

# Evaluation of *Kelo*'s Political and Economic Impact: Theory and Evidence

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*This Article examines the political and economic implications of the U.S. Supreme Court's landmark decision in Kelo v. City of New London (2005) through an empirical study of eminent-domain practices in New York City. Using a unique dataset of all expropriations in New York City over twenty-nine years, we challenge two core assumptions underlying the Kelo discourse: (1) that local governments require formal legislative or judicial constraints to refrain from aggressive economic-development takings and (2) that such takings generate substantial economic benefits.*

*Contrary to widespread expectations, our analysis reveals a ninety percent decrease in takings for economic development in New York City following Kelo, despite the absence of restrictive post-Kelo legislation in New York State. This finding demonstrates that public opposition was sufficient to drive significant policy shifts, even without formal legal constraints. Simultaneously, our economic analysis finds no measurable benefits from economic-development takings—no significant increases in employment or business-establishment growth—thus challenging the “spillover benefits” rationale cited in Kelo.*

*Building on these findings, we argue that courts should serve dual roles: as agoras fostering public debate and as enforcers of procedural safeguards ensuring that projections made by politicians are evidence based. Specifically, we propose implementing review mechanisms modeled after environmental-impact assessments to verify economic claims before pursuing eminent domain. We thus suggest that overturning Kelo, as some seek, would unnecessarily constrain local democratic processes when procedural reforms could more effectively address the underlying concerns.*

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## Introduction

The U.S. Supreme Court's decision in *Kelo v. City of New London* (2005)<sup>1</sup> sparked widespread controversy by upholding the use of eminent domain for economic-development projects, even when the primary beneficiaries are private entities. Critics argued that this would lead to unchecked government power and widespread property transfers from vulnerable communities to wealthy developers. In contrast, proponents claimed that such takings would serve as a facilitator for urban revitalization and stimulate economic development.

The Court's conclusion that economic-development takings satisfy the Fifth Amendment's "public use" requirement<sup>2</sup> rested on the premise that the projected economic growth from the development plan—which required the assembly of private property—would benefit the public indirectly. Under *Kelo*, takings for "private benefit," even in cases where the property taken was not blighted, are permitted if they are expected to create economic benefit.<sup>3</sup>

In its decision, the Court relied on what appeared to it to be the "comprehensive character" of a development plan prepared by the City of New London.<sup>4</sup> Projected economic benefits were cited: the plan would "draw new business to the area, thereby serving as a catalyst to the area's rejuvenation."<sup>5</sup> Thus, the Court thought it appropriate to resolve the takings challenge posed by the landowners in light of the entire plan's expected outcome. The majority contended

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1. *Kelo v. City of New London*, 545 U.S. 469, 484 (2005).

2. U.S. CONST. amend. V.

3. Taking for urban renewal that includes the destruction of deteriorated housing is also known as "blight condemnation." However, the exact definition for blight is subject to interpretation and is not standardized.

4. *Kelo*, 545 U.S. at 484.

5. *Id.* at 473.

that because the plan “unquestionably serve[d] a public purpose,” the takings satisfied the public-use requirement.<sup>6</sup>

Eminent domain, the power of the state to seize private property for public use with just compensation, usually fair market value, to the dispossessed owner,<sup>7</sup> has deep constitutional roots in the Fifth Amendment and across legal traditions around the world.<sup>8</sup> The primary justification for this power lies in governments’ need to overcome strategic-bargaining problems—such as holdouts and land assembly—that impede the provision of public goods.<sup>9</sup> In theory, compensation fully redresses the harm to the individual, while the public-use requirement ensures that takings do not merely enrich private actors. Over time, however, the definition of “public use” has expanded dramatically. Landmark decisions such as *Berman v. Parker*,<sup>10</sup> *Hawaii Housing Authority v. Midkiff*,<sup>11</sup> and finally *Kelo v. City of New London*,<sup>12</sup> embraced economic development and urban renewal as legitimate public purposes, even where the immediate beneficiaries are private developers. This evolution, especially in private-to-private transfers, continues to provoke heated legal and political debate,<sup>13</sup> as evidenced by the sustained body of scholarly and public commentary, including other contributions to this Symposium.

In this Article we call into question two implied underlying assumptions that stand at the core of the Court’s decision and, we argue, at the background of most of the scholarship that developed around it in the past twenty years. First, as the *Kelo* majority emphasized, nothing in the decision precluded states from placing “further restrictions on [their] exercise of the takings power.”<sup>14</sup> The assumption seems to be that state-level legislation is *necessary* to limit the exercise of the taking power at the local level. Indeed, almost all states enacted post-*Kelo* legislation.<sup>15</sup> Debating this assumption, we ask: does it make sense to assume that, *if not* restricted by state legislators, local governments would proceed as

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6. *Id.* at 484.

7. Jonathan Lindsay, Klaus Deininger & Thea Hilhorst, *Compulsory Land Acquisition in Developing Countries: Shifting Paradigm or Entrenched Legacy?*, in *EMINENT DOMAIN: A COMPARATIVE PERSPECTIVE* 118, 119 (Hojun Lee, Iljoong Kim & Ilya Somin eds., 2017).

8. Mila Versteeg, *The Politics of Takings Clauses*, 109 *NW. U. L. REV.* 695, 713 (2015).

9. Daniel B. Kelly, *Acquiring Land Through Eminent Domain: Justifications, Limitations, and Alternatives*, in *RESEARCH HANDBOOK ON THE ECONOMIC ANALYSIS OF PROPERTY LAW* 344 (Kenneth Ayotte & Henry E. Smith eds., 2011); THOMAS J. MICELI, *CONTEMPORARY ISSUES IN LAW AND ECONOMICS* 127 (2018); Ronit Levine-Schnur, *Political Divide, Weak Property Rights, and Infrastructure Provision: An Empirical Examination of Takings Decisions in Jerusalem*, 47 *LAW & SOC. INQUIRY* 821, 822 (2022).

10. 348 U.S. 26 (1954).

11. 467 U.S. 229 (1984).

12. 545 U.S. 469 (2005).

13. See, e.g., *Bowers Dev., LLC v. Oneida Cnty. Indus. Dev. Agency*, 224 A.D.3d 1240, 1241-42 (N.Y. App. Div. 2024) (mem.), *cert. denied*, *Bowers Dev., LLC v. Oneida Cnty. Indus. Dev. Agency*, 145 S. Ct. 1428, 1428 (2025).

14. *Kelo*, 545 U.S. at 489.

