

***Kelo* and its Discontents:
The Worst (or *Best*?) Thing to Happen to Property Rights**

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1. Introduction

The Supreme Court's 5-4 decision in the property rights case, *Kelo v. City of New London*, ignited more controversy than any issue decided during the Court's 2004-05 term—more than medicinal marijuana (*Gonzales v. Raich*), peer-to-peer file sharing (*MGM v. Grokster*), federal sentencing guidelines (*U.S. v. Booker*), and two decisions on the public display of the Ten Commandments (*McCreary County v. ACLU* and *Van Orden v. Perry*).² Seldom has a Supreme Court decision fomented such impassioned reactions, from all levels of government and every ideological stripe, as did *Kelo*'s apparent green light to a Connecticut local government to seize fifteen homes in trying to turn around a failing local economy.

The reactions were immediate, widespread, and intense. The House of Representatives condemned the *Kelo* decision. Libertarians and property advocates lamented the end of private property. Political liberals decried the unjust effect on low-income populations. Newspaper editorial boards across the nation denounced the decision as an unfair invitation for abuse by local authorities. Justice Sandra Day O'Connor, in her dissenting opinion, famously and bleakly remarked, “[n]othing 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.”³ The ominous *Kelo* rushed in like a dark cloud to hang over property rights.

But did *Kelo* unleash the power of local governments, posing the specter of an end to private property? Or did the decision set in motion a process of institutional change that ultimately reins in local governments and leads to even less use of eminent domain? If so

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² See Harwood (2005) for poll results to support the relative controversy of the *Kelo* decision.

³ *Kelo v. City of New London*, 125 S. Ct. (2005) at 2676.

then the discussion takes on a profoundly ironic twist. Could *Kelo* be the best thing that ever happened to property owners?

This study surveys developing events at the state and local levels in the year following *Kelo*, and examines the data through the perspective of economic efficiency and constitutional political economy. On the one hand, there is much evidence to suggest that *Kelo* had an “opening of the floodgates” effect, emboldening local policymakers to be more aggressive in acquiring private property for economic development. On the other hand, a competing hypothesis suggests a “backlash and spotlight” effect, whereby public opinion has swung heavily in favor of property owners, such that local policymakers fear negative publicity and prolonged legal battles while states feverishly enact legislation restricting the use of eminent domain. *Kelo* ignited a struggle for power among voters, developers, local policymakers, and state governments. Out of this struggle, states are experimenting with how to achieve the balance of power that is best for their unique needs, and property owners are gradually securing a stronger foothold under the states’ legislatures than they would have had under *Kelo*.

2. The End of Private Property

The *Kelo* decision has suffered no shortage of critics and doomsayers decrying the end of private property. Observers of all ideological stripes launched fierce, often emotional reactions at the *Kelo* Court. In an editorial titled “Eminent Latitude,” *The Washington Post* called the *Kelo* decision “quite unjust” (Washington Post 2005). Similarly, *The Sacramento Bee* likened the decision to a regressive tax, saying “the history of government takings of private property shows that most often it takes from the poor, or the weak, and gives to the rich and the powerful. And the Supreme Court has just made that even easier” (Weintraub 2005).

Prominent bloggers and policy wonks weighed in heavily with their own form of rapid response. *Time* blogger Andrew Sullivan pulled no punches, saying “now you can have your property stolen by Walmart and be unable to get any recompense either, as long as your local representatives, financed by the real estate lobby, go along. Is this an unfree country or what?” (Sullivan 2005). On the same note, Will Collier for *Vodkapundit.com* wrote, “property rights have ceased to exist in the US” (Collier 2005), and free market philosophy professor Tibor Machan lamented, “individual rights are legally dead” (Machan 2005). With

some resignation, economist and *Marginal Revolution* blogger Tyler Cowen simply summed it up: “this is just awful” (Cowen 2005).

Attorneys for the petitioners echoed these remarks. Dana Berliner of the Institute for Justice, which represented Susette Kelo, said in a press statement:

It’s a dark day for American homeowners. While most constitutional decisions affect a small number of people, this decision undermines the rights of every American, except the most politically connected. Every home, small business, or church would produce more taxes as a shopping center or office building. And according to the Court, that’s a good enough reason for eminent domain. (Institute for Justice 2005)

Such biting criticisms were seemingly everywhere; in fact, the *Kelo* majority could merely pay a visit to peers’ chambers to hear the worst. Two dissenting opinions, one each from Justice O’Connor and Justice Thomas, were as critical as any journalist, scholar, blogger, or politician could muster. Said Justice O’Connor of the decision:

Today the Court abandons this long-held, basic limitation on government power [not to take property from A and give it to B]. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—*i.e.*, given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings “for public use” is to wash out any distinction between private and public use of property—and thereby effectively to delete the words “for public use” from the Takings Clause of the Fifth Amendment. Accordingly I respectfully dissent.⁴

In a separate dissent, Justice Thomas characterized *Kelo* as releasing a “boundless use of the eminent domain power.”⁵

From the above and countless other negative responses to *Kelo*, one might conclude that it was about the worst thing to ever happen to property rights. Was this the end of private property? On its surface, perhaps yes, because *Kelo* further obscured the Fifth Amendment’s public use test that was already a fuzzy, curvy line. Under *Kelo*, that line could fall wherever a majority city council says it does. That is, indeed, a lot of power. What’s more, the above reactions suggest there is little in American government to match that power in order to constrain it. A declaration of blight is a precondition in most states to using eminent domain. However, what is to stop cities like San Jose from declaring one-tenth of the city blighted just in case the city wants it for redevelopment (Berliner 2003, 22)? Why wouldn’t states like New York transfer land from long time owners to new developers promising jobs and higher tax bases (Welch 2005a)? What is to stop the eminent domain floodgates from opening?

⁴ *Kelo v City of New London*, 125 S. Ct. (2005) at 2671.

⁵ *Kelo v City of New London*, 125 S. Ct. (2005) at 2687.

