

Dreher and Echeverria:

Disinformation & Errors on Eminent Domain

A Response to [Kelo's Unanswered Questions](#)



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I. Introduction

In the fight to protect home and small business owners from the government's abuse of eminent domain, it was only a matter of time until the apologists of the practice—taking property from one private individual and transferring it to another—began their counteroffensive. Since the U.S. Supreme Court's infamous and widely despised decision in *Kelo v. City of New London*,¹ abuse defenders have descended upon state capitals, been heard through the airwaves and penned many articles, all with the hope of preserving this enormous power of government.

Their latest missive, Robert Dreher and John Echeverria's "Kelo's *Unanswered Questions*," is simply another attack on the fundamental principle that Americans should be able to keep what they own. As shown in this short paper, Dreher and Echeverria miss facts and are disrespectful to property owners, internally illogical and altogether short on substance.

II. Dreher and Echeverria's *Unasked* Question

Attempting to frame the debate about the use of eminent domain for economic development, the authors pose a series of questions for policymakers at the very beginning of their paper. They ask, for instance, whether eminent domain is necessary to accomplish large projects or if people are paid enough money when the government takes their home or business.² But the paper conspicuously misses the most elementary question of all: Is it *right* for the government to take property by force from one person and transfer it to someone else?

Although the authors claim there is insufficient information to provide "clear, definitive answers" to the questions they pose,³ years of experience—gained through litigation as well as the stories of our thousands of members and activists—unequivocally answer the real question they *should be* asking. Indeed, in every poll taken after the *Kelo* case was decided, ordinary Americans, the ones at far greater risk of losing their homes than, say, academics at Georgetown or George Washington,

[*Kelo's Unanswered Questions*]
conspicuously misses the most elementary question of all: Is it right for the government to take property by force from one person and transfer it to someone else?

1 545 U.S. 469, 125 S. Ct. 2655 (2005).

2 Robert G. Dreher & John D. Echeverria, *Kelo's Unanswered Questions* 1 (2006).

3 *Id.*

overwhelmingly support the notion that it is simply *not right* to take someone's home or small business for a shopping mall or luxury condominiums.⁴

Even assuming that the use of eminent domain for private profit is legal (a topic addressed later), that does not end the inquiry. The government need not engage in every activity that courts or legislatures allow it to do. Invariably, there is a moral component to all government action, one that both Dreher and Echeverria refuse to recognize, but should be an essential part of the debate over the use of eminent domain for economic development.

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III. Alarming Factual Selectivity

Echeverria co-authored the amicus brief against Susette Kelo and her neighbors for the American Planning Association in the *Kelo* case, so it makes sense that the report would be written from that perspective and essentially defend the status quo. However, it is important to point out some of the report's major factual errors and omissions, which appear quite early in the document.

In discussing the two major U.S. Supreme Court cases on eminent domain prior to *Kelo*, the authors conveniently forget a few things. First, neither *Berman v. Parker*⁵ nor *Hawaii Housing Authority v. Midkiff*⁶ were actually about using eminent domain for *economic development*. *Kelo* was the first case to directly pose this question to the Court, so it can hardly be said that there was "strong support for the constitutionality of eminent domain for economic development"⁷ prior to the *Kelo* case.

Additionally, what the authors fail to state about the facts of the cases is instructive. *Berman* involved a neighborhood with ridiculously high rates of communicable diseases and infant mortality; homes lacked indoor plumbing and were literally falling down.⁸ The D.C. government attempted to remedy this horrible situation, not provide more tax revenue, as New London sought in *Kelo*. There is also no mention of the fact that the government already possessed the ability to remove the blighting conditions—by condemning property through its police powers.

Information is also missing in their discussion of *Midkiff*. It is true that Hawaii sought to end the land oligopoly that remained from its days as a monarchy, though the authors do not divulge the other side of the story—the government owned nearly half of the land in the state and participated in the creation of the oligopoly itself.⁹ Eminent domain again was

⁴ At least 20 polls have been taken since the *Kelo* decision. No matter how the question is phrased, the result is always the same—intense and overwhelming rejection of the *Kelo* rationale. For links to all the polls, see http://www.castlecoalition.org/resources/kelo_polls.html (accessed December 20, 2006).

