

**Financial Services Panel Series, the Honorable Maxine Waters (CA-35) Presenting
The Housing Crisis and Policy Solutions: Should Eminent Domain Be Used to Save
Underwater Homeowners?**

Testimony of Robert Hockett

September 11, 2012
Rayburn 2226

Thank you for the opportunity to testify here today. I would like to begin by explaining what I take to be the cardinal importance of purchasing mortgage loans, especially out of private label securitization trusts (which is possible only through eminent domain), and reducing principal below the value of the homes that secure the purchased loans in order to convert homeowners into real stakeholders with positive, not negative, equity in their homes.

I believe that this objective is critical for purposes of saving homeowners, as the title to this hearing suggests, and is just as critical for purposes of saving the many communities now being ravaged by defaults and foreclosures. It is also critical for purposes of recouping value for investors in securitization trusts, and even in the interest of second lienholders. In other words, ultimate creditors, debtors, and their communities alike – not to mention the broader economy, still in the throes of a mortgage debt deflation with no end in sight – now await action of the kind that only municipalities exercising their eminent domain authority appear able to deliver.

It will be helpful, in making my case, to quote some very compelling testimony given the Congress by Tom Deutsch of the American Securitization Forum. His testimony is titled "Private Sector Cooperation with Mortgage Modifications – Ensuring that Investors, Servicers and Lenders Provide Real Help for Troubled Homeowners."¹

I quote:

"Although industry-driven loan modification and loss mitigation actions have been and will continue to be key components to preventing avoidable foreclosures, there are limits to their effectiveness in addressing the extraordinary challenges in the housing market. As such, we believe expanded government programs may be effective in bridging this gap, and *helping to address the potential foreclosures that commercial and contractual arrangements cannot prevent*. The nationwide home price correction and persistent uptick in foreclosures present systemic risks to the national economic infrastructure. Moreover, foreclosures are bad for everyone - borrowers, communities and investors."

"Ultimately, it must be recognized that the seismic economic challenges in the United States, the epicenter of which is the housing market, are *too great for purely private sector loan modification solutions*."

¹ See http://archives.financialservices.house.gov/hearing110/deutsch_-_asf.pdf (emphasis supplied).

"[G]overnment initiatives . . . will have to be even more aggressive in their efforts to stabilize homeownership, neighborhoods and communities around the country."

"One potential opportunity is that *TARP could purchase individual distressed loans out of MBS trusts, which could give the Treasury Department unlimited discretion to modify those loans. Historically, whole loans have not been sold out of securitization trusts by servicers for a variety of legal, tax, and accounting constraints.* The ASF supports, where feasible, facilitating such purchases as part of a broader range of loss mitigation alternatives . . ."

"The prevailing market view is that if the governing Board of the [Hope for Homeowners (H4H)] program were to exercise its new authority to increase the LTV percentage to that of FHASecure (97%), the H4H program would incentivize servicers, based on investor approvals, to refinance a significantly higher volume of loans into the H4H program. This new LTV requirement would still require loan holders to make significant principal reductions and provide some limited equity in the new FHA mortgage for borrowers formerly owing more on their mortgage than their home's value."

End of quote.

I agree wholeheartedly with the views of Tom Deutsch and the American Securitization Forum as just quoted. Because the federal government did not take their advice back in 2008-09 when they, I, and others offered it, however, it is now incumbent upon *local* governments to take the advice and act decisively to purchase underwater mortgage loans from private label securitization trusts, reduce principal, thereby mitigate loss for borrowers, communities and investors, and in so doing stabilize homeownership rates, families, neighborhoods and communities across the country.

I will now address several specific questions that I know Representative Waters and others here present would like to see answered.

Can you discuss the constitutionality of the use of eminent domain for principal reduction?

Governments will use eminent domain to purchase loans – particularly loans that current PLS securitization documents effectively prevent, as the quoted testimony from Mr. Deutsch helpfully noted, trustees and servicers from selling or modifying in numbers commensurate with the scale of our still ongoing mortgage crisis. After purchasing the loans, governments will deal with them like any other loan owner, by refinancing them, modifying them, etc. as conditions warrant. They will do, in short, essentially what Mr. Deutsch, I, and others urged the federal government to do back in 2008-09.

