

ARIZONA STATE SENATE

47TH LEGISLATURE
SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON JUDICIARY

DATE: June 21, 2006 **TIME:** Upon Recess of Floor **ROOM:** SHR 1

CHAIRMAN: Senator Huppenthal **VICE CHAIRMAN:** Senator Martin

ANALYST: Jennifer Eugster **COMMITTEE SECRETARY:** Bill Ritz

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Aguirre	X			HCR 2002	DPA/SE
Senator Brotherton	X			HCR 2035	DPA/SE
Senator Gould	X				
Senator C. Gray	X				
Senator Harper	X				
Senator Miranda	X				
Senator Martin, Vice Chairman	X				
Senator Huppenthal, Chairman	X				

Chairman Huppenthal called the meeting to order at 4:14 p.m.

CONSIDERATION OF BILLS

HCR 2002 – eminent domain; presumption – DO PASS AMENDED/STRIKE EVERYTHING

Nadine Sapien, Government Research Analyst, explained the 8 page C. Gray strike everything amendment to HCR 2002 dated 06/21/06 at 3:35 p.m. (Attachment A) and answered questions posed by the Committee members.

Karen Peters, City of Phoenix, testified in opposition to HCR 2002 and answered questions posed by the Committee members.

Brenda Burns, Americans for Limited Government, testified in support of HCR 2002 and answered questions posed by the Committee members.

Senator Martin moved HCR 2002 be returned with a DO PASS recommendation.

Senator Martin moved the 8 page C. Gray strike everything amendment to HCR 2002 dated 06/21/06 at 3:35 p.m. The motion CARRIED by voice vote.

Senator Martin moved HCR 2002 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 5-2-1 (Attachment 1).

In explanation of his vote, Senator Brotherton stated "First, I want to reiterate my concerns about the process here. We have this hastily called meeting with one person testifying from each side, which I don't know if it matters because the votes were already counted so it didn't matter what happened because it was going to go through anyway. Perhaps there could have been more specifics given if the people here were given a little bit more than 15 minutes notice of the meeting. We either sit around and don't do anything here for days, except collect 10 dollars, or we suddenly push something to the ballot that, if it is passed and is screwed up, will take a three quarters vote to change. You would think we would be a little bit more circumspect about doing that considering the experience we have had with other items that we have put on the ballot where they have been screwed up, people have complained, and it has been very difficult to make changes to them. Personally I don't want to live in Houston. If somebody wants to put a knotting donkey in their backyard because they think there is oil there, I don't want it in my neighborhood. Land use regulation is appropriate and I don't adhere to the idea of letting everybody determine the highest use and if you want to put whatever on your property that suddenly the government has to pay you because you have diminished the value of the property. The other thing I don't believe is that there is much of an issue with this. I am not saying that there aren't situations where there haven't been people treated unfairly. There is not a system that we have set up that doesn't treat people unfairly. I think arguably there are many people who have been treated unfairly here today by the way this process has gone on but nobody talks about a wholesale change in the Legislature, at least not yet. I think people have become worked up on this issue because of what happened in Connecticut, a state clear across the nation with totally different laws. Our laws were just changed a couple of years ago and I think they have made a big difference on how cities and counties are dealing with this issue. They are being much more careful about what they do. I don't see a big problem here that needs to be addressed by a wholesale change in the way eminent domain is

utilized and all I really do see is the potential for established neighborhoods and those established residences that are in places near vacant lots and areas that developers might buy. Being in a situation where if the city or the county stands up for them that they are going to end up paying out money to keep the character of a neighborhood from being changed by a developer whose only motivation is profit and does not really care about that neighborhood because they are not going to be there any longer so I vote 'No'."

In explanation of his vote, Senator Gould stated "If we look at the Bailey's Brake Shop case in Mesa, the city was outside the existing rules of the State. Had the Institute for Justice not come in and taken that case pro bono, Mr. Bailey's brake shop would now be a hardware store. I vote 'Aye'."

