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# File Overview

**What is Eminent Domain?**

This the process that the Federal, State, or Local Government uses to take, and seize property from private citizens for the benefit of the public. The 5th amendment states “…Nor Shall Private property be taken for public use, without just compensation”, this is known as the “takings clause” in the U.S. constitution.

**AFF CASE:**

The Affirmative looks at the consequences of the Eminent Domain. The main focus to understand the Aff is the literature and fallout surrounding the *Kelos V. New London* 2005 Supreme Court case. The verdict changed the definitions of “public use” to expand eminent domain. The case builds an argument and narrative against that. This case uses the SCOTUS decision to highlight how damning Eminent Domain can be. There are two big impacts, the first is the structural oppression and violence that is caused by ED. Private property owners are forced to follow the government and give up their land while being paid what is “deemed” okay. This targets people who do not have the monetary or social strata to combat the government. The second impact is a biopower argument. The USFG uses ED to dictate who is has the best use for land. This sets a narrative of people who ideally know how to manage money, property, etc… against those who “don’t”. The Government categorizes people into these groups without explicitly saying that.

**NEG CASE:**

The strategy on the Negative is a little difficult. The main focus is the value of morality. The negative’s job is it prove that eminent domain used in MORALLY instances is key. This means that we don’t defend ALL uses of ED, just the ones that are moral. One of the arguments is that Eminent Domain is used to build hospitals to communities that do not have access them. These areas are both RURAL and URBAN that are impoverish. This is important because it is a morally correct thing to build access to medical centers for these people who currently do not have them. Another argument is that it is moral to use ED for infrastructure purposes. Roads are the backbone of the United States and it is important to use keep them updated and connected. This is a process done by eminent domain. Also we show that ED does not just benefit the wealthy and corporation, but it brings life to communities that need assistance.

# Further Readings

**Ernst, M. (2006) “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.**

Gragoso, D. A. (2016). “For-Profit Pipleines Are Growing And So Are Eminent Domain Battles” Think Progress https://thinkprogress.org/for-profit-pipelines-are-growing-and-so-are-eminent-domain-battles-2b8beee7af3c/

Garrett, T. A., & Rothstein, P. (2007). The taking of prosperity? Kelo vs. New London and the economics of eminent domain. The Regional Economist, (Jan), 4-9.

**Kim, J. 2017** “Fifth Amendment” **Cornell Law School** https://www.law.cornell.edu/wex/fifth\_amendment

##### Weber, R. (2002). Extracting value from the city: neoliberalism and urban redevelopment. Antipode, 34(3), 519-540.

# AFF

## AFF CASE

#### Eminent Domain is allowed to be used by Federal, State, and local governments, meaning that there are three circulating bodies that can rule property owners out of their land.

 **Kim, J. 2017** “Fifth Amendment” **Cornell Law School** https://www.law.cornell.edu/wex/fifth\_amendment

The U.S. Supreme Court has long recognized in the federal government the power to acquire private property for public use. This is true even though the term “eminent domain” does not appear in the Constitution or the amendments. The power is limited, however, by two restrictions. First, as with any federal action, the use of eminent domain must be “necessary and proper” in accordance with the congressional powers enumerated in Article 1, Section 8, of the Constitution. Second, the use of eminent domain must obey the final clause of the Fifth Amendment, which states, “Nor shall private property be taken for public use, without just compensation.”

### The supreme court ruled in favor of eminent domain making the governments power over property greater!

#### A major problem with eminent domain is that the language of public use is not concrete and changes to benefits the government.

 **Ernst, M. (2006)** “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.

In its majority opinion, the U.S. Supreme Court stated in *Kelo* that the government can never take property from one private party for the sole purpose of giving it to another, even if just compensation is paid. On the other hand, the government can always do so if the general public acquires some actual use of the property. The court has been defining the ground between these extremes since the late 19th century. From the start, “it embraced the broader and more natural interpretation of public use as ‘public purpose,’ ” the court said in *Kelo*. More precisely, the court began to argue in the late 1800s that if property is taken to create a widespread benefit, then it is “put to” a public use and satisfies this requirement.

