



## Eminent Domain



IMPLICATIONS FOR  
COMMUNITY REDEVELOPMENT  
EFFORTS



Part of a monograph series on Neighborhood Development  
from the Annie E. Casey Foundation

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*The Annie E. Casey Foundation is a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States. It was established in 1948 by Jim Casey, one of the founders of UPS, and his siblings, who named the Foundation in honor of their mother. The primary mission of the Foundation is to foster public policies, human-service reforms, and community supports that more effectively meet the needs of today's vulnerable children and families. In pursuit of this goal, the Foundation makes grants that help states, cities, and neighborhoods fashion more innovative, cost-effective responses to these needs. For more information, visit the Foundation's website at [www.aecf.org](http://www.aecf.org).*

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The essence of the Casey Foundation’s mission is to improve the prospects and life chances for vulnerable children and families. Throughout Casey’s journey—from New Futures to Rebuilding Communities to the Jobs Initiative and then to the design and development of *Making Connections*, our current flagship initiative—we have tried to make a difference, to produce results, and to remain open and appreciative of what we are learning. The early decades of our work focused on improving outcomes for children who were removed from their homes and families by the child welfare and juvenile justice authorities. We made the well-being and safety of children our first priority.

That focus, however, didn’t accommodate an important reality, that families are co-producers of good outcomes for their children. This co-production role is not easily replaced when families fail. A large and growing number of children live in families where parents and caregivers lack the capability or capacity to help produce good outcomes for their children.

This insight led us to change our focus from child rescue to family strengthening. We looked at what resulted in strong families—connections to economic opportunity, positive social networks, and effective services and systems. We found that the families who needed those connections the most almost always had the least. This led us to realize that to create the best future for children, we needed to understand the circumstances and conditions of their families.

And further, if we care about families, we must also care about the communities in which they live. Place matters. It was with this idea that the Foundation’s Neighborhood Development unit was formed, with

the intention of achieving better outcomes for low-income children and families by engaging the community. For many in philanthropy, this is a tender topic. There is an unavoidable tension between “respecting” the community and the stewardship obligations that are attached to foundations. The “community” is not monolithic and it does not always “know best.” And part of the challenge is that we lack the language to speak truth in the face of unresolved issues of race, class, gender, language, ethnicity, and, most of all, power.

It is possible to work respectfully and collaboratively in communities and with low-income families and residents, but it may not always be easy. An imbalance of information exists between those who study the issues and those who live with the problems. We should be unapologetic about the fact that there is knowledge to be garnered from disciplined research. But we should be similarly unapologetic about the fact that there also is important knowledge to be garnered from reflective practice, and from the wisdom of lived experience.

The challenge is to braid the knowledge from disciplined research and lived experience into something more powerful than one of them alone. To do so, we must reach a balance of both leading with ideas and giving those in the community a seat at the table. It is through this process that we can successfully revitalize a neighborhood and provide the most benefit to the families and children who live there. Our challenge is not to do good. Good is not enough. Our challenge is to do better. Ours is important work. It is noble work. Let’s get on with it.

*Ralph Smith, Senior Vice President  
The Annie E. Casey Foundation*

## II. FOREWORD

In recent history, eminent domain has been a powerful and often necessary tool in neighborhood redevelopment. The prevailing paradigm of urban renewal through urban redevelopment used eminent domain as a major means of acquiring and assembling projects for blight removal rather than for improving conditions and expanding opportunities for the children and families who live in these communities and are usually impacted by community redevelopment efforts.

Although the redevelopment of an area can lead to stronger, safer neighborhoods and the deconcentration of poverty, it also has other consequences. The low-income children and families who are displaced through the redevelopment process often lack the resources, such as housing assistance, job placement, social service supports, and counseling, that could lead them to better social and economic outcomes.

The 2005 Supreme Court *Kelo* decision (for an in-depth description, see p. 8) sparked debate over the use and scope of eminent domain, spurring a multitude of policy and practice initiatives at the local, state, and federal levels. The Casey Foundation wanted to explore what impact these proposed changes might have on the development of affordable housing and mixed-income communities and on the low-income children and families impacted by revitalization efforts. We sought to explore the aftermath of the *Kelo* decision by convening a

consultative session in September 2006 to bring together those who are involved directly at all levels of neighborhood development. The participants who attended the session, entitled: *The Eminent Domain Debate: Implications for Community Redevelopment Efforts*, included leading national intermediaries, national advocates, community developers, municipal and federal policymakers, and foundation colleagues.

The first half of the session focused largely on the impact of the *Kelo* decision, and the politics and ideologies guiding the new legislation and practices throughout the country that it sparked. The theoretical question was the possible chilling effect the legislation would have on nonprofit builders and intermediaries, and on the rebuilding of communities.

The second half of the session focused on the impact the policy and practice changes will have on low-income children and families. The discussion was spurred by the approach taken to responsible relocation by the Casey Foundation's Neighborhood Development unit. This approach works to ensure that families impacted by relocation are involved in an engagement and planning process throughout the entire redevelopment, resulting in improved and affordable housing, supportive services, and access to high performing schools either within their original community or in the new neighborhood to which they are relocated. Participants embraced

this approach, and the discussion culminated in the collaborative compilation of a set of guiding principles for the responsible use of eminent domain as a tool to improve outcomes for low-income children and families.

The session—planned in large part by Salin Geevarghese, Senior Associate; Felipe Floresca, Program Consultant; and Malka Jampol, Program Intern—served as a strong representation of the current perspectives and work being done regarding neighborhood redevelopment following the *Kelo* decision. By sharing this monograph and continuing these discussions, we hope all involved will be more aware of these issues so that a power such as eminent domain can be used as a positive force in community change.

*Roger Williams, Senior Fellow  
The Annie E. Casey Foundation*

THE *KELO* DECISION  
SPARKED DEBATE  
OVER THE USE AND SCOPE  
OF EMINENT DOMAIN,  
SPURRING A MULTITUDE  
OF POLICY AND PRACTICE  
INITIATIVES AT THE  
LOCAL, STATE, AND  
FEDERAL LEVELS.

### III. CASEY'S APPROACH TO NEIGHBORHOOD DEVELOPMENT

The Casey Foundation has developed its Neighborhood Development investments to create and promote a new paradigm of urban redevelopment that can produce better results for low-income children and families affected by such activities. Many of the current policies and practices of urban redevelopment sustain and intensify the challenges and risks faced by low-income families. Casey's Neighborhood Development portfolio advocates for policies, programs, and activities that:

- Improve the quality of life for low- and moderate-income people in Casey-affiliated places impacted by redevelopment;
- Reduce the traumas, burdens, and costs often imposed on low-income families who are displaced by redevelopment;
- Make it feasible for low-income residents to move to communities of choice and opportunity located throughout the regions in which they live;
- Increase the likelihood that low-income residents can benefit from the redevelopment of their communities;
- Promote the development of mixed-income communities as a critical strategy for family success and neighborhood stability;
- Encourage and support the institutions rooted in the community (i.e., medical centers, colleges, universities, large corporations, and other anchor institutions) to become active advocates, catalysts, and investors in

the efforts that strengthen and support the vitality of the communities in which they are located;

- Stimulate collaboration between and among the public, private, and philanthropic sectors, and other entities engaged in promoting and supporting community redevelopment.

The portfolio's principal components or operational areas are: Responsible Relocation, Responsible Redevelopment, and Expanding Access to Regional Opportunities:

**Responsible Relocation** is a programmatic approach to improving outcomes for low-income families affected by involuntary relocation. The approach calls for engaging community stakeholders in the design and implementation of the relocation plan, ensuring a wide range of choice of replacement housing options (including the ability of residents to return to the revitalized community); and providing comprehensive supportive services to help these families realize sustained housing stability, greater economic success, and improved well-being.

The aim of **Responsible Redevelopment** is not to stop revitalization, but to influence public policies and leverage private and public resources to achieve maximum beneficial impact for the Foundation's mission-critical populations—low-income children and families—when redevelopment takes place. It is a programmatic approach to support and encourage the creation of mixed-income



communities, which provide affordable housing, supportive services, quality education, and well-paying economic opportunities that enable low-income families to improve their well-being. Elements of this approach include substantive community engagement in the planning process, creative use of public and private resources to assemble land and build sustainable affordable housing, promotion of resident ownership of homes and businesses, development of high-quality schools, and advocacy for supportive public policies.

