



Promoting
Prosperity
in

Mississippi

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The Institute for Market Studies at Mississippi State University was created in 2015 to support the study of markets in order to provide a deeper understanding regarding the role of markets in creating widely shared prosperity.

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Preface

What creates prosperity? Why are some states rich and others poor? Why does Mississippi consistently rank as one of the poorest states in the nation? Can anything be done to move Mississippi ‘out of last place’? These questions are often raised by our students and fellow Mississippians. This book addresses each of these questions by identifying areas in which Mississippi can improve its economic conditions.

In this book, we identify key areas for Mississippi economic policy reform. Twenty-one scholars, ten of which are from or work in Mississippi, have contributed original policy research. All twenty chapters were written specifically for Mississippi with a shared goal to promote prosperity in the state. While some of the chapters contain complex policy reforms, we have made every effort to present the concepts and ideas in a way that is understandable to the average citizen, the person who can benefit the most from this information.

The first three chapters of the text summarize the basic economic principles necessary to achieve economic prosperity. These three chapters present the principles behind the reforms proposed in the subsequent seventeen chapters. Each chapter was written independently and offers unique insight into different areas of state policy reform. While the topics covered range from tax reform, education reform, healthcare, corporate welfare, occupational licensing and business regulatory reform to criminal justice reform, and natural disaster recovery efforts, there is a clear unifying framework underlying the conclusions reached in each chapter. The theme throughout is that economic growth is best achieved through free market policies, policies which are based on limited government, lower regulations, lower taxes, minimal infringement on contracting and labor markets, secure private property rights, low subsidies, and privatization. Policy based on these principles allows Mississippians to have more rights and more choices in their lives.

We hope that readers come away with a better understanding of capitalism’s true potential to generate the long-run economic growth necessary to make Mississippi more prosperous, as well as ideas for policy reforms that could accomplish it in our lifetimes. This book illustrates that if Mississippi embraces economic freedom, the state will experience more entrepreneurship, increased business and capital formation, higher labor productivity and wages, and overall economic growth. Our main goal is to provide the scholarly, academic research that can inform state policy decisions and open a much needed dialogue on growth-oriented policy reform in Mississippi.

We focus on long-run policy improvements. Thus, the analysis is not an assessment of any particular administration or political party. Instead, this book can be thought of as a blueprint of possible economic reform proposals that use scientific evidence as a guiding principle. We emphasize that our unifying framework, which shapes the conclusions drawn in each chapter, is based on economic science, not politics. All authors address their respective topics by relying on academic research. Topics and policy conclusions were not based on any particular political agenda, political party, or political expediency. Instead, the authors relied on cold, hard facts and data with references to published academic literature to develop policy reform suggestions specific for Mississippi. In fact, many reforms suggested may not be politically possible.

The inspiration for this book came from *Unleashing Capitalism*, a series of books using economic logic to improve state policy in West Virginia, South Carolina, and Tennessee. We owe thanks to more people

than we could possibly list. We are indebted to our colleagues and the Finance and Economics advisory board at Mississippi State University who helped review chapters and provide invaluable feedback. We thank Ken and Randy Kendrick, Earnest W. and Mary Ann Deavenport, and the Pure Water Foundation for the funding necessary to embark on a project of this magnitude. We also thank our friends and family for their support, and for putting up with the long working hours that went into conducting this research. Most importantly, we would like to thank the staff and supporters of the Institute for Market Studies at Mississippi State University for publishing this book. Without their support, this book would not have been possible.

Let's start promoting prosperity in Mississippi!

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Property Takings: Eminent Domain and Civil Asset Forfeiture

Carrie B. Kerekes

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Property Takings: Eminent Domain and Civil Asset Forfeiture

Carrie B. Kerekes

On June 23, 2017, the United States Supreme Court delivered another blow to property rights in America in *Murr v. Wisconsin*.¹ The Murrs owned two pieces of property along the St. Croix River in Troy, Wisconsin. They wanted to develop one of the properties and sell the other; however, the properties had been merged under St. Croix County zoning regulations. The Murrs argued that the zoning regulation constituted a property taking by effectively denying them use of their second property. As such, they argued they should receive just compensation under the takings clause in the Fifth Amendment to the U.S. Constitution. The Supreme Court decided against the Murrs.² Court decisions like *Murr v. Wisconsin* weaken property rights, threaten individual liberty, and can have significant negative long-run consequences on the health of an economy.

This chapter discusses property rights in Mississippi and examines the effects of takings, specifically takings conducted through eminent domain and civil asset forfeiture. Secure private property rights make it easier for individuals to put their resources to productive uses. If other beneficial rules and policies are in place, secure property rights can ultimately translate to higher incomes and a better standard of living for residents across the state. Fortunately, Mississippi performs well relative to other states in protecting residents from eminent domain abuse. However, civil forfeiture laws in the state do not adequately protect property owners. Additional reforms to state laws are necessary for Mississippi residents to realize the full benefits of secure private property rights and the resultant gains in income and prosperity they produce.

¹ *Murr v. Wisconsin*, 582 U.S. No. 15-214 (2017).

² See Abbott (2017) and Somin (2017). Epstein (2017) provides a detailed discussion of the case and its relevance for takings law in the United States.

