



Expropriation in Puerto Rico

policy brief and report card

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About the Institute for Justice

The Institute for Justice is a nonprofit, public interest law firm that litigates to fight eminent domain abuse and secure private property rights nationwide. Founded in 1991, IJ pursues cutting-edge litigation in the courts of law and advocates at the grassroots and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government.

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Introduction

In the wake of the U.S. Supreme Court's ruling in *Kelo v. City of New London*, 44 state legislatures quickly passed reform limiting the use of eminent domain—or “expropriation” as it is called in Puerto Rico—for private development. Sadly, Puerto Rico has not joined the *Kelo* backlash. While decision makers stateside are now overwhelmingly (if not universally) either unable to or reluctant to use eminent domain as a development tool, Puerto Rican mayors and lawmakers continue to use the highly controversial power in unconstitutional ways. Now more than ever, Puerto Rican property owners and their communities face the threat of expropriation for private development, as developers and lawmakers see post-hurricane recovery efforts as a potential green light for previously stagnant projects.

This report seeks to put Puerto Rico's law in the context of broader stateside trends, and makes recommendations to ensure the island's property owners and communities are safe from illegitimate land grabs.

Grade: F | Report Card on Puerto Rico's Law Post *Kelo*

Despite a number of legislative proposals that would have brought Puerto Rico's law of eminent domain—or expropriation, as it is called locally—into line with reforms adopted by other jurisdictions after the U.S. Supreme Court's decision in *Kelo v. City of New London*, the island's eminent domain laws remain largely unchanged. They also remain some of the worst in the United States. As a result, the property rights of Puerto Ricans are routinely disregarded by government officials who believe they face no meaningful limits on their power.

The primary problem with Puerto Rican law is that eminent domain can, in essence, be used for anything municipalities want. There are no “public use” limitations. Instead, total deference is given to legislative determinations about the public *purpose* of a taking. Municipalities can take (and have taken) property for anything they deem a public purpose—including shopping malls, restaurants and luxury housing developments, among other things—giving tax-hungry municipal authorities a freer hand to seize private property than officials have in almost any other U.S. jurisdiction.

Making matters even worse, there is no public hearing on the purported public nature of the proposed project; once an expropriation action is filed, the property immediately transfers to the municipality, and only then do property owners have their day in court to challenge the purpose of the taking. There are no known instances where a court has overturned a finding of public purpose by a municipality. There are additional incentives throughout the law that make it even easier for developers to drive expropriations.

Modern Puerto Rican law does provide some procedural checks on eminent domain—but only in certain areas. In designated “Special Communities,” legislation requires a community referendum prior to any taking by a municipality. Property owners have had difficulties enforcing these safeguards, having to rely on court action for enforcement. The protection applies only to municipal takings, and there have been numerous legislative attempts to abolish it. Though this mechanism has prevented expropriation in some communities,



La Santa has fought the expropriation of her home in Ciudadela for a decade. The initial project failed, and her once peaceful community is now a construction zone.

the right to keep one's home or small business should not be subject to a majority vote, making further reform necessary.

Puerto Ricans deserve property rights protections just as much as any other U.S. citizens. Puerto Rico should adopt meaningful reforms, making clear that eminent domain can only be deployed for a clearly defined public use and clarifying that the existence of a public use must be determined by an independent judge—not by the municipal officials who stand to benefit.

Eminent Domain and the *Kelo* Backlash

In the United States, eminent domain is the power of the government to take away someone's private property. As the U.S. Constitution specifies in the Fifth Amendment, this power is strictly limited: "[N]or shall private property be taken for public use, without just compensation."¹ This provision imposes two important limits on eminent domain: Private property can be taken only for *public use*, and just compensation must be paid.

"Public use" meant, and means, what one would traditionally consider public works projects: things like roads, schools, bridges and other public buildings. Eminent domain was intended to be a narrow power, and has rightly been called a "despotic" power of government,² given the vast potential for abuse: It can destroy lives and livelihoods by uprooting people from their homes, businesses and communities.

Over the past century, the meaning of the public use clause has been largely gutted at the federal level. In cases before the U.S. Supreme Court in 1954 and 1984, the Court upheld an expansive definition of public use, transforming the requirement from one of *public use* to one of *public purpose*.³ Notably in the case of *Berman v. Parker*, the Court allowed condemnations for the purpose of slum clearance, even if the property ended up in the hands of private developers. *Berman* upheld the constitutionality of urban renewal: the government's efforts to supposedly revitalize urban areas and eliminate so-called blighted conditions. In the Court's eyes, the end use no longer mattered; the projects served the public *purpose* of renewal and revitalization.

Urban renewal proceeded to devastate vulnerable minority communities across the United States: No longer bound by the public use requirement, officials could take property they deemed "blighted" based on increasingly vague criteria, give it to their developer friends, and in doing so wipe out communities of people they deemed undesirable.⁴ One researcher noted that more than 1,600 projects during this urban renewal period—two-thirds of the total number of such projects—were directed at African-American neighborhoods, making African-Americans five times more likely to be displaced despite composing only 12 percent of the population.⁵

After these decisions, courts should have acted as a check on eminent domain. Instead, they significantly abdicated their role and often simply deferred to whatever claims of "public purpose" a legislature or administrative agency made, no matter how attenuated. With strong economic incentives and few judicial checks, the use of eminent domain for private development grew. Most states required that properties at least be declared "blighted," so their remediation would serve a public purpose akin to urban renewal. However, statutory criteria for declaring a property as such were vague, and local officials stretched them to apply to any perfectly fine home or small business, as they also increasingly claimed that forecasts of increased tax revenue or jobs satisfied the public use requirement. If a property could generate more tax dollars as something bigger and newer, then using eminent domain to replace the current owner with a glitzier development served the public good.