⁵ 348 U.S. 26 (1954).

⁶ 467 U.S. 229 (1984).

⁷ Dreher & Echeverria, *supra*, at 6.

⁸ See *Schneider v. District of Columbia*, 117 F.Supp. 705, 709 (D.D.C. 1953).

⁹ 467 U.S. at 232.

unnecessary here, since the oligopoly would have been corrected if the government divested itself of its own property. More significantly, the situation was a bizarre anomaly, the facts of which will never be faced again in this country's history.

Regarding other sources, the authors tell you that the “modern and historical precedents generally support the broader reading” of the public use restriction of the Fifth Amendment.¹⁰ This selective reading of cases pays scant attention to the considerable number of states that have interpreted their constitutions in the modern context to prohibit the use of eminent domain for private uses, as well as those that did so historically, as Justice Thomas ably and thoroughly points out in his dissent.¹¹

Dreher and Echeverria also give no weight to Justice O'Connor's dissent—other than mentioning what they refer to as her “colorful” passage¹²—which accurately reflects who will be affected by the ruling and why. Justice O'Connor explains that the majority erased the distinction between public and private use because any new use “can be said to generate some incidental benefit to the public,” so “the words ‘for public use’ do not realistically exclude *any* takings.”¹³ She also predicts the winners—large corporations and developers—and the losers—citizens with less power, influence and resources¹⁴—who Dreher and Echeverria apparently believe will be protected by additional layers of procedure.¹⁵ It is a normal pattern the authors employ—ignore or gloss over the unpleasant points and dodge the real legal and moral arguments, which is especially strange for a case that was decided by a mere one vote.

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But the selectivity doesn't stop there. The authors routinely play up the “successes” of government-sponsored economic development using eminent domain, while forgetting the projects that have failed miserably, for example: Chicago's project on Block 37, which destroyed 16 buildings and many profitable businesses in 1989 and currently remains undeveloped, and Indio, Calif.'s, proposed Fashion Mall expansion, which destroyed a predominantly black and Hispanic neighborhood in the late 1980s—and still nothing has been built.¹⁶ The authors also gloss over the wholesale destruction of neighborhoods and communities during the 1950s and 60s through urban renewal, well documented by the late urban scholar Jane Jacobs¹⁷ and Dr. Mindy Fullilove, a professor of psychiatry and public health at Columbia

10 Dreher & Echeverria, *supra*, at 3.

11 *Kelo*, 545 U.S. at ___; 125 S. Ct. at 2681-83 (Thomas, J., dissenting), available at <http://www.supremecourtus.gov/opinions/04pdf/04-108.pdf> (accessed December 20, 2006).

12 Dreher & Echeverria, *supra*, at 10 (“The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory”) (quoting *Kelo*, 545 U.S. at ___; 125 S. Ct. at 2676 (O'Connor, J., dissenting)).

13 545 U.S. at ___; 125 S. Ct. at 2675 (O'Connor, J., dissenting) (emphasis in original).

14 545 U.S. at ___; 125 S. Ct. at 2677.

15 Dreher & Echeverria, *supra*, at 42-43.

16 The Castle Coalition, IJ's grassroots activism project, provides details of these and other unsuccessful projects in *Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse* (2006), available at <http://www.castlecoalition.org/publications/redevelopment-wrecks/index.html> (accessed December 20, 2006).

17 See Jane Jacobs, *Death and Life of Great American Cities* (1961). Ms. Jacobs also filed an amicus brief in the *Kelo* case, available at http://www.ij.org/pdf_folder/private_property/kelo/jacobs05.pdf (accessed December 20, 2006).

