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Eminent Domain Abuse: If They Can't Tax It, They'll Just Take It

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Nor shall private property be taken for public use without just compensation.

Article V, The United States Constitution

Since the 1970s, National Taxpayers Union (NTU) and other citizen groups have been slowly but surely rolling back and lifting taxes at many points of the system, including federal income taxes and property taxes (through measures like Proposition 13 in California). While politicians may be reluctant to call for tax hikes as a result, that old adage "nothing breeds contempt like success" is as true of fiscal policy as it is of any other aspect of American life. So, it is not surprising that in recent years, governments at all levels have taken aim at property owned by taxpayers and small businesses in their unending quest to expand their power and influence over average Americans. Their guiding philosophy seems to be, if you can't tax it, just take it.

As the United States Constitution clearly states, property is only supposed to be taken from individuals for a "public use." Twenty-five years ago, however, when the phrase "what is good for General Motors is good for America" still resonated -- particularly in Michigan -- the State's Supreme Court set an unfortunate precedent by allowing the city of Detroit to uproot families and businesses in the Poletown neighborhood so GM could build a factory on their land.[1] This decision has been used repeatedly around the country to allow governments to transfer property from one private interest to another.

Fortunately, the Michigan Supreme Court recently reversed the *Poletown* decision when it ruled unanimously in *Wayne County v. Hathcock* that "To justify the exercise of eminent domain solely on the basis of the fact that the use of that property by a private entity ... might contribute to the economy's health is to render impotent our [C]onstitutional limitations on the ... power of eminent domain." [2] This decision could provide some needed ammunition to opponents of eminent domain abuse in the legal system, but grassroots activists must assess the full extent of the situation before taking undue comfort in this recent court decision.

Although it is still too soon to tell just how government officials will react to the *Wayne County v. Hathcock* decision, it is clear that most government officials see nothing wrong with stretching and abusing the Constitutionally outlined power of eminent domain. According to Larry Morandi, Environmental Program Director for the National Conference of State Legislatures, cities often use eminent domain to increase tax collections. "They are taking property they don't believe is generating enough tax revenue and turning it over to a developer who will generate more taxes," [3] he stated recently. Thus, eminent domain is now seen as a backdoor revenue source for many public officials who are fearful of raising taxes overtly.

The Institute for Justice -- a non-profit law firm that has handled several high-profile eminent domain cases -- found that at least 10,000 eminent domain abuses occurred between 1998 and 2002 alone. [4] A vast majority of these are cases in which the government is attempting to generate higher tax revenues. The fact that governments so often misuse this power to pad their bottom lines is bad enough, but the situation is actually far worse and even taxpayers who are not directly victimized by eminent domain abuse may be footing the bill. That is because eminent domain is often used to clear the way for "redevelopment" -- professional sports stadiums, sweetheart deals to corporations, and other heavily subsidized public works projects that politicians decide are a priority -- usually as the result of intense lobbying and campaign contributions. Rather than being an economic boon, these land grabs often lead to higher taxes, a reduced tax base, and further economic stagnation -- exactly the opposite of the portrayal of eminent domain as a panacea for a region's or neighborhood's economic ills.

Throughout the nation, taxpayer subsidized eminent domain abuse tends to follow a consistent pattern. First, a few taxpayers and property owners whose property is coveted by a powerful developer have their land forcibly taken from them by the government, usually with minimal or completely inadequate compensation. Then, a greater number of taxpayers, perhaps those in a city or county jurisdiction, are also forced to pay for massive subsidies to support the developer or whatever project the eminent domain abuse originally cleared the way for. This "double-whammy" is not a coincidence. Once a government entity -- whether it is a city, county, or state -- gets away with taking advantage of taxpayers, it is likely to continue to do so unless a massive effort is undertaken to stop the pattern of abuse.

The leading organization in the nation in fighting eminent domain abuse is the Institute for Justice (www.ij.org) and their Castle Coalition (www.castlecoalition.org), which works to protect property owners and taxpayers in the courts. While many eminent domain abuse "horror stories" can be found on the Castle Coalition's website, this analysis of just a few cases of taxpayer-subsidized eminent domain abuse illustrate how big the problem really is and how much Americans need to be concerned. Even if it is not your home being taken, you might soon be forced to foot the bill for the dreams of ambitious developers. Besides, as Castle Coalition Attorney Dana Berliner explains, "If the promise of

greater jobs or profits is enough to take someone's property, then almost no one is safe. Practically any home in the United States would generate more tax dollars as a Costco. Small businesses provide fewer jobs than an industrial park. And houses of worship produce no tax dollars and few jobs." [5]

