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THE SPECTER OF CONDEMNATION:

THE CASE AGAINST EMINENT DOMAIN FOR PRIVATE PROFIT IN MISSOURI

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EXECUTIVE SUMMARY

Private property rights have long been regarded as the foundation of a free society. Traditionally, the taking of private property by eminent domain has only been allowed for public use. But over the last 50 years, courts have increasingly allowed municipalities in Missouri to take property for private developments. Under the pretext of remedying "blight," cities now condemn ordinary middle-class neighborhoods to make room for retail, corporate offices, and apartments.

Proponents claim the practice promotes economic development, but the reality is just the opposite. The threat of eminent domain casts a cloud of uncertainty, discouraging owners from investing in their property. And many "redevelopment" projects do not create wealth; they divert jobs and revenues from neighboring jurisdictions.

Some developers argue that the problem of "holdouts" — property owners who demand exorbitantly high prices — justifies the private use of eminent domain. But there are a number of other strategies developers can employ for holdouts. What they don't mention is that simply the threat of eminent domain has often allowed them to obtain property at below-market rates.

Some planners argue that eminent domain is needed for urban slums. However, if slum redevelopments are intended to help residents, permitting eminent domain is counterproductive. Eminent domain is often used to demolish low-income housing and replace it with more expensive housing. Many former residents are forced into even more squalid housing elsewhere.

Last year's eminent domain legislation did not provide adequate protections for property owners. Municipalities can still seize "blighted" property, and the definition of "blight" is so broad that almost no neighborhood is safe. Missouri needs a constitutional amendment prohibiting eminent domain for private use.

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INTRODUCTION

In 1997, Susette Kelo purchased her pink dream house that looked out over the water. It was located in the Fort Trumbull neighborhood of New London, CT, less than a mile from where she grew up.[1] The next year, she read in the newspaper that Pfizer was planning to build a new research facility nearby. The city wanted to "revitalize" the area around the new headquarters by building upscale condominiums, shops, and restaurants, and they were going to force property owners in her neighborhood to sell using the power of eminent domain.

She didn't want to sell. The Institute for Justice (IJ), a public-interest law firm based in Washington, D.C., agreed to take her case. The Fifth Amendment to the United States Constitution requires that property only be taken for "public use," and IJ's lawyers didn't believe that a private development project qualified. The case made it all the way to the Supreme Court in 2005, where in a 5-4 decision, the court sided with the city. Writing for the majority, Justice Stevens said that promoting economic development qualifies as a public use under the Fifth Amendment. Because the new occupants would pay more taxes and create more jobs than Susette Kelo, the project provided a "public benefit" sufficient to justify the taking under the Fifth Amendment.

Writing in dissent, Justice O'Connor warned that the decision would open the floodgates to abuses of power. The definition of "public use" was so broad that almost any taking could be valid, placing no meaningful constraint on the eminent domain power. O'Connor charged that as a result of the majority's decision, "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."[2]

O'Connor's warning is reflected in the recent experience of property owners in Missouri. In dozens of cases, both before *Kelo* and since, municipalities in Missouri have taken the property of one private party and given it to another. As we document in this report, eminent domain often acts as a kind of Robin Hood in reverse, confiscating the wealth of middle- and lower-class Americans and transferring it to wealthy, politically connected private developers. The legal and political processes that determine whose property will be taken and who gets to "redevelop" it are highly susceptible to manipulation by those with money and influence.

Beyond the fundamental unfairness of the state using its power to benefit one private party at the expense of another, the abuse of eminent domain has been harmful to economic development. Those who want to use eminent domain often try to justify it by the supposed presence of "blight" in the area to be condemned, but in many cases, the use of eminent domain is itself a contributor to blighted conditions. The threat of eminent domain casts a shadow over neighborhoods, discouraging property owners from investing in their homes and businesses.

Worst of all, the use of eminent domain in "urban renewal" projects has harmed low-income residents in urban areas and exacerbated the shortage of affordable housing. The cities of Saint

Louis and Kansas City have used the power of eminent domain to bulldoze neighborhoods populated by low-income residents. Such projects sometimes make neighborhoods more pleasant places to live, at least superficially. But this is only because most of the poor residents who previously lived there have been priced out of the market and forced to move to even more crowded neighborhoods elsewhere in the city. Urban renewal projects would be more effective at reducing poverty if they were conducted without the use of eminent domain.

Eminent domain abuse wasn't always so common. Until the mid-20th century, the constitutional limits on eminent domain were much stricter. An ordinary Missourian had little reason to fear that his home or business would be taken for the benefit of another private party. Unfortunately, a series of judicial innovations and an ill-considered amendment to the Missouri Constitution undermined those protections. The result has been just what Justice O'Connor described in her dissent: City governments in Missouri routinely raze middle-class neighborhoods and replace them with shopping malls, condominiums, and other private projects. In this report, we explain how that shift has occurred, why it has been so disastrous for our state, and how we can reclaim our property rights.

We start with a brief summary of the history of eminent domain law, examining the erosion of legal protections for property rights and the rise of "blight" as a legal pretext for taking almost anyone's property. Next, we examine four common arguments in favor of the private use of eminent domain and conclude that none of them adequately justify the taking of property for the benefit of another private party. Finally, we examine recent efforts to strengthen property rights in Missouri, and argue that Missouri still needs a constitutional ban on eminent domain for private use.

PUBLIC USE

The right to secure ownership of property is enshrined in the Missouri Constitution, but it has always included an important exception: Property can be taken if it is needed for a public use. As an example, suppose the state publishes plans for a new highway and begins purchasing the parcels of land it needs to begin construction. Unfortunately, one homeowner along the road's path — sensing the opportunity to make a profit — demands 50 times the market rate for her property. Such a "holdout" could cost taxpayers a fortune, or even stop the project in its tracks. The power of eminent domain allows the government to seize the property of such holdouts, but it requires that they be given just compensation for their property.

Although the power of eminent domain is necessary in some cases, it is also problematic because it gives government officials considerable discretion in deciding whose property will be seized. There is always a temptation to engage in favoritism when one person has power over the property of others. Obviously, corruption is one concern, but too much discretion can be problematic even in the hands of honest public

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servants. It's impossible to be perfectly fair when you're forced to choose between the rights of different constituents. Those with the best connections to elected officials will inevitably have the most influence.

Many Missourians whose property is targeted for condemnation feel the process is unfair. Consider the case of Homer Tourkakis, whose dental practice in the Saint Louis suburb of Arnold was slated for condemnation in 2004. He says, "It just seems really arbitrary. Why do some get red-carpet treatment, while I get my life turned upside-down so the city can pick up a few bucks?" Tourkakis, whose practice has been in its current location for two decades, points out that another business nearby, Arnold Stove and Fireplace, was given a place in the new development plan, and that its owner, Norman Moss, sits on the city's Board of Adjustments.[3]

It is unlikely that Arnold government officials engaged in deliberate favoritism when they decided to force Tourkakis to move his business while allowing Arnold Stove and Fireplace to remain in its present location. But Moss probably had an unfair advantage in the decision-making process. As an "insider," he had greater access to the key decisionmakers, and was therefore better positioned to argue his case. Such biases are inevitable when elected officials have virtually unlimited discretion to decide the fate of property that is being redeveloped.

Abuse becomes much more likely when eminent domain is exercised for the benefit of private developers. Most of the benefits of a road or courthouse flow to the public at large, not to any particular individual. Special interests therefore have more reason to lobby for expanding the use of eminent domain for private projects, because the benefits of such projects flow much more directly to those private parties.

A municipality only needs so many roads, schools, courthouses, and hospitals. But it's always possible to find additional neighborhoods to "redevelop." One of the most common rationales for taking property is to remedy "blighted" conditions. And under Missouri law, "blight" is a relative term, so a city always has areas that could be declared "blighted" when compared to wealthier parts of town.[4] As a result, city officials have almost unbridled discretion in deciding whose property to take and whom to give it to.

The Changing Definition of "Public Use"

The framers of the first Missouri Constitution required that eminent domain only be employed for public use, and that just compensation be paid to the property owner.[5] In 1875, the framers of Missouri's third Constitution further strengthened the protections for private property by adding what became today's Article I, Sections 26 and 28. Section 26 reads, in part:

> That private property shall not be taken or damaged for public use without just compensation ... and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested.

And Section 28 provides:

> That private property shall not be taken for private use with or without compensation, unless by consent of the owner ... and that when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public.

