

EMINENT DOMAIN

City Claims Binding Restrictions on Eminent Domain Are Merely 'Guidelines'

That Pirates of the Caribbean logic did not sit well with the Georgia Supreme Court.

CHRISTIAN BRITSCHGI | 10.31.2017 1:40 PM



There is a scene in the first Pirates of the Caribbean movie where a captain is accused of violating the much vaunted "Pirate's Code." He responds that the code is "more what'd you call 'guidelines' than actual rules."



Someone from the city of Marietta, Georgia, must have been taking notes, because the town just made essentially the same argument in a case before the state Supreme Court.

The issue was whether the City of Marietta had violated the state's 2006 "Landowner's Bill of Rights" when it attempted to seize Ray Summerour's grocery store to expand an adjacent public park. Summerour, who had owned the store for a quarter century, claimed that the local government failed to provide him with a timely justification for the city's valuation of his land when it first tried to purchase his property. The 2006 law requires such an appraisal.

The city copped to violating the provision. But the law's strictures, it argued, were "merely suggested guidelines for condemnations, which are not mandatory or, at the least, judicially enforceable." Since the introductory language in the Landowner's Bill of Rights says the law is to be followed "to the greatest extent practicable," the city said, that meant that the statute was entirely voluntary.



Yesterday the Georgia Supreme Court responded with a collective eyeroll, ruling that if the basic guarantees included in the Landowner's Bill of Rights were "as the City urges, entirely optional, the protective function of the Act as a whole would be impaired significantly."

The Court also noted that the city's focus on the word "practicable" would have made Brown v. Board of Education voluntary as well, since it required desegregation to be done "as soon as practicable."

"It's been kinda like a long, hard ordeal. The main thing is from this point on nobody will have to go through what I went through," Summerour told the Atlanta Constitution-Journal after Monday's decision.

That Summerour had to go through the ordeal in the first place is a scandal, given that the entire purpose of the Landowner's Bill of Rights was to create explicit and binding restrictions on the government's ability to take citizens' property without their consent.

The law was passed in the aftermath of the U.S. Supreme Court's infamous 2005 Kelo decision, which allowed the city of New London, Connecticut, to seize a house, to demolish it, and hand the property over to the pharmaceutical giant Pfizer. In the aftermath of the decision, 42 states passed laws restricting eminent domain. When Gov. Sonny Perdue signed Georgia's bill in 2006, he declared it "wrong for your house, your land and your property to be held in jeopardy at the sway of a powerful government." A local governments has to operate with a few more restrictions than a fictional pirate when it wants to go a-plundering.

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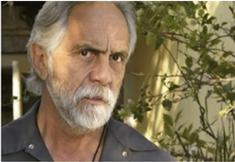
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