

Energy, Utilities, and Technology Committee
**LD 2087 An Act to Protect Property Owners by Preventing the Use of Eminent Domain to Build
Transmission Lines Under the Northern Maine Renewable Energy Development Program**
Testimony provided by Joshua Abram Kerckmar, Unity, Maine (Jan. 23, 2024)

Good afternoon, Senator Lawrence, Representative Zeigler, and distinguished Members of the Committee on Energy, Utilities, and Technology.

My name is Josh Kerckmar, and I write in support LD 2087. I am an associate professor at Unity Environmental University, where I teach history and environmental ethics. I am also a homeschooling dad whose land was targeted to “host” the Aroostook Renewable Gateway (ARG). If finalized, the proposed route would run a few hundred feet behind the home my wife and I saved for twenty years to build, obliterating the field and woods in which we work, learn from the land, and educate our two homeschooled kids.

Everything becomes quiet and dark as you enter these woods, where we walk most days along the “Ridge Trail” that we created when we moved here a few years ago. It’s the only place on our land where we can hear the hermit thrush.

Perhaps you will hear opponents of LD 2087 argue that sometimes, a few people (like us) must sacrifice for the benefit of the many, and that eminent domain is a necessary tool in that process.

But I disagree for the following reasons.

1. The suffering of the few may outweigh the benefit to the many.

Let’s imagine that you’re trying to decide whether to build a large commercial wind project that will require the use of eminent domain. On the one hand, that project would knock \$2/month off the electricity bills of 1 million people. In so doing, it would make life better for a great **quantity** of people but create very little **quality** of good for each person. The \$24/year savings likely wouldn’t make a huge difference in those peoples’ lives.

On the other hand, the project would gravely impair 1,000 landowners selected by the developer to host (or abut) the transmission lines. Each would face devastated property values,¹ harm to livelihoods, negative visual impacts, and the specter of losing to eminent domain land they view as sacred.

It’s true that the wind project would help combat climate change, which would benefit everybody, even those whose land is taken. But we have less invasive ways to develop renewable energy (think buried HVDC lines, rooftop solar, cutting back on electricity use) than stringing industrial-scale systems through small, disproportionately poor, communities and enriching massive out-of-state development firms in the process.

¹ David Wyman and Chris Mothorpe, “The Pricing of Power Lines: A Geospatial Approach to Measuring Residential Property Values,” *Journal of Real Estate Research* 40, no. 1 (2018): 121-54.
<https://www.tandfonline.com/doi/abs/10.1080/10835547.2018.12091490>

2. The use of eminent domain tends to target the poor.

The history of eminent domain in the United States is not a pretty one. It has often taken the form of “urban renewal” projects in which (white) business interests develop (black or brown) neighborhoods to eliminate blight and create “economic benefit for all.”² While a high-impact transmission line running through rural Maine is different than a bulldozer leveling minority neighborhoods in Chicago, these scenarios share at least one element in common: The victims in both cases are overwhelmingly poor.

The proposed route for the ARG ran from Aroostook County south through Penobscot, then through either Kennebec or Waldo. Each of these counties suffers poverty at rates 20% to 25% higher than the rest of Maine.³ Within those counties, the path of the transmission line seemed attracted, almost by magnetism, to some of the poorest towns. In my area, for example, we had anecdotal evidence to suggest the developer was looking to build a substation in Troy, which is impoverished at 1.3 times the rate of the already impoverished Waldo County.⁴

As someone who thinks we ought to fight systemic injustice, I view any system that targets the disadvantaged as morally wrong.

And I believe the legislature does, too. Why else would you have approved the language of Title 35-A, Section 3210-I, which states that the Northern Maine Renewable Energy Development Program would “promote energy equity with particular consideration given to the economic circumstances . . . in the State’s socially vulnerable counties and communities”?⁵ This language would seem not to favor the use of tools, like eminent domain, that depend on the disproportionate suffering of the disadvantaged.

3. Enabling large companies to take areas of food production by eminent domain sets a dangerous precedent in the face of declining agricultural production and climate change.

In our area alone, the proposed route for the ARG ran through numerous maple-syruping operations, farms (several of them Amish), and Swan’s Honey, the largest apiary in Maine.

