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**Statement  
of  
The National Association of REALTORS®  
to  
United States House of Representatives  
Committee on the Judiciary  
Subcommittee on the Constitution**

**September 22, 2005**

**RE: The Supreme Court's *Kelo* Decision and Potential Congressional Responses**

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The National Association of REALTORS® , “The Voice for Real Estate,” is America’s largest trade association, representing over 1.2 million members, including NAR’s institutes, societies and councils, involved in all aspects of the residential and commercial real estate industries.

Our membership is composed of residential and commercial REALTORS®, who are brokers, salespeople, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,600 local associations/boards and 54 state and territory associations of REALTORS®.

The protection of the right of citizens to be secure in their ownership of property is a core value of REALTORS® . NAR believes it is an essential condition for the operation of our free enterprise system and a first principle of the social contract upon which our democratic system of government relies for legitimacy. Any erosion of this protection, real or perceived, is cause for serious alarm. So much depends on it.

Therefore, REALTORS® greeted the news of the Supreme Court’s decision in the *Kelo* case with understandable alarm. NAR had filed an *amicus* brief urging the court to apply a higher level of scrutiny, to insist that the government provide persuasive and objective evidence to justify its use of eminent domain in cases where property is not taken for public ownership and use, but merely to advance a public purpose. Our arguments were rejected by the majority.

Since the announcement of the *Kelo* decision we have heard from our members about it. In general, the reaction is anger, disbelief, and chagrin. But there are a few who support the decision. Rather than rely on random responses to gauge our members’ reaction, NAR commissioned a scientific opinion poll of REALTORS® nationwide on the topic of eminent domain in general. This poll was conducted in late August and has a margin of error of +/- 2.8 %. Some the key finding are:

- 66% of REALTORS® do not support the *Kelo* decision; almost half are **strongly** opposed
- 86% would support condemnation of **blighted** properties that pose a risk to public health or safety
- 53% said eminent domain **should not** be used to take non-blighted properties, even if required by an economic development plan
- 58% responded that “just compensation” should include more than fair market value
- 69% said **each state** should have the power to make its own laws about eminent domain, while 29% said the Congress should establish standards for the proper use of eminent domain

The last finding of the survey underscores the point NAR wishes to make today. Many are disappointed with the Court’s decision and many want to create a solution. That is understandable, healthy and welcome. But we should be careful that the solution does not create unintended consequences we will live to regret. NAR feels that some of the solutions



being discussed in the Congress could unintentionally harm important principles of federalism, such as the constitutional division of power between the federal and state governments.

In our view, matters concerning land use, economic development, blight and the like are essentially local issues better handled at the local and state level. These levels of government are closer to the issues and to the people affected. The federal government should preempt state rules rarely and only when a significant federal interest is at stake. Our research indicates that in the area of eminent domain, the states have not been lax. In fully half the states a taking such as occurred in New London would not have been legal due to restrictions in the state constitution, statutes or case law. In the wake of *Kelo* three states, Delaware, Alabama, and Texas, have already amended their laws to further restrict the use of eminent domain. Many other state legislatures, including Connecticut's, are preparing to act in their next session to toughen their eminent domain laws. NAR applauds this effort and encourages our state REALTOR® Associations to work with legislatures to craft reasonable reforms.

Realtors believe it is preferable that states be given the chance to devise their individual solutions appropriate to conditions in the respective states rather than have the federal government impose a "one-size-fits-all" solution from above. An appropriate federal role might be to provide technical assistance grants to the states to help them get the job done. For its part, NAR, is doing just that through our state affiliates. For example, NAR has provided analysis and suggested improvements for eminent domain reform bills in Pennsylvania and New York.

While the *Kelo* decision is troubling and the impulse to act is strong, NAR urges the Congress to exercise restraint. The states are moving rapidly to correct this problem. At the very least, Congress should take a wait and see attitude while the process works itself out at the state level.

NAR is grateful for the opportunity to make its views known to the Subcommittee. We would welcome the opportunity to work with the Subcommittee on this issue.

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