

# Homeownership Effects of Eminent Domain Legislation Following The Kelo Supreme Court Ruling

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Abstract: The 2005 United States Supreme Court case of *Kelo v. City of New London* cemented a very broad definition of the meaning of “Public Use” for use of eminent domain within the United States. The public backlash from the court case led to forty-five states passing some form of restriction on this broad definition of public use. The protections provided by these laws theoretically change the overall homeownership cost for families and could effect the rent or buy decision. Using American Community Survey Data I have analyzed whether this is the case. Overall there seems to be little to no effect of these laws on an individuals homeownership choice. This is likely caused through one of two mechanisms. First, the overall change in homeownership cost is negligible to the overall cost of owning a home. Second, the risk born by the homeowner without eminent domain protections may be counteracted by the increase in home value by the ability of a municipality to remove blighted properties that may subtract from its value.

## 1. Background History of Eminent Domain and Kelo

Eminent domain is the name given in the United States to the practice of a government entity taking private property and repurposing it. Historically the practice was reserved for public works projects, highways, power plants and the like. Within the past few decades, however, eminent domain has been increasingly used by governments to take property and repurpose it for a different private use such as shopping malls, office parks, etc. Starting in 1954 with *Berman vs Parker*, states began using eminent domain for purposes that benefited private parties. (Cypher & Forgey, 2003; Sharp & Haider-Markel, 2008) This increased breadth of the law's use may lead to abuses in many areas where perfectly serviceable housing was being declared blighted and taken from its original owners often to benefit other interested private parties. Support for this argument has been cited by groups that advocate for minorities including the NAACP. (NAACP 2005) With the support of the court system municipalities continued to expand their use of eminent domain. Other famous examples include Poletown in which Detroit bulldozed acres of housing to keep General Motors in the city and Hawaii Housing Authority versus Midkiff in which the court allowed the state of Hawaii to redistribute large tracts of private land to the lessees who occupied it. This practice was notably challenged in a landmark case named *Kelo versus City of New London*. In 2005 the case of a homeowner suing to prevent their land from being handed over to a private developer to build office space again returned the topic of eminent domain to the Supreme Court. The court ruled that the city was within their rights to use eminent domain under the takings clause of the Fifth Amendment even though the final use would be by a private entity (for an office park) and not for some public city project.

The Kelo ruling set off a significant chain of state legislation. Kelo was significant because it not only was in the national spotlight and news cycle but because of the lengthy legal battle the land was never used for its intended purpose. The planned development was originally intended to benefit pharmaceutical giant Pfizer but a

merger and expiration of the tax breaks they were given caused the plans to be canceled and the development never was constructed. While on the federal level these transfers remained legal, states took it in to their own hands to pass laws preventing what was widely seen as abuse of the eminent domain policy. Within months of the ruling 28 states already had some form of bill proposed. (Klass, 2008; Lopez & Totah, 2007; Sharp & Haider-Markel, 2008) Forty-five states now have laws on the book restricting the use of eminent domain in some fashion. (Somin,2015) The laws are somewhat concentrated in more conservative states but there is a surprising amount of variation across the nation. The nature of these laws varies quite a bit state to state but there have been multiple attempts at understanding the legislation and translating it in to easily digestible categories.

## 2. Theory of Eminent Domain

There are a lot of competing economic effects when it comes to eminent domain. Normatively it is not obvious at all whether eminent domain is “good” or bad.” Eminent domain is a useful tool for governments in pursuing any given agenda and making policy decisions more effectively but it may come at the expense of property owners and taxpayers. Eminent domain for transfers to private parties (real estate developers etc.) also may create additional abuses.

### 2.1 Fair Market Value

One of the biggest criticisms of eminent domain is that the letter of the law states that owners must be compensated for their property with “just compensation.” This has generally been interpreted by governments to translate to fair market value which is “what a willing buyer would pay in cash to a willing seller.” (US vs Miller, 1943) The issue with this translation is that if the property owner wanted to sell the use of eminent domain would be

unnecessary in the first place. Theoretically the seller can receive this fair market value at any point in the past and has chosen to retain ownership of the property. There is some benefit that the property owner is receiving above and beyond the dollar value of the property. (Merrill, 1986; Kelly, 2005; Gay and Nasser-Ghods 2016) This is often called the “subjective premium.” This premium must exist if the owner has not sold the land but it is nearly impossible to estimate. Everything from individual preferences of location or style of home, history and memories in a location, pure inertia, the cost of moving, search costs for a new location, psychic costs to changing homes, and many other components all could contribute to this premium. The true burden born by the property owner could theoretically be much higher than the fair market value compensation. Owners obviously have the incentive to make any government believe that these costs are high to try and garner higher compensation but that doesn’t mean they don’t exist to some extent.

