

Independent, principled state policy fostering limited and responsible government, free enterprise, and a robust civil society.

October 2021

Better Late Than Never: Enacting Eminent Domain Reform in Oklahoma - Summary*

Introduction

In 2005, the United States Supreme Court, in *Kelo v. City of New London (Kelo)*, held that eminent domain could be used to take property from one private party for the direct benefit of another, in a perversion of the “public use” requirement of the Fifth Amendment to the United States Constitution. The *Kelo* decision dramatically diminished private property rights in favor of oppressive authority to steal from the poor and powerless to give to the rich and powerful under the guise of economic development. Oklahoma is one of only a few states that have not improved protections against these unjust takings. Now is the time to act – better late than never.

Erosion of the Limits to Eminent Domain

Eminent domain describes the power of a government to take private property for the common good. The Takings Clause of the Fifth Amendment to the United States Constitution implies the power of eminent domain by providing limitations to its use. It limits eminent domain to taking private property for “public use” and for which taking the owner is provided “just compensation.”

While determining the scope of eminent domain has been the subject of ongoing debate, defining “public use” has been particularly complicated. Modern jurisprudence has rejected a literal interpretation of public use, favoring an expansive view that allows taking private property so long as it achieves some public purpose.

The erosion of the literal interpretation of “public use” reached a tipping point in 2005 when the U.S. Supreme Court’s decided *Kelo*. In *Kelo*, the U.S. Supreme Court virtually abrogated any limitation the clause may have once provided, exposing every property to condemnation for virtually any purpose. While the vast majority of states across the country have reformed their eminent domain laws in response to *Kelo*, Oklahoma remains one of only a few that has not.

Attempts to Reform Public Use in Oklahoma

To date, the Oklahoma Legislature has introduced only three bills that attempted to redefine public use in a meaningful way. While none of them were perfect, each would have made significant progress toward restoring the limiting effect of “public use.” Because eminent domain is one of the most intrusive powers possessed by

a sovereign and ripe for misuse by corrupt bureaucrats and crony politicians, if it is allowed at all, it must be narrowly defined and strictly construed in favor of property owners.

Recommendations

Given the effect that an expansive view of eminent domain has had in permitting government overreach and cronyism, the legislature should take decisive action to protect individual rights and liberties. The legislature should:

- Define “public use” so that, at a minimum, it precludes any use that falls outside the government’s legitimate scope of authority, amounts to corporate welfare, or unnecessarily burdens private property rights;
- Require condemning authorities to show that taking private property is necessary;
- Define “blight” to include only those properties that pose a real threat to public health and safety and require condemning authorities to prove the existence of blight objectively and that no less-intrusive means of remediating problematic conditions is reasonably possible;
- Limit the delegation of eminent domain, allowing only a sovereign authority, subject to public scrutiny, to possess the power of eminent domain, delegating it only when necessary to accomplish a specific public use;
- Consolidate the laws, policies, and procedures for using eminent domain under a single title subjecting all condemning authorities to the same limitations, policies, and procedures necessary to protect private property rights; and
- Revert condemned property to the victims of eminent domain abuse and allow them to keep whatever amount of money was paid as “just compensation.”

Conclusion

It has been over a decade and a half since the U.S. Supreme Court issued its opinion in *Kelo*. While the Supreme Court has eroded the meaning of public use in the Takings Clause, it left the door open for states to enact greater protections for property owners. The Oklahoma Legislature has an opportunity to reform the law of eminent domain to prevent its abuse and preserve private property rights. It is time for the legislature to act.