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SENATE
OF THE
STATE OF SOUTH CAROLINA



REGULAR SESSION BEGINNING TUESDAY, JANUARY 12, 2016

FRIDAY, APRIL 15, 2016

Friday, April 15, 2016
(Local Session)

~~Indicates Matter Stricken~~

Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the ACTING PRESIDENT, Senator CROMER.

ADDENDUM TO THE JOURNAL

The following remarks by Senator CAMPSSEN were ordered printed in the Journal of February 18, 2016:

Remarks by Senator CAMPSSEN

Senator CAMPSSEN: Senator MASSEY, since we are talking about eminent domain, a topic of much national interest as of late, I wanted to just get some clarification about what this Bill is doing in regards to eminent domain. First of all, eminent domain is authorized in the Fifth Amendment of the U.S. Constitution. Isn't that right, Senator?

Senator MASSEY: That's right.

Senator CAMPSSEN: Doesn't the Fifth Amendment provide that private property shall not be taken for public use except for just compensation?

Senator MASSEY: That sounds familiar, yes sir.

Senator CAMPSSEN: So the property must be put to a public use in order, according to the U.S. Constitution, to be subject to eminent domain. Is that correct?

Senator MASSEY: Yes sir, that's correct.

Senator CAMPSSEN: In this Bill, what you are doing is trying to assure that before eminent domain can be implemented by a pipeline company that it is in fact a regulated utility, therefore putting it in the public use category. Is that correct?

Senator MASSEY: I think that is an important point to make about the situation we have here.

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Senator CAMPSEN: If you look at the jurisprudence of the Supreme Court when it comes to the public use doctrine we see a great example of a living and breathing Constitution that many legal scholars embrace by the way of principle and a theory that the recently deceased Justice Scalia fought against. He really awakened the nation's conscience to the dangers of that living, breathing constitution concept. Did he not, Senator?

Senator MASSEY: He spoke about that often.

Senator CAMPSEN: His opinions are masterful pieces of jurisprudence that discuss how the original intent of the Constitution is what we need to focus on, because if we don't look to the original intent then we are ruled by an oligarchy of five people on the Supreme Court. Isn't that right, Senator?

Senator MASSEY: That is correct.

Senator CAMPSEN: And so, we have a great opportunity to learn and reflect upon how important original intent is when we consider eminent domain and the constitutionality of it. Because, Senator, in 2005, didn't the U.S. Supreme Court in *Kelo v. City of New London* hold that property could be taken for a public purpose even though the Constitution uses the term public use. Is that correct, Senator?

Senator MASSEY: That's right.

Senator CAMPSEN: Senator, didn't that concept first arrive in 1954? This is how pernicious the living, breathing constitution concept is. A seed is planted in 1954 in the case of *Berman v. Parker*. In that case the Supreme Court stated that although our Founders said "public use," we, possessing superior knowledge on the court, think the Founders really should have said "public purpose" so we are going to authorize condemnation for public purpose. That first arose in *Berman v. Parker* in 1954. Then in the *Kelo* case in 2005, the Supreme Court finished off the job by authorizing and upholding the city of New London, Connecticut's decision to take a piece of waterfront property from a little old lady and convey it to a developer because the developer would produce more property taxes for the city. Isn't that right, Senator?

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Senator MASSEY: Yes sir.

Senator CAMPSEN: The Supreme Court, because of its commitment to the living, breathing progressive vision of the Constitution, upheld that as constitutional. Didn't it, Senator?

Senator MASSEY: Yes sir.

Senator CAMPSEN: The Supreme Court upheld it in derogation of the Constitution, in derogation of original intent, and in derogation of little old ladies whose property should be protected. Isn't that right, Senator?

Senator MASSEY: Especially to the little old ladies.

Senator CAMPSEN: So we've had a national conversation about eminent domain. Haven't we here lately, Senator?

Senator MASSEY: Yes sir.

