

109TH CONGRESS  
1ST SESSION

# S. 1895

To return meaning to the Fifth Amendment by limiting the power of eminent domain.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2005

Mr. ENSIGN (for himself, Mr. INHOFE, and Mr. DEMINT) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To return meaning to the Fifth Amendment by limiting the power of eminent domain.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property  
5 Rights Protection Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The founding fathers held dear the funda-  
9 mental rights associated with the ownership of pri-  
10 vate property.

1           (2) In 1788, James Madison recognized the  
2 connection between freedom and property rights  
3 when he wrote in Federalist No. 10 that the right  
4 to own property originates in free thought and that  
5 it is the Government’s job to protect such rights.

6           (3) In 1792, in an essay entitled “Property”,  
7 James Madison wrote, “where an excess of power  
8 prevails, property of no sort is duly respected. No  
9 man is safe in his opinions, his person, his faculties,  
10 or his possessions.”.

11           (4) In the “Property” essay James Madison  
12 also wrote, “Government is instituted to protect  
13 property of every sort. . . . This being the end of  
14 government, that alone is a just government, which  
15 impartially secures to every man, whatever is his  
16 own.”.

17           (5) In 1775, the Virginia patriot Arthur Lee  
18 wrote, “The right of property is the guardian of  
19 every other right, and to deprive a people of this, is  
20 in fact to deprive them of their liberty.”.

21           (6) In 1783, Benjamin Franklin wrote, “All the  
22 property that is necessary to a Man, for the Con-  
23 servation of the Individual and the Propagation of  
24 the Species, is his natural Right, which none can  
25 justly deprive him of.”.

1           (7) In 1787, John Adams wrote, “The moment  
2 the idea is admitted into society that property is not  
3 as sacred as the laws of God, and that there is not  
4 a force of law and public justice to protect it, anar-  
5 chy and tyranny commence.”.

6           (8) In 1795 Supreme Court Justice William  
7 Patterson wrote, in the case *Vanhorne’s Lessee v.*  
8 *Dorrance*: “From these passages it is evident; that  
9 the right of acquiring . . . property, and having it  
10 protected, is one of the natural, inherent, and  
11 unalienable rights of man. Men have a sense of  
12 property: Property is necessary to their subsistence,  
13 and correspondent to their natural wants and de-  
14 sires; its security was one of the objects, that in-  
15 duced them to unite in society. No man would be-  
16 come a member of a community, in which he could  
17 not enjoy the fruits of his honest labor and industry.  
18 The preservation of property then is a primary ob-  
19 ject of the social compact, and . . . was made a fun-  
20 damental law.”.

21           (9) In 1798, the Supreme Court considered the  
22 case of *Calder v. Bull*, in which Justice Samuel  
23 Chase recognized that government action which is  
24 “contrary to the great first principles of the social  
25 compact, cannot be considered a rightful exercise of

1 legislative authority” which he explained with the  
2 following example: “. . . a law that takes property  
3 from A and gives it to B: It is against all reason and  
4 justice, for a people to entrust a Legislature with  
5 such powers . . . .”.

6 (10) On March 6, 1860, Abraham Lincoln stat-  
7 ed that the institution of slavery is reprehensible be-  
8 cause it offends the right of man to keep the fruits  
9 of his own labor and thus denies man the right to  
10 own property.

11 (11) In a stark departure from the honor and  
12 recognition given individual private property rights  
13 under the United States Constitution, the United  
14 States Supreme Court in the case of *Kelo v. City of*  
15 *New London*, issued a decision on June 23, 2005,  
16 by a 5 to 4 vote, that eminent domain may be used  
17 to seize property for the purpose of private economic  
18 development.

19 (12) Justice Sandra Day O’Connor rightly stat-  
20 ed in her dissenting opinion in *Kelo*, “the govern-  
21 ment now has license to transfer property from  
22 those with fewer resources to those with more. The  
23 Founders cannot have intended this perverse re-  
24 sult.”.

