

Blight After “Kelo”



“Redevelopment and
Condemnation”

Kirby A. Glaze
Public-Private Partnership Project
Management, Inc.

What is “Kelo”?



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- **“HIGH COURT EXPANDS REACH OF EMINENT DOMAIN”**
 - **FOXNEWS**



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- **“Supreme Court backs municipal land grabs”**
 - Associated Press



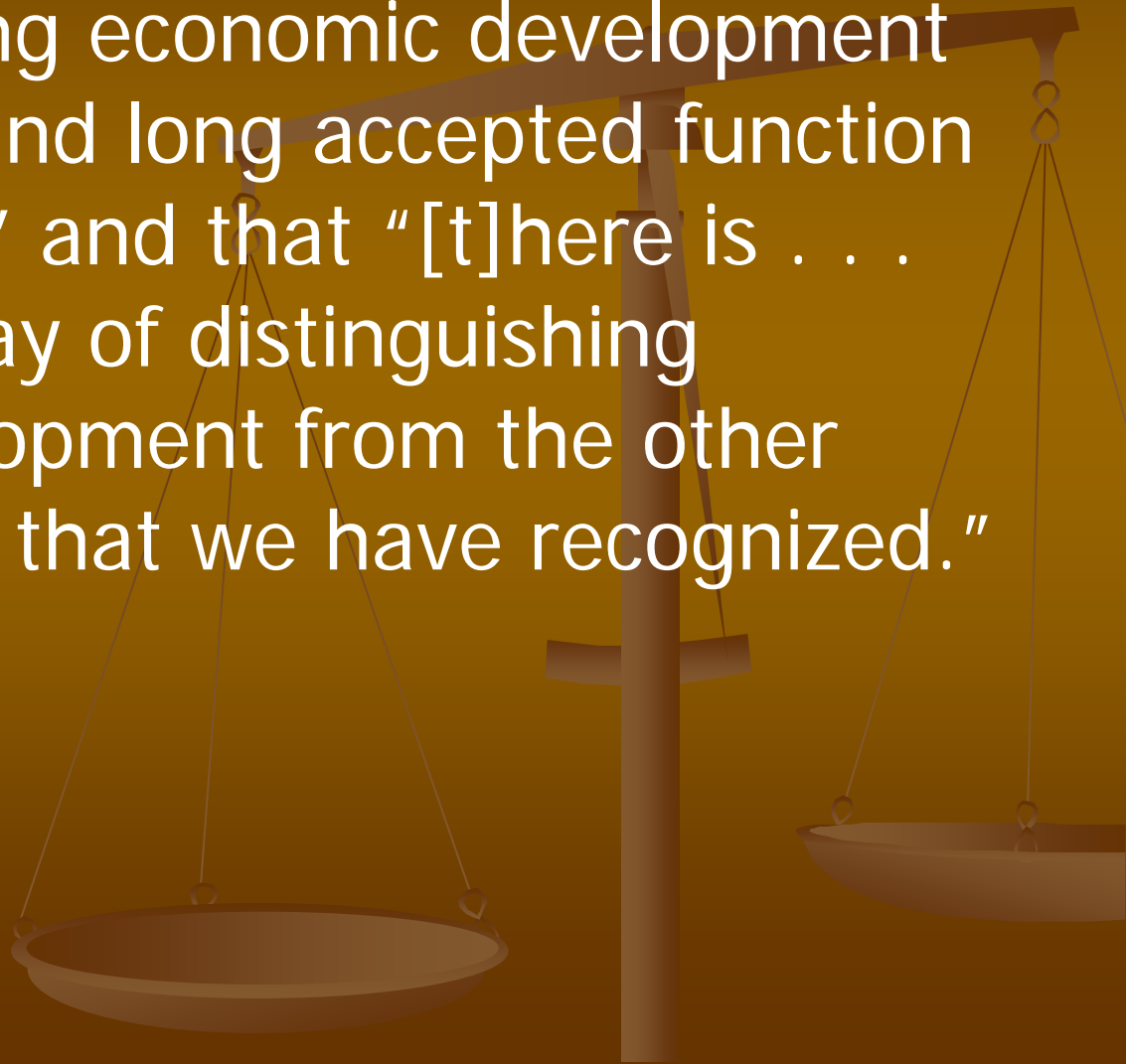
What is “Kelo”?

- **“HIGH COURT EXPANDS REACH OF EMINENT DOMAIN”**
 - FOXNEWS
- **“Supreme Court backs municipal land grabs”**
 - Associated Press
- **“This decision abolishes private property.”**
 - Dave Hitt - Blogwriter



In *Kelo v. City of New London*, the US Supreme Court decided

- that “[p]romoting economic development is a traditional and long accepted function of government,” and that “[t]here is . . . no principled way of distinguishing economic development from the other public purposes that we have recognized.”

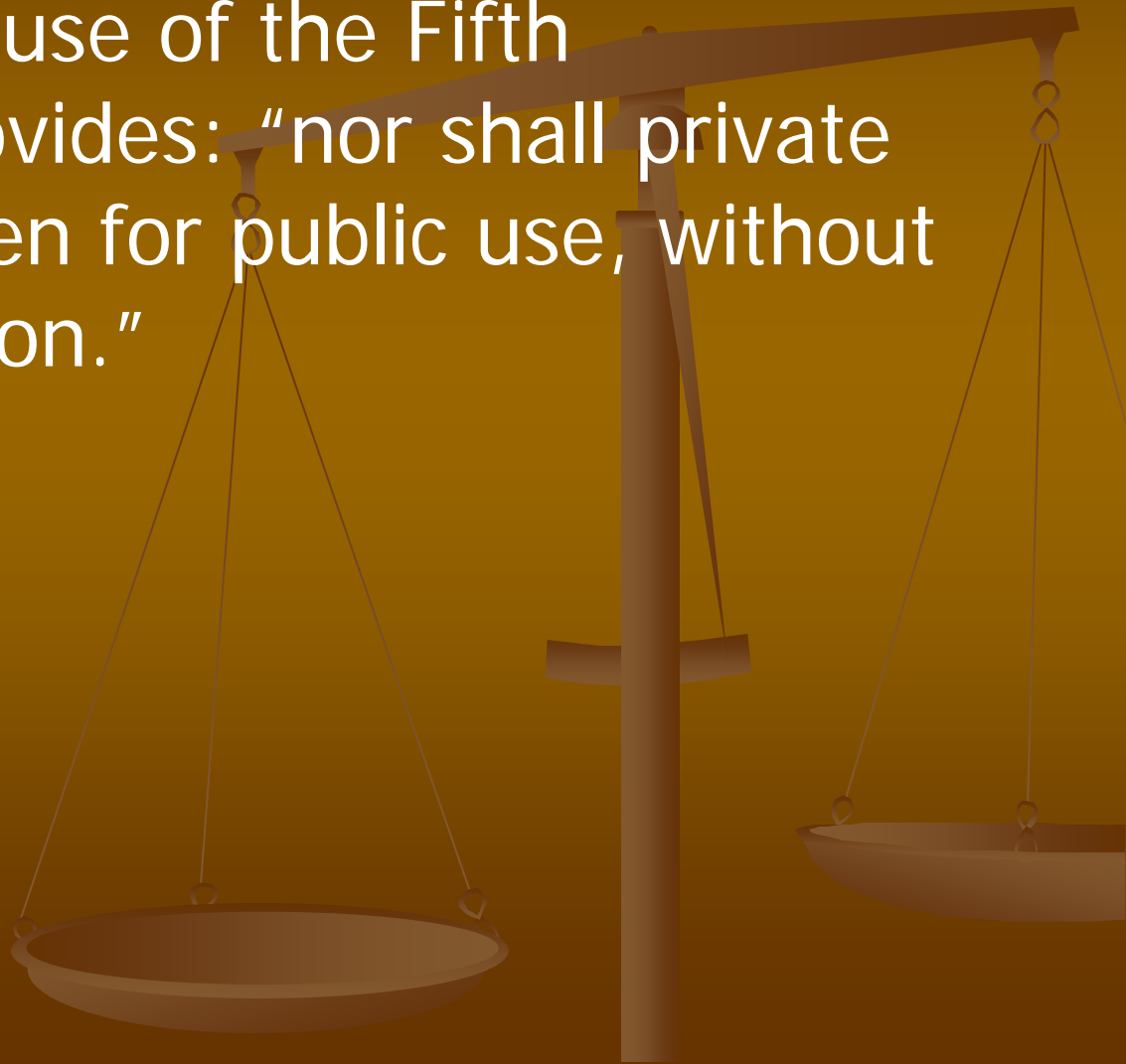


What is all the fuss about?



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- The Takings Clause of the Fifth Amendment provides: "nor shall private property be taken for public use, without just compensation."

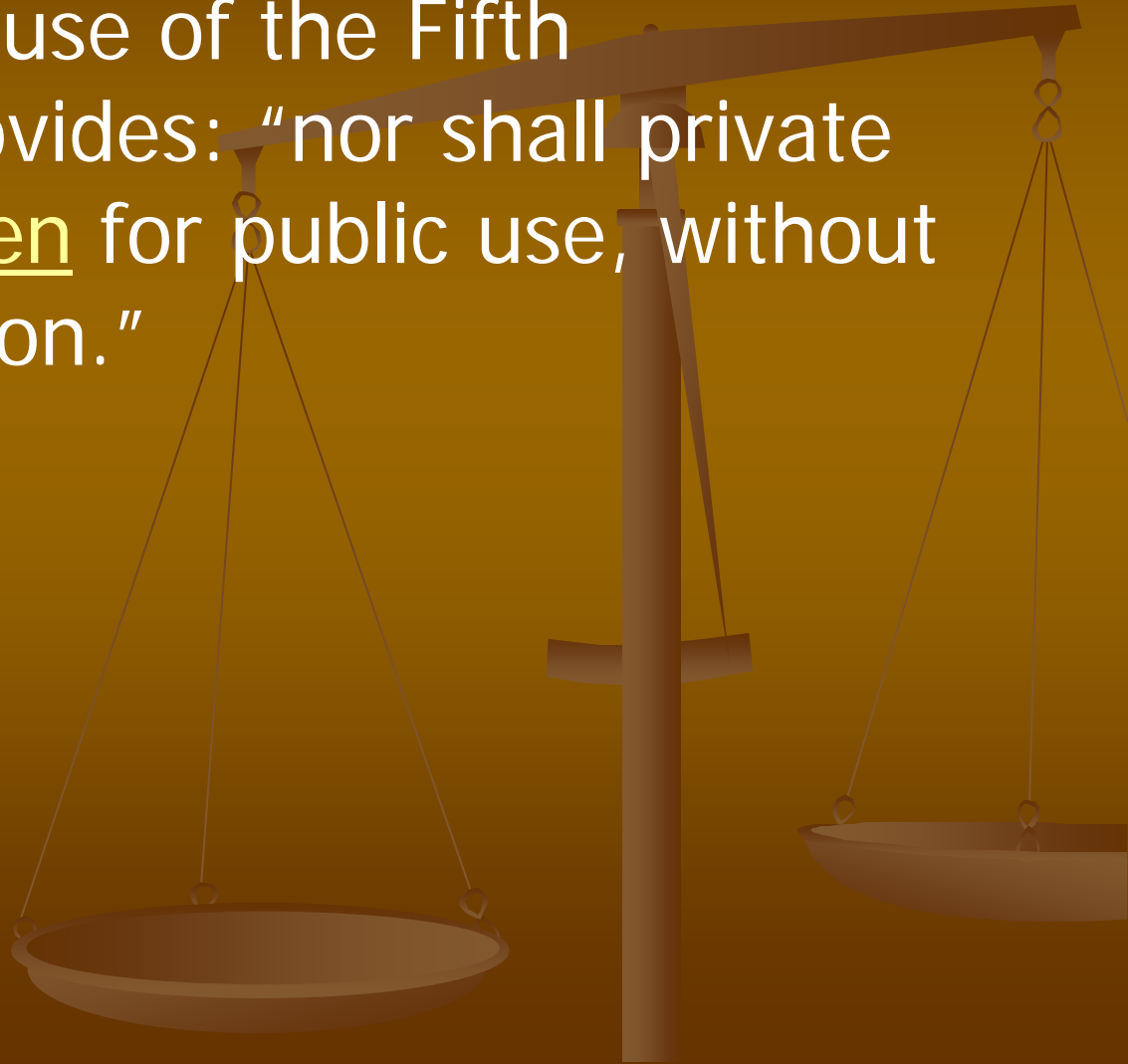


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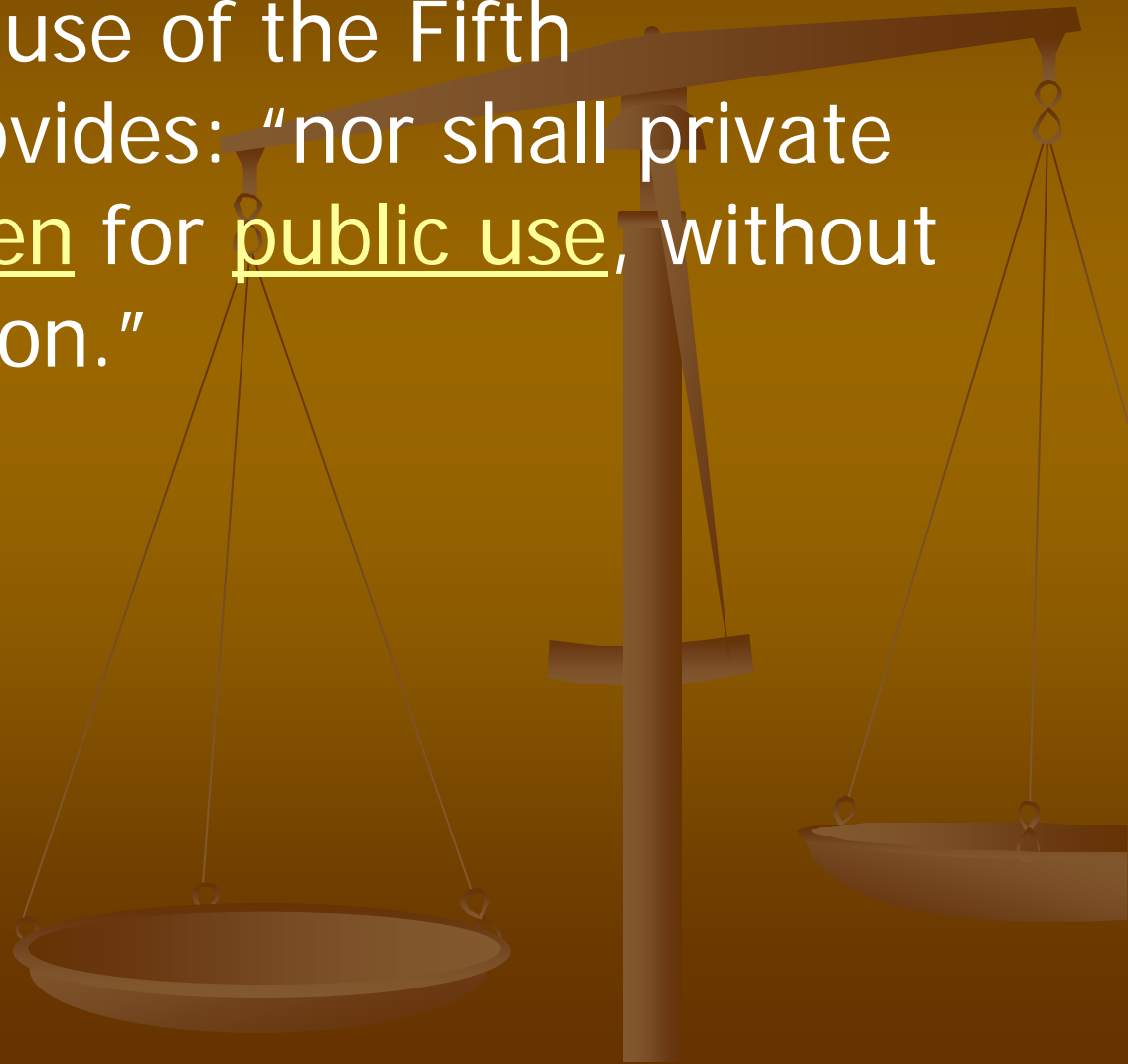
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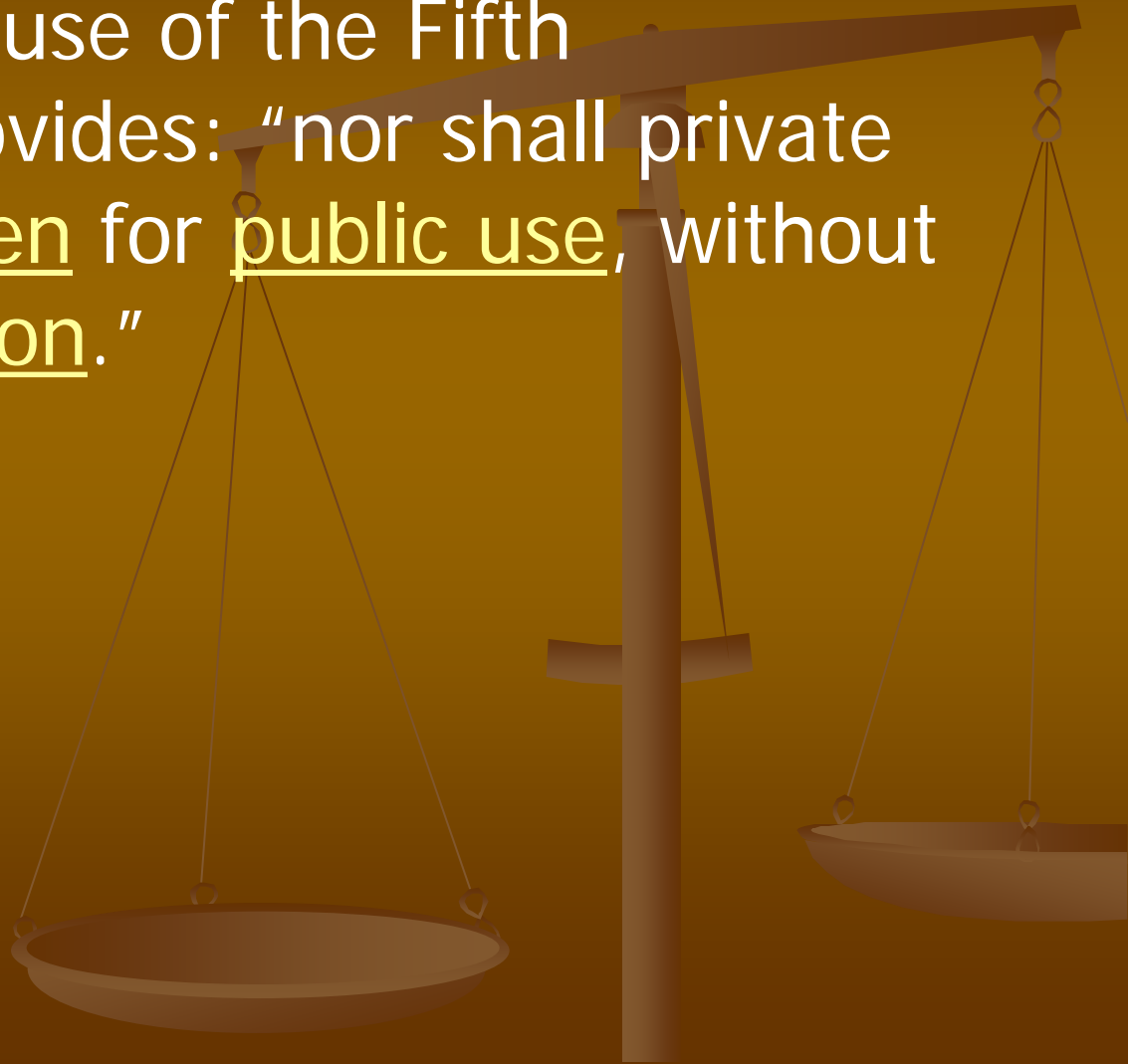
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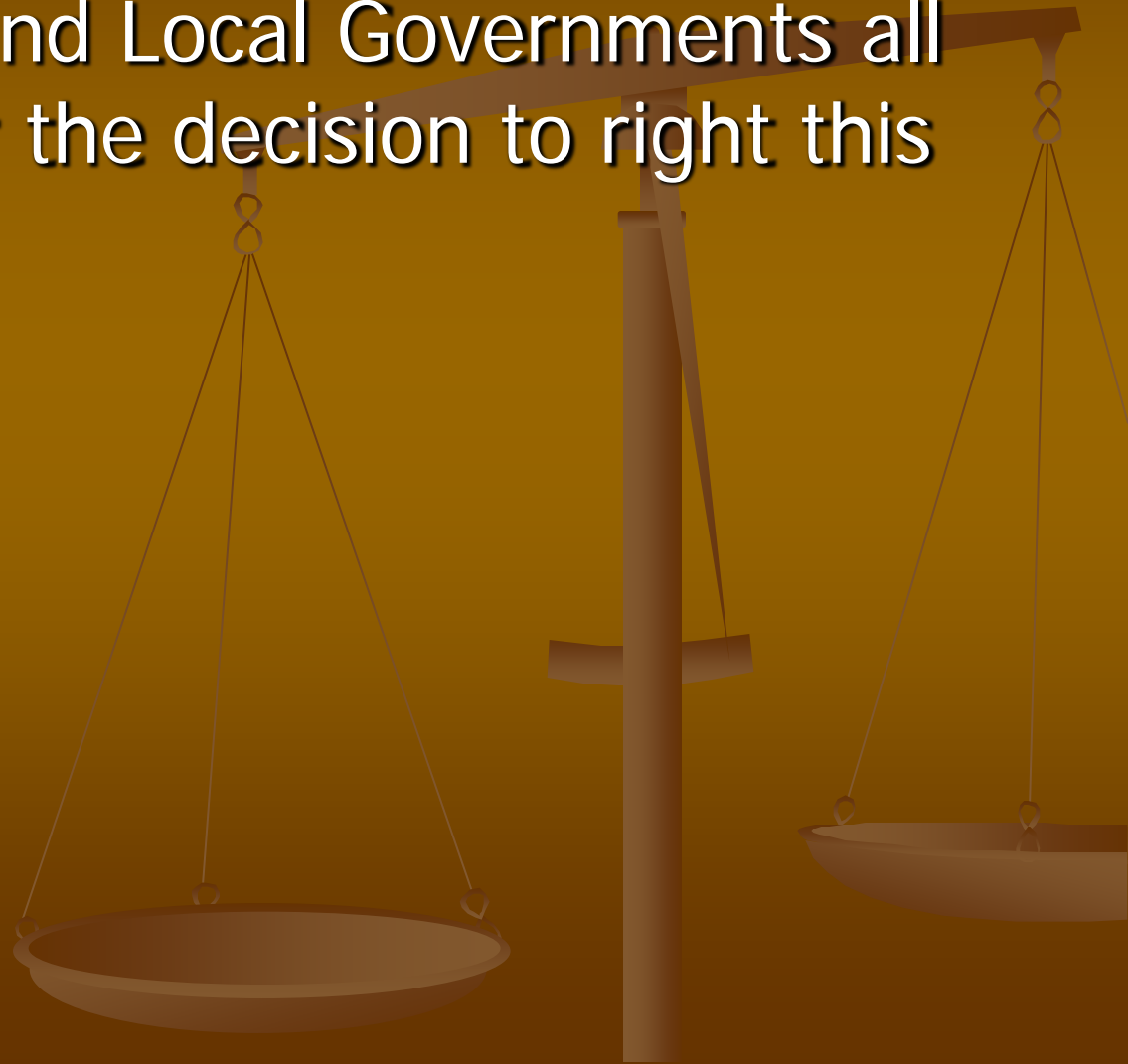
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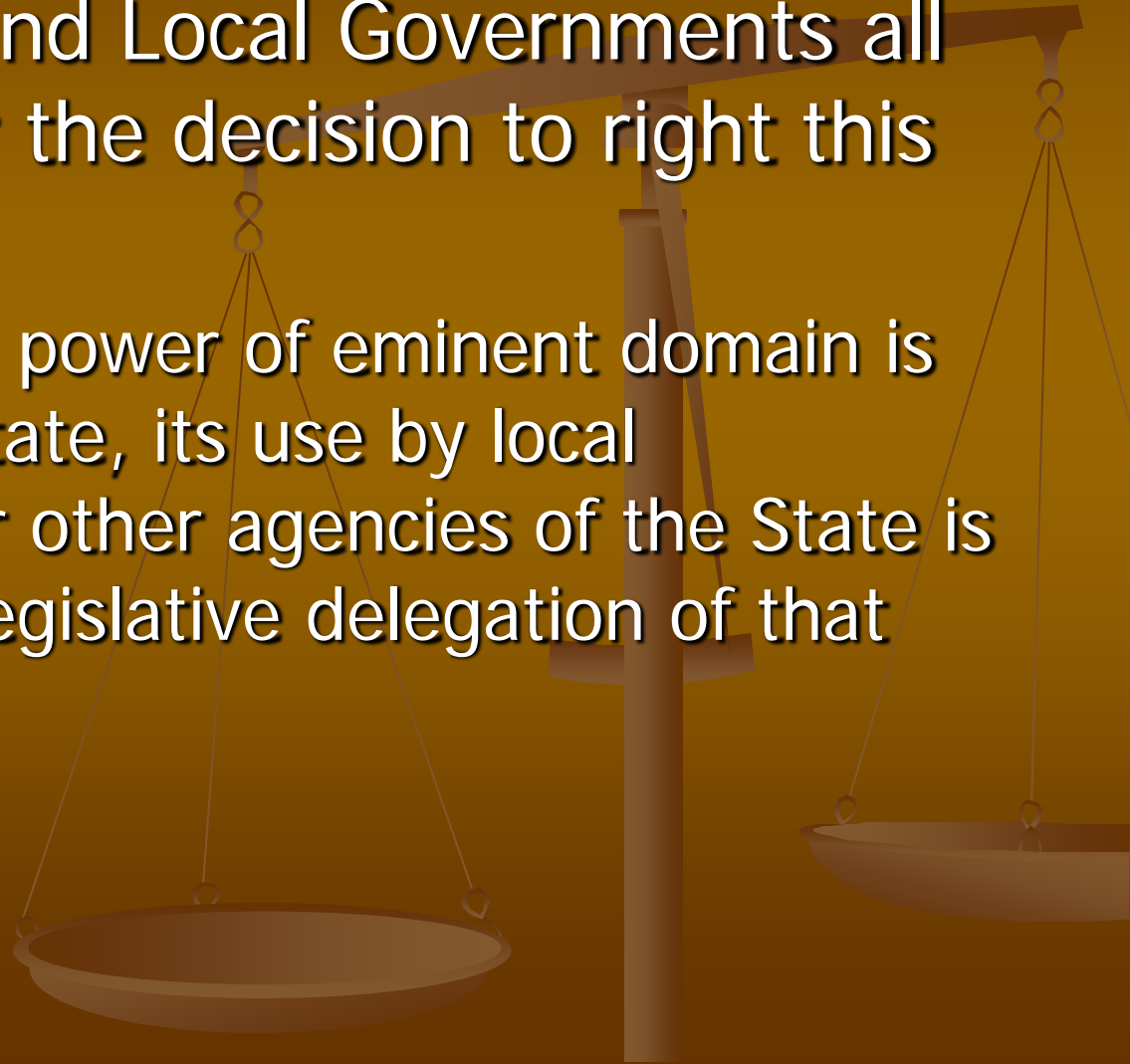
“Public Purpose” Legislative Reaction

