



Written by [Brian Koenig](#) on July 14, 2012

Businesses, Investors Protest Eminent Domain in Virginia and California

Compelled under the despotic power of a local government in Virginia, one business owner is losing his property under the government's alleged authority of eminent domain. And it's not because officials in Norfolk plan to build a new road or a public park; it's so they can clear the area for new "retail space."

For five decades, Bob Wilson has been building radio parts and surveillance equipment for the U.S. Navy, and two years ago, the North Redevelopment and Housing Authority pursued the property to build retail space for college students who were attending the state school Old Dominion University. In rationalizing its action, the local government said the move was to stimulate "economic development."



However, officials are ignoring the economic contribution Wilson's business, Central Radio Co., is offering the Norfolk community. "We don't need economic development," Wilson [responded](#). "We have hundreds of employees here that are getting paid good wages. They pay taxes in Norfolk. They are part of the community."

Meanwhile, Wilson is now backing a ballot measure called the Virginia Eminent Domain Amendment, which would bar the state from confiscating property for private enterprise. "You shouldn't be able to take land from one business and give it to another," Wilson asserted. "That's not fair."

However, chief of the Virginia Association of Counties Jim Campbell says the proposed amendment is "too broad" and that it will severely impede community planning across the state. "All this means there's going to be higher costs for acquiring land," he explained. "Most counties take land for good reason, a school or a road. This is just going to drive up the costs of eminent domain."

Another pressing eminent domain debacle has sprouted in San Bernardino County, California, where the local government is seeking to seize and restructure "underwater" residential mortgages — those whose owners owe more than their mortgages' worth — by forcibly purchasing them from mortgage-backed securities (MBS) investors at low rates and reselling them with lower balances to other investors.

The theory is that principal writedowns would reduce household debt while curbing the number of underwater mortgages. The housing crisis, such critics affirm, was prompted through collective action, and if government officials were to levy their eminent domain authority, they could sweep the mortgage-debt hodgepodge under the table. However, as Anthony Randazzo of the Reason Foundation [notes](#), the purported solution is illusory:



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But this is too simplistic of an understanding for how principal writedowns would work. Consider that the federal government's Home Affordable Modification Program has had re-default rates of over 50 percent. Sometimes a family that is in a home worth less than the face value of their mortgage won't be able to make payments even if the principal balance is reduced. Sometimes a family that gets a principal writedown recognizes that they still have no equity in the home and can walk away just as before. Sometimes lenders can get more money for their shareholders or investors by taking a home into foreclosure and selling it, rather than taking a loss by offering to reduce the principal balance owned by the borrower.

Of course, beyond the debate over its economic viability, California's latest eminent domain measure has become a constitutional battle, as investors and state lawmakers claim it violates the constitutions of both the federal government and California government. A letter from the American Securitization Forum (ASF) asserts that eminent domain would usurp these constitutional standards because of the profit motives of private investors.

Further, investors who own mortgage bonds are outraged because they will likely suffer write-downs as principals on the loans are slashed. In response, the ASF and 17 other trade organizations are arguing that the move presents "very serious legal and constitutional issues" and erodes the conception of borrower-creditor contracts.

Constitutionalists point out that, in effect, the government's alleged authority to leverage eminent domain in such ways is despotic in nature, as it confiscates property rights and undermines federal and state laws. In Wilson's case, the move was rationalized under the guise of "economic development." Insofar as the case in San Bernardino County, it is being justified as a government solution to an economic tragedy.



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