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Posted on Mon, Nov. 14, 2005

# Backlash to ruling on eminent domain

By Diane Mastrull  
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The words *eminent domain* have been throwing a fright into property owners for more than half a century, but never more so than in the last six months.

Setting off the nationwide panic attack was a U.S. Supreme Court decision in June that expanded the concept well beyond its usual bounds. The justices ruled that a Connecticut city could force the sale of homes and businesses in a neighborhood not deemed blighted, to make way for private economic development.

Predictions of wanton land grabs by local governments rumbled across the country.

The eminent-domain juggernaut, though, has not materialized. What has occurred is a stampede of lawmakers in Congress and more than 30 states to prohibit the kind of property seizures the high court allowed in Connecticut. Within a week of the ruling, a bill reining in the use of eminent domain passed in Delaware. Five are pending in New Jersey and four in Pennsylvania, where one could come up for a Senate vote as early as tomorrow.

The legislatures are piling through a door that the justices themselves opened. The majority opinion in *Kelo v. the City of New London* noted that nothing in their ruling "precludes any state from placing further restrictions on its exercise of the takings power."

In no time, bills to do just that were popping out of politicians' printers.

Legislation to safeguard property rights would seem a sure-fire crowd pleaser. And it has been in places such as Ardmore on the Main Line, where a coalition of residents and small-business owners has been fighting off an eminent-domain threat for two years.

But the bills also have taken a drubbing, especially by redevelopment advocates, who call them "knee-jerk." They warn that the limitations on eminent domain would be so tight, and the process of condemning the most blighted properties so onerous, that hundreds of cities



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and struggling older communities might never be revitalized.

Eminent domain "is a very, very important revitalization tool," said Herbert Wetzel, executive director of the Philadelphia Redevelopment Authority. Without it, he said, more than 7,300 affordable housing units built in the city since 1992 would not exist.

On Wednesday, Wetzel spent four hours in Harrisburg lobbying for compromise language in the bill about to come before the Senate. Under the proposal written by Sen. Jeffrey Piccola (R., Dauphin), property could not be seized unless it met a considerably narrowed definition of "blight." With few exceptions, eminent domain also could not be invoked to clear the way for private commercial enterprises - hotels, office complexes, shopping malls - even if they generated jobs and tax revenue.

The *Kelo* ruling "made people sit up and take notice and start to realize that in the face of activist courts and local government, private property rights might very well be threatened," said Piccola, whose district includes Harrisburg.

He and like-minded lawmakers have heard pleas for caution from a variety of land-use and redevelopment-advocacy groups such as 10,000 Friends of Pennsylvania, which is urging more study of eminent domain in the state before any bill is put to a vote.

Late last week, Gov. Rendell's office weighed in with a five-page letter of suggested adjustments to Piccola's proposal, to "strike the right balance between the rights of homeowners ... and the critical needs of Pennsylvania's communities to revitalize."

Also calling for changes, a legislator who had been on Piccola's list of sponsors removed her name from the bill.

"It's not time to move this yet without more thought so we do it right," said Sen. Connie Williams (D., Montgomery/Delaware). Her district includes Norristown, where one of the region's largest revitalization projects is just starting up.

But some speed is appropriate, Piccola said, when the matter at hand is taking "private property from one person and giving it to another."

"This issue," he said, "is ripe."

It is less so in New Jersey, but only because the state has been consumed with a governor's race and assembly contests.

The eminent domain bills there have gotten scant attention, but that is likely to change in the new year. Some would prohibit the condemnation of any property that meets local health, safety and building codes. Others would amend the state constitution so eminent domain could be used only for "public purposes" such as schools, roads and parks, not for economic development.

In its *Kelo* ruling, the Supreme Court found nothing unconstitutional about New London's use of eminent domain to force property owners to sell (at fair market value) in order to accommodate offices, a hotel and new residences - a project expected to create more than 1,000 jobs and increase tax revenues in the distressed city.

For the first time, economic development qualified as "public use," which under the Fifth Amendment of the U.S. Constitution is the sole reason for acquiring property by condemnation, said lawyer David Snyder, an eminent-domain expert in Philadelphia.

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Reflecting the contentiousness of the issue, the justices split 5-4 in *Kelo*. In her dissenting opinion, Sandra Day O'Connor wrote that "all private property is now vulnerable to being taken and transferred to another private owner."

Thus, the stage was set for the legislative frenzy.

For redevelopment advocates, the most worrisome bill is not to be found in any statehouse but in Congress. The Property Rights Protection Act of 2005 would bar any state or local government that receives federal economic-development money from using eminent domain for economic development. Violators would have that funding withheld for two years.

After sailing through the House early this month, the proposal awaits Senate action. President Bush has endorsed it.

In an alert sent to its 20,000 members, the National Association of Housing and Redevelopment Officials warned, "If signed into law, the [act] would have a devastating impact on state and local governments' ability to pursue meaningful community revitalization."

Scott Mahan doesn't want to get in the way of revitalization, but neither does he want to lose his office supply store on Lancaster Avenue in Ardmore, a business founded 80 years ago by his grandfather.

Lower Merion Township's renewal plan for the downtown historic district could involve the condemnation, through eminent domain, of his building and nine others. So late last month, Mahan went to Harrisburg to testify for Piccola's bill.

If any good came of the *Kelo* ruling, he said, it is the creation of a "groundswell of opposition" to eminent domain.

"People are afraid of losing their property," he said. "They're demanding that their state and local governments offer them the protection they deserve."

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