1           (13) Justice O'Connor further wrote, “any  
2 property may now be taken for the benefit of an-  
3 other private party, but the fallout from this deci-  
4 sion will not be random. The beneficiaries are likely  
5 to be those citizens with disproportionate influence  
6 and power in the political process, including large  
7 corporations and development firms.”.

8           (14) Justice O'Connor also wrote about the ef-  
9 fects of the Kelo ruling: “To reason, as the Court  
10 does, that the incidental public benefits resulting  
11 from the subsequent ordinary use of private property  
12 render economic development takings ‘for public use’  
13 is to wash out any distinction between private and  
14 public use of property—and thereby effectively to  
15 delete the words ‘for public use’ from the Takings  
16 Clause of the Fifth Amendment.”.

17           (15) Justice Clarence Thomas wrote, “I do not  
18 believe that this Court can eliminate liberties ex-  
19 pressly enumerated in the Constitution.”.

20           (16) The City Council of New London, Con-  
21 necticut, created the New London Development Cor-  
22 poration (“NLDC”) as a 501(c)(3) non-profit orga-  
23 nization and authorized the NLDC to purchase  
24 property or to acquire private property for economic

1 development purposes by exercising eminent domain  
2 in the City's name.

3 (17) NLDC's actions, which were the subject of  
4 the lawsuit in the Kelo case, were made possible by  
5 numerous Federal grants and direct appropriations,  
6 including: \$2,000,000 from the Economic Develop-  
7 ment Administration in 2001, \$750,000 from the  
8 Department of Labor in 2000, \$125,000 from the  
9 Fannie Mae Foundation in 2000, and an earmark of  
10 \$100,000 in the FY2001 VA-HUD appropriations  
11 Act (Public Law 106-988).

12 (18) The Kelo decision stands as a repudiation  
13 of the principle of the Fifth Amendment, as em-  
14 bodied by the writings of James Madison, Benjamin  
15 Franklin, John Adams, and Abraham Lincoln, and  
16 also as had previously been recognized by the Su-  
17 preme Court.

18 (19) Congress has encouraged the State and  
19 local governments' practice of using eminent domain  
20 to further economic development by using the Fed-  
21 eral purse strings to incentivize such practices  
22 through Federal grants and direct appropriations.

23 (20) Congress has also created extensive tax-  
24 based incentives to encourage State and local gov-

1 ernments to condemn private property for economic  
2 development purposes.

3 (21) In a joint amicus brief, the National Asso-  
4 ciation for the Advancement of Colored People and  
5 the American Association of Retired Persons stated,  
6 “The takings that result [from the Court’s decision  
7 in Kelo] will disproportionately affect and harm the  
8 economically disadvantaged and, in particular, racial  
9 and ethnic minorities and the elderly.”.

10 (22) The Supreme Court’s decision to expand  
11 eminent domain is also troubling for religious insti-  
12 tutions, as this ruling will disproportionately nega-  
13 tively impact these institutions as they are often  
14 non-profit and almost universally tax-exempt. As a  
15 result, the property owned by religious institutions is  
16 particularly vulnerable to this type of taking, as the  
17 ruling of the court disfavors non-profit, tax-exempt  
18 property owners in favor of for-profit, tax generating  
19 businesses.

20 (23) It is in the best interest of the American  
21 people for Congress to prohibit Federal funding and  
22 to restrict tax benefits from accruing to any person,  
23 party, or governmental authority who would seek to  
24 acquire private property through seizure by eminent  
25 domain for economic development purposes.

1           (24) Congress can restrict the use of Federal  
2 funds and the availability of Federal tax incentives  
3 to discourage the activities of State and local gov-  
4 ernments.

5           (25) It is the responsibility and obligation of  
6 Congress to act to protect private property rights  
7 and to further the protections afforded to private  
8 parties by the United States Constitution under the  
9 Fifth Amendment and to prevent the unjust use of  
10 the power of eminent domain.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act:

13           (1) ACQUIRING PARTY.—The term “acquiring  
14 party” means any person or party that acquires a  
15 real property interest from a condemning authority,  
16 which took title to such real property interest by the  
17 use of eminent domain or the threat of the use of  
18 eminent domain, including any—

19                   (A) individual;

20                   (B) trust;

21                   (C) charity;

22                   (D) corporation;

23                   (E) partnership; or

24                   (F) limited liability company.