Examples of Taxpayer-Subsidized Eminent Domain Abuse

Brooklyn, New York

In Brooklyn, New York, well-connected developer Bruce Ratner -- President and CEO of the development firm Forest City Ratner -- has put forward an ambitious proposal to redevelop the "Atlantic Yards" area of Brooklyn. Under this plan, Ratner -- having recently purchased the New Jersey Nets basketball franchise for \$240 million -- plans to move the team to Brooklyn to play in a \$435 million arena. The rest of the plan, to be developed over a 10-year span by Forest City Ratner, includes four office towers with 2.1 million sq. ft. of space, 300,000 sq. ft. of retail, 4,500 units of housing, and six acres of parks. [6] This project would not only displace 150 homes through eminent domain, but the combined subsidy provided by New York City and State taxpayers of the arena and redevelopment will also be nearly \$1 billion. [7] Worse, by kicking out 150 tax paying homeowners -- some of whom are paying property taxes on homes valued at \$1 million or more -- the city and state will be forcing productive citizens off the tax rolls, perhaps to live in the suburbs or another state.

Although it is doubtful that many Americans would say that a sports arena is a "public good" in the same vein as a road or a school, in this case the developers are using the arena and the prospect of bringing professional basketball to Brooklyn as political tools to gain support for the use of eminent domain. In fact, the arena itself is destined to lose money for the developer -- even though it will be heavily subsidized -- while the residential and commercial components of the project will turn a hefty profit.

Taxpayers and the residents of Brooklyn have not lost this battle yet. In fact, the war over public opinion is being waged in the chambers of New York's City Hall and in the city's newspapers. On May 4, NTU testified in opposition to the proposed stadium subsidies and eminent domain abuse. Given the unanimity of support among New York's public officials, the struggle against this massive power and property grab will be long and difficult, but grassroots organizations like NTU and Develop Don't Destroy Brooklyn are putting up a vigorous fight. [8]

Toledo, Ohio

As part of a \$300 million subsidy package, city officials had offered to acquire nearly 160 acres of residential and commercial property -- including 83 homes -- for immediate transfer to DaimlerChrysler. The company planned to use the land to expand and modernize its Jeep manufacturing facilities. The struggling city's generous offer was an attempt to persuade the company not to relocate to another city, taking 4,900 jobs and \$6 million in annual city income tax contributions with it. [9]

To offset the enormous cost of relocating the homes, the city applied for and received \$2 million in Economic Development Initiative grant funding and a \$26.7 million Section-108 loan guarantee from the U.S. Department of Housing and Urban Development. In order to qualify for this financial relocation assistance and to comply with the state Constitutional clause governing urban renewal projects, Toledo officially designated the area to be redeveloped a "slum," although by all accounts the homes were well maintained. While DaimlerChrysler plans to keep Jeep in Toledo, it has made no promises.

Although Toledo had hoped to repay its loan through increased tax revenue from the expected 4,900-person Chrysler workforce, the new plant that Jeep built was fully automated, assembling cars by robot without much human participation. In total, the new plant employs 2,100 workers instead. [10] Since the city offered a \$47,000 tax rebate for each worker now employed at the plant, paid for by the people of Toledo, it is obvious that the city's abuse of eminent domain and massive distribution of corporate welfare did little for economic growth.

Pittsburgh, Pennsylvania

Like so many other cities that have resorted to land grabs, Pittsburgh has struggled economically -- in part due to uncontrollable changes in the national economy and in part due to high taxes and anti-growth policies. In May 1997, Mayor Tom Murphy, in an effort to attract retail shopping centers to Pittsburgh's declining downtown, used a variety of subsidies and taxpayer-financed loans to lure both Lazarus and Lord & Taylor to relocate there. To make way for the first phase of his plan, a 24-story office building was imploded and other businesses were forced to leave to clear a half-block area for the Lazarus department store. [11]

In the Mayor's deal with Lazarus, the firm would not have been required to start payments on its city taxpayer-financed loans until the store's annual sales reached \$41.7 million. In Lazarus' best year, it cleared half that amount; in 2003, it cleared only \$14 million. [12] In a similar deal with Lord & Taylor, the store had to reach \$35 million in annual sales before starting to pay back its city loans. This target was never hit either.

In July 2003, Lord & Taylor announced that it was closing its Pittsburgh store. In mid-January, Lazarus announced that it too was closing shop in Pittsburgh. The city squandered over \$50 million in subsidies and loans on these two "quasi-governmental" department stores alone -- or about \$150 for every man, woman and child still living in

Pittsburgh.

Manhattan, New York

Forest City Ratner touts itself as "the nation's largest publicly traded commercial real estate development company." [13] This description may be accurate as far as it goes, but Forest City Ratner is also one of the most politically well-connected developers in the nation and one of the largest beneficiaries of taxpayer subsidized eminent domain abuse. In 2002, the company, working hand-in-hand with the owners of *The New York Times*, scored a sweetheart deal to develop the site of the newspaper's new 52-story headquarters on Eighth Avenue between 40th and 41st Streets. Rather than offering to purchase the land from existing owners of the 11 buildings and 30 businesses located on the site, the *Times* and Forest City Ratner used their political connections to have the Empire State Development Corporation condemn the properties using eminent domain.

