IN THE SUPREME COURT OF MISSOURI

SC88647

CITY OF ARNOLD,
Plaintiff-Appellant,

v.

HOMER TOURKAKIS, ET AL.,
Respondents,

and

AMERENUE, ET AL.,
Defendants.

Appeal from the Jefferson County Circuit Court
Honorable M. Edward Williams, Judge

BRIEF OF *AMICUS CURIAE* NATIONAL FEDERATION OF INDEPENDENT BUSINESS LEGAL FOUNDATION IN SUPPORT OF RESPONDENTS

Marc H. Ellinger, #40828
Blitz, Bardgett & Deutsch, L.C.
308 East High Street, Suite 301
Jefferson City, MO 65101
Telephone (573) 634-2500
Facsimile (573) 634-3358
E-mail: mellinger@blitzbardgett.com

ATTORNEY FOR *AMICUS CURIAE*
NATIONAL FEDERATION OF INDEPENDENT BUSINESS
LEGAL FOUNDATION

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

As an organization that represents small businesses in Missouri, *amicus* has a substantial interest in ensuring that Missouri's property rights law follows traditional legal principles and reflects sound public policy.

The National Federation of Independent Business Legal Foundation ("NFIB Legal Foundation"), a nonprofit, public interest law firm established to protect the rights of America's small-business owners, is the legal arm of the National Federation of Independent Business (NFIB). NFIB is the nation's leading small-business advocacy association, with offices in Washington, D.C. and all 50 state capitals. NFIB represents over 9,000 members in Missouri, and its membership spans the spectrum of business operations, including one-person enterprises, family farms, retailers, and manufacturing firms. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses.

An important function of the NFIB Legal Foundation is to represent the interests of small-business owners in precedent-setting cases. Since its launch in 2000, the Legal Foundation has filed nearly 100 *amicus curiae* briefs in state and federal courts.

Protecting private property rights remains one of NFIB's prime public policy concerns. This concern stems from the fact that for many small-business owners and NFIB members their most valuable business asset is the real property on which their business is located. NFIB and its members are therefore keenly interested in the outcome of this case.

STATEMENT OF THE FACTS

Amicus adopts Respondents' Statement of Facts.

STANDARD OF REVIEW

This Court reviews the trial court's interpretation of the Missouri Constitution *de novo*. *State v. Beine*, 162 S.W.3d 483, 490 (Mo. Banc 2005). In general, constitutional provisions are subject to the same rules of construction as other laws, except that constitutional provisions are given a broader construction due to their more permanent character. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006). This Court is required to give due regard to the primary objectives of the constitutional provision under scrutiny, as viewed in harmony with all related provisions. *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991).

This Court reviews *de novo* whether a statute is constitutional. *Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. Banc 2006). Statutes have a presumption of constitutionality and may be found unconstitutional only if it clearly contravenes a specific constitutional provision. *State v. Kinder*, 89 S.W.3d 454, 459 (Mo. Banc 2002). "Nevertheless, if a statute conflicts with a constitutional provision or provisions, this Court must hold the statute invalid." *Id*.

POINTS RELIED ON

I.

THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT'S PETITION BECAUSE THE CITY OF ARNOLD DOES NOT HAVE THE POWER OF CONDEMNATION IN THAT ARTICLE VI, SECTION 21 OF THE MISSOURI CONSTITUTION RESTRICTS EMINENT DOMAIN AUTHORITY TO CONSTITUTIONALLY CHARTERED CITIES AND COUNTIES.

Article VI, Section 21 of the Missouri Constitution

Debates of the Missouri Constitution 1945

II.

THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT'S PETITON BECAUSE CONDEMNING RESPONDENTS' PROPERTY IS PROHIBITED IN THAT THE PROPOSED TAKING OF RESPONDENTS' PROPERTY BY THE ARNOLD TRIANGLE DEVELOPMENT, L.L.C. IS A PROHIBITED, PRIVATE USE UNDER ARTICLE I, SECTION 28 OF THE MISSOURI CONSTITUTION.

Article I, Section 28 of the Missouri Constitution

State on Inf. Of Dalton v. Land Clearance for Redevelopment Authority of Kansas City, 270 S.W.2d 44 (Mo. 1954)

III.

THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT'S PETITION BECAUSE TAKING OF PRIVATE PROPERTY SHOULD BE LIMITED IN THAT PUBLIC POLICY FAVORS TIGHTER SCRUNITY OF PUBLIC SEIZURES OF PRIVATE PROPERTY FOR PRIVATE REDEVELOPMENT.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This brief raises many small-business policy concerns not discussed by the parties and expands on the constitutional challenges raised by Respondents.

Article VI, Section 21 grants chartered cities and counties the power to enact eminent domain ordinances. The City of Arnold is not a constitutionally chartered city and, therefore, does not have authority to seize Respondents' property. In addition, the proposed taking of Respondents' property is a prohibited private use under Article I, Section 28. Finally, public policy favors tighter scrutiny of public seizures of private property for redevelopment.

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT'S PETITION BECAUSE THE CITY OF ARNOLD DOES NOT HAVE THE POWER OF CONDEMNATION IN THAT ARTICLE VI, SECTION 21 OF THE MISSOURI CONSTITUTION RESTRICTS EMINENT DOMAIN AUTHORITY TO CONSTITUTIONALLY CHARTERED CITIES AND COUNTIES

A. Whether Article VI, Section 21 of the Missouri Constitution Grants Or Limits The Authority Of Nonconstitutionally Chartered Cities And Counties To Enact Eminent Domain Ordinances Is A Question Of First Impression

This case presents an issue of first impression – whether the Missouri Constitution restricts eminent domain authority to constitutionally chartered cities and counties. Appellant erroneously argues that *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W. 2d 635 (Mo. banc 1965) controls the underlying dispute in this case. *Annbar* simply affirms the authority of constitutionally chartered cities to enact eminent domain ordinances and affirms the authority of the state legislature to enact eminent domain laws. *Amicus* does not dispute that Article VI, Section 21 grants these powers. Instead, the dispute turns on whether Article VI, Section 21 excludes non-chartered cities, such as the City of Arnold, from exercising a takings power.

The eminent domain ordinance disputed in *Annbar* was enacted by Kansas City, a constitutionally chartered city. *Annbar*, 397 S.W. 2d at 637. The City of Arnold is not a constitutionally chartered city. This Court has never determined whether Article VI, Section 21 grants the power to enact eminent domain ordinances to non-chartered cities or counties. *Annbar*, therefore, is not controlling authority.

B. The Missouri Constitution Limits The Power To Enact Ordinances To Condemn Blighted Land To The State Legislature And Constitutionally Chartered Cities

To resolve ambiguity in the Missouri Constitution, this Court has rejected strict grammatical rules regarding the placement or absence of commas. *Missourians to Protect Init. Proc. v. Blunt*, 799 S.W.2d 824, 830 (Mo. Banc 1990); *See also Abrams v. Ohio Pacific Exp.*, 819 S.W.2d 338, 340 (Mo. Banc 1991). Rather, when interpreting the

constitution, this Court has emphasized the importance of context and intent. *Blunt*, 799 S.W.2d at 831.

> The organization of the constitution creates a presumption that matters pertaining to separate subjects . . . should be set forth in the article applicable to that subject and not commingled under unrelated headings. The organizational headings of the constitution are strong evidence of what those who drafted and adopted the constitution mean by one subject.

Id. *See also Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983) ("Words used in constitutional provisions must be viewed in context.").

Article VI, Section 21's location within the Missouri Constitution reveals much about the article's intent. Section 21 falls amongst other sections of the Missouri Constitution that describe the formation, responsibility, and authority of constitutionally chartered counties and cities. The sections that precede and follow Section 21 relate to topics concerning constitutionally chartered cities or counties. Article VI, Section 21's location indicates that the framers intended for Section 21 to limit eminent domain authority to constitutionally chartered cities.

Examination of Article VI, Section 21 in this context also reveals the importance of the fact that the provision does not say "all" cities and counties have the authority to enact eminent domain ordinances. Instead, the section references "any city or county operating under a constitutional charter." In this way, the framers limited the authority to enact "ordinances" to constitutionally chartered cities and counties. The state legislature may enact laws for this same purpose. But as to ordinances, authority rests with

constitutionally chartered cities or counties. Article VI, Section 21 prohibits non-chartered cities from exercising this power by explicitly using the words "constitutional charter" and placing the amendment in a section surrounded by segments that define the authority and responsibilities of constitutionally chartered cities and counties.

