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THE SPECTER OF CONDEMNATION: THE CASE AGAINST EMINENT DOMAIN FOR PRIVATE PROFIT IN MISSOURI

By Timothy B. Lee and Shaida Dezfuli

Property rights have long been regarded as the foundation of a free society. The right to secure ownership of property is enshrined in the Missouri Constitution, and the taking of private property using eminent domain has traditionally been permitted only for public use.

But during the mid-20th century, an amendment to the Missouri Constitution and a series of ill-conceived court decisions undermined traditional protections for private property, opening the door to the use of eminent domain for private profit. Over the last half-century, the private use of eminent domain has become common.

A typical example is the 2003 project in which the city of Maplewood demolished a neighborhood of “small, tidy homes with well-kept lawns” to make room for a Wal-Mart and a Sam’s Club. The condemnations were ostensibly for “blight” removal, but no one disputes that the project’s primary

motivation was to enhance city tax revenues. Maplewood Mayor Mark Langston admitted as much: “I’m glad we’re not raising taxes,” he said in 2002. “I think that’s great. It really was a sacrifice of the few for the many here.”

Eminent domain advocates offer several arguments in defense of the new, more permissive rules regarding eminent domain, but none of them withstand close scrutiny. Missouri property owners deserve stronger protections for their rights.

“Holdouts”

Some advocates of eminent domain contend that it is needed to deal with “holdouts” — those who insist on an exorbitantly high selling price, or who refuse to sell at all. Holdouts can be serious obstacles for government projects, but are much less severe for private firms. Public entities must conduct their activities in public view, with ample time for public input. In contrast, private developers can

Timothy B. Lee is an adjunct scholar at the Cato Institute. He resides in Saint Louis. Shaida Dezfuli is pursuing a master’s degree in public policy at the University of Missouri-Saint Louis.

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assemble land quickly and in secret before anyone can engage in holdout behavior. Smart developers will also negotiate purchases before finalizing architectural plans, so that if an owner refuses to sell, the developer can tweak the project's design to work around the holdout's property.

Indeed, this happened in the case of the Maplewood project. One owner in the area was a law firm that refused to relocate. Rather than fight a building full of lawyers, the developer accommodated the firm, which now still sits in Wal-Mart's parking lot.

Economic Development

Many government officials believe that comprehensive development projects are needed to promote a city's economy, but the opposite is true. The uncertainty created by the lengthy, bureaucratic planning process does real economic damage and often leads to economic stagnation.

A good example is Hadley Township, a historically black neighborhood in Richmond Heights. When the adjacent Maplewood Wal-Mart project broke ground in 2003, speculation began that Hadley Township would be "redeveloped" next. The city soon responded by soliciting redevelopment proposals. According to a 2006 editorial by the *St. Louis Post-Dispatch*, the threat of eminent domain accelerated the neighborhood's decline. "If one neighbor sells to a developer and the next thinks his property will be bulldozed, there is less incentive to keep it well maintained," the editorial board noted.

Hadley Township would have fared better if officials had not insisted on finding a single developer to oversee the entire project. Early in the city's deliberations, residents said they wanted a redevelopment plan that would not force them from their homes. A small father-and-son firm, Kinder Construction, submitted a bid to redevelop the most dilapidated properties, leaving the rest



The law firm of King, Krehbiel, Hellmich, & Borbonus is located in the parking lot of the Maplewood Wal-Mart. The developer, THF, initially sought to condemn the firm's land, but when faced with a legal battle against a building full of lawyers, THF dropped the suit and reconfigured the development plan to leave room for the building.



intact. But Kinder's bid came under heavy criticism because it lacked resources to redevelop the entire neighborhood at once. The barrage of criticism and a lukewarm response from the city council forced the firm to withdraw their bid a month later. But the problem was not that Kinder lacked the capacity to begin renovations in the area — only that it lacked capacity to redevelop the entire area by itself.



Business owner Homer Tourkakis stands in front of his “blighted” dental office.

It would have been more efficient to allow several small firms to develop parts of the neighborhood in response to supply and demand. But with the threat of eminent domain looming, developers could not afford to begin renovation until they had received the city's approval. Otherwise, the city might condemn the entire neighborhood halfway through a project, wiping out investments.

Disrupting Communities

Contrary to the claims of some urban planners, eminent domain is not an effective anti-blight tool. Rather, like squeezing a tube of toothpaste, slum clearance merely forces the problems of a blighted neighborhood to a new part of town. It often makes things worse by undermining and punishing the very people who are essential to solving the problems of urban poverty.

For example, in the mid-1990s, the McRee Town neighborhood was one of the worst slums in Saint Louis. Beginning in 2003, the city demolished low-income housing that had existed on the site, and developers are now building new single-

family homes there. In a 2003 letter to the editor of the *St. Louis Post-Dispatch*, Rev. Gerald J. Kleba charged that the redevelopment “moves hundreds of poor families from McRee Town into the larger city where hundreds of families with Section 8 vouchers already have no place to live. Valuable city dollars will transplant these people to another neighborhood that will become overcrowded and deteriorated.”

“Clearing” slums is easy. But it doesn't solve the problems of residents. It's hard to deny that McRee Town is now more pleasant than it was in 1995, but few original residents are still there to enjoy it. A more humane redevelopment plan would have built on existing social networks, leaving room for existing residents. Undoubtedly, such a process would have meant more work for city officials. It was far easier to evict all the low-income residents, demolish their homes, and bring in wealthier residents from the suburbs. But that did nothing to help those already living there.

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7777 BONHOMME AVENUE
SUITE 2150
SAINT LOUIS, MO 63105

WWW.SHOWMEINSTITUTE.ORG



A "blighted" home in Sunset Hills.

Conclusion

Eminent domain is extremely convenient for those in power. It enables officials to create comprehensive plans for an area without having to worry too much about the people living there. It gives well-connected developers the ability to assemble land without persuading owners to sell. It's not surprising that cities and large developers are strong advocates of sweeping eminent domain powers.

But convenience for officials and developers carries a high cost for ordinary Missourians who find their property in the path of bulldozers. Without strong property rights, the wealthy manipulate the political process to transfer property from others to themselves. The poor and the middle class, lacking resources to hire a small army of lawyers and lobbyists, need the protection of strong property rights just to keep what they already have.

This is made crystal clear from the fate of the property owners we have

described in this report. The wealthiest targets of eminent domain succeeded in using the legal or political process to defend their property, but at a steep cost. Moderately wealthy individuals were at least able to hire competent lawyers and press their rights in court. On the other hand, poorer targets have been powerless to stop the destruction of their homes.

It was precisely to prevent this sort of injustice that the framers of the United States and Missouri constitutions established a strong prohibition on the use of eminent domain for private profit. The abuses of the last half-century are an eloquent testimony to the wisdom of that rule. Ordinary Missourians would be better off if the Missouri Constitution once again strictly limited eminent domain to public uses.

For more details, please see Show-Me Policy Study no. 10, which is available at www.showmeinstitute.org.