15. For a listing of post-*Kelo* state legislative initiatives, see *50 State Report Card: Tracking Eminent Domain Reform Legislation Since Kelo*, INST. FOR JUST. (Aug. 1, 2007), [https://ij.org/wp-content/uploads/2015/03/50\\_State\\_Report.pdf](https://ij.org/wp-content/uploads/2015/03/50_State_Report.pdf) [<https://perma.cc/DM2Z-ZUHH>].

they were before *Kelo* (or even expand abusive takings practices)? Moreover, is this assumption supported by empirical findings?

Another implied assumption that lay at the core of the Court's decision is that the development plan prepared by the city provided a sound basis for the prediction of economic gains. In fact, the opinion of the Court opens with this prediction without any reservation: "In 2000, the city of New London approved a development plan that, in the words of the Supreme Court of Connecticut, was 'projected to create in excess of 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas.'"<sup>16</sup> Thus, the tradeoff seems simple: are we willing to sacrifice the sanctuary of the private home in return for the public good of economic profits for the community? Debating this assumption, we ask: what are the grounds for *trusting* what may be politicians' overoptimistic expectations for economic growth? Is there any empirical support for such claimed economic outcomes?

We rely on an original empirical examination of three decades of eminent-domain practices in New York City, before and after *Kelo*, to test these implied assumptions. The unique dataset at our disposal enables us to provide a comprehensive evaluation of *Kelo*'s impact on urban-development policy and local-government practices. The New York City case demonstrates that local governments do not necessarily require formally imposed restrictions to align with public opposition to takings for economic development. However, they indeed may fail to accurately predict the economic benefits of development projects. Put simply, we contend that local governments understand politics better than economics.

We further argue that courts can assist with the proper integration of economics and politics in governance in two key ways: (1) by serving as "agoras"—a term drawn from ancient Greek city-states denoting open public spaces used for assemblies and markets—that foster public debate on policy choices, and (2) by enforcing procedural safeguards to ensure that economic (or other) projections are grounded in sound evidence and are based on expert analysis. By fulfilling these roles, courts can generate positive value while incentivizing local democratic processes and empowering communities to make context-sensitive land-use decisions for the public benefit.

The Article proceeds as follows. Part I examines the political response to *Kelo*, asking whether—in cases where strong public opposition was evident but neither restrictive regulation nor judicial intervention was enacted—local governments nonetheless changed course in their use of eminent domain. Part II analyzes the economic outcomes of takings for economic development in New York City, using original empirical data to test whether such projects generated economic spillover benefits. Part III draws on these findings to offer normative recommendations concerning the institutional role of courts, focusing on how they might function both as agoras for public deliberation and as enforcers of procedural safeguards to discipline speculative economic justifications by local

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16. *Kelo*, 545 U.S. at 472 (quoting *Kelo v. City of New London*, 843 A.2d 500, 507 (Conn. 2004)).

governments. The conclusion considers the implications of this analysis for the ongoing calls to overturn *Kelo*.

## I. Political Response: Beyond Legislation and Judicial Intervention

### A. Revealed Public Preferences

In *Kelo*, local governments were not prohibited from the taking of private property, including family houses, to establish high-technology research-and-development office space, retail services, and parking.<sup>17</sup>

The Court's reluctance to limit states' and local governments' discretion with respect to what constitutes public benefit ignited intense public discourse.<sup>18</sup> To emphasize, in the six months following the decision, there were 107 stories in five major newspapers about *Kelo*, thirteen times more than the respective coverage entailed for *Lingle v. Chevron U.S.A. Inc.* which was decided in the same year on a different regulatory matter.<sup>19</sup> National and state-level surveys showed between 80 and 90% of respondents disagreed with the decision, while 70 to 90% supported legislation restricting eminent domain following it.<sup>20</sup> As Nadler summarizes, the "real story in the *Kelo* backlash was . . . the remarkable uniformity of public opinion in reaction to the case. . . . [,] shared by . . . various racial, ethnic, religious, and ideological groups."<sup>21</sup>

Over the years, many surveys and experiments were dedicated to exploring more closely attitudes toward eminent domain. In *Kelo*, there was a combination of both the "sacredness of the home,"<sup>22</sup> violated when Ms. Kelo was forced to leave her "little pink house," and the private-to-private nature of the taking's purpose. Which of these two factors is more significant in shaping people's views? Some studies indicate that it is primarily the type of property taken that matters (e.g., vacant land, run-down buildings, land from developers, low-value (or not) residential homes).<sup>23</sup> Others come to the opposite conclusion, finding

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17. *Id.* at 509.

18. See, e.g., MICHAEL ZILIS, THE LIMITS OF LEGITIMACY: DISSENTING OPINIONS, MEDIA COVERAGE, AND PUBLIC RESPONSES TO SUPREME COURT DECISIONS 59 (2015); Logan Strother, *Beyond Kelo: An Experimental Study of Public Opposition to Eminent Domain*, 4 J.L. & CTS. 339, 339 (2016) [hereinafter Strother, *Beyond Kelo*]; Logan Ray Strother, Impact: The Supreme Court in American Politics 86 (2017) (Ph.D. Dissertation, Syracuse University) (on file with authors) [hereinafter Strother, *The Supreme Court in American Politics*].

19. 544 U.S. 528 (2005); Janice Nadler, Shari Seidman Diamond & Matthew M. Patton, *Government Takings of Private Property*, in PUBLIC OPINION AND CONSTITUTIONAL CONTROVERSY 250, 256 (Nathaniel Persily, Jack Citrin & Patrick J. Egan eds., 2008).

20. *Id.* at 258-59; ILYA SOMIN, THE GRASPING HAND: *KELO V. CITY OF NEW LONDON* AND THE LIMITS OF EMINENT DOMAIN 137-41 (2015); Strother, *Beyond Kelo*, *supra* note 18, at 343.

21. Janice Nadler, *The Social Psychology of Property: Looking Beyond Market Exchange*, 14 ANN. REV. L. & SOC. SCI. 367, 374 (2018).

22. Nadler et al., *supra* note 19, at 265.

23. Janice Nadler & Shari Seidman Diamond, *Eminent Domain and the Psychology of Property Rights: Proposed Use, Subjective Attachment, and Taker Identity*, 5 J. EMPIRICAL LEGAL STUDS. 713, 745 (2008); Cherie Metcalf, *Property Law Culture: Public Law, Private Preferences and the Psychology of Expropriation*, 39 QUEEN'S L.J. 685, 726 (2014).

that the purpose for which property is to be taken determines people's attitudes.<sup>24</sup> Overall, it seems fair to stipulate that both factors matter, especially for marginal cases.

