

**GOVERNMENT 'THEFT':**

# The Top 10 Abuses of **EMINENT DOMAIN**



**1998-2002**



By Dana Berliner

## Executive Summary

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**Eminent domain is the power of government to force people from their family homes, to destroy their businesses.**

It is a despotic power, and America's Founders placed limits on the condemnation power in the Fifth Amendment to the U.S. Constitution. Governments may condemn only for "public use," as well as paying just compensation. All 50 state constitutions also limit condemnations to those for public use. Yet government increasingly uses the eminent domain power to condemn property for *private* uses. Acting more like real estate agents than public servants, government agencies form unholy alliances with developers in order to force the rightful owners off of their property.

In this report, we bring together the 10 most egregious uses of eminent domain for private purposes from 1998 to 2001. These 10 are just the tip of an iceberg. We selected them from more than 100 that have come to our attention, yet there are many others we do not even know about. Indeed, in 1998, the head of the Council for Urban Economic Development estimated that cities undertake roughly 80 projects per year for private businesses that involve condemnations,<sup>1</sup> and each project could involve more than one condemnation. Many owners caved in to pressure and settle. Others resist condemnation in court, but the legal decisions are unpublished. Still others receive minimal news coverage or coverage only from local papers that do not survive in electronic form. For example, we could find few details on a mobile home park for fixed-income senior citizens that was condemned for a private mall project that fell through in Garden Grove, California.<sup>2</sup> We are thus regretfully certain that there are many other condemnations from this time period that are as offensive and improper as the ones listed in this report.

These ten low points of eminent domain abuse include:

- Removing an entire neighborhood and the condemnation of homes for a privately owned and operated office park and other, unspecified uses to complement a nearby Pfizer facility in New London, Connecticut
- Approving the condemnation of more than 1,700 buildings and the dislocation of more than 5,000 residents for private commercial and industrial development in Riviera Beach, Florida
- A government agency collecting a \$56,500 bounty for condemning land in East St. Louis, Illinois, to give to a neighboring racetrack for parking
- Replacing a less-expensive car dealership with a BMW dealership in Merriam, Kansas
- Condemning a building in Boston just to help the owner break his leases so that the property could be used for a new luxury hotel
- Seizing the homes of elderly homeowners in Mississippi and forcing them and their extended families to move in order to transfer the land to Nissan for a new, privately owned car manufacturing plant, despite the fact that the land is not even needed for the project
- Taking the building of an elderly widow for casino parking in Las Vegas, claiming it was blighted but without ever even looking at the building
- Improperly denying building permits to a church in New Cassel, New York, then condemning the property for private retail as soon as it looked like the church would begin construction
- Condemning 83 homes for a new Chrysler plant in Toledo, Ohio, that was supposed to bring jobs but ended up employing less than half the projected number because it is fully automated
- Forcing two families (along with their neighbors) to move for a private mall expansion in Hurst, Texas, while spouses were dying of cancer

<sup>1</sup> Dean Starkman, "Take and Give: Condemnation is Used to Hand One Business Property of Another," *Wall Street Journal*, Dec. 2, 1998, at A1.

<sup>2</sup> Tiffany Horan, "\$400 million mall; theme park floated," *Orange County Register*, March 7, 1998, at A1; Jon Hall, "There Goes the Neighborhoods," *OC Weekly*, March 6, 1998.

## New London, Connecticut

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The New London Development Corporation (NLDC), a private nonprofit organization, has been trying for more than three years to take the property of seven homeowners in the Fort Trumbull area of New London in order to construct privately owned office buildings and other, unspecified uses, that will complement the new Pfizer global research facility nearby.<sup>3</sup> The Fort Trumbull neighborhood was a close-knit community of approximately 80 homes and a few small businesses. Among those slated for condemnation are the homes of the Derys and Cristofaros. Wilhelmina Dery is 83 years old and lives in the house where she was born. Her son, daughter-in-law, and their children live next door. In comparison, the Cristofaro's mere 40-year tenure seems short. This will be the second Cristofaro family home condemned for a private redevelopment project. The first one was supposedly condemned for a seawall but in fact became part of an office complex. When the family moved, they brought the trees that they had planted next to their old home and have grown a beautiful garden around them at their Fort Trumbull home.<sup>4</sup>