Until the late 19th century, the United States Supreme Court restricted the use of eminent domain to government projects like roads and post offices, and to common carriers such as railroads or mills.[6] But as the 20th century dawned, the court gradually weakened the previously strict ban on private takings. In the 1905 case of *Clark v. Nash*[7], a landowner sought to compel his neighbor to allow him to widen a ditch that would bring water to irrigate his fields. The geography of the properties meant that this was the only feasible way to irrigate the land, and the land would be worthless without irrigation. The Supreme Court upheld the taking, but emphasized, "We do not desire to be understood by this decision as approving of the broad proposition that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the state."[8] In the 1906 case of *Strickly v. Highland Boy Gold Mining Co.*, the Supreme Court allowed a taking that primarily benefited a private mining firm, but it again stressed that "great caution [was] necessary to be shown" when takings for the benefit of private parties are permitted.[9]

BLIGHT AS A "PUBLIC PURPOSE"

Respect for private property declined sharply in the opening decades of the 20th century.[10] A new generation of progressive intellectuals, confident in the government's ability to plan the economy for the good of society, became far more concerned with social problems such as urban slums than with protecting property owners. They thought that demolishing "substandard" neighborhoods and replacing them with new housing facilities would improve the plight of the urban poor. They viewed the property owners in those neighborhoods who didn't want to sell as obstructionists, and they chafed at the way in which old-fashioned notions of private property impeded their plans.[11]

In 1945, Congress passed legislation to redevelop some poverty-ridden areas of southwest Washington, D.C. The plan envisioned condemning entire city blocks, and turning them over to private firms for redevelopment. In 1954, the Supreme Court considered the constitutionality of the project in *Berman v. Parker*. The owner of a department store that happened to fall in the development area objected to the taking of his property. He conceded that much of the neighborhood was blighted, but he argued that since his property was not blighted and did not pose a danger to public health, it would be unfair to seize it simply because some of his neighbors' properties happened to be blighted. He insisted that even if slum clearance qualified as a public use under the Fifth Amendment, the Constitution still required that properties be evaluated on a parcel-by-parcel basis.

The Supreme Court disagreed. The high court ruled that slum clearance was

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The conflation of "public use" with "public purpose" undermined constitutional protections for private property.

a "public purpose" (note the contrast with the text of the Constitution, which requires a "public use") and that it would not be appropriate for the courts to second-guess the judgment of Congress regarding what means would be required to accomplish the objective. Apparently, no longer was "great caution necessary to be shown" in authorizing the use of eminent domain for private projects.

The Blight Exception Comes to Missouri

The same intellectual currents that produced the *Berman* decision also undermined property rights in Missouri. A major blow was the adoption of a new state Constitution in 1945. The new Constitution included Article VI, Section 21, which read:

> Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest.

This new provision undermined the strong protections for property rights found in Article I, Sections 26 and 28 of the previous Missouri Constitution by giving local governments broad authority to take private property for private use.

In the same year that the United States Supreme Court handed down its *Berman* decision, the Missouri Supreme Court decided the case of *Dalton v. Land Clearance for Redevelopment Authority of Kansas City, MO*.[12] Like the *Berman* case, the *Dalton* case considered the constitutionality of condemning non-blighted parcels within a blighted area of downtown Kansas City. Citing the 1939 case of *Laret Investment Co. v. Dickmann*, and using language strikingly similar to that in *Berman*, the Missouri Supreme Court held that "the concept of 'public use' was never to be taken as static, but should be applied and construed as made necessary to the public welfare by changing conditions."[13] As in *Berman*, the conflation of "public use" with "public purpose" undermined constitutional protections for private property. As we will see, it is possible to find a plausible "public purpose" for almost any taking.

To make matters worse, despite the requirement in Article I, Section 28, that "the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration," the court held that legislative declarations regarding public use were "entitled to great weight," and that "the courts would presume the declared purposes 'public purposes' unless it clearly appeared they were not in harmony with the constitution."[14] Both the United States and Missouri Supreme Courts had given a green light to the use of eminent domain for private development.[15]

The Growing Abuse of the "Blight" Exception

It probably wasn't obvious at the outset just how far-reaching these decisions would become. In 1954, blight seemed to have a clear and generally accepted definition. It meant neglected, run-down, dangerous, vermin-infested properties — properties that were unfit for human habitation, and a danger to public health and safety. But the definition has gradually broadened to the point where almost any property today can be declared blighted.

A typical example is the 2003 project in which the city of Maplewood demolished a neighborhood of "small, tidy homes with well-kept lawns"[16] to make room for a Wal-Mart and a Sam's Club. Maplewood is not the most upscale municipality in Saint Louis County, but it's hardly a slum. The condemnations were ostensibly for "blight" removal, but no one disputes that the primary motivation for the project was not to remedy blight, but to enhance the city's 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."[17]

Another example is the 2000 redevelopment project along Rankin Avenue in Brentwood, which sought to replace 37 modest houses with apartment buildings. Brentwood commissioned a study to determine whether the homes were blighted, which the *St. Louis Post-Dispatch* described this way:

> A study found various reasons to declare the area blighted, concluding that the area is obsolete, isolated and bordered by several commercial and industrial areas. Much of it lies in a 100-year flood plain, and the Black Creek flood plain covers half the area, half the structures and 60 percent of the residences. The properties have had a flat assessment since 1993. The average age of the structures is 45 years old. The majority of the residences are in fair condition with a few in poor condition; the study says that the public works are in poor condition.[18]

Aside from declining public works (which are the responsibility of the city), it's hard to see how this description distinguishes the neighborhood from any other working-class neighborhood. "Obsolete" and "isolated" are hopelessly subjective terms, and replacing houses with an apartment building will do nothing to deal with the flooding problem. Almost any working-class neighborhood will have a handful of homes in poor condition. And 45-year-old homes are hardly a sign of blight.

The Centene Case

Even the wealthiest neighborhoods are at risk from eminent domain. In 2005, the city of Clayton commissioned a consulting firm to examine the 7700 block of Forsyth Avenue, to determine whether it was blighted. The firm was unable to find any evidence that the area was a social liability — police, fire, and EMS calls to the block were no higher than elsewhere in Clayton — but they did find that the property suffered from an "inability to pay

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reasonable taxes" and they recommended a blight finding on that basis. Based on these findings, Clayton declared the properties to be blighted and began condemnation proceedings against them.

Some of the owners fought back in court. When they lost at the trial court, they appealed, ultimately prevailing in the Missouri Supreme Court in June 2007. The court ruled in *Centene Plaza Redevelopment Corporation v. Mint Properties*[19] that the statute at issue in the case, Chapter 353, defines blighted areas as those portions of a city that "have become economic *and* social liabilities." Because Clayton had failed to provide any credible evidence of a "social liability," the court had little choice but to rule against the city.

Thus, the landowners' victory was largely due to a technicality, not a constitutional principle. Had the Missouri Legislature drafted Chapter 353 to read "economic *or* social liabilities" — as the blight language in Chapter 100 does — it is likely that the city of Clayton would have prevailed. The fact that Clayton attempted to condemn properties in one of the most prosperous business districts in the entire Saint Louis metropolitan area suggests just how far the "blight" bar has been lowered. The 7700 block of Forsyth looks nothing like the slums at issue in *Berman* and *Dalton*, yet the Supreme Court evidently believes that even these neighborhoods are not protected by the Missouri Constitution's ban on takings for private use.

Moreover, given the avowed reluctance of the courts to second-guess legislative judgments in property rights disputes, the *Mint* decision should be small comfort to property owners in ordinary middle-class neighborhoods, almost all of whose properties will have more evidence of "social liabilities" than does downtown Clayton, and few of whom will have the hundreds of thousands of dollars required to mount an effective defense in court.

Blight as a Negotiating Tactic

Two recent incidents in the city of Saint Louis suggest that developers have come to see a blight designation as little more than a negotiating tactic.

In 2003, the Target Corporation wanted to upgrade one of its Saint Louis stores. The building was leased from another company, and when Target approached the company about demolishing the store and building a larger one, the landlord demanded higher rent in exchange for permission to construct the new building. Fearing Target would leave the area, the city of Saint Louis sought to declare the store a blighted area so that the land could be transferred to Target for "redevelopment."[20]

In 2005, the Gentry's Landing apartment complex in downtown Saint Louis was owned by Peter McCann of Integrity Real Estate, while the land underneath the building belonged to John and Joe Seravalli, two Florida investors. McCann paid rent to the Seravallis under the terms of a multi-decade lease agreement. McCann wanted to upgrade his building, but he wanted first to acquire the property underneath it, before commencing with the renovation. He approached the Seravallis, seeking to

purchase the land, but they were unable to agree on a price. A few months later, the Seravallis got a letter from the city of Saint Louis demanding that they sell their property, or they would have it taken through eminent domain. The Seravallis charged, not implausibly, that the city was acting on McCann's behalf.[21]

These properties may or may not have been blighted. But if they were blighted, it would more likely be the fault of the tenants — McCann and Target — than of the landlords. The tenants have had physical use of the properties for years. It's difficult to justify using blight as a justification for seizing the property and turning it over to the parties that were primarily responsible for the blighted conditions in the first place.

All of these examples make it clear that the meaning of "blight" has changed dramatically since the *Berman* and *Dalton* decisions. Declaring a neighborhood to be blighted has become little more than a formality that the city must go through before seizing any private property it wishes to give to a new owner.

"HOLDOUTS"

Most defenders of today's eminent domain regime acknowledge that "blight" has practically become an all-purpose justification for taking property for private development, but they offer four arguments in defense of the practice. First, they argue that without the power of eminent domain, holdout problems would make the construction of shopping malls, corporate headquarters, and other large buildings impossible. Second, they claim that cities need to be able to adopt detailed economic development plans, and that these plans would be impossible to implement without eminent domain. Third, they contend that eminent domain is necessary for enhancing a city's tax base. And finally, they argue that the power of eminent domain is essential to deal with urban slums.

In the next four sections, we shall argue that none of these rationales is persuasive. We first consider the problem of "holdouts" — property owners who refuse to sell in the hopes of getting an above-market rate for their property.