1           (2) BLIGHTED PROPERTY.—The term “blighted  
2 property” includes any—

3           (A) property which because of physical  
4 condition, use, or occupancy constitutes a public  
5 nuisance or attractive nuisance;

6           (B) dwelling which, because it is dilapi-  
7 dated, unsanitary, unsafe, vermin-infested, or  
8 lacking in the facilities and equipment required  
9 by the housing code of the municipality, is unfit  
10 for human habitation;

11          (C) structure which is a fire hazard, or is  
12 otherwise dangerous to the safety of persons or  
13 property;

14          (D) structure the utilities, plumbing, heat-  
15 ing, sewer, or other utility services of which  
16 have been disconnected, destroyed, moved, or  
17 rendered ineffective such that the property is  
18 unfit for its intended use;

19          (E) vacant or unimproved lot or parcel of  
20 ground in a predominately built-up-neighbor-  
21 hood, which by reason of neglect or lack of  
22 maintenance has become a place for accumula-  
23 tion of trash and debris or a haven for rodents  
24 or other vermin;

1 (F) property that has tax delinquencies ex-  
 2 ceeding the fair market value of the property;

3 (G) property with code violations affecting  
 4 health or safety that has not been substantially  
 5 rehabilitated within 1 year of the receipt of no-  
 6 tice to rehabilitate from the appropriate hous-  
 7 ing code enforcement agency; or

8 (H) abandoned property.

9 (3) CONDEMNING AUTHORITY.—The term “con-  
 10 demning authority” means any authority, utility, or  
 11 co-operative which exercises the power of eminent  
 12 domain either directly or by a delegation of power,  
 13 including any—

14 (A) State;

15 (B) county;

16 (C) municipality,

17 (D) city;

18 (E) town, whether private or public;

19 (F) corporation, whether for profit or not  
 20 for profit; and

21 (G) district.

22 (4) GOVERNMENT.—For purposes of sections 6,  
 23 7, and 8, the term “government”—

24 (A) means—

1 (i) a State, county, municipality, or  
 2 other governmental entity created under  
 3 the authority of a State;

4 (ii) any branch, department, agency,  
 5 instrumentality, or official of an entity list-  
 6 ed in clause (i); and

7 (iii) any other person acting under  
 8 color of State law; and

9 (B) includes the United States, a branch,  
 10 department, agency, instrumentality, or official  
 11 of the United States, and any other person act-  
 12 ing under color of Federal law.

13 (5) INCIDENTAL ECONOMIC BENEFIT.—The  
 14 term “incidental economic benefit”—

15 (A) means the use of any property for any  
 16 project that is neither—

17 (i) a public use; or

18 (ii) a public purpose; and

19 (B) includes projects which rely on emi-  
 20 nent domain to acquire property and which are  
 21 done—

22 (i) for the purpose of enhancing or in-  
 23 creasing the tax base of a condemning au-  
 24 thority;

1                   (ii) for the purpose of creating jobs  
2                   within the jurisdiction of a condemning au-  
3                   thority; or

4                   (iii) in furtherance of economic devel-  
5                   opment.

6                   (6) PROPERTY OWNER.—The term “property  
7                   owner” means any person with a real property inter-  
8                   est, whether possessory or not, that is being taken  
9                   under the power of eminent domain.

10                  (7) PUBLIC PURPOSE.—The term “public pur-  
11                  pose”—

12                   (A) means the use of property acquired by  
13                   eminent domain that furthers a legitimate gov-  
14                   ernmental purpose to directly and substantially  
15                   protect the health, safety, and welfare of the  
16                   public; and

17                   (B) includes—

18                   (i) condemnation of any severely  
19                   blighted property;

20                   (ii) the development of any property  
21                   to provide public utilities, including—

22                               (I) electric;

23                               (II) gas;

24                               (III) phone;

25                               (IV) cable;

1 (V) water service and sewer; and

2 (VI) wi-fi networks;

3 (iii) hydro-electric projects and flood  
4 control measures;

5 (iv) development of waste, recycling,  
6 and waste treatment facilities; and

7 (v) development of any property to  
8 provide an essential public health or safety  
9 service such as a privately operated prison  
10 or hospital.

