

# Liberty Briefs

Wisconsin GrandSons of Liberty

## EMINENT DOMAIN REFORM

5/7/2019

### Overview:

Wisconsin Statutes need to be re-written to clarify and better define 'blight' in order to limit and prevent Wisconsin Governmental power from aiding a private entity in the pursuit of profit by the use or threat of eminent domain and to limit and prevent local municipalities from using eminent domain in pursuit of creating development projects

### Constitutional and Court Reference:

Eminent Domain is a power that the government has to take a person's land, home, or business. What started out as taking for public use, changed to taking for public purpose, and the last change allow for taking for public good.

The founding fathers, knowing the potential for abuse of this power, set two limits: The use must be public and the compensation must be just.

In 1954, the United States Supreme Court extended that interpretation from public use to "public purpose".

In 1981, the Michigan Supreme Court further extended the power to include economic development. This ruling was overturned in 2004, by the Michigan Supreme Court, but in 2005, the United States Supreme Court broadened 'public purpose' to include 'economic development' which brings us to the 'public good' broadening.

### Needed improvement:

Wisconsin can improve its eminent domain law by replacing subjective terms with objective factors that can be conclusively demonstrated and by extending the same protections it has for residential property owners to all state's citizens and businesses.

### WiGOL reasons for improving the Eminent Domain law:

- Government's poor track record of stripping people of their property and their livelihoods through eminent domain.
- Eminent domain is most often used against minorities, the elderly, the poor and small business owners.
- Private property should never be used for wealth redistribution.
- Eminent domain should be reserved for "public use" and not "public purpose."
- Conservatives favor the individual v. the "collective."
- Private property rights must not be infringed upon.

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## Benefits of ED improvement:

- Blight definition gets defined, tightened, and becomes measurable.
- TIF district definition is intact.
- Private to private transfer through a unit of government is not allowed.
- Public Use v. Public purpose/benefit is clarified.
- Closes loopholes left by *Kelo* decision.

## Key Court Decisions/Actions:

1951 *Schumm v. Milwaukee County* – WiSupCrt prohibited taking for private corporation use

1954 *David Jeffery Co. v. City of Milwaukee* – required that taking be for Public Use only

1954 *Berman v. Parker* – SCOTUS ruled that public use can be superseded by public purpose.

1992 *Hawaii Housing Authority v. Midkiff* – SCOTUS held that the federal government can take land from a few landowners and redistribute it to many people.

1986 *Clarmar Realty Co. v. Redevelopment Authority* – WSC held that comparable properties are to be considered for determination of compensation.

1996 *Grunwald v. City of West Allis* – Court of Appeals allowed taking without reason.

2004 *County of Wayne (Mich.) v. Hathcock* – reversing *Poletown Neighborhood Council v. City of Detroit* – which permitted condemning land for GM build a new factory. SCOTUS called Poletown a “radical departure from constitutional principles.”

2005 *Kelo v. New London* – SCOTUS held that public purpose outweighs public use.

2006 *City of Norwood v. Horney (Ohio)* – Ohio SC repudiation of *Kelo*.

*Lamar Outdoor Advertising v. Country Side Restaurant (5/4/12)* The issues involved the compensation to which sign owners are entitled when their permitted signs are taken for highway improvement or other public projects.

*E-L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District (7/2/10)* While constructing a sewer, MMSD unreasonably removed groundwater from E-L’s property, which caused the building to settle, amounting to a “taking” of E-L’s property without just compensation. (WI Supreme Court ruled in favor of plaintiff by reversing Court of Appeals decision) Reference:

<http://www.wicourts.gov/sc/opinions/08/pdf/08-0921.pdf>

*Southwestern Illinois Development Authority v. National City Environmental (4/4/02)* The Illinois Supreme Court ruled that “taking one owner’s private property and giving it to another for private use is an unconstitutional use of the power of eminent domain.”

*In Dolan V. City of Tigard (1994)* The U.S. Supreme Court decided that the city of Tigard, Oregon could not regulate Ms. Dolan’s private property beyond that which was necessary to ensure compliance with flood plain regulations. The court rejected the city’s argument that it had a right to require Ms. Dolan to allow unfettered access to her greenway in order to comply with the city’s bicycle plan.