



Texas Public Policy Foundation

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# EMINENT DOMAIN, ECONOMIC DEVELOPMENT AND AFFORDABLE HOUSING

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# What is Affordable Housing?

- ▣ Affordable housing is a dwelling where the total housing costs are affordable to those living in that housing unit.
- ▣ Means many things to many people

# Poletown, Detroit



# New London



# Segundo Barrio, El Paso



# Common Denominator: Economic Development

- ▣ Poletown – New GM Plant
- ▣ New London – Pfizer offices, retail, residential
- ▣ El Paso – Downtown Redevelopment Plan

# Economic Development

- ▣ Economic development is a codeword for increased tax revenue
- ▣ Economic development, in conjunction with eminent domain, means replacing one set of property owners, renters, and residents with another, more politically favored, set

# El Paso - Old





# El Paso - New



# The Impact of Kelo in Texas

- ▣ The Texas Municipal League embraced the *Kelo* decision when it said that Kelo “simply confirms what cities have known all along: under the Fifth Amendment to the U.S. Constitution, economic development can be as much a ‘public use’ as a road, bridge, or water tower.”

# The Impact of Kelo in Texas

“The well-paid lobbyists of developers and municipalities will claim that the decision doesn’t affect Texas, and that there’s really no problem that needs fixing. They’re wrong. The *Kelo* decision signifies a fundamental shift in the sanctity of all our property rights—it erases the public use requirement for eminent domain. Under *Kelo*, purely hypothetical economic development is the only justification necessary to condemn property.” – Clark Neily, Institute for Justice

# El Paso – The Next New London

- ▣ Eminent domain can be exercised as of November 2008
- ▣ Over-expansive definition of blight will allow the taking of almost structure within designated redevelopment zone
- ▣ Eminent domain doesn't have to be used to be effective

# Blight Exception

Economic development takings are acceptable if “the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.”

# El Paso's "Blighted" Area

- ▣ El Paso has completed its blight study, and, not surprisingly, found the redevelopment area to be blighted
- ▣ El Paso City Council adopted a Tax Increment Financing Zone—what it calls “a formidable force in the redevelopment.” Indeed. Through the TIRZ and the blight exception, the city will be able to engage in Kelo-style takings, just like New London.

# El Paso's "Blighted" Area

- ▣ 79901 zip code
- ▣ 1,055 businesses in the employing 12,485 people with an annual payroll of more than \$325 million.
- ▣ The sales for these businesses totaled more than \$340 million dollars in 2005—\$120 million of which were retail sales

# El Paso's "Blighted" Area

- ▣ Almost 100 residential buildings in the area:
  - Single family homes
  - Duplexes
  - Apartment buildings.
- ▣ According to the 2000 U.S. Census, more than 14,000 people live in the vicinity



# All of Texas at Risk

- ▣ Harris County – Residential developer uses MUD to take neighbor's property
- ▣ Austin – City takes apartments near airport to sell to commercial developers
- ▣ Rowlett – City takes family homestead for prospective residential development

# What Needs to Be Done

- ▣ Define public use in statute and the Texas constitution
  - Texas courts have “adopted a rather liberal view as to what is or is not a public use.” Essentially, public use in Texas has been construed as including the concepts of public purpose and benefit. The meaning of public use should be restored to its traditional meaning through a definition in statute.

# What Needs to Be Done

- ▣ Eliminate the Blight/Slum Loophole
  - Require that designations of blight be made on a property by property basis
  - Require strict criteria for findings of blight

# What Needs to Be Done

- ▣ Ban Private to Private Transfers & Government Land Speculation
  - Eliminate the ability of governments to take land from one owner and transfer it to another
  - Require governments to offer property for sale to previous owner if it hasn't been used for stated purpose within 5 years

# What Needs to Be Done

- ▣ Restore Balance on Determinations of Public Use and Necessity
  - Allow courts to examine whether all contemplated uses are truly public and necessary

# What Needs to Be Done

- ▣ Local governments can help themselves to create affordable housing and economic development:
  - Reduce burdensome building codes and regulations
  - Reduce or eliminate zoning laws
  - Reduce taxes and fees



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