Across from the Fort Trumbull residential community was an abandoned U.S. Naval research facility. No one objected to the replacement of the abandoned facility with a luxury hotel (for visitors to Pfizer) and upscale housing (for Pfizer employees). They only objected when it became clear that the NLDC planned to replace their working-class, waterfront community with offices for businesses related to Pfizer. The NLDC added insult to injury by exempting the Italian Dramatic Club, a politically well-connected membership club, while razing every home around it.<sup>5</sup>

Rather than doing the condemnations itself, the City of New London delegated its eminent domain power to the NLDC, a private organization. The former head of the NLDC, Claire Gaudiani, explained "we all have to sacrifice." It seems she meant that the homeowners would sacrifice, while the private developer in the project would benefit. Seven homeowners filed suit, and the case went to trial in mid-2001.<sup>6</sup> As of March 1, 2002, no decision has been issued.

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<sup>3</sup> Laura Mansnerus, "Testing Limits of Land Use as Owners Refuse to Let Go," *The New York Times*, July 23, 2001, at B1.

<sup>4</sup> Kathleen Edgecomb, "Fort residents: 'You can't call a home a home here'," *The Day*, Dec. 21, 2000.

<sup>5</sup> Izaskun E. Larraneta, "New London, Conn., Development Group Accused of Pushing too Hard for Pfizer," *The Day*, Aug. 14, 2001.

<sup>6</sup> David Herszenhorn, "Residents of New London Go to Court, Saying Project Puts Profit Before Homes," *The New York Times*, Dec. 21, 2000, at B5; Izaskun Larraneta, "Eminent domain trial resumes today," *TheDay.com*, Aug. 13, 2001.

## Riviera Beach, Florida

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City Council members voted unanimously to approve a \$1.25 billion redevelopment plan with the authority to use eminent domain to condemn at least 1,700 houses and apartments and dislocate 5,100 people. The city will then take the property and sell the land to commercial yachting, shipping, and tourism companies. The plan also would move Route 1 and replace a city park with an enlarged harbor. The proposal still needs the state's approval. If it occurs, it will be one of the largest exercises of eminent domain in the United States.<sup>7</sup>

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Many of the residents are descendants of Bahamian conch fishing families. They, as well as others, do not want to give up their homes.<sup>8</sup> Riviera Beach is one of the last remaining areas for affordable waterfront homes in Florida. As many as 150 boat-related businesses could be put out of business. The Maritime Industries Association of Palm Beach County has expressed concerns, after being contacted by one of the potential condemnees, Martin Murphy of Cracker Boy Boat Works. His boating service has been there for decades and cannot relocate.<sup>9</sup> The American Indian Movement also is keeping an eye on the project, because some of the development will take place on the remains of an ancient village. Also

scheduled for demolition as part of the plan is Riviera Beach's last redevelopment project. After putting in nearly \$1.9 million in public money, the city has decided the commercial development at Spanish Courts is a flop. According to city officials, it just wasn't a big enough project. According to Riviera Beach officials, if they spend much more money and displace thousands of residents, then the project will really take off.<sup>10</sup>

<sup>7</sup> Scott McCabe, "Residents Vow to Fight Riviera Plan," *Palm Beach Post*, Dec. 17, 2001, at 1B.

<sup>8</sup> *Id.*; Scott McCabe, "Riviera Approves Waterfront Project," *Palm Beach Post*, Dec. 20, 2001, at 1B.

<sup>9</sup> Jim Di Paola, "The Path of Progress", *CityLink Online*, Jan. 30, 2002.

<sup>10</sup> Scott McCabe, "Riviera Beach Set to Say 'Adios' to Spanish Courts," *Palm Beach Post*, Feb. 19, 2002, at 1A.