All of this is even assuming that governments truly pay the fair market value. Governments clearly have incentives to pay as little as possible for the land they are taking and save themselves as much money as possible. Incidentally the first recourse for anyone who receives a low-ball offer is often a different branch of that same government. There are legal provisions and rules for determining fair market value but they do rely on the subjective determination of the court system. (US vs 50 acres of Land, 1984; US vs Miller 1943) It is not hard to imagine there may occasionally be circumstances where a government knowingly pays as little they feel they can get away with. What percentage of eminent domain filings are low-ball offers is almost impossible to estimate especially since there are incentives on either side to disagree about the final price.

## 2.2 Holdouts

The classic argument behind the need for eminent domain is that it can circumvent the holdout problem. If a government is going to fulfill some of its most basic tasks it needs land. Highways,

courthouses, police stations, and fire departments all require land. In situations where multiple properties are necessary for a single project the possibility for strategic behavior is present. Any given property owner can hold-out for a grossly inflated price and stall if not derail the entire project. This is especially true for public projects because the scope of public projects is generally fully disclosed so all participants have near perfect information. Simply appropriating the property with eminent domain allows lawmakers to side-step this issue by simply taking the land and paying the homeowners compensation.

One area where this argument does somewhat breakdown is when looking at takings meant for transfers to private parties. If a private party wants to purchase land they have the advantage over governments in that their plans can be kept private. Private companies can use secret buying agents to quietly purchase property from owners while keeping their real intentions quiet. In practice this has been effective in the past. Institutions including Harvard University have used this technique. Harvard once successfully used a real estate development company to purchase multiple land parcels in secret for \$88 million. (Cassidy & Don Aucoin 1997) This is definitely not the only example of the technique being used effectively. Developers across the country have used similar techniques to great success. (Kochan 1998)

There are some situations in which the solution of buying agents can fail though. One example of this failure is in a case with positive externalities. If the private benefit of a combination of properties is less than the private benefit no transaction will take place. But if externalities exist there could be a situation in which the public benefit may exceed the private cost. In this case without government intervention no transfer would occur. For example, if there is an area without sufficient healthcare there could be a case where the societal benefit of a hospital is very high but the private cost of acquiring the land could be higher than the benefits in turn of profits that the hospital owners would receive. In this case no hospital would be built given only private transfers but government

may have incentives to act. While these cases surely exist there are other avenues to avoid eminent domain use. Tax breaks and subsidies may be equally effective at achieving the goal of building the hospital without many of the distortionary drawbacks of eminent domain. (Kelly, 2005)

Another example of secret buyer failure is when land needs to be taken quickly. Secret buying increases transactions costs in that each owner must be negotiated with individually. Even if the process goes smoothly it could be costly in terms of time. Eminent domain appropriations can happen with the stroke of a pen and construction can start immediately. There doesn't seem to be an easy workaround for this issue like the situation of externalities. One could argue that some amount of delay could be beneficial to society in the long run though. Legislators are not known for making the most rational and logical decisions. A short acquisition period may make for more impulsive actions by legislators. For instance, a city looking to entice a company to come there may go ahead and begin an eminent domain taking as soon as a company proposes plans for expansions. This impulsiveness may harm the owners of the takings before any kind of plan is finalized and no development or expansion may ever take place. It is not hard to imagine a city eager for an expanded tax base making a rash decision such as this.

A last issue with secret buying agents is the possibility that they create distrust in the market. In reality buying agents are probably a relatively small fraction of the overall market. While the technique is certainly used it not overly common. If the technique became widespread as an alternative to eminent domain, it may cause distrust among buyers and sellers and inefficiencies in the market. While this seems to be a relatively small risk it is worth noting.

Some parties who have used the technique have also received backlash. The Harvard purchases mentioned earlier received some public backlash and Harvard went on an expensive public relations campaign in order to regain their lost credibility in the community in the Boston area. (Zernike, Bombardieri 2003) This backlash may be

expensive for public institutions that are often ingrained in the fabric of a region whereas this backlash could be cheaper for a large corporation who doesn't have any specific investment in a region and can easily move.

### 2.3 Targeting

Eminent domain practices have also been accused of being discriminatory. Groups like the NAACP have accused governments of specifically targeting minorities and those unable to defend themselves. (NAACP, 2005) Eminent domain is most commonly applied to poorer or blighted areas. This makes sense since the idea of eminent domain is to improve and develop property that is not being utilized to its full potential. Furthermore, if a government development must go forward it makes sense to do it at the cheapest cost which generally means focusing areas with lower property values. Because some minorities (specifically blacks and Hispanics) have a higher percentage of their population living in poverty they are much more likely to experience the effects simply because of market forces. But they also may be targeted because minorities and the poor may also have less legal recourse than other groups. Immigrants or non-English speakers are theoretically at risk as well because of the higher level of difficulty posed in working with the legal system to prevent a taking. Different studies have attempted to examine the extent to which this effect occurs. One study found that in San Jose, California 95% of properties that were taken under eminent domain actions were Hispanic or Asian owned when only 30% of businesses were minority owned. (Werner 2001) Another study found that of the 10,000 families that were displaced by highway projects in Baltimore 90% were African American. (Frieden and Sagalyn, 1989) Similar stories to these could be told about regions with disproportionately elderly populations or elderly populations. Often those affected by eminent domain are not the property owner either. These renters who are displaced are left with no compensation and forced to move sometimes on relatively short notice. One could imagine that a quick move could be very disruptive to a poor family who may not have

access to liquid funds for movers, trucks, etc. or time off work to find the most suitable replacement.