"The first rule of constitution construction of a constitutional amendment is to give effect to its intent and purpose." *City of Willow Springs v. Missouri State Librarian*, 596 S.W.2d 441, 445 (Mo. banc 1980). The Committee on Local Government (City of St. Louis, St. Louis County and Jackson County) proposed Article VI, Section 21 and intended for Section 21 to provide large cities power to ameliorate slums and dilapidated areas within their jurisdiction. *See Debates of the Missouri Constitution 1945* at 2090 ("*Debates*"). Officials from Kansas City, one of the largest cities in Missouri at that time, drafted the provision.

A committee member later observed that Article VI, Section 21 was "of great importance to Kansas City and St. Louis and Springfield, and perhaps…St. Joseph," all larger cities that contained slums and desired authority to eradicate urban blight. *Debates* at 2090. In reference to the slums and dilapidated areas, a delegate noted that "those cities . . . have the responsibility to restore those areas… [a]nd the city administration and the Chamber of Commerce in Kansas City are asking that this provision be adopted as it is [to] give them the power and the authority to proceed to do those things which they think will restore [the blighted areas]." *Debates* at 2090.

Missouri's statutes classify municipalities on the basis of population. A city or county must attain a population of more than 5,000 to become constitutionally chartered.

Since Article VI, Section 21 intended to eradicate larger cities' slums, it follows that the framers limited this authority to constitutionally chartered cities.

Missouri's reluctance to grant broad eminent domain powers to the legislature bolsters this interpretation. For instance, the framers retained Article I, Section 28 when they adopted of Article VI, Section 21. An earlier constitutional convention approved Article I, Section 28 to limit the power of the government to take property by eminent domain for private uses. Missouri's adoption of Article I, Section 28 was unique; most states at the time had less restrictive eminent domain laws. States commonly left unchecked court decisions that expanded public use definitions, thereby allowing broader eminent domain powers. Missouri, however, exercised caution and respect for eminent domain authority and amended its constitution to limit private-use taking.

By limiting the power to enact ordinances to constitutionally chartered cities, the framers simultaneously empowered larger cities with authority to eliminate slums and curtailed expansion of the takings power. Since the purpose of Article VI, Section 21 was to ameliorate slums, not all cities required the power to enact such ordinances.

The Missouri Constitution provides the state legislature with power to enact laws to exercise eminent domain over blighted areas. At the same time, the document limits to constitutionally chartered cities or counties the power enact ordinances to exercise eminent domain over blighted areas. This limitation protects individuals and businesses in smaller cities from defending against trumped-up blight declarations.

C. The TIF Act Does Not Grant The City Of Arnold Authority To Enact Eminent Domain Ordinances

Appellant argues that the Real Property Tax Increment Allocation Redevelopment Act, ("TIF Act"), Sections 99.800 through 99.865 of the Revised Statutes of Missouri, authorizes nonconstitutionally chartered cities to enact ordinances to take blighted areas by eminent domain. It cites in particular to Section 99.820(3), which provides:

> Pursuant to a redevelopment plan, subject to any constitutional limitations, acquire by purchase, donation, lease or, as part of a redevelopment project, eminent domain, own, convey, lease, mortgage, or dispose of, land and other property, real or personal, or rights or interests therein, and grant or acquire licenses, easements and options with respect thereto, all in the manner and at such price the municipality or the commission determines is reasonably necessary to achieve the objectives of the redevelopment plan. No conveyance, lease, mortgage, disposition of land or other property, acquired by the municipality, or agreement relating to the development of the property shall be made except upon the adoption of an ordinance by the governing body of the municipality.

Section 99.820(3), RSMo Cumm. Supp. 2006 (emphasis supplied).[1]

Although Section 99.820(3) of the TIF Act provides municipalities with the power to take blighted areas by eminent domain, Appellant ignores an important clause in that very section. Section 99.820(3) unambiguously declares that the power is "subject to any

[1] All citations to Section 99.820(3) are to RSMo Cumm. Supp. 2006 unless otherwise noted.

constitutional limitations." Since Article VI, Section 21 only provides eminent domain authority to constitutionally chartered cities, and the City of Arnold is not a constitutionally chartered city, the TIF Act provides no such authority to the City of Arnold.