The "Holdout" Argument

In the standard holdout scenario, a large developer wishes to build a shopping mall, office tower, or other large structure in an area currently occupied by a significant number of small property owners. Most are happy to sell, but a handful — the "holdouts" — demand an unreasonably high sale price for their properties. As a result, the theory goes, a handful of property owners can stall or block a project that provides large benefits to the community as a whole.

This argument has some superficial appeal, but the holdout problem can be greatly overstated. More importantly, allowing the use of eminent domain to deal with holdouts creates a much more serious problem. It allows developers to use the mere threat of eminent domain as a negotiating tactic to force property owners to accept unreasonably low prices for their property.

Holdout problems are much less severe for private entities than for public ones. Public entities must conduct their

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With careful planning, a developer can usually avoid a situation in which any one property owner is in a position to block the entire development.

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.

activities in public view, with ample time for public input. In contrast, a private developer can assemble land quickly and in secret, acquiring most of the land it needs before anyone recognizes an opportunity to engage in holdout behavior.[22]

Moreover, a new road — the paradigmatic example of a public development project — needs to go more or less in a straight line. A single property owner anywhere along the route can bring the project to a halt. In contrast, private developers building shopping malls, hotels, or office towers will have considerable flexibility as to their location and configuration. With careful planning, a developer can usually avoid a situation in which any one property owner is in a position to block the entire development. And a smart developer will negotiate purchase rights with property owners before finalizing architectural plans. That way, if a particular property owner refuses to sell, the developer can tweak the design in a way that works around the holdout's property.

Reconfiguration of development plans partway through the planning process is a common occurrence. For example, the Manchester Highlands shopping mall in Saint Louis County was reconfigured three times in 18 months. The developer, Pace Properties, expanded the project in July 2005 to encompass more homes and businesses.[23] Pace then scaled the project back slightly in February 2006, reducing it from 476,719 square feet to 410,000 square feet.[24] Finally, in January 2007, Pace expanded the development again to 508,178 square feet.[25] If a developer can adjust plans to fit its own needs and the needs of the city, it can also make adjustments to accommodate the concerns of one or two property owners who wish to keep their property.

Indeed, that's exactly what happened in the case of the Maplewood Wal-Mart we discussed earlier. In that case, one of the property owners in the development

area was the law firm of King, Krehbiel, Hellmich, & Borbonus. 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. The firm is still there today. It looks a little bit strange sitting in the middle of Wal-Mart's parking lot, but it does not appear to be impeding Wal-Mart customers.

Anti-Holdout Strategies

There are several ways a developer can persuade a property owner to sell without resorting to the use of eminent domain. For example, a developer might sign contracts with all the property owners in a given area stating that the sale will go through only if all other property owners also agree to sell, and that every property owner is entitled to receive the same premium over the market value of his or her property. With such a contract in place, each property owner wanting to sell has a strong incentive to convince all the other property owners to go along with the sale. A property owner who might be inclined to hold out against a wealthy, faceless development corporation may be more receptive to the pleas of her friends and neighbors.

The targets of redevelopment projects often complain about the high-handed way they are treated by developers and city officials, who know they will be able to obtain a property with or without its owner's consent. If developers and city officials treated property owners with greater respect, they might find that fewer of them were inclined to engage in holdout behavior.

Consider the case of Loughborough Commons, a shopping center project that began in Saint Louis in 2004. Many residents of the neighborhood seemed most angry about the way the developer and the city had treated them during the negotiation process. "No one knocked on the door, and no one left a business card. I think they did this in a very back-door way," resident Rachelle Brown told the *St. Louis Post-Dispatch*. Added resident Bill Sheahan, "We got broadsided. We were ticked off, mainly at the integrity part of it."[26]

Residents in the Maplewood Wal-Mart project felt the same way. "You can't just send a person a letter in the mail and say, 'We're taking your home and it's a done deal,'" resident Dawn McCoy said in 2001. "You can't do that to people; it's not fair. A lousy letter in the mail?"[27]

And city officials can be just as high-handed toward business owners. A September 2005 article in the *Kansas City Star* reported that All-Makes Machine was one of the businesses slated for demolition in Kansas City's East Village redevelopment proposal.[28] (See pages 23-24.) Yet seven months later, another article in the *Star* noted that owner Judy Hubbard had still received no information from the city about the fate of her business. "How do I get information?" she asked. "This is my livelihood and my employees' livelihood."[29] Hubbard was assured that city officials would get in touch with her. One might have thought the city would have informed her of the development plan *before* announcing it to the press, rather than leaving her in the dark for close to a year.

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It's likely that many more property owners would willingly sign on the dotted line if they received a reasonable offer* and *red-carpet treatment.

Business owners in Kansas City's Power and Light district — which has been the subject of various redevelopment proposals for close to four decades — received similar treatment. In 2003, Kansas City unveiled an ambitious plan that would be anchored by a new headquarters for H&R Block.[30] Darren Siegel, whose property at 1319 Grand Blvd. is home to a nightclub called the Stray Cat, told the *Kansas City Star* in 2004 that he had trouble getting a straight answer from the city regarding the fate of his property. Each city official he called directed him to another official. After nearly a year of waiting and wondering, he finally received a letter in the mail in September 2004 informing him that his property would be taken.

Some elected officials are downright callous in their attitudes toward property owners. Ozark, Mo., Mayor Donna McQuay, who led the city's Finley River project (see page 18), was puzzled by residents' attachment to their homes. "It's just a house," she told the *Springfield News-Leader* in 2005. "Home is wherever you make it."[31]

If they didn't have the power of eminent domain available, city officials and developers would behave very differently. They might take the time to get to know the owners and make sure to understand their concerns and objections. They might help property owners find new homes, cover their moving expenses, and pay for upgrades to their new homes to make them comparable to the homes they just left. Above all, they would approach the property owners as equals, worthy of respect and persuasion, rather than as obstacles to development plans. It's likely that many more property owners would willingly sign on the dotted line if they received a reasonable offer *and* red-carpet treatment.[32]

Just Compensation

Developers will surely object, noting that requirements to gain the voluntary consent of property owners will raise redevelopment costs. That may very well be true, but it's not at all clear that it would be a bad thing. For a project that primarily benefits a private developer, why *shouldn't* property owners get a substantial premium on the value of their property, to compensate them for the hassle of moving?

The last "holdouts" in the Loughborough Commons project were Reba June Thompson and her son Howard. They received $350,000 for their modest home in November 2005, after their case was accepted for a hearing by the Missouri Supreme Court. The price was reported to be "more than twice the average payout for the other homes and well above the going rate for South Side bungalows."[33]

City officials had some harsh words for the Thompsons; Alderman Matt Villa (D-11th Ward) claimed that the Thompsons had "won the lottery." But that hardly seems fair. Out of that check for $350,000 will come the Thompsons' legal expenses in the eminent domain fight, payments to their real estate agent, and all the costs of moving. The money must also compensate the Thompsons for losing the substantial sentimental value of their old home.

It's worth comparing the Thompsons' payout of $350,000, which Villa says is

tantamount to "winning the lottery," with the $14 million in taxpayer subsidies the city is giving to Desco, the developer. Even if every one of the 20 homes in the development area had received the same $350,000 payout the Thompsons got, the cost would have been only $7 million, or just half of the public subsidy and about a sixth of the overall project cost of $40 million. Presumably, Desco is expecting to earn much more than $350,000 in profits from the development. At 79 years old, Mrs. Thompson simply wanted to be left alone to live out her life in peace. It seems only reasonable that if Mrs. Thompson is required to give up her home for the project, that she should be paid a premium to compensate her for the hassle of moving.

Many "holdouts" are simply people who don't believe that the amount they've been offered will compensate them for what they would lose. At a 2001 hearing concerning the Maplewood Wal-Mart project (See page 7), Val Sanders said she had acquired a home in the area for her grown daughter and modified it to accommodate the daughter's disability. But because Sanders didn't live in the home herself, her daughter wouldn't get a penny of relocation assistance, to say nothing of being reimbursed for the costs of modifying a new home. And Val's daughter, Kim Moody, said her own high-school-age daughter was in danger of losing a scholarship if she were forced to move outside of the Maplewood-Richmond Heights school district.[34]

The Hanson family, whose home was located in Rock Hill's "Market at McKnight" redevelopment project, originally chose their location because "they wanted their daughter to attend Hudson Elementary School," which was known for its work with special-needs children. They needed a five-bedroom house to accommodate their five children. The Hansons refused to sell because they were unable to find a comparable home in the same school district for the amount Novus, the project's developer, was offering.[35]

Small business owners often face similar difficulties getting a fair price for their properties. Ben Penner and his son Daryl have owned American Formal and Bridal for decades. Until 2005, it was located in downtown Kansas City. When the city sought to acquire their property as part of the Power and Light project (see page 12), they initially offered $350,000. The Penners' appraiser valued the property at $1.4 million.[36] The city sweetened the pot to $750,000, but the Penners took the case to court, ultimately winning $1.1 million from a jury.[37]

It's impossible to say for sure whose valuation of the property was more accurate, but it's difficult to believe that the initial $350,000 offer was anywhere close to a fair price. It certainly wouldn't have covered the substantial costs of relocating the Penners' business. These costs include redoing signage and stationery, advertising the new address, and customizing the new space. Perhaps most significantly, relocation leads to a substantial amount of lost business, both during the move and after, as repeat customers may not travel to the new location. Moreover, the $1.1 million they ultimately received will also have to cover the tens of thousands of dollars in legal fees that were required to challenge the condemnation in court.