## East St. Louis, Illinois

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In 1999, the Southwestern Illinois Development Authority (SWIDA) began the process of condemning 148 acres belonging to National City Environmental and reselling it to Gateway International Motorsports Corp. for a parking lot to accommodate visitors to large race events. Gateway had previously tried to purchase the property, but the owner didn't want to sell.<sup>11</sup>

So Gateway went to the offices of SWIDA. It picked up an application for SWIDA to use eminent domain and paid the \$2,500 application fee for condemnation for "private use."<sup>12</sup> (SWIDA's lawyers must have forgotten to tell the agency that property may be condemned only for "public use" under the U.S. and Illinois constitutions.) For private condemnation, SWIDA requires the private beneficiary to reimburse SWIDA for the value of the condemned property and also charges a percentage as a commission.<sup>13</sup> For the Gateway condemnation, SWIDA would receive \$56,500,<sup>14</sup> more than its appropriated budget that year. SWIDA officials also got free tickets to Gateway events.

There was no pretense that the property was blighted. It was just property that Gateway wanted, that it wasn't able to buy, and that SWIDA procured for it for a substantial fee. The best SWIDA could do was claim that the condemnation served a public purpose because Gateway would bring money into the city through its racing events. The owner was not convinced and opposed the condemnation in court.

The case has gone through a series of reversals. First, the trial court approved the condemnation, but the Illinois Appellate Court rejected it in stinging language.<sup>15</sup> The Illinois Supreme Court then reversed again, 4-3, in sharply divided opinions.<sup>16</sup> Within two months, the Illinois Supreme Court granted rehearing, agreeing to reconsider the case.<sup>17</sup> A decision is still pending as of March 1, 2002.

<sup>11</sup> Daniel C. Vock, "Quick Take OK For Commercial Use: Court," *Chicago Law Bulletin*. April 19, 2001. at p.1.

<sup>12</sup> *Southwestern Illinois Dev. Auth. v. National City Environmental, LLC*, 2001 Ill. LEXIS 478, \*4 (Ill. Apr. 19, 2001).

<sup>13</sup> *Id.* at \*4 and \*5.

<sup>14</sup> Brief of Institute for Justice and The Heartland Institute *Amici Curiae*, *Southwestern Illinois Dev. Auth. v. National City Environmental, LLC*, Docket No. 87809, Supreme Court of Illinois.

<sup>15</sup> *Southwestern Illinois Dev. Auth. v. National City Environmental, LLC*, 710 N.E.2d 896 (Ill. 1999).

<sup>16</sup> Mike Fitzgerald, "Illinois Supreme Court Upholds Seizure of Land for Motorsports Firm's Parking," *Belleville News-Democrat*, April 20, 2001; *Southwestern Illinois Dev. Auth. v. National City Environmental, LLC*, 2001 Ill. LEXIS 478 (Ill. Apr. 19, 2001).

<sup>17</sup> "Court Will Rehear Case Involving Taking Land for Raceway," *The Associated Press State & Local Wire*, June 4, 2001.

## Merriam, Kansas

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In 1998, the City of Merriam condemned William Gross's property, which he leased to a used car dealership, so that Gross's neighbor, a BMW dealership, could expand.<sup>18</sup> The city sold Gross's property to Baron's BMW for the same price they paid Gross and gave Baron \$1.2 million in tax-increment financing to build a new BMW dealership and add a Volkswagen dealership. The City Council said the project served the public interest because the city would make \$500,000 per year in sales tax revenues from the BMW and Volkswagen dealerships.

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This is hardly Kansas' first foray into condemnations for private parties. In 1998, the state took 150 homes for the Kansas International Speedway, and the Kansas Supreme Court ruled in favor of the takings when 30 homeowners tried to fight.<sup>19</sup>

As if it weren't bad enough to replace a used car dealership with a new car dealership, Gross had proposed using the site for a Mitsubishi dealership, which would have raised the site's yearly tax revenue from \$40,000 to \$150,000. The city refused. It wanted the BMWs. Gross depended on the income from his dealership for his retirement income.<sup>20</sup> He lost his property and his business, but the citizens of Merriam were less than pleased. At the next election, voters responded by ousting half of the city council.<sup>21</sup>

<sup>18</sup> Dean Starkman, "Take and Give: Condemnation is Used to Hand One Business Property of Another," *Wall Street Journal*, Dec. 12, 1998, at A1.