In addition, the language of Section 99.820(3) of the TIF Act confirms the interpretation that Article VI, Section 21 limits the power to enact eminent domain ordinances to constitutionally chartered cities or counties. Section 99.820(3) states both that the power of eminent domain granted to the municipality is "subject to constitutional limitations" and that before its use the "adoption of an ordinance by the governing body of the municipality" is required. The latter phrase uses the same language Article VI, Section 21 contains, which limits the power to enact such ordinances to constitutionally chartered cities. This replication, along with the "subject to constitutional limitations" language, indicates that the TIF Act drafters recognized the limitation that Article VI, Section 21 imposed and drafted the TIF Act accordingly. Consequently, the TIF Act grants takings powers subject to the limitations Article VI, Section 21 imposes.

II.

THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT'S PETITION BECAUSE CONDEMNING RESPONDENTS' PROPERTY IS PROHIBITED IN THAT THE PROPOSED TAKING OF RESPONDENTS' PROPERTY BY THE ARNOLD TRIANGLE DEVELOPMENT, L.L.C. IS A PROHIBITED, PRIVATE USE UNDER ARTICLE I, SECTION 28 OF THE MISSOURI CONSTITUTION

This Court has strictly construed statutory authorities authorizing the condemnation of private property for public use. *Harris v. L.P. and H. Construction Company*, 441 S.W.2d 377 (Mo. 1969). The United States Constitution and the Missouri Constitution further limit statutory authorities. *Board of Regents v. Palmer*, 204 S.W.2d 291, 293 (Mo. 1947). Moreover, "both the statute conferring the power and the proceedings under the statute are to be strictly construed *in favor of the property owner*." *City of Caruthersville v. Faris*, 146 S.W.2d 80, 86 (Mo. Ct. App. 1940) (emphasis supplied). A statute authorizing a taking is, therefore, subject to constitutional limitations and will be strictly construed in favor of the property owner.

The TIF Act provides certain municipalities power to take private property, by means of eminent domain, for the purpose of redevelopment. Section 99.820(3). The statute requires an initial determination that "the redevelopment area on the whole is a blighted area, a conservation area, or an economic development area, and has not been subject to growth and development through investment by private enterprise and would

not reasonably be anticipated to be developed without the adoption of tax increment financing." Section 99.820(3). The Missouri Constitution limits the statute's reach. Specifically, the constitution provides:

> That private property shall not be taken for private use 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.

Mo. Const. Article I, Section 28.

Aside from the limited exceptions set forth above, the Missouri constitution generally limits the power of eminent domain to public uses. A blight determination pursuant to Section 99.810(1) "declares the public use" for purposes of an eminent domain taking. *State of Missouri ex rel. United States Steel v. Koehr*, 811 S.W.2d 385, 389 (Mo. 1991). This Court reserved its authority to judicially settle whether a use is public. While "a legislative declaration that a blight or insanitary area exists… will be accepted by the courts as conclusive evidence that the contemplated use thereof is public," a court can overrule a blight declaration if it "further appears upon allegation and clear proof that the legislative finding was arbitrary." *State. on Inf. of Dalton v. Land Clearance for Redevelopment Authority of Kansas City*, 270 S.W.2d 44, 52 (Mo. 1954).

This Court has not, therefore, surrendered to a legislature the right to ignore facts that lead only to the conclusion that the proposed use of Respondents' property is private.

What distinguishes private use from public use? This Court has grappled with this question in many cases and concluded that the answer is deliberately unsettled since "any definition [of public use] attempted would exclude some subjects that properly should be included in, and include some subjects that must be excluded from, the operation of the words 'public use.' Naturally, a definition or description of 'public use' is likely to vary with the character of the case in which the term is employed." *Kansas City v. Liebi*, 252 S.W. 404, 407 (Mo. banc 1923). *See also City of Smithville v. St. Luke's Northland Hospital Corp*, 972 S.W.2d 416, 420 (Mo. Ct. App. 1998).