Institutions, Property Rights, and Economic Development

Institutions, or the rules of the game, provide the framework for any economy, as described in Chapter 2. When the rules of the game are uncertain or do not promote incentives for exchange, growth stagnates, and prosperity is elusive for most of the population.

Property rights are the cornerstone of a well-functioning economy. Property rights provide incentives to engage in socially productive activities through the incentive for exchange. Only when people own resources securely can exchange emerge. With property rights and exchange comes the emergence of prices. Prices provide incentives for the productive and efficient use of resources as relative prices provide information to owners regarding the value of their assets. Prices provide valuable information to property owners and make possible a system of profits and losses. This system of profit and loss provides incentive for innovation and is necessary for entrepreneurs to decide what goods and services to produce and how to produce them. Innovation and positive technological change lead to increases in productivity as scarce resources are combined in more efficient ways to produce more goods and services that people ultimately desire. It is this increase in productivity that ultimately causes economic growth.

Resources are more efficiently utilized when property owners can receive market signals through prices and act on them. Any intervention that interferes with prices or the profit/loss system distorts these valuable market signals. Interventions that reduce the security of property rights can potentially break the chain entirely. The result of these interventions is more waste, less efficient use of property and resources, and less innovation. Eventually, productivity will decline and the economy will stagnate or shrink.

When individuals are confident and their property rights are secure, they have incentives to put their property to its most efficient use and undertake investments because they know they will reap any increases in value (i.e. profits). The factors that make property rights important hold true for individual states as well as for entire nations. While the rules chosen at the federal level significantly affect the health of the economy for the United States, state rules and policies also play an important role in determining individual states' relative success or failure in terms of their economic productivity. Therefore, state level policies that weaken the security of property rights constitute a significant disadvantage for economic prosperity in Mississippi and are worthy of analysis.

Eminent Domain

One form of property taking that renders property rights more insecure is government's use of eminent domain. In the now infamous 2005 decision, the U.S. Supreme Court declared in *Kelo v. City of New London*³ that private property could be taken by eminent domain and transferred to another private party for public benefit.⁴ This decision created an uproar as it made property rights significantly less secure by expanding the scope for eminent domain.

The Fifth Amendment to the United States Constitution states, "nor shall private property be taken for public use, without just compensation."⁵ The interpretation of 'public use' has undergone significant changes since the constitution was written. Traditionally, eminent domain was used for public projects

³ *Kelo et. al. v. City of New London*, 545 U.S. 469 (2005).

⁴ In *Kelo*, property was taken from residents near Fort Trumbull State Park for redevelopment. Specifically, the city's redevelopment plan included a hotel and shopping center, and research, office, and retail space to accompany a new facility for Pfizer, the pharmaceutical company. The reason for redevelopment was to increase the city's tax base.

⁵ U.S. Const. amend V.

and infrastructure, such as schools and roads. Over time, ‘public use’ came to mean ‘public purpose’. The ‘public purpose’ interpretation allowed eminent domain to be used on the justification of eradicating blight⁶ or reducing the concentration of land ownership⁷. In the aftermath of *Kelo*, eminent domain can now be used for ‘public benefit’. For example, under this interpretation, eminent domain can be used to transfer property from one private owner to another if doing so will increase tax revenue or promote employment.

Eminent domain is a direct violation of private property rights. As such, its use is limited by the U.S. Constitution. Increases in the government’s ability to use eminent domain reduce individuals’ protection of their private property, distorting incentives for investment and negatively affecting economic growth. Economic development takings, like *Kelo*, are especially problematic and pose a grave threat to property rights.⁸ Economic development takings are often initiated by special interest groups who have powerful political connections and can use the political process to their benefit at the expense of people with lower incomes or less political power. There is almost no limit to the reach of eminent domain if it can be used for development because supporters of the proposed project can claim the potential effects will have some public benefit that amounts to a public use. The only effective way to eliminate this potential expansion of eminent domain is for states to completely ban its use for economic development takings.

In addition to the U.S. Constitution, state constitutions also have provisions to protect private property rights. In the aftermath of *Kelo*, many states passed reforms to constitutions and laws in attempts to increase protections for private property rights. Several states drafted amendments to prevent property takings for private benefit, including economic development takings. Some states were more effective in their efforts to increase the security of property rights, while others made less significant changes that are little more than empty words on paper to appease voters. Many states that enacted reforms post *Kelo* still allow economic development takings to eradicate blight (usually defined as structures existing in states of abandonment or disrepair). However, loose definitions of ‘blight’ keep the door for eminent domain abuse open. While the overall effectiveness of the *Kelo* backlash in making property rights more secure is debatable, the response did ultimately cause many state legislatures to respond in some way to concerned voters.

Eminent Domain in Mississippi

Fortunately for Mississippi residents, eminent domain abuse does not currently appear to be a significant problem in the state. The Mississippi Constitution affords reasonable protection of private property. According to the Mississippi Constitution,

“Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.”⁹

6 *Berman v. Parker*, 348 U.S. 26 (1954) and *Poletown Neighborhood Council v. Detroit*, 304 N.W. 2d 455 (1981).

7 *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

8 Cohen (2006) discusses how problems of efficiency and group capture are particularly acute with economic development takings. Undercompensation for property owners is more likely in these cases than when the property is taken for a more traditional public use. Special interests are more likely to ‘capture’ the political process, making the government less likely to make efficient determinations when acquiring property. See also Somin (2004).