- Federal, State and Local Governments all stepped in after the decision to right this wrong.



“Public Purpose” Legislative Reaction

- Federal, State and Local Governments all stepped in after the decision to right this wrong.
 - Note: Since the power of eminent domain is vested in the State, its use by local governments or other agencies of the State is limited by the legislative delegation of that power.

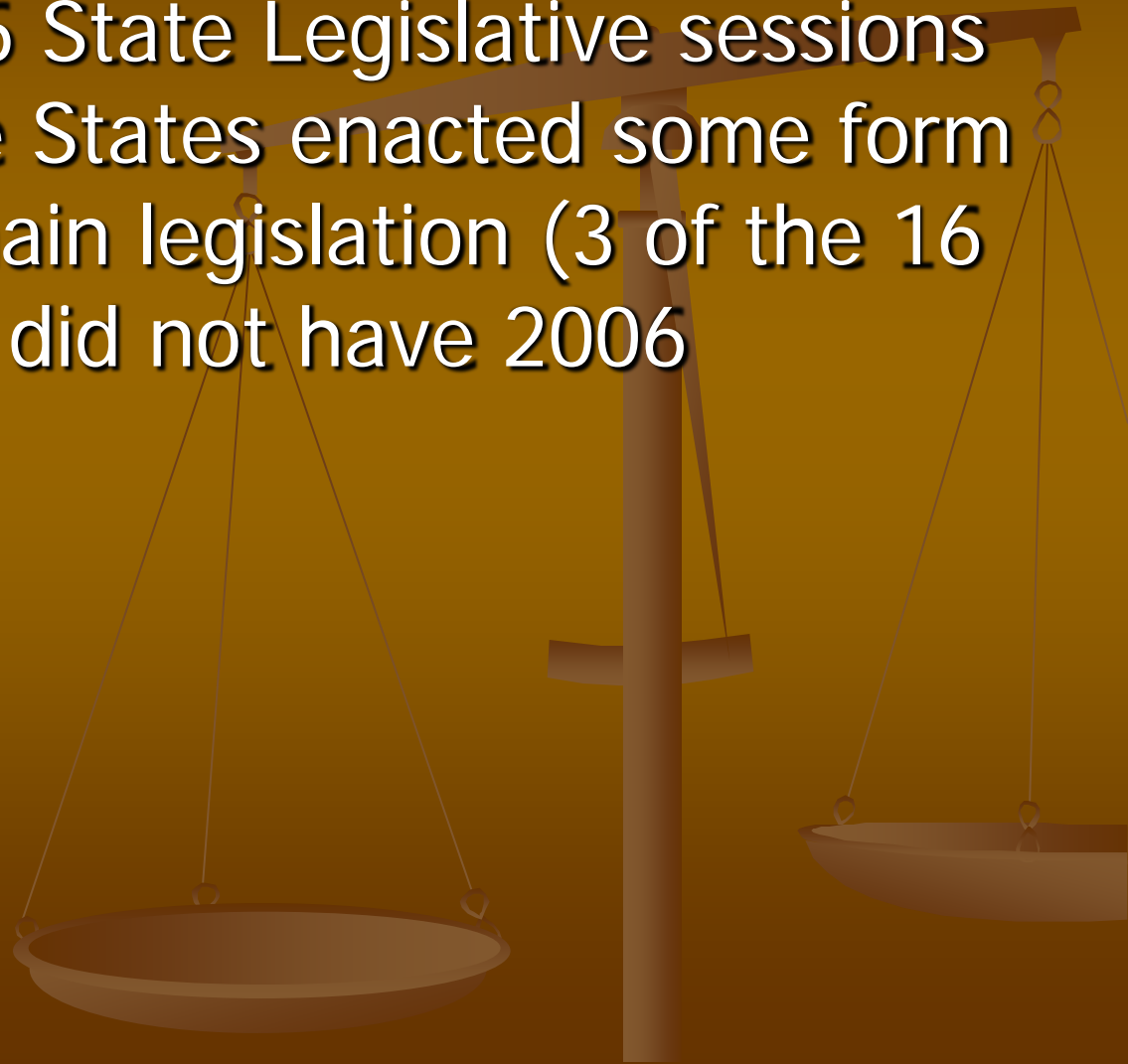


Focus on State Legislative Action



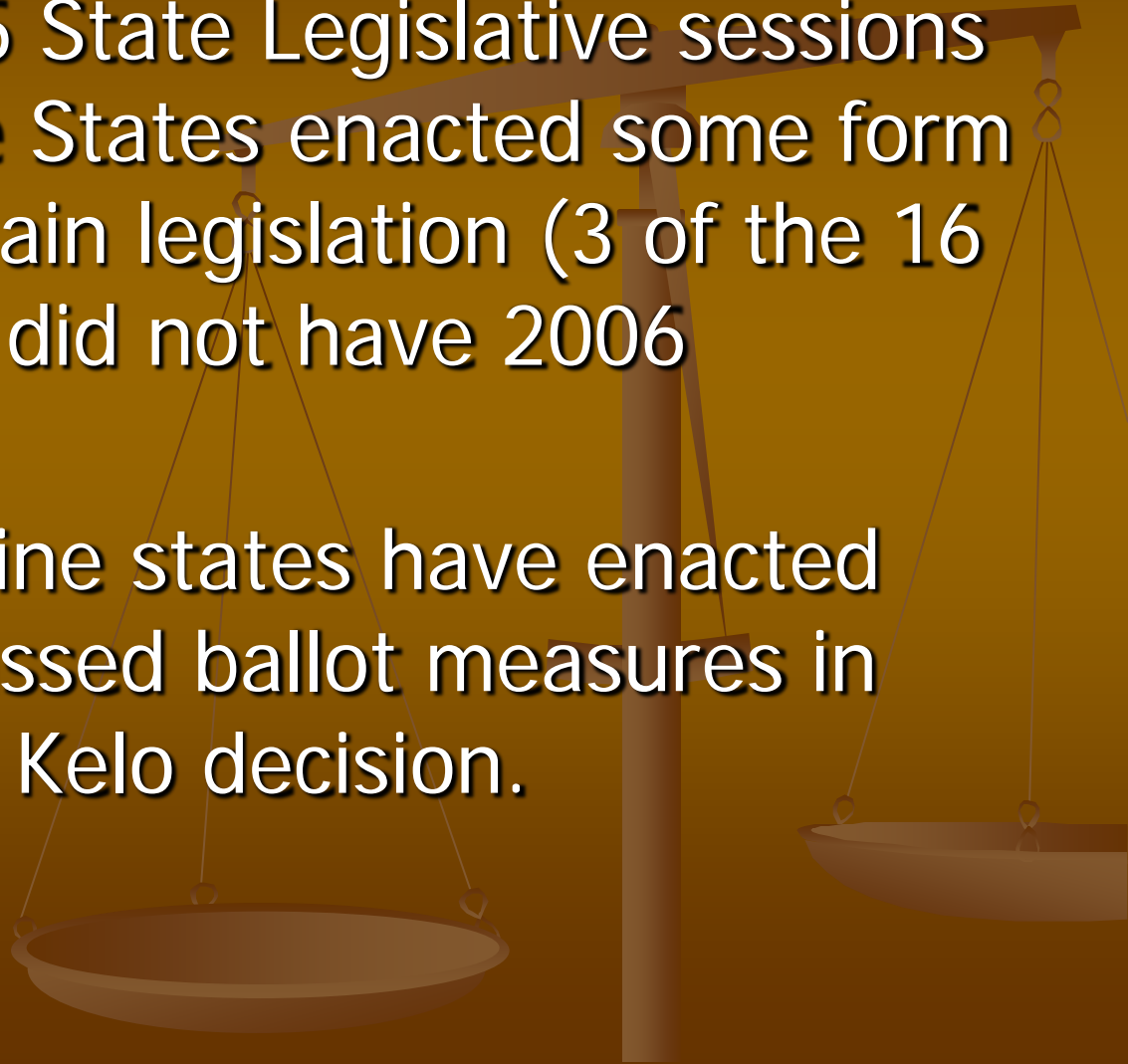
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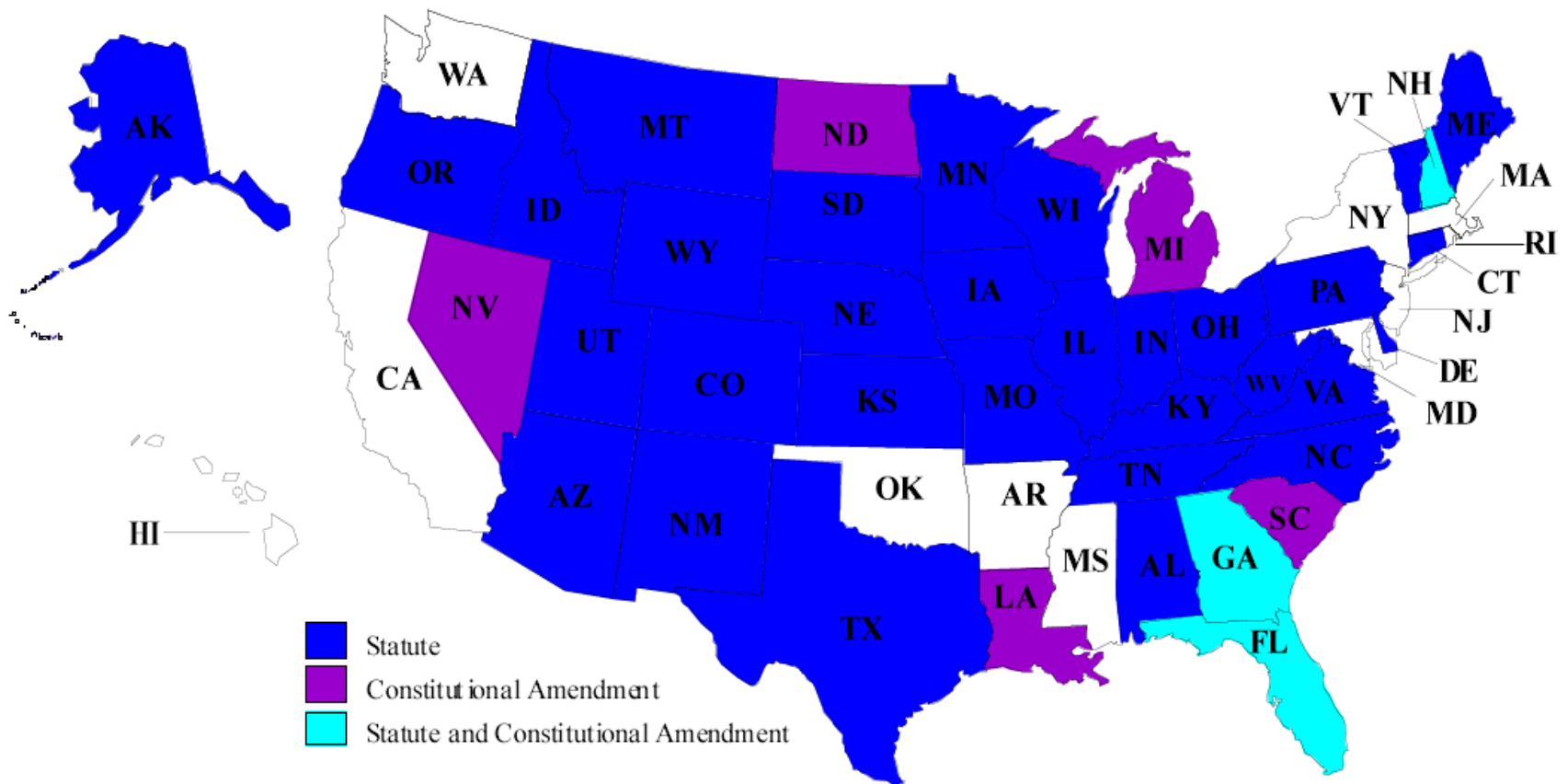
- During the 2006 State Legislative sessions all but 16 of the States enacted some form of eminent domain legislation (3 of the 16 that did not act did not have 2006 sessions).



Focus on State Legislative Action

- During the 2006 State Legislative sessions all but 16 of the States enacted some form of eminent domain legislation (3 of the 16 that did not act did not have 2006 sessions).
- To date thirty-nine states have enacted legislation or passed ballot measures in response to the Kelo decision.





