

INTRODUCTION

UNDERSTANDING EMINENT DOMAIN IN THE REAL WORLD

“...nor shall private property be taken for public use without just compensation.”

—U.S. Constitution, Amendment V.

Those are the words of the U.S. Constitution, and every state has a similar restriction. Property can be taken for public use, but not for private use. However, as this report documents, state and local governments believe they can condemn anything for any purpose, no matter how blatantly private.

PRIVATE USE NOW MEANS PUBLIC USE

The “public use” requirement of the Constitution almost met its demise during the latter half of the twentieth century. The U.S. Supreme Court in 1954 changed the requirement of “public use” to one of “public purpose.” It allowed condemnations to accomplish slum clearance, even if the property ended up in the hands of private parties. State and local governments took this as a green light. First they condemned slums, then blighted areas, then not very blighted areas, and now, perfectly fine areas. Their initial purposes were quasi-public, like public housing, but have now expanded to include any residential or business development that happens to appeal to local bureaucrats who are hungry for dollars. For decades courts simply rubber-stamped all condemnations. That automatic deference has begun to change as courts grow more skeptical about government’s blatant abuse of power.

The result of the years without judicial supervision, however, has been a feeding frenzy. Developers pick out the choicest spots in town, then get the cities to condemn them, regardless of who happens to live or work there. The incentives all point in the wrong direction. Cities love eminent domain because they can offer other people’s property in order to lure or reward favored developers. Developers love eminent domain because they don’t have to bother with negotiating for property. They can pick anywhere they want, rather than anywhere they can buy. And the compensation they have to pay is usually less than if they bought the property on the open market. Private companies now routinely demand incentive packages that include promises of large areas of land—land that must be cleared of any homes and businesses that happen to be in the way.

Under this regime, large businesses are always favored over mom-and-pop establishments, national chains over local businesses and upscale condominiums over middle-class single-family homes. And, of course, government-chosen projects are favored over ones developed independently.

THE EMINENT DOMAIN PROCESS AND THE ORDINARY CITIZEN

For many people, the first time they hear the term “eminent domain” is when they hear that someone is planning a shopping mall or condominium project and the location being talked about sounds suspiciously like their home. Local bureaucrats begin to praise the upcoming project. They talk about thousands of jobs and increased tax revenues. And they say things like, “we plan to work together in partnership with the community.” Eminent domain will be used only “if necessary” and “as a last resort.”

Sometimes there are public meetings before a redevelopment agency and/or city council. These hearings can be for approval of the project or for designation of the area as “blighted.” Blight designations make it easy to condemn property and transfer it to private developers. People are often astonished that the government would call their property blighted, because the ordinary person pictures blight as rats and buildings that are falling down. Instead, cities can declare anything blighted that wasn’t built in the last few years. Modern characteristics of “blight” include too-small side yards, “diverse ownership” (different people own properties next to each other), “inadequate planning,” and lack of a two-car attached garage. Cities will even declare areas to be blighted that have no current blight but might be blighted in the future.

Owners attend these public hearings, beg, and are usually ignored by the government planners, who have made up their minds and reached preliminary agreements with developers long before the hearing started.

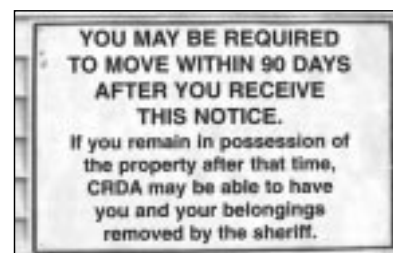
Occasionally, and more frequently in recent years, the public outcry against using eminent domain for private parties will actually make an impression on the city leaders who thought the project was a done deal. This report describes a number of instances where people succeeded in fending off government attempts to grab their land.

Once the project is authorized, someone begins contacting property owners and trying to purchase the properties. At this point, some people are willing to sell. Some people feel like they will move for the right price. And some people do not want to move at all.

If someone says that her home or business is not for sale, she is told that if she does not sell, the property will be taken by eminent domain. Then the owner must face a choice—whether to accept the loss of her beloved home, business or neighborhood and try to strike the best arrangement she can or whether to stand her ground and fight.

If the owner refuses to sell, the government (or, in a few states, a private party) files a condemnation lawsuit against the person. In many states, governments are authorized to “quick-take” property. Under quick-take, if the government deposits its estimate of compensation with the court, it can take immediate title to the property and get possession immediately or within a few months. That means the property is immediately bulldozed, leaving the owner to fight in court about whether the now-empty lot that remains was legally condemned.

Increasingly in recent years, courts actually hold that the government has gone too far and cannot take the home or business it is trying to seize through eminent domain.



THE THREAT OF EMINENT DOMAIN

Even an eventual victory in preventing condemnation of property for a private party takes its toll, because it forces someone to live for years with the threat of having his property unjustly taken away. It seems obvious, but living under the threat of being condemned is terribly frightening and stressful. It places life on hold. No homeowner will spend time fixing their home or remodeling; no business owner will expand. And for someone who does not want to move, this limbo is punctuated by frenzied activity whenever there is another city council meeting, another vote or a new plan. Living under the dangling sword of eminent domain prevents people from getting on with their lives, and the threat of eminent domain can continue for many years.

