



**TESTIMONY OF LETITIA HARON  
POLICY DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF KANSAS  
IN SUPPORT OF HB 2317  
KANSAS HOUSE COMMITTEE ON ENERGY, UTILITIES &  
TELECOMMUNICATIONS  
MARCH 19, 2019**

Thank you, Chair Siewert, and members of the Committee for affording us the opportunity to provide testimony on HB 2317.

The American Civil Liberties Union (ACLU) of Kansas is a non-partisan, non-political membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas. We work to preserve and strengthen our constitutional rights and freedoms through policy advocacy, litigation, and education. We proudly serve over 40,000 supporters in Kansas and represent more than 1.7 million supporters nationwide.

We urge you to support HB 2317 because this bill could prevent the displacement and disenfranchisement of poor communities due to poorly written eminent domain laws. This is an issue of equality, justice, and property rights, to which every Kansan should have equal access.

***Low-income communities are disproportionately exploited by the use of eminent domain to benefit private, high-profit companies.***

Westar had options of where to build their transmission lines and utility poles, and they chose to do so in the place where they would get the least resistance— a community they thought would lack the political power and influence needed to defend against eminent domain. Eminent Domain projects throughout our country’s history have fallen with precision and almost exclusively on black communities, forcing them to leave their homes or decreasing property values. This exploitation continues to be successful because of two controversial cases: *Berman v. Parker*, and *Kelo v. City of New London*.<sup>1</sup>

In *Berman*, the Supreme Court agreed that eminent domain could be permissible where the property was intended for “public use” and with “just compensation.” Public use was defined so broadly that it gradually became a term leveraged by lower courts to drive racial and ethnic minorities out of their homes in so-called “urban renewal” projects.<sup>2</sup> The *Kelo* decision concluded that even private economic development, similarly to the construction of roads, bridges, parks, public buildings, or other infrastructure, also qualified as a permissible “public use.”

<sup>1</sup> *Berman v. Parker*, 348 U.S. 26 (1954); *Kelo v. City of New London*, 545 U.S. 469 (2005).

<sup>2</sup> See Dick M. Carpenter and John K. Ross, Institute for Justice, *Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse*, June 2007, p. 3.

In their separate dissents in *Kelo*, Justices O'Connor and Thomas derided the majority's understanding of the concept of "public use" and predicted that communities with less power than the business interests seeking their property would be disproportionately harmed by eminent domain abuse.<sup>3</sup>

A 2007 study commissioned by the Institute for Justice, *Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse*, appears to confirm the Justices' concerns, finding a disparate impact on the communities least capable of defending themselves against takings. "Taken together, more residents in areas targeted by eminent domain—as compared to those in surrounding communities—are ethnic or racial minorities, have completed significantly less education, live on significantly less income, and significantly more of them live at or below the federal poverty line."<sup>4</sup>

***This bill is in response to Westar's targeting of poor communities of color in Sedgwick county.***

This controversial precedent has allowed corporations such as Westar to get away with projects such as these utility towers, which intruded into resident's private spaces, drove down property values, and did *not*, as should have been required by the SCOTUS decision, justly compensate the home owners and residents.

The stakes are even higher because Westar has placed its high-voltage poles concerningly close to people's homes without any proper hearing about the health and safety impact of living close to high voltage currents. Families with these high-voltage poles in their yard were not informed about the statistical correlation between childhood leukemia and exposure to power lines.<sup>5</sup>

The consistent co-opting of property from people of color or low-income communities, and not from wealthier white residents, triggers serious Equal Protection and Due Process concerns under the U.S. Constitution.

***HB 2173 would protect these communities from exploitation and hold corporations accountable for targeting the poor.***

Even Justice Thomas, one of the justices on the Supreme Court who has prioritized private capital growth, noted the court's decision as a clear error in his dissent in *Kelo*: "Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities."

This is, after all, what Westar has done. In an attempt to increase its capacity to offer power to WSU's new Innovation Campus and other wealthy neighborhoods, thereby increasing its private profits, it has

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<sup>3</sup> See, e.g., *Kelo*, 545 U.S. at 521 (Thomas, J., dissenting) ("Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities."); see also *id.* at 505 (O'Connor, J., dissenting).

<sup>4</sup> Carpenter and Ross, *Victimizing the Vulnerable*, p. 7.

<sup>5</sup> Distance to High-Voltage Power Lines and Risk of Childhood Leukemia – an Analysis of Confounding by and Interaction with Other Potential Risk Factors <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4178021/> (finding statistical correlation between childhood leukemia and power lines).

forcibly taken land from poorer black folks and decimated property values for an entire community without proper notice or consent.

In the absence of leadership from the federal courts on this issue, it is up to state and local government to protect their communities from eminent domain abuse.

HB 2317 does exactly that. It would force public utilities like Westar into a state approval and public hearing process that would require a meaningful impact evaluation prior to any electric transmission line expansion. The impact on poor communities and children would be explained and assessed prior to leveraging eminent domain.

If HB 2317 had been the law last year, Westar would not have been able to erect these poles on private property without a robust public hearing where the community could have had its voice heard, and could have defended itself before a state authority who would be obligated to examine Westar's project plans and require changes to mitigate against community impact. This bill will ensure that a public utility can never again deprive people of their civil rights to property without just compensation and a fair and meaningful process.

For this reason, we urge you to vote yes on HB 2317, as a means of protecting the rights of Kansans to have Equal Protections and Due Process.