



## Eminent Domain: A fair middle path?

By Neal Peirce, November 1, 2005

NEW LONDON, Conn. -- Sparks continue to fly across the country as a result of last June's U.S. Supreme Court decision upholding this city's use of eminent domain powers to seize homes in a working-class neighborhood so that a private developer could build a riverfront hotel and office complex.

Measures to curb or totally forbid taking of private property for economic development projects have been introduced in at least 35 states, according to the Institute for Justice, the self-described libertarian law firm that represented Susette Kelo and other New London homeowners in their unsuccessful court bid.

Among the states with serious proposals to amend their state constitutions to forbid the practice are Florida, Maryland, Michigan, California, Colorado and Texas.

There's even talk that political forces on the right may want to propose a series of eminent domain-limiting ballot measures to trigger a turnout of indignant, anti-government voters -- a possible replay of 2004, when measures against gay marriage helped to bring out social conservatives whose votes, in a few key states, may have tipped the presidential election to the Bush-Cheney ticket.

But is the eminent domain issue that glibly tagged politically? A bill in Congress, to limit federal funds for private economic development that uses eminent domain, is cosponsored by conservative Republicans, Sen. John Cornyn and Rep. Richard Pombo on the one hand, and liberal Democrats, Sen. Barbara Boxer and Rep. Maxine Waters on the other. Waters is especially concerned about post-Katrina New Orleans, where she fears the "rich and powerful" may abuse eminent domain "to take property that belongs to poor people to get them out of the city."

Justice Sandra O'Connor, in her dissent in the 5-4 Supreme Court decision in the New London case, bemoaned the possibility of state or local governments "replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

The Institute for Justice, which represented the New London homeowners, lists thousands of alleged eminent domain abuses. One example: Donald Trump, using the leverage of a local redevelopment agency, trying to evict an elderly woman from her Atlantic City home.

But cases are often murkier than they sound. In New London, complications included a nearby Pfizer research center that inflated property values, and a state law making it illegal to offer people more than fair market value for their property.

And, for every case of abuse, there's an example of condemnation that makes highly valuable projects possible. Baltimore's sparkling Inner Harbor is one example. Another is the revival of Smyrna, Ga., where condemnation made possible a new city hall, library, community center and green space that lured developers to buy nearby land and revitalize a decaying downtown. Eminent domain should be used "sparingly and with surgical precision," says Richard C.D. Fleming, president of St. Louis' Regional Chamber and Growth Assn. But he notes how critical it's been for the city to gain control of long-empty or underused historic buildings and adjacent lands, making possible the dramatic \$3 billion turnaround that the long-depressed downtown is presently experiencing.

For older suburbs in trouble, says Fleming, timely use of eminent domain powers often enables strategic early intervention, "avoiding a massive downturn that would require massive public intervention to turn around later."

Eminent domain represents "awesome power to be used with great care and discretion" -- and never just to add to the local tax base, or benefit a group of private investors -- says Richard Ward, CEO of Development Strategies Inc. in St. Louis.

Ward suggests devising a model set of "fair and transparent" rules to be used. Is there blight -- and what's the objective definition of blight being used? Will the condemnation create significant job gains in the city? And will it strengthen the city's ability to compete with other jurisdictions?

Plus, says Ward, anyone whose property is taken by eminent domain should get a significant premium over its fair market value, to compensate for the many headaches and costs of a forced move.

Another idea, in especially contentious or difficult cases, is to ask the local voters' advice in a special referendum.

Would the property rights absolutists find such protections enough? Likely not. But balanced rules could protect against abuses even while giving cities that act with care the authority they need to create jobs, eliminate blight, improve their quality of life, and stay competitive.