3. Emboldened Local Governments: Opening the Floodgates

Welcome to small city U.S.A., where citizens are politicians and the local paper is the only press at city hall. Places like Riviera Beach, Florida; Yolo County, California; and Sussex, New Jersey. They used to be quiet and left alone. But after *Kelo*, their city council chambers became standing room only, and their stories flew over the Internet before the final gavels struck. These stories, and their counterparts in big cities, tell us how *Kelo* has emboldened local authorities to set more aggressive land-use policies.

In Hercules, CA, for example, the city council on May 23, 2006, unanimously voted to seize property acquired by Wal-Mart, in order to prevent the retail giant from opening a store in town. An hour's drive away, in Yolo County, the government claimed eminent domain on a 17,300 acre ranch whose rightful owners had planned to develop small segments while conserving the rest. According to the *Sacramento Business Journal*, county authorities had not released a development plan but wanted to “preserve the ranch as open space and farmland, and to retain its vast natural resources including water rights, natural gas and flood-control capacity” (Anderson 2005). *The Orange County Register* editorialized:

Taking more than 17,000 acres for unclear reasons is a far cry from the taking of a narrow piece of land to make way for a freeway or courthouse. It shows the degree to which governments perceive themselves as economic central planners, rather than agencies that set some ground rules and enforce people's rights. (Orange County Register 2006)

Not surprisingly, most of the emboldened central planning emerged in states whose courts interpret “public use” broadly, or whose legislatures define “blight” vaguely. According to the *New York Times*:

Nine state supreme courts, including those in Illinois, Michigan and Washington, have forbidden the use of eminent domain simply to bring in more revenue and jobs. New York's highest court, the Court of Appeals, has allowed such condemnations. The New Jersey courts have not ruled on the issue. (Salzman and Mansnerus 2005, A20)

With some irony, it is the *Times* that stands to benefit from New York's lax law. By late in 2006, the New York Times Co. was scheduled to complete construction on its sparkling new 52-story headquarters on 8th Avenue across from the Port Authority bus terminal—on the edge of the neighborhood traditionally known as Hell's Kitchen. Designed by the post modern architect Renzo Piano, the elegant skyscraper will “transform the dowdy block and generate millions of dollars in tax revenues,” according to an August 2002 *Times* story (Vagli 2002, 3). And *The City Review* calls the building “laudatory” and a boon to “bus

travelers across the street [who] could use a little respite from the visual cacophony and onslaught of the area” (Horsely 2002). The Company acquired the land from the Empire State Development Corporation, which condemned the properties of 55 businesses, consolidated the parcels by eminent domain, and transferred the land to the new tenants for \$85 million (Welch 2005a).

Like Gosplan, eminent domain is often used to pursue lofty goals hatched by central planners without due attention to local economic realities. In Lakewood, Ohio, for example, a redevelopment project required that the City designate an entire neighborhood as blighted, but property values and occupancy rates were growing faster in that neighborhood than in the rest of the city as a whole (Staley and Blair 2005). Decisions like these, where property is forcibly transferred between private parties to fulfill a central plan, fail to harness the specialized knowledge that owners and prospective buyers possess about the property’s value. As Thomas Sowell summed it up in his classic political economy treatise, *Knowledge and Decisions*, “Ideas are everywhere, but knowledge is rare” (Sowell 1980, 3). This is the case in New York, where the Times Co. made no private offers for the properties on which its new skyscraper stands, and the city fulfilled the dreams of aesthetes at the cost of aging but viable small businesses. The only knowledge that a skyscraper is a better use for these properties comes from bureaucratic edict out of the Empire State Development Corporation. Presumably the skyscraper would have been erected somewhere in the city if not on the 8th Avenue site. So the tax revenues would have materialized without eminent domain, perhaps more so if the site were closer to Times’ Square, where property values are higher. In this way, eminent domain is often a tool of central planners pursuing their subjective preferences for a good society.

Florida is another state with broad “public use” and “blight” definitions, and local planners wasted no time making use of their expanded powers under *Kelo*. Riviera Beach, for example, is a small city on Florida’s Atlantic coast 50 miles north of Ft. Lauderdale. This city exemplifies the many facets of development takings and the struggle for power that *Kelo* created among voters, developers, local policymakers, and state governments.

According to the city’s redevelopment agency, properties in Riviera Beach have been in decline for 30 years, creating “blighted physical, social, and economic conditions.” In 1999, residents like Martha Babson formed a citizen action group to beautify the town, and they had hopeful talks with then mayoral candidate Michael Brown. Born and raised in Riviera Beach, Brown promised to clean things up, fight corruption in the local government,

and make the city worthy again of its waterfront status. With Babson's vote, Brown was elected mayor and within months announced a major plan to redraw the city's redevelopment boundaries, hire the Viking Group (a yacht building firm) as master developer, and begin to gobble up properties to build a 400-acre, \$2.4 billion complex of marinas, condos, hotels, shops, restaurants, an aquarium, and a maritime charter school. Having designated an official redevelopment area, the city was empowered under Florida law to take properties for public use as long as they were blighted. Grassroots leaders like Martha Babson, who received a notice that her property was blighted and subject to eminent domain, were incensed. "We just felt like a donkey had kicked us in the diaphragm" Babson said (Lush 2006, 1A).

Riviera Beach illustrates the post-*Kelo* confidence that local officials have in eminent domain as a development tool. The Florida legislature began considering ways to restrict eminent domain in July 2005, and soon afterward Mayor Brown began urging the city to initiate eminent domain proceedings before the legislature could enact its restriction. But other city council members were cautious, and the redevelopment plan proceeded without threats of eminent domain. When Florida's legislature passed a bill in May, 2006, restricting development takings, Mayor Brown saw a missed opportunity. "I think it would have been a good strategy," Brown said. "Had the city taken the action this would have been water under the bridge" (Cooper 2006). Nevertheless, Brown pushed ahead with the strategy, striking a deal with the master developer in which the city promised to condemn certain properties if necessary.⁶

California is another state known for eminent domain abuse and did not update its takings laws in at least the year following *Kelo*. If a city deems a property "blighted" then it can be transferred to developers through eminent domain, and some big California cities have shown the type of post-*Kelo* boldness found in Yolo County and Hercules. One week after *Kelo*, Oakland officials evicted a tire shop and adjacent auto repair shop, whose owners had been resisting eminent domain, to pave the way for a new housing high rise. "The city thinks I cause 'economic blight' because I don't produce enough tax revenue," the tire shop owner said. "We thought we'd win, but the Supreme Court took away my last chance." The auto

⁶ Florida Governor Jeb Bush had not yet signed the bill into law when Riviera signed the contract with Viking. Because of this timing, Brown claimed that Riviera Beach's plan falls under the previous, more lenient law and eminent domain is still the city's option (Gomez 2006). At the time of this writing, the issue was on the way to state court but arguments had not yet been heard.

shop owner added, “the cost of buying or leasing a new site is prohibitive. The money the city offered me does not cover it” (Zamora 2005).

