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Brody Fights On

New York State property owners have long suffered under one of the worst eminent domain laws in the country—but help may be on the way. Eminent domain is the power by which the government is able to take private property for public use for projects such as highways, bridges, prisons, and courts. But it is often misused to benefit private plutocrats, such as, in New York, the New York Stock Exchange, the New York Times, Home Depot, and Costco. A small businessman from Port Chester, N.Y., Bill Brody, is fighting the condemnation of his property to build a parking lot for a Stop & Shop grocery store, and a victory on a technical matter yesterday gives him a chance to win his case on Constitutional grounds.

Both the federal and New York State constitutions permit property to be taken only for a public use, which a parking lot for a private business certainly is not. Furthermore, the federal Constitution states that “No person... shall be... deprived of life, liberty, or property,

without due process of law.” Due process is hardly what New Yorkers are getting now. Here, the state is not required to notify property owners in a timely manner when it plans to condemn their property through eminent domain; it need only post notification of possible future condemnation in the legal notices section of the newspaper, an act which begins a 30-day window after which the property owner is no longer allowed to challenge the condemnation.

This year, New York’s Legislature finally passed a bill to curb such abuses. With bipartisan sponsorship from Assemblyman Richard Brodsky and Senator Vincent Leibell, the body unanimously agreed to increase the responsibility of public entities to notify owners of land or buildings that the government agency wants to acquire through eminent domain. However, Governor Pataki vetoed the bill, saying that it was too expensive, “in these times of fiscal uncertainty.” It’s funny. We must have missed the Fiscal Uncertainty Clause of the

Constitution that allows the government to neglect to enforce the Bill of Rights after a minor recession.

The libertarian law firm that is fighting the case in court, the Institute for Justice, released a report earlier this year naming New York “perhaps the worst state in the country for eminent domain abuse.” They documented in the state at least 14 recent projects using eminent domain to benefit private entities, which have taken at least 57 businesses. When the purpose is truly public, eminent domain is a necessary government tool. But the cases that the Institute for Justice has scrutinized, including Mr. Brody’s case, are clearly private endeavors—even if some in the community would like a nice parking lot at the Stop & Shop or the projects would bring in more revenue to the state, city, or town. Private property is the basis of a free and just society, and all New Yorkers can look on with an interest as Mr. Brody and the roving libertarian litigators fight to preserve its sanctity.