<sup>19</sup> John T. Dauner, & Steve Nicely, "Speedway Wins High-Court Test; Ruling Approves Condemnation Powers, 125 Percent Valuation," *The Kansas City Star*, July 11, 1998, at p. A1; *State ex rel. Tomasic v. The Unified Government of Wyandotte County/Kansas City, Kansas*, 962 P.2d 543, 554 (Kan. 1998).

<sup>20</sup> Tim Baxter, "Court Sets Pace on Baron Case; Setting Value on Land Being Condemned Could Take Months," *The Kansas City Star*, Sept. 5, 1998, at p. 1.

<sup>21</sup> Martin Wooster, "Government as Land-Grabber," *American Enterprise*, June 1, 2001, at p. 57.

## Boston, Massachusetts

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The Boston Redevelopment Authority (BRA) plans to seize a 14-story, 110-year-old granite and sandstone Ames Building, in order to break the leases with the building's tenants. The Intercontinental Hotel bought the property in 1998 and wants to convert the building into a boutique hotel.<sup>22</sup> Inconveniently, the building happened to have tenants. Two of them—the D'Angelo sandwich shop and the Taylor & Partners architectural design firm—didn't want to move. D'Angelo's lease ran until 2012, and Taylor's until 2003.<sup>23</sup> In other words, the landlord wants to get out of its long-term lease agreements. Typically, such disputes can be handled by buying out the tenant, simply waiting until the lease is up, or paying whatever penalties are stated in the lease agreement itself. Eventually the architectural firm settled, but the sandwich shop brought suit.

But the owner has politically powerful friends and has managed to get the government to intervene in this utterly private dispute.<sup>24</sup> So the BRA is condemning the building, which automatically breaks the leases. That way, the owner won't have to pay the penalties or reimburse the tenants for what they lose. Instead, the owner gets off nearly scot-free, and then the BRA will transfer the property right back to the same owner, minus those pesky leases, for development as the Intercontinental Hotel.

Tenants fare particularly poorly in condemnations. Business tenants usually expend a significant amount of money customizing their space, installing fixtures, and building their business in that location. When a condemnation occurs, leases are broken, and the tenants get little or no reimbursement for their losses and relocation expenses. Many, if not most, condemned businesses never reopen.

<sup>22</sup> Sarah Schweitzer, "BRA Plan to Seize Building Spurs Suit," *The Boston Globe*, July 28, 2001, at A1.

<sup>23</sup> *Id.*

<sup>24</sup> Paula Restuccia, "Hub Zoning Code Causes Contention," *The Boston Herald*, Jan. 25, 2002, at RE39.

## Canton, Mississippi

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Mississippi would not ordinarily be a contender for the Top Ten abusers of eminent domain. Up until 2000, Mississippi almost never condemned property for the benefit of private parties. However, in 2000, Mississippi passed the “Nissan Act.” It authorized the State to pour money and incentives into a future Nissan manufacturing facility. And it gave the Mississippi Major Economic Impact Authority (MMEIA) the power to condemn property for the new facility.<sup>25</sup>

After pressuring most owners to sell, the MMEIA condemned three homes in 2001 in order to transfer the land to Nissan. Andrew Archie is in his late 60s, diabetic, and in poor health. He has lived on the land since he was eight years old. He lives there surrounded by his wife, children, and other family members. His children, including Lonzo Archie, who owns one of the other homes being condemned, have never lived anywhere else. The condemnation will require 15 Archie family members to move.<sup>26</sup>

**But the MMEIA wants to save face with future developers, so that the next time it promises to take someone’s home for private development, the developer will believe the MMEIA will follow through.**

The MMEIA also is condemning the home of Percy and Minnie Bouldin, who have lived in their home for more than 40 years and raised their 13 children there. Percy did much of the construction of their house with his own hands.

Amazingly, both Nissan and the former head of the MMEIA have publicly admitted that the project will go forward even if Nissan can’t get the Archie and Bouldin homesteads. The three properties constitute a tiny portion of the overall area—28 acres at the southern end of the project out of 1,400 acres. But the MMEIA wants to save face with future developers, so that the next time it promises to take someone’s home for private development, the developer will believe the MMEIA will follow through.<sup>27</sup>

The Archies and Bouldins are close friends, and both families challenged the constitutionality of condemning their homes. The trial court ruled against them on July 26, 2001, but the Mississippi Supreme Court stayed the condemnations until it could hear the case in mid-2002.<sup>28</sup>

<sup>25</sup> See Record in *Percy Lee Bouldin and Minnie Pearl Bouldin, et al., v. Mississippi Major Economic Impact Authority*, Case No. 2001-CA-01296 (Mississippi Supreme Court).