11 (8) PUBLIC USE.—The term “public use”—

12 (A) means any use of property acquired by  
13 eminent domain that is—

14 (i) used by a governmental entity;

15 (ii) owned, operated, or maintained by  
16 a government entity and used by the public  
17 as a right-of-way; or

18 (iii) used by a common carrier; and

19 (B) includes—

20 (i) right-of-ways;

21 (ii) roadways;

22 (iii) highways;

23 (iv) interstates;

24 (v) interchanges;

25 (vi) bike paths;

1 (vii) waterways and navigable waters;

2 (viii) airports, railroads, and other

3 transportation needs; and

4 (ix) public parks and public buildings,

5 including—

6 (I) schools;

7 (II) hospitals;

8 (III) prisons;

9 (IV) government buildings; and

10 (V) sports stadiums, theaters, or

11 other public entertainment venues

12 provided that any takings for these

13 projects is limited solely to the real

14 property necessary for—

15 (aa) the construction of such

16 stadiums, theaters or venues; and

17 (bb) parking facilities and

18 public transportation and access

19 roads to and from such stadiums,

20 theaters or venues.

21 (9) REAL PROPERTY INTEREST.—The term

22 “real property interest” means any—

23 (A) fee title interest;

24 (B) lease interest;

25 (C) easement;

- 1 (D) development rights;
- 2 (E) mineral rights;
- 3 (F) water rights;
- 4 (G) rights in real property related to sky,  
5 air, or vision which affect the value of such real  
6 property; or
- 7 (H) future interest in any of the real prop-  
8 erty interests or rights described in subpara-  
9 graphs (A) through (G).

10 **SEC. 4. DENIAL OF FEDERAL FUNDS FOR TAKINGS NOT**  
11 **FOR THE PUBLIC USE.**

12 (a) DENIAL OF FUNDS.—A condemning authority or  
13 acquiring party that engages or participates in a taking  
14 or condemnation of any real property interest not for a  
15 public use or public purpose, without the consent of the  
16 owner of such real property interest, under the power of  
17 eminent domain pursuant to the Fifth Amendment of the  
18 United States Constitution, or under any relevant State  
19 constitution, statute, or regulation, shall not be eligible to  
20 receive any Federal funds, including any funds appro-  
21 priated by Congress or otherwise expended from the Fed-  
22 eral treasury.

23 (b) CERTIFICATION OF ELIGIBILITY TO RECEIVE  
24 FUNDS.—

1           (1) IN GENERAL.—Any entity applying for Fed-  
2           eral funds shall certify to the appropriate Federal  
3           agency, under penalty of perjury, that any funds it  
4           receives will not be used to—

5                   (A) develop any real property which is sub-  
6                   ject to or otherwise subsequently becomes sub-  
7                   ject to a Fifth Amendment property protection  
8                   statement;

9                   (B) further any economic development as-  
10                  sociated with an exercise of eminent domain  
11                  power which is not in furtherance of a public  
12                  use or public purpose; or

13                  (C) provide, further, or enhance an inci-  
14                  dental economic benefit.

15           (2) REGULATIONS REQUIRED.—The Secretary  
16           of the Treasury shall promulgate rules and regula-  
17           tions to establish the procedures and rules regarding  
18           the certification required under paragraph (1), in-  
19           cluding—

20                   (A) certification language; and

21                   (B) application forms.

22           (3) NOTICE TO THE IRS.—Each Federal agency  
23           shall forward a copy of each certification required  
24           under paragraph (1) that it receives to the Commis-  
25           sioner of Internal Revenue.

## 1 (4) AUDITS.—

2 (A) AUTHORITY.—The Commissioner of  
3 Internal Revenue may conduct an audit of any  
4 condemning authority or acquiring party that  
5 has made a certification under paragraph (1)  
6 and may review such books, records, and mate-  
7 rials as the Commissioner determines appro-  
8 priate.