Updated November 7, 2007

Legislation took various forms:



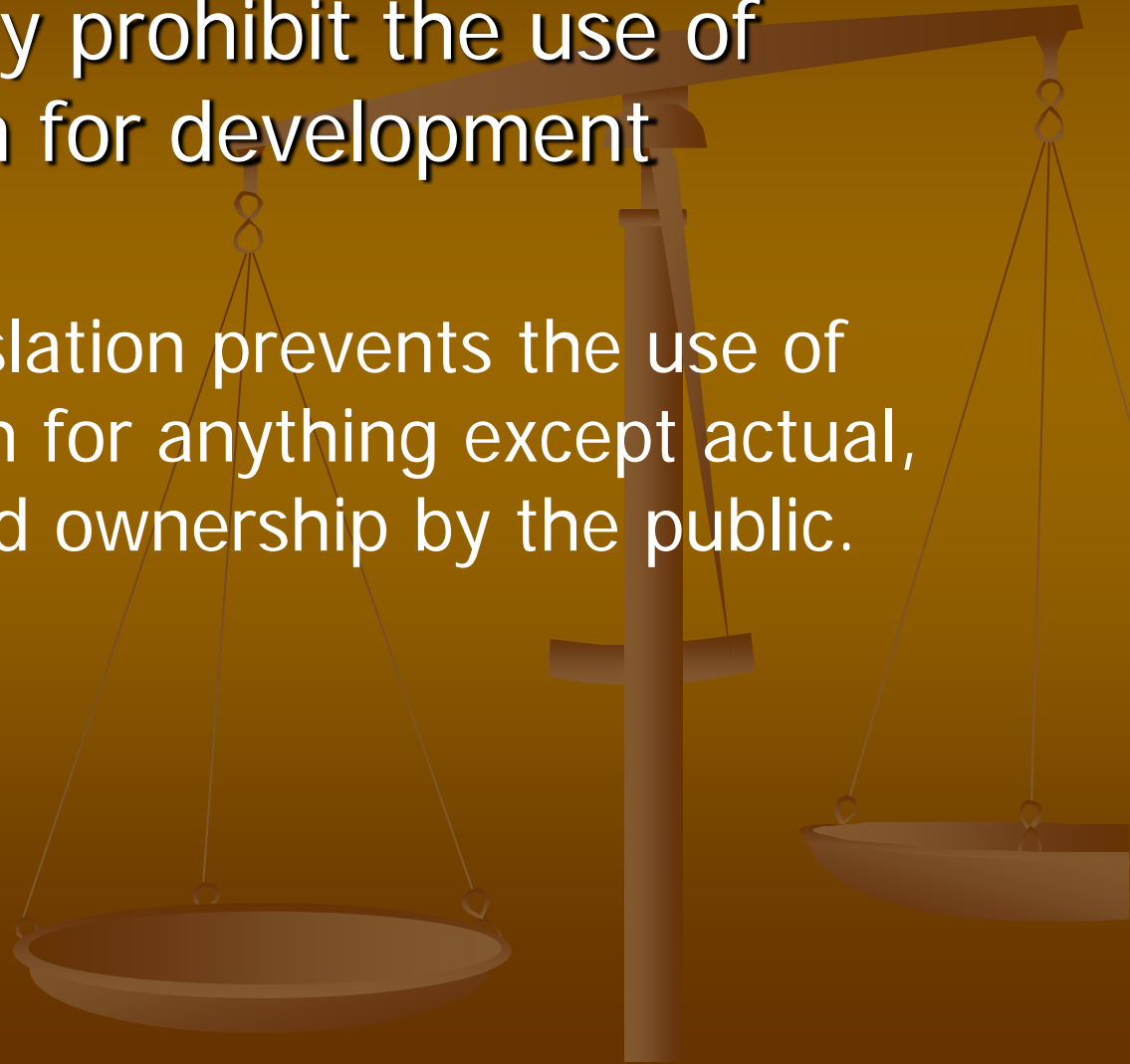
Legislation took various forms:

- Some specifically prohibit the use of eminent domain for development purposes:



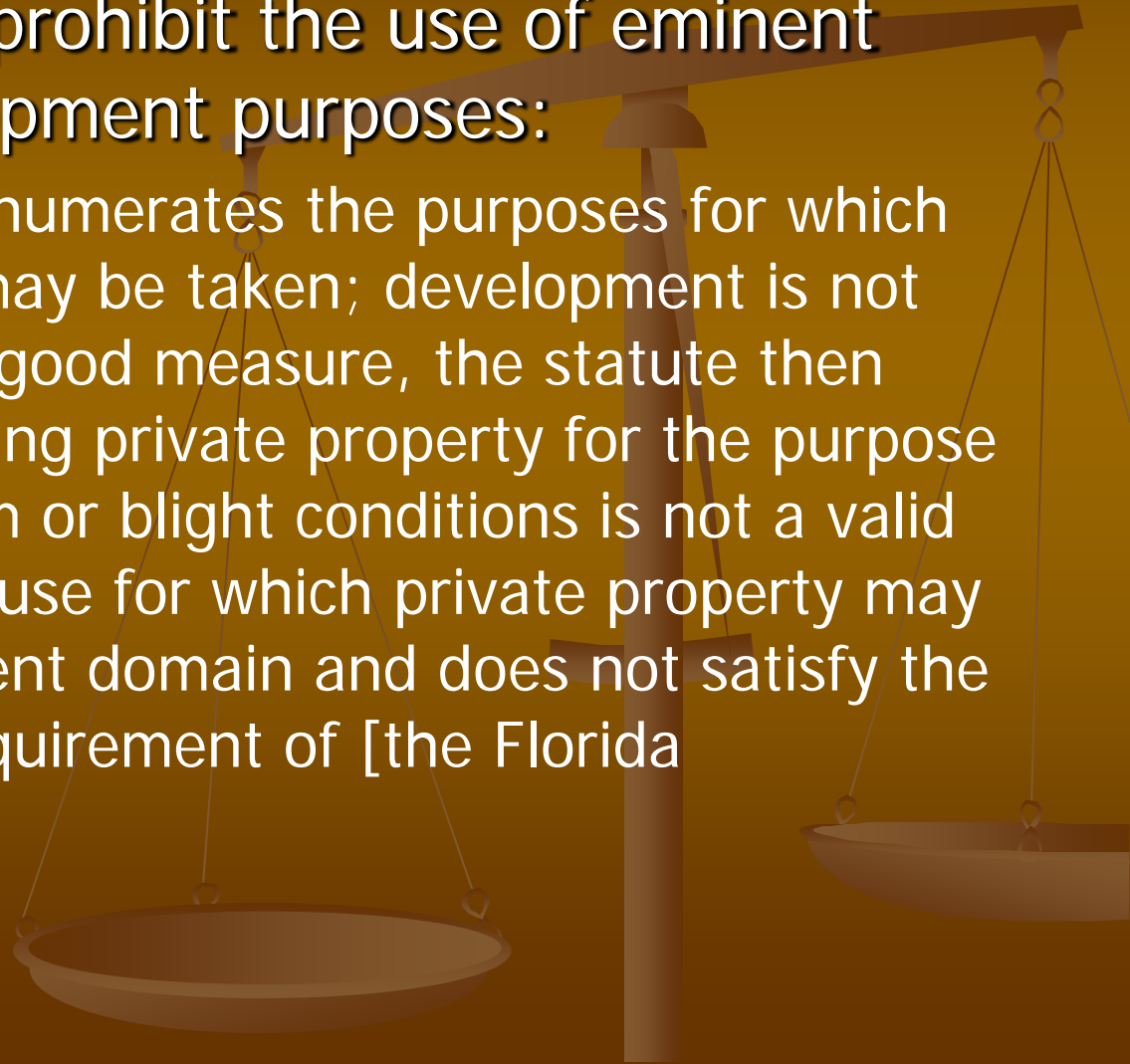
Legislation took various forms:

- Some specifically prohibit the use of eminent domain for development purposes:
 - Kentucky's legislation prevents the use of eminent domain for anything except actual, physical use and ownership by the public.



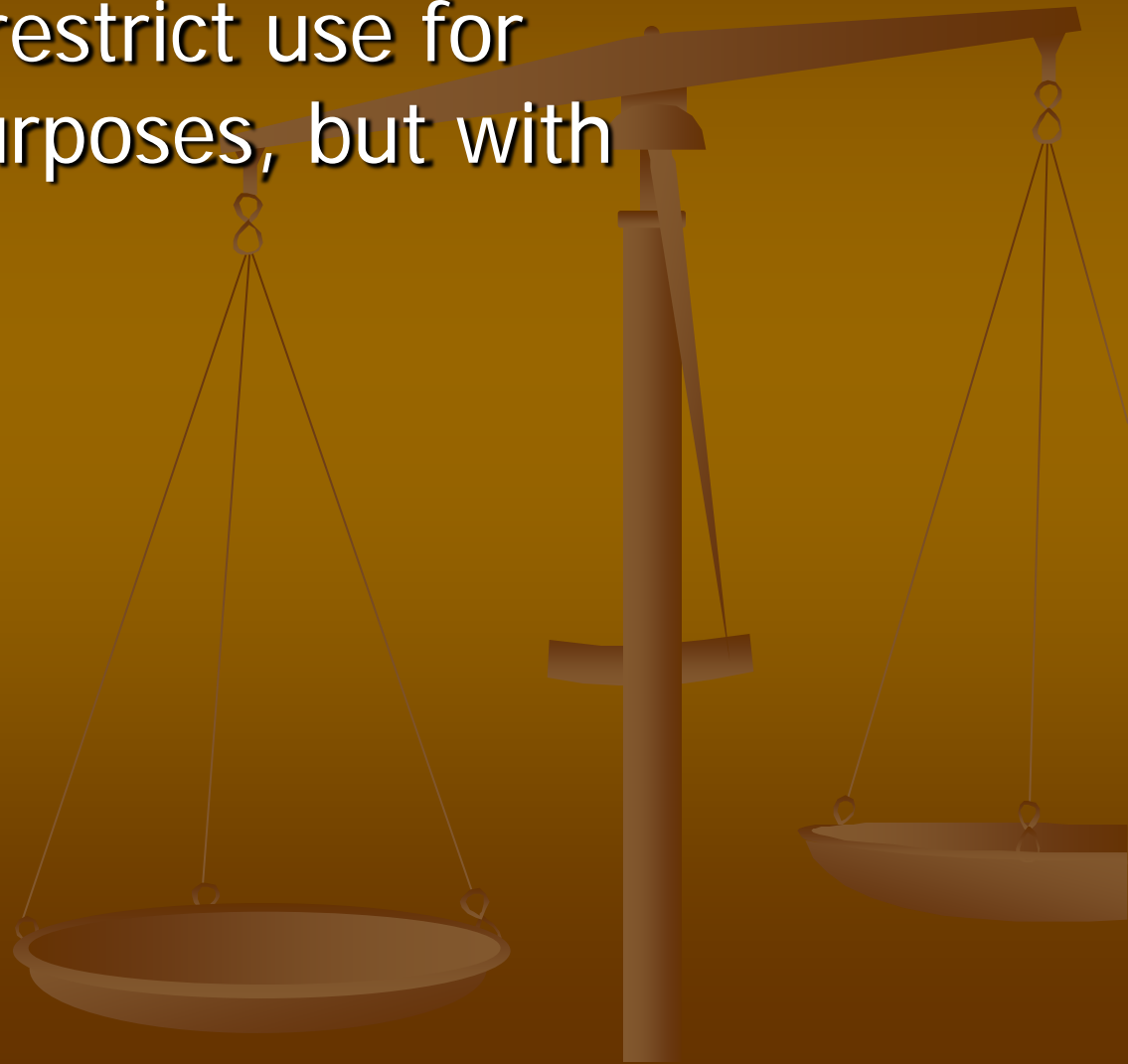
Legislation took various forms:

- Some specifically prohibit the use of eminent domain for development purposes:
 - Florida's statute enumerates the purposes for which private property may be taken; development is not among them. For good measure, the statute then provides that "taking private property for the purpose of eliminating slum or blight conditions is not a valid public purpose or use for which private property may be taken by eminent domain and does not satisfy the public-purpose requirement of [the Florida Constitution]."



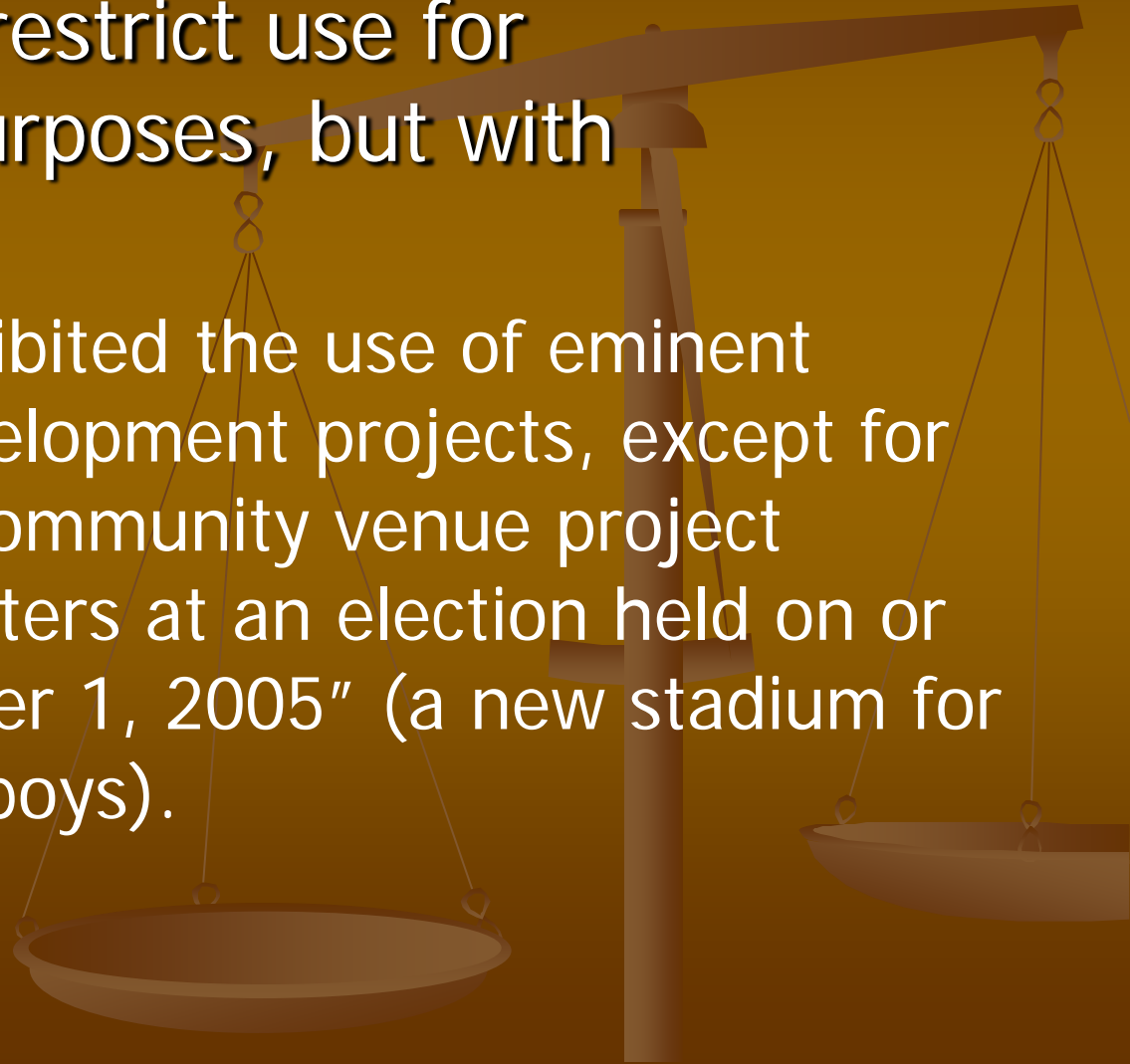
Legislation took various forms:

- Others seek to restrict use for development purposes, but with exceptions:



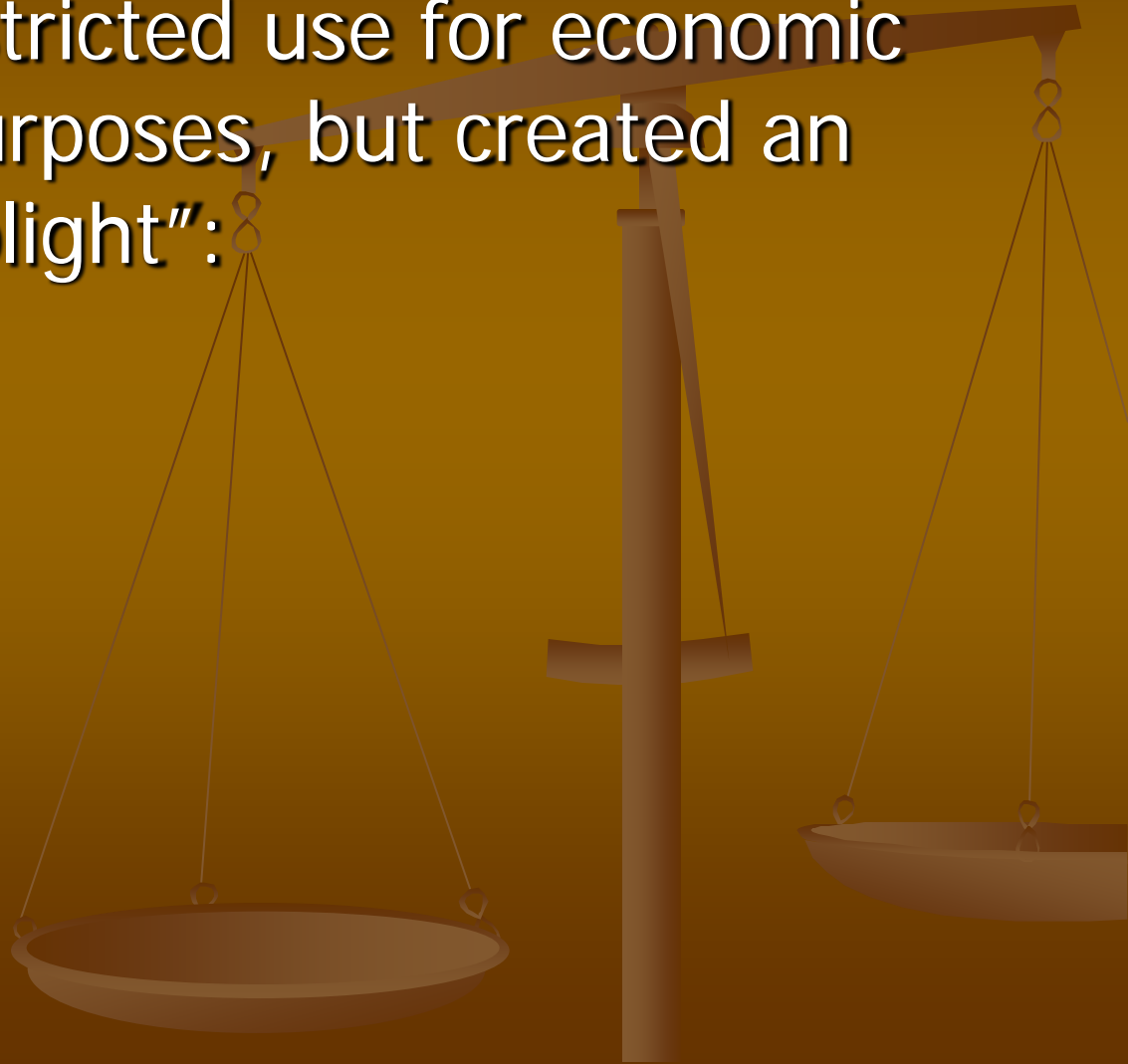
Legislation took various forms:

- Others seek to restrict use for development purposes, but with exceptions:
 - Texas has prohibited the use of eminent domain for development projects, except for “a sports and community venue project approved by voters at an election held on or before December 1, 2005” (a new stadium for the Dallas Cowboys).



