

# MYTHS AND REALITIES OF EMINENT DOMAIN ABUSE

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# MYTHS AND REALITIES OF EMINENT DOMAIN ABUSE

In the debate over eminent domain abuse, municipalities and developers often advance myths in defense of the government's use of this power for private commercial development. In response to those myths, the Castle Coalition offers something far more compelling—the truth.



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## MYTH:

*Kelo v. City of New London did not expand the power of eminent domain.*

*“In Kelo, for the first time in U.S. history, the ordinary private use of property was declared a ‘public use’ for which a government could use its power of eminent domain. Kelo leaves practically no federal constitutional limitation on eminent domain for private development. It is now up to states and localities to do just that.”*

## REALITY:

*Kelo* did change the law—and the U.S. Supreme Court’s decision threw open the floodgates to eminent domain abuse throughout the nation. As a matter of practice, local governments have been using eminent domain to assist private developers on a regular basis for years.<sup>1</sup> But governments still recognized that the nation’s highest court had never actually upheld eminent domain for economic development. That provided some limited restraint or caution; in the aftermath of *Kelo*, however, that restraint was removed.

As Justice Sandra Day O’Connor explained in her dissenting opinion, while the Court had described the eminent domain power as broad, it had previously recognized just three discrete categories of eminent domain condemnations prior to *Kelo*: (1) condemning land and transferring it to public ownership (such as a road or park); (2) condemning land and transferring it to a privately owned common carrier (such as a cable or utility carrier); and (3) condemning land to eliminate an identifiable public harm caused by the property.<sup>2</sup>

*Kelo* created a fourth and much broader category of condemnations allowed under the Fifth Amendment—transferring any land from one person to another for his or her private use, as long as the new owner plans to make more money with the property. Justice O’Connor wrote, “To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings ‘for public use’ is to wash out any distinction between private and public use of property—and thereby effectively to delete the words ‘for public use’ from the Takings Clause of the Fifth Amendment.”<sup>3</sup>

In *Kelo*, for the first time in U.S. history, the ordinary private use of property was declared a “public use” for which a government could use its power of eminent domain. *Kelo* leaves practically no federal constitutional limitation on eminent domain for private development. It is now up to states and localities to do just that.

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1 Dana Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining the Abuse of Eminent Domain* (2003), available at <http://www.castlecoalition.org/report> (June 2, 2006).

2 *Kelo v. City of New London*, 125 S. Ct. 2655, 2673 (2005) (O’Connor, J., dissenting).

3 *Ibid.* at 2671.

## MYTH:

**Eminent domain is only used as a last resort.**

## REALITY:

This claim—made by nearly every official and planner considering eminent domain for private development—simply makes no sense. Actually filing for condemnation may be the last thing the government does, but its ability to do so is so ominous that the threat of eminent domain influences all “negotiations.” When present, the threat of eminent domain plays the most important role from the beginning of “negotiations.”<sup>4</sup> Truly voluntary negotiation is impossible when one party has the power to get what it wants no matter what; if the government can take any property it wants, owners have no real power in negotiation.

When the government has all the power, cities can plan projects on the assumption that there is no need to incorporate existing homes or businesses because they can simply be taken. Cities often target poor and middle-class communities for condemnations, and government officials are well aware that people in these communities rarely have the financial means to fight eminent domain through the courts.<sup>5</sup> With the threat of eminent domain always looming in the background, developers know that local officials can acquire almost any piece of land they choose—and many are all too willing to do so.<sup>6</sup>

For example, in St. Louis, Mo., developer Jim Koman, in an attempt to acquire land to expand the shopping center he owns, said to the *Wall Street Journal*, “The question is, ‘Is it faster for me to buy this guy off, or quicker to go to court and condemn it.’”<sup>7</sup>

Koman employs “hardball tactics” including the threat of eminent domain to acquire property from hesitant owners. The *Journal* reports, “He tells people who don’t want to settle that he will take them to court, where they will get much less than what he is offering. As he drives through a trailer park he is currently trying to buy out, he mocks the people who fight his efforts.”<sup>8</sup>

When city officials say they will use eminent domain only if

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4 See, e.g., Transcript at 40, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005); Martin Stolz, “Little Italy Laundry Threatened with Eminent Domain,” *The San Diego Union-Tribune*, July 19, 2005; Sarah Hollander, “Eminent-domain Threat Solidifies in Flats Project,” *The Plain Dealer (Cleveland, OH)*, Apr. 11, 2006; Margaret Gillerman, “Days Appear Numbered for Allenton,” *St. Louis Post-Dispatch*, Feb. 21, 2006, at B1.