9 (B) REIMBURSEMENT OBLIGATION.—If  
10 after an audit of a condemning authority or ac-  
11 quiring party, the Commissioner of Internal  
12 Revenue determines that the condemning au-  
13 thority or acquiring party violated the terms of  
14 the certification required under paragraph (1),  
15 the condemning authority or acquiring party  
16 shall reimburse the Department of the Treasury  
17 for any funds—

18 (i) received from any Federal agency;

19 (ii) expended by the Secretary of the  
20 Treasury in conducting the audit; and

21 (iii) together with interest, com-  
22 pounded annually at a rate of 12 per cen-  
23 tum, calculated from the date of disburse-  
24 ment of such funds until the obligation has  
25 been repaid.

1 (C) AUDIT OF PRIOR PERIODS.—An audit  
2 conducted under this paragraph—

3 (i) shall not be limited to the year in  
4 which a suspected violation of the terms of  
5 the certification required under paragraph  
6 (1) occurs; and

7 (ii) may extend back to cover any year  
8 or years in the period beginning 10 years  
9 prior to the year such audit commences.

10 (D) APPEAL.—The United States Court of  
11 Federal Claims shall have original and exclusive  
12 jurisdiction over any appeal by a condemning  
13 authority or acquiring party of any reimburse-  
14 ment obligation imposed under subparagraph  
15 (B).

16 **SEC. 5. DENIAL OF TAX BENEFITS FOR TAKINGS NOT FOR**  
17 **THE PUBLIC USE.**

18 (a) FIFTH AMENDMENT PROPERTY PROTECTION  
19 STATEMENT.—

20 (1) IN GENERAL.—Upon receipt of a notice  
21 from a condemning authority which states the intent  
22 of the condemning authority to initiate an eminent  
23 domain proceeding against a real property interest  
24 of a property owner, any property owner who re-  
25 ceives such notice may file a Fifth Amendment prop-

1 erty protection statement (in this section referred to  
2 as a “PPS”) with the appropriate State or local  
3 agency responsible for recording deeds, liens, or  
4 mortgages of real property in which the affected real  
5 property interest is located, provided that the prop-  
6 erty owner files the PPS not later than 90 days  
7 after the receipt of such notice.

8 (2) CONTENTS OF PPS.—Each PPS described  
9 in paragraph (1) shall state the basis on which the  
10 property owner believes that a condemning authority  
11 has exceeded its authority in exercising its eminent  
12 domain power to take or condemn the real property  
13 interest of the property owner, including by using or  
14 intending to use such taking or condemnation to cre-  
15 ate an incidental economic benefit.

16 (3) FILING COPY OF PPS WITH THE COMMIS-  
17 SIONER OF INTERNAL REVENUE.—A property owner  
18 may submit a copy of each PPS such property  
19 owner filed under paragraph (1) to the Commis-  
20 sioner of Internal Revenue.

21 (4) VOLUNTARY RELEASE OF PPS.—

22 (A) IN GENERAL.—A property owner, the  
23 personal representative of a property owner, the  
24 estate of a deceased property owner, or any  
25 qualified heir of a deceased property owner (as

1 such term is defined in section 2032A(e) of the  
2 Internal Revenue Code) may voluntarily file a  
3 document terminating a PPS with the appro-  
4 priate State or local agency responsible for re-  
5 cording, deeds, liens, or mortgages of real prop-  
6 erty in which the affected real property interest  
7 is located.

8 (B) EFFECT.—The effect of filing a termi-  
9 nation of PPS under subparagraph (A) shall be  
10 to void such PPS.

11 (5) INVOLUNTARY RELEASE OF PPS.—

12 (A) IN GENERAL.—A condemning author-  
13 ity may seek a judicial determination of the va-  
14 lidity of any timely filed PPS in any State court  
15 having jurisdiction over takings or condemna-  
16 tion proceedings in the State in which the af-  
17 fected real property interest is located.

