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"PUBLIC USE" BEFORE KELO

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"PUBLIC USE"

- MOST TAKINGS ISSUES ARE OVER MONEY – I.E., "JUST COMPENSATION"
- FIFTH AMENDMENT TO THE FEDERAL CONSTITUTION ALSO PROHIBITS TAKINGS **"FOR PUBLIC USE"** WITHOUT JUST COMPENSATION
- EVEN IF MONEY IS PAID, THERE ARE SOME LAND TAKINGS THAT MAY STILL NOT OCCUR, BECAUSE THEY ARE NOT FOR A "PUBLIC USE"
- "PUBLIC USE" CLAUSE IS ALSO IN MOST STATE CONSTITUTIONS AS WELL
- U.S. SUPREME COURT HAS TAKEN DEFERENTIAL APPROACH TO PUBLIC USE OVER THE LAST FIFTY YEARS



BERMAN V. PARKER 348 US 26 (1954)

- FACTS
 - D.C. URBAN RENEWAL PLAN
 - SLUM CLEARANCE
 - WELL-MAINTAINED STRUCTURE IN MIDST OF BLIGHT
 - JUST COMPENSATION TENDERED

BUG
LAW

BERMAN V. PARKER 348 US 26 (1954)

• ISSUE

• OWNER CLAIMED NO PUBLIC USE, AS PROPERTY AGGREGATED AND SOLD BY RENEWAL AUTHORITY

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BUG
LAW

BERMAN V. PARKER 348 US 26 (1954)

• SUPREME COURT OPINION

• CONGRESSIONAL DECISION "WELL-NIGH CONCLUSIVE" IN SOCIAL LEGISLATION AND EMINENT DOMAIN

• URBAN RENEWAL PLAN FOR GENERAL AREA

• CONCEPT OF GENERAL WELFARE "BROAD AND INCLUSIVE" AND VALUES "SPIRITUAL AS WELL AS PHYSICAL" AND "AESTHETIC AS WELL AS MONETARY"

• REFLECTS NEW DEAL COURT WITH HANDS-OFF APPROACH TO LEGISLATIVE VALUE JUDGMENTS

• SLUM CLEARANCE WAS A "PUBLIC USE"

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BUG
LAW

HAWAII'S HOUSING AUTHORITY v. MIDKIFF, 467 U.S. 229 (1984)

• FACTS

• HISTORICAL LAND OLIGOPOLY – 49% OF LAND OWNED BY PUBLIC, ANOTHER 47% OWNED BY 72 LANDOWNERS AND 18 OWNED 40% OF ALL PRIVATE LAND

• MOST LAND LEASED

• STATE CONDEMNED LESSOR'S INTEREST AND FINANCED LESSEE PURCHASE THROUGH BOND SCHEME

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BUG
LAW

**HAWAI'I HOUSING AUTHORITY v.
MIDKIFF, 467 U.S. 229 (1984)**

- ISSUE
 - WAS LAND REDISTRIBUTION A "PUBLIC USE," EVEN IF COMPENSATION GIVEN?

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BUG
LAW

**HAWAI'I HOUSING AUTHORITY v.
MIDKIFF, 467 U.S. 229 (1984)**

- SUPREME COURT OPINION
 - "PUBLIC USE" FOUND UNLESS LEGISLATIVE CHOICE "PALPABLY UNREASONABLE"
 - IF HAWAI'I LEGISLATURE COULD HAVE BELIEVED SCHEME COULD ACHIEVE ITS PURPOSE, PUBLIC USE REQUIREMENT SATISFIED
 - BOTH BERMAN AND MIDKIFF INVOLVED PUBLIC ACQUISITION AND SALE OF LAND FROM ONE PRIVATE PARTY TO ANOTHER AND DEFERENCE TO LOCAL OR STATE POLICY DECISIONS


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
BUG
LAW


**SKEPTICISM OVER DEFERENCE
OF THE PUBLIC USE DOCTRINE IN
CERTAIN CASES**


THREE CASES ILLUSTRATE THE POINT


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
	<p><u>99 CENTS ONLY STORES V. LANCASTER REDEVELOPMENT AUTHORITY,</u> 237 F SUPP2d 1123 (C.D. CAL, 2001)</p>
	<ul style="list-style-type: none"> • FACTS • CIVIL RIGHTS ACTION TO ENJOIN CITY AGENCY FROM TAKING RETAIL STORE SITE LEASE TO ALLOW EXPANSION BY MAJOR TENANT (COSTCO) – STRONG POLITICAL PRESSURE



	<p><u>99 CENTS ONLY STORES V. LANCASTER REDEVELOPMENT AUTHORITY,</u> 237 F SUPP2d 1123 (C.D. CAL, 2001)</p>
	<ul style="list-style-type: none"> • ISSUE • WAS LAND ACQUISITION FOR PRIVATE USE – IS PUBLIC PURPOSE SUFFICIENT