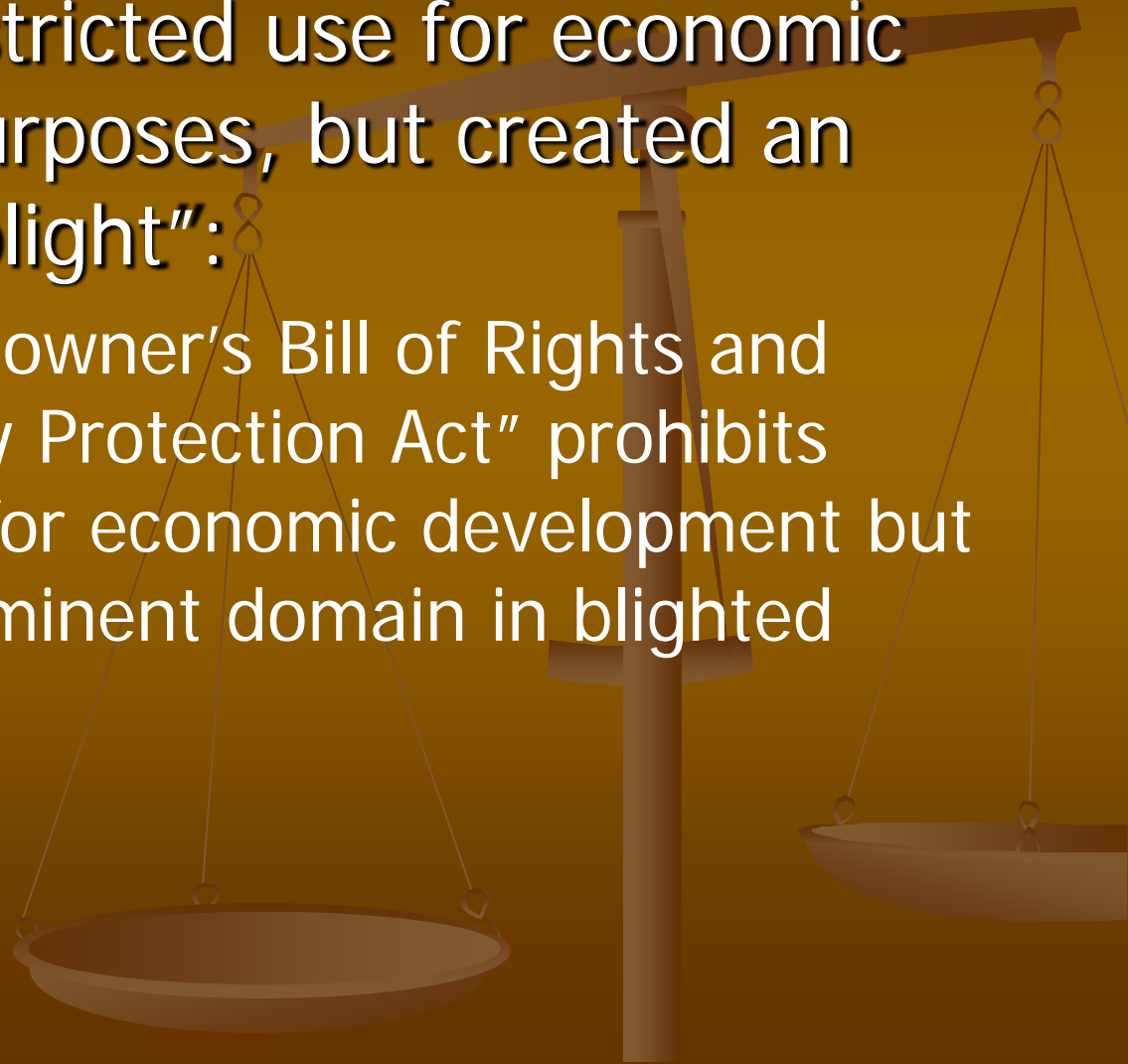
Legislation took various forms:

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Legislation took various forms:

- Others have restricted use for economic development purposes, but created an exception for "blight":
 - Georgia's "Landowner's Bill of Rights and Private Property Protection Act" prohibits condemnation for economic development but allows use of eminent domain in blighted areas.

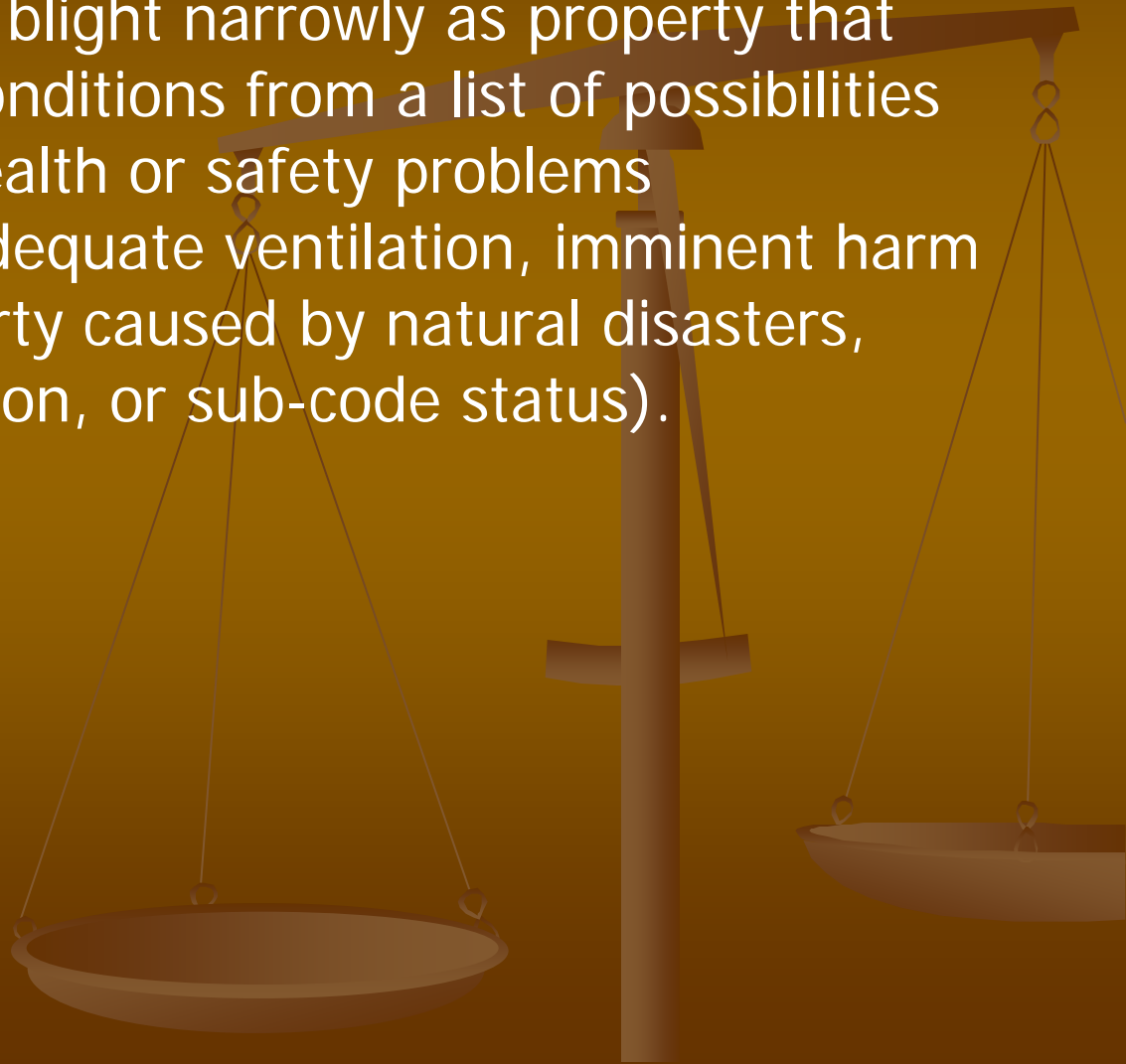


Such statutes generally contain some definition of “blight” by identifying the conditions:



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- Georgia’s act defines blight narrowly as property that meets at least two conditions from a list of possibilities and contributes to health or safety problems (uninhabitability, inadequate ventilation, imminent harm to life or other property caused by natural disasters, Superfund identification, or sub-code status).

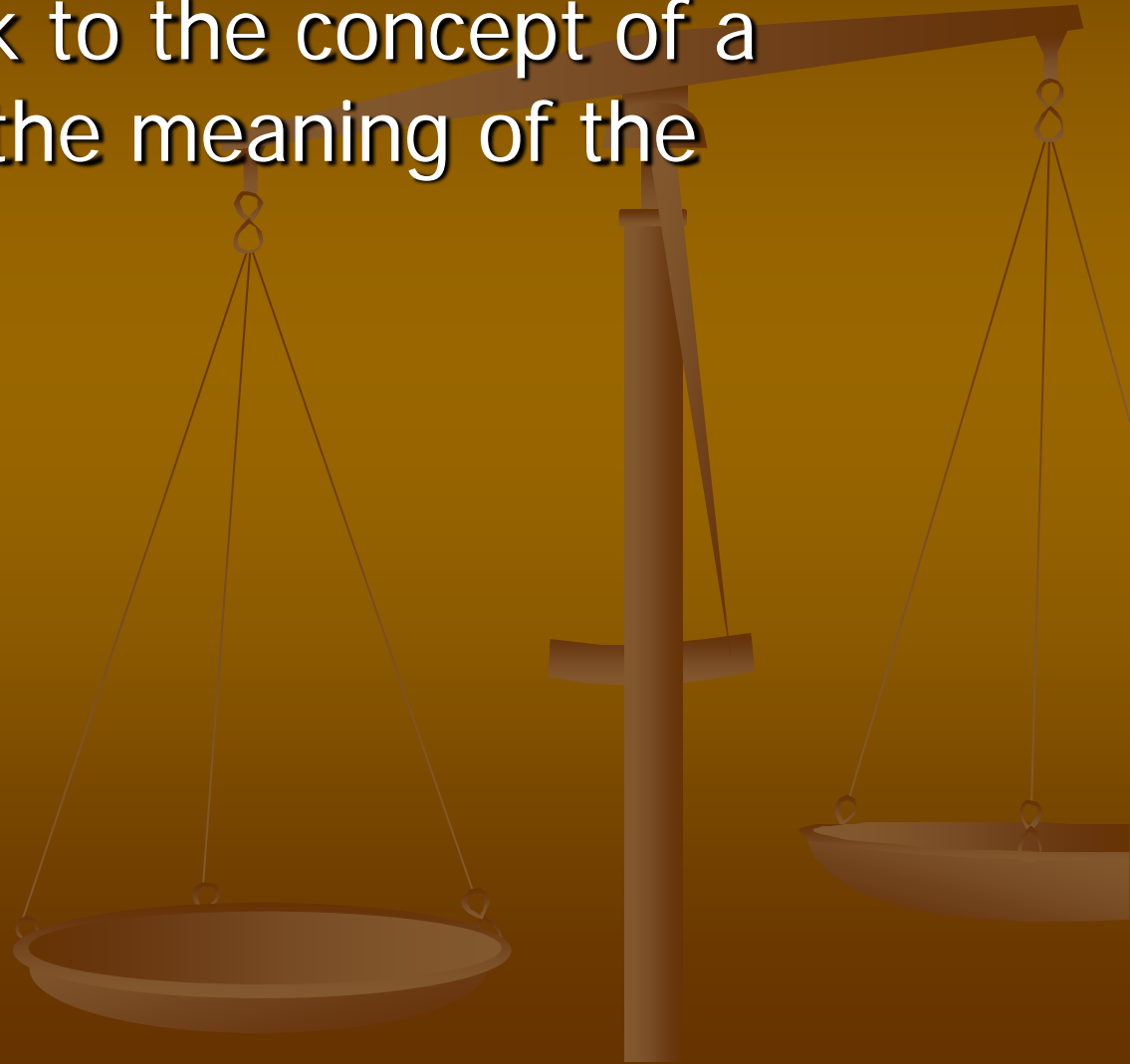


Having identified the problem,
where do we go from here?



Having identified the problem, where do we go from here?

- First we go back to the concept of a “taking” within the meaning of the Constitution.

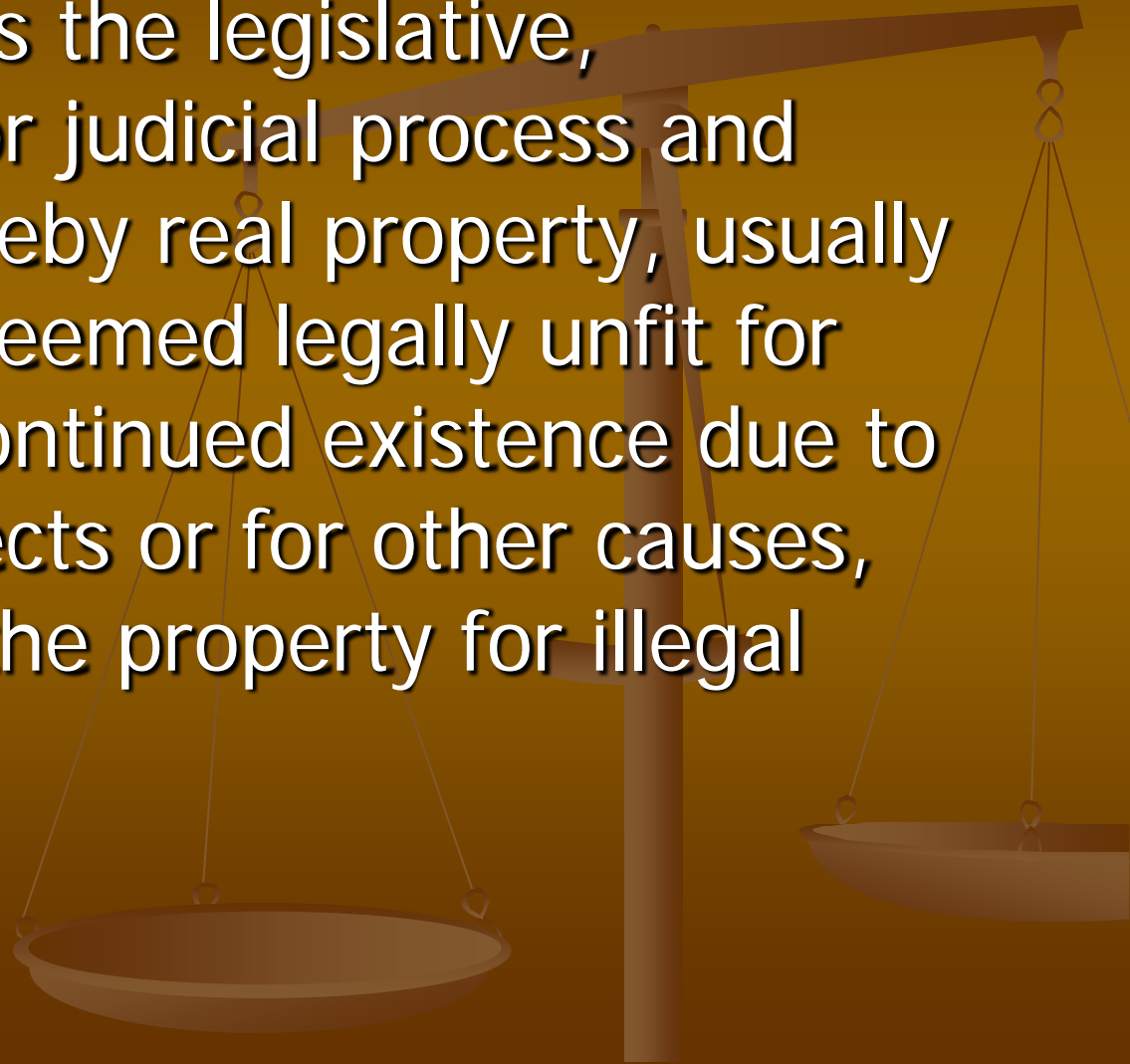


Condemnation vs Eminent Domain



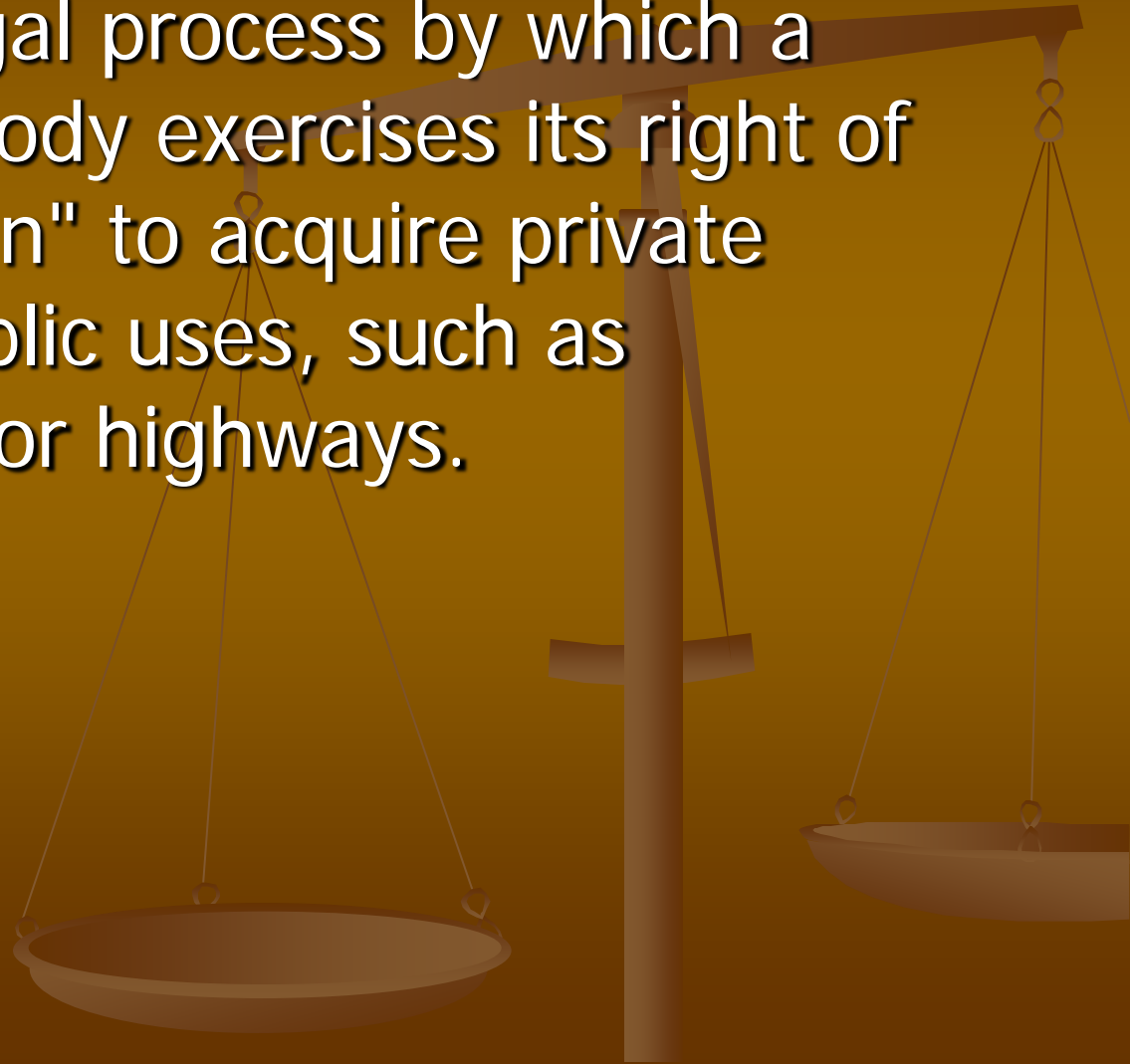
Condemnation vs Eminent Domain

- Condemnation is the legislative, administrative or judicial process and procedure whereby real property, usually a structure, is deemed legally unfit for occupancy or continued existence due to its physical defects or for other causes, such as use of the property for illegal purposes.



Condemnation vs Eminent Domain

- It is also the legal process by which a governmental body exercises its right of "eminent domain" to acquire private property for public uses, such as redevelopment or highways.