As if the abuse of government's eminent domain power by one private property owner to displace other private property owners were not bad enough, the *Times* also received a sweetheart deal on the land, along with millions of dollars in subsidies. In fact, the company paid only \$85 million to the existing property owners -- a 25 percent discount according to M.I.T. real estate finance Professor W. Tod McGrath -- and thereafter it received \$21.6 million in state and local tax breaks. [14] Forest City Ratner has recently been lobbying New York's Department of Environmental Conservation to ensure that the firm and the *Times* are entitled to an estimated \$170 million in state income tax credits and a permanent local property tax exemption, potentially worth tens of millions of dollars. Ratner is making the rather unique argument that Times Square is a "brownfield" and that he and the *Times* should be subsidized for "redeveloping" the site. [15]

Conclusion

Eminent domain may seem like a simple way for governments to redevelop their jurisdictions and increase tax revenues, by pushing out old businesses and homes in exchange for new investment and construction activity. Unfortunately, even the most well-intentioned urban renewal and revitalization schemes fail to generate a return on their "investment." In the case of eminent domain, however, good intentions are usually left at the door. Rather, these schemes -- especially those that rely on significant taxpayer subsidies to supplement land acquisition powers -- are calculated attempts to fleece citizens for projects that will ultimately deliver little public benefit.

They are also the most blatant method by which politically powerful special interests use their clout to steal from property owners and taxpayers alike. If your local officials start talking about grand redevelopment schemes and the use of eminent domain, the next "taking" to occur is likely to be cash out of your wallet.

About the Author

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[1] *The Detroit News*, "Supreme Court Restores Sanctity of Property Rights," August 4, 2004, <http://www.detroitnews.com/2004/08/04/editorial/0408/04/a10-231672.htm>.

[2] Michigan Supreme Court, *Wayne v. Hathcock*, Case No. 124070, July 30, 2004, http://courtofappeals.mijud.net/documents/opinions/final/sct/20040730_s124070_176_wayne_co7apr04_op.pdf.

[3] Dennis Cauchon, "Pushing the Limits of Public Use," *USA Today*, March 31, 2004, http://www.usatoday.com/news/nation/2004-03-31-eminent-usat_x.htm.

[4] Dana Berliner, "Public Power, Private Gain," Castle Coalition website, April 2003, <http://www.castlecoalition.org/report/pdf/ExecutiveSummary.pdf>.

[5] Jacob Sullum, "Exposing Eminent Domain Abuses," TownHall website, April 25, 2003, <http://www.townhall.com/columnists/jacobsullum/js20030425.shtml>.

[6] Nancy Cohen, "Bruce Ratner's Grand Plan for Brooklyn," *National Real Estate Investor*, April 1, 2004, http://www.nreionline.com/article/real_estate_bruce_ratners_grand/.

[7] Jung Kim and Gustav Peebles, "Estimated Fiscal Impact of Forest City Ratner's Brooklyn Arena and 17 High Rise Development on NYC and NYS Treasuries," Develop Don't Destroy Brooklyn website, July 21, 2004, <http://developdontdestroy.org/public/EconReport.pdf>.

[8] NTU testimony can be found on the NTU website www.ntu.org under the "Testimony" section. Develop Don't Destroy Brooklyn is the local group of activists leading the opposition to the arena and eminent domain plan; <http://www.developdontdestroy.org/>.

[9] Adam P. Hellegers, "Eminent Domain as an Economic Development Tool: A Proposal to Reform HUD Displacement Policy," *Michigan State University Law Review*, 2001, <http://www.law.msu.edu/lawrev/2001-3/Hellegers.pdf>.

[10] Dana Berliner, "Government Theft: The Top 10 Cases of Eminent Domain Abuse 1998-2002," Castle Coalition website, March 2003, http://www.castlecoalition.org/Top_10_Abuses/top_10_report.pdf.

[11] Jim Powers, "Pittsburgh Socialism Unsuccessful," Newsmax.com, January 26, 2004, <http://www.newsmax.com/archives/articles/2004/1/26/01212.shtml>.

[12] *Ibid.*

[13] Forest City Ratner Company Website, Company Info, <http://www.fcrc.com/index.asp>.

[14] Derooy Murdock, "Time\$cam," National Review Online, October 29, 2002, <http://www.nationalreview.com/murdock/murdock102902.asp>.

[15] Elizabeth Cady Brown, "Dirty Business: Ratner Seeks Toxic Tax Break," *City Limits Weekly*, June 28, 2004, <http://www.citylimits.org/content/articles/weeklyView.cfm?articleNumber=1544>.