<sup>26</sup> Timothy R. Brown, “State files for eminent domain to grab land for Nissan Project,” *Associated Press*, Feb. 9, 2001.

<sup>27</sup> David Firestone, “Black Landowners Hold Ground in Mississippi,” *The New York Times*, Sept. 10, 2001.

<sup>28</sup> Heath A. Smith, “Nissan Land Hearings Delayed,” *The Clarion-Ledger*, Oct. 1, 2001.



## Las Vegas, Nevada

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When John Pappas died, he left his widow, Carol, a commercial building in downtown Las Vegas, intending that its rents would provide for her retirement.<sup>29</sup> On December 8, 1993, the Las Vegas Redevelopment Agency served Mrs. Pappas with notice that it was condemning her properties. The purpose of the condemnation was to transfer the land to a consortium of eight casinos for construction of a parking garage.<sup>30</sup> Among the 15 legal documents she received that day was one stating that she had 30 days to respond. Unbeknownst to Mrs. Pappas, however, there was a hearing in only seven days to decide whether the agency would get immediate possession of the property. Mrs. Pappas did not know about the hearing and did not attend. The Judge granted title to the agency, and the buildings were promptly demolished. Later, the Judge recused himself because he had invested in one of the casinos that was to acquire the property.

The case has been in litigation ever since. In 1996, a district court judge ruled that the condemnations were unconstitutional and illegal. In a harshly worded 65-page opinion, the judge found that the agency had "set itself up as an entity only unto itself." The court found that the agency ignored many statutes and procedures. For example, the supposed justification for the condemnation was that the area was blighted. However, the surveys of the area revealed no blight, and in fact, no one had even surveyed Mrs. Pappas' block.<sup>31</sup>

On March 29, 2000, the Nevada Supreme Court threw out the city's second too-early appeal and warned the city's attorneys against providing further "misleading" information.<sup>32</sup> After a series of judges recused themselves for accepting campaign contributions from casino interests, the Nevada Supreme Court ruled that campaign contributions did not disqualify judges.<sup>33</sup> The case then returned to the trial courts for various further proceedings on other issues. It is finally heading up to the Nevada Supreme Court and will probably be heard in 2002.

<sup>29</sup> "The Pappas Dispute," *Las Vegas Review-Journal*, Sept. 3, 2000, at 2D.

<sup>30</sup> Steve Sebelius, "It Was Worth Trying, Anyway," *Las Vegas Review-Journal*, Aug. 27, 2000, at 1J.

<sup>31</sup> *City of Las Vegas Downtown Redevelopment Agency v. Pappas*, Case No. A327519, Opinion on Motion to Dismiss (July 3, 1996). Many of the facts in this section are taken from the court's ruling.

<sup>32</sup> Mike Zapler, "Settlement talks between city, family stalled," *Las Vegas Review-Journal*, April 11, 2000, at 1B; "Misleading the Court," *Las Vegas Review-Journal*, April 11, 2000, p. 6B.

<sup>33</sup> Ed Vogel, "State's high court rules judge can stay on redevelopment case," *Las Vegas Review-Journal*, Aug. 19, 2000 at 4B; *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial District Court*, (Nev. 2000).

## New Cassel, New York

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St. Luke's Pentecostal Church, led by Pastor Fred Jenkins, had been saving for more than a decade to purchase property and move out of the rented basement where it holds services. It bought a piece of property on Prospect Avenue to build a permanent home for the congregation.<sup>34</sup> Before purchasing the property, it obtained a list of exactly what it would need to do to get all the permits for the building. After the purchase, the building department denied the permits for insufficient parking, an issue never mentioned before.

After successful litigation to acquire the parking variance, the North Hempstead Community Development Agency condemned the property. Unbeknownst to both St. Luke's and the previous owners, the building had been slated for condemnation. No one had bothered to tell St. Luke's during the discussions about the building permits or when it was struggling to get the parking variance. The head of the agency even testified against the parking variance but never mentioned that St. Luke's was wasting its time and money because he planned to condemn the property.