Los Angeles garnered national attention throughout the year following *Kelo* for condemning dozens of business properties around the famous intersection of Hollywood and Vine streets. The city seized the land to allow a private developer to build a luxury hotel, condominiums, shops and restaurants. Properties were deemed blighted for trivial reasons, such as lack of sufficient parking. The city’s redevelopment agency said developing the area was impossible without eminent domain, but the city council promised it would be used only as a last resort if developers and property owners fail to reach a private deal (Welch 2005b).

Land-use officials boldly tested the post-*Kelo* waters in New Jersey, a state whose high court has yet to rule on economic development takings. In an unusual use of eminent domain, state officials seized 17 acres of working farmland from Harvestone Farms, a 154-acre patchwork of fields in a traditional farming region. The state needed the farm land to offset loss of wetlands following road construction over 50 miles away in Sussex County. Local mayor, Tracy Tobin, said “the state has poured millions of dollars into farmland preservation. Why in the Lord’s name would they turn around and attack a working farm?” (Wihbey 2006).

Anecdotes like these, in cities large and small, are part of a national trend. According to the Institute for Justice and the Castle Coalition, *Kelo* has led to an “opening of the floodgates.” In a report of selected case studies, the Castle Coalition detailed 31 stories of local governments taking a stronger eminent domain position after *Kelo* (Institute for Justice 2006). In many of these stories, the project was uncertain or stuck in court but then moved quickly after the post-*Kelo* emboldened government threatened eminent domain. Another study, broader in scope, found 5,783 new eminent domain uses in the single year following the *Kelo* ruling (Berliner 2006). In comparison, a total of 10,282 properties were under threat of eminent domain in the five years prior to *Kelo* (Berliner 2003).

This trend toward greater abuse should come as no surprise given the historical development of the political-legal environment surrounding eminent domain. Fueled by Progressive and New Deal era attitudes undermining private property rights, takings jurisprudence has consistently expanded government’s eminent domain powers. Sandefur (2006) discusses the case history that caused a shift of anti-takings arguments from the Fifth Amendment’s due process clause to its less stringent public use requirement. “The demise of economic substantive due process in the 1930s...forced litigants to contend that a challenged

condemnation was not a ‘public use’ and was therefore unconstitutional” (Sandefur 2006, 7). The Court had already extended public use to the states via the Fourteenth Amendment’s due process clause in its 1897 *Chicago Burlington* decision (Ely 2005). And “public use” had already become a weakened requirement by that time.

...[I]n the late nineteenth century both state and federal courts gradually adopted a broader reading of governmental authority to acquire private property. The constitutional norm of “public use” was increasingly equated with the more expansive concept of “public benefit” or “interest.” Moreover, judicial review of legislative decisions about the need to exercise eminent domain grew slack. In the face of such trends the significance of the “public use” requirement steadily eroded. The decline of the “public use” limitation was hastened by the larger jurisprudential shift associated with the political triumph of the New Deal. (Ely 2005, 55) (footnotes omitted from quotation)

Thus, the expanding eminent domain powers were nurtured by an undermined view of property rights in favor of elected officials’ ideas of the public interest, as influenced by redistributionist political pressures. Two leading public choice scholars recently assessed these developments as follows.

Nineteen thirty-five’s infamous “switch in time that saved nine” launched a period of judicial activism that established new “rights” nowhere found in the Constitution written by the Founding Fathers in 1787. The view that the constitution is an organic, living document adaptable as necessary to accommodate changing circumstances of time and place quickly entered the mainstream of American legal thinking. (Shughart and Tollison 2005, 239)

In this legal climate, one can appreciate how the Court repeatedly deferred to takings that the government said were in the public interest. In the 1954 landmark *Berman v. Parker*, the Court allowed takings for bureaucratic visions of urban renewal, and in 1984’s *Hawaii Housing v. Midkiff* the Court upheld takings to breakup what politicians claimed was a land oligopoly. In both cases, as well as the Michigan state court ruling in *Poletown v. Detroit*, the courts stepped aside in deference to what political circumstances of the time and place dictated to be the public interest. In this climate, the *Kelo* decision seems to have been an almost foregone conclusion, and legal scholars expressed shock that the minority garnered four votes, much less any at all (SCOTUSblog 2005). In fact, *Kelo* was one of a trio of property rights cases heard in the 2004-05 term, and with all three the Court even further strengthened the governments takings power (Ely 2005).

Eminent domain powers have become increasingly strong under this nurturing legal-political environment. The effect is detrimental to the public interest because strong eminent domain powers make policy decisions vulnerable to rent seeking dynamics, which can lead to inappropriate and abusive uses of power. Land-use policymakers attract political pressure

from developers looking for a less costly way to acquire land. Local officials get to central plan development according to their subjective preferences. And bureaucrats get to further their careers by taking credit for economic development projects. With strong eminent domain powers, land-use decisions become shaped by cozy-triangle political incentives more than by economic realities or the public interest. With the growth of the economic development industry around these rent-seeking dynamics, eminent domain has become a standard, commonly used tool in economic development (Staley and Blair 2003). The rights of property owners are no longer guaranteed by constitutional protection, but instead they flow with the currents of political expedience and trends of fashion in development planning. Seen in its proper context, *Kelo*'s emboldening effect is part of the movement toward a rent-seeking society in property rights and away from a constitutional order (Buchanan, Tullock and Tollison 1980). As a result, the response to *Kelo* by grassroots groups, voters, and property rights advocates has been mounted through the political process.

