



GOVERNMENT ACCOUNTABILITY

PROTECTING PRIVATE PROPERTY FROM EMINENT DOMAIN ABUSE

LEGISLATION

This year, in the name of Daniel Fink, a community activist from the Rainier Valley who fought eminent domain abuse until his death in October 2010, the Attorney General's Office continues efforts to:

- Prohibit the exercise of eminent domain for economic development, amending Title 8, RCW to:
 - Clearly define "public use" and "economic development."
 - Prohibit the taking of private property for economic development.
 - Adopt a "substantial factor" test for courts to use in determining whether or not a taking is for economic development purposes.

- Give property owners 120 days to improve blighted property before condemnation. This legislation would allow Washington property owners to appeal to a county Superior Court to remove a blight designation. The court will provide the property owner a reasonable amount of time to fix the problem. Once all conditions have been met, the court will remove the blight designation.

THE PROBLEM

Washington's Community Renewal Law (CRL) allows municipalities to eliminate "blight" using the power of eminent domain. "Blight" includes any physical deterioration, inappropriate uses of land, diversity of ownership, high levels of unemployment or poverty, crime, as well as factors affecting welfare and morals. This definition is too broad and overly vague, putting landowners at risk.

Making matters worse, blight is defined as an "area" affected by those conditions. Because blight is not specific to certain parcels, a municipality could use its eminent domain authority to broadly condemn non-blighted homes or businesses so long as the community renewal area includes some blighted parcels.

State law encourages municipalities to redevelop community renewal areas using private enterprise. In other words, the blight statute allows—and even encourages—what is explicitly prohibited by the state Constitution, Art. 1, Sect. 16, which says "private property shall not be taken for private use." And current case law allows the same kind of eminent domain abuse that occurred in the infamous US Supreme Court case of *Kelo v. City of New London*.

In that case, the city took Suzette Kelo's home, and others, and gave the property to private developers for a project that included a hotel and new offices to enhance a nearby Pfizer corporate facility. Four years later, *The Wall Street Journal* reports the city and state has spent "\$78 million to bulldoze private property to make room for high-end condos." Pfizer has announced the closure of its facility in New London and the neighborhood sits vacant.

According to a recent policy brief by the Washington Policy Center:

- Since 2000, Washington local governments have applied or attempted to apply the CRL to take the property of more than 71,000 Washington residents.
- When compared to residents in other areas, those living where the CRL has been used or contemplated are more likely to be:
 - Ethnic or racial minorities
 - Less educated
 - Surviving on significantly less income
 - Living at or below the poverty line.

In mid-2007, the Institute for Justice gave Washington a C- grade for its ability to protect private property.



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BACKGROUND

At a news conference in January 2007, Attorney General Rob McKenna, the Washington Policy Center and the Institute for Justice Washington Chapter spotlighted the plight of several Washington property owners who were victims of eminent domain abuse.

Following the 2007 legislative session, McKenna convened the Eminent Domain Task Force to review eminent domain laws and identify the changes needed to eliminate abuses. The Eminent Domain Task Force issued its final report in Fall 2009, including three recommendations:

- Enact legislation barring the use of eminent domain for “economic development”
- Reform the Community Renewal Law.
- Develop and adopt model rules for eminent domain.

In 2010, the Attorney General’s Office, on behalf of its Eminent Domain Task Force, requested legislation:

- Prohibiting the exercise of eminent domain for economic development (HB2425/SB6200); and
- Reforming Washington’s Community Renewal Law (HB2423/SB6199).

Despite garnering a combined 77 sponsors, these two bills did not advance to the floor in either chamber.