## 2.4 Perception versus Reality

One criticism about eminent domain research is that while eminent domain may have large dramatic effects for those affected it is a relatively rare event compared with other factors that contribute to property purchasing decisions. While eminent domain takings are uncommon they are not as rare as many think. It is hard to pinpoint the exact amount of takings in many states because records can be hard to find. There are so many local governments that have the capability to begin the procedure that it is hard to keep count. Additionally, most states don't track court cases that fall under eminent domain in their own classification and simply lump them in with other property litigation. The castle Coalition made an attempt to track all the incidents of eminent domain in the US for a 5-year period from 1998-2002. There are quite a few states where data was simply unavailable but most states had dozens of filings in this period the worst offenders had filings in the hundreds and Florida had over one thousand. (Castle Coalition, 2003) These numbers are not large numerically compared to the population but each incident could have very large consequences. It may be that while the probability of any given property in any given year being subject to an eminent domain taking is high the mere threat of this small probability occurrence could affect housing decisions.

## 3. Limitations and Research Question

Numbers on how often eminent domain is used are few and far between. (Berlinger 2003) Because there can be thousands of governments capable of filing in a state and most states don't have a centralized repository for eminent domain filings it can be hard to work with. However eminent domain overuse does seem to be a substantial problem. Many diverse groups from the NAACP to

specialized citizen rights groups have actively decried the use of eminent domain. (Shelton 2005, Castle Coalition 2003) It is interesting that one issue could unite such a diverse group of supporters. Groups in the past have tried to establish the breadth of eminent domain takings with thousands of freedom of information requests and even more man-hours but because of the breadth of localities this has proved limiting. (Castle Coalition 2003) A few states, like Florida, do have data that is relatively easily accessible and complete and in another paper I will do a case study of that state. But even when data is available researchers are faced with a variety of issues. Generally, there is no dollar amount associated with the takings and they are simply filed as a single instance of use. This means that a million dollar taking looks the same as a ten-thousand dollar taking which makes for difficult comparison. Also states that do have clear filing systems often differ in how takings are filed. A state could have an eminent domain filing for each parcel or for each owner or a single filing for a whole project that impacts multiple owners.

Because of these limitations workarounds have been used in the past. For this paper I will be using the American Community Survey to analyze the how laws of varying strength effect the home buying decisions of movers and attorney marketing data to determine whether the strength of these laws effects the practicing decisions of lawyers. Eminent domain constitutes a threat to homeowners and as such should have some effect on the ownership decision. It has been shown previously that there is a price discount on homes because of the shadow of possible eminent domain takings. (Gay Nasser-Ghodsi 2015) Homeowners are unable to insure against the loss of their own subjective premium of their property in the event of use of eminent domain so instead this reveals itself as a discount in the price of homes. If eminent domain can have an effect on the price of homes, it may also stand to reason that it could have an effect on the buy versus rent decision as well. While eminent domain law changes aren't likely to be the impetus to change ones living situation they may have some marginal effect for those who are moving anyway. To examine this, I will use the ACS to target movers in general and

specifically intra-state movers. Those moving interstate may be less familiar with eminent domain legislation in their destination than those who are moving within a state so we should theoretically see a larger effect. One might expect that on the margin individuals are more likely to purchase homes in states with strong legal protections that make eminent domain less likely. Conversely, movers may be more likely to rent in cases where there are not strong protections.

#### 4. Previous Empirical Work

There has been a lot of theoretical work done in the realm of eminent domain and the theoretical backing is fairly well understood. More recent studies, often inspired by the Kelo ruling, lead to an increase in empirical work as well. Since the history of this work is shorter the quantity of work is smaller but there are still around a dozen or so publications that have tried to empirically understand the impact of modern eminent domain use and the effects of recent laws.

One of the first studies to take a look at eminent domain was Lopez, Jewell, and Campbell 2008. They argued that eminent domain is often used disproportionately in poorer areas. If two sites are equal in terms of all other characteristics besides price governments will use their power of eminent domain in the poorer area. This ignores the fact that poorer areas should generally have higher subjective value than wealthier areas and expands the gap between payment and subjective valuation. Lopez et al were also some of the first to suggest that because of the backlash in the media to the Kelo ruling politicians may have been inclined to pass purely symbolic legislation to show that they were doing “something” about the threat of eminent domain. The paper tried to estimate what prior conditions lead to having any law passed and what prior conditions would lead to having an effective and not symbolic law passed.

