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Landowner's Bill Of Rights Are Not "Suggested Guidelines," Georgia Supreme Court Rules

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When lawmakers limit the government's power, does the government actually have to comply?

Officials in Marietta, Georgia didn't think so. When the city was accused of violating the Georgia Landowner's Bill of Rights, Marietta officials claimed that those were nothing more than "suggested guidelines." Thankfully, in a unanimous decision handed down on Monday, the Georgia Supreme Court rebuked the city and blocked its land grab, setting an important precedent for property rights and limited government.

For nearly 30 years, Ray Summerour has owned Brenda's Grocery in a historically black neighborhood of Marietta. Today, his grocery store is the last of its kind in the area and plays an essential role in the community. "They look to the store to supply them with a lot of stuff they need to keep from having to go to the nearest grocery store, which is several miles away," Summerour told the Atlanta Journal-Constitution. "This is a low-income area. People just don't have the money to buy cars so they rely on walking a lot."

But for the past seven years, Summerour has been fighting to protect his business from Marietta's grasping hand. Starting in the summer of 2010, the city wanted to buy Summerour's land to build in order to a public park. After he declined their offers multiple times, in October 2014, Marietta filed a lawsuit to condemn Summerour's property with eminent domain. A trial court upheld the taking, but also found that the city's highest offer was roughly \$65,000 below fair market value. On appeal, the Courts of Appeals ruled that Marietta failed to comply with state law, a decision the city promptly appealed to the Georgia Supreme Court.



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Summerour's case marked the first time the state's highest court considered the Georgia Landowner's Bill of Rights, enacted by state lawmakers over a decade ago to protect homes and businesses from the abuse of eminent domain in the wake of the U.S. Supreme Court's ruling in Kelo v. New London. In what became one of the court's most infamous cases, the Kelo decision upheld the condemnation of an entire neighborhood based on the promise of economic redevelopment—a plan that ultimately never happened.



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Public backlash was swift and cut across party lines. According to the Institute for Justice, which represented homeowners in Kelo, Georgia and more than 40 other states strengthened protections for private property rights. To counter Kelo, the Georgia Landowner's Bill of Rights only allows eminent domain for a "public use," like roads or public utilities, and explicitly bans condemning private property for the "public benefit of economic development." In addition, the law creates several new policies and practices, like stricter notice requirements, that "all condemnations and potential condemnations shall, to the greatest extent practicable, be guided by."

Much of the dispute between Marietta and Summerour hinged on that line. In the city's view, the words "be guided by" and "practicable" mean that the law is optional and merely sets "suggested guidelines for condemnations." Or as one of Marietta's attorneys put it, "The city believes firmly that the clear language says that it is not mandatory."

Writing for a unanimous court, Justice Keith Blackwell dismissed the city's argument and threw out the condemnation order. Siding with Summerour, Justice Blackwell noted the Landowner's Bill of Rights is "introduced not in terms of a suggestion, but instead by words of command ('shall...be guided')." If government agencies were free to treat the law as "entirely optional," its safeguards would be "impaired significantly." That would undermine the very reason why the law was passed in the first place.

Moreover, complying with a requirement "to the greatest extent practicable" does not mean "only 'if he feels like complying' or 'if he thinks it a good idea,'" Justice Blackwell added. For instance, in the aftermath of Brown v. Board of Education, the U.S. Supreme Court's historic decision to desegregate public education, the court wrote that desegregation decrees should require racial integration "as soon as practicable" and could not be rejected "simply because of disagreement." In short, the city did, in fact, have to comply with the law, even if it would be "inconvenient" to do so.

As a result, the court ruled that Marietta violated the Landowner's Bill of Rights when the city failed to provide an appraisal summary before it began negotiations with Summerour. That failure "substantially undermined fair negotiations," Justice Blackwell noted. "Without appraisal information, a landowner cannot know whether an offer is fair and whether it reflects the true market value of the property."

Feeling vindicated, Summerour was glad he won. "From this point on nobody will have to go through what I went through," he said.

Unfortunately, his victory is somewhat bittersweet. Earlier this year, Georgia lawmakers weakened some of the state's protections against eminent-domain abuse. Echoing Kelo, the rollback now lets government agencies condemn "blighted" property if economic development is a "secondary or ancillary public benefit." That risks becoming a backdoor to take property for private developers.