Between 1998 and 2002, the Institute for Justice catalogued over 10,000 abuses of eminent domain (but there were certainly far more; the Institute found most of the cases based on news reports and court documents, but many other instances went unreported).⁶ This culminated in the U.S. Supreme Court's infamous 2005 decision in *Kelo v. City of New London*, in which the court approved the condemnation of perfectly fine homes based on the mere promise of increased tax revenue and jobs. In *Kelo*, the city of New London, Connecticut, in concert with pharmaceutical giant Pfizer, claimed it could take Susette Kelo's two-bedroom house and those of her neighbors in the Fort Trumbull area in order to build a private development to complement the company's neighboring headquarters.⁷

In one of the most widely hated rulings in modern history, the Court held that economic development is a "public use" under the Fifth Amendment.⁸ This meant that Susette Kelo, her neighbors and every property-owning American faced the threat of losing their homes and businesses to a private developer under the guise of raising tax revenue and creating jobs. Indeed, in the year after *Kelo*, eminent domain abuse tripled nationwide as cities enjoyed what they thought was a free-for-all.⁹ But that free-for-all would soon come to an end.

Luckily for property owners, the Supreme Court did not have the last word, as the Court made clear that states were free to enact their own reforms.¹⁰ While the Court's decision was devastating, public disapproval of it made possible a widespread legislative backlash to eminent domain abuse. In the years since *Kelo*, 44 states have reformed their eminent domain laws, responding to pressure from the public; all but two of these passed reforms in just the first two years after the decision.¹¹ In many states, these reforms provide greater protections to property owners than the Court would have, had it sided with Susette Kelo on the narrower question before it.

In 23 of the 44 states, legislatures enacted substantive eminent domain reforms that have eliminated eminent domain for private development almost entirely in those states. In the other 21 states, lawmakers increased eminent domain protections for property owners to a lesser extent. Yet although more could be done to strengthen those laws, local officials have mostly abandoned eminent domain as a development tool due to how politically unpopular it is.

Eleven of these 44 states passed constitutional amendments that strictly limit the use of eminent domain to transfer property to private developers. And many states now require that properties be individually declared "blighted" according to objective criteria focused on legitimate public health and safety concerns, essentially eliminating the problem of "bogus blight."

Florida's experience is illustrative of the power of the *Kelo* backlash. For years, municipalities across the Sunshine State were habitually abusing eminent domain; the Institute for Justice counted at least 2,122 instances between 1998 and 2002.¹² In the year following *Kelo*, at least eight cities were engaged in private development projects that involved eminent domain. Sixty-seven properties had been condemned in the preceding 11 months, while another 206 were on the chopping block. At that point, three Florida courts had relied on *Kelo* to reject challenges by property owners. Local officials were addicted to eminent domain abuse, but state legislators instead heeded the outcry from their hard-working constituents and passed two of the strongest reform bills in the country, sponsored by then-state Rep. Marco Rubio, in 2006.

Florida's new eminent domain law requires cities to wait 10 years before transferring property taken using eminent domain to another private owner, which has effectively ended condemnations for private development. It also forbids the use of eminent domain to eliminate so-called blight, instead requiring

municipalities to use their police powers to address individually properties that actually pose a danger to the public's health and safety.¹³ Voters also approved a constitutional amendment that requires a three-fifths majority in both legislative houses to grant any exceptions to the aforementioned restrictions.¹⁴

In the wake of *Kelo*, courts are also making it more difficult for the government to engage in eminent domain abuse. Ten state high courts have either rejected *Kelo* or made it more difficult for government to engage in takings for private development by making it harder for government to show a public use for the taking.¹⁵ Supreme courts in three states—Ohio, Oklahoma and South Dakota—have explicitly rejected *Kelo*. Of the many state courts to consider the question of eminent domain for private development since *Kelo*, only one state high court (New York's) has signed off on anything nearly as expansive as the federal rule.

All told, 47 states have strengthened the rights of private property owners in legislatures and courts in the years since the U.S. Supreme Court's decision.

This post-*Kelo* backlash did not stop at the capitol or courtroom steps: It gave birth to a fervent grassroots movement—one that continues to be dedicated to stopping government officials from abusing the power of eminent domain. Through community organizing and activism alone, the Institute for Justice has teamed up with local communities to help save nearly 20,000 homes and small businesses from condemnation or being labeled as “blighted” or “in need of redevelopment,” the precursor to eminent domain in many states. This means that, by influencing the political process locally and statewide, Americans across the country have rallied together to fight bogus, open-ended definitions of “blight,” and to prevent governments from upending entire neighborhoods on behalf of wealthy developers.