University.¹⁸ Nearly all development across the country occurs without the use of government force, but the authors barely mention it. One prominent Dreher and Echeverria theme is that development is only achievable if it is directed by city officials, especially in urban areas,¹⁹ though this concept completely flies in the face of reality.

It may be a little more difficult to redevelop already developed areas without eminent domain—burdened, no doubt, by ubiquitous zoning, planning, permitting and permission regimes that the authors do not discuss—but it is still happening across the country. Mayor Curt Pringle of Anaheim, Calif., for instance, is building a new downtown in the Platinum Triangle on land that is currently developed, all while taking pains to respect the rights of those who are already there to keep what is theirs. His “freedom-friendly” city is simply trying to get government out of the way, and development is taking off.²⁰ And even where government is involved in development, former Milwaukee Mayor John Norquist, now head of the Congress for the New Urbanism, describes a number of large-scale developments that occurred without eminent domain, as well as the vast array of tools—infrastructure improvements, grant assistance, debt finance, regulatory relief—cities can use to successfully revitalize their communities, all without eminent domain.²¹

The authors are fearful of the costs of restraining eminent domain to more traditional uses, like roads, schools and courthouses, because they believe there is not enough information from those places that have such restraint. Since this restraint “might” impose costs, they argue, very little—if anything—should be done.²² Of course, we *do* know the costs that the *unrestrained* use of eminent domain for economic development imposes. We know it destroys minority, elderly and working class neighborhoods—the Institute for Justice’s current cases in Riviera Beach, Fla.,²³ and Long Branch, N.J.,²⁴ serve as perfect examples of that. The NAACP and AARP, among others, joined IJ in the *Kelo* case for very good reason—their communities are particularly affected by eminent domain abuse.²⁵ IJ continues to work with minority groups like the NAACP, Southern Christian Leadership Conference, League of United Latin American Citizens and Mexican-American Legal Defense and

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18 See Mindy Thompson Fullilove, M.D., *Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It* (2004).

19 Dreher & Echeverria, *supra*, at 18.

20 See Steven Greenhut, “The Anti-Kelo,” *Wall Street Journal*, April 6, 2006; Sarah Tully & Kimberly Edds, “Anaheim Backs Lennar’s Vision,” *Orange Country Register*, October 26, 2005.

21 Brief of *Amicus Curiae* John Norquist in Support of Petitioners, *Kelo v. City of New London*, 545 U.S. 469 (2005).

22 Dreher & Echeverria, *supra*, at 23.

23 The City of Riviera Beach, Fla., has threatened 5,100 predominantly minority residents to make way for a luxury yacht marina and condominium project. Information can be found at http://www.ij.org/private_property/riviera_beach/index.html (accessed December 20, 2006).

24 The City of Long Branch plans to destroy the homes of a small middle class community of young children and retirees in their 90s along the Atlantic Ocean for upscale condominiums. More information can be found at http://www.ij.org/private_property/longbranch/index.html.

25 Brief of *Amici Curiae* National Association for the Advancement of Colored People, AARP, Hispanic Alliance of Atlantic County, Inc., Citizens in Action, Cramer Hill Residents Association, Inc., and the Southern Christian Leadership Conference in Support of Petitioners, *Kelo v. City of New London*, 545 U.S. 469 (2005), available at http://www.ij.org/pdf_folder/private_property/kelo/naacp02.pdf (accessed December 20, 2006).

Education Fund to ensure their members are protected from the government wrecking ball. Of course, this is something the authors delicately touch upon but never address head on. Instead of relying on what happens in the real world before their own eyes, they conclude that minorities should no longer be worried, basing their assertions on some unverifiable notion that “cultural values”²⁶ and “social norms”²⁷ have changed. Perhaps the authors should actually visit the home and business owners in Seattle, Wa., Burlington, Iowa, or El Paso, Texas, and explain this concept to the minority neighborhoods there threatened by eminent domain.

[T]he recommendations do not confront the heart of the issue—whether it should be permissible to force someone from their home or business for the sake of private development.