Relocation leads to a substantial amount of lost business, both during the move and after, as repeat customers may not travel to the new location.

The only way to ensure that property owners get a fair price is to deny private developers the weapon of eminent domain, even against alleged holdouts.

Consider the case of Steve Blechle, a commercial real estate developer who owned 117,000 square feet of retail space in downtown O'Fallon. In March 2003, the city announced a redevelopment plan that would have condemned a 128-acre area, including Blechle's properties, replacing it with an upscale "town center."

Blechle says the developer offered him $6.3 million for the property, or $54 per square foot. More recently, after the plan was dropped, Blechle sold one 10,000-square-foot building for $1.1 million, or $110 per square foot. That suggests that the fair market price for his entire property is about $14 million, more than twice what the developer had offered.

Most of Blechle's 32 tenants had made substantial leasehold improvements, and many of them still had several additional years on their leases. Had Blechle been forced to sell, he would have been liable to his tenants for lost improvements and profits. He also would have been required to pay stiff capital gains taxes on the value of the property, which had appreciated dramatically since his family acquired it in the 1970s. Blechle's accountants estimated that his total expenses could have been as high as $20 million. In short, he was facing a real possibility of bankruptcy if the plan went through.

Blechle and other property owners in the redevelopment area succeeded in organizing political opposition to the proposal, successfully ousting O'Fallon's mayor and five of the city's eight aldermen in the 2004 and 2005 elections. But Blechle and his tenants still suffered from the attempted takings. One of them, a banquet center, was unable to book any weddings for five months. What young woman is going to risk booking the most important day of her life at a location that might not be there in a year? Other tenants faced similar financial losses because of lost business. Blechle was forced to offer rent discounts to some tenants to avoid losing them. He estimates that the entire ordeal cost him hundreds of thousands of dollars in lost revenues.[38]

Developers will inevitably label anyone who rejects their offers as "holdouts," but they rarely mention the more common case of property owners who suffer financial losses as a result of the condemnation process. In many cases, property owners legitimately feel that the offers on the table do not fairly compensate them for what they would lose. Many property owners who feel that an initial offer is too low nevertheless accept it out of fear that the costs of a court battle will leave them with even less. The result is that developers often get property for less than its fair market value. The only way to ensure that property owners get a fair price is to deny private developers the weapon of eminent domain, even against alleged holdouts.

"Economic Development"

The second major argument for permitting eminent domain for redevelopment is that such takings are necessary for "economic development" projects. City officials draw up elaborate plans, designating particular neighborhoods for renovation, and solicit proposals from developers interested in implementing them.

Many elected officials believe that these types of plans are vital to promoting a city's economic development, but, in fact, just the opposite is true. Like virtually all government planning of private industry, centralized and coercive real estate development plans are economically harmful. The uncertainty created by the lengthy and bureaucratic planning process does real economic damage. When property owners face the likelihood that their homes and businesses will be taken, they stop investing in their properties. As a result, a "blight" designation often leads to economic stagnation.[39]

Cities do not need comprehensive real-estate development plans any more than they need comprehensive dining or dry-cleaning plans.[40] The forces of supply and demand do an excellent job of supplying consumers with enough restaurants and dry cleaners. If allowed to operate, they can provide sufficient housing, office space, and retail options, just as they did before 1954.

In this section, we examine a half-dozen real-world examples of the damage that neighborhoods can suffer as a result of too much micro-managing from city hall.

Hadley Township

Maplewood's "Wal-Mart" development impacted nearby Hadley Township, a historically black neighborhood in Richmond Heights, as well. Hadley Township residents began to see negative repercussions in their neighborhood from the moment the Wal-Mart project broke ground, as dust and noise from the construction lowered the area's quality of life. Speculators began buying up property in the area in anticipation of development there.[41]

The city of Richmond Heights responded in late 2003 by soliciting redevelopment proposals for Hadley Township. City officials thought a redevelopment plan was required to halt the neighborhood's decline, but the city's actions actually accelerated the process. Three years later, in July 2006, the *St. Louis Post-Dispatch* published an editorial noting, "Before the big-box stores and others arrived, the area was a stable, blue-collar neighborhood." But after the Wal-Mart went up, the editorial pointed out, speculators swooped in. Add the "uncertainty that comes with the specter of eminent domain, and the neighborhood's foundations begin to weaken. 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."[42]

The seemingly interminable process took a heavy toll on residents. At a July 2006 meeting of the Richmond Heights City Council, many residents stated that although they didn't want to relocate initially, they were tired of waiting "in limbo" in deteriorating neighborhoods, and simply wanted to move on with their lives. By this time, the council had already considered and rejected several redevelopment plans. The city council made it clear that the only choice they would consider was between approving the current proposal or putting out yet another request for proposals. The possibility of simply allowing current residents to keep their homes was not considered.[43]

The forces of supply and demand do an excellent job of supplying consumers with enough restaurants and dry cleaners. If allowed to operate, they can provide sufficient housing, office space, and retail options.

Cities don't call for bids to run all the dry cleaners in a neighborhood. Why not allow a variety of smaller developers to develop parts of the project without being micromanaged from city hall?

Hadley Township could have avoided all of that heartache if its elected officials had not been so obsessed with finding a single developer to oversee the entire development project. Early in the city's deliberations, residents made it clear that they wanted a redevelopment plan that would not force them from their homes. So in 2004, Richmond Heights called for a redevelopment plan that would give residents the option to stay. A small father-and-son firm, Kinder Construction, submitted a bid to do just that by redeveloping the most dilapidated properties and leaving the rest intact.

City officials "raised questions about Kinder's ability to fund and carry out the task." Critics noted that Kinder didn't have the deep pockets required to make lucrative buyout offers to neighborhood residents, and might not have the resources needed to redevelop the entire 65-acre community.[44] A month after announcing his firm's plan, Kinder withdrew the bid, citing uncertainty about how the Richmond Heights City Council wished to proceed with the project.[45]

The problem, in other words, was not that Kinder's firm lacked the capacity to begin performing renovations in the area. The problem was only that Kinder Construction lacked the capacity to redevelop the entire area by itself. But why should there be only one developer doing the *entire* project? Cities don't call for bids to run all the dry cleaners in a neighborhood. Why not allow a variety of smaller developers to develop parts of the project without being micromanaged from city hall?

One reason is that with the threat of eminent domain hanging over their heads, developers could not afford to begin renovating homes until they had received the city council's seal of approval. Otherwise, the city might condemn an entire neighborhood halfway through a project, wiping out developer investments. Had the city ruled out eminent domain from the outset, it's likely they could have recruited several small developers to purchase and renovate portions of Hadley Township. That would have allowed for a faster, more organic, less contentious redevelopment of the neighborhood. And, most importantly, no one would have been forced from their homes.

Sunset Manor

The neighborhood of Sunset Manor in Sunset Hills has been facing the threat of eminent domain since 2000. A 2002 *St. Louis Post-Dispatch* article described it as a "neighborhood of small but tidy houses."[46] The city's redevelopment efforts endured several false starts, as the city searched for a developer that could complete the project. Homeowners, expecting that their homes would be purchased within months, did not invest in upkeep. A 2005 editorial in the *Post-Dispatch* reported that "owners don't maintain houses they think will be flattened soon. A stroll around Sunset Manor shows the consequence in dangling storm gutters, cracked windows, and peeling paint. Sunset Hills has taken a nice neighborhood and turned it into a troubled one."[47]

In August 2005, disaster struck. The developer announced that it hadn't been able to secure financing for the redevelopment, and the project collapsed. Property owners who had contracts to

A “blighted” home in Sunset Hills.

sell their homes in the fall suddenly found themselves trapped. Some had already purchased new homes and moved their children to new schools. The collapse of the project created a political earthquake in the city that led to the ouster of the mayor and four aldermen in April 2006.

Over the past year, however, Sunset Hills has been a model for sensible redevelopment. Rather than putting out a new call for redevelopment proposals, the city took eminent domain off the table by repealing the ordinances designating Sunset Manor a blighted area. The new leadership has focused on removing legal obstacles to development, so that residents could invest in their own homes, or sell to someone else who was interested in doing so. For example, the city had previously required a minimum lot size of 7,500 square feet for residential properties in Sunset Manor. Because many of the lots in Sunset Manor were as small as 5,280 square feet, residents had difficulty getting approval to make changes to their homes under the old rules. By relaxing these rules, the city made it easier for homeowners to upgrade their properties.[48]

By ruling out the use of eminent domain, the city has given property owners confidence that they will not be forced to sell against their will. That will prompt many of them to resume maintenance on their homes. It will make it possible for those who want to sell to put their homes on the market and receive a fair price for them. Finally, it will make it possible for multiple small developers, such as the Kinders, to buy individual properties and redevelop them. The result will be a process for redeveloping Sunset Manor that is much more rational and efficient — and much less political.

Cortex

The city of Saint Louis’ Cortex redevelopment project seeks to transform the area between I-64/40 and the Central West End into a “biotech corridor.”

By ruling out the use of eminent domain, the city has given property owners confidence that they will not be forced to sell against their will.