Meanwhile, back in New London, the Fort Trumbull project has been a dismal failure. Although the government spent close to \$80 million in taxpayer money on the project, there has been no new construction whatsoever and the once-thriving neighborhood is now a barren field home only to feral cats. In 2009, Pfizer, the lynchpin of the disastrous economic development plan, announced it was leaving New London for good, just as its tax breaks were set to expire; the developer followed shortly after.¹⁶

Unfortunately for Puerto Ricans, this unprecedented reform backlash has not materialized on the island. In fact, legislators and courts have utilized the *Kelo* decision as a blank check for expanding state powers and undermining property rights. As a result, and absent legislation that prevents the use of expropriation for private development, Puerto Rican officials routinely abuse this power. In order to strengthen Puerto Ricans' property rights and protect vulnerable communities from displacement, the government must take strong, preventative measures to forbid unconstitutional takings.

Legal Overview

Article II, section 9 of the Puerto Rican Constitution largely mirrors the public use clause of the U.S. Constitution. It states, “Private property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law.” Similar to the U.S. Constitution, the Puerto Rican Constitution places two requirements on the use of expropriation: The taking must be for a public use, and just compensation must be paid.

“The Law of Forced Expropriation,” originally passed in 1903 (and rarely amended since), further defines when and how the government may seize private property in Puerto Rico. Though municipalities originally lacked eminent domain powers, Act No. 81-1991, known as the “Autonomous Municipalities Act,” was amended in 1992 to grant them such powers. The Autonomous Municipalities Act was amended again by Act

No. 83-2017 under the guise of nuisance removal, though it included ample eminent domain powers that apply to non-nuisance properties as well.

Act No. 83 also empowers municipalities to expropriate property that officials deem it is in the public interest to rehabilitate—whether or not the property is actually deemed a public nuisance—and transfer it to private developers. This particular provision references abandoned structures, brownfield sites, wastelands and barren areas of communities but gives wide latitude for developers to drive expropriations pursuant to Act. 31- 2012 (discussed below).

Most problematically, the law states that private property can be expropriated for “any other useful purpose declared so by the Municipal Legislature.” This is a sweeping catchall that can be used to justify literally any purpose for which a municipality would want to expropriate someone’s home or small business. If a municipality thinks it would be “useful” to build luxury condominiums or a shopping mall where a community currently exists, this provision would allow that taking. This means property rights in Puerto Rico are completely at the whim of elected officials’ development plans. This provision guts any protections of the “public use” requirement and is deeply unconstitutional.



In Barriada Morales de Caguas, homes and businesses were taken for a Popeye's Chicken.

The Municipal Legislature must pass an initial ordinance declaring the “public interest” of the expropriation—meaning the proposed taking fulfills some kind of public purpose. If the municipality decides its stated purpose will serve the public interest, the proposed expropriation is considered to have met the law’s requirements and can proceed.

Shockingly, there is no public hearing on this ordinance, and it is not subject to review by the courts when passed. This means there is no initial check on the municipality’s ability to use this expansive power. The municipality can offer any reason it wants for the taking, and it can decide, at its sole discretion, whether the expropriation is legitimate and satisfies Puerto Rico law.

Worse, at this stage, owners have no recourse. Not only that, they may not yet even know their property is up for expropriation: While the law requires the government to “carry out all reasonable steps” to identify anyone who has an interest in the property and notify them about these proceedings, this is more difficult than it may sound. Per local reports, 55 percent of homes in Puerto Rico lack a clear or formal title,¹⁷ and it is common for individuals to spend years in court to clear them or claim their inheritance rights. Acquisitive prescription periods per the Commonwealth’s Civil Code also range from 10 to 30 years. These deficiencies in Puerto Rico’s title and inheritance system mean it can be extremely difficult to identify the owners of a given property—particularly if public officials have no incentive to do so.

After the municipality passes the ordinance declaring the public purpose of the expropriation, it files a petition for condemnation of the property in court, and deposits the estimated compensation, based on its appraisal, in an account. The instant this petition is filed, ownership of the property transfers to the municipality—whether or not the actual property owner has been identified or notified. Often, they have not been.

It is only at this point—once the government files a petition for condemnation and ownership of the property transfers to the government—that the owners of the property get their day in court, assuming they have even been identified and notified. This will be their first and only opportunity to raise objections about the

purported public nature of the intended use of the property (or about whether the government's offered compensation is fair). The law is careful to safeguard the municipality's ability to keep the seized property: Claims brought by the property owners in court will not prevent the municipality from obtaining provisional title and possession of the property.

In a move that further empowers developers, in 2012, Puerto Rico enacted Act No. 31, the "Act to Enable the Renovation of Communities in Puerto Rico." This misleadingly titled law allows a municipality to bank properties it deems public nuisances and make them more readily available to private developers. If a city declares a property a public nuisance pursuant to this law and subsequently finds it not salvageable, the property owner has to pay to demolish and clear it. Meanwhile, the city maintains a list of these properties. If a developer wants a property on the list, it simply pays for the condemnation, which is then executed by the city.



An anti-expropriation mural in Vietnam, a community that has been subject to many takings over the years.

Puerto Rico's law has no regard for the right of home and small-business owners to keep what they have worked so hard to own and protect their well-established communities. Particularly in light of the devastation of Hurricane Maria, the government should enact reforms that protect property owners and their communities so that nobody is subject to more loss—this time not by force of nature, but by force of government.