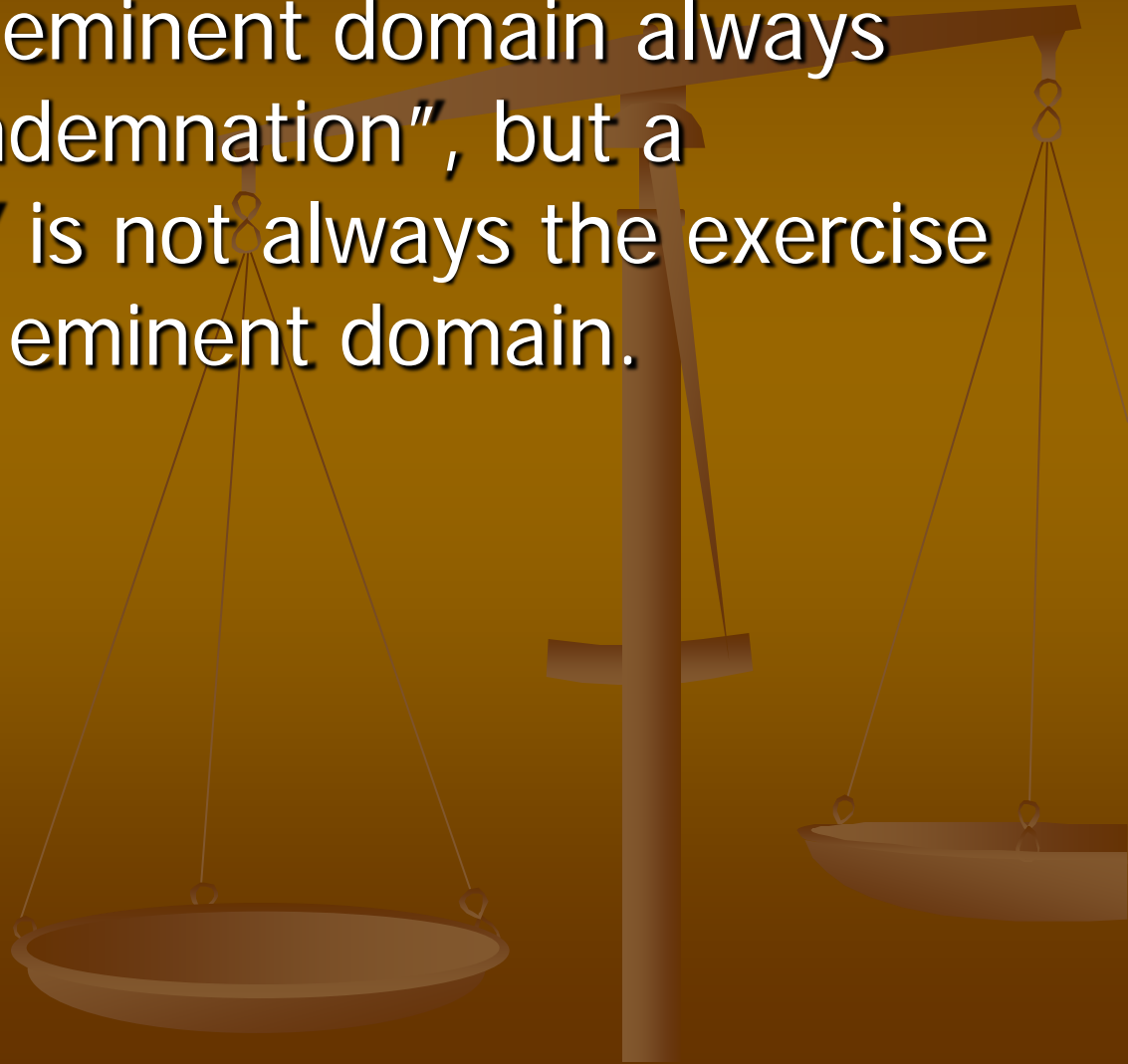
Condemnation vs Eminent Domain

- Eminent domain is the government's right to acquire private property for public use.



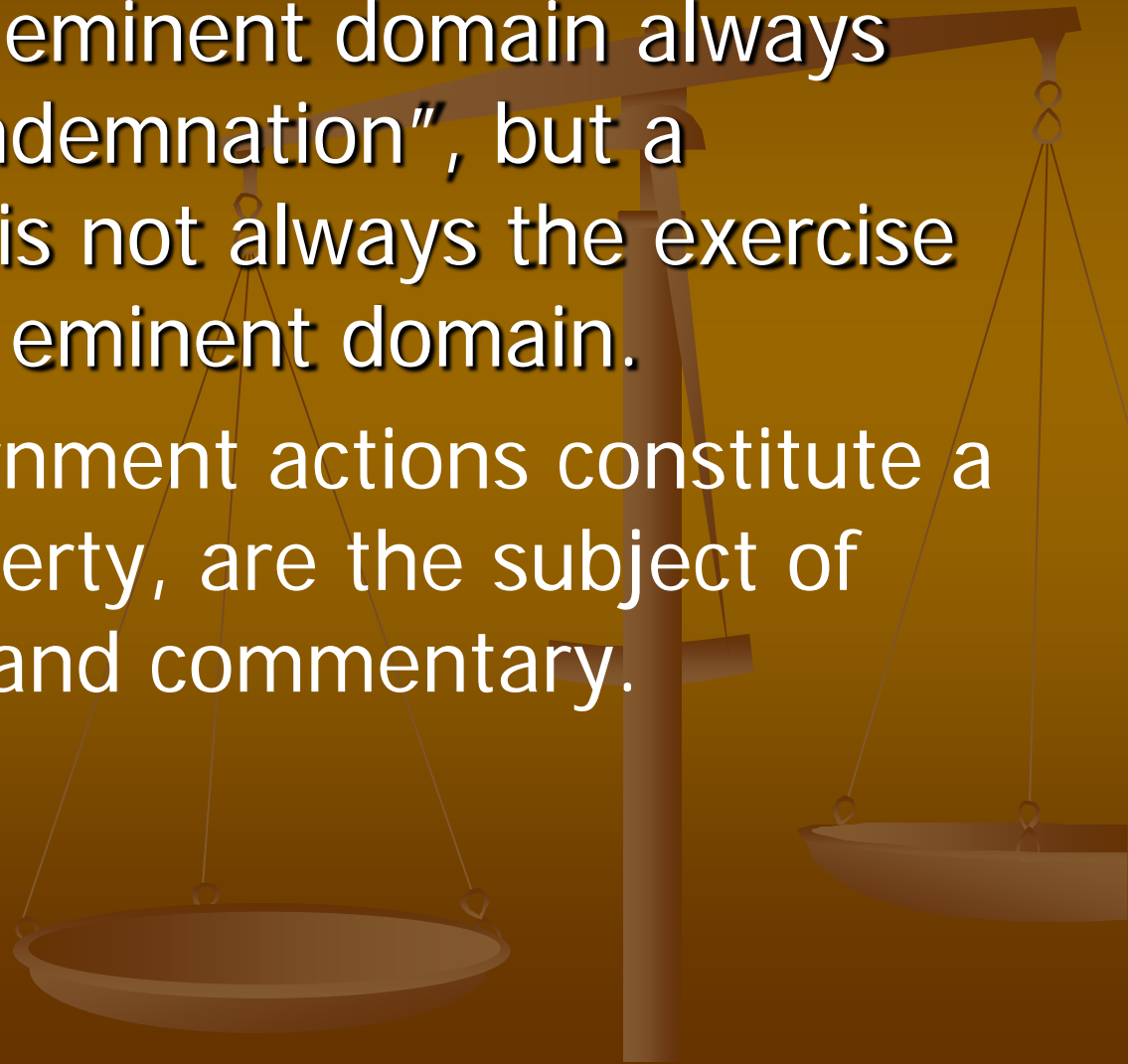
Condemnation vs Eminent Domain

- The exercise of eminent domain always results in a "condemnation", but a "condemnation" is not always the exercise of the power of eminent domain.



Condemnation vs Eminent Domain

- The exercise of eminent domain always results in a "condemnation", but a "condemnation is not always the exercise of the power of eminent domain.
- Just what government actions constitute a "taking" of property, are the subject of much litigation and commentary.

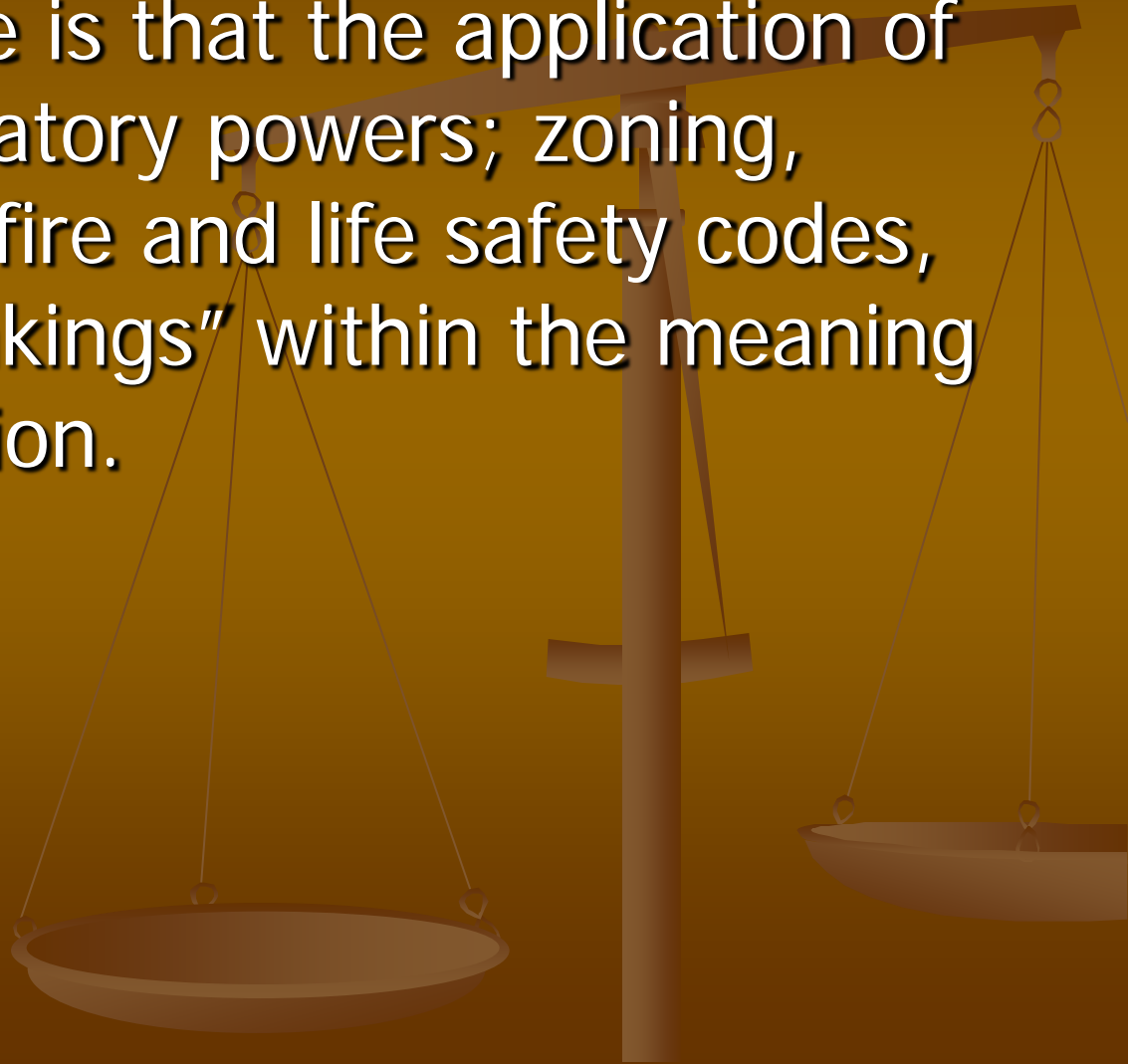


“Regulation” vs “Confiscation”



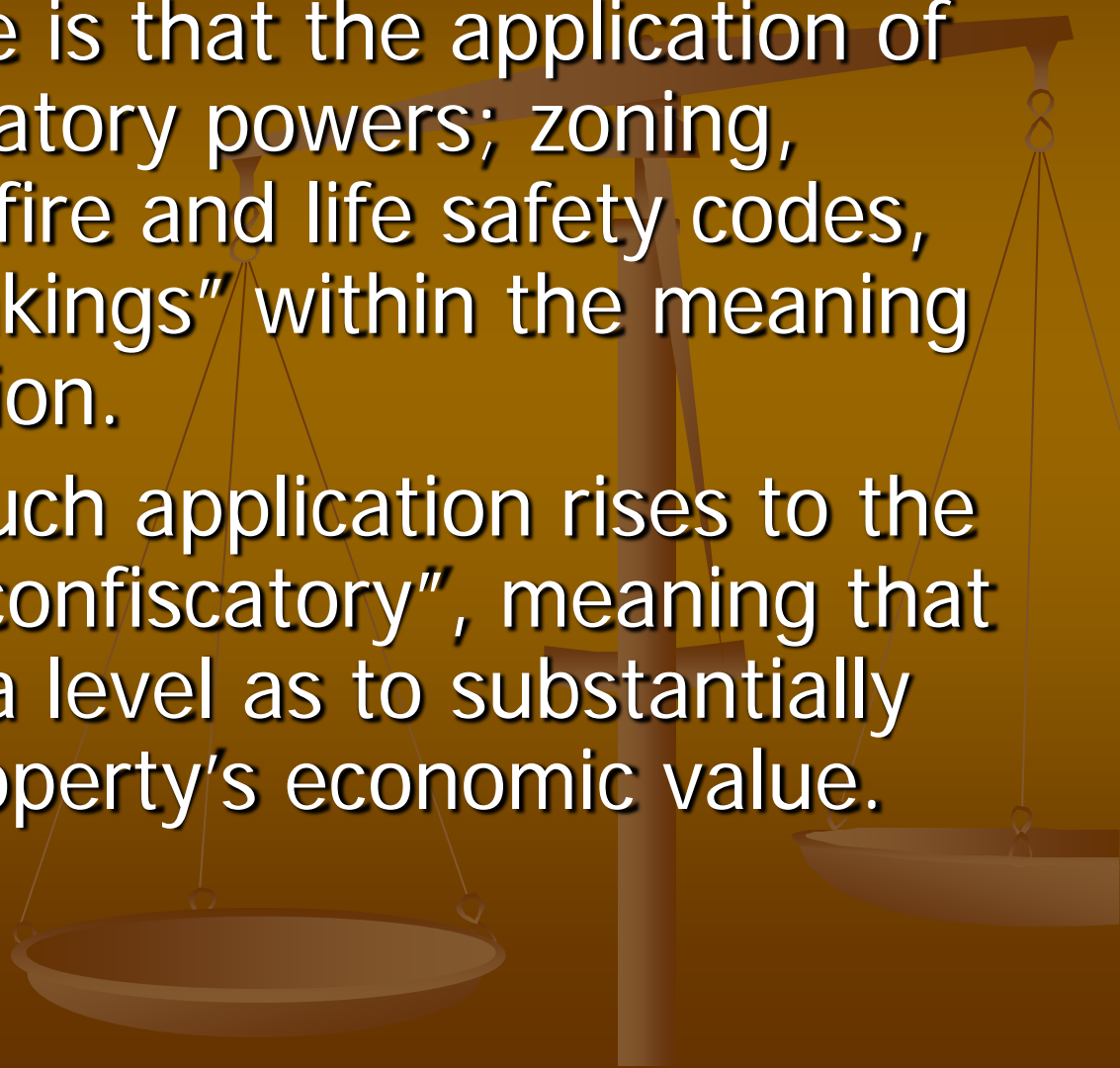
“Regulation” vs “Confiscation”

- The general rule is that the application of legitimate regulatory powers; zoning, building codes, fire and life safety codes, etc.; are not “takings” within the meaning of the Constitution.



“Regulation” vs “Confiscation”

- The general rule is that the application of legitimate regulatory powers; zoning, building codes, fire and life safety codes, etc.; are not “takings” within the meaning of the Constitution.
- Except where such application rises to the level of being “confiscatory”, meaning that it rises to such a level as to substantially diminish the property’s economic value.



§ 22-1-1. Definitions

- (9) (A) "Public use" means:

- (i) The possession, occupation, or use of the land by the general public or by state or local governmental entities;

- (ii) The use of land for the creation or functioning of public utilities;

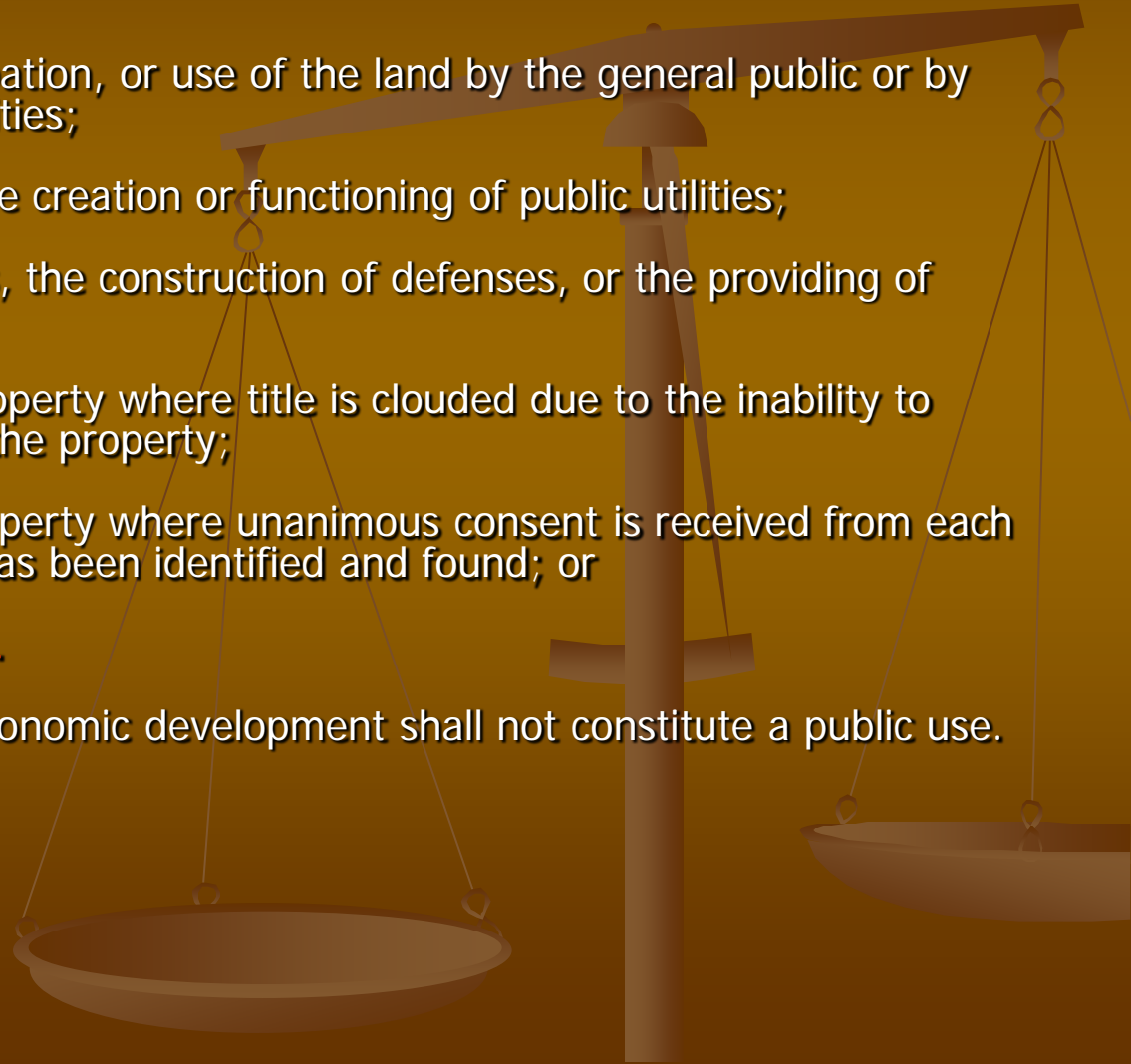
- (iii) The opening of roads, the construction of defenses, or the providing of channels of trade or travel;

- (iv) The acquisition of property where title is clouded due to the inability to identify or locate all owners of the property;

- (v) The acquisition of property where unanimous consent is received from each person with a legal claim that has been identified and found; or

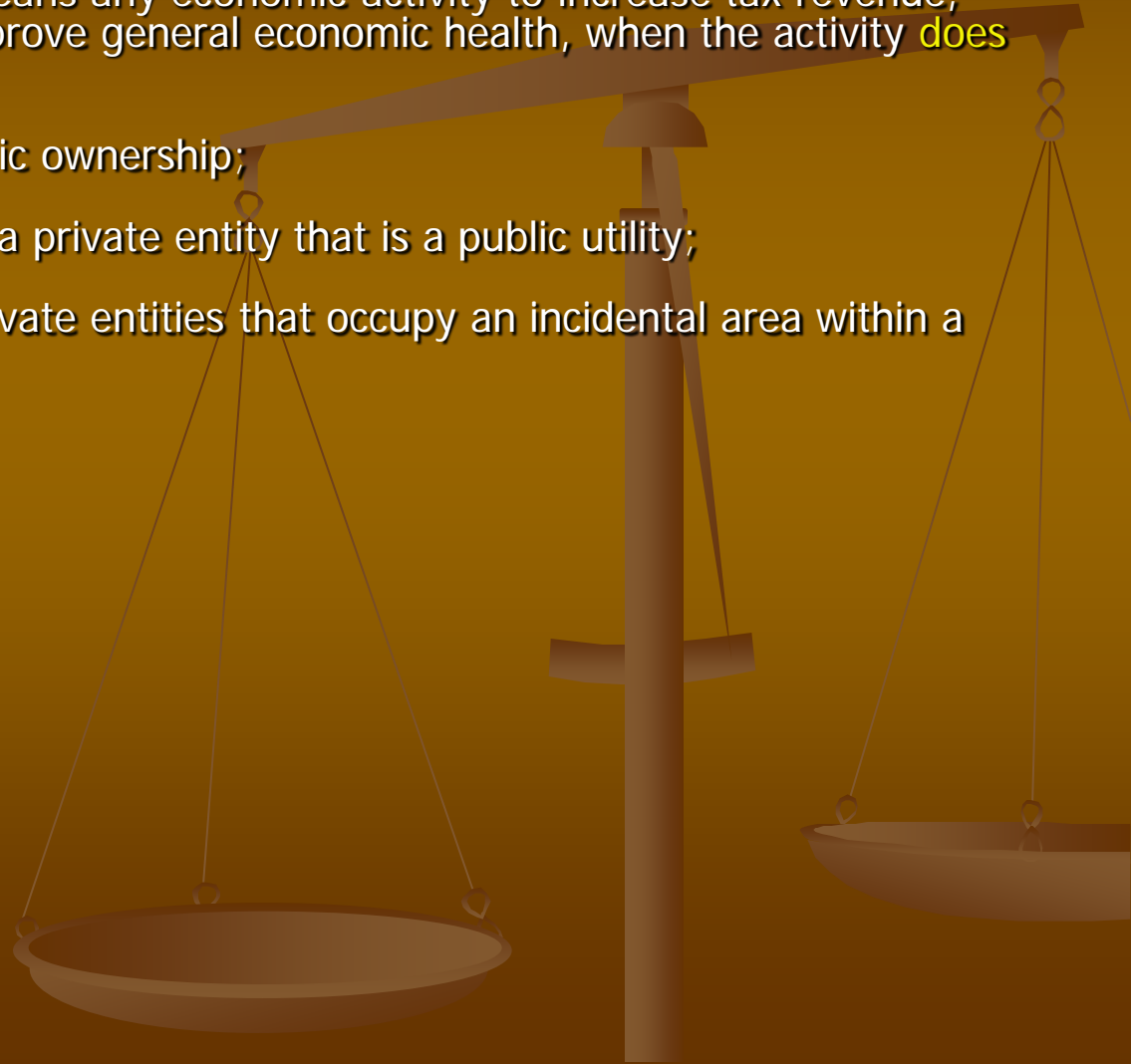
- (vi) The remedy of blight.