Interestingly they seem to find that professional home builders seem to be very aware of the dangers of eminent domain. One of the most significant influences on whether any law was passed was the

number of current housing permits in a state. The authors note anecdotally that real estate developers were lobbying state houses in the wake of Kelo. The other major factor in whether a state passed any law was the state's Economic Freedom Index number. States that were higher on the index were more likely to pass a law targeted at eminent domain abuse in the wake of Kelo. The paper expected the property tax rate to be significant because often the motivation for eminent domain for private use is redevelopment to boost the tax base but Lopez et al found it to be insignificant. The distinction between symbolic and effective laws also had motivations. The Economic Freedom Index of a state was significantly correlated with effective laws but had no effect on purely symbolic laws. Housing permits were again significant for effective legislation maybe showing that professional homebuilders understood the effects of these laws more than the average homeowner since housing stock in a state had no effect. Lastly, income inequality leads to more effective legislation as well.

The next use of Castle Coalition data in the literature is by Lanza, Micelli Sirmans, and Diop in 2010. They argue that even pre-Kelo the courts had a history of siding with governments in cases of eminent domain. In Merrill 1986 the author surveyed court rulings from 1954-1985 of 308 cases and found the court upholding the government use almost 85% of the time. To examine what seems to actual influence states to file takings the authors used the data gathered by the castle coalition of actual takings from 1998-2002. The data is not nearly an exhaustive list of all actual takings just the takings that the castle coalition was able to find at the time. They argue this will give a rough idea of state's behavior prior to the Kelo ruling in 2005. They pair this data with demographic data in attempt to determine what variables influence states quantities of takings.

Carpenter and Ross is the next paper trying to tackle what influences states to pass laws post-Kelo. They argue that the main driving force for eminent domain abuse cases is the increase in tax base from redevelopment. A survey administered by Cypher and Forgey 2003 did a survey of administrators and city managers who reported that

in 65% of cases properties redeveloped with eminent domain saw an increase in tax revenue compared to the development's prior use. One reason that this number may not be higher is that often developers who are pushing for their projects to be approved are incentivized to exaggerate the actual economic effect of redevelopment. One example is sports stadiums whose construction often requires the use of eminent domain takings. Kennedy and Rosentraub 2000 argue that besides the construction of the stadium a preponderance of the research indicates that teams and the facilities they use produce very little or no additional economic development. The plans get approved by ambitious politicians but the development in reality doesn't produce the economic boom they had hoped for. The inefficacy of these undertakings casts some doubt on the perception that large-scale projects drive economic development. Critics of legislation making eminent domain more difficult criticized that politicians would be handcuffed by the laws and one inflammatory quote from Michael Brown states that "if we don't use this power cities will die." Carpenter and Ross attempt to assess the real impact of post-Kelo legislation and see if it does indeed stifle development that otherwise would have taken place.

The authors break the legislation passed post-Kelo down into three categories; None, nominal, and major legislation. Their classifications are based primarily on rating from the Castle Coalition as well. The distinction between the laws is "Some entail only minor procedural changes (requiring more public hearings or greater public notice), creation of study committees, temporary moratoria on use of eminent domain, or payment of enhanced compensation. Such efforts are designed to be more symbolic than real so as to assuage a concerned public but maintain the broad use of eminent domain (Lopez & Totah, 2007). The more restrictive changes go to the heart of the issues in the Kelo decision by tightening the definition of blight (a designation used to condemn properties), banning eminent domain for economic development purposes, or disallowing transfer to another private entity." (Carpenter and Ross 2010) Later I will use their classification as one of the specifications for the strength of the laws.

In the end the authors find no significant effect of the legislation on construction jobs before and after the legislation, number of building permits, or total tax revenues. The authors mention that this is unsurprising because eminent domain in general is a small factor when compared to redevelopment projects as a whole. They also argue that the strengthening of property rights in general should actually improve the economy in general as homeowners and property owners can be more assured that their property won't be threatened with this tool.

The most recent piece of literature from post-Kelo eminent domain is from Gay and Nasser-Ghodsi 2015. Their paper tries to estimate two different effects of eminent domain on price. The authors try to estimate the cost of the "condemnation risk discount" or how much less homes sell for because of the looming specter of possible eminent domain takings. Because homeowners can't insure their subjective risk premium because it is impossible to verify this amount for insurance. Because no insurance exists for this risk home buyers are implicitly creating a risk discount. The authors argue that this risk premium is specifically related to eminent domain for private redevelopment. This doesn't seem very clear to me. The authors argue that state public use like roadbuilding is predictable by homeowners in a way that eminent domain for private development is not but I would argue each could be equally erratic.

The authors also try to take a look at the premium that eminent domain could have on prices based on the possibility of the government using eminent domain and redeveloping an area nearby and thus driving up prices. Their paper seeks to estimate which one of these effects is stronger from the effect of post-Kelo laws. Because homeowners are rational and know the duration they'll be in the home they can estimate the probability that any given property will be affected and can implicitly price both of these costs in to a home's sale price.