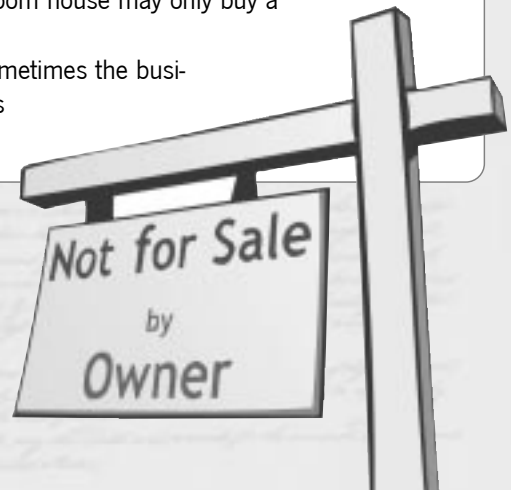
The effect of this—and usually the intended effect—is that people will sell “voluntarily.” They may not have planned to move; they may not want to move, but they may not be able to continue in limbo forever. Unless they have substantial funds, they will have trouble affording a lawyer to fight the condemnation if it ever happens. Most condemnees will not have enough money to afford such a battle, particularly if they face the possibility of substantial expenditures to relocate if they lose. So most people bow to what they believe is inevitable anyway.

Nearly all eminent domain cases are settled because people simply cannot afford, or do not have the energy, to keep going. But even these threats represent the exercise of eminent domain just as much as the condemnations filed. A deal struck voluntarily is quite different than a deal struck with someone who says, “hand it over, or we’ll take it by force.” In many ways, the number of threatened uses of eminent domain for private parties tells more than the number that were actually filed.

BUT THEY’RE COMPENSATED. WHY ISN’T THAT ENOUGH?

Many people wonder why others complain about eminent domain—whether for public or private use—when they receive compensation. Of course, different people have different reasons. For homeowners, the number one reason is family history and all the irreplaceable memories that go with a long-time home. Someone who has spent her whole life in her house may not want to move, regardless of the price. There is no way to replace the attachment to a homestead that has been in a family for generations. Also, long-term residents in an area often have friends and family nearby. Eminent domain means destroying neighborhoods as well as individual homes. Finally, another reason homeowners resist condemnation is that the government won’t give owners enough money to buy a comparable home. The fair market value of an older three-bedroom house may only buy a small apartment in the current real estate market.

Businesses have similar reasons for wanting to stay put. Sometimes the business has been in the family for years. Other times, the business



depends on a particular location. Still other times, the business is of a type that is impossible, or prohibitively expensive, to move. Compensation for businesses is often even worse than that for homeowners. Just compensation does not pay for all of the improvements or fittings one has made to property; it does not pay for the loss of business or business goodwill; it does not pay for the time the business is closed; it pays a little for relocation, but it does not pay for the cost of establishing the business elsewhere. Thus, many condemned businesses cannot reopen after condemnation.

All of these are practical reasons that someone may not want their home or business taken, even with compensation. But there is another, larger, reason. The American Dream is to work hard, buy a home, start a business and be in control of one's own destiny. Eminent domain means threatening, bullying or outright forcing people to give up what they have worked for their whole lives. Losing a beloved family home or a family business is bad enough when their property is taken for a highway or a police station, but it's heartbreaking to be kicked out so some other private person can make a profit.

DON'T THESE PROJECTS BRING JOBS AND TAXES?

For all of these projects, city leaders must assert some sort of public benefit, and the number one claim is that the project will bring jobs and tax dollars. On a practical level, some projects may bring tax dollars and jobs; others are utter disasters. More importantly, if the promise of greater jobs or profits is enough to take someone's property, then almost no one is safe. Practically any home in the United States would generate more tax dollars as a Costco. Small businesses provide fewer jobs than an industrial park. And houses of worship produce no tax dollars and few jobs. The implications of the jobs/taxes mantra is that everyone's home, everyone's business is up for grabs. Citizens just have to hope that no one gets a bright idea to build an office block where their homes and businesses stand. Using jobs and taxes as a justification for eminent domain gives bureaucrats (and developers) unlimited power to seize property.

Condemning property for jobs and taxes has dangerous practical implications, but it is also deeply immoral. The idea that one person will be forced to sacrifice their peace and happiness so that someone else can benefit is repugnant to our society and the core principles that led to our founding. It cannot be tolerated.

For the first time, this report collects instances of the abuse of eminent domain for private parties across the country. It includes all of these stories—the approval of blight designations, the authorization of condemnations, the people who give up and try to cut a deal, and the people who fight to the bitter end. It also includes the recent successes where courts or activists have prevented the condemnation of homes and businesses for other private parties.