#### The Supreme Court has ruled in favor of using Eminent Domain to give land to private developers.

 **Ernst, M. (2006)** “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.

In a five-to-four ruling, the high court held in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), that New London, Connecticut could properly exercise eminent domain power in furtherance of an economic development plan. At issue was the scope of the Fifth Amendment to the U.S. Constitution, which allows governments to take private property through eminent domain if the land is for “public use.” New London, Connecticut had fallen on hard economic times. The city was economically distressed after its last major employer, the U.S. Naval Undersea Warfare Center, closed in 1996. Its tax base and population were continually decreasing, and city leaders were desperate for some form of economic development. In 1998, the pharmaceutical giant Pfizer began construction of a major research facility on the outskirts of the Fort Trumbull neighborhood of New London. Seeing an opportunity, the city activated the New London Development Corporation, a private entity under the control of the city government, to consider plans to redevelop the area and encourage new economic activities that might be brought in by the Pfizer plant. The development corporation created a development plan that included a resort waterfront hotel and conference center (New London is located on both the Thames River and Long Island Sound), a new state park, new residences, and various research, office and retail spaces.

#### Now Eminent Domain allows for the State and Corporations to “shop” at devalued residential and pick which areas they want to use for relocation. This is the price of being poor, that they can be relocated for “a public use”.

#####  Weber, R. (2002). Extracting value from the city: neoliberalism and urban redevelopment. Antipode, 34(3), 519-540.

Co-constructing obsolescence allows the state and private developers to both write down property values and speed the turnover of capital in the built environment. When particular properties experience significant devaluation, the local state may draw on its own expertise and legal authority to initiate a “quick-take” use of its eminent domain power. Tax-delinquent, “nuisance,” and abandoned properties—often grouped together as “temporarily obsolete, abandoned or derelict sites,” or “TOADS”—then become part of the city’s extensive inventory of real estate (Greenberg, Popper and West 1990).

### Eminent Domain is used to categorize people in to economically beneficial or not. This is a form of biopolitical control

#### The Supreme Court uses Eminent Domain as a way to justify taking away property of those who do not make use of it.

 **Ernst, M. (2006)** “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.

Thus, the majority found that the city’s determination that the area at issue was sufficiently distressed to justify a program of economic rejuvenation is entitled to deference. In the majority’s opinion, the city’s plan unquestionably served the public purpose and therefore satisfied the requirements of the Fifth Amendment. Thus, under the Court’s ruling, if an economic project creates new jobs, increases taxes and other revenues, and revitalizes a depressed (even if not blighted) urban area, it qualifies as a public use.

#### SCOTUS dissenters acknowledge that eminent domain gives power to large corporations to displace families and target minorities.

 **Ernst, M. (2006)** “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.

**Justice O’Connor**, however, **issued a strong dissenting opinion arguing that local government should not have unlimited eminent domain authority to displace families, even if they are compensated, simply to accommodate private developers**. Justice O’Connor concluded that “[a]ny property may now be taken for the benefit of another private party, **but the fallout from [the majority’s] decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms**.” She reasoned that the decision eliminates “any distinction between private and public use of property.

Justice Thomas also filed a separate dissenting opinion, in which he argued that the precedents upon which the Court’s decision relied were flawed and that “something has gone seriously awry with this Court’s interpretation of the Constitution.” Justice Thomas accused the majority of replacing the Fifth Amendment’s “public use” clause with a very different “public purpose” test: “This deferential shift in phraseology enables the Court to hold, against all common sense, that a costly urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue, but which is also suspiciously agreeable to the Pfizer Corporation, is for a ‘public use.'” Justice Thomas also argued that “[l]osses will fall disproportionately on poor communities. **Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful.”**

#### The oppressed experience eminent domain and actions of the government in ways that are not transparent on paper contracts. THIS MEANS THAT the victims of Eminent Domain experience a reality that is magnified and cannot be repaid by “Just Compensation”.

 **Mignolo, W. D. (2007)**. Delinking: The rhetoric of modernity, the logic of coloniality and the grammar of de-coloniality. *Cultural studies*, *21*(2-3), 449-514.