Eminent domain is entirely constitutional for governments to use as a means of acquiring mortgage loans to mitigate further damage to their communities from negative equity and defaults, as I shall elaborate shortly.² This might appear unfamiliar to some laypersons who are

² See Hockett, "Breaking the Mortgage Debt Impasse," <http://www.lawschool.cornell.edu/spotlights/upload/Memorandum-of-Law-and-Finance-21-April-Municipal-Plan.pdf>.

more familiar with uses of eminent domain authority to purchase land and other forms of real estate, but the constitutional, statutory, and case law upholding use of eminent domain authority to purchase other forms of property – *all* forms, in fact – is and has always been abundant for as long as we have been a constitutional republic.

Is there precedent for using eminent domain to seize mortgages or contracts?

In a word, yes. And not only mortgages and contracts, but other forms of intangible property as well. I'll briefly elaborate on some of these forms of property and their amenability to eminent domain authority in sequence.

Mortgages. There is quite longstanding precedent for purchasing mortgages by eminent domain. Mortgages are liens on real property, and governments routinely condemn these liens when they acquire the real property to which they are appurtenant by eminent domain.³ *Prospectuses for mortgage loan securitization trusts routinely warn investors of the risk of condemnation.* For example:

"In particular, prepayments (which may include amounts received by virtue of purchase, condemnation, insurance or foreclosure) of the Mortgage Loans . . . may affect a Noteholder's yield to maturity."⁴

This point is of particular significance in view of some false claims leveled by opponents of eminent domain use, to the effect that its use to acquire underwater mortgages will introduce a hitherto unknown source of uncertainty into housing credit markets.

Contracts. There is also longstanding precedent for using eminent domain to purchase contracts. The U.S. Supreme Court has stated that "A chose in action, a charter, or any kind of contract are, along with land and movables, within the sweep of this sovereign authority."⁵

Other creditor rights. There is also longstanding precedent for using eminent domain to condemn other categories of creditor rights. The U.S. Supreme Court, for example, famously has advised states to use eminent domain to condemn creditors' rights in order to avoid the limitations of the Contract Clause of the federal constitution in a case involving the Port Authority of New York and New Jersey.⁶ The Court noted in the referenced decision that the Contract Clause is not a barrier to the states' decisions on such public policy. "The States remain free to exercise their powers of eminent domain to abrogate such contractual rights, upon payment of just compensation."⁷

³ See, e.g., *W. Fertilizer & Cordage Co. v. City of Alliance*, 504 N.W.2d 808, 816 (Neb. 1993) (Nebraska Supreme Court holding that "a mortgagee's lien on real estate is an interest that may be subjected to a taking for a public purpose and, therefore, may be the subject of an eminent domain proceeding.").

⁴ See Prospectus Supplement dated September 26, 2005 to FBR Securitization Trust 2005-2, <http://www.investorscopes.com/secfilingsview.aspx?CompanyId=4496625>, page S-36.

⁵ *City of Cincinnati v. Louisville & Nashville Railroad Co.*, 223 U.S. 390, 400 (1912).

⁶ *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, note 27 (1977).

⁷ *Idem.*

In reliance on this instruction, the state Connecticut condemned bondholders' rights in some \$4 billion of Connecticut's own state debt.⁸ Likewise, New York has authorized the Long Island Power Authority to condemn the debt of local utilities as part of a health and safety action to shutter the Shoreham nuclear facility.⁹

Finally, the U.S. Supreme Court has instructed that where "the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain."¹⁰ Supreme Court Justices expressly recognize that this puts debt on all fours with other condemnable assets. "Can the poor man's cattle, and horses, and corn be thus taken by the government when the public exigency requires it, and cannot the rich man's bonds and notes be in like manner taken to reach the same end? . . . Is it anything more than putting the securities of the capitalist on the same platform as the farmer's stock?"¹¹

How would a court reason through whether the use of eminent domain in this context is an unconstitutional government taking?

A court would consider two foundational prerequisites for legitimate exercises of eminent domain: whether the government has a public purpose in exercising the eminent domain authority, and whether the property is located within the government's jurisdiction. (Courts also require that fair value be paid, which is less a prerequisite than it is a concurrent requisite, hence will figure into the discussion I provide further herein.)

Public purpose. Under our legal system, public purpose is a question for local governments to consider at the time that they act. Courts will defer to a government's determination as long as its action has a rational relation to a legitimate public purpose; that is, as long as the purpose is not manifestly a mere pretext. It is accordingly impossible for anyone to show today that the use of eminent domain to purchase mortgage loans lacks a public purpose, unless they can show want of good faith on the part of our governments. And courts are loath to second-guess the good faith of legislatures absent very strong showings indeed of contrary motives.

