

Gavel to Gavel

A review of state legislation affecting the courts

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Focus: Eminent Domain

The state-level backlash against the judiciary stemming from the U.S. Supreme Court decision in *Kelo v. City of New London* includes legislative efforts to direct or manage the courts on the subject of eminent domain. While some legislation introduced in 2006, like Louisiana's [SB 21](#), simply stated the question of whether a taking was for public use was a judicial one, others placed limitations on the courts.

Some legislation proposed in 2006 directed the courts to make their determinations "without regard to any legislative assertion that the use is public." Examples included Colorado's [HCR 1001](#), New Mexico's [SJR 7](#) and [HJR 2](#) and Virginia's [SJR 139](#).

Still other states opted for legislation that would require jury trials at the request of the property owner, such as Arizona's [SCR 1019](#), [SCR 1002](#), [HCR 2031](#), and [HCR 2002](#). Arizona's [HCR 2003](#) would require a jury in all such proceedings, regardless of whether one was requested.

Beyond the legislatures, propositions were placed on the ballot by voters to restrict the courts on the subject. Arizona's [Proposition 207](#) which passed in November 2006

requires the courts make determinations "without regard to any legislative assertion that the use is public." Nevada's [Proposition 2](#) and California's [Proposition 90](#) would also have prohibited judges from ruling on such matters and required jury trials. California's proposition failed at the ballot box while Nevada's Supreme Court removed the language from that state's version.

Already in 2007, many of these bills are returning and new ones being filed. California's [SCA 1](#) would prohibit the court from according deference to any legislative finding or declaration made with respect to a condemnation. Mississippi's [HC 18](#) has similar language. Virginia's [HJ 579](#) specifies that eminent domain takings are judicial questions, while Mississippi's [SC 509](#) would limit the courts to finding if there is a "direct" public use.

Newly Introduced

Selection

[ARIZONA SCR 1004 \(2007\)](#) Requires Senate confirmation of all judges. Vacancies in office to be filled by governor with Senate confirmation. Retention elections for



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subsequent terms. (see also [ARIZONA SCR 1003](#)). No Committee assignment yet

Qualifications and Terms

None

Rule Making Authority

None

Structure Changes

None

Jurisdiction

[MISSISSIPPI HC 18 \(2007\)](#) Eminent Domain. Private property shall never be taken primarily for private economic development purposes; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

In House Constitution Committee

[MISSISSIPPI SC 509 \(2007\)](#)

Eminent Domain. Taking of private property can only be for "direct" public use. Determination of whether "direct" public use shall be a judicial question, and, as such, shall be determined without regard to legislative assertion that the use is a direct public use. In Senate Constitution Committee

Salary and Budget

In December, the Missouri Citizen's Commission on Compensation for Elected Officials issued its recommended raise schedule for judges, legislators and other elected state officials. In addition to the raises, the Commission recommended a onetime payment of \$2,000 for each Associate Circuit Judge to partially compensate for the Circuit Court duties currently being assumed by Associate Circuit Judges throughout the state.

Three resolutions have now been filed in the Missouri Legislature to override the Commission's recommendations. [HCR 3](#) in the House has been filed but not yet assigned to a committee. [SCR 2](#) and [SCR 3](#) in the Senate are both in the Rules, Joint Rules, Resolutions & Ethics Committee.

Other

None

Floor and Committee Activity

Withdrawn: [FLORIDA SB 408 \(2007\)](#) which would have increased the number of justices on Florida Supreme Court from 7 to 15 justices. Sponsor Senator Bill Posey told the *Tallahassee Democrat* the filing of the bill was an accident. "[Basically, a law student came up with the idea and asked me to have it drafted so he could see how it would look, but it was never supposed to be introduced.](#)"

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