4. Spotlight and Backlash Effects

I think there's going to be an unbelievable popular backlash to this decision. The court has just told homeowners that the government can take their house for someone who pays more in taxes. (Dana Berliner, Attorney, Institute for Justice, qtd. in Salzman and Mansnerus 2005, 20)

It has been a bumpy ride for Riviera Beach and Mayor Brown's master plan, as big projects in little places came under the microscope after *Kelo*. Property rights advocates howled that Riviera Beach, a city of 31,000, would displace some 5,100 residents (McCabe 2001)—making it the second largest eminent domain relocation since the 1950s-60s urban renewal of Southwest Washington, DC (which displaced about 5,000). Some newspapers even reported that Riviera would dispossess 6,000 people, but even the 5,100 number was exaggerated. In truth only about 1,350 residents were threatened under the Riviera master plan. And while the city had not used eminent domain to acquire any property, the city's plan was enough for a *Tampa Tribune* editorial to conclude, "Riviera Beach exemplifies how local governments can abuse eminent domain" (Tampa Tribune 2005).⁷

In addition to switching on the media spotlight, *Kelo* produced a considerable backlash among voters and legislators. One state senator in Connecticut remarked, "very few

⁷ The 5,100 number was first reported in McCabe (2001), and later touted by activist groups such as the Castle Coalition (Beliner 2002) and ACORN (2005). The 6,000 number was reported in *The Washington Times* (Price 2005), and more recently the 1,000 figure is routinely reported as being more accurate; for example Cooper (2006).

issues are this easy to understand. My constituents have shown feelings of outrage, surprise, and some are scared. Few homes *will* be taken by eminent domain, but anyone's home *can* be taken by eminent domain” Lucas (2006). In stark recognition of this, public opinion swung heavily in favor of property owners soon after *Kelo*. Pollsters and newspapers were quick to gauge the public’s sentiment, and the results were overwhelmingly negative. In several online polls, over 90% of those polled disagreed with the *Kelo* Court. Another nationwide poll of registered voters indicated 68% support for legislative restraints on eminent domain.⁸

Congress didn’t waste any time either. In the days following the decision, then House Majority Leader Tom DeLay called *Kelo* “a horrible decision” (Associated Press 2005), and the House passed a resolution by a vote of 365–33 to express “grave disapproval” of the *Kelo* Court. Later, the House approved by 231-189 a measure to withhold federal economic development funding related to eminent domain land transfers to private developers. Although dozens of bills have been introduced by members of both parties, at the time of this writing Congress had yet to pass a law.⁹

This spotlight and backlash environment had the effect of constraining local policymakers. After *Kelo*, resorting to eminent domain for economic development would face the fear of negative publicity and voter unease. Development projects would also face greater legal costs since property owners became more educated about eminent domain and enjoyed a broader support network. Thus, it was no surprise to see many local officials shying away from, and even pledging never to use, eminent domain except as a last resort. In Riviera Beach, councilwoman Liz Wade repeatedly promised as much in news articles. In San Jose, the Redevelopment Agency vowed not to use eminent domain on single family homes, and asked the city council to reconfirm this policy to further reassure residents (Roberts 2006).

It was also no surprise to see state legislatures acting strongly on eminent domain. With this much exposure on a topic that had become so sensitive, voters would be unlikely to have memory problems come time for re-election bids. As Riviera Beach’s Liz Wade said, there was tight political pressure on legislatures due to the *Kelo* backlash. “You had a national outcry that was heard from coast to coast. Legislatures across the country had to

⁸ The Connecticut state senator is Republican John McKinney and is quoted in Lucas (2006). For the 90% result, see (Economist 2005). Poll results were taken from various news web sites including *msnbc.com*, *cnn.com*, *chronicle.augusta.com*, *haptonroads.com*, and *bradenton.com*. For the 68% result, see Andres (2005).

⁹ The House vote of 365-33 was on H.Res.340, 109th Congress, sponsored by Rep. Phil Gingrey (R-GA).

answer that cry. They had to respond or none of them would be in office” (Cooper 2006). In fact two states, Utah and Nevada, limited eminent domain in anticipation of the *Kelo* decision. Florida’s legislature was not far behind; it started on the issue one day after *Kelo* was released. As of June 15, 2006, eminent domain measures had been considered in 43 of the 44 states whose legislatures had convened (National Conference of State Legislatures 2006). Bills had passed in 27 state legislatures, and had been enacted in 18 of those, vetoed in three others, and were awaiting governors’ signatures in the rest.

For their part, several state high courts also began to interpret economic development takings more narrowly. Most notably, in 2004 the Michigan Supreme Court overturned the 1981 *Poletown* decision that allowed the city of Detroit to transfer an entire working class neighborhood to General Motors to build a Cadillac plant.¹⁰ Under the new Michigan Court rules, the government still has power of eminent domain, but it is more restricted.¹¹ In suburban Cincinnati, 70 homes stood in the way of a \$125 million office and retail development. Three of these property owners challenged the city’s power of eminent domain, and in the resulting law suit a state court ruled in favor of the city.¹² On appeal, the case became the first involving eminent domain for economic development to reach a state supreme court after *Kelo*. On July 26, 2006, the Ohio Supreme Court reversed the lower court’s ruling in favor of the property owners. This brings the total to ten state supreme courts that now disallow takings for economic development. Several others such as New Hampshire and Massachusetts restrict without banning development takings (Somin 2006).

At least on the surface, then, the pendulum appears to have some momentum toward stronger property rights protection in the year following *Kelo*, as the states generally appeared to be constraining the powers of eminent domain. In particular, most of the state legislation through 2006 restricted economic development takings, with exceptions like transferring property to common carriers (Kansas) or public utilities (Maine). Many of the laws attempt to more carefully define public use or purpose as not including economic development (Florida), and others sharpen meanings of blight to prevent loophole mining (Georgia). Also, most of these laws feature procedural changes such as requiring approval by the local government’s oversight body (Utah), greater than fair market value for residential

¹⁰ *County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004), reversing *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, 464 (Mich. 1981).

¹¹ For excellent analysis of the Michigan Court on public use takings, see Somin (2004).