Urban redevelopment and the challenges it creates need to be addressed ultimately in a broad regional context that extends beyond jurisdictional boundaries. Under the banner of **Expanding Access to Regional Opportunities**, the Neighborhood Development portfolio is supporting collaborative partnerships and projects that support regional housing mobility programs and the development of a regional perspective on redevelopment, including inclusionary zoning, affordable housing production, transportation-oriented development, and workforce development.

#### IV. BACKGROUND *on* EMINENT DOMAIN

*John D. Echeverria, Executive Director,  
Georgetown Environmental  
Law & Policy Institute*

Use of the eminent domain power to promote economic development, particularly in America's urban centers, has become the focus of significant controversy over the last several years. The primary sparks for the controversy have been the U.S. Supreme Court's June 2005 decision in *Kelo v. City of New London* and concerted public advocacy in opposition to the use of eminent domain by libertarian organizations such as the Institute for Justice. The current controversy has unsettled widely accepted understandings among urban redevelopment specialists about the appropriate use of this redevelopment tool. It also has revealed a large reservoir of public concern about perceived abuses of the eminent domain power. As a result, political leaders, academics, economists, environmentalists, developers, and members of the public are now engaged in a focused debate about this longstanding but arguably endangered urban redevelopment tool.

##### **The Legal Background**

Eminent domain is the power of government to take private property for public use by condemnation. The roots of this legal authority stretch far back in legal history, predating the founding of the United States. The English crown and early colonial governments in America condemned private property for a

variety of public purposes, including for the construction of roads and forts, and also to advance more general economic development purposes.

The Takings Clause in the Fifth Amendment to the U.S. Constitution recognizes the existence of the eminent domain power in a backhanded way by placing limits on its exercise: "[N]or shall private property be taken for public use, without just compensation." Thus, the government can "take" private property, but only if it is for a "public use," and only upon payment of "just compensation." The Takings Clause originally applied only to the federal government, but the U.S. Supreme Court ruled at the end of the 19th century that the Fourteenth Amendment made the Takings Clause applicable to the states as well. Many state constitutions include parallel limitations on the taking of private property, and in some states (a minority), the state courts have interpreted their state constitutions as placing greater restrictions on the use of eminent domain than the federal constitution. The exercise of eminent domain is further limited by federal and state statutes (and some local ordinances), imposing substantive limitations and procedural conditions upon government's power of condemnation.

##### **The *Kelo* Case**

Much of the public debate about the eminent domain issue has centered on the Supreme Court's *Kelo* decision. This case arose from a

challenge to the use of eminent domain for an urban redevelopment project in the economically beleaguered New England port city of New London. Over many years, the city had suffered the loss of major businesses and employers, including a major naval base, resulting in an official state designation as a “distressed municipality.” Unemployment in New London was nearly double the state level, and the city’s population had declined to its lowest level since 1920.

With the goal of revitalizing New London’s economy, state and local officials developed a plan to redevelop the city’s Fort Trumbull area, which contained an existing state park, some vacant properties, as well as some businesses and residential housing. Capitalizing on the decision by Pfizer Inc. to build a \$300 million research center adjacent to Fort Trumbull, city planners developed a comprehensive redevelopment plan for the area, including a waterfront conference hotel, marina, public river walk, museum, residential housing, and research and development office space. The plan was expected to create more than 1,000 jobs, increase tax revenues, and spark additional economic development in the city. At the same time, the goal was to make the city more attractive and to create leisure and recreational opportunities on the waterfront and in the park.

The city development corporation succeeded in negotiating the purchase of most of the properties in the 90-acre area, but a handful

of property investors and homeowners refused to sell. After the city brought condemnation proceedings against these owners to complete the purchase of the area, the owners challenged the city’s action as a violation of the Takings Clause of the Fifth Amendment. Although the plaintiffs were offered financial compensation based on the fair market value of the properties, they argued that the taking was unconstitutional because it was not for a public use.

After the case worked its way through the Connecticut courts, the U.S. Supreme Court, on June 23, 2005, ruled that the taking was for a public use by a vote of 5-4. Writing for the majority, Justice John Paul Stevens stated that the Supreme Court had “long ago rejected any literal requirement that condemned property be put into use for the general public,” and said that the Court had consistently embraced the “broader and more natural interpretation of public use as ‘public purpose.’” Justice Stevens observed that the city had “carefully formulated an economic development plan that it believes will provide appreciable benefits to the community,” and had relied upon a state statute specifically authorizing the use of eminent domain to promote economic development. Given the “comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of [the Court’s] review,” the Court ruled that these eminent domain proceedings satisfied the public use requirement.

THE SUPREME COURT’S DECISION IN *KELO* MAY NOT HAVE BEEN SURPRISING TO CONSTITUTIONAL SCHOLARS, BUT IT STIRRED AN IMMEDIATE OUTCRY IN THE POPULAR MEDIA AND AMONG LAWMAKERS IN CONGRESS AND IN STATE LEGISLATURES.

Justice Anthony Kennedy joined the majority in ruling for the city. But he also filed a separate concurring opinion to emphasize that “transfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits, are forbidden by the Public Use Clause.” Justice Sandra Day O’Connor filed a strongly worded dissent, contending that the majority’s holding abandoned the “long-held, basic limitation on government power—that the sovereign cannot take property from one citizen to give to another for private benefit—embodied in the Public Use Clause.” In a now famous turn of phrase, Justice O’Connor wrote, “The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.” Justice Clarence Thomas filed his own dissent, arguing that takings should be permitted only when the public actually would own or use the property.

The one essentially irrefutable point one can make about the *Kelo* decision, despite the justices’ strong disagreement, is that the ruling is consistent with and naturally follows from the Court’s prior precedents in this field. In a host of decisions over the last century, involving manufacturing facilities, irrigation projects, mining operations, and downtown redevelopment projects, the Court had upheld the use of eminent domain. It would have been a revolutionary legal step for the Court to come out the other way in *Kelo*.

It is also fair to observe that in many ways the facts of the *Kelo* case have been converted, in the course of the public debate, into an unfair caricature. It is often alleged that *Kelo* stands for the proposition that the government can simply take private property to hand it over to a private developer, or that a community can use eminent domain for the sole purpose of enhancing property tax receipts. But in upholding New London’s exercise of the eminent domain, power it is clear that the Court relied heavily on the fact that the city had engaged in comprehensive, deliberate, and public planning processes in order to develop a public vision for the Fort Trumbull area. Neither the facts nor the analysis in *Kelo* support ad hoc property transfers from one owner to another, or takings solely designed to enhance tax revenues.

Ironically, despite the public furor over the Court’s decision in *Kelo*, the Court’s decision arguably limited—rather than expanded—the government’s ability to use eminent domain for economic development. For example, the Court’s opinion in *Kelo* does not repeat the language in some of the Court’s prior precedents asserting that the taking power is coextensive with the government’s regulatory authority. The opinion also does not repeat the strong endorsement by Justice Douglas in the famous *Berman* case of urban renewal efforts. Moreover, as discussed, the Court gave great weight to the comprehensive planning process employed by New London, and suggested that it might give less deference to

an exercise of eminent domain that did not implement a comprehensive plan. In addition, the Court pointedly observed that the developer was bound by contract to carry out the specific elements of the redevelopment plans. Finally, the Court's recognition that condemnation entails hardship on displaced property owners and its acknowledgment in a footnote that there exist "important questions" about the fairness of the traditional measure of just compensation may signal a willingness to consider changes in the prevailing "market rate" standard. As discussed, Justice Kennedy's concurring opinion suggested an even greater willingness to restrict eminent domain for economic development purposes in certain circumstances. For all the foregoing reasons, even though the *Kelo* decision upheld the use of eminent domain in this instance, the Court actually drew narrower lines around this power than in any other modern Court decision on this topic.

### **The Backlash to *Kelo***

The Supreme Court's decision in *Kelo* may not have been surprising to constitutional scholars, but it stirred an immediate outcry in the popular media and among lawmakers in Congress and in state legislatures. Editorials and magazine articles expressed outrage at the notion that a person's property could be condemned and given to another private party for economic development. The publicly prominent plaintiffs in *Kelo* appeared strongly sympathetic to many Americans: ordinary

middle-class homeowners who simply wanted to continue to live in their homes, some of which had been in their families for generations. Fanned by inflammatory press releases from the Institute for Justice and by the dire warnings in Justice O'Connor's and Justice Thomas's dissents, many Americans expressed fear that their property could be threatened at the whim of planners and government bureaucrats. Public opinion polls showed overwhelming popular opposition to the Supreme Court's decision. Congressman James Sensenbrenner denounced *Kelo* as the "*Dred Scott* decision of the 21st century." New London city officials were targets of death threats, and libertarians proposed condemning Supreme Court Justices' homes in New Hampshire.

