

# A new twist in eminent domain

A father and son who operate a nonprofit boxing gym for kids in suburban San Diego are fighting their town for the right to stay where they are. Ultimately their battle to hold on to their property could help decide your right to hold onto yours.

Carlos Barragan and his son, Carlos Jr., who turned an old gun store into the gym, filed suit in September to challenge the "blighted" certification given to the property and its adjacent neighborhood by the suburb of National City. That designation gives the city the power under California law to seize the property, once a fair price is determined, through the constitutional right of eminent domain any time in the next 10 years for private development.

A large "Coming Soon" sign next to the gym already depicts the ritzy condo development that the city has in mind. But the Barragans have different plans. "Our facility is not for sale," Carlos Jr. told me in a telephone interview. "This is a perfect location. We took an old gun store and made a gym for local kids out of it. That's redevelopment!"

A suit has been filed on the Barragans' behalf by the Institute for Justice, a libertarian, Virginia-based public interest law firm that has fought similar property rights battles all the way to the Supreme Court.

Eminent domain battles between local governments and holdout property owners are nothing new, but the legal landscape has changed. Some of the most contentious high court battles in recent years have been about real estate.

In *Kelo v. City of New London*, the Supreme Court cleared the way two years ago for cities to take private property for development not only by government entities for schools, roads and other public works but also by private developers.

In effect, "blighted" may simply mean that some proposed property is expected to yield more in property taxes than the current owners pay.

Can local governments be trusted to avoid abusing such powers? Unfortunately, city fathers do not always know best.

I remember, for example, how my own southern Ohio hometown decided in the early 1960s that the neighborhood in which I grew up would serve the public better as an "industrial park." Our homes, churches, grocery

stores and other working-class neighborhood life were wiped away under a federal program called "urban renewal." Closer to the point, my embittered parents and neighbors called it "Negro removal."

Yes, our poor-but-proud neighborhood was mostly black, just as the Barragan's area is mostly Hispanic. In the end, industry somehow shunned our former neighborhood. Little did anyone predict that America's industrial power and that of our factory town had peaked. Today, prairie grasses grow where our old neighborhood once thrived.

Justice Clarence Thomas cited such disastrous effects

on minority communities by urban renewal in his dissent to the 5-to-4 *Kelo* decision. "Regrettably," he said, "the predictable consequence of the Court's decision will be to exacerbate these effects."

Justice Sandra Day O'Connor agreed. "The government now has license to transfer property from those with fewer resources to those with more," she wrote. "The Founders cannot have intended this perverse result."

Yet, that result already may be what we have. A new study of 184 eminent domain projects across the country by the Institute for Justice confirms what many have long suspected: Displacement by eminent domain tends to hit the poor, less well-educated and non-white.

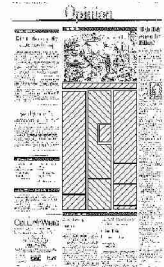
For example, the study, called "Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse," found that 58 percent of residents threatened with displacement by eminent domain were non-whites, although the surrounding municipalities were only 45 percent non-white. Annual median income in the targeted areas was \$19,000, compared to \$23,000 in surrounding municipalities.

States were expected to respond to the *Kelo* decision by tightening standards on what local governments can call "blighted."

About half of the states have passed some version of *Kelo* reform. But critics say most have left large loopholes, leaving the burden on property owners to prove that the land the government wants is not "blighted," instead of putting the burden on government to



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show that it is.

Such loopholes need to be plugged up.

As the influential urban renewal critic Jane Jacobs wrote in her 1961 classic, "The Death and Life of Great American Cities," the future of cities is not in their big buildings or highways, but in their neighborhoods.

She argued that urban renewal was creating isolated, unnatural urban spaces that destroyed neighborhoods. Instead of rushing to push old residents out of neighborhoods, smart city leaders find ways to incorporate residents into their plans and keep property rights from going wrong.

*Clarence Page is a syndicated columnist.*