It should be noted in this connection that there are *multiple* textbook cases of public purpose that condemning underwater mortgage loans is the best means of advancing. These include common health, safety and welfare purposes – e.g., restoring economic activity, reducing crime, and protecting the local property tax base from reduced Proposition 13 property tax caps caused by foreclosures or short sales. They also include express statutory housing purposes, such as, in California, increasing financing opportunities for lower and middle income citizens.

Given the breadth of the governmental power and the standard of judicial deference, experts from across the spectrum expect that local governments will meet the public purpose

⁸ See <http://www.squiresanders.com/de/experience/casestudies/CaseStudyDetail.aspx?StudyID=493>.

⁹ See <http://www.lipower.org/pdfs/company/trans/LIPAact.pdf>.

¹⁰ *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 602 (1935).

¹¹ *The Legal Tender Cases*, 79 U.S. 457, 561 (1870) (Bradley, J., concurring).

requirement. The Pacific Legal Foundation, a noted opponent of eminent domain, has stated that it is "likely that courts, at least in California, would allow it. . ."¹²

Location of Debt. Under controlling precedent, a mortgage loan is located at the encumbered residence of the borrower.¹³ Other precedent locates the situs of a debt in the domiciliary jurisdiction of the debtor. On both scores, of course, mortgage debt is located in the states whose municipalities would exercise eminent domain authority to purchase underwater mortgage loans.

Opponents of eminent domain have of late attempted, quite unsuccessfully in my view, to impugn the clear public purpose and jurisdictional claims that I have just elaborated. To those attempts I now briefly turn.

Claims of Opponents. Opponents of the proposal to use eminent domain to acquire mortgage loans make a number of unsustainable claims apparently in order to intimidate local governments out of exercising their constitutional powers. One popular such claim of late has been to the effect that mortgage loan condemnation would violate the Contract Clause of the federal constitution. Yet the U.S. Supreme Court has expressly considered and unanimously rejected this argument in the preeminent controlling decision on point, stating that it has "no merit" because no one has ever thought that the Contract Clause "protect[s] against the use of eminent domain."¹⁴

As the Court wrote many years earlier:

*"The constitutional inhibition upon any state law impairing the obligation of contracts is not a limitation upon the power of eminent domain. The obligation of a contract is not impaired when it is appropriated to a public use and compensation made therefor. Such an exertion of power neither challenges its validity nor impairs its obligation. Both are recognized, for it is appropriated as an existing, enforceable contract. It is a taking, not an impairment of its obligation . . . Every contract, whether between the state and an individual or between individuals only, is subject to this general law. There enters into every engagement the unwritten condition that it is subordinate to the right of appropriation to a public use."*¹⁵

Opponents also occasionally argue that mortgage loans are located at the place of the creditor, citing the *Baltimore Football Club* condemnation case¹⁶ and the *Texas v. New Jersey* escheatment case.¹⁷ But these are inapplicable and, as it happens, mutually contradictory decisions. The *Baltimore Football Club* decision expressly rejects the *Texas v. New Jersey* case as not applying to condemnation, and rightly so. The decision in that case expressly chose a rule limited to escheatment as a matter of administrative convenience because there was no existing law on point. In addition, the *Baltimore Football Club* case is inapplicable *because it turns on the fact that the football club had already moved out of Baltimore*, which of course is not the

¹² See <http://blog.pacificlegal.org/2012/eminant-domain-as-a-bailout/>.

¹³ For the controlling precedent on location, see *City of Oakland v. Oakland Raiders*, 32 Cal.3d 60, 68 (2008).

¹⁴ See *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 at n. 6 (1984).

¹⁵ *City of Cincinnati v. Louisville & Nashville Railroad Co.*, 223 U.S. 390, 400 (1912) (emphasis supplied).

¹⁶ See *Mayor and City Council of Baltimore v. Baltimore Football Club Inc.*, 624 F.Supp. 278 (D. Md. 1985).

¹⁷ See *Texas v. New Jersey*, 379 U.S. 674 (1965).

case for homeowners and encumbered homes that remain within the jurisdiction of their condemning local governments.