Traditional defenders of eminent domain were largely caught flat-footed by the public reaction to *Kelo*. On the one hand, some defenders of the eminent domain power simply dismissed the public reaction to *Kelo* as a misinformed popular reaction to a perfectly pedestrian application of settled precedent. On the other hand, some defenders of eminent domain recognized that this urban redevelopment tool had not been subjected to meaningful public scrutiny in recent years, and that some examples of the use of eminent domain appeared abusive. For example, there has been a widespread concern that certain individuals or communities have been unfairly targeted for takings, and that some exercises of eminent domain appear to be designed more

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to benefit specific developers than the community as a whole. Land use planners, led by the American Planning Association, and municipal officials, led by the U.S. Conference of Mayors and the National League of Cities, emerged as the primary opponents of radical eminent domain reform measures. Mayor Michael Bloomberg of New York City became the most prominent national political figure to speak out in defense of the use of eminent domain for urban revitalization and economic development.

### Key Underlying Policy Issues

Whatever the specific legal or factual issues in the *Kelo* case itself, the case has become the focal point for a wide-ranging public policy debate about whether the power of eminent domain for economic development should be taken away from cities, or whether the power should at least be severely restricted. Some of the key questions in this debate include the following:

*Is Eminent Domain an Essential Tool for Achieving Urban Redevelopment?*

Presumably no one would resist jettisoning the eminent domain power to promote private economic development, thereby avoiding all of the controversy associated with this governmental power, if development projects could proceed through voluntary purchases from willing sellers, or if the public itself (rather than private companies) could undertake necessary redevelopment projects. Thus, one of the fundamental questions in this

debate is how necessary (or essential) the eminent domain power is in order to overcome owners who “hold out” and refuse to sell or, what may amount to the same thing, refuse to sell except at an exorbitant price. The other question is whether private enterprise plays a necessary role in downtown redevelopment projects.

The first question is difficult to answer because proponents of eminent domain can certainly point to examples in which the eminent domain power has been used to overcome holdouts. But critics can also point to major development projects in which parcels have been assembled through voluntary purchases, and they raise the question of whether at least some urban redevelopment projects might not have been pursued without using eminent domain. It seems clear that losing the eminent domain power would mean losing some urban redevelopment opportunities. The ultimate question is what would be the public costs in terms of lost jobs, reduced economic activity, and reduced opportunities and services for families and individuals that could benefit from redevelopment activity?

The public vs. private question seems easily resolvable in at least some cases. For example, few would see an appropriate role for government in owning and operating retail establishments, such as grocery stores. But the case for demanding that eminent domain be used solely to advance publicly owned projects is perhaps stronger in the case of housing or sports stadiums, for example.

*Are Property Owners Fairly Compensated?*

The Constitution requires that every exercise of the eminent domain power be accompanied by payment of “just compensation,” generally measured based on the fair market value of the property. In addition, federal and state relocation assistance laws generally provide at least modest support in assisting businesses in relocating and families in finding new housing. There is substantial evidence that some property owners faced with the threat of eminent domain have been able to negotiate for significant premiums above fair market value in exchange for the agreement not to contest the condemnation.

Nonetheless, there are legitimate questions about whether fair market compensation, even if supplemented with relocation assistance, is adequate to fully mitigate the effects of property loss. After all, if an owner had been content to sell at fair market value, he or she would have sold already, or would be content to make a voluntary exchange. For any of a host of reasons, including a long family association with a home or a personal affection for the community, a property owner may place a subjective value on a property that far exceeds its market value. Furthermore, when the government succeeds in assembling a large parcel through eminent domain, it often increases the value of the property, and the question can be raised whether the original owners should be entitled to share in this run up in value.

*Does the Use of Eminent Domain Improperly Favor Private Interests?*

Another question frequently raised about eminent domain is whether this governmental power is being deployed, not to further public objectives, but to make profits for a private developer or some other special interest. This concern was obviously at the heart of Justice O’Connor’s quip that the eminent domain power could be used “to replace a Motel 6 with a Ritz-Carlton.” There are certainly examples in which profit-minded developers, rather than public officials, appear to be the driving force behind particular projects. Nonetheless, the issue is difficult because one objective of a redevelopment project may be to attract new private investment in an area, and private investors can only be enticed by the prospect of profits. One possible solution may lie in devising ways of separating the public planning process from the process of selecting the developer to carry out the plan.

*Does Eminent Domain Target Vulnerable Populations?*

Finally, a frequently expressed concern about eminent domain is that public officials’ exercise of this power targets minorities, the poor, and other vulnerable populations. Certainly there is significant evidence, especially in the context of highway construction in the 1950s and 1960s, that exercises of the eminent domain power often had the effect and even the purpose of destroying minority

communities. The rise of stronger minority political leadership in many urban areas probably reduces the likelihood of these kinds of discriminatory practices today. Moreover, targeting of lower-income communities is a two-edged sword because it threatens these communities with displacement, but lower-income communities are arguably in greatest need of the kinds of redevelopment facilitated through eminent domain. The underlying concern in some cases may be whether those displaced by redevelopment, particularly homeowners and residents, receive adequate relocation assistance, including replacement housing, a concern that, at least in theory, could be addressed without totally destroying the eminent domain tool.

### **The Legislative/Political Response to Date**

The *Kelo* decision and the associated public controversy initially provoked a strong political reaction at the federal and state levels. It remains to be seen exactly what kinds of new policies will eventually emerge.

#### *Congressional Response*

In Congress, immediately after the *Kelo* decision, the House of Representatives, by a vote of 365 to 33, passed a resolution expressing its “grave disapproval” of the *Kelo* decision. Subsequently, in November 2005, Congress attached a “rider” to the HUD appropriations bill, the so-called “Bond Amendment,” barring the use of federal funds to support federal,

state, or local development projects that “primarily benefit[] private entities.” In the same month, the House of Representatives passed a far more sweeping bill, H.R. 4128, the “Private Property Rights Protection Act of 2005,” by an overwhelming 376-38 vote. The bill would essentially prohibit the use of eminent domain for any type of “economic development.” Despite the strong support for this bill in the House of Representatives, the 109th Congress adjourned without any Senate action on this bill. At the same time, the omnibus continuing resolution adopted at the end of the 109th Congress continued the Bond Amendment into 2007.

#### *The States*

In contrast to the lack of action on eminent domain reform in the U.S. Congress, there has been a flurry of very significant activity at the state level. Following the November 2006 elections, 34 states have now adopted laws or constitutional amendments—either as a result of state legislative action or ballot measures—in response to the *Kelo* decision. At the same time, a third of the states have declined to adopt new restrictions on eminent domain or are still studying the issue. (Comprehensive information on post-*Kelo* laws and measures is available on the websites of the National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org), and the Castle Coalition, [www.castlecoalition.org](http://www.castlecoalition.org).)

The most striking feature of the state responses to *Kelo* is the *extraordinary diversity*



of the state approaches to reform. This suggests that legislators and citizens in different states believe that eminent domain presents distinctive issues calling for tailored solutions that vary from state to state. It also demonstrates that the states, which Justice Louis Brandeis famously dubbed the “laboratories of democracy,” are productively experimenting with different approaches to policy reform in this important and controversial area.

The National Conference of State Legislatures has categorized the various types of state responses as follows:

- “Prohibiting eminent domain for economic development purposes, to generate tax revenue, or to transfer private property to another private entity.
- Defining what constitutes ‘public use,’ generally the possession, occupation or enjoyment of the property by the public at large, public agencies or public utilities.
- Restricting eminent domain to blighted properties and redefining what constitutes blight to emphasize detriment to public health or safety.
- Requiring greater public notice, more public hearings, negotiation in good faith with landowners and approval by elected governing bodies.
- Requiring compensation greater than fair market value where property condemned is the principal residence.
- Placing a moratorium on eminent domain for economic development.
- Establishing legislative study committees or stakeholder task forces to study and report back to legislatures with findings.”