Indeed, when land is taken from the poor for the purposes of economic development, there is a broad consensus that it violates rights.<sup>25</sup> This consensus is broader and more bipartisan than with other contested constitutional matters.<sup>26</sup>

### *B. Are Legislation and Judicial Interventions the Only Ways to Limit the Abuse of Discretionary Powers?*

Fueled by the intensive media coverage,<sup>27</sup> a strong legislative backlash ensued.<sup>28</sup> All but five states enacted post-*Kelo* reforms to their eminent-domain laws or constitutions.<sup>29</sup> Most of these legislative reforms took place soon after the decision,<sup>30</sup> echoing the majority's invitation to states to place "further restrictions on [their] exercise of the takings power."<sup>31</sup> *Kelo* has therefore resulted in more new state legislation than any other Supreme Court decision in American history.<sup>32</sup>

24. See, e.g., Strother, *Beyond Kelo*, *supra* note 18, at 354 (finding that the purpose for which property is to be taken exerts a substantively large and highly significant effect on respondents' attitudes toward the taking and again shows no effects for either the type of property taken or the imagined ownership treatment).

25. Logan Strother & Daniel Bennett, *Racial Group Affect and Support for Civil Liberties in the United States*, 11 POLS., GRPS & IDENTITIES 287, 295 (2023).

26. *Id.* at 292, 293, 295 (finding that 50% of respondents view the denial of a demonstration permit as a violation of the rights of the would-be demonstrators; 75% of respondents view a governmental act disarming an anti-government organization as a rights violation; and 90% of respondents view the taking of private property from the poor for the purposes of economic development as a rights violation). For President Trump's views on *Kelo*, see David Boaz, *Donald Trump's Eminent Domain Love Nearly Cost a Widow Her House*, GUARDIAN (Aug. 19, 2015), <https://www.theguardian.com/commentis-free/2015/aug/19/donald-trumps-eminant-domain-nearly-cost-widow-house> [<https://perma.cc/V7R2-G2KC>].

27. On the effect of media coverage on legislative backlash, see ZILIS, *supra* note 18; Strother, *Beyond Kelo*, *supra* note 18, at 344; and Strother, *The Supreme Court in American Politics*, *supra* note 18, at 87.

28. For comparison, see legislative efforts that followed the Supreme Court's signaling to state governments with respect to abortion policy in *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989), discussed by Marshall H. Medoff, *The Determinants and Impact of State Abortion Restrictions*, 61 AM. J. ECON. & SOCIO. 481, 482 (2002).

29. See Dana Berliner, *Looking Back Ten Years After Kelo*, 125 YALE L.J.F. 82, 84, 88 (2015) (counting only forty-four states making statutory or constitutional improvements, although she acknowledges that a forty-fifth state, New Jersey, did pass a statute purporting to increase eminent-domain protections).

30. SOMIN, *supra* note 20, at 179.

31. *Kelo v. City of New London*, 545 U.S. 469, 489 (2005).

32. SOMIN, *supra* note 20, at 135-36; Andrew P. Morriss, *Symbol or Substance? An Empirical Assessment of State Responses to Kelo*, 17 SUP. CT. ECON. REV. 237, 238-39 (2009); Nadler et al., *supra* note 19, at 287; Jeffrey E. Cohen & Charles Barrilleaux, *Public Opinion, Interest Groups, and Public Policy Making: Abortion Policy in the American States*, in UNDERSTANDING THE NEW POLITICS OF ABORTION 203, 208 (Malcolm L. Goggin ed., 1993).

New York State is one of several states that did not amend its laws.<sup>33</sup> In New York, at least seventeen post-*Kelo* bills to reform the state's Eminent Domain Procedure Law (EDPL) and constitution were proposed.<sup>34</sup> However, none of these bills have been enacted, and the EDPL and the state's constitution have not been reformed.<sup>35</sup> It could be that these efforts have consistently failed because New York City wants to preserve its powers to condemn for broadly defined public purposes. This desire was documented, for instance, in its amicus curiae brief submitted in *Kelo*, where it considered such power as “a crucial tool in the City's ability to meet its future, and create balanced and prosperous neighborhoods.”<sup>36</sup>

Furthermore, New York's lasting avoidance from adopting legislation comports with López, Jewell, and Campbell's model from 2009, according to which the decision to enact a meaningful restriction on the eminent-domain power is a function of political-economy measures: states with more economic freedom, greater value of new housing construction, and less racial and income inequality were more likely to have enacted stronger restrictions.<sup>37</sup>

According to common belief, a lack of restrictions by state legislators led local governments, particularly in New York City, to proceed as they did before the decision, and even expand their aggressive use of unrestricted powers for economic-development purposes.<sup>38</sup> Institute for Justice advocates argued that the city has “responded with a binge of takings for private development” and that “City officials appear to be acting as if no one will be looking over their shoulder.”<sup>39</sup> Berliner argued that “the use of eminent domain in New York” since *Kelo* has been “by far the worst,” and can be characterized as “a parody of takings horror stories.”<sup>40</sup>

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33. Note that while Oklahoma too has not turned to legislation, it was argued that its supreme courts ruled more stringently following *Kelo*. SOMIN, *supra* note 20, at 182-83; Bd. of Cnty. Comm'rs v. Lowery, 136 P.3d 639, 650-52 (Okla. 2006).

34. See, e.g., S. 5936, 228th Sess. (N.Y. 2005); S. 5961, 228th Sess. (N.Y. 2005); S. 7358, 229th Sess. (N.Y. 2006). For more details, see REPORT OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON EMINENT DOMAIN, N.Y. STATE BAR ASS'N 3 (2007), [https://nysba.org/wp-content/uploads/2020/02/ED\\_Task\\_Force\\_Final\\_Report\\_June07\\_2\\_.pdf?srsltid=AfmBOoo1\\_Ly2SyZCbZHKR49i04DG-kzLsH19YmK0XwSc7MZpZ4gxgs8](https://nysba.org/wp-content/uploads/2020/02/ED_Task_Force_Final_Report_June07_2_.pdf?srsltid=AfmBOoo1_Ly2SyZCbZHKR49i04DG-kzLsH19YmK0XwSc7MZpZ4gxgs8) [<https://perma.cc/T337-C44Y>].

35. N.Y. CONST. art. I, § 7 (“Private property shall not be taken for public use without just compensation.”); N.Y. EM. DOM. PROC. LAW § 101 (McKinney 2025) (establishing, since 1977, “the exclusive procedure by which property shall be acquired by exercise of the power of eminent domain in New York state”).

36. Brief Amicus Curiae of the City of New York in Support of Respondents at 5, *Kelo*, 545 U.S. 469 (No. 04-108).

37. Edward J. López, R. Todd Jewell & Noel D. Campbell, *Pass a Law, Any Law, Fast: State Legislative Responses to the Kelo Backlash*, 5 REV. L. & ECON. 101, 131 (2009).