The last piece of this model is the issue of salience. The authors believe that eminent domain "information flare-ups" may distort homebuyer's beliefs. Because data for how often eminent

domain isn't available easily to homebuyers they may base their decisions on the perception created by media. To assess this they create a dummy for home sales around the Kelo decision to account for the effect of the news on prices. The authors also note something that many other papers ignore. Many localities passed eminent domain legislation not just states. Using only states laws essentially is a lower bound of the effect of any law because local governments have the ability to pass legislation above and beyond as well.

Using a housing price index and a GPA calculation using the grades from the Castle Coalition to estimate the strength of various state laws, the authors find that information flare-up around Kelo had a significant negative effect on housing prices as homebuyers seemed to overestimate the probability of eminent domain being used on their property. This implies a large risk discount on the price of homes when the issue is salient to individuals. Second, the authors found that an increase in the GPA measure is negative with respect to sales price. This finding implies that the limitation that effective eminent domain legislation has on redevelopment has a greater cost economically than the benefit from the new protections. The risk discount is lowered because home owners know they won't be evicted but the premium from possible future development has decreased by more than this discount has decreased. Effective legislation seemed to decrease housing prices by 2% overall. This finding seems surprising compared to past literature.

## 5. Homeownership Theory

The existence of eminent domain can best be seen as an invisible cost that homeowners are forced to bear. It is just one of many factors that goes in to the overall cost of homeownership. Overall homeownership can be seen as a tradeoff to renting. Rent is straightforward. An individual pays a certain amount to live on a property for a certain amount of time. Homeownership on the other hand bears additional risks. A homebuyer forgoes the interest that

could have been earned on the money used to purchase rather than rent. Homeowners also face property taxes and the cost of maintaining the property themselves or through hired contractors. Homeowners could also experience a hidden cost or benefit when it comes to capital gains on the property. Betting whether the home appreciates or depreciates is often an enormous factor in the housing decision as can be seen in the recent housing crisis. Lastly, there is the general risk of owning which limits mobility. Homes are generally the largest asset for Americans lucky enough to own one so they are often implicitly tied to them and this can affect job mobility etc. These are ownership costs can be represented mathematically in the following equation.

$$\text{Cost to own} = P_t r_t + P_t w_t - P_t \tau_t (r_t + w_t) + P_t \delta_t - P_t g_{t+1} + P_t \gamma_t$$

$P = \text{price}$ ,  $r = \text{interest}$ ,  $w = \text{property tax rate}$ ,  $\tau = \text{income tax}$ ,  
 $\delta = \text{maintenance}$ ,  $g = \text{capital gain}$ ,  $\gamma = \text{risk of owning}$

(Himmelburg Mayer and Sinai 2005)

Eminent domain, however, is not represented in this traditional homeownership equation. The existence of eminent domain creates an additional cost by ways of revealed preference. At any given point in time a homeowner is able to sell their home for market value and buy a new home or choose to rent. Because our homeowner chooses not to sell at any given time by the property of revealed preference they value their home in excess of what the market values it at. Because of this, when a home is taken via eminent domain the homeowner bears an additional cost. Gay and Nasser-Ghodsii 2015 argue that this cost should be included in the price of the home as a kind of insurance against eminent domain and be included in the housing the

housing equation because as cited in one prominent eminent domain case, “For the individual property owner, the appropriation is not simply the seizure of a house. It is the taking of a home – the place where ancestors toiled, where families were raised, where memories were made.” (Norwood vs Horney) To account for this additional cost an additional term can be added to the housing equation as follows.

$$Cost\ to\ own = P_t r_t + P_t w_t - P_t \tau_t (r_t + w_t) + P_t \delta_t - P_t g_{t+1} + P_t \gamma_t + S_t \pi_t$$

*S = subjective premium,  $\pi$  = probability of taking*

(Gay and Nasser-Ghodsi 2015)

The Probability of a taking will depend on a few factors. The states past history and general policies will be an important factor. Additionally, the expected tenure in the home will increase the probability of a taking as tenure increases. Lastly, one factor that can be directly observed by a researcher is the type of state laws that protect a homeowner from a taking. This is the object of interest in this paper. As these state laws and protections change is there a meaningful response on the price of homeownership and as a result will more individuals choose to rent instead.

Past empirical papers (Carpenter and Ross 2010) have argued that this subjective premium should always be positive and that homeowners are always subject to some sort of loss when eminent domain is used. Gay and Nasser-Ghodsi 2015 argue that eminent domain may be a boon for homeowners. If you own property and are a “good” homeowner who maintains and cares for their home, then it may be unlikely that your property will be deemed blighted and taken. However, you may actually benefit from weaker eminent domain protections in this case because your neighbors who are “bad” homeowners who don’t care for their property may be condemned and have their home redeveloped. This case could actually cause the

subjective term to be negative. In this instance the presence of strong laws could actually hurt homeowners by making it harder for a municipality to condemn properties that are bringing down property values overall. If a homeowner believes that they are a “good” homeowner strong eminent domain legislation may actually hurt them and they may choose to rent instead to lower avoid the risk of other homes bringing down their property value.