Finally, we know the threat of eminent domain stops new development and investment in existing properties. In Scottsdale, Ariz., for instance, the removal of redevelopment designations (which allow the use of eminent domain) resulted in a flood of over \$2 billion in private development funds into the city.²⁸ There is, of course, no advantage to investing in property that the government plans to take from you. The authors do not mention that.

IV. Internally Illogical

The authors’ conclusions are also contradictory, or at the very least, inconsistent. This flaw surfaces throughout their paper, which underscores its uselessness as a self-described guide to assist policy makers, frame public concerns or evaluate policy responses.

As pointed out in the previous section, Kelo’s *Unanswered Questions* misses or overlooks certain facts, leading to gross generalizations that are most apparent in the report’s primary conclusions regarding the private-to-private transfer of property. The conclusions:

- There is not enough data available to make decisions.
- Eminent domain is a valuable tool for cities.
- People are paid well for their properties.
- There’s little, if any, abuse.
- Sensitive populations are no longer affected because of social changes²⁹

Yet, after making all these sweeping claims, the authors *still* make one final conclusion—that government should “pursue procedural reforms.”³⁰ This conclusion is a clear admission that a real problem with eminent domain abuse *does* exist, though the “reforms” they advocate are really just illusions, as they focus on procedure and compensation—requiring more votes,

26 Dreher & Echeverria, *supra*, at 2.

27 *Id.* at 37.

28 Ryan Gabrielson, “Council Ends ‘Bad Idea’ Unanimously,” *East Valley Tribune*, October 5, 2005, at 23; Casey Newton, “Scottsdale Plans to End Redevelopment Designation,” *The Arizona Republic*, October 4, 2005, at 4B.

29 Dreher & Echeverria, *supra*, at 2.

30 *Id.*

planning and money³¹—not substance. That is, the recommendations do not confront the heart of the issue—whether it should be permissible to force someone from their home or business for the sake of private development. Regardless, change of *any* sort would be unnecessary if the authors actually believed their preceding conclusions were at all accurate.

Adding another round of hearings or providing a few extra dollars does not excuse or absolve the government from violating a fundamental American right. There are certain rights that cannot be compromised, though the authors are quick to point out the right to keep what you own is not one of them.

Also strange is that the authors mention how “little experience and questionable competence” government has in private industry, particularly with respect to those things that usually replace the existing homes and small businesses in redevelopment areas, like hotels and shopping centers.³² Despite this observation, the authors hope—advocate, in fact—for government’s deep engagement in just the sort of quintessentially private commercial development that the authors acknowledge the government does not know how to do.

Equally interesting is the authors’ warm embrace of the planned redevelopment of Norwood, Ohio, which they present as a representative example of how well the victims of eminent domain abuse are treated. What they neglect to mention is that their own policy recommendations, particularly those related to ending developer-driven projects,³³ would prevent the project since the entire scheme in Norwood was planned, promoted and pushed by the developer.³⁴

V. Ivory Tower Arguments

One of the most troubling aspects of the Dreher and Echeverria piece is its condescending tone, one that is widely offensive to the small property owners around the country fighting to keep their homes and businesses and most unwelcome in any debate that has real world consequences.

The best example of their arrogance is the excoriation of so-called “holdouts,” a pejorative term routinely used by defenders of eminent domain abuse to label property owners who decline to sell their homes or businesses for the private development envisioned by the local government. The myth of the “holdout” is that if just one person does not sell at the price specified by the government, it will scuttle the *entire* project.

The right to own property free from government interference is enshrined—because the Founders found it so important—

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31 *Id.* at 42-43.

32 *Id.* at 22.

33 *Id.* at 43.

