



INTERNATIONAL
ECONOMIC DEVELOPMENT
COUNCIL

*The Power of
Knowledge and Leadership*

STATEMENT OF
JEFFREY FINKLE
PRESIDENT AND CEO OF THE INTERNATIONAL ECONOMIC
DEVELOPMENT COUNCIL

BEFORE THE
HOUSE FINANCIAL COMMITTEE,
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY



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August 18, 2005

Chairman Ney, thank you for the opportunity to appear before you today. I am honored to be here and to be given the opportunity to discuss the experiences of economic development professionals. We hope our experiences can be an important source of information as Congress reviews the rights of local officials to exercise eminent domain in an effort to protect the economic health and vitality of their communities.

My name is Jeff Finkle, and I am the President and CEO of the International Economic Development Council (IEDC.) IEDC is the premier membership organization dedicated to helping economic development professionals. Like you and your colleagues in Congress, our 4,000 members work every day to create high-quality jobs, develop vibrant communities and improve the quality of life in their regions. IEDC provides a diverse range of services, including conferences, certification, professional development, publications, research, advisory services and legislative tracking.



I have been a leader in economic development field for nearly 25 years and am the former U.S. Department of Housing and Urban Development (HUD) Deputy Assistant Secretary of Community Planning and Development during the Reagan Administration. In that role, I was HUD's Deputy Assistant Secretary in charge of the Urban Development Action Grant Program (UDAG) and the Community Development Block Grant Program (CDBG), and the Housing Rehabilitation program from 1981-1986. Additionally, I served in the Rhodes Administration between 1978 and 1980 working on facility issues for the Ohio Department of Mental Health and Mental Retardation.

On a personal note, I was born in Licking County, Ohio and grew up Newark, Ohio. I attended Ohio University and return to the institution often. It feels like being at home today, as this hearing is being held at Ohio University Chillicothe branch. Over the years, I have assisted the Institute of Local Government Administration and Voinovich Center. I have also had the pleasure of working with the Southern Ohio Diversification Initiative in Piketon as they confront the economic diversification issues at the Department of Energy facility in Piketon.

What is eminent domain? Eminent domain is an economic development tool that allows local communities to acquire and assemble land for new development projects that generate new jobs, investment and taxes. The Supreme Court's 5-4 decision in *Kelo v. New London* leaves eminent domain in the hands of states and affirms eminent domain as an important tool for local governments in the redevelopment and revitalization of economically distressed areas.

The court stated in its opinion that the pursuit of economic development is a "public use" within the meaning of the Fifth Amendment's Takings Clause. The



New London economic development project at issue in the case is similar to projects across the country aimed at revitalizing depressed communities.

It is IEDC's understanding, based on conversations with lawyers familiar with the decision, that the Supreme Court decision did not in any way expand the power of eminent domain. Rather, the Court simply upheld the long-standing inclusion of economic development as a 'public use.'

It is therefore unlikely that the Supreme Court's decision will result in city officials exercising eminent domain randomly or without balanced consideration. Rather, the court affirmed years of interpretations allowing the use of eminent domain to redevelop our nations communities and to protect our local economies.

Judicious use of eminent domain is critical to the economic growth and development of cities and towns throughout the country. Assembling land for redevelopment helps to revitalize local economies, create much-needed jobs, and generate revenues that enable cities to provide essential services. When used prudently and in the sunshine of public scrutiny, eminent domain helps achieve a greater public good that benefits the entire community.

One example of this success can be seen in the return of retail to our urban cores. Eminent domain has been crucial in encouraging retailers, particularly anchor tenant supermarkets, to locate in the heart of inner cities rather than on the periphery where they have traditionally positioned themselves. A combination of educational efforts and economic development incentives are encouraging the supermarkets that abandoned inner cities in the 1970s to return.



Successful redevelopment projects facilitated by eminent domain are proving that there are underserved populations/markets, and that perceived or actual higher costs of doing business in inner cities can be absorbed by sales volume. Without the ability to exercise the power of eminent domain for redevelopment purposes, the public would be unable to support many inner-city retail projects, and those neighborhoods would continue to decline.

Many of our urban communities were developed in the late 1800s and early 1900s. Those cities have small lot sizes and were developed during an era of horse and buggy. It is often difficult to redevelop these communities without the ability to assemble land. These communities want desperately to be competitive, but they are competing with farmland and suburbs. Big box retailers, shopping malls and new office buildings often choose to locate in greenfields and suburbs. Each time those development decisions are made, the tax base and jobs are also going to those places. That puts central cities like Newark, Columbus, Cleveland and Cincinnati at a competitive disadvantage. This translates to the inability of those communities to pay their police and fire departments and generate new jobs in their municipal limits.