9 Miss. Const. Art. 3, § 17.

Mississippi state law allows for the use of eminent domain by persons or corporations to condemn private property for public use.¹⁰ However, in 2011, residents voted for Initiative 31. This initiative amended the Mississippi Constitution to provide further protections against eminent domain use:

“No property acquired by the exercise of the power of eminent domain under the laws of the State of Mississippi shall, for a period of ten years after its acquisition, be transferred or any interest therein transferred to any person, non-governmental entity, public-private partnership, corporation, or other business entity with the following exceptions:

(1) The above provisions shall not apply to drainage and levee facilities and usage, roads and bridges for public conveyance, flood control projects with a levee component, sea-walls, dams, toll roads, public airports, public ports, public harbors, public wayports, common carriers or facilities for public utilities and other entities used in the generation, transmission, storage or distribution of telephone, telecommunication, gas, carbon dioxide, electricity, water, sewer, natural gas, liquid hydrocarbons or other utility products.

(2) The above provisions shall not apply where the use of eminent domain (a) removes a public nuisance; (b) removes a structure that is beyond repair or unfit for human habitation or use; (c) is used to acquire abandoned property; or (d) eliminates a direct threat to public health or safety caused by the property in its current condition.”¹¹

Initiative 31 amended the Mississippi Constitution to prohibit state and local governments from using eminent domain to confiscate private property for *Kelo*-style economic development takings. Exceptions include property taken for public projects, such as infrastructure and utilities, and situations involving property that is abandoned or severely dilapidated.

This amendment to the Constitution does provide more protection to property owners against eminent domain. However, the exceptions to this amendment leave the door open for potential eminent domain abuse. Property can still be confiscated if it is deemed to be a public nuisance or is dilapidated to the point where it poses a threat to public health or safety. These exceptions mean eminent domain can still be used for development takings to eradicate blight. As such, eminent domain still poses a threat in Mississippi, even though this reform is stronger than many enacted in other states.¹²

In 2007, the Castle Coalition released a report that graded states according to legislative reforms passed following the *Kelo* decision.¹³ According to that report, Mississippi earned an F for its failure (at that time) to pass any legislative reforms to prevent *Kelo*-type property takings. More recently, the Castle Coalition gave Mississippi a B+.¹⁴ This improvement is due to Initiative 31, which offers property owners significantly more protection from economic development takings than in the past.

One area related to eminent domain where Mississippi can improve is its determination of just compensation in property takings. For example, in 2005 Hurricane Katrina destroyed a restaurant and bar (Dan B’s Restaurant and Bar) owned by Kenneth, Ray, and Audie Murphy in Bay St. Louis, Mississippi.¹⁵ After the hurricane, the City of Bay St. Louis and the State of Mississippi proposed a redevelopment plan

10 Miss. Code § 11-27-1 (2016).

11 Miss. Const. Art. 3, § 17A.

12 Somin (2011) acknowledges the relative effectiveness of Initiative 31 in prohibiting eminent domain for economic development takings compared to other states’ reforms. He does, however, caution that eminent domain could still be used for questionable condemnations by utility companies and common carriers.

13 Castle Coalition (2007).

14 <http://castlecoalition.org/50-state-report-card>

15 See Newman (2014).

for downtown Bay St. Louis. The plan included an access ramp and parking for a new harbor on property owned by the Murphy's. The State of Mississippi argued the property was public tideland, and confiscated the property without paying compensation to the Murphy's. The Murphy's took the state to court and a jury ultimately ruled against the state. The jury awarded the Murphy's \$644,000 for their property.¹⁶

In *Bay Point Properties v. Mississippi Transportation Commission*¹⁷ land was taken to build a public park, and the property owner was not awarded fair compensation for the taking. Prior to Hurricane Katrina in 2005, the State of Mississippi had an easement on the property and constructed a highway bridge. Hurricane Katrina destroyed the bridge, and the state decided to rebuild it elsewhere, not on the same piece of property. Rather than allow the property owner to use the land again, the state allowed the Mississippi Department of Transportation to use the land for a public park. Bay Point Properties sued the Mississippi Highway Commission for just compensation for the land. The case went to court on the argument that the State of Mississippi violated the just compensation clause in the Fifth Amendment. The jury did decide that the state had violated the Fifth Amendment. However, the judge instructed the jury to base compensation for the property as if it were encumbered because of the easement. As a result, the jury awarded \$500 to the property owner.¹⁸

The case then went to the Mississippi Supreme court, but it sided with the lower court.¹⁹ The Mississippi Supreme Court ruled that the jury had to value the land as if it were encumbered by the easement prior to the taking for the public park. The property owner, and parties filing amicus briefs on behalf of Bay Point Properties, argued that the land should have been considered unencumbered in determining just compensation because the State of Mississippi had abandoned the easement and now wanted to use the property for a different purpose for which the easement was originally obtained. The United States Supreme Court denied the petition for a writ of certiorari to hear the case.

While Mississippi courts can more carefully determine just compensation in future eminent domain cases, the Mississippi Constitution and state laws do offer reasonable protection for property owners from eminent domain. Unfortunately, property owners are not nearly as well protected from expropriation through civil asset forfeiture.