Current Problems

Shortly before the arrival of Hurricane Maria, the Puerto Rican legislature approved several eminent domain laws making it even easier to use expropriation for private development. The damage and destruction left by Maria further worsened the situation, as many mayors and municipalities have used the need to recover and rebuild as a pretext for new economic development projects. With an influx of billions of dollars in federal Community Development Block Grant funds forthcoming, the Puerto Rican government is now more able than ever to take private property for private development. Mayors are already presenting plans to relocate communities and construct private developments, many of which are revived proposals that were not politically or financially viable when originally proposed years ago.¹⁸ Examples include the construction of numerous tourism projects and movie theaters.

At the time of this report's publication, Puerto Rico's legislature had just approved Senate Bill 926, which would expand the government's eminent domain powers even further. The bill—which currently awaits the governor's signature—seeks to grant the Puerto Rico Land Administration the ability to enter into agreements with municipalities, private developers and other government agencies for private economic development initiatives on condemned property. The bill also permits the Land Administration to expropriate in the name of municipalities, a mechanism that would create a loophole to effectively circumvent the aforementioned Special Communities law. If signed into law, Senate Bill 926 will, in effect, convert the Land Authority into a broker for private developers.

Reforms Needed to Protect Puerto Rico's Property Owners and Communities

The last reform effort in Puerto Rico culminated in House Bill 2321 in 2015. Thirty communities from across the island banded together to share their stories and united around a common goal of changing the expropriation law to limit takings for private development. The group worked tirelessly for two years to advocate for the bill's passage, but the legislature ultimately rejected the bill in the face of heavy opposition from mayors. Now teaming up with the Institute for Justice, these groups will once again strive together to reform the island's laws and provide much needed protection and relief to vulnerable property owners and communities.

It is critical that the use of expropriation be limited strictly to public uses. The purported public *purpose* served by the benefits of a private development—for example, increased tax revenue or jobs—should not be deemed to satisfy the public *use* requirements of the U.S. or Puerto Rican Constitutions, and that should be made clear in Puerto Rico's statute. In the wake of *Kelo*, 30 states tightened their definitions of "public use" to varying degrees.¹⁹

While limiting expropriation to clear, actual public uses is the most commonsense and straightforward reform, it is also important to ensure the government is not using declarations of public nuisance as a pretext to simply transfer perfectly fine property to private developers. When the government wants to use expropriation to address public nuisances, the criteria *each* property must meet should be objective and strictly related to protecting the public's health and safety. As discussed above, many cities across the United States have declared perfectly fine properties "blighted" under vague criteria that even the decision makers' homes themselves would meet, in order to have broad authority to condemn any property a developer wants.

Twenty-five states changed their definitions of "blight" following *Kelo*, requiring a closer connection between the taking and the protection of the public's health or safety, and diminished the government's ability to designate large areas as "blighted" based on the condition of a few properties.²⁰

Puerto Rico should also make it possible for people to *vindicate* their rights in court, which means both making clear that courts have an important role to play in policing the use of expropriation and making sure that affected property owners know what is going on and how to protect themselves.

To make sure courts play their essential role as guardians of individual rights, any reform should make clear that property owners *can* in fact challenge the legality of a condemnation and that courts *can* determine that question for themselves. The law must make clear that a property owner can challenge a proposed expropriation at any time—from directly after the municipality's initial approval of expropriation to the expropriation action itself. It must also make clear that the existence of a sufficient public use is a judicial question, not one where courts must defer to the municipality's determination or the legislature's open-ended delegation of eminent domain authority. Municipalities considering the use of eminent domain face a wide variety of pressures, including pressure from private developers who stand to profit from takings, which means serious review from a neutral judge is necessary to make sure an expropriation is both legal and necessary.

To ensure that property owners have enough notice to protect their rights, Puerto Rico must also make sure property owners are aware of the government's condemnation plans. Particularly in light of Puerto Rico's deficient title and inheritance system (which in many instances makes it difficult to determine who the actual legal owner of a property is), any legal reform must ensure that anyone who might have a claim to a piece of property knows their rights are at risk. Notice must be provided directly to (at least) both the title-holder of

record and the current occupant explaining (1) that expropriation has been authorized and (2) how property owners can challenge that authorization. Similar notices must accompany any actual attempt or proposal for expropriation.

There are other post-*Kelo* reforms modeled after stateside efforts that will further benefit Puerto Rico. Eleven states gave prior owners a right of first refusal to repurchase property that has not been used for the purpose for which it was condemned or that is later sold by the condemnor.²¹ Nine states changed the burden of proof in eminent domain cases, either by requiring the government to prove public use or by removing deference to the government's assertions.²² And two states prohibited transferring condemned property to private parties for any reason, for at least 10 years.²³



Property owners and activists from across the island reconvene in 2018 to talk about the need for reform.

Expropriation Is Not the Answer

Expropriation is neither an appropriate private development tool nor a solution to any problems that Puerto Rico's communities face. Often, government officials will argue that certain takings for private development are necessary in order to grow the economy or, in light of the devastation of Hurricane Maria, rebuild communities, and that this development cannot occur without expropriation.