The policies adopted by the states differ dramatically in terms of the extent to which they limit communities’ ability to use eminent domain for economic development. For example, in Vermont, the legislature amended the state’s provisions governing eminent domain to provide that property cannot be condemned “primarily for the purpose of economic development”; yet the legislature created an exception from this new mandate for very broadly defined “blighted areas” targeted for urban renewal. In Delaware, the legislature adopted a statutory change providing that property can only be condemned for a “public use” as set forth six months in advance of the initiation of condemnation proceedings in a planning document, at a public hearing on the acquisition, or in a published report by the agency. The evident purpose of this statutory amendment is to improve the transparency and accountability of government decision-making involving eminent domain.

In the November elections, the states of Florida and Georgia adopted measures that do not affect the scope of the eminent domain power but ensure that its use is subject to greater political accountability. The Florida measure provides that eminent domain may

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not be used to transfer property to a new owner except pursuant to a general law approved by a three-fifths vote of the legislature. The Georgia measure provides that an exercise of eminent domain by a non-elected housing or development authority must first be approved by the elected governing authority of the county or municipality.

Other states have adopted legislation imposing tight restrictions on eminent domain. The South Dakota legislature adopted a measure imposing a blanket prohibition on government acquiring property by eminent domain “for transfer to any private person, non-governmental entity, or other public-private business entity,” or “primarily for enhancement of tax revenue.” In November 2006, voters in New Hampshire and Nevada approved sweeping constitutional amendments that essentially bar any type of eminent domain for economic development, including, for example, creation of rights-of-way for electric transmission lines and other utility corridors or to promote the rejuvenation of even the most dilapidated and dysfunctional urban areas. Indiana and Florida are examples of states that have adopted legislation limiting the use of eminent domain for economic development to situations where narrowly defined “blight” conditions exist.

A number of other states (Indiana, Pennsylvania, Texas, and Minnesota) have adopted exemptions for specific types of development projects or for specific communities. These

exemptions reflect both the intensity of the political debate over eminent domain, as well as the fact that the attitude of the public and political leaders on the use of eminent domain is highly context specific.

It is likely that in 2007 the level of state legislative activity on eminent domain will be lower than the level of activity in 2006. Nonetheless, it is fair to assume that eminent domain will continue to be a matter for debate in many state legislatures. It is more difficult to predict whether the eminent domain issue will continue to be a focus of congressional interest. On the one hand, given the overwhelming support for legislative action in the House of Representatives in 2006, it seems reasonable to assume that there will be a continued push for eminent domain legislation. On the other hand, the shift in party control of Congress may make progress on national legislation even more difficult next year than it was last year. In addition, the large number of widely varying state responses to *Kelo* arguably makes national legislation on the subject unnecessary or even potentially counterproductive to the solutions adopted at the state level.

## V. FRAMING QUESTIONS

The consultative session brought together leading intermediaries, advocates, policymakers, and foundation colleagues to explore the use of eminent domain as a tool in neighborhood redevelopment projects and the impact of the *Kelo* decision. The following questions and issues were sent in advance to the participants and served as framing questions throughout the session.

### **Essentials of the Eminent Domain Debate**

- How will the *Kelo* decision influence the use of eminent domain in community redevelopment efforts going forward?
- What issues or questions were answered or are left unresolved by the decision?

### **National Intermediary Perspectives**

- How has the thinking in the neighborhood development community shifted as a result of the *Kelo* decision and the proposed changes in eminent domain policy? What are the most promising practices that you see between community development organizations and government?
- How are municipalities now using eminent domain to stop the redevelopment of communities?
- How is the public debate at the local, state, and national levels getting framed with regard to the use of eminent domain for redevelopment from your perspective?
- Is the noise around the issue likely to subside in the near term, particularly around use of eminent domain to build affordable housing and redevelop blighted communities?

### **National Advocacy Perspectives**

- How has the advocacy field responded to the proposed changes in eminent domain policy?
- Which constituencies or target populations stand to gain or lose with the changes?

### **Perspectives on Challenges and Opportunities Ahead**

- Where are the opportunities to influence public policy on eminent domain for the benefit of disadvantaged children and families?
- Given the present conditions, where are there opportunities for achieving common ground on the issues arising from the use of eminent domain in redevelopment efforts? Where are the barriers?

## VI. SESSION SUMMARY

### I. Essentials of the Eminent Domain Debate

John Echeverria, Executive Director of the Georgetown Environmental Law and Policy Institute at Georgetown University Law Center, opened the discussion by giving an overview about eminent domain and posing the following questions regarding current use of eminent domain for neighborhood development.

- Is eminent domain needed to accomplish urban redevelopment projects?
- Is eminent domain as a tool for redevelopment applied equitably, or are residents of lower-income communities disproportionately targeted?
- What constitutes “just compensation” and to what extent does it solve the inconveniences caused by the use of eminent domain?
- What are the opportunity costs, such as a decrease in job creation, new housing stock, lost tax revenue, and fewer community improvement projects, when eminent domain is not used?
- Is eminent domain used to improperly promote private special interests?
- How do you deal with “holdouts”—land-owners and lessees who refuse to leave areas designated for redevelopment?
- It is possible to engage in impactful redevelopment without using eminent domain,

and what do we lose if we stop using eminent domain as a tool in development?

The discussion of the Echeverria presentation and the questions above led to the following insights, observations, and questions about the use of eminent domain, the context of redevelopment, and the complex issues that result.

**A. The *Kelo* Decision and the Public and Private Sectors:** The *Kelo* decision on eminent domain has implications for the public and private sectors and fuels a debate by raising questions about the relationship between public purpose, private action and investment, and redevelopment.

- **THE EVOLVING ROLE OF THE PRIVATE SECTOR IN FULFILLING PUBLIC PURPOSES:** The private sector has long been involved in redevelopment projects that have an ostensible public purpose. However, among the possible repercussions for redevelopment, responses to the *Kelo* decision could potentially force a return to an earlier, now rejected model of community redevelopment and affordable housing. That earlier model was characterized by large public housing projects, while the current paradigm in affordable housing—practiced over the past 30 years—has been substantially linked to creating mixed-income housing. Through the use of inclusionary zoning and other policies, private investors have been encouraged to make a percentage of housing units in new residential developments affordable to low- and moderate-income households. These projects enable the private sector to fulfill

public purposes through investments and long-term commitments to communities. In general, residents and other stakeholders benefit from this type of collaboration and housing. However, affordable housing may become disconnected from the public purposes over time as private investors take control of development projects and the market squeezes out opportunities for low-income people to benefit from redevelopment.

- *Question from discussion:* How can you encourage private investment in distressed communities while ensuring the preservation and continued development of affordable housing units?

- **DEVELOPERS' ROLES:** Residents in areas targeted for redevelopment that will require the use of eminent domain are suspicious when the proposed project is developer-driven. However, a tension arises because private developers offer expertise and ideas that are often useful in the beginning stages of successful development projects, and are integral to the development of large-scale, mixed-use redevelopment projects.

- *Question from discussion:* Are residents' concerns about developers' roles and influence mitigated when the choice of allowing developer input and expertise into a project and the consideration about using eminent domain are kept separate from the process of bringing in the developer to implement the project?

**B. Stakeholders and Rights:** The *Kelo* decision raises new questions about the rights of a

variety of stakeholders and how to balance the rights of individual citizens against the rights of the overall community. Greater clarity over the essence of the claim of rights is important.

- **PROPERTY RIGHTS:** The term "property rights" can encompass both individual rights and community rights. It is important to find ways to balance a community's interests with the interests of individuals.

- **INDIVIDUAL RIGHTS:** There is a public perception—perhaps misperception—that eminent domain can be used against an individual to force relocation as a result of redevelopment but not in the individual's favor when he or she wants to address absentee or delinquent landowners that allow blight to take hold or similar community concerns.

- **COMMUNITY RIGHTS:** In communities of color, and particularly those composed mainly of low-income families, collective power, cultural power, and connection to place are essential. Because of these factors, some residents often express a desire to return to their neighborhoods at the completion of the redevelopment project. The *Kelo* decision might have a chilling effect for communities and responsible redevelopment, in that initiatives in response to *Kelo* would make new developments difficult to accomplish.

- **RENTER RIGHTS:** Whereas the takings in the *Kelo* case were owner-occupied homes of stable, white middle-class families, in reality, many areas targeted for redevelopment involve

blighted properties or poorly maintained rental properties where communities of color are the predominant renters or owners. Given this reality, questions emerge about the reach of *Kelo* to the typical situations of low-income families where they are renters who cannot object to eminent domain using valid property rights claims. Local, state, and federal relocation assistance and benefits may provide limited support to these renter families and largely afford greater protections to homeowners. Ironically, despite these policy provisions in favor of them, owners with valid property rights claims often do not have much genuine investment in the blighted properties targeted for redevelopment and, therefore, are not as much in need of relocation assistance.