- (B) The public benefit of economic development shall not constitute a public use.



§ 22-1-1. Definitions

- (4) "Economic development" means any economic activity to increase tax revenue, tax base, or employment or improve general economic health, when the activity **does not result in**:
 - (A) Transfer of land to public ownership;
 - (B) Transfer of property to a private entity that is a public utility;
 - (C) Lease of property to private entities that occupy an incidental area within a public project; or
 - (D) The remedy of blight.



§ 22-1-1. Definitions

- As used in this title, the term:

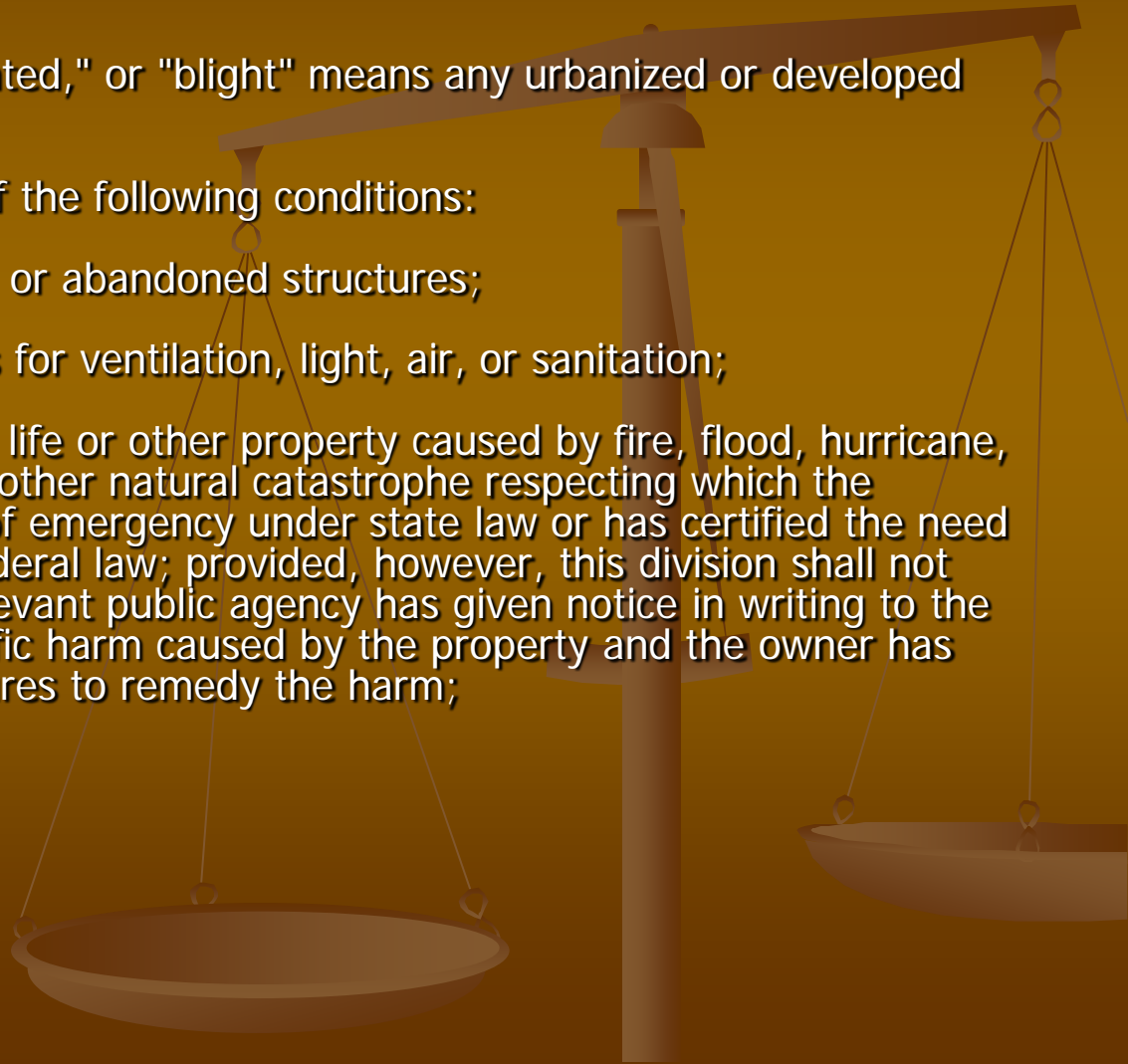
(1) "Blighted property," "blighted," or "blight" means any urbanized or developed property which:

(A) Presents two or more of the following conditions:

(i) Uninhabitable, unsafe, or abandoned structures;

(ii) Inadequate provisions for ventilation, light, air, or sanitation;

(iii) An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe respecting which the Governor has declared a state of emergency under state law or has certified the need for disaster assistance under federal law; provided, however, this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm;



§ 22-1-1. Definitions

■ (iv) A site identified by the federal Environmental Protection Agency as a Superfund site pursuant to 42 U.S.C. Section 9601, et seq., or environmental contamination to an extent that requires remedial investigation or a feasibility study;

(v) Repeated illegal activity on the individual property of which the property owner knew or should have known; or

(vi) The maintenance of the property is below state, county, or municipal codes for at least one year after notice of the code violation; and

(B) Is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property.

Property shall not be deemed blighted because of esthetic conditions.

§ 22-1-2. Nature of right of eminent domain; property to be put to public use

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(a) The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection the proper authorities may possess and hold any part of the territory of the state for the common safety. Notwithstanding any other provisions of law, neither this state nor any political subdivision thereof nor any other condemning authority shall use eminent domain unless it is for public use. Public use is a matter of law to be determined by the court and the condemnor bears the burden of proof.

(b) All condemnations shall not be converted to any use other than a public use for 20 years from the initial condemnation.

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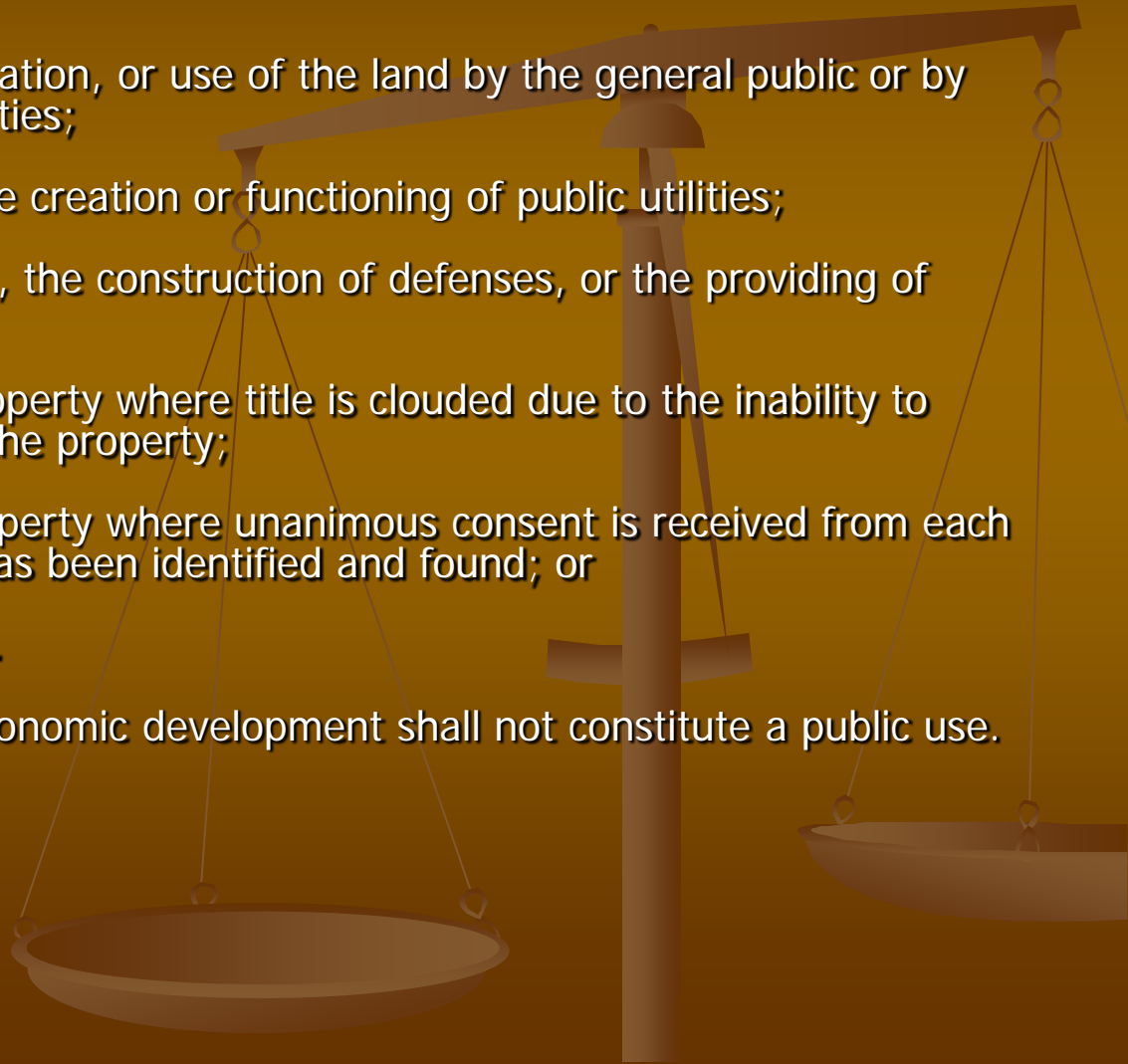
- (iii) The opening of roads, the construction of defenses, or the providing of channels of trade or travel;

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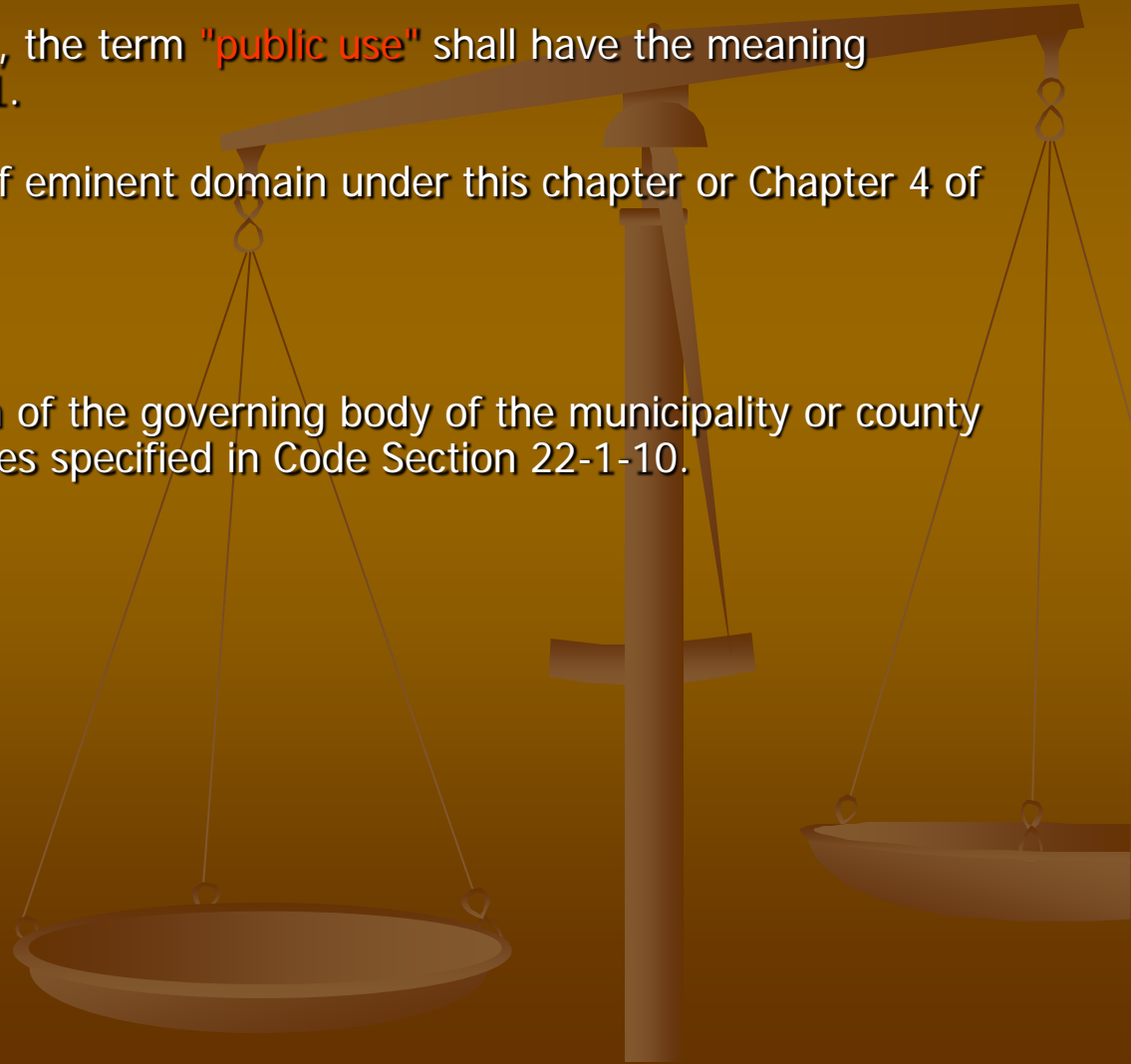
- (vi) The remedy of blight.

- (B) The public benefit of economic development shall not constitute a public use.



§ 8-3-31.1. "Public use" defined; eminent domain to be exercised solely for public use

- (a) As used in this Code section, the term "public use" shall have the meaning specified in Code Section 22-1-1.
- (b) Any exercise of the power of eminent domain under this chapter or Chapter 4 of this title must:
 - (1) Be for a public use; and
 - (2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10.



§ 8-4-3. Definitions

- (1) "Blighted areas" means:

(A) Areas in which there is a predominance of buildings or improvements, or which are predominantly residential in character, and which, by reason of:

(i) Dilapidation, deterioration, age, or obsolescence;

(ii) Inadequate provision for ventilation, light, air, sanitation, or open spaces;

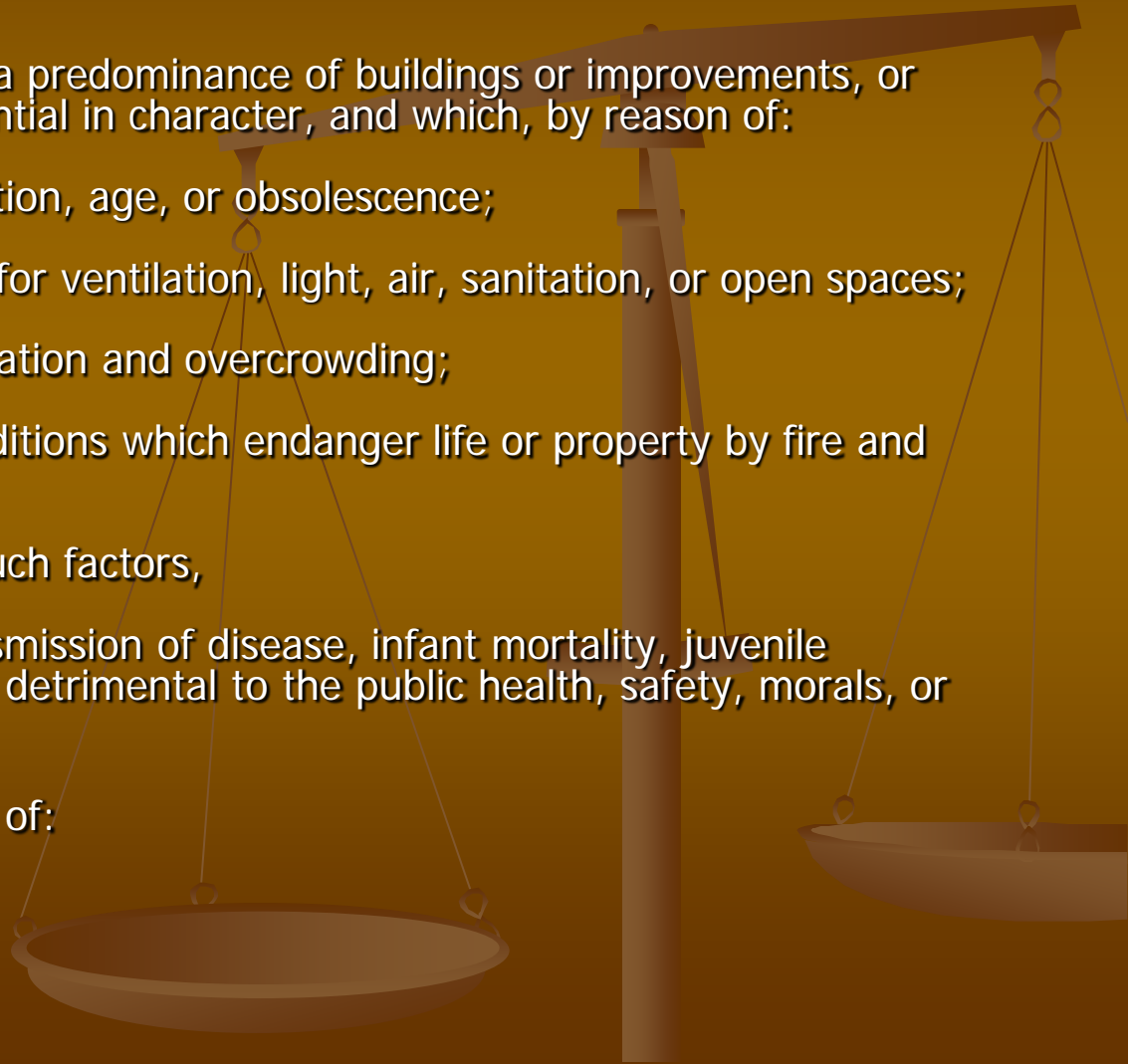
(iii) High density of population and overcrowding;

