



The Jury is in on Eminent Domain and Economic Growth

By Jonathan J. Miltimore

In the summer of 2006, the Iowa Legislature passed HF 2351. The bill was passed one year after the famous Supreme Court case *Kelo v. New London*.

In *Kelo*, the Supreme Court held that it was constitutionally permissible for the city of New London, Connecticut, to advance economic development by seizing the ordinary, non-blighted property of private citizens and forcibly transferring that property to another private party. The decision represented a massive shift in property rights jurisprudence and seemed in clear contravention of the Constitution's Fifth Amendment, which limits eminent domain for purposes of "public use."

In the wake of the public outcry following *Kelo*¹, Iowa and the vast majority of other states took steps over the next 18 months to protect citizens from property-hungry developers and ambitious local governments by passing legislation that placed limits on how and when eminent domain could be used. HF 2351 offered modest protections to Iowans by restricting the use of eminent domain to blighted or partially blighted areas and placing the burden of proof of blight on the municipality.

However, then-Governor Tom Vilsack vetoed the bill, claiming Iowa's economy would "be negatively impacted should HF 2351 become law and place us at a competitive disadvantage with other states."² The Iowa Legislature overrode Vilsack's veto by overwhelming margins — 90-8 in the House and 41-8 in the Senate.³

But did Governor Vilsack have a point? Do state imposed restrictions on eminent domain hinder economic health by impeding growth and development? Vilsack was not alone in predicting that placing limitations on eminent domain use would have dire economic consequences. Mayors in numerous cities, including Madison, Wisconsin, Hartford, Connecticut, and Indianapolis, Indiana, echoed similar portents.⁴

Scholars at the Institute for Justice recently published a study that analyzes this very question. By examining the economic data of the 42 states that passed eminent domain prior to 2007, the authors of the study conclude the following:

- "There appear to be no negative economic consequences from eminent domain reform. State trends in all three key economic indicators were essentially the same after reform as before.
- [E]ven states with the strongest reforms saw no ill economic effect compared to states that failed to enact reform. Trends in all three key economic indicators remained similar across all states, regardless of the strength of reform."

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The authors of the study conclude that despite the angst of reform opponents, no significant statistical changes could be observed in “construction jobs, building permits, and property tax revenues as a result of eminent domain reform.”

This is good news not only for civil libertarians and champions of individual rights, but also for proponents of economic development. The evidence strongly suggests that dynamic economic growth can be achieved while respecting the property rights of individuals. Contrary to the doom-and-gloom prophecies of reform opponents, the study reveals that municipalities and contractors need not employ strong-arm tactics to enhance city development.

Intuitively this makes sense. There is nothing that prevents developers from buying people out of their homes. Government coercion may be a more expedient tool, but contractors are finding that, despite the power of sentiment, the vast majority of people are willing to part with their homes if the price is right.

Iowa should take this opportunity to reexamine the Hawkeye state’s own eminent domain laws. In 2007, Iowa received a B- grade from the Castle Coalition, which graded states on their 2006 eminent domain reforms. Eighteen states received a higher grade than Iowa.⁵ Under the current law, Iowans can still be forced out of their homes if cities and developers can make the case that at least 75 percent of individual properties are deemed to be in a state of “blight,” even if their own property is not.⁶

Strengthening the property rights of Iowans is an issue that enjoys great bipartisan appeal, and Legislators should take additional steps to prevent future eminent domain abuse. It is true that rampant eminent domain abuse has not been a major problem in Iowa, but Kelo made it all too clear that past prudence does not ensure future discretion.

Endnotes

- 1) V. Last, “The Kelo Backlash,” The Weekly Standard, August 20, 2006, <<http://www.cbsnews.com/stories/2006/08/18/opinion/main1912758.shtml>> (February 4, 2008).
- 2) “Iowa Democratic Party: Governor Vilsack vetoes Restrictive Eminent Domain Provisions,” U.S. States News, June 2, 2006, <<http://www.allbusiness.com/government/3695911-1.html>> (January 31, 2007).
- 3) Dan Gearino, “Iowa Legislature overrides eminent domain veto,” Quad-City Times, July 15, 2006, <<http://www.qctimes.com/articles/2006/07/15/news/local/doc44b7bdec0f9a6627889376.txt>> (February 5, 2007).
- 4) Dick Carpenter II, PhD, & John K. Ross, “Doomsday? No Way: Economic Trends and Post-Kelo Eminent Domain Reform,” Institute for Justice, January 2008, p. 3-4, <http://www.ij.org/pdf_folder/other_pubs/doomsday-no-way.pdf> (January 30, 2007).
- 5) Castle Coalition, 50 State Report Card: Tracking Eminent Domain Reform Legislation since Kelo, June 2006, <www.Castle-Coalition.org/publications/report_card> (February 5, 2007).
- 6) Ibid.

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