Opponents would have us believe that the U.S. Supreme Court acted unconstitutionally to instruct New York and New Jersey to use eminent domain to condemn bondholder rights in the Port Authority case (where the debtor and encumbered property were in New York and New Jersey); and that Connecticut unconstitutionally condemned bondholder rights in its own state debt (although many bondholders resided out of state); and that New York acted unconstitutionally in authorizing the Long Island Power Authority to condemn debt of local utilities; and that the California Supreme Court acted unconstitutionally in ruling that the Raiders football club was located in Oakland. In fact, the opponents are simply wrong, as it seems to me they are on *all* of their arguments. In some cases – the repeated failure to cite *Midkiff* when citing the Contract Clause, for example – the omissions that plague the arguments are so surprising that it grows tempting to conjecture that opponents raise their ersatz issues simply to intimidate local governments out of so much as considering the use of their eminent domain authority, realizing as they must that once localities take these measures there will be no stopping them in court.

Opponents *also* frequently claim that governments will not pay *fair value* for the loans that they purchase through eminent domain. This is not an argument against the constitutionality of the proposal so much as it is a demand for more money. Governments *must* pay fair value; there is simply no way for them *not* to do so. That is the law, and the courts that oversee all eminent domain proceedings will enforce it. There is no more reason to impugn the integrity of courts in discharging this function than there is to impugn the integrity of legislatures in democratically determining public purposes and choosing means to advance them. Property owners routinely complain that governments will not pay fair value just as counterparties in all transactions tend to wish to pay less or be paid more, but such routinely advanced claims do not render a condemnation unconstitutional. The property owner must simply make its case in court – to a jury in California – and receive the just compensation that the jury determines.

SIFMA and other trade groups recently submitted comments to FHFA expressing their concerns with the eminent domain proposal. Among their arguments, they contend that using eminent domain for principal reduction would have a chilling effect on credit extension and on investment in the housing market. They argue that mortgage investors would seek a significant risk premium to compensate for risk of seizure by eminent domain. How would you respond to these criticisms?

There will be no such chilling effect, because (a) condemning authorities are legally required to pay fair value, and (b) as noted earlier, financial market participants and the lawyers who advise them already know about eminent domain risk and price credit accordingly. With respect to (a), there is no risk premium to be built in for a fair market value call option. As to (b), governments have condemned bondholder rights, shares of corporate stock, and residential rental real estate literally for centuries, yet none of these actions has chilled lending or investment in the markets in question. (When was the last time that American corporations significantly wanted for debt or equity capital, or that would-be homeowners wanted for home finance? If anything, our nation

has suffered a glut of excess credit and capital over the past several decades, not a shortage thereof. That's what our recent spate of asset price bubbles has been all about.)

Free markets are broad and deep, and lenders will lend when we have cleared the debt overhang – rooted significantly in PLS contract rigidities – that currently chokes them. That is how free enterprise and competition work. It is also presumably why SIFMA and other opponents are going out of their way to collude in attempting to stop current eminent domain plans in their tracks before implementation begins – like threatening to deny TBA trading. For everyone knows that lenders will lend without any additional cost even after condemnation, just as we keep purchasing corporate stocks and bonds long after the cases in which governments purchased assets of those classes in eminent domain.

Finally, and most importantly of all where the false argument from “chilling” is concerned, whether any city actually *does* condemn loans now or not is entirely irrelevant. The market is now aware, in the exceedingly unlikely event that it was not already, that governments are constitutionally invested with authority to condemn loans. Rational markets will now have *already priced in this “risk”* irrespective of any actual actions. Of course, the market should have been fully aware of this risk already, since as noted before, it has been used for such purposes many times. What is more, the use of eminent domain to purchase mortgage loans and associated assets in the wake of the present crisis has been advocated by a number of legislators and scholars, myself included, since 2008.¹⁸

Since the FHFA has said “no” to both principal reduction and eminent domain, what other alternative plans could be presented to address negative equity?

I am not aware of any other means by which to effect broad scale principal reduction in hard hit areas of the country. Certainly opponents have yet to offer any. Local governments have no other means of controlling the Biblical scale destruction now underway in their jurisdictions. Modification programs are generally voluntary, which Tom Deutsch helpfully noted as early as 2008 to be inadequate, and in the case of private label securitized mortgage loans the voluntariness in question is in effect contractually foreclosed. In the few cases in which principal reduction is mandatory – as in the Attorneys General settlement, for example – scale remains small and implementation is in any event within the control of other parties, like servicers, who have no obligation to focus their efforts on any given community.

