

Testimony of Tom Giovanetti
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Before the Land & Resource Management Committee

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Mr. Chairman, and Members of the Committee:

Thank you for providing this opportunity for testimony. My organization, the Institute for Policy Innovation (IPI), is a 30 year-old free-market policy think tank based in Irving. Among our key policy areas are property rights and economic growth.

Those two issues, property rights and economic growth, intersect on the issue of eminent domain. Economic growth, which is a major goal of public policy, places demand on infrastructure, and necessitates continuous infrastructure construction, growth and maintenance. And building infrastructure almost always involves an imposition on private property.

One of the most amazing things about the U.S. Constitution is that the Founders anticipated this issue and made exactly the right provision. It's astonishing to me that the Founders, reacting against an imperial and overbearing British monarch, nonetheless recognized that there would be needs for what they called "takings." Even with their strong distrust of government, the Founders nevertheless knew that the taking of personal property for public purposes would be necessary, and they placed only two restrictions on the practice, but they were the two key restrictions: A taking would have to be for a public use, and it had to be properly compensated.

Note that the taking has to be for a public use. It doesn't say for a government use—it says public use. The Founders wisely made provision for the likelihood that critical public infrastructure could be privately owned. The fact that a road, or bridge, or airport, or pipeline, or communications network, or rail right-of-way could be privately owned makes it possible for infrastructure to be entrepreneurial, and to be built and maintained with the efficiency of the private sector, instead of the bloat, waste and drain on the taxpayers of the public sector.

For those of who believe in limited government, that means government should do only those things it is explicitly authorized to do, and should leave everything else to the private sector. There is wisely no mandate in either the Texas constitution or the U.S. constitution that all infrastructure must be government owned and government run. That means that infrastructure is NOT an exclusive mandate of the government, and thus can and should be built to the degree possible by the private sector. From the legislature's standpoint, this means that Texas can expand its infrastructure WITHOUT expanding its government.

Now, the fact that public infrastructure can be privately owned does not mean that every private project is a public use. In the Supreme Court's dreadful Kelo decision, the Court found that it was appropriate for private property to be seized so that the Pfizer Corporation could build an office building. But Pfizer's building would not have been a public use. The public could not have gained admission to that

building, could not enter without permission, could not buy a ticket. It didn't convey any public utilities. It was a PRIVATE use, and the Supreme Court was wrong. Public uses can be privately owned, but not all privately owned projects are public uses.

It is common to hear today from some sources that private companies should not have the power of eminent domain. This usually comes from well-meaning folks from my side of the aisle, but not only are they incorrect on the facts—if they got their way, it would lead to an enormous growth in the power and size of the government. That's because if only government can exercise eminent domain, only government will be able to build, own and control infrastructure. As I said, this will lead to a massive growth of government, and the exact opposite result intended by those who want to restrict the power of eminent domain to government.

A key principle of policy is neutrality—government shouldn't favor certain industries and disfavor others. In general, the same laws and regulations should apply to all infrastructure, and should be modally and technologically neutral. That means policy should not make it easier to build a highway and harder to build a railroad, or easier to build a cable network but harder to build a pipeline. Please resist the temptation to put industry-specific restrictions on eminent domain. Let the market decide who succeeds and who fails, not the government.

We Texans are rightly proud of our high rates of economic growth, and they are an indication that our policies are good ones. But this growth means that Texas must expect to invest huge sums of money in expanded critical infrastructure. Texans recognize the need for continuous infrastructure investment, and don't want to be victims of overcrowded highways, underpowered Internet or cell phone bandwidth, inadequate water, sewage, and utilities. In a recent poll, 73 percent of Texans support building critical infrastructure. Texans know it's got to be built.

Don't reserve this burden for the taxpayers—let the private sector build as much of it as possible, with private risk capital. And don't place restrictions on eminent domain that will make it harder to maintain a healthy pace of infrastructure investment. My organization intends to study carefully the projected needs for infrastructure in Texas, and we would be delighted to work with the committee going forward.

Of course, compensation for landowners should be fair, and justly derived through market mechanisms rather than through cronyism or corruption. Market mechanisms prevent both the errors of paying too little, and of paying too much. Too often, landowners feel abused by government actions they have no hope of contesting, but sometimes particularly connected landowners reap a windfall from a smart eminent domain play. It has always seemed wrong to me for a landowner to benefit from a rapid run-up in value that is due exclusively to the coming infrastructure project they resist. Market mechanisms would lessen both abuses.

We would support any legal or regulatory steps that result in landowners receiving fair compensation for their property, provided that the rules apply equally to all infrastructure projects and don't discriminate against specific industries or technologies.

Finally, If the legislature wants to take a major step toward the protection of property rights, the legislature should focus on reining in asset forfeiture, which is blatant violation of property rights. Seizing the property of persons simply for being accused of a crime, without a conviction, is without any constitutional basis, either in the U.S. Constitution or the Texas Constitution.

Thank you.