Some of the most thriving neighborhoods in Saint Louis became successful because numerous small private developers bought and renovated undervalued properties in those neighborhoods.

The city has declared the 173-acre area blighted as a first step toward redeveloping it. Not surprisingly, that has worried the businesses already operating there. Joe Stricker, president of St. Louis Metalizing Co., said in 2005 that he had recently spent almost a million dollars installing a new grinding machine. But, he said, if the area were declared blighted, he wouldn't invest in any more equipment for his plant for fear that his property would be condemned. Douglas Kirberg, who runs a roofing company in the area, asked, "How can we afford to continue investing in our businesses when we are in such a vulnerable position for so many years?"[49]

The really puzzling thing about the Cortex project is that it's not clear why eminent domain is needed at all. The area is predominantly commercial, and there are plenty of underutilized properties that the city could acquire at reasonable cost. Moreover, Cortex doesn't have any specific plans for most of the 173-acre site. Instead, Cortex is planning to develop the area gradually in the next 25 years. That seems like plenty of time to negotiate voluntary buyouts and work around the businesses that wish to stay. The city might need to deal with individual properties that have been abandoned or fallen into disrepair (using the police power, as we'll discuss beginning on page 25), but there's no reason to put so many active, successful businesses under the cloud of eminent domain for 25 years.

Some of the most thriving neighborhoods in Saint Louis — including Soulard, LaFayette Square, Washington Ave., the University City Loop, and the Central West End — became successful not because a Board of Aldermen designated them for redevelopment using eminent domain, but because numerous small private developers bought and renovated undervalued properties in those neighborhoods. Designating the Cortex area as blighted guarantees this process will not happen there, because no private developer will dare to invest in the area without the city's prior approval.

Ozark, Rock Hill, and Liberty

Residents in Ozark's botched Finley River redevelopment area suffered from the same "limbo effect," according to the *Springfield News-Leader*. "The unknown is very difficult," Pam Hunter, one resident who put off repairs on her property, said. "Everyone keeps wondering when the city will make an offer ... It's been two years, we still don't know." Hunter and her neighbors were relatively lucky, as an intense public backlash ultimately forced the city to cancel the project. But the cloud of uncertainty discouraged investment in the area for three years while authorities were making their decisions.[50]

In 2005, Rock Hill administrator Don Cary noted of the city's "Market at McKnight" project that "redevelopment has hung like a cloud over the area for about seven years." Not surprisingly, a blight study found declining upkeep of buildings, driveways, fencing, and landscaping.[51] "It's like a yo-yo for us," resident Pearl Werner stated in October 2006. "You don't know from one day to the next."[52]

Dale and Mark Miller are a father-and-son team that owns Custom Expansion Fabricators in Liberty, Mo. They've been in their current location for two decades,

but in 2005 they became locked in an eminent domain fight against the city, which wanted to demolish their property and replace it with a retail area that would include a Lowe's hardware store.[53]

Unfortunately, Dale says, financial difficulties forced the city to put the redevelopment project on hold. The plan hasn't been formally abandoned, but the Millers have no idea when their land will be taken. Business is booming, and they would like to expand their facilities, but they don't dare sink more money into a site that could be condemned at any time. The city's actions all but guarantee that the area will stagnate until the city gets around to completing its project.

TAX REVENUES

One of the most common motivations for the use of eminent domain, especially in suburban communities, is the drive to enhance sales tax revenue. It is no coincidence that two of the eminent domain victims we consider in this report — Dr. Tourkakis in Arnold and Dr. Erondu in Gaslight Square — are dentists. Under Missouri law, services are not subject to sales taxes, and so dentists (as well as barbers, doctors, and other service professionals) do not generate as much in sales tax revenues as do ordinary retail establishments.

In 2005, Manchester sought to evict Jim Butler and his Saturn dealership to make room for the Manchester Highlands shopping center. Manchester Mayor Larry Miles defended the taking of Butler's dealership by stating that "the dealership provides little tax benefit to the city. Manchester only receives sales tax revenue from the sales of parts or vehicles to city residents. Under state law, the local sales tax from vehicle purchases goes to the municipalities where buyers live."[54]

Officials often claim that large-scale redevelopment projects are necessary to stimulate their city economies. They point to the jobs and sales tax revenues that a shopping mall or a Wal-Mart will bring. The problem is that, in most cases, those jobs and tax revenues are not newly created wealth, but are simply lured across the border from a neighboring jurisdiction. The availability of eminent domain for private projects has contributed to a "race to the bottom," in which cities compete to offer businesses ever-larger sweetheart deals to locate in their city, all at the expense of a few unlucky property owners.

For example, the only real evidence of "blight" on the 7700 block of Forsyth Boulevard in Clayton (see page 8) was the vacancy of the Library Ltd. building at the corner of Forsyth and Hanley Road. The site had previously been occupied by the well-known Library Ltd. bookstore, which became a Borders in the 1990s. But in 2002, Borders moved to the newly opened Brentwood Town Center, which was itself a large-scale redevelopment project on a site that had been constructed by demolishing a strip mall and 64 modest homes.[55] The city did not condemn any of those homes using eminent domain, but during the planning process both the city and the developers made it clear that eminent domain would be used if necessary.[56] That no doubt strengthened the developers' hands in their negotiations with homeowners.

Likewise, in 2002 the *St. Louis Post-Dispatch* blamed the Maplewood Wal-Mart project for the financial difficulties of the

The availability of eminent domain for private projects has contributed to a "race to the bottom," in which cities compete to offer businesses ever-larger sweetheart deals to locate in their city, all at the expense of a few unlucky property owners.

There is ample reason to question whether Missouri's metropolitan areas need more shopping malls and big-box retail stores.

Michael Fitzgerald stands outside his "blighted" home in Sunset Hills.

St. Louis Marketplace: "When the new store opens two years from now, Sam's Club plans to shutter its store that anchors St. Louis Marketplace just two miles away on Manchester Avenue. The closure could cripple the center, which has labored to maintain a major anchor since opening 10 years ago."[57]

In 2003, while debating the massive Power and Light project in downtown Kansas City, city councilman Jim Rowland worried about the risk involved with adding 425,000 square feet of new entertainment space, and how it would affect other parts of the city. "As a person who represents the Freight House District, Crown Center, Union Station, Westport, the Plaza and 39th Street, I have legitimate concerns about what will happen to those businesses that have existed for quite some time," he said.[58]

When the Manchester Highlands proposal was brought before a tax increment financing (TIF) committee in late 2005, the plan was opposed by representatives of Saint Louis County and the Parkway School District. "Parkway is much more than Manchester," the school district representative said. "A retail TIF probably would cannibalize sales from other communities in the district."

Perhaps the most striking bit of evidence that municipalities often use eminent domain to entice sales-tax-generating businesses away from neighboring municipalities is the location of eminent domain controversies. In Saint Louis County, there are two categories of cities: "A" cities keep the majority of the sales tax revenues collected within their boundaries, while "B" cities pool their sales tax revenues and then share them on the basis of each city's population. All of the major Saint Louis County redevelopment projects we consider in this report — Clayton, Sunset Hills,

Manchester, Rock Hill, Maplewood, Richmond Heights, and Brentwood — are in "A" cities. "B" cities have little incentive to replace residential properties with businesses because the residents' property taxes go to the city, while sales tax revenues have to be shared with other municipalities. Not surprisingly, we have been unable to find any significant commercial development projects using eminent domain in the "B" cities of Saint Louis County.[59]

There is, in short, ample reason to question whether Missouri's metropolitan areas need more shopping malls and big-box retail stores. These development projects seem to be driven more by a desire to siphon sales tax revenue from neighboring jurisdictions than by a genuine shortage of retail options. Therefore, even if it were true that banning the use of eminent domain for private profit would lead to fewer large-scale development projects, it's not at all obvious that this would be a bad thing. It is in everyone's interest to end this destructive arms race — the only major losers would be wealthy developers and big-box retail stores who would get fewer sweetheart deals — but no city can afford to disarm unilaterally. Statewide restrictions on eminent domain would serve as the equivalent of a "ceasefire," denying the use of eminent domain to all municipalities simultaneously.

DEALING WITH SLUMS

Some advocates of eminent domain concede that local governments use eminent domain too promiscuously, but they emphasize the need for eminent domain to deal with genuinely blighted neighborhoods.

It's easy to sympathize with this argument. Certainly, urban slums are a serious problem, and those who advocate "urban renewal" mean well. But in the long run, eminent domain is simply not an effective anti-blight tool. Rather, like squeezing a tube of toothpaste, slum clearance merely forces the problems of a blighted neighborhood from one part of town to another. It often makes things worse by undermining and punishing the very people who are essential to ultimately solving the problems of urban poverty.

Consider the case of Joseph Erondu, an immigrant dentist who opened a dental practice in the Gaslight Square area of Saint Louis. At the time, the area was, in the words of the *St. Louis Post-Dispatch*, "a haven for drug dealers and prostitutes." Yet Erondu persevered. He built up a clientele and helped to bring a small measure of order to the area. He also provided much-needed dental care to an underprivileged clientele that might have trouble getting out to suburban dental offices. "Gaslight Square was his love," said Erondu's wife. "He and his children and I would pick up trash from around dilapidated buildings; he thought of it as a lifetime opportunity."[60]

Erondu was thrilled to learn that the city was planning to redevelop the area. He hoped that with the revitalization of the area, his years of investment would pay off. But the city had no place for him in the new Gaslight Square. They took his land using eminent domain, forcing him to rebuild his practice from scratch in another neighborhood. Perhaps as a

Like squeezing a tube of toothpaste, slum clearance merely forces the problems of a blighted neighborhood from one part of town to another.