Eminent domain has also helped struggling rural communities. In March 2002, Shawnee County, Kansas exercised its power of eminent domain to acquire the last few remaining parcels of a 432-acre site intended in part for a new Target Corporation distribution center. Although two property owners fought the condemnation proceedings primarily on the grounds that the distribution center did not satisfy a “public use,” the Kansas Supreme Court ultimately ruled that the taking of private property for industrial and economic development was in fact a valid public purpose. The \$80 million, 1.3 million square-foot warehouse



distribution center opened in June 2004 to the tune of over 600 new jobs, with the expectation of adding an additional 400 jobs within the next three years.

Whether you live in an urban or rural area, the use of eminent domain is never the first choice of any community. The eminent domain process is time consuming and expensive; it is therefore the last resort pursued during a land assembly process. Many local authorities rarely exercise their power of eminent domain, particularly when it deals with occupied housing. Public officials who do use eminent domain comply with existing rules protecting individual property owners, and they have the ultimate accountability to the citizens and voters.

There is no question that eminent domain is a power that, like any government power, must be used prudently, and there are many built in checks. One such check is the public nature of the takings process. Probing questions should be raised about any complex undertaking financed by taxpayers, and nothing in local government attracts more scrutiny or more criticism than eminent domain.

In their majority opinion in *Kelo*, the Supreme Court refers favorably to New London's long engagement in an open and comprehensive planning process. There are many other examples of public officials engaging their constituents. The City of Lakewood was a Denver suburb with little sense of place when the Lakewood Reinvestment Authority and developer Continuum Partners, LLC decided to redevelop a failing shopping mall into a mixed-use town center. The result was Belmar, 22 city blocks of stores, entertainment, office space, and residences, that has emerged as the symbolic heart of the community. Over the course of a year, the city underwent an extensive public process, establishing a citizens advisory committee and inviting members of the community to comment on potential redevelopment options.



Each state and locality legislates the use of eminent domain, and a public purpose or benefit generally needs to be clearly demonstrated. Authorities that abuse this privilege risk creating volatile political situations. Few government or elected officials are willing to risk their position and political stability in pursuit of a project overwhelmingly opposed by the community.

In another check on abuse, the Fifth Amendment requires that anyone whose property is taken for a public use be fairly compensated, and in practice, most takings are compensated generously. The eminent domain process requires just compensation for displaced property owners. In case after case, the majority of property owners willingly accept just compensation for their property in support of the development projects. According to our research, some are compensated as much as 25% above market value for their property. Just compensation allows property owners to relocate with an equal or improved quality of life.

Critics of the *Kelo* decision have said that it authorizes seizing the property of one person merely to give it to another. While it is true that once the public entity acquires title to the property, it is conveyed to a developer to carry out the project, eminent domain is part of the land assembly process for redevelopment with the intent to remove blight and/or create jobs and/or create housing. The public sector intervenes so that the private sector can bring much needed investment to a distressed area.

Government agencies are not and should not be in the private real estate development business; therefore, the assembled land is typically leased or sold to the private sector for redevelopment. As a matter of policy, cities should not be in the long-discredited practice of building redevelopment projects, rather they should

facilitate the use of private capital and private management to achieve the same end.

For years, public purpose has been more broadly defined than public ownership, and most development projects involve both public and private land uses and cooperation between public and private entities. Often the prices and terms of the deals are very favorable because 1) the location and characteristics of the property are otherwise very unfavorable, and/or 2) the private party can create or retain much-needed jobs.

How did we get here in the first place? One reason: eminent domain is used differently than it was in the 1960s. In the 1960s our federal government gave cities resources under the Urban Renewal Act to plow down hundreds of acres of land and thousands of homes and commercial buildings. That left many cities with land vacant for years. This policy has since been attacked by many as an inefficient use of resources.

Today we wait until there is a market opportunity before we use eminent domain to acquire distressed properties to redevelop. Local officials use eminent domain to achieve the greater good when holdout landowners think their property is worth far more than could ever be achieved. If governments have to wait for holdouts, communities will see jobs and market opportunities disappear.

In closing, I would like to comment on pending eminent domain legislation. In response to the Kelo decision, Congress is offering legislation that would prohibit the use of federal funds for economic development projects that involve the exercise of eminent domain. Should Congress act to prohibit the use of eminent domain for economic development purposes, the economies of many



Congressional districts will suffer. No municipality in America could use eminent domain to carry out an economic development project. One person could veto the redevelopment of an entire distressed community. This would have the practical effect of making such projects virtually impossible.

In IEDC's opinion, Congress should not preempt or displace existing state and municipal laws that govern the local application of eminent domain. The Supreme Court's decision keeps the economic health of communities in the hands of local leaders who are not out to destroy communities, but rather who work for the best interests of their communities at large. State or federal bills prohibiting the use of eminent domain for economic development are job-killing pieces of legislation.

Judiciously used eminent domain is critical to the economic growth and development of cities and towns throughout our country. Assembling land for redevelopment helps revitalize local economies, create much-needed jobs, and generate revenues that enable cities to provide essential services. Exemplified by New London, eminent domain is used to breathe new life and give new hope to residents by providing new jobs.

Thank you again for the opportunity to speak with you today.