Civil Asset Forfeiture

Civil asset forfeiture is another form of property taking that reduces the security of property rights. Civil asset forfeiture is the process by which government can confiscate property that is alleged to have been used to commit a crime, regardless of whether the property owner was involved in or had any knowledge of its use in a crime. In these cases, the property is assigned a persona and held accountable for its actions. The forfeiture action is taken against the object, not the property owner. Civil asset forfeiture differs from criminal asset forfeiture. In criminal cases, the forfeiture accompanies a criminal prosecution.

Constitutional protections that apply to individuals do not apply to property in civil asset forfeiture cases, including the assumption of innocence until proven guilty, protection against “unreasonable searches and seizures”, and requirements for due process.²⁰ For example, in criminal cases, the prosecution must prove the commission of a crime beyond a reasonable doubt; in civil forfeiture cases, they

¹⁶ *Murphy v. State of Mississippi*, Cause No. 12-0453 in the Circuit Court of Hancock County, Mississippi.

¹⁷ *Bay Point Properties v. Mississippi Transportation Commission*, Cause No. A2401-41-115 in the Circuit Court of Harrison County, Mississippi.

¹⁸ See Davis (2017) and Hearne et al. (2017).

¹⁹ *Bay Point Properties v. Mississippi Transportation Commission*, No. 2014-CA-01684-SCT.

²⁰ U.S. Const. amend IV and U.S. Const. amend V.

must do so only by a preponderance of the evidence. This is a much lower burden of proof, with the result that individuals can lose their property even after being acquitted of the crime in question. Unlike in criminal proceedings, in most civil forfeiture cases the property owner does not have the right to a court-appointed attorney if he or she cannot afford one. The property owner must obtain legal counsel at his or her own expense. In many cases, the cost of hiring an attorney and the legal fees may be higher than the value of the property in question. As a result, assets valued below the cost of representation are often forfeited.

In the later 20th century, civil asset forfeiture was rationalized to fight the war on drugs. Its use has increased significantly over time as civil asset forfeiture can be attractive for law enforcement agencies. State and local law enforcement agencies rely on state budget allocations for funding. When state legislatures decrease funding for these agencies, the economic incentive for civil forfeiture increases, and it can be used as a revenue generating mechanism. In this manner, revenues from civil asset forfeitures may act as a substitute for state funding when state budgets shrink.²¹

The increasing use of civil asset forfeiture was compounded by the creation of the Equitable Sharing Program administered by the Department of Justice (DOJ). Most state civil forfeiture laws require seized funds to be deposited with the respective state and allocated by the state legislature to fund things like education. However, state and local law enforcement authorities can participate in equitable sharing to circumvent state laws. Through equitable sharing, federal authorities adopt state and local civil forfeiture cases. In return, the state and local law enforcement agencies share in the proceeds of the confiscated assets. These agencies can continue to supplement their budgets by retaining a portion of the seized assets. Thus, equitable sharing provides an economic incentive for law enforcement agencies to confiscate private property even when state laws are in place to try and prevent its use for this purpose. Between 2000 and 2008, equitable sharing payments to the states increased from approximately \$200 million to \$400 million.²²

Many states do not require law enforcement agencies to track and report statistics on civil forfeiture, including the number of cases, values and descriptions of the seized assets, whether the property owner was convicted of a crime, or how the proceeds were used. This raises issues with government transparency and accountability. In addition, much of the burden in civil forfeiture cases falls on the property owner to prove their innocence, versus the government proving their guilt. These factors, combined with the aforementioned economic incentives, encourage law enforcement authorities to expropriate private property. Civil asset forfeiture is therefore one of the most serious threats to private property rights in the United States.

As individuals become more aware of this threat, and as forfeiture cases increasingly target innocent individuals, pressure from constituents has made civil forfeiture reform a priority. Many states have enacted reforms to forfeiture laws. Several states have enacted reforms that eliminate civil forfeiture without an accompanying criminal case. For example, Connecticut recently became the 14th state to require a criminal conviction for forfeitures.²³ Laws in Mississippi have also undergone change, but much more can be done to better protect residents and their property.

21 See Benson and Rasmussen (1996) and Blumenson and Nilsen (1998) for more detailed discussions of how law enforcement agencies use civil asset forfeiture as a revenue generating mechanism.

22 Kramer (2010).

23 Sibilla (2017a).

Civil Asset Forfeiture in Mississippi

Abuses of civil asset forfeiture are not uncommon in Mississippi. While recent legislation will help increase transparency, civil forfeiture will continue to pose a real threat to private property rights unless more substantial changes are made to state forfeiture laws.

The Institute for Justice (IJ) publishes *Policing for Profit*, a report that analyzes several factors to grade states according to their civil forfeiture laws.²⁴ IJ examines how lucrative and easy civil forfeiture is in each state. It examines the standard of proof, innocent owner burden, and the percentage of proceeds that go to law enforcement agencies. IJ also examines the extent to which each state utilizes equitable sharing. As this is often a means to circumvent state laws about how forfeiture proceeds will be allocated, more equitable sharing translates to a lower grade.