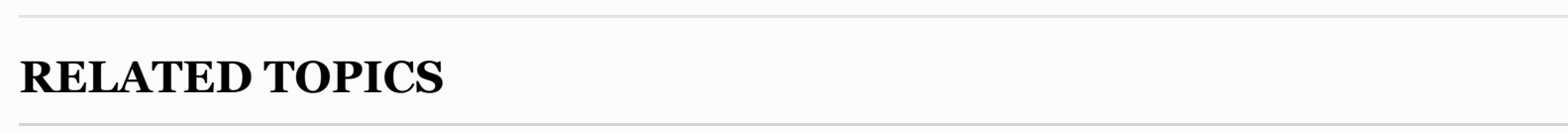
"This case is a reminder that government officials given the power of eminent domain will happily stretch that power to the breaking point—and beyond," said Robert McNamara, a senior attorney at the Institute for Justice who litigates eminent domain cases nationwide. "That makes it all the more important for engaged courts to step in to protect the rights of property owners, which is exactly what happened here."

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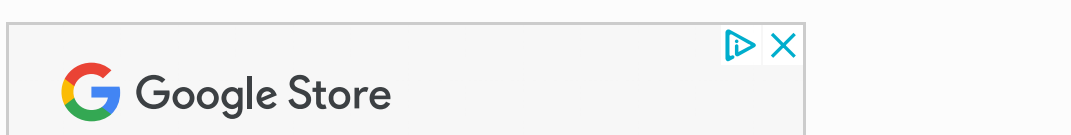
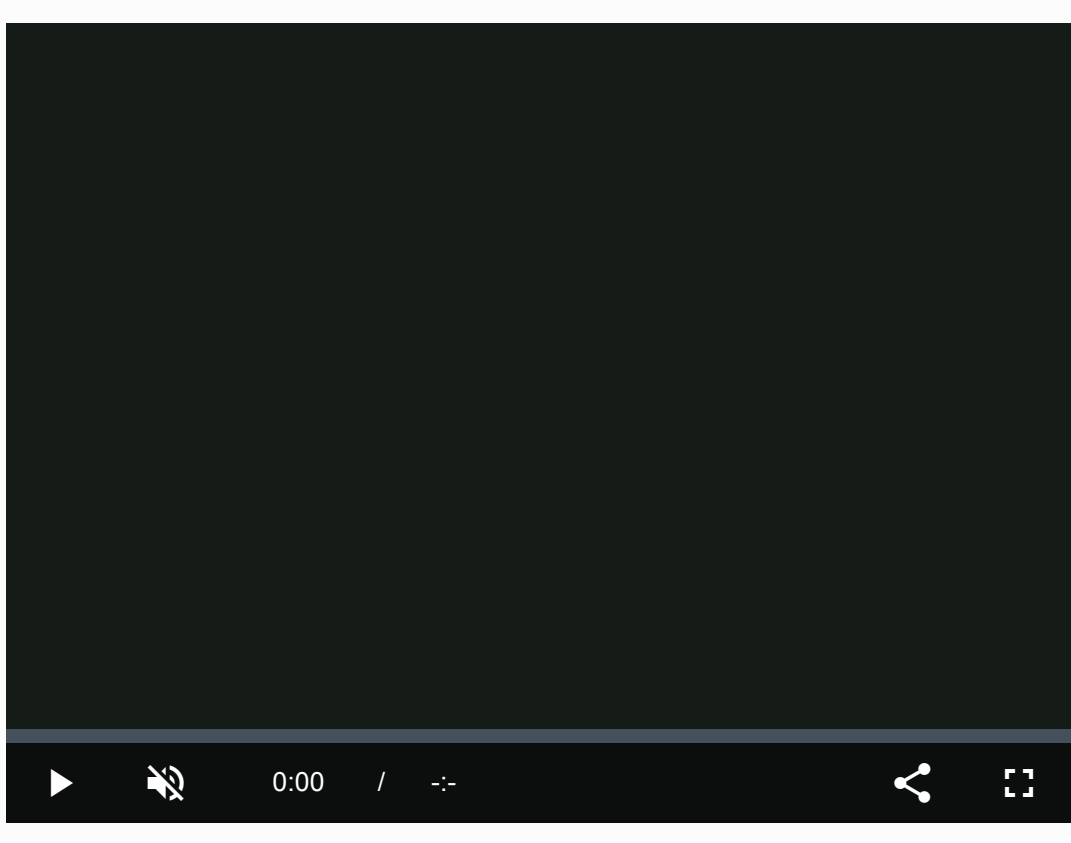
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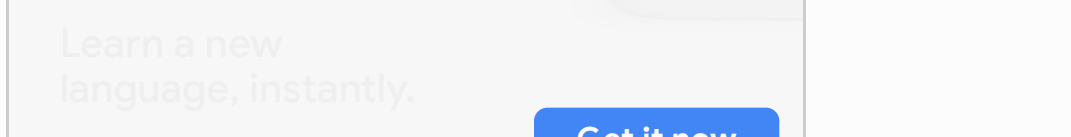
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