Senator CAMPSEN: The reason I think it is important to have this discussion and make these distinctions is because eminent domain as the Framers envisioned it, properly so, is necessary at times to produce power line right of ways for a regulated utility. It may be necessary at times when the government actually uses the property as long as the individual is paid just compensation at market value. But we have had a liberal Supreme Court that has ruled it is okay to take property from a little old lady and give it to a big high powered developer as long as the city believes the high powered developer is going to produce more tax revenue for the city. Isn't that right, Senator?

Senator MASSEY: That is correct.

Senator CAMPSEN: Is that not anathema to the actual concept that the Framers of the Constitution had in mind?

Senator MASSEY: I think that's true and I think it is also anathema to what the public at large expects for the use of eminent domain. I think most people accept eminent domain in a situation where the government is building a road, or if there is a new waterline coming thru, or even like you said for power transmission lines. But when you are talking about

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an unregulated private institution taking property, that makes people take a step back.

Senator CAMPSEN: It's not for public use, is it?

Senator MASSEY: That's right.

Senator CAMPSEN: Senator, in the wake of the *Kelo* decision in 2005, did we not pass through this General Assembly a Resolution to amend the South Carolina Constitution to clarify and make certain (this was a belt and suspenders approach) private property can only be taken for public use and not public purpose, including the public purpose of economic development. Isn't that what we proposed to the people, and the people of South Carolina then passed that constitutional amendment in a referendum. I think 83% of the people voted for that. Isn't that right, Senator?

Senator MASSEY: That's right. As you know, our constitutional language is much more restrictive than the language in the United States Constitution, and one of the goals Senator HUTTO brought up in a committee meeting was to act in accordance with that constitutional provision.

Senator CAMPSEN: So we have to make sure this is for a public use and not simply a public purpose. But Senator I want to go back to the national debate that is going on. There is a lot of confusion, some of it intentional, about eminent domain. We have had figures on the national stage who have expressed support for the *Kelo* decision and who have benefited from the same principle applied in the *Kelo* decision, where someone's private property is taken, not for a public use, but for the benefit of a developer or the operator of a big money making commercial operation. That's very different from what the framers envisioned in the Takings Clause. Is it not, Senator?

Senator MASSEY: I think that's right and we are trying to limit it here.

Senator CAMPSEN: We are trying to limit it here, because the Framers said you can take it for public use but not for the benefit of a developer or a casino or a parking lot or anything like that. This is a core central tenant of conservatism. Is it not? It's about respecting property rights.

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It's about being a strict constructionist when it comes to the Constitution, and it's about defending the rights of little old ladies. Yet we have on the national stage, people expressing support for the *Kelo* decision. We have people who have benefited from this judicial activism that created a body of jurisprudence that permits government to take private property from one property owner and give it to a preferred property owner just because that preferred property owner is going to produce more taxes and economic development. Is that right, Senator?

Senator MASSEY: I agree with you. I do think it is a bedrock of conservatism, but I also do not think it is an idea limited to only conservatives.

Senator CAMPSER: I'm talking about constitutional conservatism. We have a lot of constitutional conservatives over on that side of the aisle and I see them raising their hands.

Senator CAMPSER: Senator MASSEY, I appreciate you entering into this discourse. I think it's important to make the distinction between the property rights we're trying to protect here and why we are doing it. That is why this little lesson in constitutional law is important. Because you are trying to assure if this property is taken, it is taken for a public use, and that only happens if it is done by a governmental entity, by a public utility, or by a common carrier that is regulated and it is necessary to provide services like electricity, roads and things like that. It's important because there has been a lot of confusion, Senator, on the national stage about these nuances, but these nuances are very, very significant in where you should fall when it comes to eminent domain. I'm glad to see you are falling on the side of a Constitutionalist. Thank you.