The first edition of the IJ report was published in 2010 and Mississippi earned a D+. At the time, laws in Mississippi were among the worst in the country for encouraging civil forfeiture and did little to protect property owners. At the time of the 2010 report, Mississippi had a very low standard of proof for property to be considered forfeitable. Police only had to show by a preponderance of the evidence that property was related to a crime. The burden was on the property owner to prove his or her innocence, and law enforcement agencies could collect 80% of the proceeds from forfeitures. Additionally, there was no requirement to collect or report any data on civil forfeitures.

By the publication of the second edition of the IJ report in 2015, Mississippi had improved its grade to a C-.²⁵ The only apparent area of improvement between the 2010 and 2015 reports is that state statutes have been interpreted as placing more of the burden of proof on the government versus the property owner.²⁶ There was still a low standard of proof for forfeitures, no conviction was required to seize assets, there were no reporting requirements, and law enforcement agencies continued to pocket 80% of the proceeds from forfeitures. If more than one agency is involved in the forfeiture, all of the proceeds go to law enforcement. This creates a strong economic incentive to seize assets, and it also creates a conflict of interests. The IJ report includes a striking example of this conflict. A \$4.1 million training facility for law enforcement was built in Richland, Mississippi. The police boast that the facility was funded completely with proceeds from civil forfeitures conducted by the Richland police. Richland has a population of only 7,000 residents.²⁷

The 2015 IJ report also ranks Mississippi 20th in the United States for federal forfeiture. Between 2000 and 2013, law enforcement agencies in the state worked in conjunction with the federal government and pocketed more than \$47 million worth of assets through the Equitable Sharing Program. Using this figure, law enforcement agencies in Mississippi took in an average of \$3.4 million from the Department of Justice (DOJ) each year.

In 2016, the Mississippi state legislature organized a Civil Asset Forfeiture Task Force to collect court records and data from 2015 to study civil forfeiture in the state.²⁸ According to the study, the Mississippi Bureau of Narcotics seized \$4 million of assets in 2015. This figure includes 154 seizures with an average value of \$66,773. Seized cash amounts ranged from \$75 to \$460,000. These numbers actually understate the extent of civil forfeiture because they do not include assets seized from police agencies that did not

24 Williams, Holcomb, and Kovandzic (2010). The full report is available online at <http://ij.org/report/policing-for-profit-first-edition/>.

25 Carpenter, Knepper, and McDonald (2015). The full report is available online at <http://ij.org/report/policing-for-profit/>.

26 Miss. Code § 41-29-179 (2013).

27 See Carpenter, Knepper, and McDonald (2015) and Wing (2015) for details.

28 See Ciarmella (2017) for more details from this report and examples of recent civil forfeiture cases in Mississippi.

work with the Bureau of Narcotics or assets taken in conjunction with federal authorities under the Equitable Sharing Program. Law enforcement officials seized everything from cash and cars to couches and comic books.

According to the Institute for Justice, Mississippi become the 18th state to pass legislation to reform forfeiture laws.²⁹ The findings of the Civil Asset Forfeiture Task Force prompted members of the legislature to draft House Bill 812. H.B. 812 was signed into law by Governor Phil Bryant on March 13, 2017.³⁰ The new law requires law enforcement agencies to report the location, description, and value of the seized assets and to indicate whether criminal charges were filed against the property owner. The Mississippi Bureau of Narcotics is required to build and maintain a searchable website reporting forfeiture information. The new law also requires a circuit or county judge to issue a civil seizure warrant within 72 hours. Failure to obtain a warrant from a judge would require the property to be returned.

Unfortunately, H.B. 812 does not mandate that law enforcement agencies report how they use forfeiture proceeds. While the new forfeiture reforms take some steps to improve transparency, stronger reforms are needed to provide property owners with any real protection against civil forfeiture abuse in Mississippi. If state residents and policy makers do not know how law enforcement agencies use forfeiture proceeds, then the new law has not achieved complete transparency. Furthermore, the new law does nothing to hold officials accountable for how they use the funds. Given the relative ease with which civil forfeiture can still be used in Mississippi, the incentives remain strong for law enforcement agencies to use civil forfeiture as a tool to increase revenues. As long as this tool is available to law enforcement, private property is at risk of expropriation.

Conclusion

Residents in Mississippi are fairly well protected from eminent domain abuses by the state and local governments. While the Mississippi Constitution still leaves room for potentially questionable economic development takings based on blight, it does prohibit state and local confiscations of property for private benefit in the style of *Kelo*. While property is relatively safe from eminent domain abuses in Mississippi, individuals should also be aware of regulations restricting land use or zoning laws. As demonstrated by *Murr v. Wisconsin*, zoning laws or land use regulations have the potential to effectively deprive individuals of the use of their property. Governments may rely more heavily on such regulations to utilize property if it becomes too difficult to seize property outright through eminent domain.

Mississippi residents are *not* well protected from civil forfeiture abuses. Mississippi should follow the example of several other states and require a criminal conviction to seize assets. Additionally, policy makers must recognize the current economic incentives in place that encourage law enforcement agencies to seize private property. Civil forfeiture is lucrative for law enforcement. Mississippi could make reforms along two fronts to significantly reduce the economic incentive. First, state laws should require forfeiture proceeds to be placed in a general fund that is allocated by the legislature. Secondly, laws should be reformed to prohibit participation in the Equitable Sharing Program so that law enforcement agencies do not try to circumvent state laws in efforts to keep forfeiture funds. These changes would eliminate much of the economic incentive for civil forfeiture and the number of seizures against innocent property owners would likely decline.

