

kind of a problem. It would be a very strange perversion of legal principles, indeed, if we were to sit here and decide that if a hospital is erected by a public corporation on property adjoining yours and yours becomes less desirable, they would have to pay but if it were erected by a private individual for profit, the individual would not have to pay.

In some of the cases which appear in the states in which damage is permitted, you find things like the holdings in Massachusetts, that the temporary obstruction of the street is compensable under such terms.

Now, I would like to inquire whether the people who are sitting here trying to write a constitution believe that when the sovereign immunity of the State from suit is abolished, the State should be sued by the people living on the street every time the street is obstructed for a public purpose even though that obstruction be temporary.

I believe that there has not been a single word in this constitution that is fraught with so much danger as this single word. I think that we shall almost have to propose another amendment to the constitution as it is submitted to us if this proposal were to pass with the word "damages" in it, and that amendment would be one that would permit the State of Maryland to print its own money to pay for these damages, because that is how serious this problem can be.

THE CHAIRMAN: Are there any questions of the sponsor of the amendment?

*(There was no response.)*

The Chair hears none.

Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, I have a question for clarification, because of the amendment, but I think the question would best be directed to Delegate Kiefer.

THE CHAIRMAN: Delegate Kiefer, would you take the floor to reply with respect to the amendment?

DELEGATE KIEFER: Yes, sir. Mr. Chairman and ladies and gentlemen of the Committee, I rise to request that you reject this amendment. I am sorry that Delegate Gilchrist misunderstood what I said on last Friday evening, in describing what this does. Either he did not hear me or maybe he did not believe me.

Frankly, I tried to assure each of you that this does not open the floodgate, Delegate Gilchrist. It does not do anything that is out of the ordinary or unusual in

the common modern practice of protecting property owner's rights.

This is not a new concept. It was first recognized in the State of Illinois back in 1870 when it became apparent that the concept of recompensing a person for damage to his property did not go far enough if it involved only a physical taking.

You must remember we are talking about a bill of rights, a protection of individuals' personal freedoms. Let us not get away from that idea and let us then start with the second concept, that the right of eminent domain is a sovereign right and what we are doing is limiting the sovereign from encroaching on individual rights.

Maryland being a very slow and conservative state, is one of the latest states to recognize this; but as public improvements continue, as more land and property are taken for public developments, there are situations where property is damaged without being physically taken. What this concept does is recognize that a property can be damaged without being physically taken.

Now, the implementation lies with the legislature and with the courts, but I read to you the other night, and I would like to read again, the basic concept of what damages we are talking about. This comes from the eminent authority, *Nichols on Eminent Domain*.

Delegate Gilchrist said all kinds of cases will develop. All of the states that have gone into this have found that this offers an orderly method of compensation for the property owners who are particularly damaged.

"Damage is a physical disturbance of a right, either public or private which the owner of a parcel of land enjoys in connection with his property or which gives it additional value and that by reason of such disturbance he has sustained a special damage with respect to his property in excess of that sustained by the public generally."

This was submitted to the Deputy City Solicitor of the City of Baltimore. There was a great deal of consternation by that department. When they found out what it was all about, they removed any question about it. The City of Baltimore has no fear with respect to what this might do to it.

I respectfully urge that you reject this amendment and bring this new modern concept into our declaration of rights to protect our people by this additional means.