**When St. Luke's tried to object to the condemnation, the NHCDA argued, successfully, that St. Luke's had lost its opportunity to object in 1994, before it had even bought the property.**

St. Luke's conducts extensive community outreach, including paying for members funerals, helping the homeless, providing heating oil to needy families, and it had planned to open both a church and daycare facility on the new site. The church property was condemned for private retail development.

When St. Luke's tried to object to the condemnation, the NHCDA argued, successfully, that St. Luke's had lost its opportunity to object in 1994, before it had even bought the property. New York has a 30-day window for objecting to condemnations, and the window happens right after the agency approves a redevelopment plan, often long before the condemnation actually takes place. After title passed to the agency, St. Luke's discovered that the time limit had never applied, because the condemnation was under an exception. Now St. Luke's is trying to get the first court to return the property.<sup>35</sup>

Other owners have been tripped up by New York's requirement that future condemnations be challenged before they occur. Bill Brody's commercial buildings in Port Chester, which he painstakingly renovated over six years, have been condemned for a parking lot for a Stop N' Shop.<sup>36</sup> And William and Bill Minnich's family woodworking business will be condemned for parking for a Home Depot in Harlem.<sup>37</sup> Both owners would have challenged the condemnation but did not know about New York's procedures and missed the brief window. They brought a federal lawsuit challenging these procedures, but it was dismissed and is now on appeal.<sup>38</sup>

<sup>34</sup> Victor Manuel Ramos, "In North Hempstead: A Spiritual Homecoming Deferred; Redevelopment claims dreams of church's building," *Newsday*, Feb. 4, 2001.

<sup>35</sup> Marni Soupcoff, "North Hempstead Bulldozes Constitutional Rights," *The Westbury Times*, Feb. 22, 2002.

<sup>36</sup> "How the eminent domain bulldozer created a private-property backlash," *Governing*, Jan. 2001, at 26; Marni Soupcoff, "NY Gov't Land Grab," *New York Post*, December 18, 2000; Len Miniace, "U.S. judge extends ban on condemning property," *The Journal News*, Dec. 16, 2000.

<sup>37</sup> J.A. Lobbia, "East Harlem Suit Challenges Eminent Domain Property Rights and Wrongs," *Village Voice*, Dec. 26, 1999.

<sup>38</sup> *Minnich v. Gargano*, Case No. 01-9219 (2d Cir., filed Oct. 18, 2001).

## Toledo, Ohio

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In 1999, the city of Toledo condemned 83 homes to make room for expansion of a Daimler-Chrysler Jeep manufacturing plant. Even though the homes were well-maintained, Toledo declared the area to be a slum. Threatening to leave town otherwise, Chrysler asked for and received \$232 million in state and municipal aid for its new plant. Using \$28.8 million loaned to the city by HUD, Toledo paid for relocation of the property owners and used eminent domain to acquire the homes of those who resisted its offers. Toledo had hoped to repay the loan through increased tax revenue from the expected 4,900-person Chrysler workforce. However, the new plant that Jeep built was fully automated, assembling cars by laser-guided robots without much human participation. In total, the new plant employs only 2,100 workers.<sup>39</sup>

Other Ohio cities are anxious to get on the eminent domain bandwagon. The city of Akron recently proposed an urban renewal project in East Akron that would condemn houses and businesses for the benefit of a Mercedes-Benz dealership.<sup>40</sup> One of the homes is owned by a Korean War veteran and his wife, who have lived there for 30 years. Nearby Richfield also is in the process of condemning homes and businesses for transfer to a private developer to develop commercial property.<sup>41</sup>

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<sup>39</sup> Gideon Kanner, "The New Robber Barons," *National L.J.*, May 21, 2001, at A19.

<sup>40</sup> Julie Wallace, "Residents Blast Plan for Ganley Expansion," *Akron Beacon-Journal*, Dec. 11, 2001, at D1; Editorial, "Should City Aid Land Deals for Private Business?," *Akron Beacon Journal*, Nov. 28, 2001, at A15.

