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## Move Over New London

2007-01-25

When the Supreme Court told Susette Kelo that she had to give up her home so that New London, Connecticut could increase its tax revenue, outrage ensued. State legislatures—including here in Texas—moved swiftly to enact laws to curb similar acts of eminent domain abuse.

Unlike the rest of the country, El Paso seems unaware of the violence done by the court to the Takings Clause in the U.S. Constitution. As a result, the city has moved forward with a plan to redevelop its downtown and the Segundo Barrio using eminent domain.

The Texas Legislature did pass a law in 2005 that banned the use of eminent domain for “economic development” takings. But the law contained an exception for takings designed to eliminate “slum or blighted areas.”

The city has done its homework and determined—to no one’s surprise—that the entire area is blighted. Yet the city’s own study clearly shows there is vibrant economic activity taking place within this “blighted” area.

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

There are also almost 100 residential buildings in the area, including single family homes, duplexes and apartment buildings. According to the 2000 U.S. Census, more than 14,000 people live in the vicinity. Many of the area’s residents and business owners don’t feel like their homes and businesses are blighted—and in fact, they are not. Yet the blight exception in state law allows the city to take properties that are not blighted themselves — they only have to be in an area that the city has determined to be blighted. It won’t matter whether the property in question is a thriving business like Starr Western Wear or someone’s apartment in the Segundo Barrio.

In December, the El Paso City Council put the final touches on the plan by adopting a Tax Increment Financing Zone, what it calls “a formidable force in the redevelopment.” And indeed, it is. Through the TIRZ, the city will be able to engage in Kelo-style takings, just like New London. And also like New London, the city will target residents and business owners in a “low and moderate income area” to benefit well-connected developers.

The city may try to allay fears of this by pointing out it has put a moratorium on eminent domain takings through October 2008. But all this does is provide the related Real Estate Investment Trust the opportunity to buy up properties from owners under duress who know that if they don’t sell now, the city will be back soon enough with a court order.

Incredibly, El Paso has been pressing forward with its rerun of Kelo despite indications that the Texas Legislature will strengthen protections against eminent domain abuse, setting up a potential legislative showdown this year.

Move over, New London. El Paso is set to be the new poster child in the battle over property rights in Texas.

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