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**STATEMENT OF MR. HILARY O. SHELTON
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BEFORE THE HOUSE ENERGY & COMMERCE COMMITTEE
SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER
PROTECTION**

“Protecting Property Rights After Kelo”

October 19, 2005

Thank you, Chairman Stearns, Ranking Member Schakowski and ladies and gentlemen of the panel for inviting me here today to talk about property rights in a post-Kelo world.

My name is Hilary Shelton and I am the Director of the Washington Bureau for the National Association for the Advancement of Colored People, our Nation’s oldest, largest and most widely recognized civil rights organization. We currently have more than 2,200 units in every state in our country.

Given our Nation’s sorry history of racism, bigotry, and a basic disregard on the part of too many elected and appointed officials to the concerns and rights of racial and ethnic minority Americans, it should come as no surprise that the NAACP was very disappointed by the Kelo decision. In fact, we were one of several groups to file an Amicus Brief with the Supreme Court in support of the New London, Connecticut homeowners.¹

Racial and ethnic minorities are not just affected more often by the exercise of eminent domain power, but we are almost always affected differently and more profoundly. The expansion of eminent domain to allow the government or its designee to take property simply by asserting that it can put the property to a higher use will systemically sanction transfers from those with less resources to those with more.

¹ The NAACP would like to offer our sincere gratitude and appreciation to the law firm of Bondurant, Mixson & Elmore, LLP, of Atlanta, Georgia, for their invaluable assistance in preparing the brief.

The history of eminent domain is rife with abuse specifically targeting racial and ethnic minority and poor neighborhoods. Indeed, the displacement of African Americans and urban renewal projects are so intertwined that “urban renewal” was often referred to as “Black Removal.” The vast disparities of African Americans or other racial or ethnic minorities that have been removed from their homes due to eminent domain actions are well documented.

A 2004 study estimated that 1,600 African American neighborhoods were destroyed by municipal projects in Los Angeles². In San Jose, California, 95% of the properties targeted for economic redevelopment are Hispanic or Asian-owned, despite the fact that only 30% of businesses in that area are owned by racial or ethnic minorities³. In Mt. Holly Township, New Jersey, officials have targeted for economic redevelopment a neighborhood in which the percentage of African American residents, 44%, is twice that of the entire township and nearly triple that of Burlington County. Lastly, according to a 1989 study 90% of the 10,000 families displaced by highway projects in Baltimore were African Americans⁴. For the committee’s information, I am attaching to this testimony a document that outlines some of the higher-profile current eminent domain cases involving African Americans.

The motives behind the disparities are varied. Many of the studies I mentioned in the previous paragraph contend that the goal of many of these displacements is to segregate and maintain the isolation of poor, minority and otherwise outcast populations. Furthermore, condemnations in low-income or predominantly minority neighborhoods are often easier to accomplish because these groups are less likely, or often unable, to contest the action either politically or in our Nation’s courts.

Lastly, municipalities often look for areas with low property values when deciding where to pursue redevelopment projects because it costs the condemning authority less and thus the state or local government gains more, financially, when they replace areas of low property values with those with higher property values. Thus, even if you dismiss all other

² Mindy Thompson Fullilove, *Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It*, p.17

³ Derek Werner: Note: *The Public Use Clause, Common Sense and Takings*, pp 335-350), 2001

⁴ Bernard J. Frieden & Lynn B. Sagalyn, *Downtown, Inc.: How America Rebuilds Cities*, p.29

motivations, allowing municipalities to pursue eminent domain for private development as was upheld by the US Supreme Court in *Kelo* will clearly have a disparate impact on African Americans and other racial and ethnic minorities in our country.

As I said at the beginning of my testimony, not only are African Americans and other racial and ethnic minorities more likely to be subject to eminent domain, but the negative impact of these takings on these men, women and families is much greater.