Although it has not adopted a precise definition of public use, this Court has not sanctioned the taking of private property where the proposed use is unquestionably private as in the immediate case. A private developer, the Arnold Triangle Development, L.L.C., ***not*** the City of Arnold, threatens to take Respondents' property. *Amended and Restated Development Agreement Between City of Arnold, Missouri, The Arnold Triangle Development, L.L.C., and The Arnold Triangle Project, Inc.*, 17. (Appendix, page A-3). At no time will Respondents' property be in public hands.

In *Annbar Associates v. Westside Redevelopment Corp.*, 397 S.W.2d 635 (Mo. banc 1965), this Court upheld the taking of private property by a private corporation. The *Annbar* decision departed from previous rulings on this issue and is, nevertheless, distinguishable from Respondents' situation.

Annbar followed the landmark case of *Dalton, supra*, where this Court rejected a landowner's argument that the taking constituted a private use because private interests would ultimately own the property. The *Dalton* court concluded that:

> Under the Redevelopment Law, private owners come into the picture only after the land has been acquired and cleared. There may then be a sale to a redeveloper, who must proceed according to the plan. Only after completion of the redevelopment plan is there anything like unencumbered private ownership.… Since the purpose has then been accomplished, the sale to private interests is purely an incident of the main program.

Dalton, 270 S.W.2d at 51.

The *Dalton* court recognized the distinction between a situation where private property is taken by a public body, cleared, and then transferred to private hands, and a situation where the chain of title throughout the redevelopment is entirely private. This Court should readopt this standard consistent with principles of strict statutory construction and Article I, Section 28.

Furthermore, *Annbar* can be distinguished from Respondents' situation based on the ultimate use of the condemned property. The court was within the bounds of common sense in finding that the intended use of the *Annbar* property was public. The *Annbar* redevelopment project showcased a convention center and adjoining hotel and parking facility. *Annbar*, 397 S.W.2d at 642. The convention center arguably would benefit the public by hosting civic events and attracting out-of-town tourists. In contrast, the Arnold Triangle Development, L.L.C. intends to replace Respondents' dental office

and the surrounding buildings with a shopping center anchored by a Lowe's home improvement store. It is a perverse distortion of the term to conclude that replacing a long-standing community dental practice with an unremarkable, privately-owned big-box store constitutes a public use.[2]

While this Court has held that "as long as the purpose of the taking is the clearance of blighted property, any benefits to private developers do not negate that public purpose," the Court has also concluded that "if the chief dominating purpose or use is private, the mere fact that a public use or benefit is also incidentally derived will not warrant the exercise of the power of eminent domain." *Koehr*, 811 S.W.2d at 390 and *Coleman Highlands v. Kansas City*, 401 S.W.2d 385, 388 (Mo. banc 1966). Here the

[2] It is possible to distinguish other instances where courts have upheld the taking of private property. *See Bowman v. Kansas City*, 233 S.W.2d 26 (Mo. 1950) (private parking lot); *Arata v. Monsanto Chemical Company*, 351 S.W.2d 717 (Mo. 1961) (roadway); *Board of Regents v. Palmer*, 204 S.W.2d 291 (Mo. 1947) (college dormitory); *Land Clearance For Redevelopment Authority v. City of St. Louis*, 270 S.W.2d 58 (Mo. banc 1954) (park); *State of Missouri ex rel. United States Steel v. Koehr*, 811 S.W.2d 385 (Mo. 1991) (hotel and parking lot); and *Tierney v. Planned Industrial Expansion Authority of Kansas City*, 742 S.W.2d 146 (Mo. banc 1988) (office buildings, hotels, and parking structures). The takings challenged in these cases offered greater public benefit than the City of Arnold's proposal.

dominating private purpose - luring a Lowe's story to Arnold - eclipses the claimed public use - demolishing a 'blighted' dentist's office.

This Court must stop the unfettered expansion of eminent domain – condemnation was not intended to grab every property with sidewalk cracks or chipped paint. This Court should follow the principle of *Coleman Highlands*, whereby the actual use of the property, rather than the means by which it is taken, demonstrates whether it is a public use or a private use. For the sake of equity and for the preservation of private property rights inherent in the Missouri Constitution, the Court should hold that Appellant's proposed taking violates the Constitution's prohibition on takings for private use.