Results are presented are as simple difference in difference model between states the before and after of states that passed effective laws and states that did not.

## 6. Classification of Legislation

Much of the empirical literature following the Kelo ruling accepted that data on filings themselves was scarce and instead attempted to analyze the conditions that lead to state laws being enacted and whether those laws were effective or ineffective given their nature. (e.g Morris 2009, Lopez et al 2008) Other papers have attempted to use the limited records available to analyze the behavior of different states pre and post Kelo. (Lanza, Miceli, Sirmans, Diop 2010; Kades 2008) In order to classify laws as strong versus weak systems of classification that have been used in past literature will be leveraged. All of the classifications and how each state’s legislation enters in to them is presented in Table 4 and it is visually represented in the figures at the end.

The first classification comes from Ilya Somin and his book *The Grasping Hand: “Kelo v. City of New London” and the limits of Eminent Domain*. Somin is a law professor at George Mason University who has worked extensively with eminent domain issues and his classification simply breaks the law into two categories of effective legislation that is able to eliminate or greatly reduce abuses and those states with no legislation or ineffective legislation. The real test of these laws is if they are able to put a stop to what is

sometimes referred to as the “blight loophole.” The loophole is where states have large leniency in what they can declare blighted property. In states with ineffective reform there is no real definition of blighted property on the books so perfectly fine property can be taken by determined governments for any reason as long as they claim it is blighted. This classification is simplistic but allows for a simple dummy variable approach in practice so it is useful for this application.

The second categorization comes from a group called the Castle Coalition. They are a group founded in the wake of Kelo by the Institute for Justice. This group of mostly lawyers created another classification of the various eminent domain laws. Their system assigns a letter grade to each state’s legislation based on its efficacy. While being somewhat subjective in the ranking this approach allows for a wider variation in the model for the effectiveness of the legislation and may prove to be a better indicator of the laws final effects than the simplistic binary model used by Somin. (Castle Coalition 2015) Previous studies have used ordered logit to account for possible non-linearity of a grade as the dependent variable. (Lanza, Micelli Sirmans, and Diop 2010) To account for non-linearity I have added a GPA squared term specification as well.

The third classification comes from Carpenter and Ross 2010. In their paper the classify laws in to three categories. Major legislation that the authors feel will have a significant effect on the use of eminent domain especially that which focuses on the issue of the “blight loophole,” minor legislation that encompasses small procedural changes but seems to have little real outcome, and no legislation.

Lastly, the fourth classification comes directly from the letter of the laws themselves. It classifies four different bins based on the nature of the reform and how it was implemented. The first and theoretically strongest laws are those that put an outright ban on private to private eminent domain transfers. This is categorically the strictest standard a state can take and attempts to prevent the largest amount of abuse. The second category is if a state has taken

some steps to close the blight loophole that allows some of the most serious abuses. A state falls in to this bin if there is legislation that defines or creates a test for whether property is truly blighted. States in this category must pass significant hurdles to declare land unfit in its current state and therefore available for an eminent domain taking. Again, theoretically this should have a strong preventative effect on the use of eminent domain. The next category is if there has been some reform at all. Many states passed legislation after Kelo that was simply ineffective. Much of the legislation seems to be political in nature rather than being used as a real attempt to stop abuses. This category should have little to no effect on takings theoretically. The last category is states with no legislation whatsoever.

The robust and time variant effects of this legislation allows for a good natural experiment to observe how the behaviors of government entities respond in their behavior to the legal environment they experience. It is theorized that there should be large and substantial effects from these changes. Even though eminent domain happens with a small probability, its consequences can be severe so theoretically small changes in its probability of occurring could lead to large reactions that we can observe. In this work I hope to use a variety of techniques and methods to measure these effects and contribute to the literature with some unusual data and methods.

## 7. Data Description

To determine the impact of post-Kelo legislation data from the American Community Survey will be leveraged. The American Community Survey is a continuing statistical survey operated by the US Census Bureau. It gathers information that was previously available in the census long form and operates on a yearly rather than decennial basis. The ACS surveys about 3.5 million Americans a year which is a little over 1% of the population. This data allows for calculations of movers as well determining inter versus intrastate

movers. It also gives rich demographic information about these movers and the households. In order to somewhat simplify things only the heads of households are going to be observed in this data. The ACS data is used for the period of 2003 through 2008 to get variation in states laws as they pass legislation in the wake of the 2005 Kelo ruling. The ACS was not fully rolled out until 2005 so there are few observations in 2003 and 2004 than later years. In total the data contains 795,787 movers over the six years with a low of 58,035 in 2003 and increasing to around 175,000 in the last 3 years. All this data is then combined with the classifications of the various classifications of legislation. The fact that we can observe movers before and after the legislation is enacted allows for a difference in differences model to analyze the effects of post-Kelo legislation.

## 8. Results

Overall there doesn't seem to be any significant change in the rent vs buy decision based on state laws. Minor effects may be seen using the quartile regression classification but in general the results are negligible.