The reality, however, is that development occurs every single day through private negotiation, not government force. There are many ways in which governments can address needed economic development and incentivize local revitalization without taking anyone's home or business. Using tools such as tax codes that incentivize the rehabilitation and redevelopment of vacant buildings and lots, overlay zoning, permit holidays or simplification, accessible public records systems that facilitate negotiations between developers and vacant property owners, or connecting communities with private grant-making services, cities can collaborate with residents to improve or grow particular areas, attract private enterprise and facilitate improvements. For example, ownership pooling—which occurs when individual parcel owners create a partnership or corporation to take title to their properties—can happen without government intervention of any form. The process can and has been initiated by landowners, and has the benefit of allowing partnership agreements to take place without going through the government to purchase land.

On a smaller scale, Puerto Rican officials can also make use of nuisance prevention and façade improvement programs, as well as community grant initiatives that incentivize property owners to beautify their homes and businesses on their own. Such programs have been used with great success stateside: By connecting communities with funding for small but impactful projects, they empower residents to take ownership of their properties, particularly in at-risk communities.

Importantly, as has been the experience stateside, seizing private property for private development often thwarts, rather than helps, economic growth. As home and small-business owners lose faith in their right to keep what they have worked so hard to own, "blight" becomes a self-fulfilling prophecy. Property owners will not make needed or wanted improvements if they are unsure of whether they will own their property a year down the line. Small businesses considering making an investment in a community will think twice if they know local officials are prone to taking people's property, because they are not confident that their investments will be safe.

Expropriation for private development also does not guarantee that a project will be successful: Across the United States, projects that have relied on eminent domain have failed miserably, particularly in light of over-hyped benefits promised by local officials who are trying to overcome public opposition to condemnation.²⁴ The greatest failure of all, mentioned above, is at ground zero of *Kelo*: The Fort Trumbull community once home to Susette Kelo and her neighbors is now a barren field that reflects tens of millions of dollars' worth of empty promises. Puerto Rico also has its share of unfinished construction projects and failed private developments.

Amidst the post-*Kelo* legislative debates, eminent domain apologists made doomsday predictions that restrictions on the use of eminent domain for private development in this way would result in less development, fewer jobs and lower tax revenues. The Institute for Justice tested those predictions. Using rigorous statistical methods, the Institute examined three indicators closely related to economic development—construction jobs, building permits and property tax revenues—and compared data from states that passed reforms with data from states where no reform had taken place. The Institute also compared the trends in the economic indicators before and after reform. Because jobs, permits and tax data are closely tied to development, one would expect to see early negative effects of eminent domain reform if, in fact, there were some. But there were not.²⁵ The data revealed that post-*Kelo* reforms provided greater protection to homes and small businesses without sacrificing economic health: Securing property rights and stimulating economic development can coexist.

Forcibly displacing residents and small businesses is also devastating to individuals and their communities. Mindy Thompson Fullilove, MD, is a research psychiatrist at New York State Psychiatric Institute and a professor of clinical psychiatry and public health at Columbia University. Her research has focused on the social, political, cultural and economic networks at work in long-standing communities, collectively called the “commons,” and the impacts of displacement. Dr. Fullilove considers the losses due to eminent domain takings to be so massive and so threatening to human well-being that she uses the term “root shock” to describe them²⁶:

This term is borrowed from gardeners, who observed that a plant torn from the ground will go into a state of shock, and may well die. The external homeostatic system of home and neighborhood “roots” people in the world. ... [I]t is the house that has the roots, not the person. ... A Home is a biological necessity. Losing a Home is a traumatic stress, costly for the individual and for the society. For the past 50 years, United States cities and redevelopment agencies have displaced people to build condominiums, highways, entertainment centers, and shopping malls. The displaced have only been compensated for a very small fraction of the losses they have endured. It is time for the pendulum to swing the other way, for drawing back from the widespread use of eminent domain and moving towards the all-out support of community and neighborhood life—the commons—as a source of well-being that every citizen needs and deserves.²⁷

Expropriation as a development tool is wrong on every level: It is unconstitutional; it contradicts strong nationwide trends; it is politically and morally disgraceful; it discourages property upkeep and investment; and ultimately, it destroys communities and individuals.

Puerto Rico should reject expropriation as a private development tool and instead collaborate with communities to rebuild together—fostering pride in residents' hard-earned homes, small businesses and communities, and making the island an even better place for generations to come.

Endnotes

¹ U.S. Const. amend. V.

² *Vanhorne's Lessee v. Dorrance*, 2 Dall. 304, 311 (C.C.D. Pa. 1795).

³ See *Berman v. Parker*, 348 U.S. 26 (1954); *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984).

⁴ Much has been written on the devastation caused by urban renewal. See, e.g., Mindy Fullilove, MD, *Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It*, New Village Press (2016); Martin Anderson, *The Federal Bulldozer*, McGraw-Hill (1967).

⁵ Mindy Fullilove, MD, "Eminent Domain & African Americans: What Is the Price of the Commons?" *Perspectives on Eminent Domain Abuse*, Feb. 2007, available at <http://ij.org/wp-content/uploads/2015/03/Perspectives-Fullilove.pdf>.

⁶ Dana Berliner, "Public Power, Private Gain: A Five-Year, State-By-State Report Examining the Abuse of Eminent Domain," Institute for Justice, April 2003, available at http://ij.org/wp-content/uploads/2015/03/ED_report.pdf.

⁷ For more background on the case, see Jeff Benedict, *Little Pink House: A True Story of Defiance and Courage*, Grand Central Publishing (2009).

