

# **NORTH GEORGIA PROPERTY RIGHTS COALITION**

## **POSITION PAPER**

### **Eminent Domain & Other “Takings”**

#### **- INTRODUCTION -**

The people of North Georgia have lived by, stood, fought, and died for our rights and liberties for generation after generation. It is through the very exercise of this bundle of rights that we secure the blessings of liberty to our selves and our posterity. It is by the traditional teaching that right is not without obligation that we maintain and keep our peace and tranquility. It is also by the exercise of this bundle of rights and the blessings of our liberties that we maintain and keep the great rural culture, customs and traditions of the South alive, though it is but a faint memory in the minds and hearts of many city dwellers today. It is here and now that we must draw the line upon our heritage and birthright and that of our children and our children's children. It is our way of life, our liberty and our property that must now be secured by legislation because of those who have appeared that have forgotten or were never taught about limitations, and that rights and obligations are inseparable. It is upon this very ground that we are once again forced to stand in opposition to those that would take away our dearest rights and liberties by their empiric designs and without just cause.

There are many who would present themselves as friends to our lands and resources, to our lives and liberties, but would by deception and stealth take them from us bit by bit and piece by piece until our rights would be in name only and our liberties but a yearning for days gone by. To these base calumniators and deceivers we neither ask their council nor do we encourage them to visit what they would only come to destroy. We are dependent upon our land and the good things that it brings to us and we are thankful to a Higher Power for our abundance, stability and peace. We are reliant upon our woods and timber, upon mountains and clean waters and upon the plants and wildlife that we are blessed with. We all have our place and purpose in the grand scheme of this thing. It is by the exercise of our rights and liberties that we maintain and keep our customs and traditions for generation after generation and we would be ill disposed of our duties and obligations not to pass the knowledge and wisdom on to our posterity. Our true wealth is not in money and our peace and tranquility are not in the exercise of powers that would intrude into the lives and property of our neighbors without moral and just cause. Our wealth is in our independence and liberty, in the peace and tranquility of customary and traditional rural life, in our land and the right and liberty to use and enjoy it without the undue and unwarranted interference by others that covet what is not theirs. Those that would come here to exercise unjust and unwarranted powers to take away that which is good and useful have yet to learn that right and obligation are inseparable and that our peace and tranquility are founded upon moral customs and traditions that have been handed down as our birthright and heritage from time immemorial.

We are gathered together now to assert and claim our rights and liberties, our birthright and heritage only because others have now appeared that would take without just cause what belongs to us as a people, a rural community and as private citizens. Many of those that appeared acted not in their own name but came in disguise as nongovernmental organizations and artificial entities whose coordinated activities are orchestrated and financed by others that live and work deep in the bowels of large urban centers far removed from our lands, customs and traditions. These often times unseen manipulators no longer live by the knowledge of right and obligation, but only by mere privilege and would extend their wanton desires over every corner of our land and every day of our lives. They seek to protect what they cannot see and to own and possess what is not theirs. Theirs is the path to continual turbulence and contention, to the continual loss of right and liberty and to injustice itself. It is for this reason that we are before the legislature of the State of Georgia to obtain statutory laws to secure what we have known, kept, honored and secured through our customs and traditions from generation to generation. It is upon right and liberty that we stand and by right and liberty we are here.

## **- POSITION -**

The people of North Georgia understand that it is the primary obligation of government to secure rights and liberties and that there are necessary limitations that must be placed upon government. The citizens of North Georgia understand that there are people in agencies and organizations who do not understand the limitations imposed upon government and consider their empiric notions as sufficient cause to take and plunder what belongs to others. There are numerous artificial entities, associations and combinations that are trying to create and exercise undue political influence that far exceed the limitation of powers that we imposed upon those in public office. The purported interests of nongovernmental organizations and combinations do not supercede our rights as citizens, and our liberties are not to be placed upon some political chopping block for feigned and unjust causes.

The Georgia Municipal Association (GMA), the Association of County Commissioners of Georgia (ACCG), Sierra Club, Upper Chattahoochee River Keepers, to name but a few, are artificial entities that do not possess the rights of a citizen nor do they understand the limitations imposed upon government. Nevertheless, they are trying to impact those rights and to influence the legislature to assist them in their activity of reducing the citizen's rights to mere privileges. These associations and organizations are trying to expand their empiric influence under guise of the "precautionary principal" and other vague designs such as nonpoint source pollution and economic development. Even when no damage has occurred to the environment, they suggest that something might happen at some unknown time and under some unknown condition. They suggest that all should be taken away from the owner for some pretence that is not the property owner's fault or liability, and may not exist or ever happen at all. They assume there is no reciprocal obligation with the right, and that people are guilty for something that has not occurred. Under such feigned pretenses the bundle of rights would be reduced to a mere privilege and the owners reduced to mere tenants on the land they once owned.

It has long been and continues to be the custom, culture, and tradition of the people of North Georgia to exercise their obligation to maintain clean water and to responsibly maintain and manage their lands and resources. The traditional people and generational families have maintained the integrity of the area for generations and claim their constitutional heritage and birthright. It is the declared purpose and high obligation of government to protect the rights of these people and to secure their liberties.

