

## Eminent Domain Abuse in Washington: “Can’t Happen Here” is becoming, “Happening Right Now”

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The U.S. Supreme Court’s 2005 *Kelo* decision has deeply shaken Americans. The ruling says the U.S. Constitution does not prevent state and local officials from seizing people’s homes and small businesses and giving them to private developers.

In a split 5-4 decision, the judges said local officials can take private property to promote “economic development,” increase their tax base, and meet the “diverse and always evolving needs of society.” The Court’s action is intensely unpopular with the public. In poll after poll, the vast majority of those surveyed across the nation oppose the ruling.

Many people in the State of Washington think that, because of the property protections in our state constitution, it can’t happen here. Too late. A new study by Washington Policy Center and the Institute for Justice Washington Chapter shows that the threat of eminent domain abuse here is real and, worse yet, is already happening.

For instance, across our state, local officials are aggressively moving ahead with grand schemes to “blight” private homes and businesses in the name of “urban renewal.” Under Washington’s Community Renewal Law (CRL), once an area is declared “blighted” (a vague and subjective term that could apply to almost any property in Washington) the government can condemn the homes and business in the area and transfer them to private developers. As long as it is proceeding under the CRL, a Washington city can abuse eminent domain just as badly as the City of New London did in *Kelo*. This is not an idle

concern, as more municipalities are discovering the CRL to be a useful tool in remaking their towns to conform to their “visions.” Here are some examples:

**Auburn** – The City Council condemned a large chunk of the city’s beautiful downtown area as “blighted.” Block after block was judged susceptible for condemnation because of such innocuous reasons as “inappropriate use of land,” “excessive land coverage,” and “obsolete platting or ownership patterns.” The head of city planning explained that blight “means anything that impairs or arrests sound growth.”

**Seattle** – Seattle is considering blighting large parts of the Rainier Valley, the heart of the city’s vibrant minority community, in order to build “urban villages” around two Sound Transit stations. City officials are using the low-income status of many residents to justify the potential taking of private homes and businesses. The City’s failure to control crime in the area is another reason officials give for seeking to redesign this neighborhood.

**Renton** – Mayor Kathy Koelker recently set her sights on the homes of low-income people living in the Highlands neighborhood. The City Attorney helped build the case for seizure by declaring the area blighted because homes there are generally worth less than houses in other parts of Renton. After public protests, the Mayor was forced to shelve the plan for the time being.

**Burien** – The CRL is, unfortunately, not the only avenue for eminent domain abuse. In Burien, the City decided to condemn a local

property housing the Meal Makers restaurant because it was not upscale enough for the City's vision. So the City proposed a public road over the property. To make sure they got the whole parcel, the City Manager instructed planning staff to "make damn sure" the new road went through the building.

### ***Kelo* seizures are becoming common nationwide**

Under both the U.S. and Washington constitutions, the government may only condemn property for a "public use." Historically, public use meant things actually owned and used by the public – roads, courthouses, post offices, parks, etc. Increasingly the definition of public use has been blurred by the courts to the point where the public use restriction has become no restriction at all.

Nationwide, property is routinely transferred by force from one private person to another in order to build luxury condominiums and big-box stores. Between 1998 and 2002, the Institute for Justice found that there were more than 10,000 actual or threatened condemnations for private development across the country. After *Kelo* was decided, local governments across the United States went on an eminent domain abuse spree, even as most Americans reacted with revulsion to the Supreme Court's decision.

### **Private property is essential to freedom**

Eminent domain abuse is unpopular because most people realize that respect for private property is the foundation of a free society. Property rights give citizens the means to defend all their other rights from both the grand designs of government officials and the greed of politically connected private citizens.

Private property gives people the means to pursue their dreams and live their lives the way they choose. Private property also provides people with the ability to help others, through their time and voluntary giving. When government takes property through the abuse of

eminent domain power, it makes it harder for citizens to defend their rights, pursue their dreams or help others.

Governments may sometimes legally acquire property to serve an essential public use, but officials should limit such seizures to an absolute minimum. Most people gain their property through hard work, patience, careful planning and voluntary negotiation, rather than by force. When government officials respect property, they are respecting the people who earned or created it.

As the experiences of property owners in Auburn, Seattle and Burien show, what Washington citizens have now is a false sense of security, not real property protections. Local officials realize that our courts have no stomach for keeping them within constitutional limits, so local officials continue to erode our right to be secure in our homes and businesses. Without action by the state legislature, Washingtonians face a growing threat of eminent domain abuse.

### **Conclusion**

In the past, Washington has led the country in protecting the rights of its citizens. It is now lagging behind. It is time once more for Washington to reclaim its heritage as part of the vanguard of reform.

Often when people see abuses happening in other towns or other states they say, "Yes, that's bad, but it can't happen here." Don't believe it. Eminent domain abuse might be coming to a nearby neighborhood soon – maybe your own.

*Washington Policy Center is a non-partisan 501(c)(3) public policy research organization in Seattle and Olympia. The Institute for Justice Washington Chapter is a public interest law firm based in Seattle. Nothing written here is intended to promote or hinder the passage of any legislation.*