The control variables used for all regressions include the laws present, age of head of household, age of head of household squared, income, a dummy for male head, race dummies, a dummy for married, a dummy for native born, a dummy for citizen, number of children, the presence of public assistance programs, a control for the urban population of the state, workers in the home, a dummy for divorce, years of schooling of head of household, the rent to home value (A ratio of average rent in an area to the average home cost. Important to control for local market effects.), a dummy for non-English speaking homes, and lastly all regressions use state and year fixed effects. Standard errors are clustered by state and year.

In the vast majority of regressions examined the state of the laws had little to no effect on the rent/buy decision of households. There seems to be a small non-linear effect based on the strength of the laws. In fig 1 column 3 there does seem to be some response to

the second strongest classification of laws. If this result is to be believed, then it might be some indication of a small but significant effect. Many of the states that passed very strong legislation post-kelo had very little use of eminent domain prior to its passage. In that case homeowners aren't affected by any new laws because they weren't at risk prior. The second quartile where there is significance is interesting because it suggests that states where there was risk prior that passed legislation did see a significant reaction of homeowners choosing to rent rather than buy in response to this legislation.

The appendix contains many additional cuts of the data based on various characteristics that eminent domain has been accused of targeting. Again there doesn't seem to be any significant results.

## 9. Conclusion

Overall the passage of laws in reaction to the Kelo settlement did not seem to have a significant impact on the own versus rent decision for the vast majority of households. Despite the media attention and theoretically significant effects of the use of eminent domain the average homeowner doesn't seem to change their actions significantly.

Based on the results presented here it seems there are two possible conclusions to be drawn. The first possibility is that homeowners simply don't account for this small probability. The probability of an individual home being taken as a portion of the price may be very small. Alternatively, the salience of that effect may be very low. Homeowners might not even be aware that this is a risk they potentially face and as a result do not insure against it.

The second possibility is that Gay and Nasser-Ghodsi 2016 were correct. Again the traditional home ownership equation is as follows.

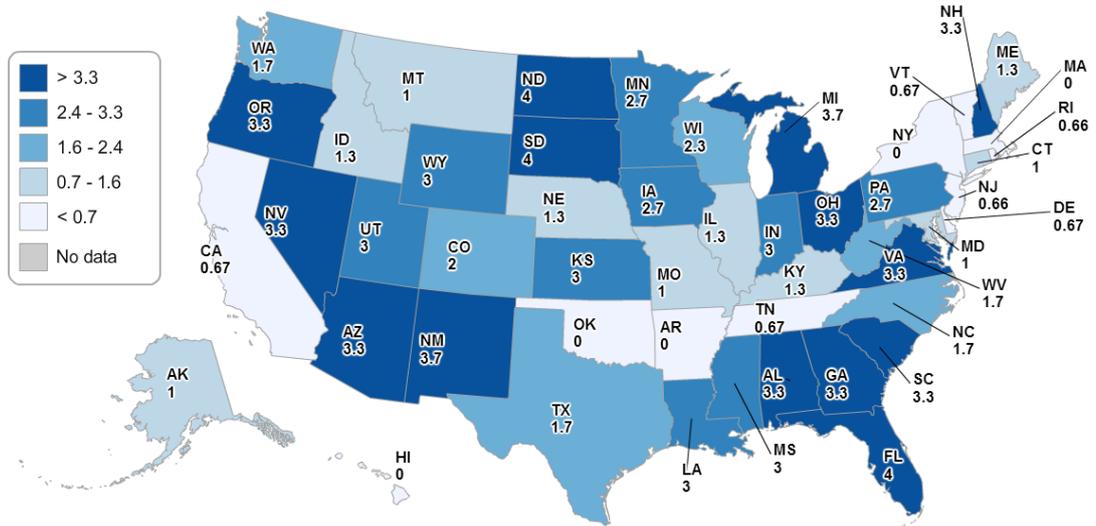
$$\text{Cost to own} = P_t r_t + P_t w_t - P_t \tau_t (r_t + w_t) + P_t \delta_t - P_t g_{t+1} + P_t \gamma_t + S_t \pi_t$$