²⁹ Sibilla (2017b).

³⁰ See Wilson (2017).

As discussed in this chapter and Chapter 2, secure private property rights provide the incentives for individuals to undertake investments and make capital improvements to their property and businesses. To foster more innovation and entrepreneurship in the state and to promote prosperity, Mississippi policy makers should continue to improve laws and policies to restrict takings, including confiscations by eminent domain and civil asset forfeiture.

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Summary of Chapter Conclusions

PART 1. Introduction: The Role of Government and Economic Growth

Chapter 1: The Case for Growth—Russell S. Sobel, The Citadel, and J. Brandon Bolen, Mississippi State University

- Mississippi is the poorest state in the United States in terms of per capita income. Mississippi underperforms economically relative to all of its bordering states.
- Focusing on policies that generate economic growth is the most viable pathway to alleviating Mississippi's weak economic condition.
- Very small changes in economic growth rates may yield vast positive changes in the quality of life for Mississippi residents within as little time as one to two generations.
- Focusing on economic growth does not mean that other important policy goals such as improving health and education and reducing crime are neglected.

Chapter 2: The Sources of Economic Growth—Russell S. Sobel, The Citadel, and J. Brandon Bolen, Mississippi State University

- The economic activity of a state necessarily occurs within that area's institutional context, including the legal, regulatory, and tax environments, as well as the degree of private property rights. The quality of these institutions affects the output of economic activity.
- Capitalism is an economic system based on the private ownership of productive assets within an economy.
- Abundant evidence demonstrates that areas with institutions that allow capitalism to thrive experience much higher levels of prosperity relative to areas that do not rely upon capitalism.

Chapter 3: Why Capitalism Works—Russell S. Sobel, The Citadel, and J. Brandon Bolen, Mississippi State University

- The prosperity of an area is determined by the total quantity of production and quality of goods and services that individuals value. This prosperity is influenced by factors such as the degree of specialization of labor, capital investment, and entrepreneurship.
- Capitalism is an economic system that generates prosperity because its decentralized nature supports the specialization of labor, capital investment, and entrepreneurship.
- Government policies, even when well-intentioned, often create harmful unintended consequences. This is often due to the more centralized nature of government decisions.

PART 2: Promoting Prosperity One Issue at a Time

Chapter 4: Why are Taxes so Taxing? —Brandon N. Cline and Claudia R. Williamson, Mississippi State University

- High taxes can be extremely costly. In addition to the cost of the tax itself, taxes create indirect costs including enforcement costs, administrative costs, and costs incurred from distortions of the market economy.
- Mississippi has a higher tax burden compared to its bordering states. This may negatively affect the location decisions of businesses and individuals, causing them to leave the state.
- Empirical evidence demonstrates that high tax rates significantly dampen rates of economic growth.

Chapter 5: Make Business Taxes More Competitive—Brandon N. Cline and Claudia R. Williamson, Mississippi State University

- State and local taxes represent a significant cost for businesses. These tax costs affect the location decisions of businesses and deter them from operating in Mississippi.
- In addition to corporate income taxes, there are a myriad of other taxes businesses pay, such as property taxes and inventory taxes. Some taxes such as the inventory tax and intangible property tax do not exist in the majority of other U.S. states.
- To generate more prosperity within the state, Mississippi should consider reducing its tax burden upon businesses.

**Chapter 6: “Selective Incentives,” Crony Capitalism and Economic Development—
Thomas A. Garrett, University of Mississippi, and William F. Shughart II,
Utah State University**

- This chapter evaluates the costs and benefits of targeted tax incentives designed to lure new private business enterprises to Mississippi.
- Our analysis demonstrates that Mississippi is poorer, not richer, by funding incentive programs.
- Reasons that incentive packages fail include no new employment since many individuals hired were previously employed, the additional tax cost to accommodate the new population growth, and resources allocated to funding the subsidies could have been spent on better schools, roads, or used to finance a reduction in tax rates for all.
- The funds now being spent to benefit a handful of private business owners could be used to finance broad-based reductions in tax rates and lightening the regulatory burden on all Mississippians.

**Chapter 7: Incentive-Based Compensation and Economic Growth—
Brandon N. Cline and Claudia R. Williamson, Mississippi State University**

- Incentive based compensation is a payment method where an individual’s pay is in some way tied to their performance. Economic literatures studying incentive based pay for executives show that use of incentive based pay improves company performance and by extension state economies.
- Empirical data shows that firms in Mississippi use incentive-based compensation less than similar firms in other states.
- Mississippi can help improve its economic position by restructuring parts of its tax code to allow for greater use of incentive based executive compensation.

**Chapter 8: Mississippi Shadow Economies: A Symptom of Over-Regulated
Markets and Measure of Missed Opportunities—Travis Wiseman,
Mississippi State University**

- This chapter discusses Mississippi’s regulatory environment and the state’s cumbersome habit of maintaining outdated and burdensome regulation, far longer than other states.
- Several sensible and low-cost reforms are introduced that can help curtail unwanted shadow economic activity, and promote prosperity in Mississippi.
- A case study of one industry that Mississippi over-regulates – the brewing industry – is discussed.