In pursuit of eminent domain for principal reduction, can you make the argument that reducing negative equity is a public benefit? Why or why not?

As noted above in connection with the constitutionality of eminent domain use, reducing negative equity yields manifold public benefits, including (a) reducing the risk of default and its

¹⁸ See <http://www.csmonitor.com/Commentary/Opinion/2008/0925/p09s02-coop.html> (Jackson, advocating federal action); <http://www.lasvegassun.com/news/2009/feb/13/builder-eminant-domain-could-calm-foreclosure-chaos/> (Willis, advocating state action); http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1276285 (Hockett, advocating federal action); <http://www.tnr.com/article/unhindered> (Miller, advocating federal action); http://www.amazon.com/Presidency-Peril-Promise-Struggle-Economic/dp/1603582703/ref=la_B000APIL3I_1_3?ie=UTF8&qid=1347383357&sr=1-3 (Kuttner, advocating federal action).

many onerous costs to society, (b) jumpstarting refinance opportunities for low and moderate income borrowers, and (c) bringing investment back to residential real property in a more sustainable, less bubble-prone way.

If eminent domain is used, should it be limited to certain types of loans or conditions – such as only for loans that are in default?

No, I don't think so. I believe that it should be used for all types of loans whose expected values (EVs) can be raised by writing down principal, including those that are underwater and current. For this is the class of loans that are now leaving money on the table – money that, when recouped, can be distributed in a manner that benefits all: bondholders, homeowners, their communities, and all who now suffer the effects of an economy with chronic fatigue syndrome thanks to the ongoing mortgage debt overhang crisis.

I think it bears noting in this connection that the FHFA has concluded that one maximizes loss mitigation by fixing deeply underwater securitized loans that are current: loss mitigation "is greatest for securitized loans that are fewer than 90 days delinquent and maximized for loans that are current and ≥ 125 MTMLTV."¹⁹ A participant in an American Securitization Forum roundtable reaches a similar conclusion: "the best time to try to mitigate your losses is when a loan is performing, but is showing other signs of stress."²⁰

This point is particularly critical in California. Refinancing a loan while a borrower is creditworthy retains the home's existing property tax cap under Proposition 13. Waiting until the borrower has defaulted makes a foreclosure or short sale highly likely, which will reduce the cap to today's price for the indefinite future, inflicting long term damage to local government budgets.

Those observations having been made, however, I wish to emphasize again that I believe all loans whose EVs can be raised by principal writedowns currently blocked by PLS securitization contracts and other such market impediments should be purchased, written down to sustainable LTVs, and refinanced.

How would cities and judges determine fair market value for a mortgage

In California, juries determine fair value, as is typically the case in federal condemnation actions as well. They determine the fair value of loans, in particular, the same way the market does for whole loans now, and as juries do for all eminent domain actions: comparable sales in the secondary market, and discounted cash flow analysis.

Market participants and governments routinely value whole loans today. Examples include: (a) loans held for sale, which banks carry at fair value in financial statements that their executive officers certify under risk of Sarbanes-Oxley sanctions; (b) loans held at fair value by entities that use fair value accounting for tax or regulatory purposes, like real estate investment trusts

¹⁹ See letter from FHFA to Rep. Elijah Cummings dated January 20, 2012, at 6, <http://www.fhfa.gov/webfiles/23056/PrincipalForgivenessltr12312.pdf>.

²⁰ See American Securitization, "Coming to Grips with Government Intervention," (Nov. 2008) at 50, <http://www.americansecuritization.com/uploadedfiles/GovtIntervention.pdf>.

(e.g. Penny Mac); and (c) loans that governments subject to tax at fair value under intangible property taxes.

And what are the risks for municipalities that choose to take on this new debt burden?

Municipalities will not take on any debt burden. Private entities will provide all funding and take all risk to acquire and refinance the mortgage loans. That they are willing to do so strongly suggests that value can indeed be recouped, as I noted above, by writing down principal as current private label securitization arrangements do not allow – precisely the reason that eminent domain authority must be exercised.

In what ways could a local government mitigate the risks associated with the seized and modified mortgages?

Local governments will not take any risk and therefore need not mitigate any risks. Private entities, as just noted, will furnish all of the capital and incur all of the risks.

