



# Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

August 2006

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## The Aftermath of *Kelo v. City of New London*

Steven S. Kaufman, William W. Jacobs, and Robin M. Wilson

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<http://www.thompsonhine.com/news/viewpub.php?pageID=192&pgID=9>

The Ohio Supreme Court is set to render the most important eminent domain decision in Ohio in 50 years, and the decision is being defined as a bellwether that other states may follow. Last Summer, the U.S. Supreme Court rendered its 5 to 4 landmark eminent domain decision in *Kelo v. City of New London*. 1255 S. Ct. 2655, 2005 U.S. LEXIS 5011 (June 23, 2005). In January, 2006, the Ohio Supreme Court heard oral argument in the case of the *City of Norwood v. Horney*, becoming the first state supreme court to address the issues of *Kelo* since the decision. The facts of the Ohio case are similar to the facts of *Kelo*. In *Horney*, the First District Court of Appeals upheld the City of Norwood's authority to use eminent domain to take property for redevelopment purposes located in the Cincinnati suburb from

unwilling sellers that was not blighted, but instead was in danger of "deteriorating" into blight. 161 Ohio App.3d 316 (1st Dist. May 2005). A decision from the Ohio Supreme Court on the efficacy of that decision could come any day.

In *Kelo*, the U.S. Supreme Court ruled that economic development is a valid public purpose for which private property can be taken, just as it can be taken for already recognized public purposes such as roads, bridges, and public buildings.

Congress has responded to the *Kelo* decision by introducing a number of

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## Wander No More: Locating Federal Legislative Information

Tom Enneking, Assistant Law Librarian

Searching for federal legislative information reminds one of Moses searching for the Promised Land – he knows it exists, but he doesn't know where to find it. Moses spent forty years wandering the desert in search of his goal. Hopefully, this article will provide you with some guidance in searching for federal legislative information and prevent you from wandering like Moses.

There are three major sources of federal legislative information: the *United States*

*Statutes at Large*, the *United States Code Congressional and Administrative News* (USCCAN), and Thomas, the web page of the Library of Congress – all of which are available at the Cincinnati Law Library.

### United States Statutes at Large

Nearly one year after the conclusion of each session of Congress, all slip laws are collected and republished as new volumes of the *United States*

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## The Cincinnati Law Library Association

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*Aftermath of Kelo, continued from page 1*

new bills aimed at curtailing the reach of *Kelo*. State legislatures, including Ohio's, also have responded with new legislation, moratoriums on eminent domain, and proposals to amend state constitutions to preclude takings such as the one in *Kelo*. Business also has reacted. The nation's ninth largest bank, the North Carolina based BB&T, announced that it will refuse to lend money to commercial developers who plan to build on land seized from private citizens in protest against the government's power to make compulsory purchases of land. The reaction to the *Kelo* decision is unprecedented; it will most likely rage on for years in the courts, Congress, state legislatures, and in the public discourse. One noted columnist, George F. Will, in *Newsweek*, cited the *Kelo* decision as "the best thing that has happened since the New Deal to energize the movement to strengthen property rights."

**Facts of the *Kelo* Decision**

In *Kelo v. City of New London*, the U.S. Supreme Court considered whether a city's decision to take private property solely for the purpose of economic development satisfies the "public use" requirement of the Fifth Amendment. *Kelo* involved 90 acres of privately-owned land on which the City of New London, Connecticut wanted to develop for the stated purpose of "revitalizing an economically distressed city, including its downtown and waterfront areas." The City estimated that the development would create "in excess of 1,000 jobs" and increase tax and other revenues. The City purchased most of the property earmarked for the project from willing sellers and then initiated condemnation proceedings against those who refused to sell. Those owners sued, claiming, among other things, that the government's seizure of their properties violated the "public use" restriction in the Fifth Amendment's Takings Clause.

**Significance of the *Kelo* Decision**

In *Kelo*, the U.S. Supreme Court determined that taking property solely for economic development qualifies as a public use. Writing for the majority, Justice Stevens concluded that a "public purpose" such as creating jobs in a depressed city can satisfy the Fifth Amendment. No prior decision by

the U.S. Supreme Court has authorized taking of property by eminent domain solely for economic development purposes. Pursuant to *Kelo*, there is no longer any need for an area to be declared "blighted" before it can be taken pursuant to an economic development plan so long as the plan is deliberative and the case is made that the taking is for the public's purpose. In a scathing dissent, retired Supreme Court Justice Sandra Day O'Connor voiced her dismay with the Court's *Kelo* decision stating that the ruling could be used to replace "any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

**Legislative Initiatives in the Aftermath of *Kelo*: Ohio and Other State Legislation**

The majority in *Kelo* wrote, "Nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power." State legislatures, including Ohio's, immediately seized upon the U.S. Supreme Court's invitation. On November 16, 2005, Governor Bob Taft signed Substitute Senate Bill 167 imposing a one year moratorium banning the use of eminent domain to take property that is not within a blighted area, as determined by the local public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person. The bill also set monetary penalties for the prohibited takings, and established an eminent domain task force which has released an initial recommendation that a statewide standard of blight be established.

