



# Impacts of SB 7 on ODOT Acquisition Policy

OPEC

October 28, 2008

The background of the slide is a stylized American flag with a blue canton containing white stars and alternating red and white horizontal stripes. A white rectangular box with a black border is centered on the flag, containing text.

## U.S. Constitution, 5<sup>th</sup> Amendment:

No person shall be \*\*\*deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

•Ohio Constitution, Article I, Section 19:

Private property shall ever be held inviolate, **but** subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money \*\*\*.

# Kelo vs. City of New London



(Suzette Kelo)

## High court OKs personal property seizures

WASHINGTON (AP) — -- The Supreme Court on Thursday ruled that local governments may seize people's homes and businesses — **even against their will** — for private economic development.

- Opponents, \*\*\* argued that forcibly shifting land from one private owner to another, even with fair compensation, violates the Fifth Amendment to the Constitution, which prohibits the taking of property by government except for "public use."
- But Justice John Paul Stevens ruled that the Court has interpreted "public use" to include not only such traditional projects as bridges or highways but also slum clearance and land redistribution. He concluded that a "public purpose" such as creating jobs in a depressed city can also satisfy the Fifth Amendment.
- The court should not "second-guess" local governments, Stevens added, noting that "[p]romoting economic development is a traditional and long accepted function of government."

# Kelo Decision

- June 23, 2005
- Did not change, but reaffirmed current practices

# Kelo's Consequences:



Who would have thought this little pink house on the water could have caused so much controversy

...



# *City of Norwood v. Horney*



*Carl & Joy Want Answers* III



Carl Jr. and Joy Gamble



# **Eminent Domain Task Force**

# Senate Bill 167

- Created E.D. Task Force
  - 24 Ohioans with expertise on E.D. (reps. from munies, courts, state gov., special interests, and l.o. attorneys)
- Moratorium on Blight Takings till 12/06



# E.D. Task Force

- Met over 8 month period
- Received testimony from dozens and dozens of “witnesses”
  - L.O.s, ODOT, cities, counties, lobbyists, special interest groups like Institute For Justice, etc.
- Arrived at 13 recommendations
- **Provided final recommendations on \*\*\***

July 26, 2006 (5 days before the E.D. Task Force provided its recommendations)



*Carl & Joy GOT Answered!!!!*

# City of Norwood v. Horney

- Ohio Supreme Court said taking as proposed by the City was unconstitutional
  - Total rejection of Kelo
- Blight statute was “void for vagueness”
- Takings will ... henceforth ... undergo a test of “Heightened Scrutiny”
- Suggested the GA reform the law