38. For review of these claims, see Ronit Levine-Schnur, *Is the Government Exhausting Its Powers? An Empirical Examination of Eminent Domain Exercises in New York City Pre- and Post-Kelo*, 17 REGUL. & GOVERNANCE 449, 451-53 (2023); Dana Berliner, *Public Power, Private Gain: A Five-Year, State-By-State Report Examining the Abuses of Eminent Domain*, INST. FOR JUST. 144 (Apr. 2003), [https://ij.org/wp-content/uploads/2015/03/ED\\_report.pdf](https://ij.org/wp-content/uploads/2015/03/ED_report.pdf) [<https://perma.cc/MHN3-GT23>].

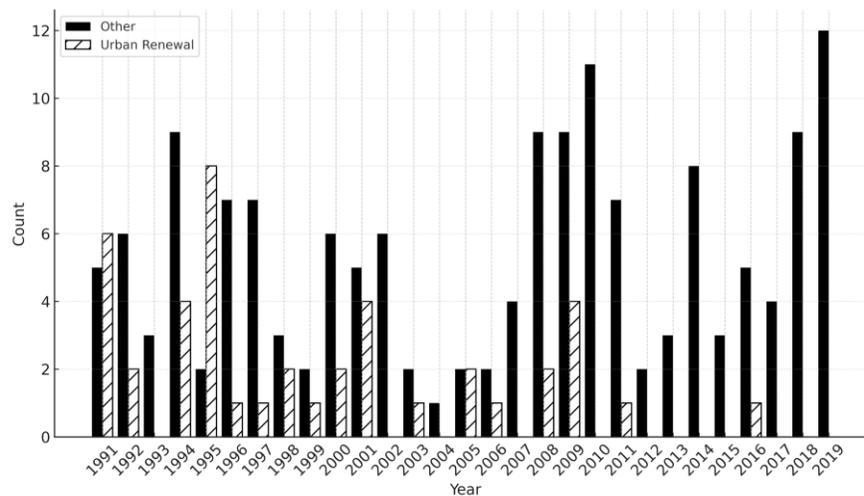
39. Robert McNamara, *Stacking the Deck: New York's Unique Approach to Eminent Domain*, 4 ALB. GOV'T L. REV. 286, 296, 297 (2011).

40. Berliner, *supra* note 38, at 89.

Those who claim that New York has expanded its use of eminent domain aggressively try to find support in both New York state courts and the Second Circuit's decisions in two high-profile cases of takings in New York.<sup>41</sup> Such claims were also recently cited by petitioners in *Bowers*, where they argued that New York courts have been more lax than those of other states in reviewing private-to-private transfers after *Kelo*, going as far as holding that any private-to-private transfer survives constitutional scrutiny so long as the condemner can articulate some theoretical public benefit.<sup>42</sup>

However, an empirical analysis of New York City's actual takings practices, which one of the authors conducted, finds that *Kelo* led to a dramatic policy shift even though legislative and judicial restraints were missing, an effect which lasted long after the issue lost popular attention.<sup>43</sup> The study relied on a unique dataset compiled from eminent-domain exercises in New York City over a twenty-nine-year period. The data includes the purpose of each expropriation (e.g., traditional public use, such as roads and schools, versus economic-development projects like private housing and commercial ventures). Figure 1, below, presents the number of taking projects per year between 1991 and 2019, grouped by their purpose.

Figure 1: Takings in New York City Between 1991 and 2019 by Project, by Year, and by Purpose<sup>44</sup>



The study documented a ninety-percent decrease in the likelihood of takings for economic-development purposes after the court ruling. At the same time,

41. *Goldstein v. N.Y. State Urb. Dev. Corp.*, 921 N.E.2d 164 (N.Y. 2009); *Goldstein v. Pataki*, 516 F.3d 50 (2d. Cir. 2008) (rejecting a pretextual takings claim); *Kaur v. N.Y. State Urb. Dev. Corp.*, 933 N.E.2d 721 (N.Y. 2010); see Ilya Somin, *Let There Be Blight: Blight Condemnations in New York After Goldstein and Kaur*, 38 FORDHAM URB. L.J. 1193 (2010).

42. Petition for Writ of Certiorari, *supra* note 13, at 1241.

43. Levine-Schnur, *supra* note 38.

44. *Id.*

overall eminent-domain activity did not decline significantly; on average, each year saw a modest six to seven development projects throughout the city's boroughs both before and after *Kelo*. In tandem, these facts suggest that although the city continued using its eminent-domain powers, it did not escalate its use for controversial purposes; instead, the city began to prioritize takings for pure public uses, even though it had the power to implement economic-development projects.<sup>45</sup>

The findings refute the hypothesis that under no constitutional impediment to their power, city officials will become more aggressive in their eminent-domain practices. To the contrary, the data shows that the Court's decision to approve takings for economic-development projects, which was followed by extensive public debate but no legislative reform in New York, had no long-term observable positive effect on the government's engagement in such takings. New York City did not show a bigger appetite for economic-development takings after the decision, even though New York State denied the Court's invitation to the states to discourage private-to-private, urban-renewal takings through legislation.

Obviously, the findings do not by themselves explain why the incidence of urban-renewal projects dropped over time. Besides the potential effect of revealed public preferences, one could also consider other, practical explanations. One such explanation might be that the city simply completed most of the feasible urban-renewal projects by the time the Court decided *Kelo*, so the need for such projects naturally died out. Alternatively, external limitations, such as extended designation of historic districts,<sup>46</sup> might have prohibited further urban-renewal projects. Even if these explanations hold, in either case, urban-renewal projects' incidence would have fallen with or without *Kelo*. Whether this trend is attributable to revealed public preferences or practicality reasons, the data *refutes* the assertion that the influence of the permissive decision was dramatic in pushing the city to expand its use of its eminent-domain power. Actual practice of land condemnations, even where no meaningful restrictions applied, has been balanced and limited—limited in scope compared to that which is legally permissible.

We can thus conclude that local politicians and public officials react accordingly to public needs and revealed preferences and that, when employing their discretionary powers, they take into account a variety of practical and political considerations. Before further exploring this conclusion, we now turn to an exploration of the economic response to local-government takings.

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45. *Id.*

46. INGRID GOULD ELLEN, BRIAN J. MCCABE & ERIC EDWARD STERN, NYU FURMAN CTR. FOR REAL EST. & URB. POL'Y, FIFTY YEARS OF HISTORIC PRESERVATION IN NEW YORK CITY 8-9 (Mar. 7, 2016), [https://furmancenter.org/files/NYUFurmanCenter\\_50YearsHistoricPresNYC\\_7MAR2016.pdf](https://furmancenter.org/files/NYUFurmanCenter_50YearsHistoricPresNYC_7MAR2016.pdf) [<https://perma.cc/38WK-YZPB>].