However, one should ask whether people in La Paz, Bolivia are living the life world in an experiential space that gets further away from the ‘horizon of expectations’ of people in Munich, Germany. ‘Further away’ is indeed the conceptual trap in the sense that ‘modernity’ has been conceived as such precisely to produce the illusion that people living in the contemporary world are ‘further away in time’ and not ‘living in a different socio-historical dimension’. In Munich, you do not see or feel coloniality. In La Paz, Bolivia, you feel it all the way, all the time, in your bones: modernity is constantly reproducing coloniality. Which means that the rhetoric of progress, of salvation, of technology, of democracy goes hand in hand with the logic and practice of oppression, racial discrimination, political concentration of power in the hand of a Creole/Mestizo/an elite.

## AFF CARDS

#### The Mantra

*Eminent domain, also referred to as “****condemnation****,” is the taking of private property by local, state or federal government for a “****public use****” or “****public purpose****.”*

 **Ernst, M. (2006)** “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.

### Kelo V. New London became the start of very dark road for eminent domain.

#### The system in place to protect private property owners failed and was used to reinforce the will of private corporations.

 **Ernst, M. (2006)** “Eminent Domain: Private Property Rights v. Economic Development” Smith, Gamebrell & Russell, LLP Issue 15, Spring 2016.

Susette Kelo and eight of her neighbors who were unwilling to sell their 15 properties brought an action claiming that the taking of their property, via condemnation proceedings, violated the “public use” restriction in the Fifth Amendment’s Takings Clause. Ms. Kelo, the lead plaintiff, owned a small home on the Thames River. Although the trial court granted a permanent restraining order prohibiting the taking of certain property, the Connecticut Supreme Court relying on U.S. Supreme Court cases such as *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), and *Berman v. Parker*, 348 U.S. 26 (1954), upheld the proposed takings.

#### An Example – Here is an example of Eminent Domain works after the Kelo’s case.

 Garrett, T. A., & Rothstein, P. (2007). The taking of prosperity? Kelo vs. New London and the economics of eminent domain. The Regional Economist, (Jan), 4-9.

Suppose a local government takes $10,000 from Peter and gives it to Paul, who plans to open a business. Paul then uses the $10,000 to open his business, which creates tax revenue and jobs. From a social welfare point of view, Peter loses $10,000 and the savings or consumption benefits of his $10,000, Paul gains $10,000 to open a business, and jobs are created. By taking the $10,000 from Peter and giving it to Paul, the local government is essentially saying that Paul can create greater societal wealth with Peter’s $10,000 than Peter can. The same would be true if local governments paid Peter for his house and then gave the property to Paul for development purposes.

# NEG

**Neg definitions**

Negative Criterion is morality. The value for this is quality of life. The Negative’s job is to prove that morally using Eminent domain will bring about a better quality of life for people within the communities. This is important because it shows that Eminent Domain has a purpose, instead of merely a dollar sign.

This criterion is most preferable than the affirmative because it proposes a radical way to look at a commonly though of concept in a vacuum. This means that Eminent Domain will be able to be evaluated at it’s original purpose.

## NEG CASE

### Important medical facilities can be created by the use of eminent domain, this provides a better quality of life for people who live in non-metropolitan areas.

#### Eminent Domain can be used to make much needed facilities like hospitals in areas that are distant and far from emergency services.

 **Mason, G. (2018)**. “Why Utica, Oneida County would handle eminent domain for new hospital. Observer-Dispatch. http://www.uticaod.com/news/20180506/why-utica-oneida-county-would-handle-eminent-domain-for-new-hospital

Oneida County Executive Anthony Picente said government and hospital officials met regularly in the weeks after it was discovered earlier this year that the Oneida County Industrial Development Agency, once thought the prime candidate to handle eminent domain, could not bear the responsibility due to a statute. He said the arrangement “was the best solution.” “When it comes to a hospital, I don’t think it’s government overreach at all,” Picente said. “I think it’s looking out for our community’s needs and the treatment of its people. How do we grow a community if our health care system is antiquated and disjointed? To a point where we have an opportunity to improve it a great degree, and yet when government didn’t get involved, it would stay stagnated. It’s been the death knell of many communities, and I don’t want to see it be the death knell of ours.”

