



SCHWARTZ *Report*

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MAKING OFF WITH THE RACES

Every few weeks articles appear in the business press about some state, county, municipal or anointed governmental redevelopment authority's outlandish efforts to seize some poor soul's private property for an ever morphing list of "public benefits." As George Will opined in one of his editorials on eminent domain abuse: "The Constitution says government may not take private property other than for a 'public' use. By 'public' the Framers, who did not scatter adjectives carelessly, meant uses – roads, bridges, parks, public buildings – directly owned or primarily used by the general public."



just compensation. Until midway through the 20th century, most courts interpreted "public use" to cover such things as roads, bridges, buildings or power lines, etc. These were to be projects owned either directly by the government or by private parties who would have a legal obligation to serve the entire public such as utility or transportation companies. This limited understanding of public use predominated at the time of the Constitution's

ratification and was extended to the states when in 1868 the Fourteenth Amendment made the Bill of Rights apply to state governments.

Let's start with the premise that individual freedom cannot be separated from the protection of private property rights. Suzette Kelo wanted to stay in the little pink house in the Fort Trumbull section of New London, Connecticut that she called home but eminent domain intervened. The ruling in her case (*Kelo v. City of New London*) and that of the other embattled property owners, which marks its 14th anniversary this summer, has set an important precedent by redefining the limits on public taking of private property. Eminent domain is the term given to the power of government to appropriate private property for public use without the owner's consent. The terms "condemnation" or "taking" refer to the act of a government exercising its power of eminent domain. This power is recognized as fundamental to government. However, as Mr. Will points out, in the United States that power is restrained by the Fifth Amendment of the U. S. Constitution, which states that private property shall not be taken for public use without

In recent years, the definition of public use has broadened cementing the belief that governmental planners should have nearly limitless authority to take property to promote growth or to combat blight afflicting depressed areas. The majority ruling in *Kelo v. City of New London* concluded that virtually any potential public benefit qualifies as a "public use" even if the government cannot prove those benefits will ever materialize (which in fact happened in Fort Trumbull). The genie was out of the bottle! Governments are now falling all over themselves in the use of eminent domain powers to take private property without an owner's consent all in the name of revitalization. Eminent domain nowadays seems to be the one exception to Will Rogers' maxim that the way to get rich in America is to find out where everybody is going, get there first and buy the land. So if economic development or renewal is the current ruse politicians are using, then almost anything, inanimate or animate, is fair game for it even a famous horse race.

May begins the thoroughbred racing series known as the Triple Crown. As my father was a great fan of thoroughbred horse racing, on certain weekends in May and June we'd be singing either "My Old Kentucky Home" in honor of the Kentucky Derby; or "Maryland My Maryland" (Dad always pronounced it "Murland") in honor of the Preakness; or "New York New York" in honor of the Belmont Stakes. Even back then, the least lustrous of the three venues for these events was poor, down-at-the-heels Pimlico race course in Baltimore, Maryland.

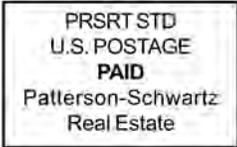
The Cato Institute's Walter Olson has written a timely piece about Baltimore Mayor Catherine Pugh's efforts to keep the Preakness in Baltimore at poor old Pimlico

rather than allow it to move to the far more modern Laurel racetrack better located between Baltimore and Washington, D.C. Mayor Pugh has filed suit asking a court to use condemnation powers to award ownership of Pimlico, and the Preakness Stakes horse race, including its trademarks and other intangible assets to the city. This is the same city, Mr. Olson notes, that in 1984 moved to condemn and seize the Baltimore Colts before they moon jumped to Indianapolis. As Baltimore seeks to use eminent domain to keep the Preakness, I'm reminded of what Justice Clarence Thomas said in his dissent on the Kelo ruling. He wrote: "Though citizens are safe from government in their homes, the homes themselves are not." He might just want to add that neither are their Colts or horses.



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