<sup>41</sup> Resolution No. 103-2001 of the Council of the Village of Richfield, Summit County, State of Ohio (passed on Oct. 2, 2001).

## Hurst, Texas

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**In court, the owners presented evidence that the land surveyor who designed the roads for the mall had been told to change the path of one road to run through eight of the houses of the owners challenging the condemnations.**

The city of Hurst, Texas, agreed to let its largest taxpayer, a real estate company, expand its North East Mall and thus increase its sales and property tax revenue. There happened to be 127 homes in the way, but that didn't deter the City. Under the threat of eminent domain, almost all the homeowners sold their property. Ten did not, and brought a lawsuit.<sup>42</sup> The Lopez, Duval, Prohs, and Laue families had each owned their homes for approximately 30 years. Others had been there for more than a decade.<sup>43</sup>

A Texas trial judge refused to stay the condemnations while the suit was ongoing, so the residents lost their homes.<sup>44</sup> Leonard Prohs had to move while his wife was in the hospital with brain cancer.<sup>45</sup> She died only five days after their house was demolished. Phyllis Duval's husband also was in the hospital with cancer at the time they were required to move. He died one month after the demolition. Of the ten couples, three spouses died and four others suffered heart attacks during the dispute and litigation.<sup>46</sup>

In court, the owners presented evidence that the land surveyor who designed the roads for the mall had been told to change the path of one road to run through eight of the houses of the owners challenging the condemnations.<sup>47</sup> The case ground on through litigation, and with no final decision ever issued, the owners finally settled in June 2000. Until the settlement, they had received no compensation at all for the loss of their homes. All are still upset at what the city did to them.<sup>48</sup>

<sup>42</sup> "10 Residents Under Siege by Proposal for Big Mall," *New York Times*, May 18, 1997, at A16.

<sup>43</sup> Jennifer Packer, "Fighting for home; settlement allows mall expansion, to the sorrow of residents," *Dallas Morning News*, July 2, 2000, at 1S.

<sup>44</sup> "Texas Judge Clears Way for Expansion of Mall," *New York Times*, May 24, 1997, at A9.

<sup>45</sup> Eric Felten, "Kiss Your House Good-Bye," *Reader's Digest*, March 2001.

<sup>46</sup> Jennifer Packer, "Fighting for home," *supra* fn. 43.

<sup>47</sup> Kendall Anderson, "Hurst accused of altering road plan; City denies changing course to allow for condemnations," *Dallas Morning News*, June 26, 1997, at 1G.

<sup>48</sup> Jennifer Packer, "Fighting for home," *supra* fn. 43.

## Conclusion

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Most people would be shocked to discover that governments across the nation are taking individuals' homes only to transfer that property to a favored business or neighbor—or that businesses are often being condemned so that another business can take their property and make a larger profit. Yet in the past few years, governments across the country have taken private homes and businesses to replace them with other privately owned single businesses, malls, industrial developments and upscale housing. These "Top Ten" abuses are just a fraction of the many abuses of eminent domain throughout the nation. Under our Constitution, property rights are not conditioned on the whim of those with financial and political influence. Nor should they be sacrificed just so municipalities can put more money in their coffers. The time has come to end the abuse of eminent domain for the benefit of private parties, and the Castle Coalition will be at the center of a nationwide effort to resist the types of abuses catalogued in this report.

The Castle Coalition is a nationwide network of property owners and community activists that seeks to prevent government and private parties from taking private property through eminent domain for private use. Although the federal and state constitutions limit condemnations to “public use,” governments at every level increasingly use condemnations to benefit politically and financially powerful private parties. This report, *The Ten Worst Abuses of Eminent Domain, 1998-2002*, by Institute for Justice Senior Attorney Dana Berliner, describes 10 of the most egregious eminent domain abuses in recent years. This report will be followed by a report describing the more than 100 recent uses of eminent domain for private parties.

The organization takes its name from the principle that everyone’s home (or business) should be their castle—a place where they are safe and free from abusive government power. The Castle Coalition is a project of the Institute for Justice. For more information, visit [www.castlecoalition.org](http://www.castlecoalition.org).



**Citizens Fighting Eminent Domain Abuse**

**[www.CastleCoalition.org](http://www.CastleCoalition.org)**