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Commentary

Minority areas hit hardest by eminent domain

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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 onto their property could help decide your right to hold onto yours.

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

A large "Coming Soon" sign next to the gym already depicts the ritzy condo development that National 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!"

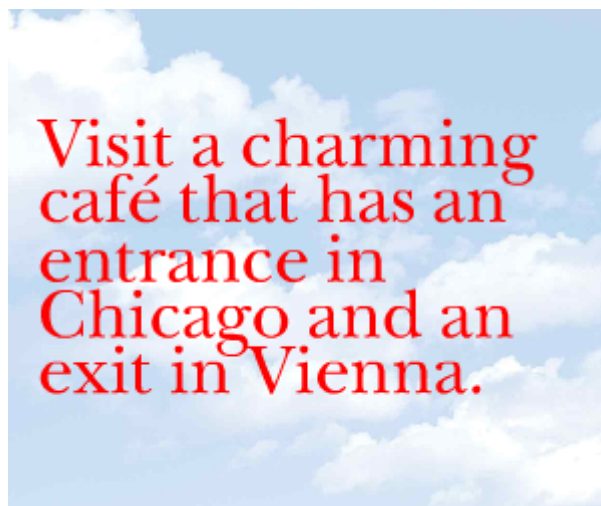
A suit has been filed on the Barragans' behalf by the Institute for Justice, a libertarian Virginia-based public interest law firm that has fought property rights battles all the way to the U.S. Supreme Court.

Eminent domain battles between local governments and holdout property owners are nothing new, but the legal landscape has changed.

In *Kelo vs. 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 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 Barragans' area is mostly Hispanic. In the end, industry somehow shunned my former neighborhood and prairie grass grows where a community once thrived.



Supreme Court Justice Clarence Thomas cited such disastrous effects on minority communities by urban renewal in his dissent to the 5-4 Kelo decision. And Justice Sandra Day O'Connor wrote: "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, the less well-educated and non-whites.

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

Such loopholes need to be plugged up. As influential urban renewal critic Jane Jacobs wrote in her 1961 book, "The Death and Life of Great American Cities," the future of cities is not in big buildings or highways but in neighborhoods.

Instead of rushing to push old residents out of neighborhoods, smart city leaders must find ways to incorporate residents into their plans and keep property rights from going wrong.

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