	<p><u>99 CENTS ONLY STORES V. LANCASTER REDEVELOPMENT AUTHORITY,</u> 237 F SUPP2d 1123 (C.D. CAL, 2001)</p>
	<ul style="list-style-type: none"> • HOLDING • ACQUISITION PROCEEDINGS "PRETEXTUAL" (NO BLIGHT REMOVAL) SO NO DEFERENCE • NO "FUTURE BLIGHT" PURPOSE UNDER CALIFORNIA LAW TO ALLOW TRANSFER OF MALL RETAIL SPACE TO COSTCO



BUG
LAW

**SOUTHWESTERN ILLINOIS DEVELOPMENT
AUTHORITY v. NATIONAL CITY ENVIORNMENTAL,**
119 Ill2d 225, 768 NE2d 1 (2002)

• FACTS

• ECONOMIC
DEVELOPMENT
AUTHORITY ACQUIRED
PRIVATE LAND FOR
TRANSFER TO
COMPANY FOR
MOTORSPORT FACILITY
PARKING

• COMPANY AGREED TO
PAY SWIDA'S
ACQUISITION COSTS

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BUG
LAW

**SOUTHWESTERN ILLINOIS DEVELOPMENT
AUTHORITY v. NATIONAL CITY ENVIORNMENTAL,**
119 Ill2d 225, 768 NE2d 1 (2002)

• ISSUES

• WAS LAND
NEEDED AND
WAS THERE A
"PUBLIC USE?"

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BUG
LAW

**SOUTHWESTERN ILLINOIS DEVELOPMENT
AUTHORITY v. NATIONAL CITY ENVIORNMENTAL,**
119 Ill2d 225, 768 NE2d 1 (2002)

• MAJORITY HOLDING

• ISSUE WAS NOT ULTIMATE
OWNERSHIP, BUT
WHETHER "PUBLIC
PURPOSE" PRESENT, A
JUDICIAL DETERMINATION

• COURT HAS DUTY TO
INQUIRE AS TO PUBLIC
PURPOSE

• NO OVERALL PARKING PLAN

• SWIDA SAID IT WOULD
CONDEMN FOR A PRICE AS
A "DEFAULT LAND BROKER"
FOR MOTORSPORT
COMPANY AND SAVE IT THE
COSTS OF OTHER
ALTERNATIVES

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BUG
LAW

**SOUTHWESTERN ILLINOIS DEVELOPMENT
AUTHORITY v. NATIONAL CITY ENVIORNMENTAL,**
119 Ill2d 225, 768 NE2d 1 (2002)

• DISSENT

• MAJORITY DECISION
INCONSISTENT WITH
PUBLIC AUTHORITY
DEFERENCE UNDER
BERMAN AND MIDKIFF

• ILLINOIS LEGISLATURE
AUTHORIZED SUCH
ACQUISITIONS AND
DISPOSALS OF LAND

• COURTS SHOULD NOT
SECOND-GUESS AGENCY
ECONOMIC DEVELOPMENT
ACTIONS

• SUPPORTED BY STRONG
EVIDENCE

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BUG
LAW

COUNTY OF WAYNE v. HATHCOCK,
684 NW2d 765 (Mich., 2004)

• FACTS

• STATE CONSTITUTION
ISSUE – “PUBLIC USE”
WHERE DEPRESSED
HOME RULE COUNTY
SOUGHT ECONOMIC
REDEVELOPMENT FOR
JOBS AND PUBLIC
REVENUE

• NONRESIDENTIAL
LANDOWNER
OBJECTED TO
CONDEMNATION

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BUG
LAW

COUNTY OF WAYNE v. HATHCOCK,
684 NW2d 765 (Mich., 2004)

• ISSUE

• DID MICHIGAN
CONSTITUTION
(1963) PROHIBIT
PUBLIC
ACQUISITION OF
PROPERTY IN
ABSENCE OF USE BY
PUBLIC OR BLIGHT?

• SHOULD POLETOWN
NEIGHBORHOOD
COUNCIL v.
DETROIT, 410 Mich.
616, 304 NW2d 455
(1981) BE
OVERRULED?

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COUNTY OF WAYNE v. HATHCOCK,
684 NW2d 765 (Mich., 2004)

- HOLDING
 - MICHIGAN CONSTITUTIONAL "PUBLIC USE" STANDARD MORE STRICT THAN FEDERAL STANDARD
 - BLIGHT AND ACTUAL USE BY PUBLIC AUTHORIZED BY STATE CONSTITUTION
 - ACQUISITION FOR TRANSFER TO PRIVATE PARTY IS NOT