5 Brief of *Amici Curiae* National Association for the Advancement of Colored People, AARP, Hispanic Alliance of Atlantic County, Inc., Citizens in Action, Cramer Hill Resident Association, Inc., and the Southern Christian Leadership Conference in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at [www.ij.org/kelo](http://www.ij.org/kelo) (June 2, 2006).

6 Brief of Jane Jacobs as *Amica Curiae* in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at [www.ij.org/kelo](http://www.ij.org/kelo) (June 2, 2006).

7 Ryan Chittum, “Is Eminent Domain Only Hope for Inner Cities?,” *Wall Street Journal*, Oct. 5, 2005, at B1.

8 *Ibid.*

*“To say that eminent domain has not been ‘used’—and was simply held back as a ‘last resort’—is to elevate semantics over both common sense and reality.”*

negotiations fail, it simply means they will use force to take people’s property against their will if they do not agree on a price. Eminent domain is not just abused when a person loses his home in court. It is also abused when a home or business owner sells under the threat of condemnation. In the latter case, to say that eminent domain has not been “used”—and was simply held back as a “last resort”—is to elevate semantics over both common sense and reality.

## MYTH:

**The political process is enough of a check against eminent domain abuse.**

## REALITY:

In its report, *Public Power, Private Gain*, the Institute for Justice documented more than 10,000 filed or threatened condemnations for private use from 1998 to 2002.<sup>9</sup> The democratic process at the local level did not stop these illegitimate condemnations or the others that have occurred since then.

There have been more than 5,000 instances of abuse (threatened or filed condemnations for private use) since the *Kelo* decision came out in June 2005.<sup>10</sup> These abuses happened even though almost every poll taken since *Kelo* indicates that Americans oppose eminent domain for private development.<sup>11</sup> Apparently, developers' promises of increased tax revenues and jobs are just too tempting for many cities to pass up—even if it means forcing citizens from their homes and businesses. Most people—especially residents of poor and minority neighborhoods—who are targeted for abuse simply do not have the political or financial clout to win the political battle to save their homes and businesses.<sup>12</sup>

When developers' promises are accompanied by their funding of the entire eminent domain process, there is even more temptation. For example, in Norwood, Ohio, the developer who wanted the City to seize Carl and Joy Gamble's home so that he could expand his real estate empire paid for the report that the City used to classify the Gambles' ordinary neighborhood as "blighted and deteriorating," paid for the costs of acquiring all the properties in the neighborhood, and paid for all of the City's legal costs.<sup>13</sup> Essentially, the developer leased the government's power for his own gain.

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9 Dana Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining the Abuse of Eminent Domain* (2003), available at <http://www.castlecoalition.org/report> (June 2, 2006).

10 Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in the Post-Kelo World*, (2006), available at <http://www.castlecoalition.org/floodgates> (June 20, 2006).

11 *The Polls Are In*, available at [http://www.castlecoalition.org/resources/kelo\\_polls.html](http://www.castlecoalition.org/resources/kelo_polls.html) (June 2, 2006).

12 Brief *Amica Curiae* of Jane Jacobs in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at <http://www.ij.org/kelo> (June 2, 2006).

13 *City of Norwood v. Burton*, Nos. A0308646–A0308650, slip op. at 7-9, 35 (Hamilton County Ct. Common Pleas, June 14, 2004).