18 (B) BURDEN OF PROOF.—In any case ini-  
19 tiated under subparagraph (A), a condemning  
20 authority shall bear the burden of proof in dem-  
21 onstrating that such taking or condemnation is  
22 not inconsistent with section 6(a).

23 (C) FINAL ORDER.—Upon a final deter-  
24 mination of any court described in subpara-  
25 graph (A) that such taking or condemnation

1 does not violate section 6(a), the court may  
2 enter an order releasing the PPS.

3 (6) FORM OF PPS.—The Secretary of the  
4 Treasury shall establish a uniform format for all  
5 PPS and releases of PPS to be used by property  
6 owners.

7 (b) RULES OF CONSTRUCTION.—

8 (1) IN GENERAL.—A PPS is intended to en-  
9 hance the property protections afforded by the Fifth  
10 Amendment by permitting a property owner to take  
11 action to discourage those takings which are not in  
12 furtherance of either a public use or public purpose.

13 (2) EFFECT OF PPS ON COMPENSATION AWARD  
14 TO PROPERTY OWNER.—Any compensation awarded  
15 for a taking pursuant to the Fifth Amendment shall  
16 be made without regard to any PPS attaching to the  
17 property being taken.

18 (3) ADDITIONAL EFFECTS OF A PPS.—A PPS  
19 shall—

20 (A) attach to the real property interest  
21 which is described in the PPS; and

22 (B) bind the current owner and all future  
23 owners, including successor in interests, as-  
24 signs, or heirs, who at any time hold title to all  
25 or any portion of such real property interest.

1           (c) TAX EFFECTS OF PPS.—For a period of 20 years  
2 beginning on the January 1st immediately following the  
3 date of recording of any PPS, any acquiring party which  
4 acquires any real property interest which is subject to a  
5 PPS shall be prohibited from claiming any benefit, deduc-  
6 tion, or tax credit related to any activities conducted with-  
7 in the geographical boundaries comprising the jurisdiction  
8 of the condemning authority under the Internal Revenue  
9 Code of 1986, including the following:

10           (1) Section 27 (relating to taxes of foreign  
11 countries and possessions of the United States; pos-  
12 session tax credit).

13           (2) Section 38 (relating to general business  
14 credits).

15           (3) Section 39 (relating to carryback and  
16 carryforward of unused credits).

17           (4) Section 40 (relating to alcohol used as a  
18 fuel).

19           (5) Section 41 (relating to credit for increasing  
20 research activities).

21           (6) Section 42 (relating to low-income housing  
22 credit).

23           (7) Section 45 (relating to electricity produced  
24 from certain renewable resources).

1           (8) Section 45A (relating to Indian employment  
2           credit).

3           (9) Section 45B (relating to credit for portion  
4           of employer social security taxes paid with respect to  
5           employee cash tips).

6           (10) Section 45C (relating to clinical testing ex-  
7           penses for certain drugs for rare diseases or condi-  
8           tions).

9           (11) Section 45D (relating to new markets tax  
10          credit).

11          (12) Section 45E (relating to small employer  
12          pension plan startup costs).

13          (13) Section 45F (relating to employer-provided  
14          child care credit).

15          (14) Section 47 (relating to rehabilitation cred-  
16          it).

17          (15) Section 103 (relating to interest on State  
18          and local bonds).

19          (16) Section 162 (relating to trade or business  
20          expenses).

21          (17) Section 163 (relating to interest).

22          (18) Section 164 (relating to taxes).

23          (19) Sections 165 and 166 (relating to ordinary  
24          losses)

25          (20) Section 167 (relating to depreciation).

1           (21) Section 169 (relating to amortization of  
2           pollution control facilities).

3           (22) Section 172 (relating to net operating loss  
4           deduction).

5           (23) Section 174 (relating to research and ex-  
6           perimental expenditures).

7           (24) Section 175 (relating to soil and water  
8           conservation expenditures).

9           (25) Section 178 (relating to authorization of  
10          cost of acquiring a lease).

11          (26) Section 179 (relating to election to expense  
12          certain depreciable business assets).

13          (27) Sections 48(g) and 170(h) (relating to  
14          Federal Historic Preservation Tax Incentives).

