

Protecting the People of Washington from Eminent Domain Abuse

by William R. Maurer
Director, Institute for Justice, Washington Chapter
Adjunct Scholar, Washington Policy Center

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Each year, the state legislature considers a number of bills that address basic civil rights – that is, bills affecting an individual’s rights of personal liberty, rights with which the government cannot constitutionally interfere. One of those basic liberties is the right to own property. In the past two-and-a-half years since the U.S. Supreme Court’s dreadful decision in *Kelo v. New London*, the legislature has considered a number of bills designed to protect an individual’s right to own property without fear of the government taking it away and giving it to private developers.

Last year, the House and Senate unanimously passed a bill making the procedure by which the government takes private property more equitable. This year both the House and Senate are considering bills with substantive protections for the civil rights of Washington home and small business owners. (Many of these bills address issues raised by Washington Policy Center in its Policy Brief, “[A False Sense of Security: The Potential For Eminent Domain Abuse in Washington](#),” published in December 2006.) What are the principles and reasons underlying these bills?

Citizens are fortunate that the Washington constitution already provides strong protections against eminent domain abuse. For example, our state constitution would prohibit the *precise* kind of condemnation that occurred in the *Kelo* case.

Loopholes in Washington law

Still, Washington law contains significant loopholes that government officials can use to take people’s property for private interests. There are therefore numerous areas of the law in which Washington’s protection of private property needs to be strengthened. Unfortunately, some have sought to preserve these loopholes to retain the ability of local governments to condemn homes and businesses for economic development.

This opposition comes after local officials have expanded their property-taking powers by using the courts. Cases involving the Seattle Monorail, Sound Transit light rail, and the City of Burien have all resulting in increased eminent domain powers for local officials. To preserve our constitution’s civil rights protections, therefore, the legislature should consider policies that limit local government power, consistent with our state’s constitution, so that private land is only taken for legitimate public uses.

For instance, reform is needed to indicate clearly that, in this state, a municipality may not take private property for economic development, such as raising tax revenue or transferring such property to

private entities the municipality believes would put the property to better use. (Allowances could, of course, be made for transfers to private entities where the property being transferred is purely incidental to a legitimate public use, such as housing a coffee shop in a city hall.)

The Community Renewal Law

While such increased civil rights protection would certainly help, it would not end the threat of eminent domain abuse in our state. The largest loophole to our constitution's protections is the Community Renewal Law (CRL), which allows the government to condemn "blighted areas," take people's private homes and business, and then give them to private developers. Under Washington law, the definition of "blight" is so broad that practically every neighborhood in the state is at risk.

Moreover, under the law, if a neighborhood contains even a single blighted property, the entire neighborhood may be seized by the government and given to a private developer.

And because the "elimination of blight" is the ostensible public use for which a local government may take people's property, there are *no* limitations on the transfer after condemnation under these kinds of laws. In New York, a court recently permitted an entire neighborhood in Brooklyn to be condemned as "blighted" and transferred to a builder for a basketball arena and high-end condos. As a result, a vibrant neighborhood faces destruction.

Local officials in Washington state have rediscovered the Community Renewal Law and have, in the time since *Kelo*, attempted to declare portions of Southeast Seattle and Renton as "blighted areas" subject to taking under eminent domain. After long and arduous battles, the residents of these neighborhoods were successful in forcing their local government officials to finally back down.

"Blight" in downtown Auburn

Auburn, on the other hand, has declared much of its downtown a "blighted area," although it has yet to condemn property to transfer to private entities. Nonetheless, all the property owners in the area declared blighted – regardless of the actual condition of their property – face the specter of eminent domain.

Moreover, local officials view this law as a tool, not to eliminate dangerous buildings, but to promote their vision of economic development. Indeed, as the Association of Washington Cities declares on its website:

...efforts to reform the CRL to limit eminent domain abuse, "*would effectively eliminate it as an economic development tool for cities*" (emphasis added).¹

This ignores the basic civil rights of citizens, who have a right to stay in their homes even if some local planning council thinks someone else would use the property better.

¹ See www.news.awcnet.org/awcleg/issues/2008-01-25/7.html, visited February 1, 2008.

Treating poor people as a disease

The CRL is little more than a vestige of the discredited theory that poor people are a disease to be controlled and eliminated through proper governmental planning. This approach should have no place in our state, which has long welcomed people of all races, backgrounds and economic stations.

Nonetheless, the opponents of reform have essentially argued that because Seattle and Renton failed to abuse eminent domain successfully, reform is not necessary.² But if local governments do not use this law and argue that eminent domain is not necessary for economic development, then what is the harm in reforming the Community Renewal Law?

Because of the threat of eminent domain abuse in Washington, Attorney General Rob McKenna convened a task force last year to review Washington's eminent domain laws. The Task Force was comprised of people with diverse interests and viewpoints, including legislators, municipal officials, farmers, ranchers, property rights advocates, academics, and representatives of various groups and agencies that use eminent domain, including the state Department of Transportation.³

A number of bills have been proposed based on ideas discussed by the Task Force, including ESHB 2016 (forbidding eminent domain for economic development), HB 2921 and its Senate companion 6595 (reforming the CRL), and HB 2920 (providing a pamphlet to affected property owners regarding their rights).

Conclusion

Efforts to reform Washington's laws have been bipartisan. Washington has a long tradition of developing without destruction, and economic growth can occur without recourse to eminent domain.⁴

There is a growing recognition that it is time that these traditions are codified in order to remove from our state the temptation to abuse the eminent domain power to which other states have succumbed. The time is now to indicate clearly that in Washington, at least, our government will treat our residents, regardless of their background or economic status, with respect and dignity.

William Maurer is an attorney and director of the Institute for Justice, Washington Chapter. He is also an adjunct scholar for Washington Policy Center, a non-partisan public policy research organization in Seattle and Olympia. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body. For more information contact WPC at 206-937-9691 or online at www.washingtonpolicy.org.

² See www.tvw.org/media/mediaplayer.cfm?evid=2008010171&TYPE=V&CFID=2834342&CFTOKEN=a5b8a1f56172f001-D6CF3415-3048-349E-4E5133B850B7E880&bhcp=1, visited February 1, 2008.

³ The author and Washington Policy Center Vice President Paul Guppy are Task Force members.

⁴ See for example "Development Without Eminent Domain" by Curt Pringle, Mayor of the City of Anaheim, Perspectives on Eminent Domain Abuse, Institute for Justice, June 2007, at www.castlecoalition.org/publications/perspectives-pringle.