Can you explain why there is no consensus on principal reduction when there appears to be a wealth of empirical research concluding that it benefits the economy, homeowners, and investors?

There is overwhelming evidence that principal reduction benefits all economically interested parties.²¹ Even the FHFA acknowledges that higher negative equity leads to more defaults.²² A major reason that the FHFA dislikes principal forgiveness is that it leaves the lender or guarantor with one-sided, continued default risk. If the property goes up in value the homeowner benefits, but if the property goes down in value then the homeowner might still default, and the lender or guarantor bears the cost. Eminent domain eliminates this one-sided risk by paying the lender fair value for the loan. Thus eminent domain addresses the FHFA's concern and eliminates the risk.

Congress has so far been unable to reach a consensus and pass a law that would allow primary home mortgages to be restructured in bankruptcy court. Current law only allows for modifications on secondary homes and investment properties. While eminent domain principal reductions have no legal precedent, we already have a system in place to modify mortgages in bankruptcy. How would you explain the resistance to allowing mortgage modifications in bankruptcy proceedings?

The resistance seems to me inexplicable where the merits are concerned, suggesting that only political gaming can ultimately account for the continued inaction. Consider a person who was wealthy enough to borrow \$1 million on a personal line of credit and purchase a \$1 million home

²¹ For example, see the OMB study of the benefits of the FHA short refinance program, <http://portal.hud.gov/hudportal/documents/huddoc?id=ia-refinancenegativeequity.pdf>.

²² "In fact, historical data has shown that the probability of default correlates with the borrower's current LTV ratio; the higher the ratio, the greater the likelihood of default." See speech by FHFA Acting Director DeMarco to Brookings Institute dated April 10, 2012, at 12, http://www.brookings.edu/~media/events/2012/4/10%20housing%20demarco/0410_housing_demarco_speech.pdf.

in Florida for cash, then later declares bankruptcy. The law allows the debtor to keep the home, with all of the equity intact, and relieves him of all of the personal debt. Yet if someone owes \$110,000 on a home worth \$100,000 and declares bankruptcy with no other assets or liabilities, she loses her home. Why is this? Why do we protect equity in a home at the expense of creditors, but not protect a borrower who has no other debts? This is simply discrimination against the working and middle classes – the classes that we say constitute the ‘backbone’ of the nation.

Why don't people inveigh every day that it is unfair for debtors to keep their homes when they have equity while being relieved of their personal debts? Why don't they cry out that the Floridian paid too much for a house he shouldn't have bought? That no one will ever again make personal loans to people again because they might buy a house and use the homestead exemption? Why is there a homestead exemption in the first place? In fact why is there even a bankruptcy code in the first place? Why don't we still have debtors' prison?

We recognize that there is social benefit to giving debtors a fresh start and, critically, to allowing debtors and their families to stay in their homes after bankruptcy. That is particularly so when they were not individually responsible for the housing price bubble that left them no alternative but to pay high prices for homes and accordingly take on correspondingly heavy debt loads – debt loads that did not vanish with the equity in their homes after the housing price collapse. The costs to families, particularly children, and to society of booting families – even faultless families – from their homes are simply too great. The same rules should apply to those with negative equity as those with positive equity.

How do these concerns compare with common criticism against eminent domain for principal reduction?

These appear to me to be exactly the same.

Recently, the Washington State Supreme Court held in *Bain v. MERS, et al.*, that Mortgage Electronic Registration Systems (MERS) is not a “beneficiary” entitled to foreclosure under a deed or trust. MERS coupled with the securitization and bundling together of thousands of mortgages at a time has in many cases made it difficult to identify the original holder of the promissory note for any given property. If other Courts followed Washington in reasoning through eminent domain litigation, for properties that include MERS in the chain of title, who would have standing (hold the title) to challenge the local government’s use of eminent domain?

The existence of MERS raises a number of questions like the one above for those who oppose eminent domain. It is important to state the benefits of eminent domain in this context for cities, investors, and borrowers alike. Eminent domain clears title to the loan, to the security interest, and to the just compensation proceeds of the action. In one consolidated action, the local government clears up all of these paperwork problems and makes literally everyone better off - just as it more broadly makes communities, investors and homeowners all better off by paying fair value for the loans, reducing principal, and keeping Americans in their homes.

Thank you very much again for affording me the opportunity to speak here today.