Additionally, some Ohio legislators are lobbying to amend Ohio's 1912 constitution which gives cities and villages the power of home rule (allowing them to set their own standards for the taking of private property) so as to require municipalities to follow state law when taking property. In addition to Ohio, Alabama, Delaware and Texas enacted laws last year limiting the use of eminent domain. Legislatures in Michigan and New Hampshire have passed constitutional amendments, similar to the one Ohio is considering, which are scheduled to go on the ballot in November 2006 for voter approval. This year, 42 states have already proposed or enacted similar legislation or amendments to their state constitutions.

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### Federal Legislation

Congress has included language in the Federal Appropriations Act, which has been signed into law for the 2006 fiscal year, precluding funding for projects that use eminent domain for economic development without a traditionally recognized public purpose. Partly in response, the U.S. Conference of Mayors sent a letter to Congress asking that it move slowly and thoughtfully before enacting legislation that will alter the right of states and localities to determine the use of eminent domain and undermine the ability of state and local governments to promote economic development.

Several bills are pending in Congress aimed at limiting the right of the government to take private property in the wake of *Kelo*. On November 3, 2005, the U.S. House of Representatives passed the "Private Property Rights Protection Act of 2005," sponsored by U.S. Rep. James Sensenbrenner (R-WI) and referred it to the U.S. Senate where it is now being considered by the Committee on the Judiciary. The bill would prohibit state and local governments from exercising eminent domain for the purpose of economic development, and would cut federal funding for those who take land for economic development purposes.

Further Senate action on the bill has not been scheduled but is possible in the coming months. Another bill, entitled the "Protection of Homes, Small Business, and Private Property Act of 2005" (S. 1313), sponsored by Senator John Cornyn (R-TX) was introduced last June just after the *Kelo* decision, and has also been referred to the Judiciary Committee. The Cornyn Bill would define "public use" to exclude economic development, restrict federal use of eminent domain to "public use" only, and prevent states or their political subdivisions from using federal funds in any way to exercise eminent domain for economic development purposes.

Other bills are being considered by Congress including the "Private Property Defense Act of 2006" being drafted by Senator Arlen Specter (R-PA), who chairs the powerful Senate Judiciary Committee which will decide the fate of the pending eminent domain legislation.

### Recent Post-Kelo Court Decisions

Cases of note recently decided that have cited to the U.S. Supreme Court's eminent domain decision in *Kelo* include:

*Rumber v. District of Columbia*, a D.C. case in which the court denied the property owners complaint for injunctive relief stating that the *Kelo* Court's holding actually supports the taking in that it recognizes that economic revitalization is indeed a public use. 2005 U.S. Dist. LEXIS 16935 (July 14, 2005 District Court, D.C.);

*HTK Management v. The Seattle Popular Monorail Auth.*, a Washington State case in which the city of Seattle sought to appropriate more land than was needed for the Seattle monorail despite the owner's assertion that only a leasehold interest should be taken in the remainder. The Washington Supreme Court upheld the taking and distinguished the case from *Kelo* stating that unlike the taking in *Kelo* the taking here was for a monorail, an "historic public use." 121 P.3d 1166, (Washington, Sept. 2005);

*The Redevelopment Authority of The City of Philadelphia v. Smith*, a Pennsylvania case in which the Commonwealth Court held invalid the taking of land that was blighted to give it to a private religious organization to build a school based in part on *Kelo*'s pronouncement that a City cannot take land from one private person to give it to another private entity and that the redevelopment plan in *Kelo* benefited all residents as a whole and not only a private group. 2006 Pa Commw. LEXIS 31 (Penn. Commonwealth Court, Feb. 6, 2006);

*Rhode Island Economic Development Corporation v. The Parking Company, L.P.*, a Rhode Island case in which the court vacated the taking of a garage for airport parking and ordered the property to be returned to the owner recognizing that while *Kelo* upheld a taking for economic development, it stressed the condemning authority's responsibility of good faith, due diligence and methodical, deliberative approach in formulating a development plan. 2006 R.I. Lexis 22 (Feb. 23, 2006 R.I.).