¹² *City of Norwood v. Horney*, 161 Ohio App.3d 316, 2005-Ohio-2448.

takings (Indiana), and more public notice (West Virginia). In Connecticut, lawmakers there intend for whatever law that passes to be retroactive and therefore stop the New London project (Lucas 2006).

The legislatures' quick response to public sentiment was big news to Larry Morandi, an infrastructure analyst for the National Conference of State Legislatures. "I have never seen a response to a Supreme Court decision this dramatic," he said (Lucas 2006). Yet critics and partisans have cautioned that the pendulum may swing too far such that the states become too restrictive on eminent domain. David Parkhurst, legislative counsel for the National League of Cities, said in a March 16, 2006, interview, that tight restrictions on eminent domain could harm municipal bond ratings and jeopardize public/private partnerships that create jobs. In Connecticut, state Sen. Eric Coleman told *Stateline.org*, "I have concerns about an absolute prohibition, particularly in relation to urban centers where there is little land to assemble for an economic development project." And in Florida, state representative Ron Greenstein expressed special concern for ongoing projects, telling *Builder* (a home construction trade magazine), "we should not be throwing the baby out with the bath water. You can't tell people who have already invested money, 'The hell with you.' Why would anybody want to redevelop in the state of Florida?" (Curry 2006).

The critics' and partisans' arguments, while clearly dosed with political rhetoric, do have some basis of support in economic theory. In terms of economic efficiency, the optimal extent of eminent domain power is greater than zero. Under certain circumstances, the well known holdout problem can prevent transfer of property to higher valued uses under voluntary exchange. In the formal economics literature, the question is not whether eminent domain is efficient under holdouts, but what is the efficient amount of compensation (Blume, Rubinfeld and Shapiro 1984; Hermalin 1995). Traditional uses for eminent domain, such as securing rights of way for infrastructure and transportation, are likely to create net positives for communities; however, transfer of property through eminent domain for urban renewal does not because the compensation offered distorts relative prices of high- and low-value properties (Munch 1976). In addition, given the received legal-constitutional context discussed in the previous section, a state law cannot overly restrict eminent domain powers with much expectation of being upheld in court.

In short, the legal climate has gradually become more favorable to eminent domain powers, and the political environment has encouraged rent-seeking dynamics leading to politicized land-use decisions. The available evidence indicates a trend of increasing eminent

domain use in the years prior to *Kelo*, and a strong acceleration of that trend in the year after *Kelo*. Yet there remain certain legitimate uses for eminent domain, and state laws to restrict eminent domain powers are themselves limited by a massive body of judicial precedent. Thus, after *Kelo*, the central issue from a political economy perspective is how best to protect the rights of property owners while maintaining traditional eminent domain authority. Equivalently, the problem can be stated as a classic political economy question of institutional design.

The Scholastic philosophers looked upon the tradesman, the merchant, and the moneylender in much the same way that many modern intellectuals look upon the political pressure group. Adam Smith and those associated with the movement he represented were partially successful in convincing the public at large that, within the limits of certain general rules of action, the self-seeking activities of the merchant and moneylender tend to further the general interests of everyone in the community. An acceptable theory of collective choice can perhaps do something similar in pointing the way toward those rules for collective choice-making, the constitution, under which the activities of political tradesmen can be similarly reconciled with the interests of all members of the social group. (Buchanan and Tullock 1962, 22-3)

The ideal state law in response to *Kelo* will limit eminent domain abuse while empowering local policymakers such that their decisions serve the public interest. Such a law would insulate eminent domain decisions from interest-group and majoritarian politics, as well as officials' subjective preferences for central planning. Within this framework, a brief analysis of the developing state laws will provide a basis for concluding whether *Kelo* turns out to be a net improvement or detriment to property rights.

5. Assessing State Restrictions on Eminent Domain

By July, 2006, 18 states had enacted legislation to restrict eminent domain powers. In six other states, legislation awaited gubernatorial signature and in three other states the governors had vetoed legislation. Up to 16 additional states were considering some form of similar legislation (National Conference of State Legislatures 2006). As we have noted, this wave of new laws is largely motivated by the electoral politics of the popular backlash against *Kelo*. But the backlash is not the only political force in play. Organized interests opposed to restricting eminent domain include local governments and redevelopment agencies, planning groups, and corporate infill developers. The list of amicus briefs filed with the *Kelo* Court makes clear how the interests are aligned. Filing for the petitioners were public interest groups advocating individual rights and business groups concerned for their

own property.¹³ On the opposing side, filing in support of the respondents were the National League of Cities and the American Planning Association, a 36,000 member association of professional planners. These same groups lobbied against restricting eminent domain powers at the state and federal level (Cooper and Gomez 2006, Sandefur 2006, National League of Cities 2005).

When deciding under pressure from opposing lobbies, legislators create policies that distribute political benefits in proportion to the relative effectiveness of the respective lobbies (Peltzman 1976, Denzau and Munger 1986). Since cities and developers have lobbied state lawmakers on this issue, there is a rational choice expectation that the laws will not completely restrict local officials' eminent domain powers. Furthermore, under certain conditions legislators will have the incentive to obfuscate the effects of the laws they pass. Given the widespread anxiety among property owners following *Kelo*, legislators may have the tendency toward "symbolic politics," in which legislation imparts real benefits on organized interests while offering only symbolic reassurances to the general public (Edelman 1964; 1971). The legal scholar Cass Sunstein describes such laws as frequently "making statements" rather than controlling behavior (Sunstein 1996, 2124). Also, legislators may intend to obfuscate effects of the laws to avoid appearances of corruption (Boylan and Long 2003). While evaluating the relative explanatory power of these theories is not within the scope of this paper, we invoke these explanations to provide a basis for expecting some of the states' laws to have more bark than bite when it comes to restricting eminent domain powers. Furthermore, in the case of laws that lack bite, some effort will be made to portray them as more powerful than they actually are. In other words, the backlash and spotlight effect may be more symbolic than real. Steve Anderson of the Castle Coalition is concerned that states are focused too much on restricting takings without paying enough attention to defining blight. "Blight is defined so vaguely. This gives government agencies a chance to do economic development through the back door" (Lucas 2006).

