

Urban Renewal?

Why Maxine Waters and John Cornyn agree on eminent domain.

by Duncan Currie

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MAXINE WATERS and John Cornyn don't agree on much, but they do agree that government should not be acquiring private property for private economic development via eminent domain. They were both unnerved by the 2005 Supreme Court ruling in [Kelo v. City of New London](#), which gave such takings a constitutional imprimatur. Soon afterward they teamed up to curb the reach of eminent domain laws and prevent *Kelo* from unleashing a raft of similar condemnations.

That Rep. Waters, a fiercely liberal Democrat from Los Angeles, and Sen. Cornyn, a dependably conservative Republican from Texas, should find such common ground might seem surprising. Indeed, Waters recognized that eminent domain reform would garner her some unlikely allies. As she testified to a House committee in September 2005, citing her work with local officials in California, "People are looking at us and saying, 'What is it that brings liberal Maxine Waters together with this conservative supervisor out of Orange County?' Well, you're right, you won't see that very often, but on this issue I think that you're going to see a lot of it because . . . we all basically share a basic value of the right to ownership of our land and our homes."

To better understand her position, consider a [recent report](#) published by the Institute for Justice, a public interest law firm that litigated the *Kelo* case. Its author, Dr. Mindy Thompson Fullilove, is a Columbia professor whose 2004 book *Root Shock* examined the history of urban renewal projects. Under the Federal Housing Act of 1949, "which was in force between 1949 and 1973," she writes, "cities were authorized to use the power of eminent domain to clear 'blighted neighborhoods' for 'higher uses.' In 24 years, 2,532 projects were carried out in 992 cities that displaced one million people, two thirds of them African American."

According to Fullilove, "African Americans--then 12 percent of the people in the U.S.--were five times more likely to be displaced than they should have been given their numbers in the population. Given that African Americans were confined because of their race to ghetto neighborhoods, it is reasonable to assume that more than 1,600 projects--two-thirds of the total--were directed at African-American neighborhoods."

These projects got a huge legal boost early on. In the 1954 case [Berman v. Parker](#), the Supreme Court held that "blighted" urban property could be condemned even if "such property may later be sold or leased to other private interests." The Court found that city officials did not need to demonstrate a strictly defined "public use" of the property in order to exercise their eminent domain power; a "public purpose" would also suffice. This logic led directly to the *Kelo* ruling, which affirmed that "economic development" was a valid public purpose.

"We aren't just talking about expanding highways anymore," says Hilary Shelton, director of the NAACP's Washington bureau. "We've moved from real community need to profit. That criterion becomes even more exploitive." Shelton is not a categorical opponent of eminent domain: He stresses that urban renewal ventures can benefit (and have benefited) inner-city neighborhoods, if properly married to genuine community interests and legitimate public functions. "There are clearly some successful projects out there," he says. But there are also many failures--and many examples of exploitation. Impoverished minority communities "lack in political power," notes Shelton. "They're the most vulnerable."

The NAACP actually co-authored an [amicus brief](#) in the *Kelo* case. "The history of eminent domain is rife with abuse specifically targeting minority neighborhoods," it argued. "Indeed, the displacement of African Americans and urban renewal projects were so intertwined that 'urban renewal' was often referred to as 'Negro removal.'" Joining this brief "was, in many ways, a no-brainer for the NAACP," says Shelton.

HOUSE REPUBLICANS responded swiftly to *Kelo*. And when they did, some prominent African-American liberals, such as Waters and John Conyers, broke with the majority of House Democrats, including caucus leader Nancy Pelosi, to support a measure introduced by conservative Republican Scott Garrett, which amended a transportation bill to prevent federal funds from being used for *Kelo*-style seizures. As John Fund of the *Wall Street Journal* [wrote](#) at the time, "A companion resolution condemning the *Kelo* decision was approved 365-33. Only 10 of the 43 members of the Congressional Black Caucus and only two members of the Congressional Hispanic Caucus voted against the latter measure."

Later that year, the House approved legislation barring all state and local governments that received federal economic development aid from exercising eminent domain power "over property to be used for economic development or over property that is subsequently used for economic development." If any state or local entity violated the ban, it would lose its federal economic development funding for two years. This provision passed the House by a vote of 376-38. Only seven Black Caucus members voted against it, while supporters included Waters, Conyers, Charlie Rangel, Jim Clyburn, Sheila Jackson Lee, and Stephanie Tubbs Jones. Yet due to the Senate's inaction, it never became law.

One recent eminent domain battle occurred in Riviera Beach, Florida, where the mayor sought to displace several thousand residents near the waterfront to make way for a \$2.4 billion redevelopment plan, which included a yacht club, an aquarium, and luxury condos. "Most of the people uprooted are going to be black," [reported](#) the *Palm Beach Post* in December 2005, "as the city is mostly black. Many will be among the city's poorest residents." But after Florida enacted landmark eminent domain reform in May 2006, the project stalled. The mayor has since lost his bid for reelection.

Defenders of such projects often argue, correctly, that eminent domain has proved a vital "last resort" tool in cleaning up squalid slums. Yet by treating it as a virtual hunting license, politicians and developers have bred cynicism about the law. They have also produced increasingly comical definitions of "blight." As Shelton puts it, "One person's 'blight' becomes another person's 'palace.'" You eventually wind up with well-maintained beachfront houses being declared "blighted," as happened in Long Branch, New Jersey.

At the very least states should, as a May 2006 [report](#) from New Jersey Public Advocate Ronald Chen recommended, "revise the statutory criteria for designating an area as 'blighted'" and "offer property owners a meaningful opportunity to appeal the blight designation." The "burden of proof," said Chen, should rest with the municipality. Truly blighted or vacant areas should not be conflated with neighborhoods that just happen to fall within the parameters of a lucrative real estate project.

"I am encouraged by the attention that's going to eminent domain now," says Shelton. But in those states that failed to pass meaningful post-*Kelo* reforms, the confluence of wealthy developers and revenue-hungry city councils continues to cast a shadow over basic property rights.

[Dissenting](#) from the *Kelo* majority, Justice Sandra Day O'Connor wrote that "the government now has license to transfer property from those with fewer resources to those with more." In fact, this phenomenon began long before the saga in New London. Just ask Maxine Waters.

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