# The "Delta"



**Takings OK**

**More Taxes = Legit. Public Purpose**

**5<sup>th</sup> Amendment Not Violated**

**Legislation Followed**

**Deference to Agency**



*The Ohio Judicial Center*

**Takings No Way**

**No Taking of Private Property  
for Private Use**

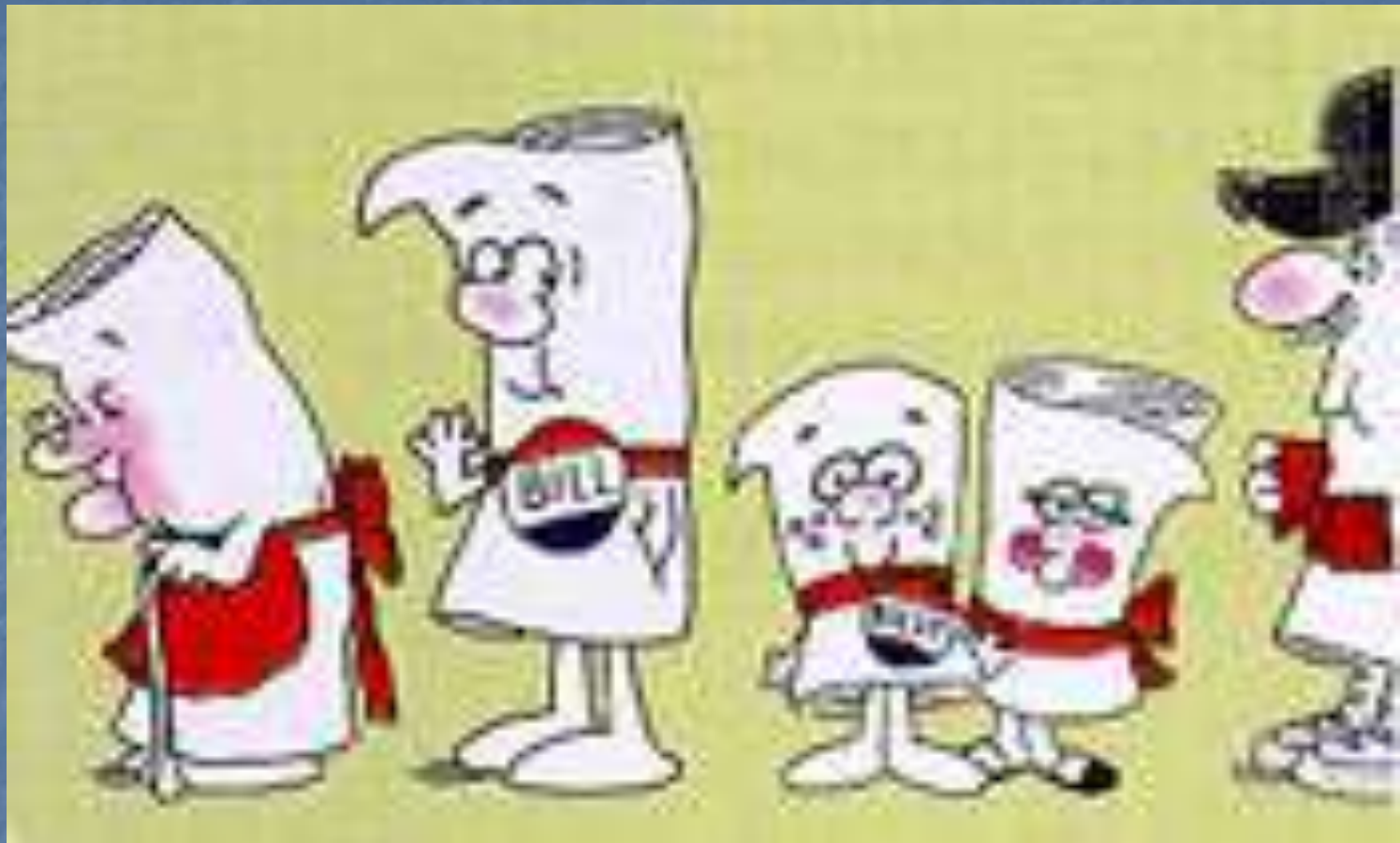
**Art. I, Section 19 Violated**

**Legislature Go Back To Work**

**Heightened Scrutiny**

# E.D. Task Force Actual Results

- **Senate Bill 7:** Property Rights Interpretation
- **House Bill 5:** Literal Interpretation
- **Senate Joint Resolution 1:**
  - Constitutional Amendment
    - Article I, Section 19 (b) .... New'b



July 10, 2007 Governor Signs “Compromise” Legislation



127th General Assembly  
Regular Session  
2007-2008

S. J. R. No. 3

Coughlin, Schaffer, Harris, Buehrer, Mumper, Padgett, Clancy

JOINT RESOLUTION

Proposing to enact Section 19b of Article I of the  
Constitution of the State of Ohio to provide  
limits on the power of a public authority to take  
private property for a public use.

Be it resolved by the General Assembly of the State of Ohio,  
three-fifths of the members elected to each house concurring  
herein, that there shall be submitted to the electors of the  
state, in the manner prescribed by law at the general election to  
be held on November 4, 2008, a proposal to enact Section 19b of  
Article I of the Constitution of Ohio to read as follows:

ARTICLE I

Section 19b. The fact that a taking of private property by a  
public authority may result in increased public revenues may not  
be used as evidence that a private property is blighted. Municipal  
corporations shall have the same authority to take private  
property for a public use as the state itself, provided that the  
municipal corporation exercises that power in conformity with the  
statutes the General Assembly enacts to govern takings by the  
state. The provisions of this section shall control in the event  
of any conflict between this section and Sections 2p and 14 of  
Article VIII, Ohio Constitution, or Sections 3, 4, 7, and 10 of  
Article XVIII, Ohio Constitution.

EFFECTIVE DATE

If adopted by a majority of the electors voting on this

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LSC 127 0096-3

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proposal, Section 19b of Article I of the Constitution of Ohio  
takes effect immediately.

SCHEDULE

The enactment of Section 19b of Article I of the Constitution  
of Ohio applies only to appropriation proceedings commenced on or  
after its effective date.

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