Chapter 9: Occupational Licensing in Mississippi—Daniel J. Smith, Troy University

- Occupational licensing, the regulation of individual entry to a profession, enables industry practitioners to restrict entry to their profession and raise prices on consumers.
- The effects of occupational licensing fall heaviest on low-income residents who must pay higher prices or resort to lower-quality home-production or black market provision.
- Mississippi has at least 118 different occupational categories with licensing, representing nearly 20 percent of Mississippi's labor force.
- The total estimated initial licensing costs in Mississippi exceed \$48 million and the estimated annual renewal costs add up to over \$13.5 million.
- Mississippi policymakers can promote prosperity in Mississippi by removing unnecessary and overly burdensome licensing laws.

Chapter 10: Prosperity Districts: A Ladder Out of Last Place—Trey Goff, Out of Last Place Alliance

- Prosperity districts are geographically self-contained areas that reduce or eliminate unnecessary government restrictions on business activity, including regulation, taxation, and private subsidization
- Prosperity districts can be a unique and promising solution to the state's economic woes by allowing specific areas to be exempt from unproductive policies.
- Prosperity districts allow experimentation to determine which policies work best.
- Real world examples of the potential success of prosperity districts can be seen in the closely related concept of special economic zones, which have seen tremendous economic growth and development in places such as Singapore.

Chapter 11: Promoting Prosperity in Mississippi through Investing in Communities—Ken B. Cyree, University of Mississippi, and Jon Maynard, Oxford Economic Development Foundation

- We investigate the impact of investing in community livability and the relation to the change in total employment to promote prosperity in Mississippi.
- We document the decline in Mississippi employment, on average, from 2007-2016, and especially the decline in manufacturing employment.
- Our analysis shows that increased employment is significantly related to better school rankings, higher changes in wages, and higher changes in per capita retail sales. New business creation is not statistically related to employment.
- Our results suggest that in order to promote prosperity in Mississippi, we should invest in quality of life for the community.

Chapter 12: Local Governments Run Amok? A Guide for State Officials Considering Local Preemption—Michael D. Farren, George Mason University, and Adam A. Millsap, Florida State University

- Local governments sometimes implement regulations and ordinances that stifle economic growth.
- Preemption is a legal doctrine asserting that state law takes precedence over local law. In some cases it should be used by state governments to overrule local governments.
- State officials should consider preemption when local rules violate the principles of generality or free exchange. Such policies often involve barriers to entry, price controls, or business practice mandates.
- Violations of generality and free exchange harm economic growth because they inhibit economic activity and the efficient allocation of resources. Conversely, preempting such policies promotes economic growth.

Chapter 13: School Choice: How To Unleash the Market in Education— Brett Kittredge, Empower Mississippi

- The United States has fallen behind other countries in K-12 education. One study found that American students ranked 38th out of 71 countries when tested in math, reading, and science.
- A government monopoly has existed in our delivery of education in the United States. Students are assigned to a school based on their zip code and the year they were born.
- Because students are assigned to a school based on a district line, real estate prices naturally rise in neighborhoods within a desirable school district. This has the effect of pricing out many families and forcing them to live in areas with less desirable schools.
- To improve quality, our education system should be student centered and market based. Parents should have options available to craft a custom education for their child based on their specific learning needs.
- The legislature can adopt a market based education through a universal school choice program that has broad eligibility, autonomy for all schools, and level funding across the various educational sectors.

Chapter 14: Medicaid: A Government Monopoly That Hurts the Poor— Jameson Taylor, MS Center for Public Policy

- State health care policy revolves around Medicaid, which is a government-subsidized insurance program consuming one-third of Mississippi's budget.
- Health outcomes for Medicaid insurance patients are very poor; patients with no insurance at all fare better.
- Medicaid's number one problem, like that of many American insurance plans, is that it incentivizes the over utilization of health care while insulating recipients from the financial consequences of poor lifestyle choices.

- Medicaid is crowding out the development of innovative products and policy ideas.
- Reforms aimed at unleashing the power of health care pricing including large HSAs, direct surgical care, and comparative shopping incentives can begin to disrupt Medicaid's monopoly.

Chapter 15: Tipping the Scales: Curbing Mississippi's Obesity Problem— Raymond J. March, San Jose State University

- Widespread obesity has serious health and financial consequences in Mississippi.
- Government policy, although well intended, is associated with increased levels of obesity especially for lower-income households.
- State-led efforts to reduce obesity are costly and unlikely to succeed because they fail to address the underlying causes of why less healthy food options are consumed.
- Private and local solutions are more effective in promoting health and reducing obesity.
- The most effective way to combat widespread obesity is the market, not the government.

Chapter 16: Criminal Justice Reform in Mississippi—Trey Goff, Out of Last Place Alliance

- Despite decreasing rates of both violent and property crime since 1996, Mississippi incarceration rates have steadily increased.
- Mississippi has an incarceration rate that is among the highest in the world, most due to incarcerating non-violent crimes.
- The economic drain from this level of mass incarceration is extremely detrimental for the state economy in terms of both the cost of maintaining incarceration and the negative effects of incarceration upon individuals in the labor market.
- Reevaluating and restructuring the criminal justice system in Mississippi to reduce incarceration rates would be an extremely effective tool to increase the economic strength and wellbeing of the state.