In explanation of his vote, Senator Gray stated "Since all of this is on the record and we have talked about whether or not this has been a fair process, I just want to bring to the record a couple of issues. Number one, I have been working on this issue for well over a year. Prior to the Kelo decision I called the Institute of Justice and asked them for input on what kind of bills I could run and write. My input on this issue has come prior to Kelo, it was not a result of Kelo, although Kelo did motivate others to join in. Secondly, the regulatory takings aspect is important because of this one underlying principle and I think this is the part where we are talking about philosophy. If the city, which is really a group of people who live in the city, the citizens and residents, if they decide 200 units, as was given in the example, is something that they don't want as a city, then the city at large gets a benefit from reducing that to 100, whether it is traffic control or whatever. If the city at large receives a benefit by a reduction or down zoning then why shouldn't the city at large pay for that, especially when the owner bought the property knowing he could build 200, got the plans and designs, submitted them to the city, and then all of a sudden after he has put all that money into it, he is told he is not going to be allowed to do what he bought the property for. The city at large receives the benefit, so the city at large should pay for benefit they receive. They should not receive it free at the expense of that single property owner who currently bears the brunt of diminution cases. The philosophy here is a fairness issue of not making one property owner pay for a benefit that all the residents receive. Third, this bill has been through this House. This was Senator Bee's bill, SCR 1019, and it was thoroughly vetted and passed out of this House with 19 votes. I just want to bring those issues to bear and I vote 'Yes'."

In explanation of his vote, Senator Harper stated "I believe that the cities will continue to try our Constitution until they find an activist judge that will creatively agree with them on their issues. I understand that the Committee came up with 15 minutes notice, but I did notice Mr. Mall Man and his client, the International Council of Shopping, who have more to gain by eminent domain abuses than anyone else in this State, they were probably the biggest player in opposition to this, and they had no problem getting down here. Maybe the 15 minutes didn't have much of a deterrent. Everybody knew almost all the provisions of this bill ahead of time because they have seen them throughout this session. It is not like this was a surprise attack with something that wasn't introduced. I believe fully that we should be strong advocates of liberty. I believe strongly that we push for liberty first. I always vote liberty first unless it violates my faith. As a matter of fact, when I saw what happened in Phoenix where some guy wanted to spend a couple of billion dollars to build a tower and neighborhood activists that don't even own the property tell him no, I don't understand that. That is not their property even if they own the adjacent property. I don't understand how somebody else can tell a neighbor what to do with their property. I am embarrassed that the Legislature didn't take action on behalf of Brayrock Group and Trump

International even though they never came here and asked us to. I believe that this is necessary legislation and I vote 'Aye'."

In explanation of his vote, Senator Miranda stated "I echo what Senator Brotherton has already said but more specifically for me is how in the world are we going to vote yes when we don't even know what page 3, lines 27 through 29 really mean? We still haven't had an answer of what eminent domain is, what is going to supersede that language, and what laws we already have on the books. I just don't see how we are going to be able to vote and pass this bill on and I vote 'No'."

In explanation of his vote, Senator Martin stated "I find it ironic that HCR 2002, although the amendment is in the form of a striker, the underlying bill is private property rights, it is the same issue. This is the same subject striker done probably to make it easier for staff to administer the amendments. We have heard this thing multiple times, multiple ways. I want to point out the fact that although Connecticut may be on the other side of the United States, the East Valley isn't that far away. It may feel like it on occasion when you are stuck in traffic, but it is definitely not that far away. Bailey's Brake Shop happened here and if it wasn't for the fact that the Connecticut case happened first it is very likely that it would have been the Bailey's Brake Shop case that ended up in the Supreme Court. For the Senator who is worried about us listening to what happens in Connecticut, the U.S. Supreme Court does apply to the State of Arizona as well. If we are going to take someone's property, whether we take it in whole or in part, we need to pay for it as government. We have stopped taking it outright and started taking it through regulatory aspects by saying it is too expensive for us to buy your property because we don't want you to build on it so we are just going to tell you not to. That needs to be paid for. This referral is a very good measure and I think in some cases it may not do enough. I think it is a very good step in the right direction and I am not afraid of listening to the voters and seeing what they have to say on this as well. We need this type of protection because if not we are going to see many more Bailey's Brake Shops. This language and what we are putting on the ballot may be one of the most important things we do and I think it is kind of ironic because the first bill I ever worked on down here was a property rights bill. I actually worked with Doug Cole and Chuck Coughlin on that bill which I think is ironic because I think you guys are on the opposite sides today. I am glad finally after six years we are actually going to get something passed on this particular issue that I started out as a brand new freshman in Government Committee working on. I am looking forward to sending this forward, I vote 'Aye'."