⁸ *Kelo v. City of New London*, 545 U.S. 469 (2005).

⁹ Dana Berliner, "Opening the Floodgates: Eminent Domain Abuse in the Post-Kelo World," Institute for Justice, June 2006, available at <http://ij.org/report/opening-the-floodgates/>.

¹⁰ *Kelo*, 545 U.S. at 489 (majority opinion) ("We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.")

¹¹ "50 State Report Card: Tracking Eminent Domain Reform Legislation Since *Kelo*," published and continuously updated by the Institute for Justice, available at <http://castlecoalition.org/50-state-report-card>.

¹² Berliner, *supra* note 6.

¹³ Fla. Stat. §§ 73.013, 163.330-.463 (2018).

¹⁴ Fla. Const. art. X, § 6(c).

¹⁵ See *Cnty. of Haw. v. C & J Coupe Family Ltd. P'ship*, 198 P.3d 615, 636-54 (Haw. 2008) (requiring serious factual evaluation by the trial court of the condemnee's claim that a taking was pretextual); *Mayor & City Council of Balt. v. Valsamaki*, 916 A.2d 324 (Md. 2007) (holding that the condemnor bears the burden of proof in showing "immediate need" for a quick-take procedure and noting sparse evidence of public use); *Sapero v. Mayor & City Council of Balt.*, 920 A.2d 1061 (Md. 2007) (insisting on serious conditions to justify quick-take); *State ex rel. Seabaugh v. Dolan*, 398 S.W.3d 472, 481-82 (Mo. 2013) (holding that a taking was for economic development and thus impermissible under a post-Kelo statute); *Centene Plaza Redev. Corp. v. Mint Props.*, 225 S.W.3d 431, 433-35 (Mo. 2007) (finding a lack of substantial evidence for a blight finding); *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*, 924 A.2d 447 (N.J. 2007) (limiting the use of "in need of redevelopment" designations and holding that the New Jersey Constitution permitted eminent domain for redevelopment only when an area had serious blighting conditions); *City of Norwood v. Horney*, 853 N.E.2d 1115, 1142 (Ohio 2006) (holding that economic development is not a public use under the Ohio Constitution and also constitutionally limiting the use of redevelopment designations); *Bd. of Cnty. Comm'rs v. Lowery*, 136 P.3d 639, 650-52 (Okla. 2006) (holding that economic development is not a public use under the Oklahoma Constitution); *In re Opening a Private Road for the Benefit of O'Reilly*, 5 A.3d 246, 259 (Pa. 2010) (remanding a petition to condemn a private road for consideration of whether the public is the primary and paramount beneficiary as required for a taking); *Middletown Twp. v. Lands of Stone*, 939 A.2d 331, 337-40 (Pa. 2007) (finding a claim of taking for open space to be pretextual); *Reading Area Water Auth. v. Schuylkill River Greenway Ass'n*, 100 A.3d 572, 579-84 (Pa. 2014) (rejecting a proposed taking of a drainage easement as unnecessary to the public); *R.I. Econ. Dev. Corp. v. The Parking Co.*, 892 A.2d 87, 104-06 (R.I. 2006) (holding that a taking of a parking lot lease simply to avoid unfavorable lease terms violated the Rhode Island Constitution); *Benson v. State*, 710 N.W.2d 131, 145-46 (S.D. 2006) (stating that the "use by the public test" under the South Dakota Constitution provides more protection than the U.S. Constitution), *cert. denied*, 548 U.S. 905 (2006); *Utah Dep't of Transp. v. Carlson*, 332 P.3d 900, 905-08 (Utah 2014) (reversing and remanding for a determination of whether an excess taking violated the Utah Constitution).

¹⁶ See, for instance, Glenn Harlan Reynolds, *Can the Government Take Your Land? Yup, but the 'Little Pink House' was Worth Fighting For*, USA TODAY, April 16, 2018, available at <https://www.usatoday.com/story/opinion/2018/04/16/little-pink-house-susette-kelo-pfizer-supreme-court-column/519093002/>.

¹⁷ "Anuncian Servicios Gratuitos para Personas que no Tienen Títulos de Propiedad," PRIMERA HORA, June 1, 2018, available at <http://www.primerahora.com/noticias/puerto-rico/nota/anuncianserviciosgratuitosparapersonasquenotienentitulosdepropiedad-1285428/>.

¹⁸ See, e.g., “Community Development Block Grant – Disaster Recovery Program, Ponencias Presentadas por los Municipios,” Ayuda Legal Huracán María, available at <https://ayudalegalpr.org/files/CE6D35A7-B0DD-E05A-5001-17185067F894/attachments/A23AF326-CB2F-47EC-9E00-46B3B939CC0F/cdbg-dr-ponencias-municipios-editado-copy.pdf>.