*“Eminent domain abusers  
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Moreover, eminent domain abusers have increasingly gone to extreme measures to keep voters out of these decisions entirely. Concerned citizens in Clayton, Mo., submitted four times the minimum number of signatures required to bring the City’s contentious proposed use of eminent domain to the ballot. But Clayton officials stopped voters from becoming the ultimate democratic check by operating under a technical provision in the City Charter that prohibits a referendum in situations where a bill is introduced and passed unanimously at the same meeting.<sup>14</sup>

The same thing occurred in Pembroke Pines, Fla., where the Charter Review Board—a municipal body charged with assessing the City Charter—unanimously voted to ask city commissioners to put the question of eminent domain for private development on the ballot; City officials voted 3-2 against the request.<sup>15</sup>

Similarly, City officials in Lorain, Ohio, voted 9-2 in November 2005 to designate 65 acres as an urban renewal area, while simultaneously enacting an emergency clause in the ordinance prohibiting residents from petitioning for a referendum on the decision.<sup>16</sup> In each of these situations, the government preemptively prohibited citizens from using traditional public and political processes to stop the abuse of eminent domain.

Sometimes, government officials forge deals with wealthy developers well before public hearings even occur. The City of Hollywood, Fla., for example, entered into an agreement with developer Chip Abele in July 2004 for his condo and retail development. The agreement was formed nearly a year before the City even held a public hearing.<sup>17</sup>

The City of Sunset Hills, Mo., teamed up with private developer Jonathan Browne of Novus Development Company to bulldoze Sunset Manor—destroying large parts of a neighborhood that was the most ethnically diverse and most affordable part of town. In 2002, Novus quietly approached the City with plans to build a \$165-million shopping center, offices and a hotel. City officials responded by pledging \$62-million in Tax Increment Financing and handing the private developer its governmental power of eminent domain to condemn and demolish more than 250 homes. Novus representatives visited residents who had no interest in selling their homes and no plans to move, threatening them with eminent domain and giving them five days to accept offers.<sup>18</sup> (Eminent domain was, after all, a “last resort.”)

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14 Margaret Gillerman, “Despite Petitions, Clayton Referendum Still in Doubt,” *St. Louis-Post Dispatch*, Jan. 6, 2006, at B1.

15 Joe Kollin, “Eminent Domain Vote Falters; 3 on Commission Oppose Taking Issue to Public,” *Sun-Sentinel (Fort Lauderdale, FL)*, Jan. 8, 2006, at 1.

16 Shawn Foucher, “Lorain Votes on Urban Renewal,” *The Chronicle-Telegram (Elyria, OH)*, Nov. 2005 (online edition).

17 John Holland, “Hollywood Mayor Felt ‘Obligation’ to Approve Eminent Domain Seizure,” *Sun-Sentinel (Fort Lauderdale, FL)*, Apr. 22, 2006, at B1; Shannon O’Boye, “Hollywood Moves to Seize Woman’s Storefronts So Developer Can Build Condos,” *Sun-Sentinel (Fort Lauderdale, FL)*, June 22, 2005.

18 Clay Barbour, “From Sunset Hills, A Story of Hollow Homes and Lives Left in Limbo Residents Are Stuck - Along with Novus’ Development Project,” *St. Louis Post-Dispatch*, Feb. 12, 2006, at A1; *News Channel Five Newscast: Sunset Hills Aldermen Officially Halt Retail Development*, (KSDK radio broadcast, Feb. 14, 2006), available at <http://www.ksdk.com> (June 2, 2006).

*“As the enormous number of condemnations for private development reveals, the political process surrounding individual development projects favors the abusers of eminent domain, not its victims. The bottom line is that individual rights should not be subject to the whim of the majority.”*

Despite overwhelming citizen opposition to the project through the public and political process, the City decided to move forward with its abuse of eminent domain. In February 2006, financing for the project fell through, and the City scrapped its plans, leaving the neighborhood in shambles.<sup>19</sup> In this instance, and the vast majority nationwide, the democratic process was simply not enough of a check on abuse.

In some cases, City officials have even gone to extreme measures to silence opponents of eminent domain abuse—including kicking them out of public meetings, criticizing them and simply ignoring them.<sup>20</sup> Even when projects fail, these officials do not take the blame for their actions.<sup>21</sup> This makes it all the more difficult to take action at the ballot box, and elected officials understand that this is the case.