- *Questions from discussion:* How can public policy reflect those who are most affected by eminent domain—low-income communities of color who are renters? What implications will the weight given to takings of owner-occupied homes have on whether renters are part of community engagement processes involved in responsible redevelopment?

## II. National Intermediaries' Perspectives

Representatives of national community development intermediary organizations laid additional context on the use of the eminent domain tool for redevelopment, the community outcomes that result, and the relative need and rationale for its continued use. The following provides highlights of the exchange

of views between participants, interspersed with the intermediaries' perspectives.

### A. Eminent Domain and Neighborhood Development:

The use of eminent domain as a tool in redevelopment has its proponents and opponents, with views that fall across a range from it being essential and necessary to it being dispensable and detrimental and perspectives in between.

- **PROS AND CONS ON THE USE OF EMINENT DOMAIN:** Advocates for and against the use of eminent domain presented a point and counterpoint on why it is an important issue:

*Acceptance on its value to redevelopment:* **Urban Land Institute:** Communities—particularly with high concentrations of blighted properties—are often in need of redevelopment and revitalization. Often, despite the circumstances in *Kelo*, these communities are high poverty areas with all of the accompanying issues. Eminent domain is only one tool in an array of tools that communities, cities, and states have to address this. Other options include tax sale foreclosure, sales for non-payment of taxes, municipal lien foreclosure, code enforcement, and nuisance abatement. The use of eminent domain may sometimes produce bad results and consequences because we are a country committed to process: one that is fair with some balance of power, where we're willing to live with the outcome if it's a fair process. This raises a host of fascinating issues around community and property. From a practical perspective,

the ultimate question we should ask is: do we want to reinvest? If so, how do we do it, who should do it, and what tools should we use? We must recognize that eminent domain is probably the most powerful tool, and it is already extremely constrained.

*Rejection on principle: Castle Coalition:* “We just don’t think it’s right ideologically or morally to take property from one person and give it to another person.” If eminent domain is used, the opportunity costs must be taken into account. Redevelopment can be “faddish.” Opposition to the use of eminent domain does not mean that an organization is anti-development and anti-affordable housing, but instead that redevelopment should be accomplished using other alternatives to eminent domain.

• **ASSUMING ITS NEED, THE EFFECTIVE USE OF EMINENT DOMAIN:** Local communities form opinions about eminent domain based on experiences with the redevelopment process. Although abuses have occurred, eminent domain remains a critical tool for local governments. When the eminent domain tool is used, it should be considered within a transparent, public planning process that communicates to communities why the tool is important for redevelopment and the parameters and limitations of its use. These community planning processes are considered a best practice in order to sustain smart growth agendas. The real issue is not about eminent domain per se but how to go about revitalizing distressed neighborhoods. Eminent domain is one of the tools that can be used to accomplish this.

• *Questions from discussion:* Who determines the appropriate use of eminent domain, and can government remain fair and objective enough to use it in a balanced fashion, particularly given the lack of credibility and trust that government has within high poverty communities—the frequent targets of redevelopment and eminent domain? Given these tensions, should other entities—rather than elected officials or public authorities—be given authority on the use of the eminent domain power?

**B. Different Contexts, Players, and Perspectives on Eminent Domain:** Factors such as local economic conditions, a community’s history with previous uses of eminent domain, and how benefits accrue to the primary stakeholders of redevelopment should all influence the ultimate decision about its use in community development. These factors are understood differently in various parts of the country. Increasingly, redevelopment advocates admit that the framing of issues on eminent domain follows an urban paradigm, crowding out a broader discussion of rural landowners’ issues.

• **URBAN V. RURAL: LISC:** Urban community development corporations (CDCs) often see eminent domain as an issue of particular urgency and relevance, whereas rural CDCs understand the use of eminent domain within the larger context of basic property rights issues. Advocacy in rural areas related to eminent domain appears to hinge on the presence of strong policy groups in these

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places. While the rural constituency may not be as highly organized as its urban counterparts, there is a deep reservoir of concern about eminent domain. In part, this concern has to do with property rights, but it also stems from a resentment of gas companies and other utilities that have taken private property for public use.

- **STRONG V. WEAK MARKETS:** Economically thriving cities like New York, Chicago, and Los Angeles have a different take on eminent domain from struggling cities like Syracuse, Rochester, and Cleveland. In weak market cities, questions about eminent domain focus on how it is employed and the long-term impact.

- **TAKINGS FOR DOWNTOWN REDEVELOPMENT V. TAKINGS FOR PUBLIC UTILITIES:** To expand the debate about how to improve the process for employing eminent domain, it is important to consider how the process can be improved for rural landowners and how the discussion can be broadened beyond downtown issues to include what eminent domain looks like in rural America. Even as the debate broadens, some see the essence of these issues as the same. **The New York Department of Housing and Preservation:** “Why does the taking from private owners for downtown redevelopment make it less legitimate than takings for railroads, utilities, and highways? They should be regarded similarly whether there are public or private owners involved; both have private users and beneficiaries.”

- **REDEVELOPMENT PROPONENTS: DEVELOPERS V. NON-DEVELOPERS:** **NeighborWorks America:** Proposed developments that start as ideas from developers are often treated differently than ideas from other parties. For instance, debates about a taking through eminent domain for “big box” stores accentuate the difference. The public adversely responds to abuses like when “big box” companies argue for the use of eminent domain to acquire a site, declaring that their project will eliminate blighting influences. However, in the process, these companies take properties from local competitors.

**C. Engaging Partners in Planning and Implementation:** Good planning depends on an inclusive and empowering engagement process with a broad range of constituents. Redevelopment—particularly when the eminent domain tool will be used—should result from as fair a process as possible.

- **ROLE OF GOVERNMENT:** Government leaders can fill a perceived leadership vacuum around what constitutes public purpose by clearly defining “public” so that all stakeholders understand the benefits that will accrue from redevelopment. Operating under a common definition of the public purpose of redevelopment raises the likelihood that all participants can “win.” In addition to uniting people around public purpose, state and local governments have a responsibility to ensure a fair process.



- **DISPARATE TREATMENT OF DEVELOPERS:** After the *Kelo* decision, developers are hesitant to get involved with projects requiring condemnation or to talk about the public good. However, developers should be knowledgeable about targeted neighborhoods prior to engaging in discussions with community representatives. Developers alone should not be responsible for defining “the public purpose,” and should not determine what is best for a community.

- **CHALLENGES OF COMMUNITY EDUCATION:** In the absence of being placed in a larger context, eminent domain functions like a “hyperlink” that, when mentioned, triggers many perceptions and misperceptions about its use as a tool. People respond more favorably to concrete examples of what change will look like, why it is important, and the tools to be used; as a consequence, they begin to think differently about community redevelopment, revitalization, and eminent domain. When working with community partners, it is important not to frame the discussion around eminent domain but rather to discuss the following: mixed-income developments, the necessary tools to make redevelopment happen, and the processes needed for responsible redevelopment. Each community responds differently to terms related to redevelopment. For instance, in places like New York where the focus is on large-scale redevelopment and mixed-income housing, eminent domain is a term with which people are familiar and comfortable. In contrast, if you go to the South, the discussion is different. There, mixed-income housing is a

#### CASE STUDY:

#### **Science & Technology Park at Johns Hopkins—Baltimore (MD)**

The East Baltimore Development, Inc., (EBDI) in partnering with the Annie E. Casey Foundation, Johns Hopkins University, and the City of Baltimore, is undertaking a \$1 billion redevelopment project on 88 acres of land north of Johns Hopkins Hospital in the Middle East neighborhood of East Baltimore. The redevelopment project seeks to create a mixed-income community and includes a state-of-the-art bio-technology park and more than 1,200 new and renovated homes for buyers and renters. The planned community will offer easy access to parking, retail, green space, and the new pre-K-8 community school. It is expected that more than 6,000 new jobs will be generated. Developers are proposing a light rail and AMTRAK inter-modal transit station. To serve the area, Casey advocates for maximum housing opportunities for relocated families and economic benefits for area residents. The Foundation has also developed a “demolition protocol” to promote environmentally safe and sound demolition practices.

foreign concept, making community education crucial.