Bees have difficulty navigating and pollinating the grasses that livestock eat in the presence of EMF’s.⁶ Nor can maple trees grow inside high-voltage power corridors. Yet food production is critical in a nation that, according to the USDA, has lost over 141 million acres of farmland since 1981 and stands to lose “substantially more land to renewable energy [development] in the next 5-7

² Ilya Somin, “How Eminent Domain Abuse Harms the Poor” (May 26, 2015). <https://spotlightonpoverty.org/spotlight-exclusives/how-eminant-domain-abuse-harms-the-poor/>

³ “Aroostook County, ME,” *Census Reporter* (<https://censusreporter.org/profiles/05000US23003-arostook-county-me/>); “Penobscot County, ME,” *Census Reporter* (<https://censusreporter.org/profiles/05000US23019-penobscot-county-me/>); “Kennebec County, ME,” *Census Reporter* (<https://censusreporter.org/profiles/05000US23011-kennebec-county-me/>); “Waldo County, ME,” *Census Reporter* (<https://censusreporter.org/profiles/05000US23027-waldo-county-me/>).

⁴ “Troy Town, Waldo County, ME,” *Census Reporter* (<https://censusreporter.org/profiles/06000US2302777625-troy-town-waldo-county-me/>).

⁵ Title 35-A, Part 3, Chapter 32, Section 3210-1, “Northern Maine Renewable Energy Development Program,” Item D. <https://www.mainelegislature.org/legis/statutes/35-a/title35-Asec3210-I.html>

⁶ S. Shepard *et al.*, “Extremely Low Frequency Electromagnetic Fields Impair the Cognitive and Motor Abilities of Honey Bees,” *Scientific Reports* 8 (2018): 1-9 (<https://www.nature.com/articles/s41598-018-26185-y>).

years.”⁷ Furthermore, in light of the EPA’s warning that rising temperatures are only beginning to threaten U.S. crop production, Maine’s ability to grow food can be a key element in developing climate resilience.⁸

Again, the legislature seems already to be aware of these problems, as evidenced by your passage of the “Right to Food” amendment in the Maine Constitution: “All individuals have a natural, inherent and unalienable right to food, including . . . the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well being . . .”⁹

For these reasons, it is morally and legally inadvisable (and even ironic) to facilitate a project designed to fight climate change via a tool that will harm our ability to fight climate change.

But if the legislature decides to incorporate into this project the “necessary evil” of eminent domain – a tool that may cause more suffering than benefit, that disproportionately harms the poor, and that enriches large corporations at the expense of Mainers’ right to grow food – it may at least consider ways to amend LD 2087.

We have numerous models for how such an amended bill might look, such as Minnesota’s “Buy the Farm” statute that requires developers to purchase the *entire* property they wish to seize through eminent domain;¹⁰ or the proposed Iowa law that required developers to buy 90% of the land along any proposed route prior to using eminent domain.¹¹ We might also consider capping eminent domain taking at 5% of the proposed route length. While these amendments would still pose problems, they would be steps in the right direction.

I am broadly in favor of moving toward renewables like wind and solar. And because I’m in favor, I’d like to see it done in ways that take ecosystems and people seriously, and that make local communities whole. But I cannot see how giving the right of eminent domain to rich development firms, who then use that right to carve large swathes of destruction through agricultural land, is good for people or the planet, especially when we have other options available to fight climate change.

Thank you for taking the time to read and consider.

Respectfully,
Josh Kerckmar

⁷ Kyle Dunphy, “\$3.2 Million Coming to SD as Part of Federal Energy and Fertilizer Funds” (Jan. 22, 2024) (<https://southdakotasearchlight.com/2024/01/22/in-utah-usda-secretary-announces-millions-in-federal-funds-for-solar-fertilizer-projects/>); Personal communication with Holly Noyes, Jan. 16, 2024.

⁸ “Climate Change Impacts on Agriculture and Food Supply,” (<https://www.epa.gov/climateimpacts/climate-change-impacts-agriculture-and-food-supply#:~:text=Rising%20temperatures%20and%20carbon%20dioxide,a%20future%20without%20climate%20change>).

⁹ “Constitution of the State of Maine 2023 Arrangement,” Article I, Section 25, “Right to Food” (<https://legislature.maine.gov/ros/LawsOfMaine/#Const>).

¹⁰ 2018 Minnesota Statutes, Utilities, Chap. 216E.12, “Eminent Domain Powers; Power of Condemnation.” <https://perma.cc/6PK5-PWGD>.

¹¹ Stephen Gruber-Miller, “Iowa House Passes New Limits on When Carbon Pipeline Companies Could Use Eminent Domain,” *Des Moines Register* (Mar. 22, 2023). <https://www.desmoinesregister.com/story/news/politics/2023/03/22/iowa-house-passes-bill-restricting-eminent-domain-to-build-pipelines/70035687007/>