(iv) The existence of conditions which endanger life or property by fire and other causes; or

(v) Any combination of such factors,

are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime and are detrimental to the public health, safety, morals, or welfare; and

(B) Areas which, by reason of:



§ 8-4-3. Definitions

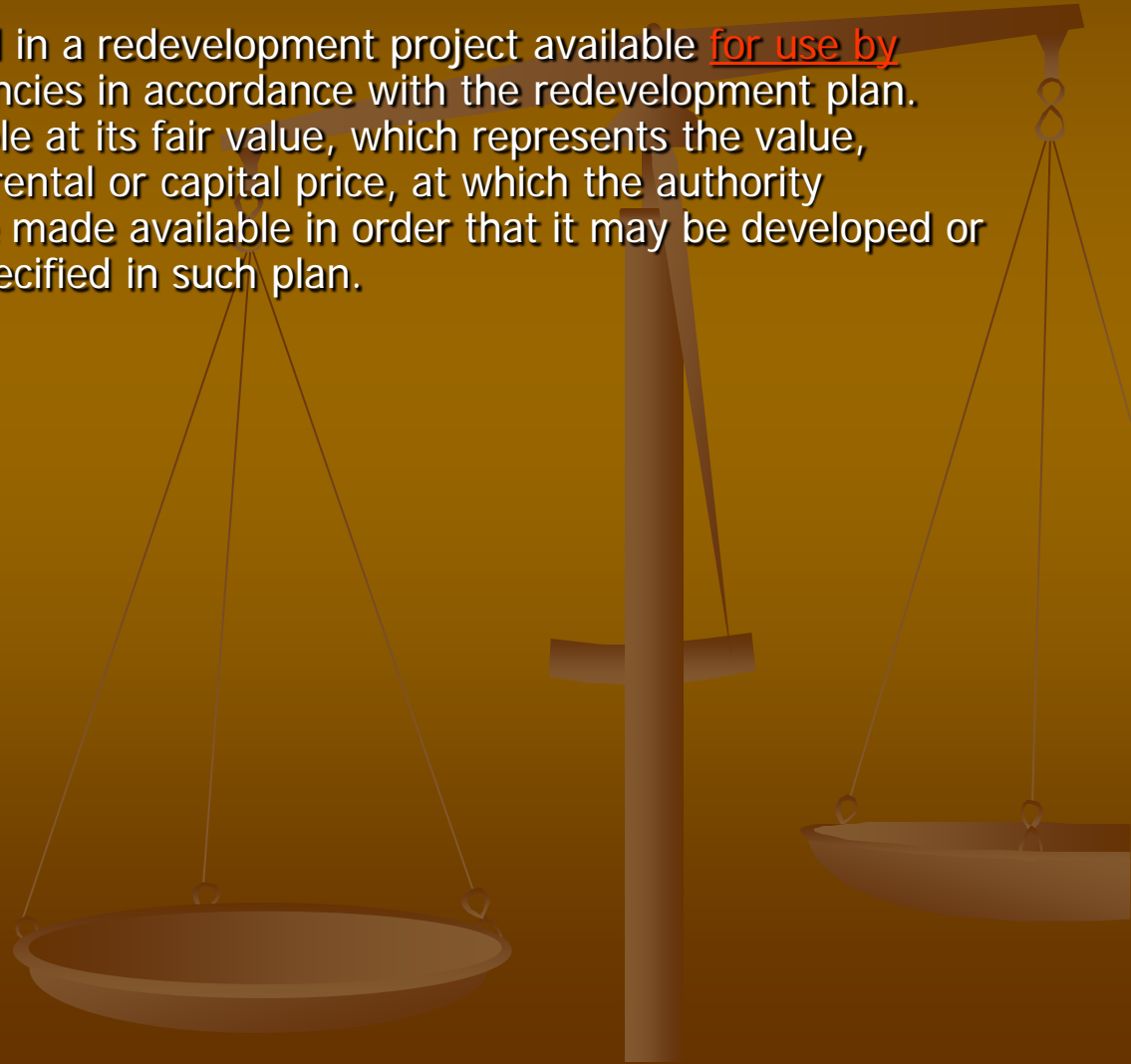
- (i) The predominance of defective or inadequate street layout;
- (ii) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (iii) Insanitary or unsafe conditions;
- (iv) Deterioration of site improvements;
- (v) Diversity of ownership;
- (vi) Tax or special assessment delinquency exceeding the fair value of the land;
- (vii) Defective or unusual conditions of title;
- (viii) Improper subdivision or obsolete platting;
- (ix) The existence of conditions which endanger life or property by fire or other causes; or
- (x) Any combination of such factors, substantially impair or arrest the sound growth of the community, retard the provision of housing accommodations, or constitute an economic or social liability and are a menace to the public health, safety, morals, or welfare in their present condition and use.

§ 8-4-4. Power of authorities

- Any housing authority established pursuant to Article 1 of Chapter 3 of this title, the "Housing Authorities Law," is authorized to prepare or cause to be prepared redevelopment plans and to undertake redevelopment projects within its area of operation, in accordance with this chapter. In undertaking such redevelopment projects, a housing authority shall have all the rights, powers, privileges, and immunities that such authority has under Article 1 of Chapter 3 of this title, the "Housing Authorities Law," and any other provision of law relating to slum clearance and housing projects for persons of low income, including, without limiting the generality of the foregoing, the power to make and execute contracts, to issue bonds and other obligations and give security therefor, to acquire real property by eminent domain or purchase, and to do any and all things necessary to carry out projects in the same manner as though all of the provisions of law applicable to slum clearance and housing projects were applicable to redevelopment projects undertaken under this chapter, provided that nothing contained in Code Sections 8-3-11 and 8-3-12 shall be construed as limiting the power of an authority, in the event of a default by a purchaser or lessee of land in a redevelopment plan, to acquire property and operate it free from the restrictions contained in said Code sections.

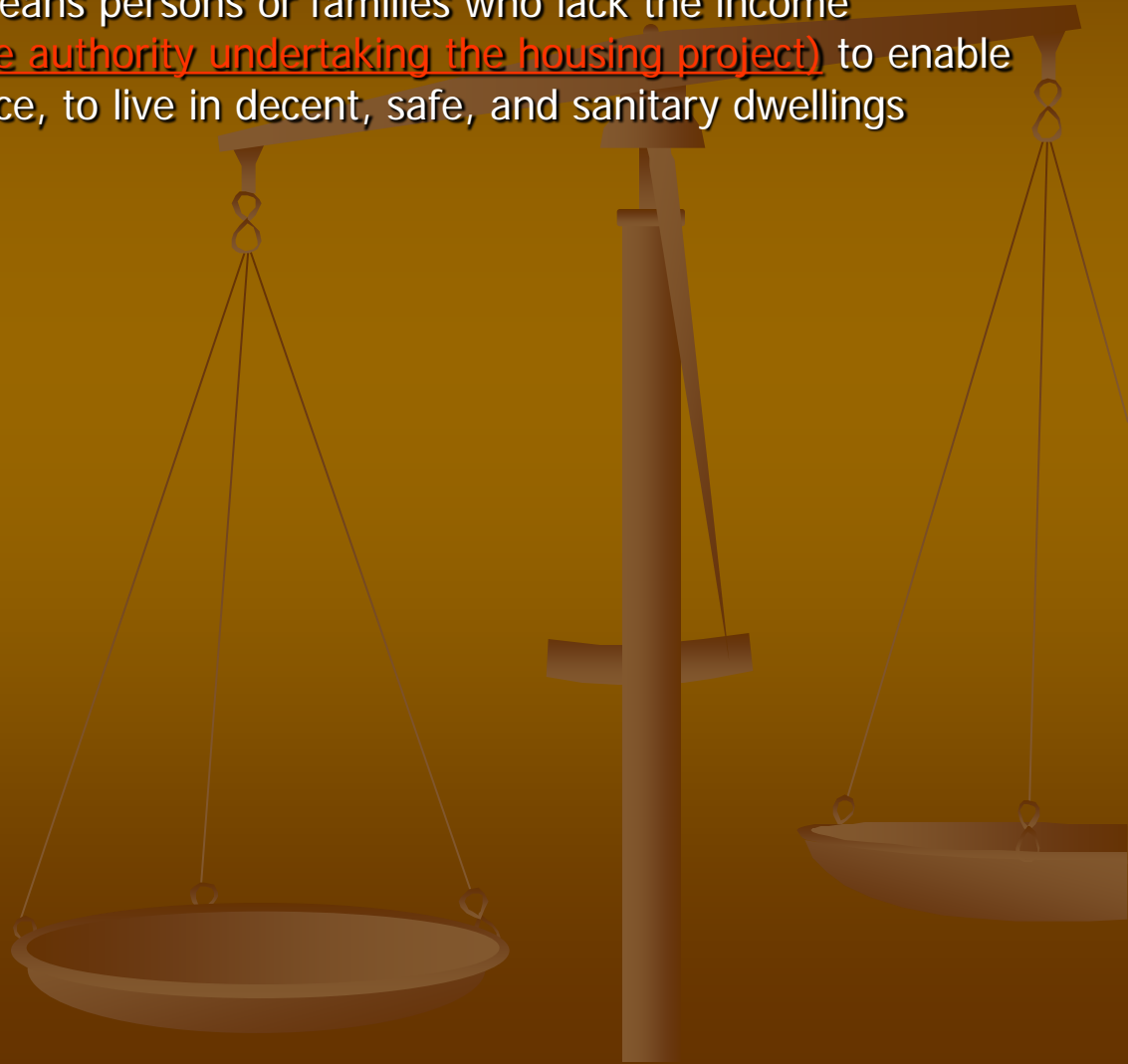
§ 8-4-6. Power of authorities to make property available for use by private enterprise

- (a) An authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan. Such land may be made available at its fair value, which represents the value, whether expressed in terms of rental or capital price, at which the authority determines such land should be made available in order that it may be developed or redeveloped for the purpose specified in such plan.



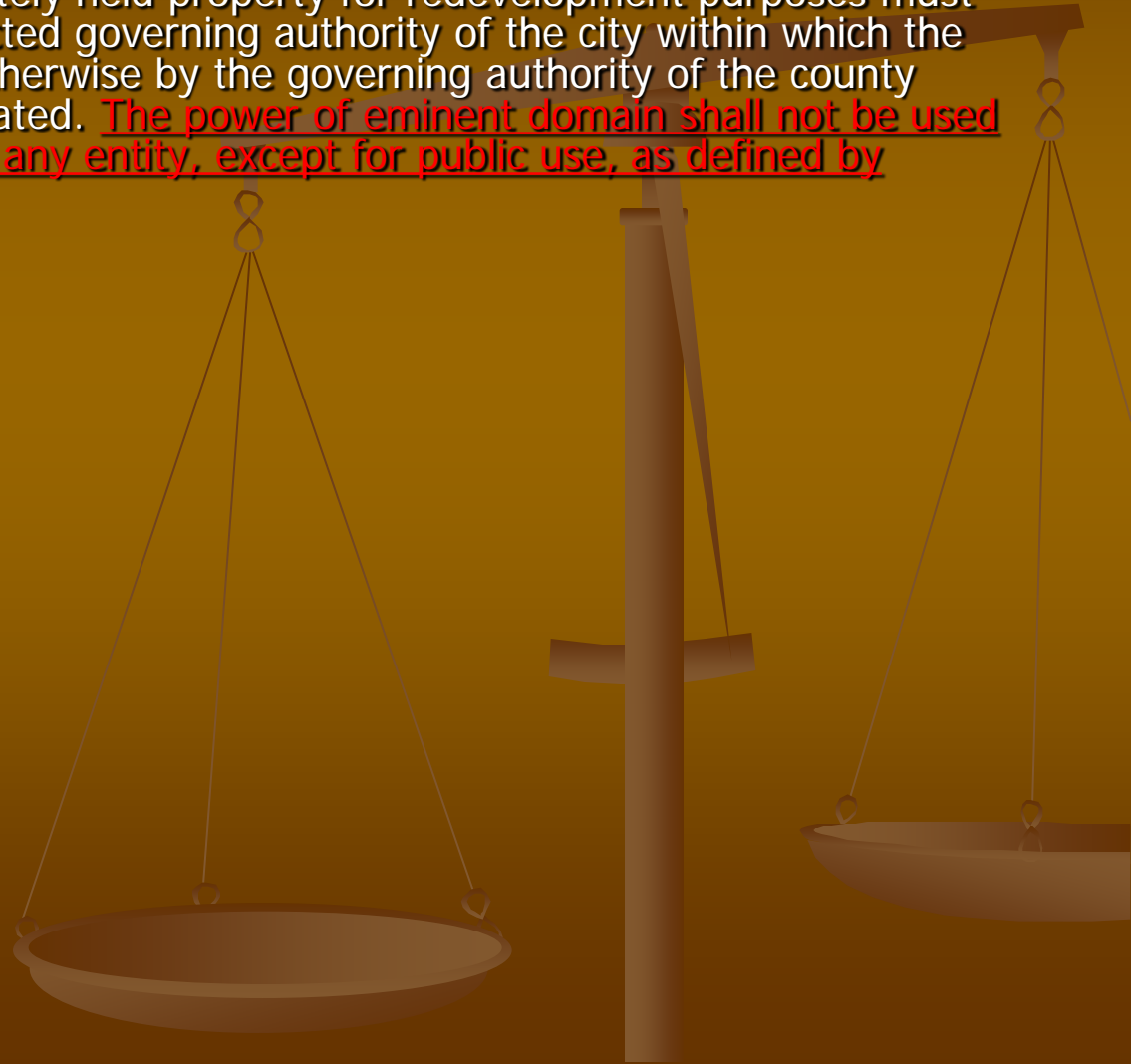
§ 8-3-3. Definitions

- (13) "Persons of low income" means persons or families who lack the income necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

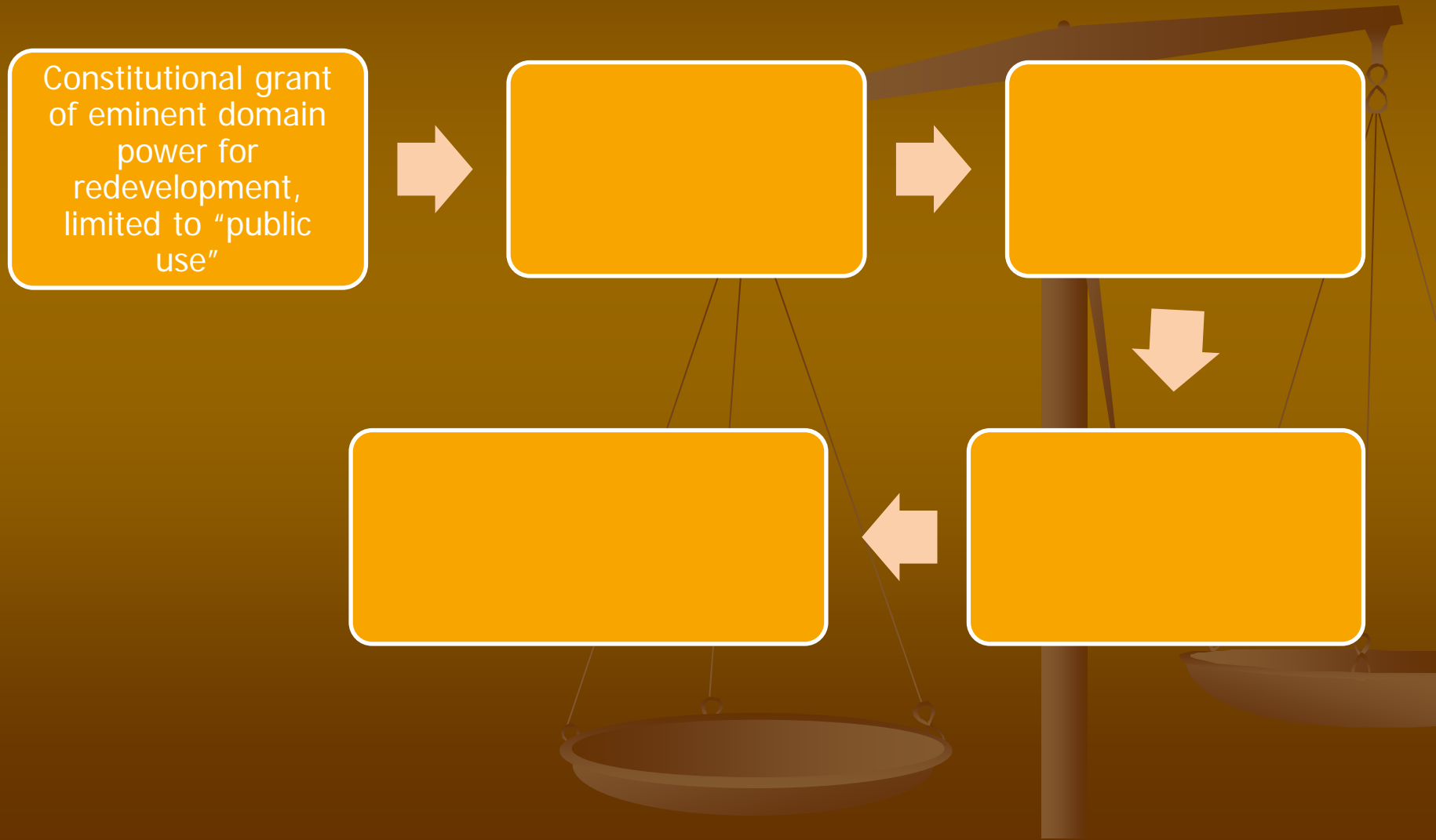


Georgia Constitution Art. IX, Sec. II, Para. VII subsection (a)

