

The Fight for Property Rights A Chance to Make Your Voice Heard

Could someone take your property away, without your permission? As the law now stands here in the Commonwealth of Virginia, the government could replace “any Motel 6 with a Ritz Carlton, any home with a Wal-Mart, or any farm with a factory.” Those words of Supreme Court Justice Sandra Day O’Connor in her scathing *Kelo* dissent apply here, now, in our state. And unless changes are made this year, there’s no telling whose home or business could be next. We have plenty of scary stories in our recent history to demonstrate that the possibilities are very real.

Virginia is one of only thirteen states not to enact legislation to combat eminent domain abuse in response to the *Kelo* decision, which allowed government to take private homes, farms, churches and other private property for a commercial development. And what was proposed by many of our esteemed legislators in the General Assembly in 2006 was merely a “pretend” fix to a real problem. Their watered-

down bill provided little additional protection for property owners and did little to limit the power of condemnors. What it would have done is allow some representatives to play both sides, to claim they supported eminent domain reform while appeasing the condemnors’ lobby—those who want to wield the government’s power to acquire our valuable property.

A recent report by the Virginia Institute for Public Policy, *The Real Story of Eminent Domain in Virginia*, authored by Jeremy P. Hopkins, Esq., pointed out the astonishing state of affairs in the Commonwealth. The courts, the legislature, and the executive branch have all worked against the individual property owner. To illustrate the abuses, the report describes eye-opening court cases, astounding in their injustice in a free society.

In *Ottofaro v. City of Hampton* (2003), the report states, “the Virginia Supreme Court allowed the City of Hampton to take Frank and Dora Ottofaro’s property and



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give 82 percent of the property to a private developer to build a shopping center." In a case more drastic than *Kelo*, Alexandria officials took the Hoffman family's property so a neighboring developer could construct apartments, condominiums, and office space (2006). The Board of Supervisors of Halifax County actually took the Lacys' property to build a driveway for another family, the Kings—and used taxpayer money to build the driveway (2005).

The Real Story of Eminent Domain in Virginia also describes abuses by the Virginia Department of Transportation (VDOT). For construction in Bedford County, VDOT not only took property permanently from the Wilmouths' business, they also used the property for storage of heavy equipment and construction material. VDOT's year-long activities drastically limited use of the new state-of-the-art car wash, cut sales in half, and damaged equipment. However, the Wilmouths received no compensation

for damages or business losses (2003). In another case, VDOT took part of the Stulls' dairy farm, the family's livelihood, and demolished the buildings used for the farming operation. The Stulls could not recover any of their business losses during the years that VDOT put them out of business (2002).

"To provide owners anything less than the total value of the property taken is to place a disproportionate share of the cost of the public project on the individual owner whose property is taken," *The Real Story of Eminent Domain in Virginia*, reminds us. "If the project is a legitimate public use or public project, the public should share equally in the cost. Those already required to surrender their property for the project should not also be forced to bear a disproportionate share of the cost of the project."

More astonishing stories and sobering details are found within the

pages of the report, which can be accessed at virginia.institute.org/pdf/V002-0017EminentDomain.pdf.

The case of Mary Meeks was reported in the May 2006 issue of *V Magazine for Women*. Mary purchased the old Cumberland County high school building. She began to renovate the space for apartments and office space. She opened up the gym to senior citizens for exercise and to church and Bible study groups. But when the Cumberland County school board decided that they wanted the building back, they wielded their power to force her to sell, and at a grossly unfair price. Subsequent to the *V* story, the lower courts awarded possession of the school to the county. The hearing for just compensation is scheduled for early February, after which she can appeal to the Virginia Supreme Court, which may or may not hear her appeal.

Unfortunately, our elected officials haven't protected individual property owners any better than the courts have. In fact, the General Assembly has diminished the protection of property rights by granting broad powers of eminent domain to a great many entities, both public and private. Giving away this power is a politically savvy move, which blames unpopular takings of property on those who carry out the theft, not on those seeking reelection. Local representatives, seeing the wisdom of the Assembly's example, have followed suit.

What's more, the General Assembly has diminished the protection of property rights by loosely defining their terms. Government planners can use "blight" as a take-all provision that allows them to take almost any property they want. Maybe they don't like the way it looks,

or maybe they believe that someone else can put the property to a more profitable use.

Our General Assembly has also loosely defined "public use." Though public use should suggest government ownership and use for public/taxpayer purposes—roads, schools, etc.—the Assembly often means "public purpose," a broader term that can include any alleged benefit for the "greater good"—more jobs, increased tax revenue, better projected economic welfare—or whatever the officials decide they want and can attempt to justify. After all, any subdivision, especially if it's not so pretty or isn't filled with powerful constituents, isn't worth as much to them as a high-priced business development.

Furthermore, statutes approved by our elected representatives give condemnees—those whose property is forcefully taken by eminent domain—little legal protection. If the condemnees don't accept the condemnor's offer, the condemnor simply drags them into court. These victims, who are in court through no misconduct of their own, must pay court and lawyer fees, as well as engineer reports, appraisals, and more. The time and costs are why many condemnees choose not to fight.

Do you value your hard-earned property? Do you value the rights of a poverty-level family to keep their home, even if a ritzy mall can be put in its place? Do you value the rights of any person, poor or wealthy, to control the fate of their rightfully gained home or business? Do you care about the small business owner? Or do you simply value the principles of individual and property rights upon which our nation was founded?

Then contact your representatives and tell them that you support real, powerful eminent domain reform. Otherwise, there's no telling who the next victim might be. **V**



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