To the extent that a government redevelopment plan is needed at all, it should focus on finding ways to get more small business owners to open up shop in troubled neighborhoods.

result of the stress, Dr. Erondu fell ill while his new practice was being constructed. He died on June 23, 2005 — the same day the Supreme Court handed down its *Kelo* decision.

Property owners in the Power and Light district in Kansas City faced a similar fate. We've already discussed the Penners, who had to go to court to fight the city's initial lowball offer for their property (see page 13). Like Dr. Erondu, the Penners were an important bulwark against urban decay in their neighborhood. Ben Penner says that his father "roughed it out through the 1970s and 1980s, when all of the other businesses were leaving."[61] In 2004, despite the grim conditions, the store was still doing a brisk business. Yet when the city decided to redevelop the neighborhood, the Penners were not permitted to stay in the area.

Entrepreneurs like Dr. Erondu and the Penners are crucial to the genuine revitalization of a city neighborhood. They serve as anchors for troubled communities, picking up trash around their businesses, chasing away troublemaking teenagers, and reporting gang members and drug dealers to the police. They provide valuable goods and services and badly needed job opportunities to surrounding residents. To the extent that a government redevelopment plan is needed at all, it should focus on finding ways to get more small business owners like Dr. Erondu to open up shop in troubled neighborhoods. Yet too often, "redevelopment" plans do just the opposite, punishing small business owners who are foolish enough to try to do business in marginal neighborhoods by taking their land for a price that's typically far short of the total cost of relocation. Is it any wonder that cities have difficulty attracting businesses to struggling neighborhoods?

McRee Town

Another social entrepreneur is Jim Roos, president of Neighborhood Enterprises. After graduating from Concordia Lutheran Seminary in 1970, he started what he describes as a housing ministry, to provide affordable housing to the less fortunate. Adopting the slogan "in the city for good," he set up shop in Saint Louis, acquiring dilapidated buildings, fixing them up, and renting them out to low-income individuals. Roos also managed properties on behalf of others, including a non-profit organization called Situation in the Ordinary.

Roos has clung to his mission despite conditions that would have scared off the faint-hearted. His home and office are in the same low-income parts of the city as his rental properties. A former tenant once fired shots at his house on Lafayette Avenue. "One of the members of our church asked, 'why are you still there?'" Roos told the *St. Louis Post-Dispatch*. "Well, they missed."[62]

One of the neighborhoods in which he acquired property was McRee Town, one of the most notorious slums in Saint Louis. During the 1980s and 1990s, Roos worked to expand the stock of affordable housing in the neighborhood. He and his partners purchased nearly 40 buildings there — many of them abandoned or dilapidated — and gradually renovated them. They were nothing fancy, but the renovated properties passed city

inspections and provided decent, low-rent housing to people struggling to make ends meet.

Then in 1998, the nearby Botanical Garden approached the city with a plan to redevelop the area. The authorities created the Garden District Commission (GDC) to oversee the project. For five years, Roos urged the GDC to employ a selective redevelopment plan that demolished the worst buildings but saved those that were structurally sound. Roos hoped his organization would have a place in the redevelopment plan, applying the renovation expertise he had honed over a quarter of a century to rehabilitate the neighborhood at minimal cost to taxpayers.

Instead, Roos says, he and other property owners were ignored and excluded from the planning process. The GDC pressed ahead with its vision of the new McRee Town — a vision without much room for low-income residents. When Roos and his partners refused to sell their buildings, the GDC used the power of eminent domain to seize the property, evict the tenants, and demolish 23 buildings with 57 units. Because the compensation Roos received was only about 60 percent of what he would need to acquire comparable property elsewhere in the city, he was forced to cut back on the number of units available to low-income residents.[63]

In the areas where Roos' properties once stood, McBride and Son is now building more than 100 townhouses and single-family homes. One 2002 news story described the plan as "suburbia in the city," projecting that the homes would be priced from $120,000 to $180,000.[64] But by August 2007, some of the homes in the neighborhood (now renamed Botanical Heights) had been finished, and the company's website listed them as costing between $214,900 and $420,802. Those prices are simply out of reach for most of Roos' former tenants in McRee Town, who had struggled to pay their rents of $275 to $550 per month. Eddie Roth, former president of the Shaw Neighborhood Improvement Association, charged in 2003 that "not one unit [was] put aside east of Thurman for low-income housing. There was not even a plan for making housing opportunities happen for low-income or moderate-income families."[65]

In a 2003 letter to the editor of the *St. Louis Post-Dispatch*, Rev. Gerald J. Kleba, a Catholic priest whose parish included many McRee Town residents, charged that the redevelopment plan "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. Poverty will not be solved, it is cruelly exacerbated."[66] In 2000, Jestene Bowen, a resident of one of the buildings slated for demolition, said, "I guess it's good for the community." But she worried that her $16,000 bus driver salary would "put me in an area that's worse."[67]

East Village

The same problem can be seen in Kansas City's new East Village project to demolish a dozen blocks east of

Eddie Roth, former president of the Shaw Neighborhood Improvement Association, charged in 2003 that "not one unit [was] put aside east of Thurman for low-income housing."

Affordable housing is scarce, and it gets scarcer every time more of it is demolished by well-intentioned city planners.

downtown. The plan initially called for about 1,200 new housing units, with most priced at $195,000 and above. Brian Gorecki, of developer Sherman Associates, promised in April 2006 that the East Village project would include 300 affordable housing units. But there are signs that this promise may not be kept. More recent plans call for only 600 to 800 loft and condo units, with no mention of affordable housing units.[68] It seems likely that, as in McRee Town, financial pressures will lead to far fewer affordable units being constructed than originally promised — if any are constructed at all.

One of the property owners who will be displaced by the project is Andrea Carter, the owner of Wiltshire Apartments at 703 E. 10th St. She renovated the property and now operates 33 affordable apartments. Yet, inexplicably, the plan called for demolishing Carter's property. "I'm asking you to draw a circle around our building and let us keep going," she said in 2006.[69] She has also expressed interest in opening "a coffee shop that would stay open late and deter vagrants."[70] But it's more likely the city will demolish her apartment building and replace it with more expensive condominiums and single-family homes — homes Carter's current tenants probably can't afford.

The Problems with "Urban Renewal"

"Clearing" slums is easy. But it doesn't solve the problems of the people who inhabit them.[71] Affordable housing is scarce, and it gets scarcer every time more of it is demolished by well-intentioned city planners. It's hard to deny that McRee Town is now a more pleasant place to live than it was in 1995. But few residents of the old McRee Town are still there to enjoy it. Many of them have been forced into ever more crowded slums elsewhere in the city, where they're most likely facing the same problems they faced before. Indeed, the *Riverfront Times* noted in 2003 that many residents had originally come to McRee Town after they "had been displaced by other neighborhood redevelopment efforts over the years."[72] With the McRee Town evictions, the cycle began all over again, further undermining poor residents' sense that they had any control over their destiny.

The foundation of a good neighborhood is a tight-knit community. Neighbors who know and trust each other, and who recognize each others' children, are a great crime-fighting asset. Vigilant neighbors keep an eye on each others' homes and keep police informed about local troublemakers. Local business owners have a strong stake in neighborhood safety, and they often double as community watchdogs.

Only time can produce such a neighborhood. It takes years for friendships to form and local leaders to emerge. The establishment of strong and stable businesses can take decades. Local police officers need time to develop relationships with residents and business owners. Residents themselves need time to put down roots and feel like they have a stake in the success of their community.

Forced relocations like the ones that occurred in McRee Town shatter this network of social bonds, forcing people to start over from scratch. As Mindy Thompson Fullilove documents in her book

Root Shock, the "urban renewal" projects of the 1960s and 1970s displaced more than a million poor, mostly black residents of urban neighborhoods.[73] The process left psychological scars and social problems that lasted for decades. The arguments for those "urban renewal" projects were strikingly similar to the arguments that are heard today, and there is every reason to think that the results will be similar.[74]

Jane Jacobs examined the problems of slums in her 1961 masterpiece *The Death and Life of Great American Cities*:

> Conventional planning approaches to slums and slum dwellers are thoroughly paternalistic. The trouble with paternalists is that they want to make impossibly profound changes, and they choose impossibly superficial means for doing so. To overcome slums, we must regard slum dwellers as people capable of understanding and acting upon their own self-interests, which they certainly are. We need to discern, respect, and build upon the forces for regeneration that exist in slums themselves, and that demonstrably work in real cities.[75]

The same insights apply today. A more humane redevelopment plan for McRee Town would have built on existing social networks — limited though they may have been — as the foundation for a redevelopment plan with room for McRee Town's existing residents.

McRee Town was slowly improving during the late 1990s. Roos says that in April 1995, near the low point for the neighborhood, he had 20 vacant three- and four-bedroom units in McRee Town out of an inventory of about 100. The apartments were being offered for $175 to $215 per month. Five years later, in April 2000, the number of vacancies had dropped to two, and rents had risen to between $260 and $315 per month. Another sign that the neighborhood was beginning a renaissance was that in 1999, Roos began receiving applications from people living east of Gravois Park. They wanted to move to McRee Town because it had become safer than the neighborhood they were fleeing.

