

“Nor shall private property be taken for public use, without just compensation” (U.S. Constitution). These well-known words are from the 5<sup>th</sup> Amendment of the United States Constitution, in which the notion of Eminent Domain originated. This report will explain the pros and cons of Eminent Domain, and how the U.S. Government is using this privilege given to them by the 5<sup>th</sup> Amendment. The definition of Eminent Domain is power given to a government to use private property for public use, usually with compensation to the owner. However, this term is now used extensively, and may be interpreted in many different ways.

One example of Eminent Domain is a ‘complete taking’. A complete taking is when the government takes full ownership of property. Another type of taking is called ‘partial taking’, in which the government takes part of the owner’s property. Partial takings can be a bit tricky.

After valuating the property that is left after the taking, the evaluator must take into account various factors, including, (1) its reduced size, (2) its altered shape, (3) reduced access, (4) any change in utility or desirability of what is left after the taking, (5) the effect of the applicable zoning regulation on the remaining property, and (6) the use to which the condemning agency intends to make of the property it is acquiring and the effect of that use on the owner’s remaining property (Taking of Property by Eminent Domain).

A ‘temporary taking’ is when the government takes the property for a limited amount of time. The owner usually acts as the landlord, in which a certain sum of money is given to him, based on the time the property is borrowed. Easements and rights of way is when the Government uses ones property, but it does not interfere with ones property. One example is a power line.

There are many uses for Eminent Domain. One way the Government uses this privilege is to build sports arenas.

“In December 2003, Forest City Ratner Companies, New York City's largest development firm, and its most active retail developer,

announced their plan for the Atlantic Yards Project. The MTA rail yards and the neighborhood adjoining them, would be replaced by a 20,500 seat sports arena and 17 luxury residential towers. A platform would be constructed over the rail yards; part of the project would be built atop it. The sports arena would occupy about 10% of the overall area; the towers would take up the rest. A pinch of public space would be provided, as would a certain amount of government subsidized "affordable" housing. The sports arena would service the New Jersey Nets basketball team. Which is owned by a group headed by Bruce Ratner, of Forest City Ratner" (Eminent Domain Blights Brooklyn).

Another use of Eminent Domain is to create economic development, also to restore blighted areas into new revitalized businesses, build homeless shelters, and create tenants. Other times the Government uses Eminent Domain to create condominiums. Using the right of Eminent Domain can also increase tax revenue. Road building is one of the uses of Eminent Domain that creates some conflict. The Government has the power to demolish homes to create roads and jug-handles. If the Government claims that a jug-handle is needed to reduce car accidents, then that house will be demolished, unless the owner files a law suit. Many times owners can not afford to go to court, or acquire a decent lawyer. When the Government recognizes that the traffic is becoming very tight, they have the power to demolish one's house to create new traffic patterns. Many times the Government uses the right to create job growth. Here is an example.

"America's largest retailer, Wal-Mart, already besieged by anti-globalization protests, discrimination lawsuits, and critical documentaries, now faces a new threat: the use of eminent domain powers to seize its real estate. Wal-Mart opponents in Hercules, Calif., a small city 20 miles north of Oakland, have persuaded local officials to begin eminent domain proceedings to take possession of a 17-acre parcel that the company hoped to develop into a new store. "The city is being very brave," a Hercules resident who supports the effort to drive Wal-Mart off the land. The attempted land seizure is a kind of turnabout for Wal-Mart, which has repeatedly encouraged other local governments to pursue eminent domain takings to clear the large lots the company needs for its stores. The lawyer said he knew of several cases in which eminent domain was used to build Wal-Mart stores but had never heard of the technique being employed to block a store. A spokesperson for Wal-Mart, Kevin Loscotoff, said the company was disappointed with the city's move. "We believe it's unfortunate that the city is looking to play politics with such an important project for the future of Hercules," he said. Mr. Loscotoff said the new store would create at least 275 new jobs in the community and would help the city recover millions of dollars in sales taxes that local

residents pay in neighboring jurisdictions. Wal-Mart's original proposal for the site called for a main store of 140,000 square feet, which the company said was about average for its California stores. After getting feedback from the city, which had earlier given clearance for stores of up to 64,000 square feet on the lot, the proposed Wal-Mart was scaled down to about 99,000 square feet. The company also agreed that its store would carry groceries. The city had already made an offer to buy the land from Wal-Mart prior to initiating the eminent domain process last week” (California Town Uses Eminent Domain to Block Wal-Mart).

The 5<sup>th</sup> Amendment states “Nor shall private property be taken *for public use*, without just compensation” (U.S. Constitution). When the 5<sup>th</sup> Amendment was written, public use did not mean *anything* that can be used by the public. The term *public use* signified for government use. For example, *public* schools are schools owned by the government. Also, public housing is referred to the people who reside in the hands of government. Furthermore, a public building can imply a government building such as a post office or a courthouse.

On a dollar bill, there is a term located on it, ‘...LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE’? The word “private” refers to private sector debts, and “public” refers to debts owed to the government (Understanding Eminent Domain).

Nowadays privately owned businesses are using the right of Eminent Domain for their own profit.

Eminent Domain was brought about when private property was needed to be taken from citizens to build post offices and main roads. The government decided that anything that can be used to help the job of the postal services and the Government (such as a courthouse), has the right to take away property, and ultimately demolish a house if it that is what is needed. Nowadays, *privately* owned businesses are interpreting the term *public use* as anything that can be used by the public. This statement currently allows retail store chains to tear apart homes to build new stores. Many homeowners have tried, but failed, to

save their homes. Since the 5<sup>th</sup> Amendment allows the right of Eminent Domain if it is for public use, then if the court decipheres the situation as for the public, then the homes of many people are in jeopardy.

“The concept of the public welfare is broad and inclusive. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled”(National Eminent Domain Power).

Along with Eminent Domain, comes the concept of *fair market value*. Fair market value is considered the highest price one would pay for the property. When the government demands that a house needs to be destroyed for a certain reason, the government will, in most cases, pay those people the fair market value. The governing law determines at which point in time the property is evaluated. This presiding law can change the value the property by more than 100,000 dollars. For example, in 1990 Mr. X bought a house costing 500,000. Then in the year 2000 built a pool, refurbished the house, and built a tennis court. The house is now worth 1,000,000 dollars. Three years later the government demands that they need Mr. X’s property to build a strip mall. If the governing law states that the fair market value is evaluated in the year 1995, then the government would give Mr. X 500,000 dollars. If the governing law states, however, that the fair market value is evaluated at the time that ones house is to be taken, Mr. X would receive 1,000,000 or so dollars.

Eminent Domain is still a major issue around the world. There are many positive and negative aspects dealing with Eminent Domain. The right of Eminent Domain given to the United States Government can decrease car accidents, reduce traffic and grant jobs to the unemployed. On the other hand, the government can define a condition as being for the ‘public good,’ while in truth the situation can be avoided. While the economic development of the state is going up because of the privilege of Eminent Domain, many citizens are

becoming frustrated, for there homes are being destroyed, because privately owned companies are claiming the way they are using the right of Eminent Domain is for the public use.

After researching the topic of Eminent Domain and putting together this report, I have a new outlook on the topic of Eminent Domain. I think that the Supreme Court should interpret and clarify the law to avoid controversy. The Supreme Court should make a delegated law determining such questions. “What in fact is considered a blighted area?” “When is the ‘fair market value’ of a property evaluated?” “What is considered for public use?” Only after reviewing and defining the underlying principles of Eminent Domain will the law actually serve the people in their best interests.