As the enormous number of condemnations for private development reveals, the political process surrounding individual development projects favors the abusers of eminent domain, not its victims. The bottom line is that individual rights should not be subject to the whim of the majority. Citizens should not be required to vindicate their property rights—before courts or city councils—when government does not have the constitutional or moral authority to take land in the first place.

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19 Clay Barbour, “Sunset Hills Board Kills Troubled Project, Shopping Center Developer Novus Mised the City, Mayor Says,” *St. Louis Post-Dispatch*, Feb. 15, 2006, at B1.

20 Kathy Tripp (Sunset Hills, Mo. homeowner), *Telephone interview conducted by Justin Gelfand*, Dec. 2005; Lori Vendetti (Long Branch, N.J. homeowner), *Telephone interview conducted by Justin Gelfand*, Oct. 17, 2005.

21 Clay Barbour, “Sunset Hills Board Kills Troubled Project, Shopping Center Developer Novus Mised the City, Mayor Says,” *St. Louis Post-Dispatch*, Feb. 15, 2006, at B1.



## MYTH:

**Economic development requires eminent domain.**

## REALITY:

Throughout the United States, economic development happens every day without eminent domain. Walt Disney constructed Disney World without condemning or threatening to condemn a single piece of property.<sup>22</sup> The Rouse Company created an entirely new city from scratch in Howard County, Md., purchasing more than 15,000 acres from 140 different owners in 1963.<sup>23</sup> The Commonwealth Development Group assembled 21 separate parcels of land in Providence, R.I., and built an enormous shopping center that is now a vibrant commercial hotspot that created jobs and tax revenue.<sup>24</sup> In Las Vegas, Nev., Focus Property Group created a 3,000-acre community called Mountain's Edge without eminent domain that is often touted by development professionals.<sup>25</sup> Seattle redeveloped part of its downtown in 1996 through private negotiation, not public force. City officials and developers worked together to create more than one million square feet of new retail space, generating a 15.8 percent increase in taxable sales and a 4.4 percent increase in retail jobs, without threatening or using eminent domain.<sup>26</sup> Also, construction in Utah—where redevelopment agencies have been forbidden from using eminent domain since March of 2005—is booming. The value of construction there last year was \$6.5 billion, exceeding 2004's mark of \$5.1 billion by 28.7 percent.<sup>27</sup> And the list goes on and on.

John Norquist, the former mayor of Milwaukee and president of the Congress for the New Urbanism, notes, "The economy of this country was built by the private sector. Though government has at times played an important role in facilitating development, it has been the actions of the private sector that have assembled and cleared the land, and built

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22 Roger Pilon, *Kelo v. City of New London U.S. Supreme Court Decision and Strengthening the Ownership of Private Property Act of 2005: Hearing on H.R. 3405 Before the House Comm. on Agric.*, 109th Cong. 59 (2005) (statement of Roger Pilon, Vice President for Legal Affairs, Cato Institute).

23 Howard Gillette Jr., "Assessing James Rouse's Role in American City Planning; Real Estate Developer," *Journal of the American Planning Association*, Mar. 22, 1999.

24 See Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) (No. 04-108), available at <http://www.ij.org/kelo> (June 2, 2006).

25 "Mountain's Edge Outpaces Sales of All Other Master Planned Communities in Southern Nevada; Mountain's Edge Reports 1,230 New Home Sales," *PR Newswire US*, June 30, 2005. See also Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners at 21, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at <http://www.ij.org/kelo> (June 2, 2006).

26 Mark Brnovich, "Condemning Condemnation: Alternatives to Eminent Domain," *Goldwater Institute Policy Report*, June 14, 2004, at 6–8.

27 Diane S. Gillam and Francis X. Lilly, "Construction in Utah Shatters Records in 2005," in *Bureau of Economic and Business Research Utah Construction Report*, Oct.-Nov.-Dec. 2005, vol. 48(4):1.

