TESTIMONY BEFORE THE JUDICIARY COMMITTEE OF THE U.S. HOUSE

By David T. Beito

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Good morning. I am the head the Alabama State Advisory Committee of the U.S. Commission on Civil Rights and a professor of history at the University of Alabama. My research specialties as a scholar include black history and civil rights history. Although the State Advisory Committee since 2005 has studied, and expressed great concern about, eminent domain abuse in Alabama, I am speaking here as a private individual not in my capacity as chair.

My focus today will center on how expansive eminent domain to benefit private interests has posed, and continues to pose, a threat to the civil rights of minorities and the poor. In my view, the Private Property Rights Act of 2013 provides the best available means to provide some measure of corrective relief.

In the history of the United States during the last hundred years, no group has suffered more from eminent domain abuse than African Americans. A major turning point for the worse was the landmark U.S. Supreme Court decision of *Berman v. Parker* in 1954. The case came out of a massive urban development project by the District of Columbia which involved the taking of a large section of the city. Several non-blighted businesses in the

area challenged the taking arguing that that it was violating the requirement of public use. The Court upheld the District's reliance on eminent domain by interpreting the definition of public use to include a more expansive doctrine of public purpose. The ruling enabled the District of Columbia to forcibly remove more than 5,000 low-income African Americans from their homes to facilitate "urban renewal." In 1977, a mall which had replaced the original businesses that were parties to *Berman* was declared a "disaster" and later demolished.

Berman opened the eminent domain floodgates in urban renewal, often serving to enrich private interests. The accumulated evidence over decades is overwhelming that minorities suffered the most. According to one typical study, two-thirds of those displaced by urban renewal, often via eminent domain, were non-white. Another found that four-fifths of these paid substantially higher rents than they had before. Commenting on the fact that government-sponsored urban renewal destroyed far more housing units than it ever replaced, author James Baldwin charged that urban renewal "means moving the Negroes out. It means Negro removal...The federal government is an accomplice."

This pattern of abuse did not end in the 1960s and 1970s. It has often continued to the present. In San Jose, California,

for example, ninety-five percent of the businesses in recent years destroyed by eminent domain were minority owned even though these constituted only 30 percent of the businesses in the city. A study from 2004 estimated that eminent domain has destroyed 1,600 African-American neighborhoods in Los Angeles.

In 2005, this long record of eminent domain overreach prompted several important minority organizations, including the NAACP and the Southern Christian Leadership Conference, to jointly file an amicus brief for the plaintiffs in the *Kelo* case. After reviewing the historical background, it warned that enabling local governments to take "property simply by asserting that [they] can put the property to a higher use will systematically sanction transfers from those with less resources to those with more....Even absent illicit motives, eminent domain power has affected and will disproportionately affect, racial and ethnic minorities, the elderly and the economically disadvantaged. Well-cared properties owned by minority and elderly residents have repeatedly been taken so that private enterprise could construct superstores, casinos, hotels, and office parks."

It might be asked why Congress needs to step in now. Can't the states be trusted to prevent the misuse, and overuse, of this power? Unfortunately the eight year aftermath of *Kelo*

shows that they all too often will not, especially when federal money is potentially at stake. My own state, Alabama, represents a case in point. In the wake of national outrage after the Court's decision, it was one of the first to enact a corrective reform which, at least on paper, greatly limited eminent domain for private purposes. Only last month, however, Alabama reversed course and gutted a key element of this reform. The new law, passed overwhelmingly by a conservative Republican legislature and signed by a Republican governor, expressly allows the deployment of eminent domain to benefit the automotive industry and other private interests. While some who voted for it have since stated that they did not intend to undermine the earlier reform, and even acknowledged the need to close possible "loopholes" in the new law's wording, they have made no apparent effort to do so.

If the states will not act to defend the property rights of the poor and vulnerable, Congress must. As generations of civil rights champions have stressed, the constitutional protection of the right to acquire and hold property is essential to the economic progress of the poor and oppressed. In 1849, for example, abolitionist Frederick Douglass declared that the chief end of "civil government" is "to protect the weak against the strong, the oppressed against the oppressor, the few against the

many, and to secure the humblest subject in the full possession of his rights of person and of property."

During a time of recession, it is all the more important to heed Douglass's timeless words. In this same spirit, it is also past due to start viewing the existing property owners in lower-income neighborhoods as assets to the community. The passage of the Private Property Rights Act of 2013 will greatly contribute to this goal by fostering an environment which will treat low-income property-owners and entrepreneurs as valuable urban pioneers rather than as obstacles to be pushed out of the way if their rights conflict with some broader governmental or private agenda.