¹⁹ La. Const. art. I, § 4 (allowing takings only for narrowly defined public purposes, prohibiting takings for “predominant[ly]” private use, for transfers to private entities, or solely economic development, and restricting sale and lease of property for 30 years); Mich. Const. art. X, § 2 (excluding economic development and tax revenue enhancement from definition of public use); N.D. Const. art. I, § 16 (2006) (economic development is not a public use); S.C. Const. art. I, § 13 (2007) (restricting takings for economic development); Ala. Code § 11-47-170(b) (2015) (municipalities and counties cannot condemn property for private development or “primarily” to increase tax revenue); *id.* § 11-80-1(b) (same); Alaska Stat. Ann. § 09.55.240 (West 2015) (listing permissible public uses and prohibiting transfer of condemned property to private persons for economic development without legislative authorization or without other limited exceptions); Ariz. Rev. Stat. Ann. § 12-1111 (2015) (listing permissible public uses, none of which include economic development); Colo. Rev. Stat. Ann. 38-1-101(1)(b)(I) (West 2015) (“‘[P]ublic use’ shall not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenue.”); Ga. Code Ann. § 22-1-1(9) (West 2015) (narrowly defining public use and excluding “economic development” from the definition); Idaho Code Ann. § 7-701A (West 2015) (prohibiting takings for economic development and private use); 735 Ill. Comp. Stat. Ann. 30/5-5-5 (West 2015) (placing limits and conditions on acquired property being in private ownership or control); Ind. Code Ann. § 32-24-4.5-1 (West 2015) (requiring property to be used for 30 years for public use, narrowly defining public use and excluding economic development); Iowa Code Ann. §§ 6A.21, .22 (West 2015) (prohibiting taking of property for private use without owner’s consent); Kan. Stat. Ann. § 26-501a (West 2014) (prohibiting takings for the purpose of selling, leasing or otherwise transferring to a private entity with some exceptions); *id.* § 26-501b (allowing taking for economic development if expressly authorized by the legislature and if the legislature “consider[s] requiring compensation of at least 200% of fair market value to property owners”); Ky. Rev. Stat. Ann. § 416.675 (West 2015) (narrowly defining public use and prohibiting takings for economic development); Me. Rev. Stat. Ann. tit. 1, § 816 (2015) (generally prohibiting takings for economic development, increases in tax revenue or transfers to private parties); Minn. Stat. Ann. § 117.012 (West 2015) (“Eminent domain may only be used for a public use or public purpose.”); Mo. Ann. Stat. § 523.271 (West 2015) (prohibiting takings solely for economic development); Mont. Code Ann. § 70-30-102 (West 2015) (listing permissible public uses and excluding takings solely for economic development); Nev. Rev. Stat. Ann. § 37.010 (West 2015) (listing permissible public uses, greatly restricting transfers to private parties and placing burden on the condemnor to prove public use); N.H. Rev. Stat. Ann. 162-K:2.IX-a (2015) (narrowly defining public use and excluding economic development); N.M. Stat. Ann. § 3-18-10 (West 2015) (providing that municipalities can take property only for a short list of public uses); N.D. Cent. Code Ann. § 32-15-01 (West 2015) (same); Or. Rev. Stat. Ann. § 35.385 (West 2015) (requiring that condemned property be used for a public purpose for at least a reasonable amount of time); 26 Pa. Cons. Stat. Ann. § 204 (West 2015) (limiting circumstances in which property can be used for economic development); S.D. Codified Laws § 11-7-22.1 (2014) (prohibiting takings for the primary purpose of increased tax revenue); Tenn. Code Ann. § 29-17-102 (West 2015) (limiting takings for economic development); Tex. Gov’t Code Ann. § 2206.001 (West 2015) (same); Va. Code Ann. (West 2014) § 1-219.1 (narrowly defining public use, excluding economic development from the definition and preventing taking of surplus property); Wis. Stat. Ann. § 32.03 (6)(b) (West 2015) (generally prohibiting takings when the condemnor “intends to convey or lease the acquired property to a private entity”); Wyo. Stat. Ann. § 1-26-801 (West 2014) (“‘[P]ublic purpose’ means the possession, occupation and enjoyment of the land by a public entity.”).