*“The private sector is very effective at assembling properties for economic development without the use of eminent domain.”*

the factories, businesses and homes which have created the economic foundation of local economies.”<sup>28</sup>

There are many ways in which cities and developers can improve the aesthetics of a given area, attract private enterprise and even facilitate infrastructure improvements to generate taxes and jobs—none of which require forcibly transferring property from one person to another. These include economic development districts, tax incentives, bonding, tax increment financing, Main Street programs, infrastructure improvements, relaxed or expedited permitting, and small grants and loans for façade improvements.<sup>29</sup>

At the same time, projects that use eminent domain often fail to live up to their promises, and they impose tremendous costs (both social and economic) in the form of lost communities, uprooted families and destroyed small businesses.<sup>30</sup> For example, city officials in Mesa, Ariz., are still debating what to do with 30 acres of land that sit vacant thanks to a failed redevelopment project that began in 1992; now known as “Redevelopment Site 17,” the tract once contained 63 homes that the city condemned and bulldozed.<sup>31</sup>

The private sector is very effective at assembling properties for economic development without the use of eminent domain.<sup>32</sup> The remaining defenders of eminent domain abuse argue that Americans must choose between private property rights and economic growth. Fortunately, the evidence is clear and compelling—Americans can have both.

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28 Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners at 4, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at <http://www.ij.org/kelo> (June 2, 2006).

29 See Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) (No. 04-108); Brief of the Goldwater Institute, Bluegrass Institute for Public Policy Solutions, Center of the American Experiment, Commonwealth Foundation for Public Policy Alternatives, Ethan Allen Institute, Evergreen Freedom Foundation, Mackinac Center for Public Policy, and National Taxpayers Union as *Amici Curiae* in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) (No. 04-108), both available at <http://www.ij.org/kelo> (June 2, 2006).

30 Brief *Amica Curiae* of Jane Jacobs in Support of Petitioners at 13, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at [www.ij.org/kelo](http://www.ij.org/kelo) (June 2, 2006).

31 Paul Green, “Eminent Domain: Mesa Flexes a Tyrannous Muscle,” *East Valley Tribune*, Sept. 2, 2001; Robert Robb, “Count on City-Driven Project to Fail,” *Arizona Republic*, Sept. 21, 2001, at 9B.

32 See Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at [www.ij.org/kelo](http://www.ij.org/kelo) (June 2, 2006).

## MYTH:

**Eminent domain  
for private  
development  
fosters economic  
growth and cures  
“blight.”**

## REALITY:

Proponents of eminent domain for private development who make this claim ignore two important facts. First, eminent domain for private development often thwarts, rather than helps, economic growth. Second, the “blight” that proponents are talking about is actually a broad term that could describe practically any neighborhood in the country.

Scottsdale, Ariz., is an example of how eminent domain abuse harms economic development. It stonewalled \$2 billion of successful redevelopment for years by threatening eminent domain. In 1993, the City designated four redevelopment areas, setting the groundwork for eminent domain abuse. When the City removed two of these designations, it reported an influx of billions of dollars. Areas that at one time were thought to need governmental interference have seen unprecedented prosperity and revitalization once the specter of eminent domain was lifted. Money poured in only after Scottsdale removed the threat of eminent domain.<sup>33</sup>

Furthermore, there are a number of instances across the nation where cities condemned private property for economic development, bulldozed them, and then the private developer backed off from the project. These include projects in cities such as Mesa, Ariz.,<sup>34</sup> Indio, Calif.,<sup>35</sup> and West Palm Beach, Fla.,<sup>36</sup> all of which are still trying to figure out what to do with plots of land that remain vacant because they seized and bulldozed homes and businesses with a promise of redevelopment that never materialized.

Additionally, redevelopment laws are often written with broad and sweeping definitions of “blight,” thereby allowing cities to condemn perfectly fine homes and thriving small businesses. In many states, property can be designated as “blighted” because of “obsolescence” — a term that can mean that a home does not have a two-car garage, two full bathrooms, or three bedrooms. Indeed, in Lakewood, Ohio, the City government claimed that all of these things were conditions of “blight.”<sup>37</sup>

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33 Ryan Gabrielson, “Council Ends ‘Bad Idea’ Unanimously,” *East Valley Tribune*, Oct. 5, 2005, at 23; Casey Newton, “Scottsdale Plans to End Redevelopment Designation,” *The Arizona Republic*, Oct. 4, 2005, at 4B.