¹³ Among the public interest groups were America's Future, the Becket Fund for Religious Liberty, the Cato Institute, and the NAACP jointly with the AARP. Among the business groups were The King Ranch (an 825,000 acre tract in south Texas that is vulnerable to eminent domain) and the National Association of Home Builders jointly with the National Association of Realtors. In their brief, the home building and realtor industry groups expressed concern mainly for their own properties. "...NAHB recognizes that housing will almost never afford a community with the economic development benefits that a commercial application will. If economic development as a sole justification for public use is decided using a rational basis test with deference to local legislative bodies, then the door is left open for local governments to abuse their eminent domain powers and take developable land from NAHB members as they could from any other property owner." (Pickel 2005, 1).

By analyzing the 27 bills that have passed state legislatures, we can delineate specific provisions that, by their language, appear on the surface to restrict eminent domain but in actuality will do little to change the scope of powers enjoyed under *Kelo*. By the same token, we also identify provisions that impose real constraints.

Many of the new state laws ban takings for economic development but attach seemingly reasonable exemptions that actually maintain, or even expand, eminent domain powers. The most pervasive exemption is to allow eminent domain if the local legislative body has declared an area or a specific property as blighted, where blight is vaguely or broadly defined. The definition of blight in West Virginia's new law exemplifies this trend well.

(c) "Blighted area" means an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(d) "Blighted property" means a tract or parcel of land that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety or welfare. (Code of West Virginia, 1931, Chapter 16, Article 18, Section 16-8-3 as amended by H.B. 4048, March 11, 2006)

Local officials could apply such an encompassing definition of blight to practically any area or property. All that is needed is a modicum of creativity and the will to do so. Thus, West Virginia's law ultimately places the protection of private property in the hands of city council majorities, rendering the law's restriction on eminent domain effectively meaningless. Similar loopholes exist in new laws passed in Alabama, Maine, Minnesota, Nebraska, Texas, Vermont, and Wisconsin.

Another type of loophole is to ban eminent domain when economic development is the *sole* purpose of the taking, such as with Missouri's new law. Under this stipulation, the government only has to add *some* public purpose, no matter how minor, to the taking rationale. This is an easy task, not just in Missouri but in every state where public use is broadly defined and therefore easy for local governments to justify. As Justice Scalia

declared in 1992 for the Court majority in *Lucas v. Carolina Coastal*, in “practically every case” only a “stupid staff” would fail to muster such a rationale.¹⁴

Aside from loopholes, many state laws simply leave policymakers with too much discretion to pursue their subjective preferences. In Alabama, policymakers can declare blight on an area “whenever it fails to perform economically up to a standard that they would prefer to see” (Sandefur 2006, 20). Similarly, the new Texas law “authorizes local government to use eminent domain to take property from private parties whose use of the property does not satisfy planners...” (Sandefur 2006, 23).

On the other hand, many of the new state laws do impose substantive restraints on eminent domain. The best example is when states narrowly define “public use,” such as in Arizona, Georgia, Iowa, Kentucky, Minnesota, and Indiana. These statutes use language similar to Thomas M Cooley’s famous treatise on limiting government power in a federal system, which defined public use as the “possession, occupation and enjoyment of the land by the public, or public agencies” (Cooley 1868 [1927], 766). In Indiana, “public use” is even more narrowly defined to exclude enhancement of the tax base, increasing tax revenue, or fostering employment or general economic health. Similarly, Georgia’s new law excludes the public benefits of economic development, and Florida’s new law excludes tax base preservation or enhancement and also blight.

In a few states the blight exemption is retained but blight is more narrowly defined. Pennsylvania’s law imposes a 10-year limitation on any designation of blight. Georgia’s new law excludes aesthetics from determining blight, and both Georgia and Pennsylvania require that any blighted property must meet the statutory definitions of blight *and* pose a danger to public health (Sandefur 2006, 41).

Other meaningful restrictions are achieved by imposing procedural and fiscal costs on governments that choose to use eminent domain. In some states, governments must now cover property owners’ legal costs in condemnation proceedings and pay greater than the average assessed market value of property that is condemned. Florida’s new law imposes a waiting period of five years before transferring condemned properties to private parties. In Texas, the new statute introduces meaningful judicial review (Sandefur 2006, 25).

The most stringent law is South Dakota’s, which simply prohibits takings for economic development without exemptions. New Mexico’s legislature passed a similar bill

¹⁴ See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 1025-6, note 12 (1992).

but Governor Bill Richardson vetoed it in March 2006, saying the bill was too vague and could stop worthy projects simply because a private developer was involved (Gessing 2006).

In sum, laws with bark but no bite are characterized by vague and encompassing definitions of blight and public use, and broad deference to local legislative majorities. In contrast, laws with bite tend to limit the option of development takings available to land-use policymakers, while otherwise respecting their authority to support development particular to the needs of their communities. As states continue to consider and enact legislation, the extent to which a particular law has bite will depend on the legislature's response to opposing lobbying forces from grassroots and property advocates and local governments and developers.

6. Outlook

The *Kelo* ruling had a profound impact on the incentives of land-use policymakers throughout the country. On the one hand, the emboldening effect has been real, as we are reminded in places like Hercules, Memphis, Riviera Beach, New Jersey, San Jose, New York, and Los Angeles. On the other hand, the spotlight and backlash effects began to break up the dark cloud that *Kelo* would have ushered in over property rights. Virtually every state legislature, many of the courts and Congress are acting to restrict eminent domain in various ways. Thus, property owners might ultimately benefit from the effects of *Kelo*. Says John Shirey, executive director of the California Redevelopment Agency:

The irony of that Supreme Court decision is that the winners are turning out to be the big losers and the losers are emerging as the winners. There has been such a public backlash against that decision that it's much easier than it has been in years for the opponents of that decision to pass state and federal laws. (Fine 2006)

How far the pendulum swings will vary state by state, and will depend on the character of each state's new restrictive laws. Of course, each state is unique in its land, political, and economic realities. So *Kelo* set in motion a familiar process of institutional experimentation in which the states serve as the great laboratory of democracy. This activity makes it unlikely that *Kelo* will spell the end of private property. But critics of the state laws warn that they lack sufficient procedural teeth, too loosely define blight, and leave too many exemptions through which local policymakers will mine loopholes over time. Thus, *Kelo* is not likely to be the best thing to happen to private property either.

