

**A RESOLUTION SUPPORTING PRIVATE PROPERTY RIGHTS  
IN MASSACHUSETTS AND PROTECTING THEM FROM  
ABUSE OF THE RIGHT OF TAKING BY EMINENT DOMAIN**

**WHEREAS**, RESPECT FOR PRIVATE PROPERTY RIGHTS IS A FOUNDING PRINCIPLE OF OUR DEMOCRACY AND IS NECESSARY FOR THE CONTINUED PRESERVATION OF THE UNION; AND,

**WHEREAS**, PRIVATE PROPERTY RIGHTS ARE PROTECTED THROUGHOUT THE UNITED STATES BY THE FIFTH AMENDMENT TO THE FEDERAL CONSTITUTION, WHICH GUARANTEES THAT PRIVATE PROPERTY SHALL NOT BE TAKEN BY RIGHT OF EMINENT DOMAIN EXCEPT FOR "PUBLIC USE", AND THEN ONLY IN EXCHANGE FOR "JUST COMPENSATION"; AND,

**WHEREAS**, THE FIFTH AMENDMENT APPLIES TO STATE AND LOCAL GOVERNMENTS BY OPERATION OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION; AND,

**WHEREAS**, THE SUPREME COURT OF THE UNITED STATES RECENTLY CONSIDERED A CASE, *SUSETTE KELO, ET. AL. V. CITY OF NEW LONDON, CONNECTICUT, ET. AL.*, 04-108 (2005), IN WHICH IT WAS PRESENTED WITH THE QUESTION OF WHETHER TAKINGS FOR THE PURPOSE OF ECONOMIC DEVELOPMENT ARE CONSTITUTIONAL, AS AN ISSUE OF FIRST IMPRESSION; AND,

**WHEREAS**, THE SUPREME COURT ISSUED AN OPINION IN SAID CASE ON JUNE 23, 2005, HOLDING THAT THE TAKING OF PRIVATE PROPERTY BY RIGHT OF EMINENT DOMAIN FOR THE PURPOSE OF ECONOMIC DEVELOPMENT SATISFIES THE PUBLIC USE REQUIREMENT OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES; AND,

**WHEREAS**, THE MAJORITY OPINION IN SAID CASE IMPLICITLY SANCTIONS THE USE OF EMINENT DOMAIN POWERS TO GIVE ONE PRIVATE INDIVIDUAL BENEFITS OVER ANOTHER; AND,

**WHEREAS**, AT THE CONCLUSION OF SAID OPINION, THE SUPREME COURT REAFFIRMED THE ABILITY OF THE SEVERAL STATES TO PLACE FURTHER RESTRICTIONS ON THE EXERCISE OF THE TAKINGS POWER, STRICTER THAN THOSE ESTABLISHED UNDER FEDERAL LAW; AND,

**WHEREAS**, ARTICLE X OF PART THE FIRST OF THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS (DECLARATION OF RIGHTS) CONTAINS A PROVISION REQUIRING THAT THE PROPERTY OF ANY INDIVIDUAL NOT BE APPROPRIATED FOR PUBLIC USES EXCEPT IN EXCHANGE FOR REASONABLE COMPENSATION; AND,

**WHEREAS**, THE MASSACHUSETTS SUPREME JUDICIAL COURT HAS NOT YET CONSIDERED THE QUESTION OF WHETHER, UNDER MASSACHUSETTS LAW, TAKINGS BY RIGHT OF EMINENT DOMAIN FOR THE PURPOSE OF ECONOMIC DEVELOPMENT SATISFY THE PUBLIC USE REQUIREMENTS OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE X OF PART THE FIRST OF THE MASSACHUSETTS CONSTITUTION;

**WHEREAS**, TRADITIONALLY WITHIN THIS COMMONWEALTH, THE TAKING OF PRIVATE PROPERTY BY RIGHT OF EMINENT DOMAIN HAS BEEN LIMITED TO SITUATIONS OF NECESSITY, WHERE THERE IS NEED TO FURTHER THE PUBLIC GOOD BY APPROPRIATING PRIVATE PROPERTY FOR PUBLIC USE, WITHOUT BENEFITING ONE PRIVATE PARTY AT THE EXPENSE OF ANOTHER, AND HAS THEREBY RESPECTED PRIVATE PROPERTY RIGHTS; AND,

**WHEREAS**, THE MAJORITY OPINION IN *KELO V. NEW LONDON* IS CLEARLY IN CONFLICT WITH THESE WELL-ESTABLISHED PRINCIPLES OF MASSACHUSETTS LAW; THEREFORE BE IT

**RESOLVED**, THAT THE MASSACHUSETTS HOUSE OF REPRESENTATIVES WISHES TO EXPRESS ITS DISAGREEMENT WITH AND DISAPPROVAL OF THE MAJORITY OPINION OF THE UNITED STATES SUPREME COURT IN THE CASE SUSETTE KELO, ET. AL. V. CITY OF NEW LONDON, CONNECTICUT, ET. AL., 04-108 (2005); AND BE IT FURTHER

**RESOLVED**, THAT THE MASSACHUSETTS HOUSE OF REPRESENTATIVES FINDS AND DECLARES ITS SENSE THAT:

- (1) THE TAKING OF PRIVATE PROPERTY BY RIGHT OF EMINENT DOMAIN FOR THE SOLE PURPOSE OF ECONOMIC DEVELOPMENT, WHERE ONE PRIVATE INDIVIDUAL BENEFITS AT THE EXPENSE OF ANOTHER, IS CONTRARY TO THE WELL-ESTABLISHED PUBLIC POLICY OF THIS COMMONWEALTH, EXCEPT TO THE EXTENT SUCH TAKINGS ARE NECESSARY TO PREVENT THE DEVELOPMENT OF OR TO ELIMINATE DILAPIDATED OR BLIGHTED OPEN AREAS AS PROVIDED BY LAW; AND,
- (2) NOTWITHSTANDING THE MAJORITY OPINION IN SUSETTE KELO, ET. AL. V. CITY OF NEW LONDON, CONNECTICUT, ET. AL., 04-108 (2005), THE TAKING OF PRIVATE PROPERTY BY RIGHT OF EMINENT DOMAIN SHOULD OCCUR ONLY WHEN NECESSARY TO FURTHER A PUBLIC USE AND IN EXCHANGE FOR REASONABLE COMPENSATION AS REQUIRED BY ARTICLE X OF PART THE FIRST OF THE MASSACHUSETTS CONSTITUTION; AND BE IT FURTHER

**RESOLVED**, THAT A COPY OF THESE RESOLUTIONS BE FORWARDED BY THE CLERK OF THE HOUSE OF REPRESENTATIVES TO HIS EXCELLENCY THE GOVERNOR OF THE COMMONWEALTH, TO THE CLERK OF THE SENATE OF THE COMMONWEALTH, TO THE CLERK OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH, TO THE ATTORNEY GENERAL OF THE COMMONWEALTH, AND TO THE SECRETARY OF THE COMMONWEALTH.

**SPONSORED BY: BRADLEY H. JONES, JR.**