## II. Economic Response

### A. Existing Literature

To satisfy the public-use requirement of the Fifth Amendment, the Supreme Court in *Kelo* invoked the idea of “spillover benefits” as the rationale for takings. As explained above, already in the first sentence of the Court’s opinion, the majority cited the Supreme Court of Connecticut’s statement that the plan “was ‘projected to create in excess of 1,000 jobs, to increase tax and other revenue.’”<sup>47</sup>

The Court’s reasoning raises questions. Should we trust these (potentially overoptimistic) assertions for economic growth? Is there any empirical support for such assertions? Professors Thomas Miceli and Kathleen Segerson attempted to assess this question from a purely theoretical point of view. Their analysis indicates that using the eminent-domain power can be welfare enhancing and welfare reducing, depending on the circumstances. They show that a necessary condition for the use of eminent domain to be welfare improving is a pre-existing imperfection in the housing and/or labor markets. That imperfection theoretically justifies corrective government action. Even when such a distortion is present, however, the use of eminent domain is imperfect in that, practically, it may or may not succeed in increasing welfare relative to the status quo.<sup>48</sup> And without such a distortion, market dynamics lead to efficient transactions, so “interference” in the market in the form of private takings necessarily reduces social welfare.

Empirically validating Miceli’s and Segerson’s theory is a complicated task, first and foremost due to the lack of available data on actual takings. As one scholar puts it, “eminent domain has proven difficult to study due to severe data constraints.”<sup>49</sup> Professors Carrie Kerekes and Dean Stansel provided, to the best of our knowledge, the only attempt to test the spillover-benefits theory based on actual numbers of eminent-domain takings.<sup>50</sup> They found no evidence that the number of takings for economic purposes increases tax revenue in a state, but they did find some evidence of a negative relationship between takings and future tax-revenue growth. However, their analysis was done at the state level only. To better assess the economic effects of urban-renewal takings, we turn again to New York City.

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47. *Kelo v. City of New London*, 545 U.S. 469, 472 (2005).

48. Thomas J. Miceli & Kathleen Segerson, *Assessing Kelo’s Legacy: Do Increased Taxes and New Jobs Justify Use of Eminent Domain?*, 63 J REAL EST. FIN. & ECON. 161, 174 (2021); see also Edward Glaeser, *They Can Take It if They Want It*, WALL ST. J. (July 24, 2015), <https://www.wsj.com/articles/they-can-take-it-if-they-want-it-1437767638> [<https://perma.cc/UT9E-B9TW>] (arguing that “the use of tax breaks and eminent domain to lure large employers to declining cities is almost always an error”).

49. Carl Kitchens, *The Use of Eminent Domain in Land Assembly: The Case of the Tennessee Valley Authority*, 160 PUB. CHOICE 455, 456 (2014).

50. Carrie B. Kerekes & Dean Stansel, *Takings and Tax Revenue: Fiscal Impacts of Eminent Domain*, 12 REV. L. & ECON. 275, 280-81 (2016).

*B. Empirical Evidence from New York City*

The economic rationale for eminent domain in urban-renewal projects has long been that takings for economic development generate substantial spillover benefits, including increased employment, business growth, and overall economic revitalization. However, empirical research on the actual economic effects of such condemnations at the city level remains limited. We address this gap by conducting a data-driven assessment of eminent domain's economic consequences in urban-redevelopment contexts.<sup>51</sup>

We refer to our unique dataset of eminent-domain exercises in New York City,<sup>52</sup> incorporating parcel-level employment and business data derived from the Your Economy Time Series (YTS) database.<sup>53</sup> The YTS database delivers exact geographic coordinates for business establishments, enabling detailed analysis. By including sole-proprietor establishments, YTS provides broader coverage than conventional government employment data does—because government employment data excludes businesses without paid employees. The database provides annual coverage from 1997 to 2024.

To estimate the causal impact of takings for economic development, we systematically test for spillover effects across multiple geographic scales, examining areas up to eight-hundred meters from project sites to capture potential neighborhood-wide impacts. To isolate the causal effect of takings, we compare parcel-level economic outcomes in and around takings locations to nearby parcels in New York City where no takings for economic development occurred. Across all specifications testing different geographic definitions and comparison groups, we find no statistically detectable effects on employment or business-establishment counts.

As a starting point, we compare employment and business-establishment counts in parcels that were directly involved in redevelopment takings to the counts for parcels located between two-hundred and four-hundred meters away from the redeveloped areas. To explore the possibility that redevelopment takings “spillover” to other nearby parcels, we extend the analysis and compare both redeveloped parcels and parcels within two-hundred meters to those further away. It is important to note that the comparison parcels have never been directly involved in any project—urban renewal or otherwise—and are not located within two-hundred meters of any project initiated after 1990.

The estimate for employment indicates that employment in parcels with urban-renewal projects *decreased* slightly after the projects were initiated relative to the comparison parcels. The difference-in-difference estimate also indicates that business-establishment counts declined slightly (on average) in the treatment

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51. Ronit Levine-Schnur & Gary Wagner, Takings for Economic Development Have No Economic Effect: An Empirical Analysis of Eminent Domain Exercises in New York City (unpublished manuscript) (on file with authors).

52. Levine-Schnur, *supra* note 38, at 456.

53. See YOURECONOMY, <https://youreconomy.org/yts-database.html> [<https://perma.cc/ML8Z-KVUX>].

parcels, but neither the employment nor business-establishment effects are statistically different from zero. We find similar effects in the extended analysis that compares economic outcomes in parcels directly impacted by urban-renewal projects *plus* parcels within two-hundred meters. Consistent with the analysis limited to parcels directly impacted, there is no evidence of a statistically significant difference in employment or business-establishment counts when the size of the treatment group is extended.

Thus, our empirical analysis finds no statistically significant evidence that eminent domain for economic development yields meaningful economic benefits. Specifically, we find that no significant increases in employment levels were observed within affected areas relative to the control area and that the number of business establishments remained unchanged. These findings indicate that takings for urban-development purposes do not stimulate local business growth.

We thus find that no detectable positive spillover effects were present in adjacent areas, undermining the argument that redevelopment takings catalyze broader economic expansion. The absence of measurable economic benefits we identify raises fundamental questions about the use of eminent domain as a tool for economic development. The findings suggest that projections of spillover benefits may be overly optimistic and lack empirical validation.