It has been asserted by the Upper Chattahoochee River Keepers that property rights are “not absolute.” This is clearly an inaccurate and twisted statement that is contrary to the clear intent and meaning of the Constitution. We would ask these nongovernmental organizations to define “absolute” for the legislature and to state their source of authority. We would also ask that they identify and define the four categories of liberty. Only after this is done, are they requested to give their legal premise for reducing and abrogating the owner’s right, title, claim and interest in their property and land.

The people of North Georgia assert that property rights are indeed recognized as “absolute” and cite William Blackstone as our source of authority and attach an appendix hereto in support of our position and use words that are clearly defined with specific origins and meanings, in order to have open, adequate and meaningful discussion. Absolute property rights are a part of the English common law that was brought into the country as the foundation and law of the land. Absolute property rights are described in Blackstone’s Commentaries on the Laws of England, 1<sup>st</sup> Volume, Chapter 3.

*“The Third absolute right, inherent in every Englishman, is that of **property**: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The original of private property is probably founded in nature,...So great moreover is the regard of the law for private property, that it will **not authorize the least violation of it; no, not even for the general good of the whole community.**”*

*“For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature;..... Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals.”(emphasis added)*

“Absolute” in this historic passage has essentially the same meaning as “inherent” right. Rights are not without obligation and liability for abuse. As an example, polluting the water is prohibited by the common law. It is neither necessary nor proper to plunder in order to protect the quality of the water, nor is plunder authorized by the Constitution. Violation of property was addressed in The Law by Frederic Bastiat when the collectivist movement was sweeping France prior to the French Revolution.

***“It is not true that the legislator has absolute power over persons and property. The existence of persons and property preceded the existence of the legislator, and his function is only to guarantee their safety.”***

***“The law can be an instrument of equalization only as it takes from some persons and gives to other persons. When the law does this, it is an instrument of plunder.”***

***“Yes, as long as it is admitted that the law may be diverted from its true mission, that it may violate property instead of securing it, everybody will be wanting to manufacture law, either to defend himself against plunder, or to organize it for his own profit.”***

The right and liberty to acquire, use, enjoy and dispose of property is inherent in the nature of man and the world that we live in. Governments are created by people to secure these inherent rights and the blessings of liberty that are necessarily attached to them. The breach of this fundamental obligation by unauthorized and unwarranted impositions and intrusions into the lives, liberties and properties of people has and always will have serious impacts and consequences. This was expressed by John Locke in Chapter 19 of his Treatise On The True Original Extent And End Of Civil Government, Section 222:

***“The reason why men enter into society, is the preservation of their property; and the end why they choose and authorize the legislature, is, that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society, to limit the power, and moderate the dominion, of every part and member of the society: for since it can never be supposed to be the will of the society, that the legislature should have a power to destroy that which every one designs to secure, by entering into society, and for which the people submitted themselves to legislators of their own making; whenever the legislators endeavor to take away, and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men, against force and violence. Whenever therefore the legislative shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, endeavor to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people; by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and, by the establishment of a new legislative, (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society.”(emphasis added)***

These same principles of right, limitation on powers and justice are found in the Supreme Court’s recent split decision in *Kelo v. City of New London*. In the *Kelo* dissenting opinion, Justice Chase stated that:

*“An act of the Legislature contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority...[A] law that takes property from A. and gives it to B: It is against all reason and justice...” (emphasis added)*

Justice O’Connor wrote in the dissenting opinion that:

*“Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. **The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process...**As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. ‘[T]hat alone is a just government,’ wrote James Madison, ‘**which impartially secures to every man, whatever is his own.**’ (emphasis added)*

These principles are clear to those whose birthright and heritage are founded upon concepts of moral reason and justice. It is against the continual expansion of innovative designs and unwarranted and unjust intrusions that we must stand. History has shown that States and people have systematically changed the whole nature of their society as a result of such schemes and artifices, and lost their original constitutions.

*“The constitution and laws of a State are **rarely attacked from the front; it is against secret and gradual attacks that a Nation must chiefly guard.** Sudden resolutions strike men’s imaginations; their history is written, and their secret sources made known; but changes are overlooked when they come about insensibly by a series of steps which are scarcely noted. One would do a great service to nations by showing from history how many **States have thus changed their whole nature and lost their original constitution.** The attention of peoples would be awakened, and thence- forthe in the realization of that excellent maxim, no less essential in politics than in morality, **principiis obsta,** they would not close their eyes to innovations which, though of little account in themselves, serve as so many steps to advance to higher and more disastrous undertakings.”*  
(Emer de Vattel, Law of Nations)

In addition to limiting regulatory takings, an important reform that the State legislature could provide would be to limit police powers to the prevention of immediate, actual and clearly foreseeable harm and to limit eminent domain powers so that it can only be used to acquire private property for legitimate public uses. That would include provisions for just compensation to all property owners who are deprived by State or local governments of their rights to exclude others from their property, or to use it, to enjoy it, properly manage it and to dispose of it, with clear recognition of the rights of all owners to do the same. The just actions of the private property rights movement are essential to conforming state and federal law to the principles of inherent rights that were so important to the Framers and are essential to our own security, peace and happiness.