34 *Norwood v. Horney*, ___ Ohio St.3d ___, 2006-Ohio-3799 ¶¶ 17-22 (2006), available at <http://www.sconet.state.oh.us/rod/newpdf/0/2006/2006-ohio-3799.pdf> (accessed December 20, 2006).

in the Bill of Rights. The individuals that choose to assert their rights, like someone who speaks or worships freely—even if the words or religion are unpopular—would never be considered “holdouts” by the authors. Asserting one’s rights should not result in being arrogantly derided and off-handedly dismissed as holding up “progress.” The Constitution protects the rights of individuals and, except in very limited circumstances, if you asked anyone on the street, no one would believe you should be forced to sell anything if you do not want to sell it—especially for someone else’s private use. Indeed, as the Ohio Supreme Court noted in the *Norwood* case mentioned above: “Although the judiciary and legislature define the limits of state powers, such as eminent domain, *the ultimate guardians of the people’s rights, as evidenced by the appellants in these cases, are the people themselves.*”³⁵

It is important to see *Norwood* for what it is—a complete and utter repudiation of the many conclusions made in Dreher and Echeverria’s academic fantasy world.³⁶ In *Norwood*, the Court *unanimously* rejected the U.S. Supreme Court’s rationale in *Kelo*. The use of eminent domain for private commercial development is no longer allowed in Ohio—based partly on the idea that the right to private property is fundamental—and courts there have been instructed to utilize heightened scrutiny when reviewing government’s use of eminent domain. It is an absolute victory for the notion that government should not be allowed to use eminent domain to increase its tax revenue by transferring private property from one private party to another. Other state supreme courts also disagree with the slim majority’s reasoning in *Kelo*, as well as the authors’ perspective.³⁷

No matter how the authors try, they cannot repudiate economic maxims of supply and demand.

In addition, the government or developers themselves create much of the “holdout” problem the authors decry. By requiring a specific parcel of property—or by being unwilling to adapt their plans for the available land—they create artificial scarcity, which skews the same market the authors routinely scorn. No matter how the authors try, they cannot repudiate economic maxims of supply and demand.

The government creation of “holdouts” is perfectly illustrated in the D.C. stadium situation on which they focus part of their paper.³⁸ What they fail to mention is that developable land was available in another part of the city to build a baseball stadium, and that alternative was favored by many in the city and on City Council. Instead, the local government decided to plop the behemoth down in the middle of an already-existing neighborhood. The government created the problem. Dreher and Echeverria also overstate the “holdout” problem, including another perfect example—with a picture—of a development, again in D.C., that is chugging along around a building owned by someone who chose not to sell.³⁹ “Holdouts” are simply a red herring.

And that scenario brings up a number of other points. Dreher and Echeverria ridicule the owner of the pictured D.C. building for asking for a large amount of money to sell his property. What is missing is a complete discussion about what will happen to the property owner who does not move. The authors claim that the *only* risk is lost profit if development is

35 *Id.* ¶ 137 (emphasis added).

36 Dreher & Echeverria, *supra*, at 8 (calling the plaintiffs “holdouts”).

37 See, e.g., *County of Wayne v. Hathcock*, 684 N.W. 2d 765 (Mich. 2004); *Board of County Comm’rs of Muskogee County v. Lowery*, 136 P3d 639 (Okla. 2006).

38 Dreher & Echeverria, *supra*, at 15, 31.

39 *Id.* at 28.

derailed.⁴⁰ But it is possible that the project will move forward, like the one in D.C., and the owner will actually lose money because the owner is enveloped by other buildings—what can be done with a tiny slice of land within a larger complex? Or an even more likely occurrence: The development will move forward, a homeowner keeps his house, the city gets its tax revenue and everyone’s rights are respected.

This example also engenders another peculiar reaction from the authors—the idea that “coherent and graceful design” should trump the constitutionally enshrined rights of individuals to keep their homes and businesses.⁴¹ But that is not the only odd nugget these academics announce. Among many, the report leaves you with these impressions that stand out in particular:

- The Constitution should *not* be read using the actual words, but with *synonyms*;⁴²
- It is wrong for people to make decisions based on their own interest;⁴³
- The ability of home and small business owners to keep their property should be based on popular fads, like the current trend toward mixed-use developments;⁴⁴
- The presumption should be that the government keep its tremendous power of eminent domain, not that it be restrained;⁴⁵
- Family history, memories, personal attachment and community relationships can be replaced with money;⁴⁶
- People whose homes are taken from them and given to someone else should consider themselves lucky;⁴⁷
- Rights are relative and should depend on where you live.⁴⁸

It is difficult to take seriously anything that makes such patronizing, arrogant and elitist assertions.