34 Paul Green, “Eminent Domain: Mesa Flexes a Tyrannous Muscle,” *East Valley Tribune*, Sept. 2, 2001; Robert Robb, “Count on City-Driven Project to Fail,” *Arizona Republic*, Sept. 21, 2001, at 9B.

35 Xochitl Pena, “Mall Makeover in Indio’s Future,” *Desert Sun (Palm Springs, CA)*, Nov. 15, 2004, at 4R; Xochitl Pena, “City Piecing Together Fashion Mall,” *Desert Sun (Palm Springs, CA)*, Apr. 15, 2005, at 1B.

36 Thomas R. Collins, “Evicted Homeowners Feel Betrayed over Failed Project,” *Palm Beach Post*, Mar. 15, 2005, at 1A.

37 The vague term “obsolescence” appears in redevelopment laws across the country. See, e.g., Idaho Code § 50-2903 (8)(a) (2006) (definition of “deteriorated area”); W. Va. Code § 16-18-3(j)

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Properties can also be designated as blighted because a neighborhood has “diversity of ownership” (i.e., many different people own their own homes)<sup>38</sup> or because a bureaucrat thinks that a home’s yard is too small.<sup>39</sup>

Some laws even give redevelopment authorities the power to take private property that is not blighted, but may at some unknown point in the distant future, become “blighted” (under an expansive and vague definition of that term).<sup>40</sup>

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(2006) (definition of “slum area”); Ky. Rev. Stat. Ann. § 99.340(1) (2006) (definition of “slum area”); Tenn. Code Ann. § 13-20-201(a) (2005). For more information on the abuse of eminent domain in Lakewood, Ohio, see *Institute for Justice Backgrounder: Lakewood, OH, Eminent Domain*; *Saleet v. City of Lakewood*, available at [www.ij.org/private\\_property/lakewood/index.html](http://www.ij.org/private_property/lakewood/index.html) (June 2, 2006); see also *60 Minutes: Eminent Domain; Government Forcing People from Their Private Property to Make Way for Redevelopment*, (CBS television broadcast, Sept. 28, 2003).

38 The term “diversity of ownership” frequently shows up in redevelopment laws. See, e.g., A.R.S. § 36-1471.2(e) (2006); W. Va. Code § 16-18-3(k) (2006); Ky. Rev. Stat. Ann. § 99.340(2) (2006); Idaho Code § 50-2903 (8)(b) (2006) (definition of “deteriorated area”).

39 See, e.g., Wash. Rev. Code § 35.81.015(2) (2006) (“excessive lot coverage”); A.R.S. § 36-1471.2(b) (2006) (faulty lot layout in relation to size, adequacy, etc.); Ky. Rev. Stat. Ann. § 99.340(2) (2006) (faulty lot layout due to size, use, etc.).

40 See, e.g., R.S.Mo. § 99.805(3) (2005) (definition of “conservation area”); Va. Code Ann. § 36-49(2) (2005) (describing power of an authority to acquire property in a “redevelopment project”).

## MYTH:

**Without the tool of eminent domain, developers will not be able to assemble large tracts of land.**

*“If property ownership means anything at all, people should not have their property taken by the government and handed over to somebody else for their private use.”*

## REALITY:

It is certainly possible to assemble large tracts of land in urban and rural areas without taking them by eminent domain. Indeed, as John Norquist, former Mayor of Milwaukee and now President of the Congress for the New Urbanism, notes, “In metropolitan areas, significant land assembly efforts are often necessary for major real estate development, but the private sector does this well.”<sup>41</sup>

