LD958 “An Act to Prohibit Eminent Domain on Tribal Lands”

April 04, 2025

Senator Carney, Representative Kuhn, and Honorable Members of the Judiciary Committee.

My name is Rae Sage, and I am the Policy Coordinator for the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations. The Permanent Commission’s role is to examine racial disparities across all systems and advise Maine State Government on ways to improve the status and outcomes of historically disadvantaged racial, Indigenous, and tribal populations.

The Policy Committee of the Permanent Commission supports Wabanaki Self-Determination, and each nation's individual right to land as sovereign governments.Currently, the state of Maine maintains the right to take tribal land through eminent domain. By removing that authority, we bring Wabanaki communities more in line with the protections granted to most other federally recognized tribes.

Understanding why this policy matters to Wabanaki self-determination and racial justice more broadly requires an awareness of the history of eminent domain and those communities most impacted by its use. First, the processes of eminent domain mimics the colonial dispossession of land from Indigenous people.Take this quote from a 2005 paper on eminent domain included in a volume of the Tulsa Law Review dedicated to Indian Property Rights:

“For centuries, American Indians have seen their lands taken by federal and state governments without consent, and at times, without compensation…From these experiences, American Indians have long

been confronted with the reality that no matter what legal interest one holds in property, those ownership interests are always subject to divestiture (or the selling off of assets) by the government…"[1]

Today, land access is central to the building of sustainable futures for Wabanaki Nations. Land is an essential connection to foodways, traditions, spiritual practices, community and overall identity. As such it is imperative that we respect Wabanaki governments' decisions about what does and does not happen on their land.

Beyond the similarities to colonial dispossession, eminent domain has continuously been used against historically marginalized people including both communities of color and communities facing poverty.

In the US, many of the first eminent domain cases involved taking land to make way for railroads, often in rural or remote areas. We see parallels in the use of eminent domain for the taking of Passamaquoddy territory for the construction of Route 190 in 1925. By the 1950s however, eminent domain was primarily being used as a tool for urban renewal projects and the taking of "blighted land" often occupied by low income people and communities of color. Over time, it represented one of the more prominent ways that the governments were "taking land belonging to the disadvantaged and transferring it" to private economic interest.[1]

Over time, the ambiguous definitions of phrases like "blighted land" and "public good" in the discourse of eminent domain have created room for dispossessing marginalized people of their land. In 2005, this practice expanded when the supreme court ruling for *Kelo v. New London* gutted federal protections against eminent domain by expanding the definitions of "public use" to include private economic development.[2] This expanded the federal, state, and municipal government's authority in what property they could take through the use of eminent domain. While many federally-recognized tribes were protected as sovereign nations from some eminent domain laws, Wabanaki Nations lack these protections as a result of the Maine Indian Land Claims Settlement Act, making them unjustly vulnerable to the right of eminent domain.

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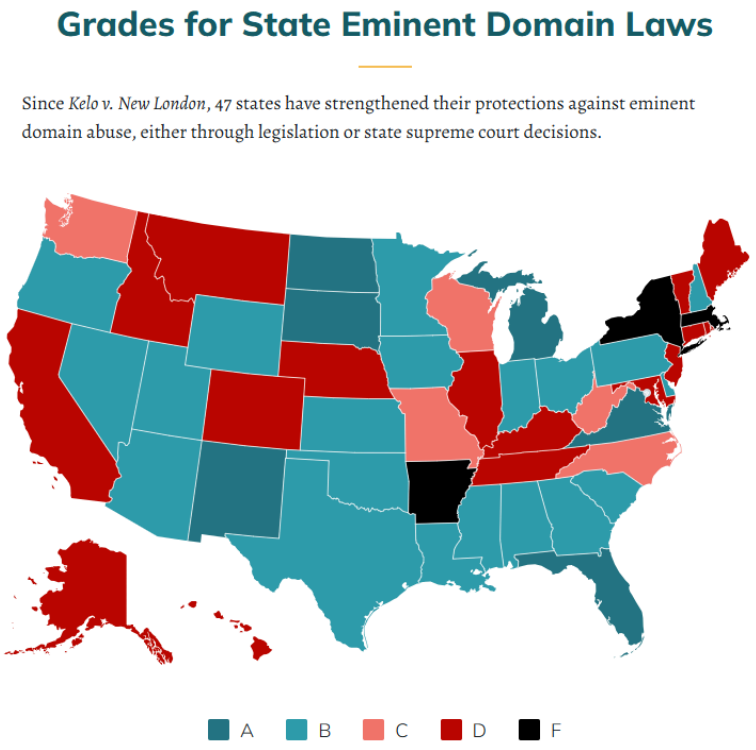
[1] Stacy L. Leeds, By Eminent Domain or Some Other Name: A Tribal Perspective on Taking Land, 41 Tulsa L. Rev. 51 (2013).
[2] Eminent domain - Institute for Justice. (n.d.). Eminent Domain - Institute for Justice

The taking of tribal lands without the consultation or agreement of tribal governments goes against federal policy. It also constitutes a form of state sanctioned theft that perpetuates a history of injustice against many Indigenous people, with particular resonance for Wabanaki Nations in Maine.

This bill is pivotal in encouraging healthy collaboration between the state of Maine and tribal nations. It is an opportunity to address the harms of the past and move together towards a mutually beneficial future. Individual agency and well-being should not be sacrificed for a supposed "public good" that may primarily serve private economic interests, echoing historical injustices. We all deserve the opportunity to make decisions about what happens in our communities, and have those decisions respected. LD958 does just that.



Maine receives a D+ rating for eminent domain laws from the Institute for Justice based on loopholes present in their eminent domain policy that make it possible for state and local governments to condemn homes, businesses, and places of worship for private profit.[3]

[3] Maine Eminent Domain Laws - Institute for Justice. (n.d.). Maine Eminent Domain Laws - Institute for Justice.