²⁰ La. Const. art. I, § 4 (requiring that blighted property cause health and safety problem to be subject to condemnation); Mich. Const. art. X, § 2 (requiring blight to be determined on a property-by-property basis, requiring clear and convincing evidence for this determination, and imposing a tighter definition of blight); S.C. Const. art. I, § 13 (requiring that blighted property be a danger to public health or safety); Ala. Code §24-2-2 (2015) (replacing power to acquire blighted “areas” with power to acquire blighted “property”); Ariz. Rev. Stat. Ann. § 12-1132 (2015) (requiring clear and convincing evidence of blight); Cal. Health & Safety Code § 33333.2, .4 (West 2015) (increasing documentation requirements for blight and narrowing definitions of physical and economic blight); Colo. Rev. Stat. Ann. 38-1-101(2)(b) (West 2015) (requiring clear and convincing evidence of blight); Fla. Stat. Ann. § 73.014 (West 2015) (prohibiting the use of eminent domain to eliminate blight); Ga. Code Ann. § 22-1-1(1) (West 2015) (requiring blight to be determined on a property-by-property basis and imposing stricter requirements for health and safety problems); Idaho Code Ann. § 7-701A (West 2015) (requiring clear and convincing evidence of blight, imposing stricter requirements for health and safety problems, and requiring blight to be determined on a property-by-property basis); Ind. Code Ann. § 32-24-4.5-7 (West 2015) (altering the definition of blight and instituting procedural safeguards); Iowa Code Ann. § 6A.22 (West 2015) (altering blight definitions; allowing the condemnation of nonblighted properties in urban renewal area only if 75 percent of individual properties in area are blighted); Kan. Stat. Ann. § 26-501b(e) (West 2015) (requiring blight to be determined on a property-by-property basis); Minn. Stat. Ann. § 117.027 (West 2015) (allowing properties to be condemned only where there is danger to public health or safety; allowing non-blighted properties in blighted area to be condemned only if there are no feasible alternatives); Mo. Ann. Stat. § 523.274 (West 2015) (requiring blight to be determined on a property-by-property basis; stating that agricultural land cannot be blighted); Mont. Code Ann. § 7-15-4206 (2) (limiting criteria for finding blight); N.H. Rev. Stat. Ann. § 205: 1-b (2015) (requiring that blight be determined on a property-by-property basis and that blight cause danger to public health and safety); N.M. Stat. Ann. §§ 3-18-10, 3-60A-10 (West 2015) (prohibiting eminent domain for blight elimination, except irregular platting in one area of the state; allowing that blighted structures may be required to be repaired or demolished); N.C. Gen. Stat. Ann. § 160A-503(2a) (West 2015) (requiring blight to be determined on a property-by-property basis); Ohio Rev. Code Ann. §1.08 (West 2015) (defining blighted area to require 70 percent blighted properties); 26 Pa. Cons. Stat. Ann. § 205 (West 2015) (instituting expirations for blight designations and tighter definitions of blight); Tex. Gov’t Code Ann. § 2206.001(b-1) (West 2015) (stating that property may be taken for economic development only if the primary purpose is blight elimination); Va. Code Ann. § 1-219.1 (West 2015) (requiring that blight be determined on a property-by-property basis and that blight be a danger to public health and safety); W. Va. Code Ann. § 16-18-6a (West 2015) (requiring blight to be determined on a property-by-property basis); Wis. Stat. Ann. § 32.03 (West 2015) (requiring that residential blight designations be made on property-by-property basis).

²¹ La. Const. art. I, § 4 H.(1) (providing a right of first refusal if the government tries to sell or lease property after holding it for less than 30 years); Nev. Const. art. 1, § 22(6) (allowing owner to repurchase if property is not used in five years); Ala. Code § 11-47-170(c) (2015) (requiring that if the condemnor seeks to sell property, the original owner be given the opportunity to repurchase); Conn. Gen. Stat. Ann. §§ 8-127a(4)(b), 8-193(b)(1) (West 2015) (requiring that if the condemnor seeks to sell property, the original owner be given the opportunity to repurchase); Fla. Stat. Ann. § 73.013(1)(f)(2) (West 2015) (giving the property owner the right to repurchase property if it has not been used within 10 years); Ga. Code. Ann. § 22-1-2(c)(1) (West 2015) (allowing the property owner to apply to repurchase property if it has not been used within five years); Minn. Stat. Ann. § 117.226(a) (West 2015) (requiring that if the condemnor seeks to sell property, the original owner be given the opportunity to repurchase); Or. Rev. Stat. Ann. § 35.385 (West 2015) (providing a right of repurchase if property is not used for public purpose within a reasonable time); S.D. Codified Laws § 11-7-22.2 (2014) (giving the property owner the right of first refusal to repurchase property if it has not been used within seven years); Va. Code Ann. § 25.1-108 (West 2015) (allowing the property owner to repurchase property if it has not been used and is declared surplus); Wyo. Stat. Ann. § 1-26-801(d) (West 2015) (allowing the property owner to seek to repurchase property if it has not been used within 10 years).

²² Mich. Const. art. X, § 2 (placing on the government the burden of proof by preponderance of the evidence to show public use and by clear and convincing evidence to show blight); Va. Const. art. I, § 11 (placing on the government the burden of proving public use, with no deference given); Ariz. Rev. Stat. Ann. § 12-1132 (2015) (defining public use to be a question for the judiciary; requiring the government to show blight by clear and convincing evidence); Colo. Rev. Stat. Ann. § 38-1-101 (West 2015) (placing on the government the burden of proof by preponderance of the evidence to show public use and by clear and convincing evidence to show blight); Ga. Code Ann. § 22-1-2 (West 2015) (placing the burden on the condemnor to prove public use); Mont. Code Ann. § 70-30-111 (West 2014) (placing on the government the burden of proof by preponderance of the evidence to show that public interest requires the taking); Nev. Rev. Stat. Ann. § 37.010 (West 2014) (placing the burden on the condemnor to prove public use); Ohio Rev. Code Ann. § 163.09 (West 2015) (placing on the government the burden of proof by preponderance of the evidence to show that the taking is necessary and for public use); W. Va. Code Ann. § 16-18-6a (West 2015) (placing on the government the burden to show property is blighted).

²³ Miss. Const. art. 3, § 17A (prohibiting the transfer of property to a private party for 10 years); Fla. Stat. Ann. § 73.013 (West 2015) (same).

²⁴ For a sample of projects, see "Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse," Institute for Justice, June 2006, available at <http://ij.org/report/redevelopment-wrecks/>.

²⁵ Dick M. Carpenter II, Ph.D. & John K. Ross, "Doomsday? No Way: Economic Trends and Post-*Kelo* Eminent Domain Reform," Institute for Justice, January 2008, available at <http://ij.org/wp-content/uploads/2015/03/doomsday-no-way.pdf>.

²⁶ Fullilove, *supra* note 4.

²⁷ Fullilove, *supra* note 5.