Often, treating homeowners with respect and offering them the right price is enough to purchase their property—even without the ability to threaten or use eminent domain. People are more willing to negotiate when they do not feel like they are under siege. Also, there is nothing to stop developers from including existing homes and businesses in the blueprints of their plans. A major downtown urban development in the heart of Washington, D.C., is doing just that: incorporating an existing home in the project by simply building around it.<sup>42</sup> Furthermore, as noted above, developers in urban areas such as downtown Seattle, Wash., and Providence, R.I., successfully acquired large tracts of land for their respective private commercial development projects without eminent domain. In the mid-1980s, two developers in West Palm Beach, Fla., discreetly assembled 26 contiguous blocks of a run-down inner city area by buying over 300 separate parcels of land from 240 different owners. Only nine months later, they broke ground on a major shopping center now known as CityPlace. It is still a vibrant urban district, bustling with retail, dining and entertainment establishments.<sup>43</sup>

On the other hand, there is absolutely nothing wrong with piecemeal or infill development. That is how the vast majority of America was developed, and it is a much better way to keep the character and uniqueness of a given neighborhood.<sup>44</sup> Developers should not complain that without the government’s power of eminent domain, they might not always be able to do exactly what they want (in fact, some developers lose their land to other developers precisely because of that argument<sup>45</sup>). If property ownership means anything at all, people should not have their property taken by the government and handed over to others for their private uses.

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41 See Brief *Amicus Curiae* of John Norquist, President, Congress for New Urbanism in Support of Petitioners at 5, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at [www.ij.org/kelo](http://www.ij.org/kelo) (June 2, 2006).

42 Lindsay Layton, “A Solitary Stand at the Precipice; D.C. Architect Refused to Sell to Developers, Who Simply Press on Around Him,” *Washington Post*, May 3, 2006, at A1.

43 Johanna Marmon, “Urban Renewal-West Palm Beach,” *South Florida CEO*, May 2002, available at [http://www.findarticles.com/p/articles/mi\\_m00QD/is\\_4\\_5/ai\\_100500854](http://www.findarticles.com/p/articles/mi_m00QD/is_4_5/ai_100500854); See Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners at 6, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at [www.ij.org/kelo](http://www.ij.org/kelo) (June 2, 2006).

44 Jane Jacobs, *The Death and Life of Great American Cities* (Random House 1961).

45 *Hannity and Colmes: New Jersey Town Threatens to Take Land from Owner for Townhouses*, (Fox News Network television broadcast, Nov. 4, 2005).

## MYTH:

**Eminent domain abuse is not a big problem.**

*“The U.S. Supreme Court’s decision in Kelo v. City of New London leaves every home, business and place of worship across the nation vulnerable to condemnation; any home can generate more taxes as a nicer home or business, and any small business can produce more tax-revenue and create greater job-growth as a big-box store.”*

## REALITY:

In just a five-year period (1998-2002), the Institute for Justice documented more than 10,000 instances of eminent domain for private gain—and that is just the tip of the iceberg.<sup>46</sup> Since then, the floodgates to eminent domain abuse have been thrown open, and the Institute for Justice is currently working to document even more threatened and filed condemnations for private profit. In just the eleven months since the U.S. Supreme Court decided *Kelo v. City of New London*, more than 5,000 properties have either been condemned or threatened with condemnation for private use.<sup>47</sup>

The U.S. Supreme Court’s decision in *Kelo v. City of New London* leaves every home, business and place of worship across the nation vulnerable to condemnation; any home can generate more taxes as a nicer home or business, and any small business can produce more tax-revenue and create greater job-growth as a big-box store. As Justice O’Connor explained in her dissenting opinion in *Kelo*, no home, no small business, no farm and no house of worship is safe if “jobs” and “taxes” are justification enough for their taking.<sup>48</sup>

Legislative reform, at both the state and federal level, is necessary to protect American home and business owners from the abuse of eminent domain.

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46 Dana Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining the Abuse of Eminent Domain* (2003), available at <http://www.castlecoalition.org/report> (June 2, 2006).

47 Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in the Post-Kelo World* (2006), available at <http://www.castlecoalition.org/floodgates> (June 20, 2006).

48 *Kelo v. City of New London*, 125 S. Ct. 2655, 2676 (2005) (O’Connor, J., dissenting).