#### Public Hospitals have the greatest impact on rural, impoverish, and elderly communities.

 **Agency for Healthcare Research and Quality (AHRQ).** Most Public Hospitals Are in Rural Areas: AHRQ News and Numbers, September 9, 2010. September 2010. <https://archive.ahrq.gov/news/newsroom/news-and-numbers/090910.html>

**Two-thirds** of the Nation's 1,131 **public hospitals** were in rural areas in 2008, according to the latest News and Numbers from the Agency for Healthcare Research and Quality (AHRQ). However, these rural hospitals—which on average have only 59 beds—accounted for just 20 percent of the 5.6 million patients discharged from public hospitals in 2008, while their larger urban counterparts accounted for 43 percent. Urban hospitals were nearly 5 times larger, averaging 285 beds. **The Federal agency also found that:** The average occupancy rate of rural public hospitals was just 47 percent compared with 61 percent for urban public hospitals. **Patients in rural hospitals were older** (42 percent were 65 plus) **than those in urban public hospitals** (23 percent were 65 plus). **Rural public hospital patients were twice as likely to be from the poorest communities in their areas than those in urban public hospitals** (52 percent versus 26 percent).

### These hospitals provide benefits to people who cannot afford extravagant medical treatment

#### Without Government assistance, hospitals are fleeing poor communities for wealthy ones, the result will devastate those left behind.

 **Galewitz P. (2015)** “Hospitals pack up in poor areas and move to wealthier ones

Like a small but growing number of hospitals around the country, St. Elizabeth's is taking a radical step. Hospital officials plan to close the 303-bed hospital and are seeking state approval to build a $300-million facility seven miles northeast, in O'Fallon. It's a wealthier city that is one of the fastest-growing communities in the St. Louis region with new subdivisions, proximity to a regional mall, and quick access to Interstate 64. Hospitals have followed population migrations before, but relocations like St. Elizabeth's are becoming more common. That's partly due to the aging of many facilities built decades ago, as well as the desire to attract better-paying patients.

### Infrastructure is the backbone of the United States and it is only possible through Eminent Domain

#### Eminent Domain is responsible for uniting the country together through infrastructural changes that make today’s quality of life possible.

 **U.S. Department of Justice (2015).** “History of The Federal Use of Eminent Domain”. https://www.justice.gov/enrd/history-federal-use-eminent-domain

**Eminent domain has been utilized** traditionally **to facilitate transportation, supply water, construct public buildings, and aid in defense readiness. Early federal cases condemned property for construction of public buildings** (e.g., Kohl v. United States) **and aqueducts to provide cities with drinking water** (e.g., United States v. Great Falls Manufacturing Company, 112 U.S. 645 (1884), **supplying water to Washington, D.C., for maintenance of navigable waters** (e.g., United States v. Chandler-Dunbar Co., 229 U.S. 53 (1913), acquiring land north of St. Mary’s Falls canal in Michigan), **and for the production of war materials** (e.g. Sharp v. United States, 191 U.S. 341 (1903)). **The Land Acquisition Section and its earlier iterations represented the United States in these cases, thereby playing a central role in early United States infrastructure projects.**

### Current Infrastructure in the U.S. will not last long without more practical uses of Eminent Domain

#### Infrastructure in America is currently failing, affecting millions of Americans.

 **Sterling, J. Meserve, J (2009).** “Poor infrastructure fails America, civil engineers report”. CNN. <http://www.cnn.com/2009/US/01/28/infrastructure.report.card/index.html>