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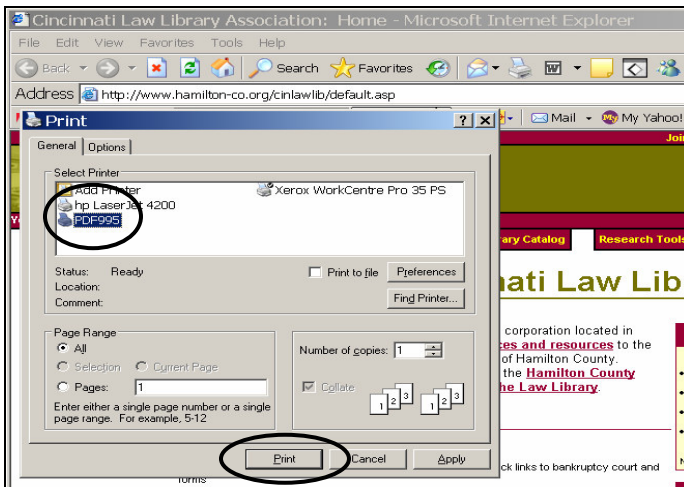
# Saving a Document as a PDF

Julie Koehne, Assistant Law Librarian

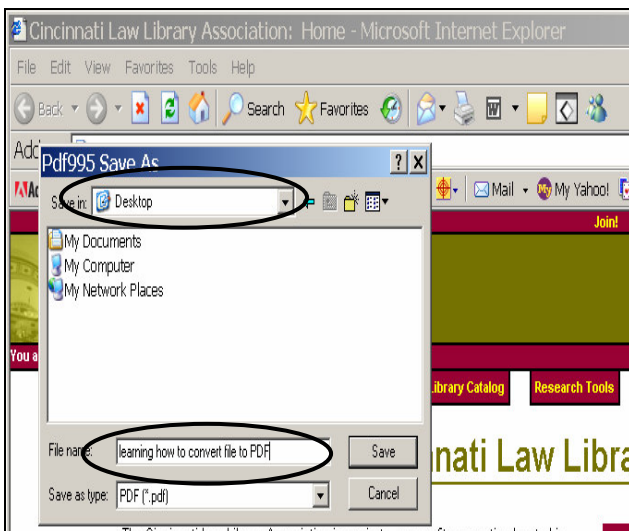
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1. When you have found the page you desire to print select the File drop down menu.
2. Choose Print.
3. Highlight the PDF995 printer by clicking on it once.
4. Click the Print button.



5. After a few seconds you will be asked where to save the PDF and what the filename is. It is recommended to save any documents to the desktop or your own media.



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# Member Benefits

All members have access to the following valuable resources and services:

**Circulation privileges** to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online Law Journals** and **Federal Register**, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

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Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

Aftermath of *Kelo*, continued from page 4

## Conclusion

In *Kelo*, the majority determined that based on the law as it stands today, courts must give deference to local governments' decisions to take property for economic development but within certain specified guidelines. Based on the aftermath of the *Kelo* decision, it is likely that the future will include legal challenges to that pronouncement and legislation of uncertain consequence. Stay tuned and fasten your seatbelts!

## For More Information

In the meantime, if you would like more information about the *Kelo* decision, or any other matter, please contact your primary Thompson Hine LLP lawyer or a member of our Land Use Team:

Steven S. Kaufman - 216.566.5528  
William W. Jacobs - 216.566.5533  
Robin M. Wilson - 216.566.5572

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Wander No More, continued from page 1

*Statutes at Large*. This is the official source for the laws and resolutions passed by Congress. Commonly called the “session laws” of Congress, this title contains such items as Private Laws, Concurrent Resolutions passed by Congress, Presidential Proclamations, as well as lists and indexes. Before the GPO publishes the bound volumes, editors may make corrections and other edits.

The numbering of the Volumes of the *Statutes at Large* is consecutive, but arbitrary and without any relationship to a particular volume or year in which the acts were approved. Beginning with Volume 18, however, larger volumes were divided into parts, which caused some confusion among references to a physical book and volume of the *Statutes*.

In 1957, the 85<sup>th</sup> Congress, compilers began employing the modern numbering system: a Congress-number prefix combined with the Public or Private Law number, e.g 85-101. The *Statutes at Large* makes no distinction between laws that originate as bills or joint resolutions; both are assigned public law numbers. You may encounter a second citation: 85 Stat. 334. This is an alternative citation and represents a second point of access to the information contained in the *Statutes*.