### III. Rethinking Judicial Roles: Normative Implications

Based on the original evidence presented here, with its limitation being that it is representative only of the New York City case, one could argue that local governments understand politics but not economics. On one hand, legislative or judicial restrictions are not necessary to effectuate policy shifts; revealed public preferences can be sufficient. On the other hand, existing judicial review does little to limit local governments' potentially overoptimistic economic projections in development plans. These findings suggest an alternative vision for judicial review of economic-development takings. If courts were willing to enforce rigorous procedural safeguards when reviewing economic-development takings, they could both (1) foster public dialogue by bringing relevant information to light and (2) restrain policymakers' overoptimistic economic expectations. Rather than focusing on overturning *Kelo*, the judiciary should consider embracing its role as an agora and enforcer of procedural safeguards.

#### A. Courts as Agoras

The term *agora* refers to the central public space in ancient Greek city-states, most notably Athens, where citizens gathered to trade goods, share information, and deliberate on matters of public concern. Far more than a marketplace, the agora functioned as the physical and symbolic heart of civic life—a place where political discourse, legal announcements, philosophical debate, and

public decision-making all occurred in full view of the community.<sup>54</sup> In this Article, we invoke the agora not merely as a metaphor for deliberation, but as a historically grounded analog for institutions that foster open, participatory governance. By framing courts as agoras, we emphasize their potential to serve as public-facing spaces where competing interests and justifications are aired transparently and where democratic legitimacy is reinforced through procedural openness and contestation.

Many of *Kelo's* critics assumed that public authorities would not respond to revealed public preferences alone. This assumption seems to rely on two grounds. First, it relies on a specific political theory of how democracy functions. As Professor Richard Posner explained, “when the Court declines to invalidate an unpopular government power, it tosses the issue back into the democratic arena,” where legislative reactions will serve as “social experiments from which much will be learned about the proper limits on eminent domain.”<sup>55</sup> Meaning, when politicians *learn* something, they speak the language of legislation. And second, the assumption relies on the bedrock perception of public officials as responding only to direct budgetary considerations when deciding on matters such as expropriation.<sup>56</sup> Thus, for instance, the perception is that governments would opt to take properties of lesser value, the compensation for which is concomitantly lower.<sup>57</sup>

This assumption, we contend, overlooks potential shifts in policymakers' approaches to takings that occur even absent legislative or judicial restrictions. Local officials (who usually possess high degrees of knowledge and institutional memory) are prone to be affected by popular views, even if those views are not strictly formalized in legislation. Therefore, observing differences in legislation or in legislative responses is insufficient to fully capture the consequences of public debate about takings.<sup>58</sup> The need to focus on the executive's response is in line with current political theory centering the growing trend of executive aggrandizement.<sup>59</sup>

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54. Homer A. Thompson, *The Agora at Athens and the Greek Market Place*, 13 J. SOC'Y ARCHITECTURAL HISTORIANS 9, 9 (1954); Astrid Lindenlauf, *Agora in the Greek World*, in ENCYCLOPEDIA OF GLOBAL ARCHAEOLOGY 69, 69 (2014); *Agora*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/agora> [<https://perma.cc/T8EU-HWX4>].

55. RICHARD A. POSNER, HOW JUDGES THINK 319 (2008).

56. Lawrence Blume, Daniel L. Rubinfeld & Perry Shapiro, *The Taking of Land: When Should Compensation Be Paid?*, 99 Q.J. ECON. 71, 88 (1984).

57. Yun-chien Chang, *Empire Building and Fiscal Illusion? An Empirical Study of Government Official Behaviors in Takings*, 6 J. EMPIRICAL LEGAL STUDS. 541, 542 (2009); Robert Innes, *Takings, Compensation, and Equal Treatment for Owners of Developed and Undeveloped Property*, 40 J.L. & ECON. 403, 427 (1997).

58. Geoffrey Turnbull, Robert Salvino & Michael Tasto, *Using Eminent Domain for Economic Development: Does It Increase Private Sector Employment?*, 14 REV. L. & ECON. 1, 3 (2017); Paul F. Byrne, *Have Post-Kelo Restrictions on Eminent Domain Influenced State Economic Development?*, 31 ECON. DEV. Q. 81, 82 (2017); Geoffrey K. Turnbull & Robert F. Salvino, *Do Broader Eminent Domain Powers Increase Government Size?*, 5 REV. L. & ECON. 785, 795 (2009).

59. Samuel Issacharoff, *Populism v. Democratic Governance*, in CONSTITUTIONAL DEMOCRACY IN CRISIS? 445, 450 (Mark A. Graber, Sanford Levinson & Mark Tushnet eds., 2018); Renata Uitz, *Courts and the Expansion of Executive Power: Making the Constitution Matter*, in THE EVOLUTION OF THE SEPARATION OF POWERS 85, 85 (David Bilchitz & David Landau eds., 2018);

The more expansive political theory that we offer here views government officials making takings decisions motivated by a variety of considerations—not only budgetary constraints, but also actual needs, fairness considerations, and anticipated public reaction.<sup>60</sup> This thesis is supported by a growing volume of empirical research,<sup>61</sup> which calls into question the contention that government officials, when exercising their eminent-domain power, act as narrow maximizers of self-interest who are exclusively motivated by budgetary constraints, specifically those created by compensation rules.<sup>62</sup>

If this is the case, what is then the role of courts? We argue they should serve as agoras: sites for constructing reasoned, transparent, and public debate. It is courts that are best suited to properly advance public hearings, where officials are required to account for their actions and prospects. While other forums may too serve the goal of advancing structured debate, courts are particularly suited to enforce procedural safeguards, as is explained below.

### *B. Courts as Enforcing Procedural Safeguards*

The assumption underlying *Kelo* that economic-development takings will yield substantial public benefits is largely based on governmental assertions about the expected goods rather than verifiable evidence. Courts have traditionally taken a deferential approach, accepting self-reported projected economic benefits as sufficient justification for takings, without requiring independent verification. We observe that there is a striking imbalance between the Court's reliance on the development plan in *Kelo* and the lack of procedural safeguards to ensure the viability of the projected economic benefits that such plans claim to generate. In *Kelo*, the Court explicitly distinguished between integrated development plans and isolated private-to-private transfers, stating that “one-to-one transfer[s] of property, executed outside the confines of an integrated development plan” were “aberrations” that “[c]ourts have viewed . . . with a skeptical eye.”<sup>63</sup>

However, this deference to the mere existence of a development plan was not accompanied by any judicial or procedural mechanism to verify whether the expected economic benefits were calculated in a reasonable manner. Courts accepted aspirational economic projections at face value and failed to impose institutional guardrails—such as requirements for independent reviews or

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Tarunabh Khaitan, *Executive Aggrandizement in Established Democracies: A Crisis of Liberal Democratic Constitutionalism*, 17 INT'L J. CONST. L. 342, 342 (2019).

60. Hans-Bernd Schäfer & Ram Singh, *Takings of Land by Self-Interested Governments: Economic Analysis of Eminent Domain*, 61 J.L. & ECON. 427, 450 (2018); Daryl J. Levinson, *Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs*, 67 U. CHI. L. REV. 345, 377 (2000).