**The American Society of Civil Engineers** **issued an infrastructure report card** Wednesday giving a bleak cumulative ranking of D. "We've been talking about this for many many years," **Patrick Natale**, the group's **executive director**, **told CNN. "We really haven't had the leadership or will to take action on it. The bottom line is that a failing infrastructure cannot support a thriving economy**. The ranking -- which grades the condition of 15 infrastructure entities such as roads, bridges and dams -- is the same as the the last time such a report was issued, in 2005. In 2001, the grade was D+, slightly better but still poor**. Roads got a D-, with Americans spending more than 4.2 billion hours a year stuck in traffic. "Poor conditions cost motorists $67 billion a year in repairs and operating costs.** One-third of America's major roads are in poor or mediocre condition and 45 percent of major urban highways are congested," the engineers' report said. **Drinking water, D-. "America's drinking water systems face an annual shortfall of at least $11 billion to replace aging facilities," the report said.** **"Leaking pipes lose an estimated seven billion gallons of clean drinking water a day."** Inland waterways, D-. "The average age of all federally owned or operated locks is nearly 60 years, well past their planned design life of 50 years. The cost to replace the present system of locks is estimated at more than $125 billion**." Wastewater systems, D-. "Aging systems discharge billions of gallons of untreated wastewater into U.S. surface waters each year**." Levees, D-. Many levees are locally owned and maintained, but **they are aging and their "reliability" is not known.** "With an increase in development behind these levees, **the risk to public health and safety from failure has increased."**

# NEG CARDS

## A2 Eminent domain benefits the wealthy

#### Economic Purposes improve communities and ease the hardships of lives of the local communities.

 **Taylor, D. (2017).** “Without eminent domain, infrastructure efforts would suffer” LancasterOnline. <https://lancasteronline.com/opinion/columnists/without-eminent-domain-infrastructure-efforts-would-suffer/article_80497a6e-689c-11e7-82ab-0b75c5ac69b2.html>

Williams has received federal approval to expand this network and loosen Pennsylvania’s pipeline bottleneck through a $3 billion expansion of its Transco pipeline system. The Atlantic Sunrise project is a game changer for Pennsylvania and gas-consuming markets all along the East Coast, providing millions of consumers direct access to the most abundant, cost-effective natural gas supply source in the country. During construction, this project will support an estimated 8,000 jobs, adding $870 million in economic value to the commonwealth. This expansion will move enough natural gas to meet the energy needs of **7 million homes**. That’s 7 million more households that can save an average of $874 a year for heating, cooking and clothes drying compared to households using electricity for those purposes.

#### Eminent Domain used property saves the lives and communities of countless people.

 **Lewis D. (2006).** “Eminent Domain: Still A useful Tool Despite Its Recent Thrashing” Planetizen https://www.planetizen.com/node/21109

Eminent domain has become a term of dread in our nation. Using the words "eminent domain" today is risky because the concept has been draped with negative news and connotations of property-owner abuse. Rarely does eminent domain get credit for the positive things that have been accomplished through its use. Without it, our urban areas would be places without the great virtues of conformity and sensible land use. How many good things have been supplied to the general public because eminent domain was used to acquire private property for a higher public use? Shouldn't eminent domain be used to take the land of an auto repair shop in order to provide a site for a charity hospital? Sites are needed for schools, hospitals, libraries and police stations. And where would our cities be if there were no roads, freeways or corridors of transit that were built with the aid of eminent domain? In a rural environment, almost everyone agrees that it would be a justifiable sacrifice to take a rancher's land to build dams and lakes for providing water supply or electrical power to our cities' millions.

## Eminent Domain allows for future technology to take place

#### High-speed transportation systems are being created through eminent domain.

Goodkind, N. (2018). “Trump Infrastructure Plan Includes Elon Musk-Style High-Speed Rail Tunnels and Eminent Domain” Newsweek https://www.newsweek.com/infrastructure-trump-elon-musk-high-speed-rail-hyperloop-772201

it’s not science fiction, but old-school tunneling—a critical, yet oddly ignored, part of President Donald Trump’s forthcoming infrastructure plan that supporters say will cost the federal government virtually nothing, but experts say the proposal's deregulation approach amounts to a handout to Big Business. **The plan calls for creating new high-speed rail lines deep underground**—the basic idea behind the English Channel tunnel, or Chunnel, that whisks travelers at 186 miles per hour from London to Paris in just two hours and 20 minutes. That’s less time than the Amtrak from New York City to Washington, D.C.—even though the two U.S. cities are 40 miles closer. **Tunneling “is so superior and quick that you can do this relatively cost-efficiently and most importantly you can do it without a dollar of government funding,” Trump’s chief economic adviser Gary Cohn said** at a forum sponsored by Axios in December. **“The funding to do this in the private sector is there. We just need to deliver them the access and rights-of-way underground.”**