III.

THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT'S PETITION BECAUSE TAKING OF PRIVATE PROPERTY SHOULD BE LIMITED IN THAT PUBLIC POLICY FAVORS TIGHTER SCRUTINY OF PUBLIC SEIZURES OF PRIVATE PROPERTY FOR PRIVATE REDEVELOPMENT

Amicus represents a constituency that, along with private homeowners, is most often subject to property seizures by local governments acting in the name of redevelopment.

A. Under The Current Legal Scheme, A Municipality Is the Investigator, The Prosecutor, The Judge And The Jury

Even assuming the City of Arnold has authority to condemn blighted property, the procedure for appropriating property for blight and re-development stacks the deck against the property owner from the beginning. It does so by affording municipalities the power to declare a blighted area and seize any property within that area, with almost no fear of contradiction from the courts of this state. First, the city identifies certain property that it wishes to take. The city then investigates and makes an initial determination that the property is blighted. At this point, the city has become adverse to that specific property owner. The city then hires its own consultant to determine that the property is blighted. Next, the city, acting as both the adverse party and the fact finder (judge), holds a legislative hearing to determine if its own initial determination of blight is in fact accurate. At that same time, the city also determines how much tax revenue it will collect

if it adopts a redevelopment plan and gives the blighted property to a developer. While the property owner may participate, the process is so biased at this point; there is little doubt of the outcome.

In making and issuing its findings, the city interprets the legislature's definition of blight liberally. The city also knows that its determination will withstand judicial scrutiny unless the city is so reckless that it fails the review standard of arbitrariness. *Dalton*, 270 S.W.2d at 52. This sets up a perfect storm into which the city forces the property owner to sail, and from which few owners have ever emerged with their property.

B. Small Businesses Are Damaged

As governmental seizures of private property for transfer to private developers have become increasingly common, it has become more apparent that it often causes greater harm than good. While mega-corporations sometimes benefit, in the long run they often do not. Moreover, the small property owner is almost always harmed. The balance of harm is shifting away from the urban re-development model.

Inherent in any forcible seizure of private property is the fact that the owner is compelled to vacate the property at a price below that which he would have accepted to leave voluntarily. Common sense dictates that the loss of location, goodwill, and possibly the former customer base will have an adverse impact on a great many small businesses victimized by eminent domain proceedings.

Urban renewal plans often amount to a subsidy because preferred land is being acquired at what are inherently below-market values.[3] Many such plans also include more direct subsidies, either via tax abatement or other relief.

These direct and indirect subsidies unfairly penalize small and family-owned businesses because the urban renewal plans rarely include independently owned small business. It is the larger employers and developers who put together the large-scale projects. Larger businesses mean that there are fewer owners involved, making it easier to reach agreement compared to a project involving a larger number of smaller business. While favoring a smaller number of larger stores may seem on the surface to make better policy, it actually makes projects more brittle. The withdrawal of a large player in a particular project can break the entire project.

If land is truly blighted, the owners of the land are less likely to go to the time and expense of resisting eminent domain proceedings. Further, the economic benefits of redevelopment are going to be significantly greater in a relative sense for truly blighted areas than they will be for areas that are not truly blighted.

Likewise, the risk of actual harm from seizing properties that are not truly blighted is correspondingly higher. If truly blighted areas are seized but the redevelopment falls through, the harm to the public is minimal. But if the seized areas are blighted only under a liberal definition drafted by a municipality self-interested in the outcome, the loss to the community and to individual citizens is far more significant.

[3] True market values, by definition, are set when owners sell their property voluntarily.

C. Redevelopment Discourages Private Investment

The threat of eminent domain seizures effectively places a Sword of Damocles over the head of business and homeowners in the affected community. When such plans are announced, common sense dictates that normal upkeep and investment will suffer. What homeowner will invest in a new roof, or waterproof the basement, when their city announces a planned takeover? What business is going to invest in new wiring or make capital improvements during the perhaps years-long debate that accompanies many redevelopment projects? If non-blighted properties are permitted to be seized simply because there is an (alleged) better economic use for the property, then no business or home is safe.