- **LIMITATIONS OF COMMUNITY-BASED DECISION-MAKING:** Community engagement can lead to outcomes that are beneficial to the community but, by itself, an engagement process is not a panacea that guarantees benefits for those who are most marginalized—e.g., increasing their access to affordable housing. For example, in one city, officials engaged residents in the process, and they chose to build a new park rather than creating more affordable housing units.

- *Question from discussion:* Should a successful community engagement plan attempt to control both the quality of the process and the quality of the outcomes?

### III. National Advocacy Perspectives

#### A. Reasons for Taking and Displacement:

From the perspective of the person whose property is being taken through eminent domain, all takings might not be regarded as the same. Thus, the question emerges: does the reason for the taking or the explicit public purpose matter to the person who loses his or her home? For example, does it matter if the home was taken for a public building like Lincoln Center, a highway, affordable housing, or community revitalization?

- **IMPORTANCE OF CHOICE AND ENGAGEMENT:** **PolicyLink:** The reasons for the new development matter if potentially relocated residents

are offered a real choice about the new development, particularly in cases of the right of return for residents. However, many residents cannot make informed choices about redevelopment because they cannot project themselves into an unknown, future development. If they do understand the choice, people might move voluntarily for a hospital but not for a shopping mall. In community discussions, residents can help officials locate places in the neighborhood for a new shopping mall. Outcomes should attempt to be fair and inclusive across the board.

- **B. The Right of Return:** Decisions about the right of return are influenced by a number of factors, including resources, family decisions, and market values.

- **COMPLICATED DECISION TO RETURN:** Not everyone exercises a right of return because it takes time and effort to return. Moreover, they may not want to return because of the trauma involved in relocation and the difficulty in moving again, and where the relocation may have been successful and have left them better off in their new community. Even if a resident may want to return initially, his or her experiences during the redevelopment and relocation can influence his or her decision.

- **DISPLACEMENT AND MARKET VALUES: The Reinvestment Fund:** In communities that are likely targets for redevelopment, some homes have depreciated in value because housing can become artificially depressed in distressed areas. These low-income families

may not be able to return to their redeveloped communities without additional support.

- **SECTION 8:** The political process can deny Section 8 vouchers for tenants. However, they can use relocation value to purchase homes in their chosen neighborhoods. Often, these families do not return to their original community because they have made an investment in a new home and neighborhood.
- *Questions from discussion:* Does monetary compensation, even at 125 percent or 150 percent of fair market value, represent adequate, equitable, and just compensation for relocation? What can be done to compensate for the costs associated with the loss of a social network and social capital? Should and how can this aspect be integrated into a restitution conversation since it constitutes loss of value?

**C. Minimum Standards for Compensation and Assistance:** Adopting and implementing a responsible redevelopment frame leads to ensuring that children and families impacted by revitalization are better off as a result. A minimum set of standards should define responsible, compassionate, and appropriate care when people are involuntarily asked to move from their homes.

- **ASSISTANCE INCLUDES MORE THAN FINANCIAL RESOURCES:** Psychological and social issues are often exacerbated as the result of relocation. For this reason, social workers, rather than real estate specialists, can more effectively serve as relocation specialists.

- **PLANNING AHEAD:** Supportive services must be available well in advance of relocation. These services must raise awareness and educate people about the redevelopment process. Services should be easily accessible to people from all income levels and experiences, including homeowners, renters, store owners, and store renters.

- **IMPORTANCE OF SERVICE INTEGRATION:** During all phases of the redevelopment process, involved entities and agencies must work in an integrated fashion to make the process more effective. For example, a commitment to supporting families and helping children succeed in school can lead to negotiations with federal, state, and city officials to reduce disruptions in families' lives.

- **SUCCESS MUST BE MEASURED BY LONG-TERM IMPACTS:** It is essential to measure the long-term effects of the relocation. As a best practice in responsible relocation, in post-relocation surveys in East Baltimore a year after the move, the Casey Foundation asks people to describe their experiences, including questions about their relocation counselor, family advocate, direct service provider, and the benefits that they received. Overwhelmingly, people reported positive experiences. Eighty-five percent of respondents thought they were in a better place and did not want to return.

#### IV. Government Roles and Perspectives

While the *Kelo* case has resulted in local and state responses and national fervor, it is

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premature to predict what changes in government policy and practice on eminent domain and relocation will result. However, the current requirements of relocation and challenges to implementation bear mentioning.

**A. Federal Relocation Requirements:** The framework for responsible relocation is built into a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The URA sets forth the minimum requirements for real property acquisitions and relocations in connection with federally funded projects. More specifically, the URA also addresses the minimum relocation advisory services for agencies to provide to people displaced by a federally funded project.

**B. Compliance and Relocation Standards:** Many agencies involved in displacement are faced with tight project schedules and must relocate people quickly from the project area so that the project may proceed as planned. Although an agency may have satisfied the minimum URA requirements, sometimes project schedules may prevent an agency from providing relocation advisory services that exceed those requirements. Relocation advisory services are person-intensive, time-consuming, and expensive, and many agencies are not able to provide post-project relocation advisory services like EBDI is doing with the support of Johns Hopkins University and the Casey Foundation, nor are they required to do so under the URA.

The Department of Housing and Urban Development (HUD) and other federal agencies are stressing the importance of responsible relocation for the projects they fund. The Casey Foundation has shared with HUD its innovations in the area of responsible relocation for further discussion and future consideration for adoption.

#### CASE STUDY:

##### **McDaniel Glenn—Atlanta (GA)**

A \$50 million HOPE VI redevelopment project is replacing and rehabbing existing public housing on 40 acres of land in the Mechanicsville neighborhood of Atlanta's Neighborhood Planning Unit V. The project will create 907 housing units of varied affordability within a mixed-income community with easy access to parking, retail, green space, and a new elementary school.

The Annie E. Casey Foundation is part of a core partnership with the Atlanta Housing Authority, the City of Atlanta, and local foundations and civic organizations. Specifically, Casey advocates for housing opportunities for relocated families who want to return to the revitalized neighborhood.

## V. Conclusion and Participant Feedback

### A. Key Points from the Consultative Session:

Local discussions should place eminent domain as part of a larger framework about responsible redevelopment and as one among many powerful tools to be used. In the absence of being placed in context, given the current polarized climate, there is a high likelihood that misunderstanding will result. Residents, community advocates, and local government representatives must work together with developers to ensure a fair process that engages stakeholders in the redevelopment, particularly those who are most disenfranchised and dispossessed and, thereby, likely to be relocated.

- **FAMILIES AND RESIDENTS:** Families and affordable housing should be at the center of discussions about community development. In current discussions, the emphasis is on the actual development and takings of houses. Residents should be actively engaged early in proposed community development projects, especially for projects where the use of eminent domain is anticipated or expected. Residents should hear about models of effective use of eminent domain and negative consequences and have the opportunity to draw their own conclusions and develop strategies.

- **COMMUNITY DEVELOPMENT ADVOCATES AND PROPONENTS:** CDCs understand the need for eminent domain and are committed to working to preserve it as a responsible tool for community development. CDCs, developers, and other stakeholders in community

development efforts should reach consensus on guiding principles for the responsible use of eminent domain and adhere to these principles. Part of these discussions should focus on the protections, assistance, and payments of the URA, especially in the area of relocation advisory services.

- **LOCAL GOVERNMENT:** Decision-making regarding the use of eminent domain needs to be made at the appropriate level. There are a number of tools that cities have at their disposal to acquire vacant properties other than eminent domain. Some cities have strengthened these alternatives to ensure that these systems work effectively, while others have become very squeamish in using these tools to full effect, particularly if the outcome involves a transfer from the property owner to another private party (i.e., a developer).

**B. Lessons Learned:** The *Kelo* decision and broader discussions about eminent domain point to the complexity of redevelopment and revitalization. Educating the public and fostering open discussions among a wide range of stakeholders can create opportunities to define common ground on this issue.

- **UNEXPECTED OUTCOMES:** Albeit important, a good community-based decision-making process does not in itself guarantee a favorable community outcome, particularly for low-income people. Therefore, it is not the panacea for handling contentious development issues. For example, community processes in places where eminent domain might be used have been known to yield unexpected outcomes,

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such as preventing the development of affordable housing.

- **RECONSIDERING *KELO***: The *Kelo* decision presents new challenges for local community development. For example, as a result of the decision, some developers admit to being less willing to take the lead in proposing new community development projects.

- **POSSIBILITIES FOR UNEXPLORED CONSENSUS**: There needs to be greater discussion about the meaning of “public purpose.” The use of eminent domain may not be as divisive as it seems. It can be a fundamental building block if used appropriately, but the way the issue is framed can create unnecessary divisions.

