Ian Clement, and I am the Chief Deputy Attorney General of the Virgin Islands Department of Justice. I am honored to be invited to provide a few remarks on Bill No. 36-0070 on behalf of Attorney General Gordon C. Rhea, as proposed by Senator Alma Francis Heyliger.

Bill No. 36-0070 proposes to amend Title 28 of the Virgin Islands Code by adding Section 423, which would require that properties acquired through eminent domain be devoted to the public use for which it was acquired, not more than 25 years after the acquisition. The proposed bill would also allow the previous owner to file a petition for the return of the property if the property is not devoted by the

25-year deadline. The Government would be required to return the property upon receipt of the original compensation from the Government. Finally, under the Bill, the Government would be prevented from instituting another condemnation to acquire the same property for not less than 10 years after the petition is granted. The Department of Justice recommends passage of the Bill with a few caveats.

By way of introduction, property rights are guaranteed by the Takings Clause of the 5th Amendment to the United States Constitution and Section 3 of the Revised Organic Act of 1954, as amended (Bill of Rights), which mandates that private property not be taken without just compensation. Under Title 28 of the Virgin Islands Code, Chapter 19, private property can be condemned for public use. The government may take property in fee simple if the use is for government buildings or grounds, or permanent buildings.¹ Under Section 413, just about any private property may be condemned. However, interestingly, under subsection (3), property previously appropriated for public use may not be further condemned under eminent domain unless the public purpose of the condemnation is greater than that of the original appropriation. But, under the precedent set by the United States Supreme

¹ 28 V.I.C. § 412. Subsection (1) also permits fee simple takings for reservoirs and dams. But according to the comments to the Paragraph, the statutory scheme was lifted from the Code of Alaska in 1921.

Court in *Kelo v. City of New London*, the Government is not required to state with reasonable certainty that the desired purpose will accrue.

The *Kelo* Decision had a dramatic effect on reconveyance statutes nationwide. It also raised numerous questions. If the Government abandons the stated purpose of the condemnation, may it sell the land, or does the condemnee have a right to regain the condemned property? If the condemnee has a right to regain the land, what is the time limit, and what is the purchase price? Under common law, if the Government obtains the land in fee simple rather than an easement, the condemnee has no further right to the land even if the public use is abandoned or the property is devoted to a different use.

Before *Kelo*, some states provided limited rights to recovery for condemnees under certain circumstances (often relating to highway or street purposes). For example, the Rhode Island Constitution provides that condemnees of lands taken for highways, streets, etc., have the first right to purchase the land upon terms that the state, city, or town is willing to sell or lease the land.² Some states granted broader rights to condemnees. In Texas, for example, if the property is not used for its stated public use within 10 years, the condemnee or their successor in interest may

² R.I. Const. Art. VI, § 19. (See also WASH. REV. CODE § 47.12.063(2)(E)(2007); MINN. STAT. § 161.44(2)(2006); N.C. GEN. STAT. § 136-19(a)(2006)).

repurchase the property at its fair market value at the time that the public use was cancelled.³ Kentucky has a shorter waiting period of 8 years.⁴ New York's waiting period is the same as Texas's, but it makes a distinction between improved and unimproved land after condemnation. If the land is unimproved, and the Government abandons the stated project within ten years of the condemnation, the Government must offer the condemnee a right of refusal to purchase the property at the fair market value of the time of the offer.⁵ New Hampshire has the same time limit, but the condemnee may purchase at the condemnation price.⁶

After *Kelo*, many states enacted significant statutory or constitutional reforms. Louisiana, for example, amended its constitution so that, with limited exceptions, condemned property may not be sold within thirty years of its taking unless the property is first offered to the condemnee or its successor in interest at current fair market value.⁷ Some ballot measures failed. In California, voters rejected Proposition 90, which, among other things, would have amended the California state constitution to provide that if condemned property ceased to be used for the stated

³ Tex. Prop. Code § 21.101(a).

⁴ KRS § 416.470(1).

⁵ NY CLS EDPL § 406(A).

⁶ N.H. Rev. Stat. Ann. § 498-A:12.

⁷ LA. CONST. art I, § 4(H)(1).

public use, the condemnee or its beneficiary or heir would have the first right to repurchase the property for fair market value.⁸

This Committee should consider whether a 25-year waiting period is appropriate in the Virgin Islands, based on empirical data about the government's timeline for completing projects and whether land is used for a dedicated purpose. This Committee should also consider whether certain devoted purposes should be afforded preference over others. Should condemnations for public roads or buildings be treated differently from condemnations for private development, and if so, how? This Committee should consider Title 28 of the Virgin Islands Code, Section 413(3), which contemplates the condemnation of land already appropriate to public use. In such a situation, who is the condemnee? If a semi-autonomous agency owns the land, may the government at-large apply this law?

What should the repurchase price be for a partial condemnation where the landowner kept possession of the remainder? Should the repurchase price contemplate any severance damages previously received by the condemnee? In that scenario, must the condemnee wait 25 years?

⁸ California Prop. 90, § 3 (proposed text), *available at* http://voterguide.ss.ca.gov/pdf/prop90_text.pdf.

The above represents just a few of the issues that this Committee should contemplate. There are too many to recount here. Nonetheless, the Department of Justice applauds this Committee's commitment to balancing the property rights of citizens with the need for development in the Territory. It supports the ultimate passage of this Bill. This concludes my written testimony.