15          (28) Section 198 (relating to Brownfields Tax  
16          Incentives).

17          (29) Sections 1201 through 1298 (relating to  
18          capital losses).

19          (30) Section 1400F (relating to Renewal Com-  
20          munities).

21          (31) Sections 1391 through 1398 (relating to  
22          Empowerment Zones and Enterprise Communities  
23          Tax Incentives).

1 **SEC. 6. PROTECTION OF PERSONAL PROPERTY RIGHTS.**

2 (a) GENERAL RULE.—No government shall engage  
3 or participate in a taking or condemnation of any private  
4 real property interest under the power of eminent domain  
5 for any purpose unless such taking or condemnation is ei-  
6 ther a public purpose or a public use.

7 (b) SCOPE OF APPLICATION.—This section applies in  
8 any case in which the exercise of eminent domain—

9 (1) is by the Federal Government;

10 (2) is related to a program or activity that re-  
11 ceives Federal financial assistance; or

12 (3) would affect, commerce with foreign na-  
13 tions, among the several States, or with Indian  
14 tribes.

15 **SEC. 7. JUDICIAL RELIEF.**

16 (a) CAUSE OF ACTION.—

17 (1) IN GENERAL.—A person may assert a viola-  
18 tion of this Act as a claim or defense in a judicial  
19 proceeding and obtain appropriate relief against a  
20 government.

21 (2) STANDING.—Standing to assert a claim or  
22 defense under paragraph (1) shall be governed by  
23 the general rules of standing under article III of the  
24 Constitution.

25 (b) JURISDICTION.—Any pending action under which  
26 a government exercises its authority of eminent domain

1 shall not operate as a limit on a court from hearing any  
2 claim for relief under this Act.

3 (c) BURDEN OF PERSUASION.—If a plaintiff pro-  
4 duces prima facie evidence to support a claim alleging a  
5 violation of the Fifth Amendment takings clause or a vio-  
6 lation of section 6, the government shall bear the burden  
7 of persuasion on any element of such claim.

8 (d) FULL FAITH AND CREDIT.—Adjudication of a  
9 claim of a violation of this Act in a non-Federal forum  
10 shall not be entitled to full faith and credit in a Federal  
11 court unless the claimant had a full and fair adjudication  
12 of that claim in the non-Federal forum.

13 (e) ATTORNEYS' FEES.—Section 722(b) of the Re-  
14 vised Statutes (42 U.S.C. 1988(b)) is amended by insert-  
15 ing “the Private Property Rights Protection Act,” after  
16 “the Religious Land Use and Institutionalized Persons  
17 Act of 2000 (42 U.S.C. 2000cc et seq.),”.

18 (f) AUTHORITY OF UNITED STATES TO ENFORCE  
19 THIS ACT.—

20 (1) IN GENERAL.—The United States may  
21 bring an action for injunctive or declaratory relief to  
22 enforce compliance with this Act.

23 (2) LIMITATION.—Nothing in this subsection  
24 shall be construed to deny, impair, or otherwise af-  
25 fect any right or authority of the Attorney General,

1 the United States, or any agency, officer, or em-  
2 ployee of the United States, acting under any law  
3 other than this subsection, to institute or intervene  
4 in any proceeding.

5 **SEC. 8. RULES OF CONSTRUCTION.**

6 (a) BROAD CONSTRUCTION.—This Act shall be con-  
7 strued in favor of a broad protection of personal property  
8 rights, to the maximum extent permitted by the terms of  
9 this Act and the Constitution.

10 (b) NO PREEMPTION OR REPEAL.—Nothing in this  
11 Act shall be construed to preempt State law, or repeal  
12 Federal law, that is equally as protective of personal prop-  
13 erty rights as, or more protective of personal property  
14 rights than, this Act.

15 (c) SEVERABILITY.—If any provision of this Act or  
16 of an amendment made by this Act, or any application  
17 of such provision to any person or circumstance, is held  
18 to be unconstitutional, the remainder of this Act, the  
19 amendments made by this Act, and the application of the  
20 provision to any other person or circumstance shall not  
21 be affected.

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