



House Joint Resolution 5001 — A joint resolution proposing and submitting to the voters at the next general election an amendment to the Constitution of the State of South Dakota, requiring a declaration of necessity and clarifying public use of private property taken or damaged by eminent domain.

Purpose: Currently, South Dakota is still vulnerable to the eminent domain abuse from private companies that many citizens have experienced. Private property is an inherent right, yet our Constitution does not have the layers of protections against some of the modern attempts at a taking that we have seen in recent years. While state statute or case law, such as the 2006 *Benson v. State* case, could be challenged or overturned at anytime, HJR 5001 is presented as an opportunity for the people of South Dakota to have the final say at the ballot in cementing their property rights in the Constitution. HJR 5001 provides clarity, certainty, and absolute Constitutional protections for home owners and landowners alike, to ensure that eminent domain is only used when appropriate. It is important to note that HJR5001 would not impact eminent domain use by utilities because the courts have clearly established that “utilities are required to provide nondiscriminatory, government-regulated service to the general public, the easements at issue were taken for public use.” (*Montana-Dakota Utils. Co. v. Parkshill Farms, 2017*)

Legal History: Thirty-three states have fortified property rights through their legal framework that are stronger than what South Dakota currently has in the books. Of those 33, 12 of those states have Constitutional amendments that are similar in nature to HJR 5001. In the 2005 case of *Kelo v. City of New London*, the U.S. Supreme Court ruled 5–4 that a city could use eminent domain to take private homes and transfer the land to another private party for economic development. The Court held that promoting economic growth qualified as a “public use” under the Fifth Amendment. That decision led to many states, including those 12, to pass laws strengthening property rights protections, which had standing under the guidance of that Supreme Court decision.

Action: With the passage of HJR 5001, South Dakotans would have the constitutional and statutory framework to provide substantial protections against private use of eminent domain, particularly by excluding eminent domain for economic development purposes. Having consulted with colleagues in the legislature, as well as many Constitutional experts and legal counsel, we propose moving forward with the submitted amended version.

- HJR 5001 has the added benefit of clarifying what “public use” does not include. It therefore prevents an interpretation of “public use” as merely “public purpose.” This specifically prevents future arguments that economic development or an increase in the tax base, tax revenues, employment, or general economic health qualify as a public use for purposes of eminent domain.
- Additionally, this amendment does not have the problematic “solely” language included, which could create a loophole for governments to claim that a taking was for an additional reason even if the driving force was increased economic development and tax revenue.
- HJR 5001 would require a public declaration by the condemnor establishing necessity, creating a procedural safeguards. Courts review necessity decisions for fraud, bad faith, or gross abuse of discretion (*SDL 21-35-10.1*). This Constitutional amendment would provide a narrow “use by the public” test, the exclusion of economic development purposes, and procedural transparency requirements to create meaningful limitations on eminent domain for private gain.