HOW TO USE THIS REPORT

The report is organized by **state**. Each state begins with an **overview** and a **summary of the data** we were able to glean from that state.

Using only the situations described in the report for each state, we also summarize the number of condemnations for private use or benefit. We break those down into “filed,” “threatened,” “total” and “development projects with private benefit condemnations.”

“**Filed**” **condemnations** indicates the number of times that the government (or private parties) filed actions in court to acquire private property for the benefit of a private party. These condemnation lawsuits may result in forced evictions, settlements or even victories for the property owner. These different results have been combined because this report seeks to document the abuse of eminent domain by government. The government’s action—filing a lawsuit to take someone’s property for another private party—is the same whatever the outcome. Also, in many situations, the ultimate outcome is not known.

“**Threatened**” **condemnations** indicates the number of properties that the government has indicated that it may obtain through eminent domain for the benefit of private parties. It includes authorizations of condemnation, verbal or written threats to condemn and redevelopment plans that call for removing someone’s property. We have also included situations where condemnation is proposed and the individual must go to the city and lobby to keep his property. These different types of threats have been combined because they all show the government using the power of eminent domain to intimidate owners out of their homes and businesses in order to benefit private parties. And in each of these situations, the reasonable person would have reason to fear.

“**Total**” **condemnations** benefiting private parties tell how many homes, businesses, and other properties have been affected by the government’s abuse of the power of eminent domain, whether the government took the property, the owner submitted and sold, or the properties are still under threat.

“**Development projects with private benefit condemnations**” indicates the number of projects that account for the filed and threatened condemnations. For example, a single project might threaten 30 properties, so we report that number separately.

Only 24 states collect any information on the number of condemnation cases filed each year. For those states that do record that information, we have included the total number of condemnations for the five-year period this report covers (or for the years for which we could obtain information). These “**state records of condemnations for all purposes**” include private use condemnations, but also include condemnations for roads and government buildings, as well as, in some cases, condemnations for failure to pay taxes or building code violations. There is no way to separate the situations that involve private use condemnations, except in Connecticut, which we discuss at greater length. We include the source of the information, which is usually the administrative office of the courts.

For each state, the report provides a brief discussion of recent **legislative activity** relating to public use or the authority to take property for private parties. It then details each **private use condemnation situation we know about**. The situations in this report are collected primarily from news reporting that appears on Lexis/Nexis. Also included are situations we learned about through direct contact from attorneys, community members, and condemnees who have sent in local news articles, court documents and unpublished opinions. The documentary sources of the information are cited in footnotes. Information about whether a person has settled or a case is on appeal usually comes from the property owners or their attorneys. We also note the cases in which the Institute for Justice has participated.

Throughout the report, we have included **sidebars** highlighting national trends or describing noteworthy situations. Finally, eminent domain can involve a lot of legal jargon, so we have included a **glossary** at the end of this report.

CHANGES AND ADDITIONS

The information in this report comes from newspaper articles, court decisions and court documents. Because there is no official data available on the use of eminent domain for private parties, there are undoubtedly many takings for private use that have not been included. Additionally, there may be conclusions to some of the situations in the report that did not appear in the news or appeared only in local papers. If you have information and documentation about additional situations or more information on situations already included, please send this information to us at Castle Coalition, Eminent Domain Report Updates, 1717 Pennsylvania Ave., NW, Suite 200, Washington, D.C. 20006, or at updates@CastleCoalition.org. If we get significant new information, we will update the online version of this report. This report covers developments between January 1, 1998 and December 31, 2002. You may also send information about developments after December 31, 2002, and this information can then be included in a future report covering additional years. To view the most updated online version of this report, see <http://www.CastleCoalition.org/report>.

THE INSTITUTE FOR JUSTICE AND THE CASTLE COALITION

The Institute for Justice is a nonprofit, public interest law firm located in Washington, DC (www.ij.org). We advance a rule of law under which individuals can control their own destinies as free and responsible members of society. One of our major areas of litigation is opposing the abuse of eminent domain for private parties. We represent people facing condemnation for other private parties and also file “amicus” or friend of the court briefs in such cases. We argue that taking property for private parties is unconstitutional, that the government may not give private developers the power of eminent domain, and that government’s claims to public purpose often mask the true private—and thus illegal—purpose of the condemnation. We note in the report whenever we have been involved in the situation described.

The Castle Coalition is an organization formed by the Institute for Justice (www.castlecoalition.org). It was created after watching and helping several groups of grassroots activists who successfully fought off attempts to take their property for other private parties. We also became aware of the sheer number of threats of private condemnations and the need for all of these local groups to connect and share information. The Castle Coalition provides a central bank of information and helps activists connect with each other in fighting the abuse of eminent domain.

ACKNOWLEDGMENTS

Every single staff member at the Institute for Justice helped with this report, as did many law clerks and interns. Many property owners across the country helped by sending both information and photographs. In particular, I would like to thank Isaac Reese, who designed this report, and give special thanks to Robert Wiles, who has worked with tireless dedication on every aspect of this project.