D. Urban Renewal Has Been Far From An Unqualified Success

As seizures have become more common, it has become more apparent that seizures of private property for redevelopment not only harm the small businesses whose property is seized, but often make matters worse rather than better in the seized area.

A great many urban renewal projects, both in Missouri and around this country, have failed to live up to the promises of their backers. In many cases, forcing healthy business and hard-working homeowners to vacate their properties to make way for planned development has resulted in failed redevelopment, vacant lots, and a worsening of problems. In other cases, the promised benefits of redevelopment failed to materialize, and ended up costing rather than benefiting municipalities.

In Chicago, for example, Block 37, a historic neighborhood largely populated by African-American businesses and residents was largely seized in a redevelopment plan.

Though most of the old businesses were profitable, the city thought it could raise more tax money via redevelopment.[4] The plan was a spectacular failure. Sixteen buildings were demolished and it was not until five mayoral administrations later that the land was sold to developers—for 33 cents on the dollar.[5] Other cities have suffered similar experiences, including: Phoenix, Arizona[67]; Mesa, Arizona[8]; Indio, California[9]; East Hartford, Connecticut[1011]; West Palm Beach[12]; Atlantic City, New Jersey[13]; Las Vegas,

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[4] Hugo Lindgren, *The secret life of a city block*, Newsday, Mar. 24, 1996; Cheryl Kent, *What's the deal? A look at Chicago's Block 37 misses the chance to explain how big cities take shape*, Chicago Tribune, Apr. 28, 1996.

[5] *Id.*

[6] Jordan Rose, *New Land Condemnation Laws Abuse Citizens*, Tucson Citizen, Aug. 29, 2002, 7B.

[7] *See 24th St. Broadway Development Touted*, Arizona Republic, Oct. 18, 1995.

[8] Paul Green, *Eminent Domain: Mesa Flexes a Tyrannous Muscle*, East Valley Tribune, Sept. 2, 2001; Robert Robb, *Count on City-Driven Project to Fail*, Arizona Republic, Sept. 21, 2001.

[9] Xochitl Pena, *Mall makeover in Indio's future*, Desert Sun, Nov. 15, 2004, 4R.

[10] Christopher Keating, *Nardis Seeks More Time for Move*, Hartford Courant, Apr. 9, 2001, B1.

[11] Carrie Budoff, *Project Faces Cost Overrun; Agency Asking for $75,000*, Hartford Courant, Nov. 19, 2001, B3.

Nevada; New Haven, Connecticut[14], and; Miami, Florida[15], and Vancouver, Washington.[16]

Seizures of private property for purposes of redevelopment have gone from being a rare but necessary means to get rid of blight, to an often-misused excuse for the latest

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[12] Thomas R. Collins, *Evicted homeowners feel betrayed over failed project*, Palm Beach Post, March 15, 2005.

[13] Bill Kent, *Real-Life Monopoly: MGM Bids on the Boardwalk*, N.Y. Times, July 14, 1996, 13NJ-6; Amy S. Rosenberg, *A.C. Residents Hold Ground; They Say they Will Make Way for Casinos—For a Fair Price*, Philadelphia Inquirer, July 26, 1996, B1; John Curran, *MGM Grand Frustrated by Atlantic City Project*, Las Vegas Rev. J., June 28, 1999, 1D; Amy S. Rosenberg, *MGM Grand Is Picked to Develop South Inlet; Atlantic City's Council Gave the Firm the Right to Build a Casino Complex.*, Philadelphia Inquirer, Jan. 6, 2000, B3; *MGM Grand May Cash in Its Chips on Casino Site*, Las Vegas Rev. J., May 22, 2000.

[14] Harry Siegel, *Urban legends: the decline and fall of the American city*, Weekly Standard, Mar. 15, 2004; Avi Salzman, April Rabkin, *When the bulldozers never arrive*, N.Y. Times, Aug. 14, 2005.

[15] J.M. Kalil, *Before Goodman, failed projects tainted view of downtown*, Las Vegas Rev. J. Journal, Dec. 19, 2004, 40A.