In explanation of his vote, Senator Huppenthal stated "I have no doubt that the loss of your home could kill somebody. I know my parents have lived in their home for 50 years and I just can't imagine if they were uprooted suddenly by some action like this and it is not surprising to me at all that it could cause the death of somebody after they are dislocated from their home. I think that is why someone's property needs to be treated almost in a sacred manner. I would like the sponsor of the bill to consider on page 3, lines 27 through 29 that we more specifically tie the authorized by state to statute to ensure that the existing statutory authorizations for traditional condemnation be anchored into this so that there is no threat of litigation. I am sure that we can get both sides to agree to that. I would say to that, one of the reasons we do this is to protect property owners from the mob and that you can have inflammation out there in which people lose their property rights simply because it is unpopular and that is what the constitutional protections are all about, to solidify ground these rights in fundamental law and that is what this is all about and I am quite comfortable voting 'Aye'."

HCR 2035 – technical correction; judicial ballot – DO PASS AMENDED/STRIKE EVERYTHING

Jennifer Eugster, Judiciary Research Analyst, explained the 1 page C. Gray strike everything amendment to HCR 2035 dated 06/21/06 at 3:31 p.m. (Attachment B) and answered questions posed by the Committee members.

Senator Martin moved HCR 2035 be returned with a DO PASS recommendation.

Senator Martin moved the 1 page C. Gray strike everything amendment to HCR 2035 dated 06/21/06 at 3:31 p.m. The motion CARRIED by voice vote.

Senator Martin moved HCR 2035 be returned with an AS AMENDED, DO PASS, recommendation. The motion CARRIED with a roll call vote of 5-2-1 (Attachment 2).

In explanation of his vote, Senator Brotherton stated “I would like to adopt the comments that I made before with regard to the 15 minutes notice. At least with the last bill, I guess arguably, there were portions of it in other bills but this one seems to be rather new. I don’t know of any laws, ordinances, or policies that currently exist on this. I guess if there is a voter initiative in a city to make a decision that the city, be it Phoenix or Bisbee, does not want their limited public safety resources going towards arresting illegal immigrants solely because they are illegal immigrants, that decision should be allowed and the residents should be able to do that and should not be something mandated on them as a statewide policy that they cannot manage their resources like that, especially considering the fact that there is no one here on this Committee who represents any of the communities on the border. There are many people who deal with this issue, much more so than any of our Districts do, have very different ideas about how these things should be dealt with and what resources should be utilized and many of them do not wish to utilize their own police or sheriff’s departments to enforce immigration law. I think it should be left to them and I vote ‘No’.”

In explanation of his vote, Senator Miranda stated “I echo what Senator Brotherton has said and I would not want this to be a round about way, but what this appears to be is to make law enforcement officers immigration officers. I also want to add, Senator Brotherton, I am going to miss you next year on this Committee and I think you brought a very intellectual legal mind to this Committee. Whether or not other members may have agreed with your opinion, you did bring some expertise to this Committee and I think we will miss that. Thank you.”

In explanation of his vote, Senator Martin stated “Senator Brotherton actually had it backwards, the City of Phoenix already has the sanctuary policy. There is an initiative similar to what this is drafted to eliminate their sanctuary policy. This would be consistent with initiative not an opposition to the initiative. It is amazing, representatives from the City of Phoenix were here a minute ago and they are all of a sudden gone. I am shocked. I vote ‘Aye’.”

In explanation of his vote, Senator Huppenthal stated “I just have trouble believing that after the frenzy of work that has taken place on illegal immigration that this is where we are at with this piece of legislation. I have a great deal of difficulty that this raises to the level of ballot status, but I will vote ‘Aye’.”

There being no further business, the meeting was adjourned at 5:15 p.m.

Respectfully submitted,

Bill Ritz
Committee Secretary

(Audio recordings and attachments on file in the Secretary of Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azsenate.gov>).