40 “Of course, if a speculator miscalculates and demands more than the project can support, he might, rather than reap a windfall, derail the project, depriving not only himself of a potential profit but the community of a potentially valuable development.” *Id.* at 19. This passage brings up two other points—the developer and city have incentives to understate the “support” in order to acquire land more cheaply. In addition, Dreher and Echeverria, highlight (probably unintentionally) just how “potential” all of the promises are.

41 *Id.* (“Even if it is physically possible to redesign around a holdout, coherent and graceful design may be lost in the process”).

42 *Id.* at 3 (“Under one view, the term ‘public use’ should be read to require actual use by the public The other view is that public use is a synonym for ‘public purpose’”).

43 *Id.* at 22 (“There is a separate rationale that rests on the notion that certain owners, looking solely to their own private interests, are not likely to recognize and act upon the true economic value of deploying their property to a higher and better use”).

44 *Id.* at 23 (“The problem is underscored by the current popularity of mixed-use developments”). It is interesting to note that mixed-use properties and neighborhoods were routinely destroyed in the 1950s and 1960s, as the prevailing trend was high-rise housing units and sprawling shopping plazas.

45 *Id.* (“All of these uncertainties appear to argue for a certain measure of restraint in considering proposals to curtail this traditional and widely used municipal power”).

46 *Id.* at 26 (“[W]hat has the owner really lost when property is taken in exchange for just compensation?”); *Id.* at 32 (“Assuming the use of eminent domain truly advances the common welfare (a point that is not beyond dispute in particular cases), the imposition of at least some burdens on property owners can be viewed as socially and morally acceptable”).

47 *Id.* at 32 (“On the other hand, landowners within a redevelopment area can also be viewed as the serendipitous beneficiaries of government initiative”).

48 *Id.* at 41 (“A related observation is that different regions of the country utilize eminent domain in very different contexts for very different purposes. . . . The point is that any sensible approach to eminent domain reform must recognize the wide diversity of uses of the eminent domain power in different states”).

VI. IJ Defends Its Studies

The final point to make relates to the Institute for Justice's own studies. Dreher and Echeverria specifically attempt to discredit IJ,⁴⁹ but, as with the rest of their report, the attempt simply falls flat.

The main thrust of their attack is against the methods section of IJ's reports. In determining the amount of eminent domain abuse around the country, IJ uses news reports, public documents and court decisions to conservatively estimate how often governments use or threaten eminent domain for private gain.⁵⁰ With no national database tracking such figures, this methodology makes sense.

Dreher and Echeverria are right that IJ undercounted the amount of eminent domain for economic development. That is a function of the data available and IJ's conservative approach. For instance, Connecticut is the only state that keeps track of these numbers—and IJ's *Public Power, Private Gain* methodology undercounted by a factor of almost 18. Additionally, even where IJ knows more than one property is involved in a project, if IJ cannot document that fact in a newspaper article or map, it is counted as a single property. References in articles to “apartments” or “properties,” without a specific number, are only counted as two. What is clear is that there is no *less* abuse than IJ has documented—more than 10,000 abuses between 1998 and 2002 and more than 5,700 in the year since *Kelo*. These staggering figures should be more a cause for public alarm than academic hairsplitting.

The authors find fault with counting threats of eminent domain or government-sponsored studies that will ultimately trigger the use of eminent domain for private development as examples of abuse. This is a common argument made by apologists and the proponents of the near-unfettered use of eminent domain—eminent domain is not real unless a lawsuit is filed.⁵¹ Unfortunately, that is not how real people threatened by eminent domain abuse feel. When the government knocks on your door and gives you two choices—“Take this money or we'll kick you out”—or more likely unveils a map with a shopping center replacing your home, the government is using eminent domain and an abuse clearly occurs. To fight, property owners are faced with high costs in time and money, as well as laws that are stacked against them. The government, with its near limitless legal funds (especially where, as in Norwood, Ohio, the developer is paying a city's fees), counts on them caving in to the threat of eminent domain. With that overwhelming threat, no legal filing is necessary.