- **THINKING ABOUT INNOVATIONS THAT GARNER GREATER TRUST**: Since the use of the eminent domain tool raises multiple questions about legitimate public purposes advanced by the private sector in a context of limited public trust, allowing public entities to use the eminent domain tool for takings yet to retain title to the taken properties for redevelopment might present a way to preserve public purpose and increase public trust. In these situations, the public entity could lease the property to developers as a way of avoiding transferring private property between private parties for public purposes.

- **FOCUS ON PEOPLE AS MUCH AS PLACE**: Assuming the eminent domain tool continues to be used, displaced families need effective and sustainable supports and services throughout

the process. The process should be planned and managed with their needs in mind.

**C. Implications for Future Work**: The discussions during the consultative session point to a variety of next steps that aim to engage constituents in new ways and systematically track policy changes.

- **DEVELOPING ADVOCACY TOOLS**: **The Urban Land Institute** is assembling a toolkit to advance state advocacy and is now thinking of discussing examples of the responsible use of eminent domain. The institute recognizes the value of bringing people together from around the country to use these toolkits.

- **SHIFTING FOCUS**: Because of recent legislation, some CDCs will place more emphasis on working at state and local levels, rather than focusing on the national level.

- **CONNECTING COMMUNITIES**: Real action is happening at state and local levels. Advocates and other stakeholders could benefit from a database that records and tracks state and local policy, with a summary about federal changes.

## VII. PARTICIPANT BIOS

## STEVEN ANDERSON

Steven Anderson serves as Director for the Institute for Justice's Castle Coalition. IJ litigates to secure economic liberty, school choice, private property rights, freedom of speech, and other vital individual liberties, and to restore constitutional limits on the power of government. With his grassroots and legislative support and strategizing, Anderson educates and inspires property and business owners, legislators, and journalists around the nation in the fight to end eminent domain abuse. As an advocate, he has traveled widely to testify before Congress and state legislatures on the critical need for eminent domain reform and advises legislators on the most effective way to effect change. Anderson received his undergraduate degree from the University of Virginia and his law degree from Wake Forest University.

## VICTOR AZIOS

Victor Azios, a Senior Fellow with the Annie E. Casey Foundation, serves as the site team leader for the San Antonio *Making Connections* site. He spends most days making connections with community stakeholders, prodding engagement and involvement, and forming partnerships to promote strong families and neighborhoods. He is also responsible for developing relationships and building partnerships with Latino, early childhood, and substance abuse organizations at the national level. Azios entered the human services field more than 25 years ago when he began a position

in the Galveston Independent School District as Lead Social Worker. Prior to joining the Foundation, Azios worked for Casey Family Programs as Director of the San Antonio Division. He has earned a BA in Psychology from the University of Houston, and his MSW in Social Casework from Boston College.

## JOHN D. ECHEVERRIA

John D. Echeverria is the Executive Director of the Georgetown Environmental Law and Policy Institute at Georgetown University Law Center, which conducts research and education on legal and policy issues related to protection of the environment and conservation of natural resources. Echeverria is the former General Counsel of the National Audubon Society, the former General Counsel and Conservation Director of American Rivers, Inc., and a graduate of the Yale Law School and the Yale School of Forestry and Environmental Studies. Echeverria has written extensively on the takings issue and various other aspects of environmental and natural resource law. He frequently represents state and local governments, environmental organizations, planning organizations, and others in regulatory takings' cases at all levels of the federal and state court systems. He filed a brief in the *Kelo* case along with Professor Thomas Merrill of Columbia Law School on behalf of the American Planning Association and the Congress for Community Economic Development.



## GAYLE EPP

Gayle Epp, a Vice President at Abt Associates, has more than 30 years of experience in affordable housing planning and development. Epp's specific areas of expertise include comprehensive housing plans and housing policy, public housing revitalization, mixed-finance development, neighborhood reinvestment strategies, and public/private partnerships. She has extensive experience with the HOPE VI program and other large-scale neighborhood revitalization efforts involving the development of mixed-income housing. Epp was a consultant to the National Commission on Severely Distressed Public Housing and assisted in the development of the National Action Plan for eliminating distressed housing. She has worked closely with HUD on developing national policies and procedures for the HOPE VI/mixed-finance program, including authoring HUD's Mixed-Finance Guidebook, HUD's cost containment and safe harbor guidelines for mixed-finance development, and the business term sheets and mixed-finance proposal guidelines.

## JAMES O. GIBSON

James O. Gibson is a Senior Fellow at the Center for the Study of Social Policy in Washington, D.C. He is a consultant to the Neighborhood Development unit of the Annie E. Casey Foundation. Gibson chairs the board of directors of PolicyLink, a national institution devoted to strengthening communities. He has been a Senior Associate

of the Urban Institute since January 1993, and he was founding President of DC Agenda, a community assistance initiative in the District of Columbia. Gibson has also served as a Program Director at The Rockefeller Foundation, President of the Eugene and Agnes E. Meyer Foundation in Washington, D.C., City Administrator for Planning and Development for the District of Columbia, Executive Associate of The Potomac Institute, and Executive Secretary of the Atlanta Chapter of the NAACP.

## GAIL HAYES

As an Atlanta-based Consultant for the Annie E. Casey Foundation, Gail Hayes provided leadership over the past year to the local site team to ensure that the results sought by the local effort on behalf of families and children were achieved. Hired in January 4, 2005, as the Atlanta Civic Site Manager, Hayes will continue to supervise the local site team there, and manage the Foundation's grant, contract, and technical assistance investments in Atlanta. She will also ensure that neighborhood residents are engaged in the local effort, and build strong alliances with local civic leaders.

## IRENE LEE

Irene Lee, a Senior Associate with the Annie E. Casey Foundation, is in charge of managing and shaping the Foundation's civic investments in Atlanta and Washington, D.C. She also manages and shapes the Foundation's



portfolio on refugees and immigrants, often helping to link and embed this work through co-design with other senior associates and their portfolios. Just prior to arriving at the Casey Foundation, Lee held a Senior Program Officer position at the Eugene and Agnes E. Meyer Foundation, with responsibilities in a broad array of areas, including housing and community development, education, health, and the arts. A graduate of Michigan State University with a joint major in economics and history, she earned her MA in Anthropology from the University of Michigan and her MPA from Bernard Baruch College at City University of New York.

#### MARY LEE

Mary Lee, Senior Associate at PolicyLink, is a member of the health team, providing research, technical assistance, and training to public and private agencies collaborating to build healthy communities. Lee is a practicing attorney with more than 20 years of experience working on land use and economic development strategies to revitalize neighborhoods and enhance public participation in the public policy arena. She is a graduate of Boalt Hall School of Law, University of California, Berkeley.

#### JENNIFER LEONARD

Jennifer Leonard is National Vacant Properties Campaign Director at Smart Growth America. In her four years as the project manager for

a community development corporation in Baltimore, she became an expert at building private and public partnerships for using the property reclamation tools and revitalizing her East Baltimore neighborhood. She also managed the corporation's grant and loan efforts, raising several million dollars for the CDC's programs. With her leadership, the Baltimore Commission for Historical and Architectural Preservation designated a new historic district within this neighborhood; after decades of disinvestment, the private market is starting to return. Leonard has a Bachelor of Fine Arts degree from the University of Arizona and a Master of City and Regional Planning degree from the University of Pennsylvania.

#### JOHN K. McILWAIN

John K. McIlwain is the Senior Resident Fellow, ULI/J. Ronald Terwilliger Chair for Housing at the Urban Land Institute (ULI) in Washington, D.C. A nonprofit education and research institute supported by its members, ULI's mission is to provide responsible leadership in the use of land in order to enhance the total environment. As the Senior Resident Fellow for Housing, McIlwain's responsibilities include leading ULI's research efforts to seek and promote affordable housing solutions in the United States and other nations, including development and housing patterns designed to create sustainable future environments for urban areas. Prior to joining the ULI staff, McIlwain founded and served as

Senior Managing Director of the American Communities Fund for Fannie Mae in Washington. McIlwain received a law degree from New York University where he worked for the NYU Law Review and was a John Norton Pomeroy Scholar. He received a Bachelor of Arts degree, cum laude, from Princeton University.