First, the term “just compensation”, when used in eminent domain cases, is almost always a misnomer. The fact that a particular property is identified and designated for “economic development” almost certainly means that the market is currently undervaluing that property or that the property has some “trapped” value that the market is not yet recognizing.

Moreover, when an area is taken for “economic development,” low-income families are driven out of their communities and find that they cannot afford to live in the “revitalized” neighborhoods; the remaining “affordable” housing in the area is almost certain to become less so. When the goal is to increase the area’s tax base, it only makes sense that the previous low-income residents will not be able to remain in the area. This is borne out not only by common sense, but also by statistics: one study for the mid-1980’s showed that 86% of those relocated by an exercise of the eminent domain power were paying more rent at their new residences, with the median rent almost doubling⁵.

Furthermore, to the extent that such exercise of the takings power is more likely to occur in areas with significant racial and ethnic minority populations, and even assuming a proper motive on the part of the government, the effect will likely be to upset organized minority communities. This dispersion both eliminates, or at the very least drastically undermines, established community support mechanisms and has a deleterious effect on these groups’ ability to exercise what little political power they may have established. In fact, the very threat of such takings will also hinder the development of stronger ethnic and racial minority communities. The incentive to invest in one’s community, financially and otherwise, directly correlates with confidence in one’s

⁵ Herbert J. Gans, *The Urban Villagers: Group and Class in the life of Italian Americans*, p.380

ability to realize the fruits of such efforts. By broadening the permissible uses of eminent domain in a way that is not limited by specific criteria, many minority neighborhoods will be at increased risk of having property taken. Individuals in those areas will thus have even less incentive to engage in community-building and improvement for fear that such efforts will be wasted.

In conclusion, allow me to reiterate that by allowing pure economic development motives to constitute public use for eminent domain purposes, state and local governments will now infringe on the property rights of those with less economic and political power with more regularity. And, as I have testified today, these groups, low-income Americans, and a disparate number of African Americans and other racial and ethnic minority Americans, are the least able to bear this burden.

As I have discussed in my testimony, too many of our communities - the minority, the elderly, and the low-income - have witnessed an abuse of eminent domain powers. Given this history of abuse, it is the hope of the NAACP that all legislative responses to Kelo to be sensitive to that. As this Congress advances these policies, and works with various interests to do so, we need to ensure that certain segments of our population that have long been voiceless in this takings issue have a voice. We need to understand how it has been easy to exploit these communities by imposing eminent domain not only in the pursuit of economic development but also in the name of addressing "blight."

Historically and today, it has been too easy to characterize minority, elderly, or low-income communities as "blighted" for eminent domain purposes and subject them to the will of the government. If legislative proposals contain language that could potentially exclude these communities from protection against eminent domain abuses, we have failed in our responsibility to serve and give a voice to this constituency. These communities should be afforded the same rights and protections that all homeowners, business owners, and other property owners will be afforded in a federal policy response to Kelo.

Additionally, in considering the interests of our communities, we raise a broader concern regarding the use of eminent domain for any purpose, including those purposes traditionally viewed as "public purposes," such as highways, utilities, and waste disposal. Even these more traditional uses of eminent domain have disproportionately burdened those

communities with the least political power - the poor, minorities, and working class families. Furthermore, it is not only our owners that suffer, but our renters, whether they be residents or small businesses, who are provided no protections and pay a heavy and uncompensated price when eminent domain is imposed. For these reasons, as the majority in Kelo suggested, there must be sufficient process protections for minority communities, regardless of the purpose and however beneficial to the public. The process must be open and the participation of the community needs to be guaranteed. This is the voice that our communities deserve.

Thank you again, Chairman Stearns, Ranking Member Schakowski and members of the committee, for allowing me to testify before you today about the NAACP position on eminent domain and the post-Kelo landscape.

The NAACP stands ready to work with the Congress and state and local municipalities to develop legislation to end eminent domain abuse while focusing on real community development concerns like building safe, clean and affordable housing in established communities with good schools, an effective health care system, small business development, and a significant available living wage job pool.