To be sure, McRee Town still had a lot of problems in 2000, but things were moving in the right direction. The neighborhood must have had some of those "forces for regeneration" Jacobs wrote about. The GDC should have identified them and enlisted their support for the redevelopment project.

Undoubtedly, such a redevelopment process would have meant more work for the GDC. They would have needed to develop relationships with existing property owners and grapple with the thorny social problems facing low-income residents. It was far easier for the GDC to evict all the low-income residents, demolish their homes, and bring in new, wealthier residents from the suburbs. For those who are only concerned with how the neighborhood looks, the redevelopment may have been a success. But for those concerned with improving the lives of people living in the slums, the McRee Town project was a step in the wrong direction.

THE POLICE POWER

The first step toward making genuine progress against urban slums is to take

The "urban renewal" projects of the 1960s and 1970s displaced more than a million poor, mostly black residents of urban neighborhoods. The process left psychological scars and social problems that lasted for decades.

Clearly, city officials need tools to deal with properties that have become genuine public nuisances. But it does not follow that eminent domain is the appropriate tool.

the sledgehammer of eminent domain away from city planners. Without the ability to call in the bulldozers for uncooperative residents, planners will have no choice but to work with existing property owners to find solutions that are acceptable to all the residents of struggling neighborhoods.

This is not to deny that blighted neighborhoods often have problem property owners. Clearly, city officials need tools to deal with properties that have become genuine public nuisances. But it does not follow that eminent domain is the appropriate tool. Government officials have always had other means at their disposal — with far fewer negative side effects — to deal with problem properties. For example, local governments can design fire and building codes to protect public safety. They can enact zoning ordinances that set minimum standards for the construction and maintenance of properties. They can enforce public health regulations to deal with unsanitary conditions. They can bring lawsuits against landlords whose properties have become neighborhood nuisances. And they can condemn houses found unfit for human habitation.

Such tools are collectively known as the "police power," which permits government officials to act to defend the health, safety, and welfare of any resident from threats posed by another. Eminent domain, in contrast, was traditionally understood as the power of the government to take property that was not a threat to one's neighbors for a public use, such as a road or a courthouse. Yet in *Berman*, Justice Douglas treated the two as synonymous.[76] As Richard Epstein, a legal scholar at the University of Chicago, has written[77], many problems with eminent domain abuse have resulted from this confusion of the eminent domain power with the police power.

Before the state can condemn a parcel of property under the police power, it must demonstrate that the owner has broken the law or posed a nuisance to his neighbors. And the state typically must give the property owner a reasonable opportunity to address the problem before initiating condemnation proceedings. That makes it difficult for nuisance designations to be used as pretext for unjust property confiscation.

MODEST REFORMS

Elected officials in Missouri reacted to the backlash against the *Kelo* decision by making a variety of changes to state and local laws. Here we consider two important reform efforts: Creve Coeur's supermajority requirement for the use of eminent domain, and HB 1944, Missouri's 2006 eminent domain legislation.

A Supermajority Rule in Creve Coeur

The voters of Creve Coeur approved a charter amendment in April 2007 that requires a two-thirds majority of its city council — six out of eight members — to take property by eminent domain.[78] The effort was spearheaded by four council members who were unhappy with the aggressive way the majority on the council had wielded its eminent domain powers.[79]

There is much to be said for their approach. In recent years, the Creve Coeur City Council has been sharply split

over the use of eminent domain in its municipality, with a majority authorizing it over the objections of a handful of dissenters. At the moment, there seem to be enough supporters of property rights on the council to block eminent domain abuse in Creve Coeur. But property owners in other municipalities may not find a supermajority requirement sufficient to protect their rights. Some cities do not have even one council member willing to stand up for property rights. A supermajority requirement will not protect property owners in those circumstances.

Moreover, as a matter of principle, it's not obvious why people's rights should be up for a vote at all — supermajority or otherwise. If taking property for private profit is wrong, as we believe it is, then it's wrong even if the taking is unanimously endorsed by the relevant board of aldermen. A supermajority requirement is a welcome addition, and could very well be an important check on eminent domain for public use, but it seems insufficient to protect property owners from the abuses documented in this study.

HB 1944

The most notable recent effort to reform eminent domain abuse in Missouri was House Bill 1944, passed during the 2006 legislative session. It included some worthwhile provisions, but fell far short of comprehensive eminent domain reform. The legislation protects farmland from "blight" designations[80], and sets a five-year time limit on all blight designations. It also increases the amount of compensation due to owners of "homestead" property (the owner's primary residence) and "heritage" property (property that has been in the owner's family for at least 50 years). And it increases the compensation due to residents and business owners, to cover relocation expenses.

While these are welcome improvements, they still leave a lot to be desired. The fundamental problem with HB 1944 is that its provisions dealing with the two most problematic types of eminent domain — "blight" and "economic development" — are symbolic measures rather than significant restrictions on the use of the eminent domain power. HB 1944 prohibits the use of eminent domain "for solely economic development purposes." But the vast majority of economic development projects already make use of a blight designation, so this is not likely to be a serious obstacle.

HB 1944 does require that in order to declare an area blighted, "the condemning authority shall individually consider each parcel of the property in the defined area with regard to whether the property meets the relevant statutory definition of blight." Taken by itself, that would be a significant improvement, because it would become harder for cities to take property merely because it is located in a blighted area. However, the next sentence makes the limitation all but irrelevant: "If the condemning authority finds a preponderance of the defined redevelopment area is blighted, it may proceed with condemnation of any parcels in such area." Dale Whitman, a University of Missouri law professor who supports the use of eminent domain for private development, notes approvingly that this language "would seldom be a barrier to actual redevelopment projects."[81]

Some cities do not have even one council member willing to stand up for property rights. A supermajority requirement will not protect property owners in those circumstances.

Prof. Dale Whitman probably sums up the impact of HB 1944 best when he concludes that its "blight" provisions "did very little to harm redevelopment, but neither did they do much to clean up abuses."

HB 1944 also requires that "any legislative determination that an area is blighted, substandard, or unsanitary shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence." Raising the bar on blight determinations is certainly a welcome change, but this language raises the question: substantial evidence of *what*? HB 1944 makes no changes to the vague definitions of blight that were already on the books, a crucial misstep.

Chapter 99 of the Missouri statutes defines "blight" as "any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors are detrimental to safety, health and morals."[82] Chapter 100 defines a blighted area as "an area which, by reason of the predominance of defective or inadequate street layout, insanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use."[83] Finally, chapter 353 defines a "blighted area" as "that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes."[84]

Given this laundry list of vague criteria, and given the court's history of deference toward legislative blight determinations, the requirement that a "preponderance" of an area be blighted, and that the blight be demonstrated by "substantial evidence" is not likely to pose a serious obstacle to the taking of most ordinary middle-class neighborhoods. And it certainly won't provide any protection to conscientious property owners, like Dr. Erondu, who make the mistake of living or working in a bad neighborhood. There was undoubtedly "substantial evidence" that a "preponderance" of the homes of Dr. Erondu's neighbors met the statutory definition of blight, but that in no way justified condemning his successful and socially beneficial dental practice.

Prof. Whitman probably sums up the impact of HB 1944 best when he concludes that its "blight" provisions "did very little to harm redevelopment, but neither did they do much to clean up abuses."[85]

The Institute for Justice Report

The Institute for Justice, the organization that represented Susette Kelo before the Supreme Court, agrees. In June, they released a report on eminent domain laws in all 50 states, evaluating the security of property rights in each state. Of Missouri's reform efforts, the report concluded: "When all of these minor changes are taken into account, the end result is not much

different from the starting point. Almost every home, business, and house of worship in Missouri may still be taken by any municipality or government agency with a little patience, ingenuity, and a wealthy developer to provide the financial incentive."[86] Missouri got a "D" grade for its weak property rights protections.

The report identifies five states with excellent reforms that could serve as models for Missouri. These are Florida, North Dakota, and South Dakota — all of which received "A" grades — and Michigan and New Mexico — both of which received a grade of "A-." These states' reforms point toward several important principles for eminent domain reform in Missouri.

First, eminent domain is not needed at all to deal with blighted areas. Reforms in Florida, New Mexico, North Dakota, and South Dakota flatly prohibit the use of eminent domain for private use, with no exceptions for "blight." As discussed previously, officials in these states will still have authority under the police power to condemn property that poses a threat to the health or safety of neighbors, but the eminent domain power will be limited to genuinely public uses like roads and courthouses.

Second, if "blight" takings are to be allowed, the definition of blight must be clear and narrow, and blight status must be evaluated on a parcel-by-parcel basis. That's the approach taken by Michigan (which got an "A-") as well as Alabama, Arizona, Georgia, New Hampshire, Oregon, South Carolina, and Virginia (which were graded "B+"). In those states, an entrepreneur like Dr. Erondu would be safe from condemnation as long as he diligently maintained his own property. The government would not be able to take his property merely because some of his neighbors had allowed their own properties to deteriorate.