#### JOHN T. MONAHAN

John T. Monahan previously served as a Senior Fellow with the Annie E. Casey Foundation, a position he has held since 1999. He has extensive federal-state policy experience in issues affecting low-income families and communities, including service as the Principal Deputy Assistant Secretary for Children and Families (1997-1999) and Director of Intergovernmental Affairs (1993-1996) at the federal Department of Health and Human Services. Monahan also has been Legal Counsel to Senator David Pryor (Arkansas), Investigator to the Senate Special Committee on Aging, and Non-Resident Senior Fellow at the Brookings Institution's Center for Urban and Metropolitan Policy.

#### CAROLINE MOORE

In addition to serving as COO, Caroline Moore is the Senior Executive for the Struever Bros. Eccles & Rouse (SBER) Brand, focusing her efforts and passion on transforming and sharpening every aspect of the company's business model for the future. She manages SBER's relationships with valued stakeholders while managing all aspects of

portfolio development, including project selection, equity allocation, joint venture partnerships, development execution, and the ultimate risk of the company's development projects. Moore joined SBER in 1986 and has advanced through the company, holding positions in brokerage, property management, and development. While concentrating much of their effort in Baltimore, she is the company's senior development executive, growing the company's national portfolio—bringing innovations as refined in Baltimore to cities throughout America where SBER is currently developing complicated urban mixed-use projects of critical mass. Moore has a bachelor in arts from Denison University.

#### VALERIE PIPER

Valerie Piper is Executive Director of the Center for Urban Redevelopment Excellence at the University of Pennsylvania, which places early-career Fellows with real estate developers working at scale to improve the quality of life in distressed communities. As President of Piper Advisory Services, Piper provides advisory and project management services to public agencies, private developers, and nonprofit civic and development groups on neighborhood revitalization and urban development projects. Previously, Piper assisted the City of Chicago in the transition of the Chicago Housing Authority (CHA) from federal to local oversight and the creation of CHA's ten-year Plan for Transformation.

Prior to her work in Chicago, Piper developed new financial products and services for the National Equity Fund, Inc., and helped to start new initiatives in federal agencies supporting community revitalization, including the U.S. Department of the Treasury's Community Development Financial Institutions Fund and HUD. Piper holds a Master of Government Administration from the Fels Center of Government, University of Pennsylvania, and a BA in Architecture from Princeton University, where she graduated Magna Cum Laude.

#### BEVERLY REID

Beverly Reid is the Director of Policy and Communications for LISC NYC. Reid joined LISC's New York City office in 2005, where she serves as the key contact for LISC NYC partners and staff on myriad local, state and federal policy issues. In addition, Reid manages media outreach and response, coordinates the publishing of LISC NYC's newsletters and issue papers and develops and conducts messaging campaigns for the organization's policy initiatives. She arrived at LISC NYC with over 20 years experience, most recently as Counsel to the Economic Development Committee of the City Council of New York. She also has extensive experience in real estate finance with over nine years as General Counsel at the Corporation for Supportive Housing, where that organization utilized public and private funding sources to assist housing providers in the creation of more

than 9,000 units of housing linked to services. She has a Master's in Public Health from Columbia University and a JD from NYU School of Law.

#### TRACEY A. RUTNIK

Tracey A. Rutnik is Senior Advisor to the CEO of NeighborWorks America a national non-profit organization that creates opportunities for people to live in affordable homes, improve their lives, and strengthen their communities. Prior to joining NeighborWorks America, she was Director of Practice Development at the Fannie Mae Foundation, the philanthropic arm of Fannie Mae. As Director, Rutnik advanced the Foundation's grantmaking strategy through technical assistance and research and evaluation services for the programmatic divisions. She holds a Master's Degree from the Rutgers University School of Criminal Justice. She graduated Phi Beta Kappa from Rutgers College with a degree in History and Political Science.

#### JULIE SEWARD

Julie Seward is Director of State Policy for LISC where she is responsible for development and implementation of state community development policy and coordination of LISC's smart growth work. Her diverse career in the public, private, and nonprofit sectors includes management of the corporate community reinvestment and philanthropic programs for Signet Banking Corporation, work as

a Special Policy Assistant in the Virginia Governor's Office, community development consultant to financial institutions and community nonprofits, and chairmanship of The Consumer Advisory Council for the Board of Governors of the Federal Reserve System.

#### HAROLD SHULTZ

Harold Shultz serves as Special Counsel for the New York City Department of Housing Preservation and Development. He has been employed by the city for 32 years, all but three in the Department of Housing Preservation and Development. During that time, he has been involved with a wide range of housing activities. These have included code enforcement; legal counsel to the divisions that operated city owned housing; housing research programs; housing development programs; and intergovernmental relations.

#### PATRICIA L. SMITH

Patricia L. Smith, Esq., is the Director of Special Initiatives for The Reinvestment Fund. The Reinvestment Fund (TRF) is a community development financial intermediary that builds wealth and opportunity for low-wealth people and places through the promotion of socially and environmentally responsible development. Smith joined TRF in September 2005 and is responsible for managing philanthropic assets and special projects involving two or more lines of business. Prior to TRF,

Smith directed the Neighborhood Transformation Initiative (NTI), a \$295 million redevelopment bond program she designed to address decades of urban blight and stimulate new investment in Philadelphia neighborhoods. Smith holds a BA from Mount Holyoke College and JD from George Washington University Law Center.

#### ALI SOLIS

Ali Solis joined Enterprise in February 2000 as the Director of Congressional Outreach. In 2001, Solis was promoted to Deputy Director of Public Policy, and subsequently became the Director in 2003 and Vice President in 2006. She develops and advocates policies to advance the development of affordable housing and sustainable communities with Congress, the administration, state and local policy stakeholders, and other national industry partners. Solis ensures the continuation of an annual multimillion dollar federal appropriation for Enterprise to build the capacity of nonprofit organizations across the country. Prior to joining Enterprise, Solis was the Legislative Director for the congressionally chartered Neighborhood Reinvestment Corporation. She also worked in the private sector for W.R. Grace, AT&T, and The Washington Group. Solis, an INROADS alumnus, is a University of Maryland graduate with a dual bachelor's degree in political science and Spanish.

## STEVEN TUMINARO

Steven Tuminaro serves in a dual role as Treasurer and Director of the Office of Public Policy and Legislative Affairs for NeighborWorks America, a public nonprofit corporation established as Neighborhood Reinvestment Corporation by an Act of Congress in 1978. The principal purpose of NeighborWorks America is the revitalization of declining urban and rural neighborhoods by mobilizing public, private, and community resources at the neighborhood level and expanding affordable housing opportunities for lower-income households. Prior to joining NeighborWorks America, Tuminaro served as Director of Housing and Property Conservation for the City of Yonkers, New York. Over the past 35 years, Tuminaro has continuously served as a board member and officer of numerous nonprofit organizations (including national and community-based organizations, religious organizations, and a private school).

## JULIA VITULLO-MARTIN

Julia Vitullo-Martin is a Senior Fellow at the Manhattan Institute and Director of the Center for Rethinking Development. Prior to joining the Institute, Vitullo-Martin served as a Senior Fellow at the Vera Institute of Justice, Managing Editor for the Mayor's Commission on New York City in the Year 2000, Assistant Commissioner for Planning and Development with the NYC Department of Parks and Recreation, and Executive Director of the

Citizens Housing and Planning Council. In addition, she taught at the Graduate School of Management at New School University and the Graduate Department of Urban Planning at Hunter College. She has edited and written numerous reports for foundations and for the city, state, and federal governments. Vitullo-Martin holds a PhD in political science from the University of Chicago.

## MTAMANIKA YOUNGBLOOD

Mtamanika Youngblood is the President and CEO of the Center for Working Families, Inc. (CWFI), which is a nonprofit organization sponsored by the Annie E. Casey Foundation to advance the Foundation's family and neighborhood strengthening work. In collaboration with neighborhood stakeholders and community-based partners, the CWFI is committed to helping families in six neighborhoods in Atlanta (Neighborhood Planning Unit V) get ahead financially and build the community infrastructure necessary for family self-sufficiency. She is the Vice Chair of the Board and past President of the Historic District Development Corporation, Atlanta's leading nonprofit, community-based builder of affordable homes in the central city. Youngblood earned an MBA in organizational management from Atlanta University and was sponsored by the Fannie Mae Foundation as a Fellow to the Kennedy School of Government Executive Program at Harvard University.



The Annie E. Casey Foundation

701 St. Paul Street  
Baltimore, MD 21202  
410.547.6600  
410.547.6624 fax  
[www.aecf.org](http://www.aecf.org)