Dreher and Echeverria are also incredulous that the number of threats and condemnations in IJ's reports is greater than the

It is almost axiomatic that every project involves multiple properties and many individual families, homes, or jobs. Importantly, the government cannot file a lawsuit or “negotiate” to acquire properties by project—it has to deal with everyone individually. To lump everyone together is simply the authors' way of belittling the hard-working people that deal with eminent domain abuse every day.

49 *Id.* at 38.

50 Dana Berliner, *Opening the Floodgates: Eminent Domain in the Post-Kelo World* 6 (2006), available at <http://www.castlecoalition.org/publications/floodgates/index.html>; Dana Berliner, *Public Power, Private Gain: A Five-Year State-By-State Report Examining the Abuse of Eminent Domain* 8 (2003), available at <http://www.castlecoalition.org/publications/report/index.html> (accessed December 20, 2006).

51 This concept also allows governments to use their favorite line regarding eminent domain—that it will only be used “as a last resort.”

number of projects.⁵² This disbelief underscores their aversion to counting individuals—as opposed to communities—in other sections of their work. It is almost axiomatic that every project involves multiple properties and many individual families, homes or jobs. Importantly, the government cannot file a lawsuit or “negotiate” to acquire properties by project—it has to deal with everyone individually. To lump everyone together is simply the authors’ way of belittling the hard-working people that deal with eminent domain abuse every day. And frankly, it doesn’t matter if only one person was being abused—it is still abuse.

Despite Dreher and Echeverria’s musings to the contrary, the Institute for Justice has never said that blight designations morally support the use of eminent domain. In fact, IJ has consistently explained how vague and dangerous blight designations are and how often perfectly fine homes and small businesses are targeted through blight designations for private commercial development. As intimated above, IJ does not base its definition of abuse on the federal standard—nothing is an abuse after *Kelo*—but what is right in the minds of everyday Americans. Also, the authors’ “smoking gun” (regarding the expansion of cargo facilities at an airport) was very explicitly for Federal Express—which would be the only user and beneficiary—as IJ plainly points out in its report.⁵³

One final point on IJ’s reports is necessary. The number of condemnation lawsuits may be less after *Kelo*, but the threats have tripled. Again, this is worrisome. IJ specifically discusses this trend in the introduction to *Opening the Floodgates*—many have lost hope now after the Supreme Court essentially erased the Public Use Clause from the Constitution.⁵⁴ It is already difficult to fight when one does not have the money, expertise or time to do so. Faced with courts that are expensive and an uncertain outcome, many owners already feel beaten. In any event, the *Kelo* case empowered cities more than ever before and their schemes—like those in Washington, D.C., and Freeport, Texas—have been given particular permission to continue because of the case.

VII. Conclusion

The Institute for Justice is confident that a critical reading of Dreher and Echeverria’s report will reveal the paper’s many flaws—its factual selectivity and faulty logic—as well as the authors’ comic detachment from reality. Anyone who reads Dreher and Echeverria’s piece will no doubt be disappointed if not outright frightened by the prospect that these ideas will prevail. IJ, of course, will continue its mission to fight for the right of home and small business owners to keep what they have worked so hard to own.

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52 Dreher & Echeverria, *supra*, at 38-39 (“IJ listed each parcel of property affected or threatened by eminent domain as a separate case IJ’s widely-cited 2003 estimate of over 10,000 instances of the use of eminent domain actually involved 222 projects”).

53 Berliner, *Public Power, Private Gain*, *supra*, at 156.

54 Berliner, *Opening the Floodgates*, *supra*, at 1.