Finally, the very best reform efforts add an additional safeguard for property rights by restricting transfers of property to private parties after it is taken by eminent domain. The need for such a safeguard is suggested by a dispute over a gas station in Creve Coeur. In 2004, the city council created the Olive Boulevard Transportation Development District (TDD), spearheaded by the Koman Group, a major development company. The TDD was charged with beautifying Creve Coeur's commercial corridor along Olive Boulevard. In 2005, the TDD sought to acquire an Amoco-BP station owned by Mike Nazemi.[87] TDDs sometimes exercise the power of eminent domain for public uses, such as widening a road or adding a right-turn lane, and the taking of Nazemi's property was publicly justified as necessary for widening Olive Boulevard. Oddly, though, the city council authorized condemnation of Nazemi's whole property, not just the portion needed to widen the road. Perhaps it's no coincidence that Koman had drawn up plans in 2004 showing Nazemi's gas station being replaced by an office building.[88]

A similar tactic was employed in 2004 by Alderman Thomas Bauer in the 24th Ward of Saint Louis. The ostensible purpose of the project was to add two additional turn lanes at the corner of Manchester and McCausland Avenues. However, rather than simply taking enough land for the turn lanes, Bauer also tried to condemn half a dozen adjacent businesses and replace them with a QuikTrip gas station.[89] It's difficult

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to see why adding turn lanes requires the condemnation of six businesses.

Widening streets and adding turn lanes are plainly public uses, so even strong legislation limiting eminent domain to public uses might not have protected the property in these cases. Reforms in other states offer a good solution. Florida's legislation prohibits the transfer of property to a private party for 10 years after the property is taken by eminent domain. South Dakota's reform provides that if a property has not been put to its intended use after seven years, the original property owner has the right to purchase it back at the original purchase price. Similarly, a proposed constitutional amendment in Nevada (which was approved by voters in 2006, but must be approved again in 2008 in order to take effect) gives owners the opportunity to buy back property taken via eminent domain if it has not been put to its intended use within five years.

The ideal reform in Missouri would be a restriction that combines these two concepts. That is, it would require that if a city government wants to transfer property to a private party within 10 years of an eminent domain taking, the original property owner be given the opportunity to repurchase the land at the same price paid by the government. That would give a property owner like Nazemi the protection he needs to ensure his property isn't taken for a feigned public use. If the TDD had taken Nazemi's property, widened the road, and then attempted to sell the remainder to Koman, Nazemi would have had the right to exercise his repurchase option and reclaim the property. Knowing this, Koman would have been forced to pay Nazemi a fair price for his land.

The Need for Constitutional Change

A final lesson of the IJ report is that the best reforms take the form of constitutional amendments. Voters in Florida, Michigan, New Hampshire, North Dakota, and South Carolina all voted to enshrine stronger property rights protections in their constitutions, making it less likely that a future Legislature will undermine those protections.

Two factors make the need for a constitutional amendment particularly urgent in Missouri. First, Missouri's Constitution contains Article VI, Section 21 (see page 6), which not only undermines the strong property rights language in Article I, but also states that "any city or county operating under a constitutional charter may enact ordinances" providing for condemnation of "blighted, substandard or insanitary areas." That provision could be read as giving municipalities the independent authority to exercise eminent domain power without the explicit authorization of the state Legislature.

Second, during the 2007 session, the Legislature approved a bill that would have once again expanded eminent domain powers in Missouri. House Bill 327, which was subsequently vetoed by Gov. Matt Blunt, included the Regional Railroad Authorities Act, which authorized the creation of "regional railroad authorities" and authorized them to exercise the power of eminent domain. To be sure, most of the land that a regional railroad authority would seize may be for public use. But it is still worrisome that the Legislature would pass legislation expanding eminent domain authority

before they had even finished the job of fixing existing problems with eminent domain law. There is good reason to be concerned that any statutory eminent domain restrictions the Legislature might enact would be eroded in subsequent legislative sessions. Only a constitutional amendment can offer lasting protection for private property rights.

CONCLUSION

If there is a single lesson from the eminent domain controversies considered in this report, it is that eminent domain is extremely convenient for those in power. It enables elected officials to draw up comprehensive plans for an area without having to worry too much about how their plans will affect those already living there. It gives well-connected developers the ability to assemble large tracts of land without having to persuade property owners to sell voluntarily. It is not at all surprising that cities and large developers are two of the strongest advocates of sweeping eminent domain powers.

But the convenience of elected officials and developers comes at a high cost for ordinary Missourians who find their property in the path of bulldozers. Assembling land without the use of eminent domain is difficult for a reason: Property rights ensure that developers do not cut corners by imposing the costs of a redevelopment project on a handful of unlucky property owners.

The progressive intellectuals who ushered in the modern eminent domain regime believed that with enough care, government officials could plan redevelopment projects that would take account of everyone's needs. They also believed that relaxing the protection of private property would allow government officials to solve the problem of urban poverty.

Our half-century experiment with allowing cities sweeping eminent domain powers has made it clear that they were wrong. Eminent domain empowers the wealthy at the expense of the poor, and the well-connected at the expense of the powerless. In the absence of strong property rights, wealthy developers manipulate the political process to transfer property from others to themselves. The poor and the middle class, who do not have the resources to hire an 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 — the Seravallis in Saint Louis, the Clayton property owners, and Steve Blechle in O'Fallon — succeeded in using the legal or political process to defend their property, albeit at a cost of hundreds of thousands of dollars. Moderately wealthy individuals, like Homer Tourkakis in Arnold and the Penners in Kansas City, were at least able to hire competent lawyers and press their rights in court. On the other hand, poorer targets, such as the residents of McRee Town and Hadley Township, 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

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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.

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4. For example, in his concurring opinion in the Missouri Supreme Court's *Centene Plaza Redevelopment Corporation v. Mint Properties* decision, Judge Stith noted: "The parties acknowledge that under the statute, what constitutes blight may vary from community to community; an area that may be acceptable in a more economically distressed community may be considered 'blighted' if out of keeping with the remainder of the particular community."
5. Article 13, Section 7 of the 1820 Constitution read, "no private property ought to be taken or applied to public use without just compensation." Missouri's second Constitution, adopted in 1865, retained this language as Article I, Section 16.
6. Indeed, during the 19th century, the courts proscribed the use of both the eminent domain and taxing powers for the benefit of private parties. For example, in 1885 the U.S. Supreme Court ruled that the city of La Grange, Mo, could not issue bonds for the benefit of a private company, holding that "The general grant of legislative power in the constitution of a state does not enable the legislature, in the exercise either of the right of eminent domain or of the right of taxation, to take private property, without the owner's consent, for any but a public object." *Cole v. La Grange*, 113 U.S. 1 (1885).
7. 198 U.S. 361 (1905).
8. *Id.* at 369.
9. 200 U.S. 527 (1906).
10. The details of the intellectual trends that undermined respect for property rights would be beyond the scope of this report, but Timothy Sandefur has documented these trends in great detail. See, for example: Sandefur, Timothy. "A Natural Rights Perspective on Eminent Domain in California: A Rationale for Meaningful Judicial Scrutiny of Public Use." *Southwestern University Law Review*, 2003, 32, pp. 569-676. "Mine & Thine Distinct: What Kelo Says about Our Path." *Chapman Law Review*, 2007, 9, 2006. "A Gleeful Obituary for Poletown Neighborhood Council v. Detroit." *Harvard Journal of Law & Public Policy*, 2005, 28, p. 651.
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12. 364 Mo. 974 (1954).
13. *Id.* at 986.
14. *Id.*
15. During the last half-century, Missouri judges have repeatedly affirmed that courts should defer to legislatures when determining what constitutes "public use." An excellent summary of these cases can be found in: Reinhart, Josh. "Tax Increment Financing in Missouri: Is It Time for Blight and But-For to Go?" *St. Louis University Law Journal*, 2001, 45, p. 1,019.
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[30] Collison, Kevin. "H&R Block to Move to Kansas City, Mo.'s Downtown Area." *Kansas City Star*. December 19, 2003.

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[79] The four council members were David Kassander, Laura Bryant, Jeanne Rhoades, and A.J. Wang. See: "A community seeks solution to eminent domain abuse." *St. Louis Post-Dispatch*. January 4, 2007.

[80] It's not obvious that this provision will have any practical effect. Dale Whitman, a University of Missouri law professor, notes that "there is no reported case in Missouri in which farmland was determined to be blighted by a local government, and no one to whom I spoke in many hours of conversations in the Capitol while these debates were going on mentioned any illustrative case." See: Whitman, Dale. "Eminent Domain Reform in Missouri: A Memoir." *Missouri Law Review*, 2006, 71, p. 721. Quotation appears on page 738.

[81] *Id.* p. 742.

[82] RSMo. § 99.020.

[83] RSMo. § 100.310.

[84] RSMo. § 353.020.

[85] *Id.* p. 743.

[86] *50 State Report Card: Tracking Eminent Domain Reform Legislation Since Kelo*. Washington, D.C: The Institute for Justice. June 2007.

[87] Nazemi was leasing the land at the outset of the development process, but he exercised his right of first refusal when the city expressed interest in purchasing the property.

[88] Barbour, Clay. "Little gas station fuels big development dispute." *St. Louis Post-Dispatch*. May 30, 2006.

[89] Seely, Mike. "Passing Gas." *Riverfront Times*. March 24, 2004.

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