That said, there is a basis for a guardedly optimistic outlook for property owners. Legislation in the year following *Kelo* points to a tightening of public use. Based on this

trend, we can say that local land-use policymakers will face greater political and procedural costs of using eminent domain in the near future. That places more decision making power in the hands of buyers and sellers who are closest to property and who possess the specialized knowledge necessary to devote the land to its highest valued uses. On balance, this is a benefit to society. Not only does it afford greater protection to existing property owners—a value that opinion polls indicate is broadly shared—but it will enhance efficiencies in land-use decisions as well. Properties will be more likely to be used for purposes that are in fact higher value to communities rather than to city planners, their frequently unrealistic visions and their political support constituencies. Developers in the future will have less of an option of acquiring land through the government, and as a result developers will spend less time rent seeking and more time building. If state legislatures can eschew symbolic politics and lobbying pressure from organized interests, an important effect of *Kelo* will be to restrict government's ability to seize land for economic development, thus empowering policymakers to reconcile their own interests with those of "all members in the social group" (Buchanan and Tullock 1962, 23).

7. Conclusion

Kelo v. New London immediately became one of the most controversial Supreme Court decisions in recent decades, igniting a struggle for power among voters, developers, local policymakers, and state governments. Initial fears of unbounded eminent domain power sparked numerous pronouncements of the end of private property. Yet powerful spotlight and backlash effects have prompted action by state legislatures and courts. Almost all the states' legislatures are considering or have passed laws that, at least ostensibly, restrict eminent domain for economic development. Many states are also requiring more careful definitions and processes for determining blight, and a growing number of state courts are interpreting public use more narrowly. While *Kelo* may have opened the floodgates on eminent domain, the states acted quickly to shift power partially back the other way.

To the extent that the backlash outweighs the floodgate effect, the more limited eminent domain power that results is almost certainly good for the public interest. The post-backlash environment will put more land-use decisions in the hands of sellers and buyers, who possess the specialized knowledge making them best able to negotiate over market prices to determine a property's highest valued use. Lesser eminent domain powers also discourage rent seeking and the pursuit of planners' subjective development preferences. To

the extent that the *Kelo* backlash winds up limiting takings for economic development, this will better equip land-use policymakers to serve the public interest.

References:

- ACORN. 2005. Riviera Beach ACORN Says No to Eminent Domain. Press Release. Available at: http://acorn.org/index.php?id=8540&tx_ttnews%5Btt_news%5D=18198&tx_ttnews%5BbackPid%5D=8359&cHash=8c1db078a2
- Anderson, Mark. 2005. Rumsey Band to Help Yolo Preserve Conaway Ranch. *Sacramento Business Journal* (May 17). Available at <http://sacramento.bizjournals.com/sacramento/stories/2005/05/16/daily15.html>.
- Andres, Gary J. 2005. The Kelo backlash. *Washington Times* (August 29).
- Associated Press, The. 2005. Congress works to blunt court decision. (June 30). Available at <http://www.msnbc.msn.com/id/8422790/>.
- Berliner, Dana. 2006. *Opening the Floodgates: Eminent Domain Abuse in the Post Kelo World*. Washington, DC: The Institute for Justice.
- Berliner, Dana. 2003. *Public Power, Private Gain*. Washington, DC: The Institute for Justice.
- Berliner, Dana. 2002. *Government Theft: The Top 10 Abuses of Eminent Domain 1998-2002*, Washington, DC: The Institute for Justice.
- Boylan, Richard T., and Cheryl X. Long. 2003. "Measuring Public Corruption in the American States: A Survey of State House Reporters," *State Politics & Policy Quarterly*, 3:4 (Winter):420-38.
- Blume, Lawrence, Daniel L. Rubinfeld, and Perry Shapiro. 1984. The Taking of Land: When Should Compensation be Paid? *Quarterly Journal of Economics* 99, no.1 (February): 71-92.
- Buchanan, James M. and Gordon Tullock. 1962. *The Calculus of Consent: Logical Foundations of Constitutional Democracy*. Ann Arbor: University of Michigan Press.
- Collier, Will. 2005. Bad News. (June 23). Available at www.vodkapundit.com.
- Cooley, Thomas M. 1972 [1868]. *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States*. New York: Da Capo Press (first edition 1868).
- Cooper, William. 2006. Riviera waterfront makeover uncertain. *Palm Beach Post* (May 9).
- Cooper, William, and Alan Gomez. Riviera Beach Mayor Organizes Rally to Capitol. *Palm Beach Post*. May 04, 2006. Available at http://www.palmbeachpost.com/politics/content/local_news/epaper/2006/05/04/c1b_Domain_0504.html
- Cowen, Tyler. 2005. No I cannot be a pure utilitarian... (June 23, posted at 2:12 p.m.). Available at <http://www.marginalrevolution.com>.
- Curry, Pat. 2006. One man's blight. *Builder* (April 1). Available at <http://www.builderonline.com/industry-news.asp?sectionID=28&articleID=289214>.
- Denzau, Arthur T. and Michael C. Munger. 1986. Legislators and Interest Groups: How Unorganized Interests Get Represented. *American Political Science Review* 80(1): 89-106.
- Economist, The. 2005. Hands off our house. *The Economist* 376(August 20): 21-22.
- Edelman, Murray. 1964. *The Symbolic Uses of Politics*. Urbana: University of Illinois Press.
- Edelman, Murray. 1971. *Politics as Symbolic Action*. Chicago: Markham Publishing Co.
- Ely, James W., Jr. 2005. 'Poor Relation' Once More: The Supreme Court and the Vanishing Rights of Property Owners. *Cato Supreme Court Review* 4: 39-69.