Chapter 17: Property Takings: Eminent Domain and Civil Asset Forfeiture— Carrie B. Kerekes, Florida Gulf Coast University

- Secure private property rights provide incentives for individuals to undertake investments and make capital improvements to their property and businesses. To promote prosperity, Mississippi policy makers should continue to improve laws and policies to restrict property takings.
- Following reforms passed in 2011 to protect against development takings, property owners in Mississippi are reasonably protected from eminent domain takings.
- Citizens are significantly less protected in the case of civil asset forfeiture. Civil asset forfeiture laws in Mississippi provide incentives for law enforcement agencies to seize private property.

Chapter 18: The Small-Dollar Loan Landscape in Mississippi: Products, Regulations, Examples, and Research Findings on Interest Rate Caps—Thomas (Tom) William Miller, Jr., Mississippi State University

- The best fuel for economic growth and prosperity is free market prices, including interest rates.
- Despite the goal of improving consumer welfare, interest rate caps often harm the very people legislatures intend to help—especially users of small-dollar loan products.
- Despite their well-known harmful effects on consumers, laws continue to fetter consumer credit markets with interest rate caps.
- Setting good rules governing how legitimate businesses provide access to consumer credit is important for everyone living in Mississippi.
- The Mississippi legislature can greatly help consumers by eliminating, or greatly raising, interest rate caps in all small-dollar loan markets.

Chapter 19: Natural Disasters and Prosperity in Mississippi—Daniel Sutter, Troy University

- Extreme weather poses a severe financial risk for a state economy. Mississippi is particularly exposed to the threat of damage from natural disasters.
- Free market practices often perform better at meeting the challenges posed by natural disasters rather than government policies. Removal of harmful policies such as occupational licensing and building codes during disaster may better allow the market to speed disaster recovery.
- Some government policies such as flood and wind insurance may exacerbate exposure to natural disasters. Other policies slow recovery time by creating uncertainty after the occurrence of a natural disaster.

Chapter 20: Learning from Disasters in Mississippi—Stefanie Haeffele and Virgil Henry Storr, George Mason University

- This chapter examines disaster recovery in Mississippi and how policies that foster entrepreneurship might help spur disaster recovery going forward.
- Entrepreneurs can spur disaster recovery by providing needed goods and services, restoring disrupted social networks, and acting as focal points around which other residents can coordinate their recovery efforts.
- To promote prosperity in Mississippi, officials should develop policies that ensure that entrepreneurs have the space to act in the wake of disaster.

About the Institute for Market Studies at Mississippi State University

The Institute for Market Studies (IMS) at Mississippi State University, created in 2015, is a nonprofit research and educational organization conducting scholarly research and providing educational opportunities to advance the study of free enterprise.

The IMS's mission is to support the study of markets and provide a deeper understanding regarding the role of markets in creating widely shared prosperity. This includes advancing sound policies based on the principles of free enterprise, individual liberty, and limited government. The IMS pursues its mission by bringing together leading scholars to conduct timely research on current economic and financial issues.

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"Promoting Prosperity in Mississippi contains transformative ideas for Mississippi on virtually every page. If Ideas have consequences, I hope the consequences of these ideas spread like wildfire across Mississippi, spurring economic prosperity, entrepreneurship, and human flourishing. Every policymaker and citizen should read this book."

— **GRANT CALLEN**, President of Empower Mississippi

"Individual initiative is an infinitely more powerful and productive economic force than government action.

In some ways, it is easy to see how people would think government is a good source for building wealth in a community or state. It's easier to grasp the concept of expanding a government program than it is to comprehend how the private sector could piece together a cohesive economy. And yet, it's that wonderful mystery of private sector initiative that has made ours the most productive and resilient economy the world has ever known!

The authors of this book understand that truth and have written, in easy-to-comprehend language, not only how to sharpen our concept of free markets, but how to implement policies which will allow them to thrive.

This book is not just for policy wonks. It is for anyone who believes — or who is willing to consider — that economic freedom is an essential but threatened component of political freedom that today requires our active engagement if it is to survive."

— **FOREST THIGPEN**, Former President & CEO,
Mississippi Center for Public Policy

"This book is an excellent contribution to the policy debate that could give Mississippi the ammunition it truly needs to finally move out of last place. It is only through unleashing the ingenuity and entrepreneurship of Mississippians that true economic growth and prosperity can finally be realized. This book contains the blueprint to do just that, and is a valuable read for every Mississippian, not just legislators and policy experts. If you want to truly understand how Mississippi can finally climb up the economic ladder, then this is the book for you!"

— **JOEL BOMGAR**, Founder of Bomgar Corporation
and Mississippi State Representative

*"Economic freedom has been the greatest catalyst of innovation, prosperity and wellbeing in human history. People free to use their gifts and pursue their passions have created endless value and improved countless lives. *Promoting Prosperity in Mississippi* is a clarion call to all who love Mississippi, and her people, to embrace the transformative policies of free enterprise and reject a rigged economy that limits our potential. The compilation articulates a practical path forward—one of hope and opportunity for all Mississippians."*

— **RUSSELL LATINO**, MS State Director
of Americans for Prosperity

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