ADDENDUM TO THE JOURNAL

The following remarks by Senator MARGIE BRIGHT MATTHEWS were ordered printed in the Journal of March 2, 2016:

Remarks by Senator MARGIE BRIGHT MATTHEWS

My fellow Senators, I rise this morning to inform you that I have done what I promised I would do since being elected as a Senator. I have been here since January, and as instructed, I have used my ears twice as much as my mouth.

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I have tried to learn the rules and have tried to learn and get to know my fellow brethren and sister. But unfortunately, I left this past weekend not understanding what had gone on. I learned a lot about statistics, but I also know the people in my district. I've lived in different places in South Carolina, so I know South Carolina pretty well.

I came to the South Carolina Senate with two agendas: fix the roads and do something about education. It wasn't a Democratic agenda nor a Republican agenda, but an agenda to do what is best for the citizens of South Carolina.

I don't know if a lot of you know this or not, but I am an attorney. When I began working as an attorney, I started out working for state government, defending cases for our State. I worked for the highway department where people had been injured on our state highways. I defended cases for our police officers and our school districts. That's how I started my career as an attorney, and I have learned a lot that I hope I can use during our deliberations and offer opinions on certain cases and situations that might come before us.

I opened my own personal injury and criminal defense practice and now I am faced with a lot of people who have been injured. I faced a parent whose child, while driving, dodged a pot hole and in the process, overcorrected, ran off the road and ended up dead. I had a case where a 22 year old boy left home on a sunny day in his raggedy Dodge pickup truck. He ran into a rut on a road that was so washed out you couldn't see the red clay dirt bottom. He, too, overcorrected trying to get out of the pot hole, hit a tree and is now paralyzed. Now here we are in this deliberative Body talking and worrying about pennies when people's lives are affected by this issue. This issue has been debated since last year with no real solutions.

Please think about Jasper, Hampton and Allendale counties and that most of the residents there have jobs in Senator DAVIS' district in Hilton Head. But they travel through 278 and Highways 17 and 170 to get there. I wonder if Senator DAVIS has talked to those people. Think about a mother of three, it takes her two and a half hours to get to work in North Charleston if there is a little rain, because the bridge is washed out. I know this is not what we want.

I feel as if I'm in a situation similar to when I was a little girl. I loved playing marbles when I was little. I am number nine in my family and I used to play marbles with a cousin who was number three in his family. He always had more marbles than us, and his were bright and shiny and

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if we didn't play according to his rules, he would grab his marbles up and say, "I'm going home." Is that what we're going to be like? That's what it seems like we are doing. We're being held hostage by a couple of people who, if they can't have everything their way, are going to take their marbles home.

Let's grow up. Let's start debating. Let's talk about what is important. Let's talk about the lives of people. Doesn't it make sense for you to pay a little bit more for gas so that those people coming into the State can ease the burden, or do you want the citizens that drive these roads every single day to have to worry about their children being killed or to have to worry about the expense for repairing their cars.

There has to be a way for us to do this without a one-size fits all or "I've got to have everything" solution. If you want to fix the roads, fix the roads. Let's worry about infrastructure later. Fix the roads, and the last time I checked, we don't have the majority, so why for two sessions are we still sitting here on this roads issue? Thank you.

SECOND READING BILL

The following Bill, having been read the second time, was ordered placed on the third reading Calendar:

S. 1238 -- Senator Leatherman: A BILL TO AMEND ACT 806 OF 1952, AS AMENDED, RELATING TO THE ANNUAL BUDGET FOR FLORENCE COUNTY SCHOOL DISTRICT TWO, SO AS TO ONLY REQUIRE A SEPARATE MEETING OF THE CITIZENS IF THE PROPOSED BUDGET REQUIRES A MILLAGE INCREASE.

CO-SPONSORS ADDED

The following co-sponsors were added to the respective Bills:

S. 1211 Sens. J. Matthews, Jackson and Scott
S. 1016 Sen. McElveen

ADJOURNMENT

At 11:04 A.M., on motion of Senator SCOTT, the Senate adjourned to meet next Tuesday, April 19, 2016, at 12:00 Noon.

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