61. Ronit Levine-Schnur & Gideon Parchomovsky, *Is the Government Fiscally Blind? An Empirical Examination of the Effect of the Compensation Requirement on Eminent Domain Exercises*, 45 J. LEGAL STUDS. 437, 463 (2016); Chang, *supra* note 57, at 580.

62. *See id.* at 542.

63. *Kelo v. City of New London*, 545 U.S. 469, 487 & n.17 (2005) (citing 99 Cents Only Stores v. Lancaster Redevelopment Agency, 237 F. Supp. 2d 1123 (C.D. Cal. 2001)).

economic-impact assessments—to assess procedurally whether these plans could deliver on their promises realistically.

This disconnect is particularly problematic given the findings of this study, which reveal that takings for economic purposes showed zero economic effect. The absence of measurable economic spillovers in such projects suggests that development plans should not automatically be equated with public benefits. Without employing procedural safeguards to assure the soundness of economic projections, eminent domain remains vulnerable to political influence and speculative decision-making, rather than being grounded in verifiable economic reasoning. Courts should reconsider their deferential approach—but only in terms of procedural safeguards, given that they cannot themselves assess the economic viability. Thus, courts could require independent validation of argued-for economic benefits and play a more active role in ensuring procedural integrity rather than merely assessing whether a taking satisfies broad public-use criteria.

To strengthen the decision-making process and prevent reliance on speculative projections, legislators should consider enacting and courts should enforce procedural safeguards modeled, for instance, after the New York State Environmental Quality Review Act (SEQRA).<sup>64</sup> SEQRA requires state and local agencies to assess the environmental impacts of proposed projects before proceeding, ensuring that decisions are based on comprehensive and evidence-backed evaluations rather than untested assumptions. A similar framework could be adapted to economic projections in eminent-domain cases to introduce greater accountability and transparency.

Courts could ensure that economic-impact assessments for takings follow a structured, independent review process, similar to SEQRA's environmental assessments, through the following safeguards:

- **Independent Economic Review**—Just as SEQRA mandates environmental-impact statements (EIS) before approving development projects, independent third-party economic assessments to evaluate whether the claimed benefits of a taking are supported by verifiable data should be required. This would prevent local governments from justifying expropriations based on politically motivated or overly optimistic forecasts.
- **Burden of Proof on Government Entities**—SEQRA requires agencies to justify their actions by demonstrating how environmental impacts will be mitigated. Similarly, courts could shift the burden onto local governments to prove, using empirical data and expert analysis, that the anticipated economic benefits of a taking are realistic, proportionate, and substantial.
- **Judicial Scrutiny of Development Plans**—Courts should assess whether the claimed public benefits are specific, measurable, and achievable, rather than accepting vague promises of economic growth. Similar to how SEQRA requires an EIS to outline mitigation measures, courts should require detailed economic-feasibility studies to assess whether a

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64. New York State Environmental Quality Review Act (SEQRA), N.Y. COMP. CODES R. & REGS. tit. 6, § 617.1 et seq. (2023).

comprehensive development plan contains verifiable commitments to job creation, infrastructure improvements, or other long-term economic gains.

- Procedural Review of Public Participation—SEQRA mandates public involvement in environmental-review processes, ensuring that affected communities have a voice in decision-making. Courts should extend this principle to economic projections in eminent-domain cases, ensuring that communities are given meaningful opportunities to contest speculative economic justifications before property is taken.

By incorporating these procedural safeguards, courts can strike a balance between respecting local-government discretion and preventing the abuse of eminent domain for speculative economic-development projects. This approach would not require overturning *Kelo* but would instead refine its application by ensuring that economic justifications are subject to rigorous review rather than accepted at face value.

Ultimately, by assuming a procedural oversight role, courts can help restore public confidence in eminent-domain practices, ensuring that economic development takings serve legitimate public interests rather than speculative gains. SEQRA provides a well-established model for requiring empirical, evidence-based decision-making, which should be adapted to the economic justifications for eminent domain to prevent misguided takings based on flawed economic predictions.

To be sure, modeling procedural safeguards for economic projections on environmental-impact assessments is not without potential costs. Critics of environmental-review frameworks like SEQRA often point to delays, litigation risks, and increased development costs as barriers to urgently needed projects—particularly in cities like Los Angeles or San Francisco, where housing shortages are acute, or in post-disaster contexts, where swift reconstruction is imperative. Indeed, California just rolled back its environmental regulation, exempting from review most urban infill housing and advanced manufacturing facilities.<sup>65</sup> These concerns merit attention. However, our proposal does not seek to replicate the full regulatory apparatus of environmental law but to adapt its core logic—*independent review, transparency, and evidence-based justification*—to guard against speculative economic claims that currently escape scrutiny altogether. Procedural oversight need not require full-scale economic-impact statements for every project; rather, it should be proportionate to the scale and claimed public benefits of the taking. In this sense, the proposed safeguards aim to balance accountability with efficiency, offering a minimally invasive tool to promote the responsible and democratically legitimate use of the eminent-domain power.

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65. Cal. Assemb. B. 130, 2025-2026 Reg. Sess. (enacted June 30, 2025); Cal. Sen. B. 131, 2025-2026 Reg. Sess. (enacted June 30, 2025).

*C. Should Kelo Be Overturned?*

We have just argued that it is a mistake to think that, without legislative or judicial strict limitations, public officials will ignore revealed public preferences. A recent example that was advanced by anti-*Kelo* supporters is worth attention. In the *Bowers* case, the Supreme Court refused to intervene in the New York Industrial Development Agency of Oneida County's decision to condemn a commercial and mostly vacant plot of land.<sup>66</sup> The condemned land is purposed under restrictive covenant to serve as a parking facility for the benefit of members of the public visiting a private healthcare facility and its employees, as well as for the general public outside business hours.<sup>67</sup> The designation of the parcel as a parking lot is, according to the County, a component of the comprehensive development plan for an Integrated Health Campus in the downtown core of the City of Utica. The Campus is supposed to include a hospital, a medical office building, a central utility plant, parking, a pedestrian bridge, and a helipad.

The petitioner, who purchased the parcel, argues that taking his land under these circumstances justifies the overturning of *Kelo*. Notably, the respondents argue that the petitioner is nothing but a competing developer, who purchased the lot as an investment with the hope to amend the plan and establish a medical office building there.<sup>68</sup>

Applying the research-based knowledge to the fact of this case reveals a couple of conclusions. First, the two relevant variables that affect public opinion work to the detriment of the petitioner. The type of property being taken is a mostly vacant parcel of land in partial commercial use, and the type of purpose the taking intends to serve is closer on the spectrum to the public-use pole than to the for-profit one. As a way of demonstration, Figure 2 depicts the lot condemned in this case against that of Ms. *Kelo's*.