- Fine, Howard. 2006. Eminent Domain Battle is Imminent. *LA Business Journal*, Feb 20, 2006.
- Gessing, Paul J. 2006. Richardson First Governor to Veto Eminent Domain Protection. *Budget & Tax News*. Heartland Institute (June 1). Available at <http://www.heartland.org/Article.cfm?artId=19077>.
- Gomez, Alan. 2006. Bush fires salvo in state battle with Riviera. *Palm Beach Post* (June 1).
- Harwood, John. Poll Shows Division on Court Pick. *Wall Street Journal*, July 15, 2005.
- Hermalin, Benjamin E. 1995. An Economic Analysis of Takings. *Journal of Law, Economics and Organization* 11, no.1 (April): 64-86.
- Horsely, Carter B. 2002. New Eighth Avenue Tower for The New York Times Designed by Renzo Piano and Fox & Fowle. *The City Review* (March 24) Available at <http://www.thecityreview.com/timesre.html>.
- Institute for Justice. 2006. Floodgates Open. Web report initially released June 29, 2005, with frequent updates. Available at http://www.ij.org/private_property/connecticut/6_29_05pr.html.
- Institute for Justice. 2005. Homeowners Lose Eminent Domain Case. Institute for Justice Warns: Supreme Court Leaves Homeowners Vulnerable To Tax-Hungry Bureaucrats & Land-Hungry Developers. Press release (June 23). Available at http://www.ij.org/private_property/connecticut/6_23_05pr.html.
- Lucas, Fred. Eminent Domain outcry pierces state houses. *Stateline.org* (March 16). Available at: <http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=96421>.
- Lush, Tamara. 2006. What's a proper price for "progress"? *St. Petersburg Times* (February 12): 1A.
- Machan, Tibor. 2005. Betrayal at the Supreme Court. *Commentary*, The Independent Institute, June 24, Available at <http://www.independent.org/newsroom/article.asp?id=1525>.
- McCabe, Scott. 2001. Residents Vow to Fight Riviera Plan. *The Palm Beach Post* (Dec. 17).
- Munch, Patricia. 1976. An Economic Analysis of Eminent Domain. *Journal of Political Economy* 84, no. 3: 473-97.
- National Conference of State Legislatures. 2006. *Eminent Domain 2006 Legislation*, Updated June 15. Available at <http://www.ncsl.org/programs/natres/emindomainleg06.htm>.
- National League of Cities. 2005. Letter to House Judiciary Committee opposing H.R. 4128 (Private Property Protection Act of 2005). November 3. Available at <http://www.nlc.org/content/Files/NLCAgainstHR4128ltr10-05.pdf>.
- Orange County Register. 2006. Editorial: Latest front in property rights fight. (May 9). Available at http://www.ocregister.com/ocregister/opinion/homepage/article_1134374.php.
- Peltzman, Sam. 1976, Toward a More General Theory of Economic Regulation. *Journal of Law and Economics*, 19: 211-40.
- Pickel, Mary Lynn (Counsel of Record). 2004. "Brief of *Amici Curiae*: The National Association of Home Builders and the National Association of Realtors In Support of the Petitioners," *Kelo v. City of New London* 04-108. Available at http://supreme.lp.findlaw.com/supreme_court/briefs/04-108/04-108.mer.ami.nahb.pdf.
- Price, Joyce Howard. 2005. Florida town considers eminent domain. *Washington Times* (Oct. 10) 2005.

- Roberts, Timothy. 2006. San Jose RDA pledges not to use eminent domain. *Silicon Valley / San Jose Business Journal* (April 14). Available at: <http://sanjose.bizjournals.com/sanjose/stories/2006/04/10/daily76.html>
- Salzman, Avi, and Laura Mansnerus. 2005. For Homeowners, Frustration and Anger at Court Ruling. *New York Times* (June 24): A20.
- Sandefur, Timothy. 2006. The 'Backlash' So Far: Will Citizens Get Meaningful Eminent Domain Reform? *Michigan State Law Review* (forthcoming). Available at SSRN: <http://ssrn.com/abstract=868539>.
- SCOTUSblog (Goldstein and Howe, P.C.). 2005. "Kelo Group Blog Discussion," June 19-25 archives. Available at <http://www.scotusblog.com/discussion/archives/2005/06/19-week/>.
- Shughart, William F., Jr. and Robert D. Tollison. 2005. The Unfinished Business of Public Choice. *Public Choice* 124: 237-47.
- Somin, Ilya. 2006. Controlling the Grasping Hand: Economic Development Takings After Kelo. *Supreme Court Economic Review* (forthcoming).
- Somin, Ilya. 2004. "Overcoming Poletown: County of Wayne v. Hathcock, Economic Development Takings, and the Future of Public Use," *Michigan State Law Review* 2004(4): 1005-40.
- Staley, Samuel R. and John P. Blair. 2005. Eminent Domain, Private Property, and Redevelopment: An Economic Development Analysis. *Reason Foundation Policy Study* no. 331 (February): 1-44.
- Sullivan, Andrew. 2005. *Daily Dish*, (June 23, posted at 4:39 p.m.). Available at www.andrewsullivan.com.
- Sunstein, Cass R. 1996. On the Expressive Function of the Law. *University of Pennsylvania Law Review*, 144:5 (May): 2021-53.
- Tampa Tribune. 2005. Florida Must Properly Define 'Blight' To Protect Property Rights. Editorial (December 29): 14.
- Vagli, Charles B. 2005. Ruling Favors Plan to Build Times Tower. *New York Times* (August 17): B.3.
- Washington Post, The. 2005. Eminent Latitude. *The Washington Post*, Editorial (June 24): A30.
- Weintraub, Daniel. 2005. Court: OK to take from the poor, give to the rich, *Sacramento Bee*, (June 28): B7.
- Welch, Matt. 2005a. Why the New York Times Loves Eminent Domain. *Reason* (October). Available at: <http://www.reason.com/0510/co.mw.why.shtml>.
- Welch, Matt. 2005b. The left's eyeing your home. *Los Angeles Times* (August 14). Available at <http://www.latimes.com/news/opinion/commentary/la-op-takings14aug14,0,5697356.story?coll=la-news-comment-opinions>.
- Wihbey, John. 2006. A twist on eminent domain: Taking farmland for wetlands. *The Star Ledger* (June 1).
- Zamora, Jim Herron 2005. "Oakland city forces out 2 downtown businesses. Action follows high court ruling on eminent domain." *San Francisco Chronicle* (July 2). Available at <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/07/02/BAGO4DI6GJ1.DTL>.