

Eminent Domain: A Progressive Reform Position In The Aftermath of *Kelo*

1) Preserve the Ability of Local Government to Maintain Community Security.

Any reforms that limit local government's ability to undertake *Kelo*-style eminent domain actions should exempt takings that are aimed at maintaining community security. Such takings advance a quintessential public purpose, and local government should have the flexibility to address demonstrated security risks through the traditional use of eminent domain. Examples of using eminent domain for community security purposes include actions to take over:

- abandoned houses;
- pornographic theatres or other "adult" businesses;
- crack houses or residences in which repeated police responses due to drug usage or drug sales have taken place;
- bars, liquor stores or night clubs which have been the site of public nuisances;
- houses or businesses that have multiple and repeated health and safety code violations; and
- shopping malls, parking lots, houses, or undeveloped parcels that are demonstrated centers for criminal gang activity.

2) Protect Property Owners Subject to *Kelo* Takings.

Post-*Kelo* reform efforts address real concerns regarding the rights of property owners. When eminent domain is exercised to transfer property to another private party for the purpose of economic development, the following protections for the original property owner should apply:

- The use of eminent domain must be approved by a 2/3 majority of the legislative body that governs the jurisdiction in which the property is located.
- Property owners must be provided a minimum of one-year's notice before eminent domain is exercised.
- The local government will pay the costs of an independent appraisal secured by the property owner.
- Compensation of the property owners will include:
 - the fair market value of the property;
 - all relocation expenses;
 - a generous "good will" amount for businesses;
 - a generous "family hardship" amount for homeowners.

- If the property owner litigates the amount of the compensation and is successful in court, the government will pay the property owner's full legal costs plus punitive damages equal to the difference between the amount of compensation last offered and the amount actually awarded.
- If the property is a business, the owner shall be offered the opportunity to submit a proposal for continued ownership with use of the property consistent with the government's RFP or redevelopment plan for the area. If the property owner submits such a proposal, the burden of proof is on the government to demonstrate why the owner's proposal is not accepted.
- In residential developments, displaced tenants and homeowners shall have a "right of return," giving them the first opportunity to rent or purchase new units
- In commercial developments, displaced businesses shall have a "right of return," giving them the first opportunity to rent commercial space within the project.

3) Ensure Economic Accountability of Projects Using Eminent Domain

The exercise of eminent domain to transfer property to another private party must be accompanied by legislative findings that demonstrate that economic effects of the project will benefit the broader community and not simply the private party that obtains ownership of the land. This criterion shall be known as "economic accountability." Such legislative findings must be based on a written, publicly available analysis that includes examination of the economic impacts of project on the public entities involved, surrounding businesses, and the broader community. Economic impacts of a development might include positive or negative changes to local tax revenues, affordable housing stock, business viability, job opportunities, job quality, need for government services, and so forth. In addition, local government decisionmakers should consider requiring certain community benefits for projects that utilize *Kelo*-style eminent domain and that receive a large public subsidy. These might include requirements ensuring that the project increase the local affordable housing stock and the number of quality jobs in the area, and that project employers will commit to hiring local, low-income individuals.

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