

Public Power, Private Gain

by Dana Berliner

THE DESPOTIC POWER

As early as 1795, the U.S. Supreme Court described the power of eminent domain—where the government takes someone’s property for a “public use”—as “the despotic power.” Eminent domain has the potential to destroy lives and livelihoods by uprooting people from their homes and businesspeople from their shops. With eminent domain, the government can force a couple in their 80s to move from their home of 50 years. Eminent domain is the power to evict a small family business, even if that means the business will never reopen.

The danger of such an extreme power led the authors of the U.S. Constitution and state constitutions to limit the power of eminent domain in two ways. First, the government had to pay “just compensation.” And second, even with just compensation, the government could take property only for “public use.” To most people, the meaning of “public use” is fairly obvious—things like highways, bridges, prisons, and courts.

No one—at least no one besides lawyers and bureaucrats—would think “public use” means a casino, condominiums or a private office building. Yet these days, that’s exactly how state and local governments use eminent domain—as part of corporate welfare incentive packages and deals for more politically favored businesses. This is the first report ever to document and quantify the uses and threats of eminent domain for private parties. We have compiled this information from published accounts and court papers covering the five-year period from January 1, 1998 through December 31, 2002. The results are chilling.



EMINENT DOMAIN FOR PRIVATE BENEFIT, NATIONWIDE

- 10,282+ filed or threatened condemnations for private parties
 - 3,722+ properties with condemnations filed for the benefit of private parties
 - 6,560+ properties threatened with condemnation for private parties
- 4,032+ properties currently living under threat of private use condemnation
- 41 states with reports of actual or threatened condemnations for private parties
- 9 states with no reports of either actual or threatened private use condemnations

THE TIP OF THE ICEBERG

The information in this report represents only a fraction of the number of cases where private property has been condemned for another private party. There is no official database of condemnation for private parties. Many, if not most, private condemnations go entirely unreported in public sources and thus could not be identified for this report. To give some sense of how few private condemnations are reported, the Connecticut courts recorded 543 redevelopment condemnations from 1998 through 2002. That's 17.5 times more than the 31 we found reported in newspapers. Connecticut is the only state that records those numbers, and it may not be representative, but there are obviously many more condemnations for private use than even this report contains. This report contains every instance of actual or threatened condemnation for private parties between 1998 through 2002 that we know about—over 10,000 in total. But even that number represents only the tip of the iceberg.

HOW THE STATES COMPARE

In terms of sheer numbers of condemnations for private parties, California, Kansas, Michigan, Maryland and Ohio lead the pack for most private use condemnations filed. Pennsylvania, Florida and New Jersey also have high numbers of threatened condemnations for the benefit of private parties. Detroit takes first place as the worst city in terms of condemning property for private parties, while Riviera Beach, Florida, San Jose, California, and Philadelphia have placed the greatest number of private owners under threat of condemnation for private parties. With the assistance of a state agency, New York City has become the site of some of the most egregious condemnations for private use. Some states stand out. From a legal standpoint, New York, Missouri and Kansas are the worst states to live in for owners who hope to avoid condemnation for private parties, while Idaho, Montana, New Mexico, South Dakota and Wyoming appear to be the best. Those states, as well as Alaska, Delaware, Georgia, New Hampshire and Washington, D.C. have no reported uses of eminent domain for private parties. Certain other states, like Arkansas, Illinois, Kentucky, South Carolina and Washington also appear to have a legal climate disfavoring private condemnations, but enforcement is either spotty or unknown.

CONDEMNED

A FEW EXAMPLES OF THE ABUSE OF EMINENT DOMAIN FOR PRIVATE PARTIES

In the past five years, governments have:

- Evicted four elderly siblings in Bristol, Connecticut, from their home of the last 60 years for an industrial park;
- Destroyed a black middle-class neighborhood in Atlantic City (including the home of a woman who lived on a street named after her father) in order to build a tunnel to a casino;
- Removed a woman in her 80s from her home of 55 years for the claimed purpose of expanding a sewer plant, but Bremerton, Washington actually gave her former home to an auto dealership;
- Condemned 10 homes for a shopping center and parking lot in Hurst, Texas and forced them to move while the spouses in two of the homes were dying of cancer;
- Condemned a family's home in Florida so that the manager of a planned new golf course could live in it;
- Designated a neighborhood of colonial homes in Lakewood, Ohio blighted because their yards were too small and they lacked two-car attached garages. The City's redevelopment plans call for upscale condominiums and retail;
- Condemned small businesses for The New York Times and the New York Stock Exchange;
- Threatened to condemn a Walgreens in Cincinnati to build a Nordstrom; condemned a CVS to relocate the Walgreens; and condemned several small businesses to relocate the CVS. The Nordstrom was never built and became a parking lot;
- Begun condemning a bus company in Edison Township, New Jersey, for a Walgreens. The Township's consultant said the bus company was "unproductive and stagnant," but actually it transports the local schoolchildren;
- Planned to force the relocation of 500 low-income seniors in Aurora, Colorado, over the next 10 years;
- Condemned property in Boston to help the owner get rid of its tenants and condemned property in Knoxville, Tennessee to help the tenants get rid of their landlord;
- Labeled as blighted one-tenth of the geographical area of San Jose, occupied by one-third of its citizens, making all homes and businesses within the area susceptible to condemnation.

THE TIDE IS TURNING

Eminent domain for private use happens all over the country, and local governments and developers regularly force residents and businesses out by threatening eminent domain. But the news isn't all bad. Courts, ordinary citizens, and even, occasionally, politicians are starting to say "enough is enough" and to prevent the use of eminent domain for private parties.

Most private use condemnations never make it to court. For many years, courts simply rubber-stamped any use of eminent domain. In recent years, however, courts have ruled against the government in a sizable minority of the cases where owners do challenge the condemnation. Courts rejected condemnations for private use or overturned blight designations (which authorize condemnations) permitting such condemnations a total of 37 out of 91 times (40 percent) between 1998 and 2002.¹

Grassroots activism has defeated a number of projects, each of which would have forced the relocation of many homes and/or businesses. Voters rejected eminent domain projects three times at the polls and in at least 18 other instances, demonstrations and public pressure caused either the government or the developer to reject the use of eminent domain.

State politicians proposed 17 bills to increase protections for people threatened by eminent domain. Although they managed to pass only six, the number proposed bodes well for the future. Local politicians even voted to limit their own eminent domain power eight times.

This report documents the widespread abuse of eminent domain, not for anything resembling a "public use," but for private benefit and private profit. Eminent domain takes a terrible toll on its victims. It should be used only in the direst of public necessities and never for private ends.

¹ This number includes all judicial rejections of takings for private use, including those on statutory grounds. The trend toward greater judicial scrutiny of private takings means that courts are applying statutes more strictly than before. The total number includes only the most recent result of any given case, not separate numbers for the trial and appellate decisions. Decisions with mixed results were not included.