$S = \text{subjective premium}$ ,  $\pi = \text{probability of taking}$

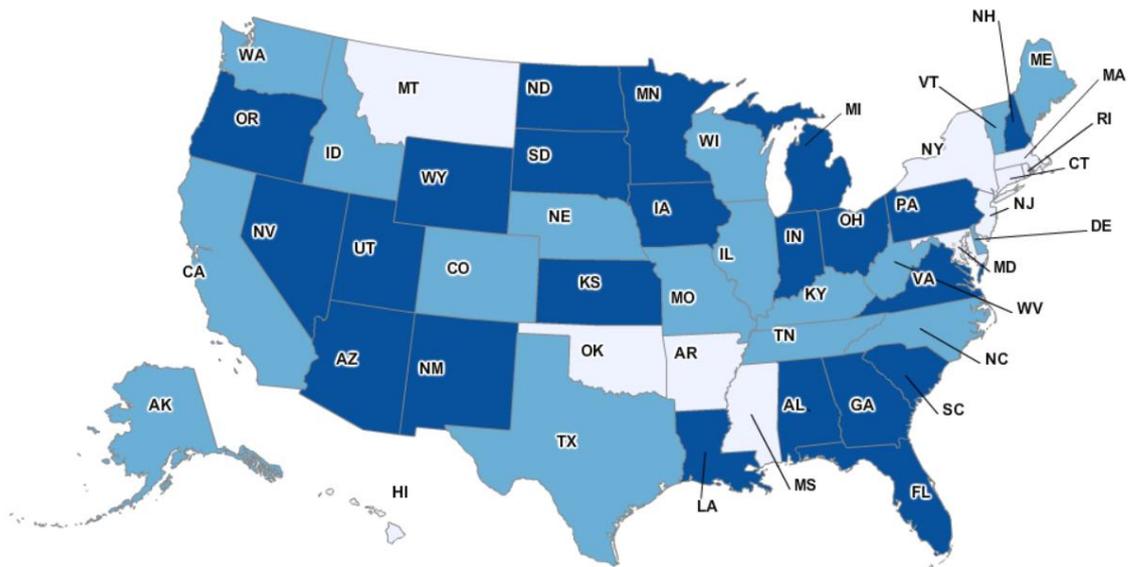
(Gay and Nasser-Ghodsi 2015)

If you are a “good” homeowner who maintains their property a small probability of eminent domain may be detrimental to you. It lessens the chance that other properties nearby and a small probability of eminent domain use could actually devalue your own property as it lessens the chances of redevelopment and rising property values. Either of these conclusions is possible given the results presented here.

GPA Classification (Fig 1)

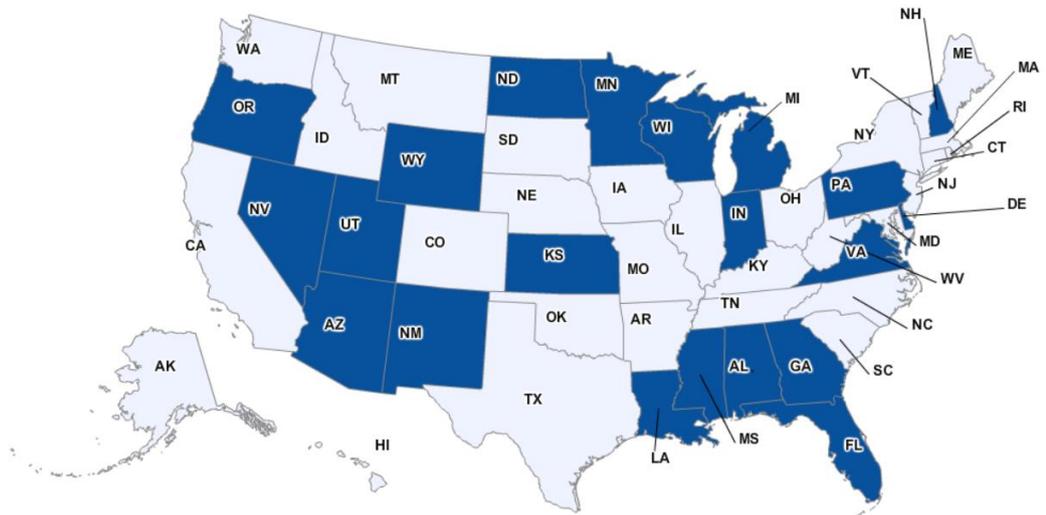


Carpenter and Ross Classification (Fig 2)



Dark Blue=Major Light Bblue-Nominal White=None or Very Little

Somin Classification (Fig 3)



Dark Blue-Blue White-Ineffective/None

Home Ownership for All Movers (Legal Classifications) (Table 1)

	(1)	(2)	(3)	(4)
	Somin	GPA	Quartile GPA	Carpenter and Ross
Somin Effective	-0.00505			
	(-0.33)			
GPA		0.00165		
		(0.28)		
Second Quartile			0.0479*	
			(2.60)	
Third Quartile			0.0236	
			(1.42)	
Fourth Quartile			-0.00623	
			(-0.34)	
CR major reform				-0.00490
				(-0.50)
CR nominal reform				-0.00181
				(-0.09)
N	368394	368394	368394	368394

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

Standard errors are clustered by state and year

Home Ownership for Intrastate Movers (Table 2)

	(1)	(2)	(3)	(4)
	Somin	GPA	Quartile GPA	Carpenter and Ross
Somin Effective	-0.00685			
	(-0.42)			
GPA		0.00123		
		(0.19)		
Second Quartile			0.0493**	
			(2.74)	
Third Quartile			0.0251	
			(1.50)	
Fourth Quartile			-0.0131	
			(-0.66)	
CR Major Reform				-0.00848
				(-0.77)
CR Nominal Reform				-0.00554
				(-0.29)
N	298521	298521	298521	298521

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

Standard errors are clustered by state and year

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