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66. See *Bowers Dev., LLC v. Oneida Cnty. Indus. Dev. Agency*, 224 A.D.3d 1240, 1241-42 (N.Y. App. Div. 2024) (mem.).

67. See Joint Brief of Respondents at 8-9, *Bowers Dev., LLC v. Oneida Cnty. Indus. Dev. Agency*, No. OP 22-00744 (N.Y. App. Div. Aug. 31, 2022), 2022 WL 17227964 (referring to a Declaration of Restrictive Covenant, recorded in the Office of the Oneida County Clerk as Instrument No. 2024-007339).

68. *Id.* at 4-5.

Figure 2: The Lots Condemned in *Kelo* and *Bowers*

The fact that the petitioner is a land developer who purchased the parcel (or attempted to do so) for investment should also be accounted for. In *Murr v. Wisconsin*,<sup>69</sup> the Supreme Court held that the particular characteristics of landowners can be taken into consideration when determining whether their reasonable expectations have been infringed by regulation. That approach could be applied to petitioners' characteristics as well.

Furthermore, judicial intervention in local governments' decision-making is not mandatory in order to effect change. If local communities view the taking in this case as an abusive use of power, local politicians will hear them, and the politicians will correct themselves in future decisions. Overturning *Kelo* to assist *Bowers* might prevent such democratic dialogue. Finally, unlike in *Kelo*, the comprehensive plan that lies as the basis for the *Bowers* condemnation is *not* targeting vague economic benefits to the city, in terms of increased tax revenues or employment rates. Indeed, as our research shows, we should suspect such intentions without proper procedural safeguards. In this case, the plan aims to provide public goods—medical services. The provision of these services is partially public and partially commercial, but they are actual services and not amorphous “economic benefits,” and therefore even the procedural safeguards we pointed at are less relevant.

#### *D. Kelo's Aftershocks: Doctrinal, Political, and Policy Reverberations*

Nearly two decades on, *Kelo v. City of New London* continues to reverberate across legal and political discourse. Its doctrinal permissiveness—allowing takings for economic development even when the immediate beneficiaries are private entities—sparked not only widespread public backlash but also a historic wave of legislative activity. Within five years of the decision, more than forty states had enacted reforms to constrain eminent-domain powers, making *Kelo* one of the most consequential decisions in terms of political response.

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69. *Murr v. Wisconsin*, 582 U.S. 383, 393 (2017).

Yet the long-term effects of *Kelo* have been uneven, both doctrinally and practically. Some state courts have interpreted the decision narrowly or refused to follow its deferential reasoning, while others—like in New York—have absorbed its logic fully, permitting private-to-private transfers with only minimal scrutiny as long as some theoretical public benefit can be articulated. In this respect, *Kelo* has deepened divergence across jurisdictions, contributing to an increasingly fractured national landscape of eminent-domain jurisprudence.

At the same time, our findings suggest that *Kelo's* most powerful consequences may lie outside formal legal doctrine. As our empirical analysis of New York City demonstrates, public opposition alone—without new legislation or judicial intervention—was sufficient to alter local takings policy. This suggests that *Kelo* functioned not simply as a constitutional holding but as a catalyst for political and institutional recalibration. Local governments internalized the message of public outrage, not judicial command, leading to a dramatic reduction in takings for economic development. In this sense, *Kelo* exposed a crucial and underappreciated dimension of democratic governance: that legal permissibility does not always translate into political viability.

However, *Kelo* entrenched a mode of reasoning in which speculative economic projections were allowed to justify invasive exercises of sovereign power. The assumption that development plans inherently generate public benefit—so long as they are framed as comprehensive—has remained largely untested by courts. Our empirical findings challenge this reasoning directly: the takings we studied produced no measurable gains in employment or business activity, undermining the core rationale that animated the majority's reasoning in *Kelo*, which found the “comprehensiveness” of the development plan a sufficient basis for judicial deferral.

Thus, the *Kelo* decision stands as both a doctrinal inflection point and a cautionary tale. It demonstrates how expansive legal doctrines, if untethered from empirical evidence and public accountability, can undermine public trust and political legitimacy. The case's enduring impact—on legislation, judicial doctrine, and the behavior of local governments—offers a crucial lens through which to assess not only what courts should allow, but what they should require. *Kelo* may not have broken eminent-domain jurisprudence, but it exposed its fault lines—between legality and legitimacy, between theoretical benefit and real-world consequence.

## **Conclusion**

This Article has critically examined the political and economic impact of *Kelo v. City of New London* by analyzing three decades of eminent-domain practices in New York City. Our empirical findings challenge two core implied assumptions underlying the *Kelo* decision: (1) that local governments require formal legislative or judicial constraints to refrain from aggressive economic-development takings and (2) that such takings generate substantial economic benefits. Contrary to these assumptions, our study demonstrates that public opposition

alone was sufficient to drive a significant policy shift, even in the absence of legal restrictions, while the promised economic spillover effects failed to materialize.

These findings hold important normative implications. They highlight the limitations of the view that legislative reforms are the sole mechanism for constraining eminent-domain power. While most states enacted post-*Kelo* reforms, our study shows that even in jurisdictions without such measures—such as New York City—public officials may internalize public opposition and voluntarily abandon controversial takings. This suggests that public engagement, transparency, and procedural oversight can be just as effective as legislative and judicial prohibitions in shaping eminent-domain policy. And because local governments may struggle to accurately project economic returns, procedural and political constraints are particularly important.

Finally, our findings support a different role for courts in the context of eminent domain. Rather than serving merely as gatekeepers who determine the constitutional validity of a taking, courts should function as agoras, forums for public debate, and as imposers of procedural safeguards ensuring that economic assessments by politicians are independent and evidence-based, to prevent reliance on speculative or overly-optimistic projections.

As calls for revisiting *Kelo* endure,<sup>70</sup> the empirical evidence presented in this Article suggests where the conversation should turn. The debate over eminent domain should move beyond a simple dichotomy of judicial deference versus judicial intervention. Instead, the focus should be on institutional mechanisms that promote transparency, democratic accountability, and procedural safeguards for accurate economic assessments.

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70. Ilya Somin, *Supreme Court Refuses to Hear Case That Might Have Led to Overruling of Kelo v. City of New London*, REASON (Mar. 24, 2025), <https://reason.com/volokh/2025/03/24/supreme-court-refuses-to-hear-case-that-might-have-led-to-overruling-of-kelo-v-city-of-new-london> [<https://perma.cc/3QL2-C867>].