Some of the documents you may encounter in the *Statutes at Large* include:

- Public Laws: the chronological cataloging of the public laws passed by Congress.
- Private Laws and Resolutions: enacted to assist citizens injured by government programs or who are appealing an executive agency ruling.
- Indexes: In the fifth volume of each biennial Congress are a subject index and a Popular Name Index.

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**United States Code Congressional and Administrative News (USCCAN)**

The *USCCAN* is a useful source when searching for the texts of federal public laws and committee reports. All public laws and selected committee reports from 1948 to present are printed in the *USCCAN*, first in monthly pamphlets and then in bound volumes after each session of Congress. Public laws and legislative history notes usually appear in each pamphlet in separate sections.

The organization of the public law section is by public law number. Bill numbers, dates and titles appear before the text of the law. The bill entries also include legislative history notes, which reference the particular page number under the title of the act. The text of the public law is printed just as it appears in the *Statutes at Large*. In fact, the *Statutes at Large* citation is printed at the bottom of the *USCCAN* page.

The legislative history section of the *USCCAN* is also organized by public law number. The title of the act, dates of consideration and passage, committee report numbers, committee names, bill numbers, Congressional Record volume numbers, public law number, and *Statutes at Large* citation appear on the first page. The legislative history section is also annotated with references to House and Senate Reports.

To assist in locating items, the *USCCAN* includes tables in the last bound volume of each Congressional Session. You will find tables under the following headings:

- Public laws in numerical page number order;
- United States Code Classifications;
- United States Code Amended Sections;
- Legislative histories;
- Signing statements;
- Bills and Joint Resolutions Enacted;
- Federal Regulations, listing amendments;
- Proclamations;
- Executive Orders;
- Pending Legislation; and
- Popular Name Acts, a listing of acts.

**THOMAS: The Library of Congress' Web Page**

THOMAS (<http://thomas.loc.gov/>), named after Thomas Jefferson, was launched in January 1995,

at the start of the 104<sup>th</sup> Congress. The leadership of that Congress directed the Library of Congress to make federal legislative information available free of charge to the public. Since its inception, THOMAS has expanded the scope of its offerings beyond legislative information.

From the homepage, you can search the current legislative session by keyword or bill number. The Advanced Bill Search function (<http://thomas.loc.gov/home/c109query.html>) allows you to search from the 101<sup>st</sup> Congress to present, for specific bills, and for bills from either the House or Senate. You may also employ a number of date restrictions, such as limiting searches to the first or second session, or to specific dates.

You may search bill summaries and status from 1973 (93<sup>rd</sup> Congress) to the present. Like all of THOMAS' search pages, you may search by keyword or by bill number, but you can browse by title, vetoed bills, and sponsor summaries. Furthermore, you can browse by document type, such as different types of resolutions and amendments from both houses of Congress.

For Public Laws, you may search 1973 (93<sup>rd</sup> Congress) to the present, but you can access the full text of bills from the 101<sup>st</sup> Congress to present. This database contains bill summary and status records for each bill that became a public law. Laws are listed both by law number order and in bill number sequence - House joint resolutions and House bills, followed by Senate joint resolutions and Senate bills.

**Conclusion**

Locating federal legislative information may seem daunting at first glance, but once you familiarize yourself with resources, you see that it's not a terribly difficult task. With some guidance, you can navigate your way through the *U.S. Statutes at Large*, the *USCCAN* and through the Library of Congress' web page. Imagine if Moses had the tools at his disposal to find the Promised Land.

## Ethics Pitfalls Using Technology CLE: August 31, 2006

Catherine Reach, the director of the American Bar Association's Legal Technology Resource Center will give an overview of ethical pitfalls lawyers face in using technology. Learn about issues related to metadata in your work product, potentially risky uses of e-mail, and how document security poses risks to lawyers, where technology and professional responsibility intersect. Ms. Reach will relate the technology challenges to the model rules and discuss how states are applying their ethical rules to these issues.

Join us at the Law Library in the Judge Robert Kraft Boardroom on Thursday, August 31, from 12:30 to 2pm. A boxed lunch will be provided from 12:30-1, and the seminar will start at 1pm.

The CLE seminar is free to members. Non-members are \$50. Please RSVP to Madonna Stoneking at 946-5301 or [mstoneki@cms.hamilton-co.org](mailto:mstoneki@cms.hamilton-co.org).

## August 2006 Law Library Newsletter

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