[16] *Vancouver Files Suit to Condemn Old Hotel*, Oregonian, Nov. 25, 1999, B5, *Vancouver, Hotel Owners Agree on $750,000 Price*, Oregonian, Nov. 12, 2001, C2.

get rich quick scheme for many municipalities. In the process, the legitimate property rights of citizens have been trampled, and the seduction of allegedly cheap land has led to projects that were not independently viable economically getting taxpayer support. The consequences have been far from uniformly beneficial, and cannot justify the loose meaning of public use under the Missouri Constitution as it is now interpreted.

CONCLUSION

Since the City of Arnold is not a constitutional charter city, it has no authority to take property for redevelopment by eminent domain. Even if a non-constitutional charter city can take property for redevelopment by eminent domain, Appellant cannot take Respondents' property since the primary purpose of such taking is a private benefit in violation of Article I, Section 28 of the Missouri Constitution. Finally, this Court should adopt a policy of closer scrutiny of takings for private property for private redevelopment. Therefore, *Amicus* requests that this Court affirm the Circuit Court's decision.

WHEREFORE, Amicus prays that this Court affirm the Circuit Court's decision dismissing Appellant's Petition.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By: _____

Marc H. Ellinger, #40828
308 East High Street
Suite 301
Jefferson City, MO 65101
Telephone No.: (573) 634-2500
Facsimile No.: (573) 634-3358
E-mail: mellinger@blitzbardgett.com

Attorneys for *Amicus Curiae* National Federation of Independent Business Legal Foundation

CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing Amicus Brief complies with the provisions of Rule 55.03 and complies with the limitations contained in Rule 84.06(b) and that:

(A) It contains 6,183 words, as calculated by counsel's word processing program;

(B) A copy of this Brief is on the attached 3 1/2" disk; and that

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Marc H. Ellinger

CERTIFICATE OF SERVICE

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Gerard T. Carmody, Mo. Bar No. 24769
Kelley F. Farrell, Mo. Bar No. 43027
Kameron W. Murphy, Mo. Bar No. 58958
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
Attorney for the City of Arnold

Michael A. Wolff
Seigel & Wolff P.C.
7911 Forsyth Blvd., Suite 300
Clayton, MO 63105-3860
(314) 726-0009
Fax: (314) 726-5809
Attorney for Homer R. Tourkakis and Julie H. Tourkakis

Tracy Gilroy
The Gilroy Law Firm
231 S. Bemiston Avenue, Suite 800
St. Louis, MO 63105
(314) 965-3536
Fax: (314) 966-3560
Attorney for Homer R. Tourkakis and Julie H. Tourkakis

James S. Burling
Timothy Sandefur
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834
Attorney for Homer R. Tourkakis and Julie H. Tourkakis

Marc B. Fried
Dennis J. Kehm, Jr.
Office of the County Counselor;
County of Jefferson, Missouri
P.O. Box 100
Hillsboro, MO 63050
(636) 797-5072
Fax: (636) 797-5065
Attorneys for Beth Mahn, Collector of Revenue

Michael F. Barnes
AmerenUE
1901 Chouteau Avenue
M/C 1310
St. Louis, MO 63103
(314) 554-2552
Fax: (314) 554-4014
Attorney for AmerenUE

Mr. William C. Dodson
P.O. Box 966
Imperial, MO 63052-0966
(636) 461-2300
Fax: (636) 461-2300
Attorney for the Unknowns

Jovita M. Foster
Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070
Fax: (314) 621-5065
Attorney for UMB Bank of St. Louis, N.A.

Robert D. Vieth, as Trustee
7805 Cassia Court
St. Louis, MO 63123
(Fax Number Unknown)

David P. Abernathy
Laclede Gas Company
720 Olive Street, Room 1402
St. Louis, MO 63101
(314) 342-0536
Fax: (314) 641-2161

John F. Medler, Jr.
Southwestern Bell Telephone, L.P.
One AT&T Center, Room 3558
St. Louis, MO 63101
(314) 235-2322
Fax: (314) 247-0881

Kenneth C. Jones
Missouri American Water Company
727 Craig Road
St. Louis, MO 63141
(314) 996-2278
Fax: (314) 997-2451

_____

Marc H. Ellinger