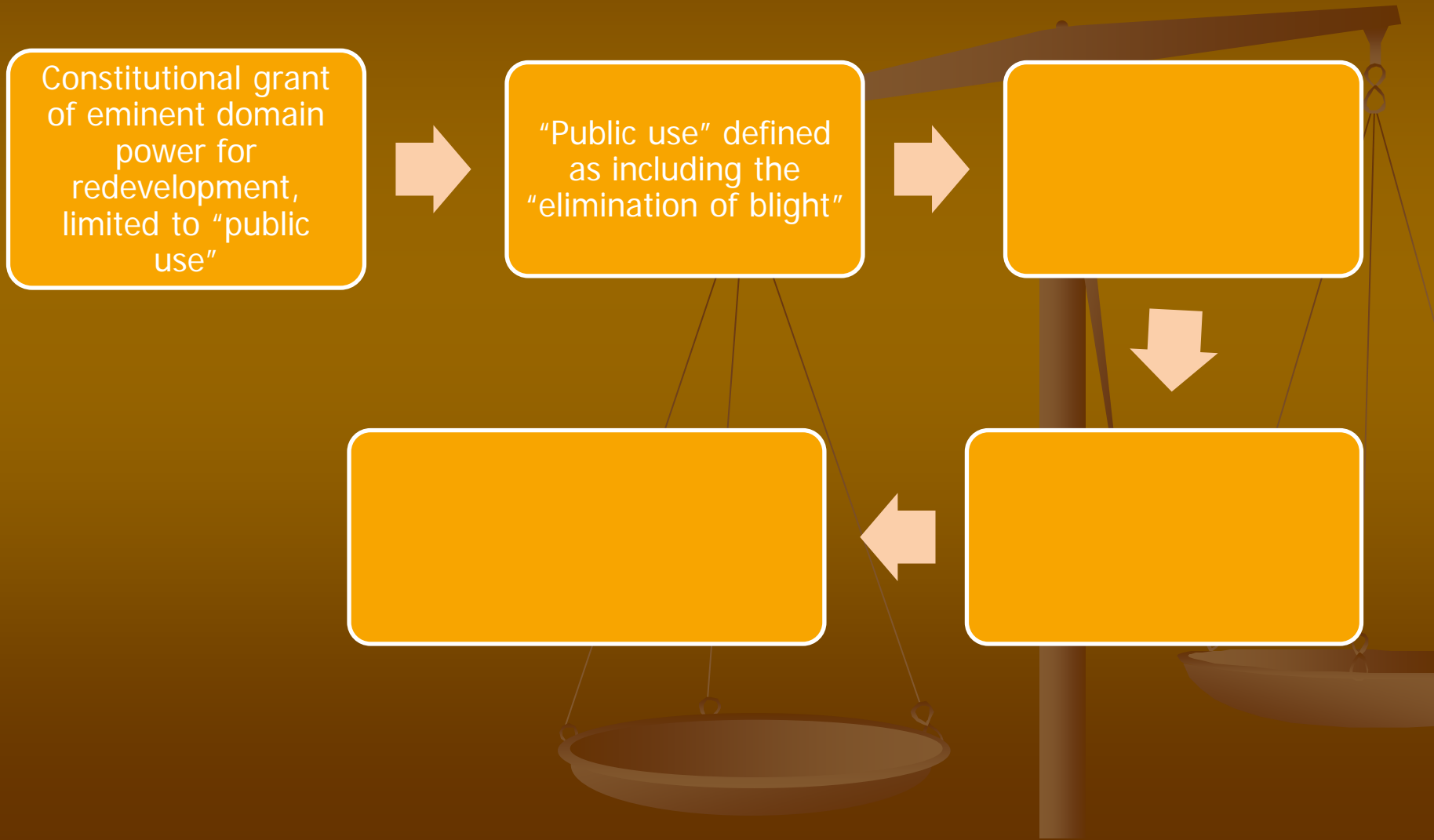
- (a) Each condemnation of privately held property for redevelopment purposes must be approved by vote of the elected governing authority of the city within which the property is located, if any, or otherwise by the governing authority of the county within which the property is located. The power of eminent domain shall not be used for redevelopment purposes by any entity, except for public use, as defined by general law.
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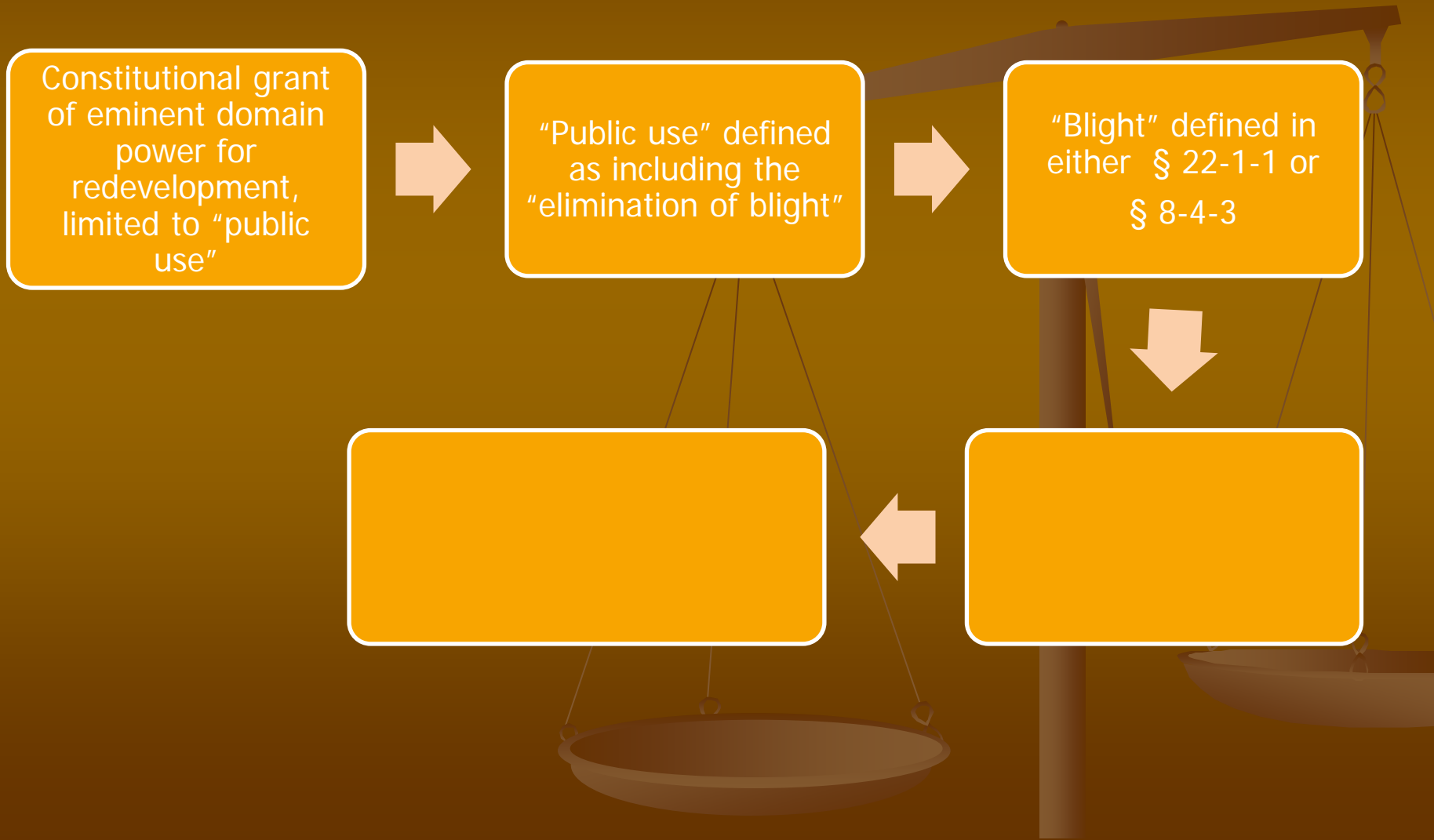
The Road Less Traveled



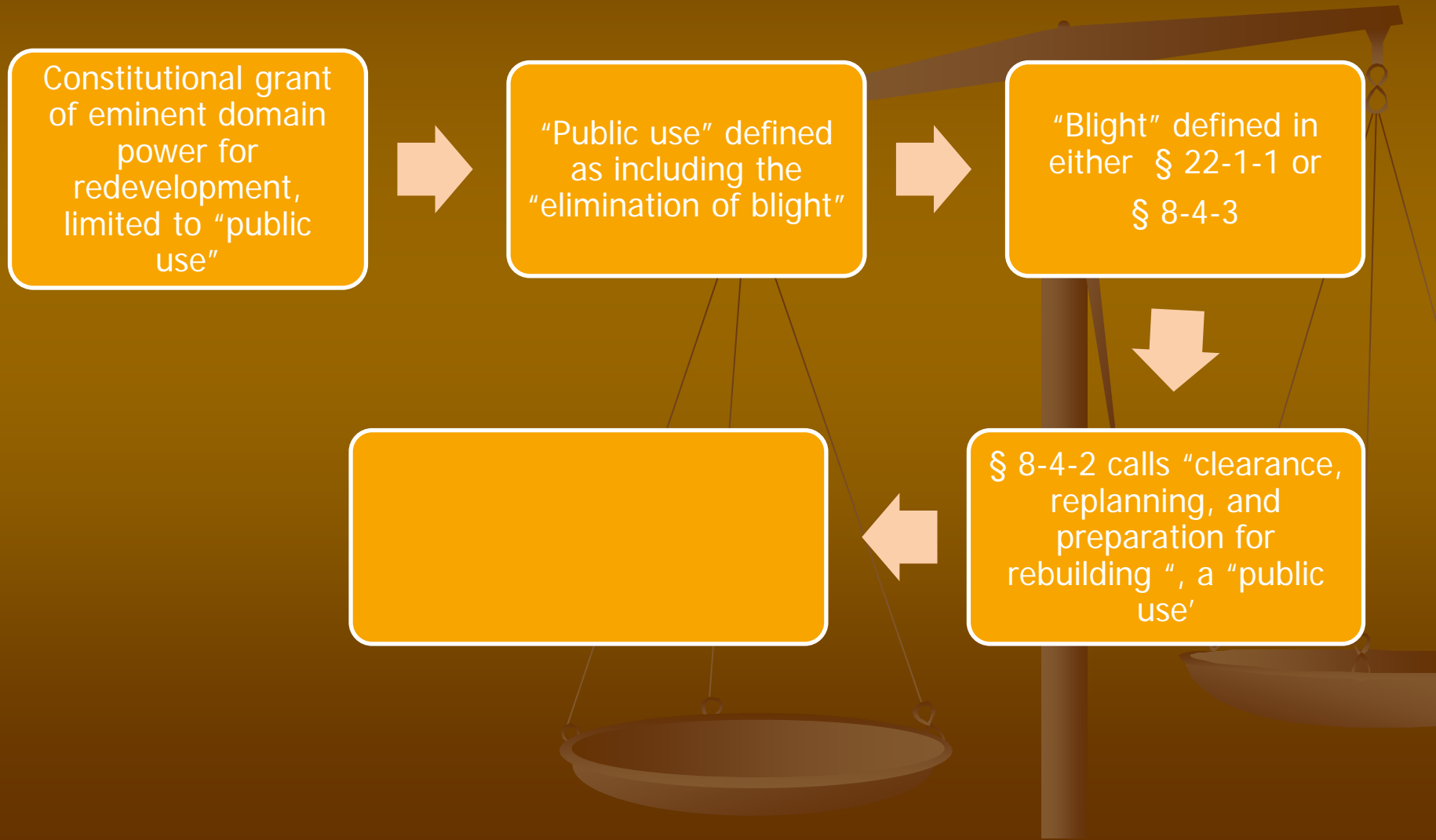
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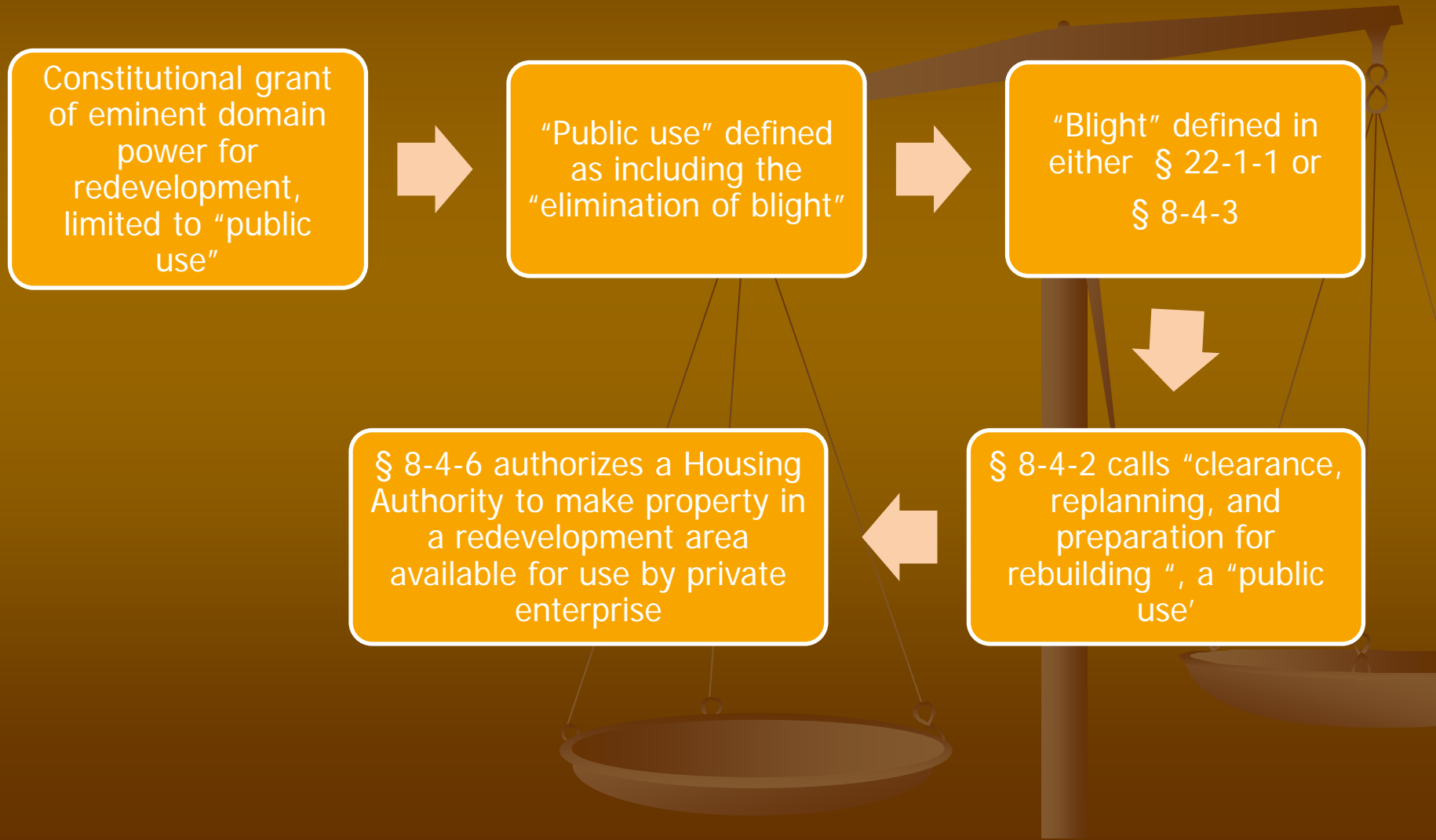
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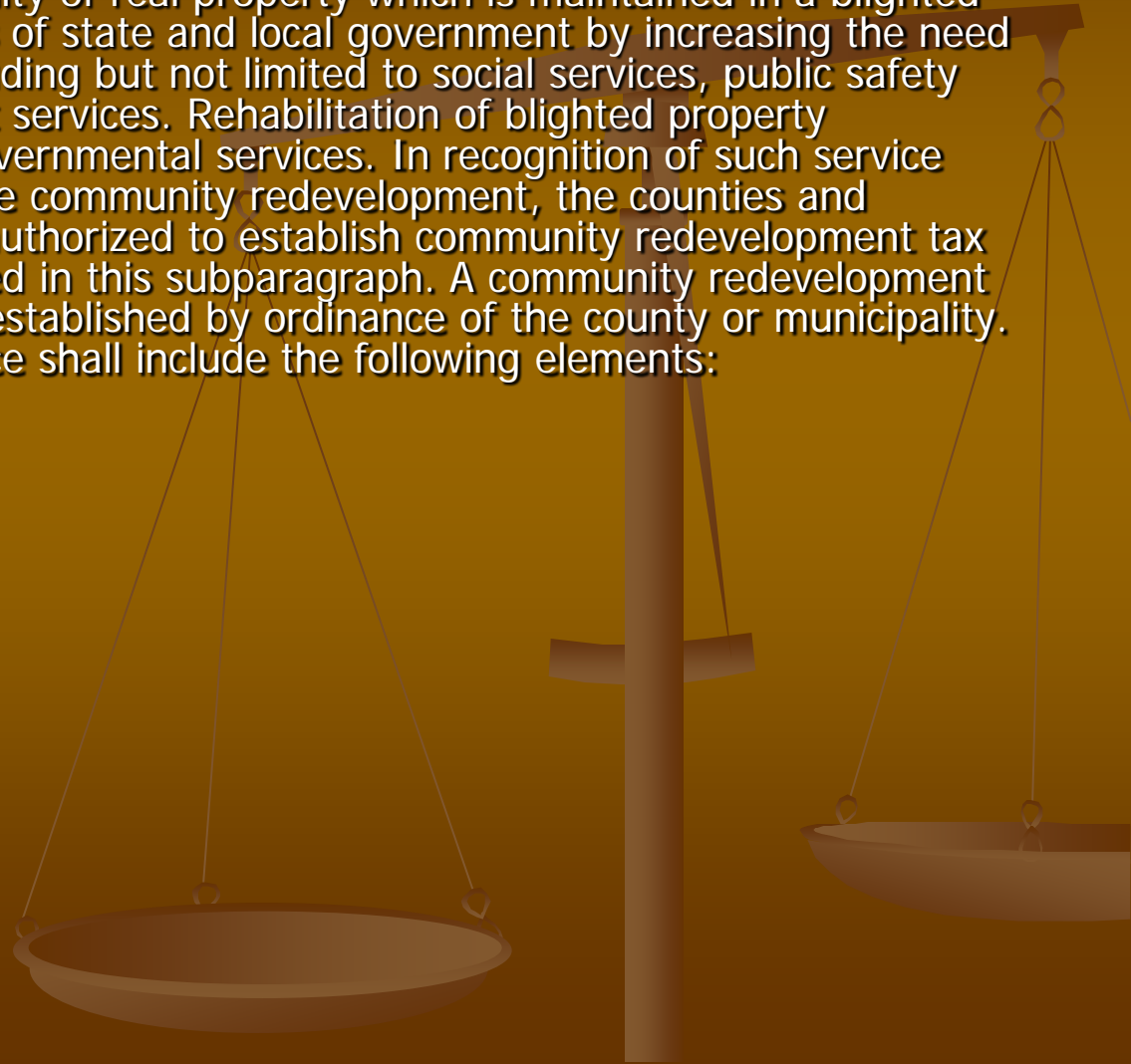


The Road Less Traveled



Georgia Constitution Art. IX, Sec. II, Para. VII subsection (d)

- (d) The existence in a community of real property which is maintained in a blighted condition increases the burdens of state and local government by increasing the need for governmental services, including but not limited to social services, public safety services, and code enforcement services. Rehabilitation of blighted property decreases the need for such governmental services. In recognition of such service needs and in order to encourage community redevelopment, the counties and municipalities of this state are authorized to establish community redevelopment tax incentive programs as authorized in this subparagraph. A community redevelopment tax incentive program shall be established by ordinance of the county or municipality. Any such program and ordinance shall include the following elements:



Georgia Constitution Art. IX, Sec. II, Para. VII subsection (d)

- (1) The ordinance shall specify ascertainable standards which shall be applied in determining whether property is maintained in a blighted condition. The ordinance shall provide that property shall not be subject to official identification as maintained in a blighted condition and shall not be subject to increased taxation if the property is a dwelling house which is being used as the primary residence of one or more persons; and
-
- (2) The ordinance shall establish a procedure for the official identification of real property in the county or municipality which is maintained in a blighted condition. Such procedure shall include notice to the property owner and the opportunity for a hearing with respect to such determination.
-
- (3) The ordinance shall specify an increased rate of ad valorem taxation to be applied to property which has been officially identified as maintained in a blighted condition. Such increase in the rate of taxation shall be accomplished through application of a factor to the millage rate applied to the property, so that such property shall be taxed at a higher millage rate than the millage rate generally applied in the county or municipality, or otherwise as may be provided by general law.
-
- (4) The ordinance may, but shall not be required to, segregate revenues arising from any increased rate of ad valorem taxation and provide for use of such revenues only for community redevelopment purposes;

Georgia Constitution Art. IX, Sec. II, Para. VII subsection (d)

- (5) The ordinance shall specify ascertainable standards for rehabilitation through remedial actions or redevelopment with which the owner of property may comply in order to have the property removed from identification as maintained in a blighted condition. As used herein, the term "blighted condition" shall include, at a minimum, property that constitutes endangerment to public health or safety;
-
- (6) The ordinance shall specify a decreased rate of ad valorem taxation to be applied for a specified period of time after the county or municipality has accepted a plan submitted by the owner for remedial action or redevelopment of the blighted property and the owner is in compliance with the terms of the plan. Such decrease in the rate of taxation shall be accomplished through application of a factor to the millage rate applied to the property, so that such property shall be taxed at a lower millage rate than the millage rate generally applied in the county or municipality, or otherwise as may be provided by general law.
-
- (7) The ordinance may contain such other matters as are consistent with the intent and provisions of this subparagraph and general law.

Georgia Constitution Art. IX, Sec. II, Para. VII subsection (d)

- Variations in rate of taxation as authorized under this subparagraph shall be a permissible variation in the uniformity of taxation otherwise required. The increase or decrease in rate of taxation accomplished through a change in the otherwise applicable millage rate shall affect only the general millage rate for county or municipal maintenance and operations. A county and one or more municipalities in the county may, but shall not be required to, establish a joint community redevelopment tax incentive program through the adoption of concurrent ordinances. No Act of the General Assembly shall be required for counties and municipalities to establish community redevelopment tax incentive programs. However, the General Assembly may by general law regulate, restrict, or limit the powers granted to counties and municipalities under this subparagraph.

