

What will the proposed constitutional amendments do?

Missouri Citizens for Property Rights is not proposing that we do anything new or revolutionary – we simply want to restore the traditional, time tested, concepts of property rights. We believe that the primary role of government is that of protecting property rights and that eminent domain should be used only rarely and only for truly public uses, such as roads and sewers.

Eminent domain has traditionally been called “the despotic power”. When it *must* be used for a truly public use, every safeguard to the rights of the one losing his property should be employed. He should have the right to due process prior to losing his property and should be well compensated for his loss. After all, if the public use will truly benefit the masses, the rest of us should be willing to each chip in a little to minimize the suffering of the one making the sacrifice.

Perhaps of greatest importance, Missouri's constitutional provisions for protecting property rights should protect everyone's rights equally. We should accept no less than “justice for all” whether they be rich or poor, home owners or businesses, urban or rural. And the state's awesome power of eminent domain should never be conveyed to private entities for their personal profit!

To those ends, the proposed amendments to Missouri's constitution will accomplish the following:

THE FIRST PETITION

Article I, Section 26

1. Limit eminent domain authority to the state and its political subdivisions.
2. Require just compensation when property rights are “taken” or damaged indirectly..
3. Limits the use of eminent domain to situations in which it is necessary to use that power.
4. Allow normal appraisal methods to be considered in determining “just compensation”.
5. Require due process before property can be taken or disturbed by the taking authority.

Article I, Section 28

1. Prohibits the use of eminent domain for “private use, private ownership, or other private rights” and ensures that those uses are not considered “public use”.
2. Discourages the government from “hoarding” or speculating on property through eminent domain for longer than 5 years through a buy back provision.
3. Discourages a feigned public purpose at the time of taking and subsequent conveying to a private party by allowing the original owner an opportunity to buy back his property if the government attempts to sell it within 20 years.
4. Ensures regulated utilities and electric cooperatives the ability to provide their services, but a government entity must use eminent domain on their behalf and the title remains in the original owner, “subject to the use for which it was taken”. Privately owned utilities will no longer be able to directly wield the people's power of eminent domain.
5. A “notwithstanding” clause to keep Art VI, Sec. 21 from “trumping” these provisions.

THE SECOND PETITION

Article VI, Section 21

1. Provide a remedy for “blight” and other public nuisances, but shift the role of the government to that of protecting the property rights of the neighbors of those conditions rather than punishing the responsible property owners along with the abusers.
2. Limits those nuisances to those historically considered so, that is, only conditions that negatively affect the property rights of another.
3. This change reestablishes the appropriate distinction between police powers and eminent domain powers.
4. Provide for a reasonable opportunity to abate the nuisance before action is taken.
5. **Permit the expenditure of public funds to protect the neighbors and prescribes the due process protection for the “offending” property owner.**

Proposed Amendment to the Missouri Constitution's Article I

(NOTE: Bold underscored language, **thus**, is new, words in brackets, [thus], would be deleted from the current Constitution.)

Be it resolved by the people of the State of Missouri that the Constitution be amended:

Section 26 and 28 of Article I of the Constitution of Missouri are amended by modifying Section 26 and 28. The existing Section 26 and 28 are set forth hereinafter with the new matter underlined and deleted matter in brackets, [thus].

Article I - Bill of Rights

Section 26. [~~That private property shall not be taken or damaged for public use without just compensation.~~] **That the power of eminent domain shall be vested in no other than the state, or political subdivisions of the state whose officials are directly responsible to elected officials, and that private property, or the right to the use, sale or enjoyment of private property, shall not be directly or indirectly taken or damaged unless such taking is necessary for a public use and just compensation is rendered.** Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be provided by law[;] **. The value of the property may be determined by, but is not limited to, appraisal methods typical to the ordinary course of business and any evidence which would be considered by an appraiser in the ordinary course of business shall be relevant and admissible.** [~~and until the same]~~ **Until a final legal determination of the legitimacy of the taking is established and until compensation** shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of land taken for railroad purposes without consent of the owner thereof shall remain in such owner subject to the use for which it is taken.

Section 28. (1) That private property [~~shall not be~~] taken for private use **or private ownership or other private rights shall not be considered a public use and no such takings shall occur** with or without compensation, unless by consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in the manner prescribed by law; and that when 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 judicially determined without regard to any legislative declaration that the use is public.

(2) **The use for property, or rights in property, shall be declared at the time that such property, or rights in property is taken by eminent domain. If that use is not earnestly or substantially pursued, the original owner, his heirs or assigns shall, after five years but prior to any substantial accomplishment of the declared purpose, be allowed to claim the property back at a price no greater than was paid at the time of taking.**

(3) **Subject to the conditions set forth in Section 26 of this article, property may be taken for transportation or utility facilities or transmission systems used by a railroad, regulated utility or rural electric cooperative, however the fee of property taken for such purposes without consent of the owner thereof shall remain in such owner, his heirs or assigns subject to the use for which it is taken.**

(4) **Except as provided for in subsection (1) and subsection (3) of this section and notwithstanding Section 27 of this article, property, a portion thereof, or rights in property taken by eminent domain can not be sold, transferred, leased or otherwise made available for use by a private entity within 20 years of such taking, unless the original owner, his heirs or assigns, have at the time of sale, been afforded the first opportunity to purchase such property back at a price no greater than was paid at the time of taking, however interests less than fee title may be conveyed to a privately owned business for the purpose of providing products or services incidental to the function of a publicly owned facility.**

(5) **The effective date of this amendment shall be November 5, 2008 and the provisions of Article I, sections 26 and 28 apply notwithstanding any application to the contrary of Article VI, Section 21 of this constitution.**

Submitted by: Missouri Citizens for Property Rights

Proposed Amendment to the Missouri Constitution's Article VI

(NOTE: Bold underscored language, **thus**, is new, words in brackets, [thus], would be deleted from the current Constitution.)

Be it resolved by the people of the State of Missouri that the Constitution be amended:

Section 21 of Article VI of the Constitution of Missouri is amended by modifying Section 21. The existing Section 21 is set forth hereinafter with the new matter underlined and deleted matter in brackets, [thus].

Article VI – Local Government

Section 21. Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances **which protect property owners from public nuisances, as defined by the Common Law. In the event that an owner of property is found by a court of competent jurisdiction to be harboring such nuisance and has not fully abated the nuisance within a reasonable time after final judgment, any political subdivision of the state in which the nuisance exists may expend public funds to abate the nuisance and impose a lien on the offending property limited to an amount equal to the costs of the abatement and reasonable interest on such costs. Enforcement of the lien may be accomplished in the same manner as tax liens are enforced.** [~~providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest.~~]

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