

A city filed eminent domain proceedings in order to obtain 40 beach houses fronting a particularly attractive stretch of shoreline. The city would pay the owners the fair market value of the properties. As part of an elaborate plan to increase the city's tourist trade and revive the local economy, the city planned to sell the beach houses to a company that would demolish the houses and build a luxury hotel in their place.

The owners of the beach houses have challenged the city's exercise of eminent domain, contending only that the city's plan is unconstitutional.

Will the owners of the beach houses be likely to prevail?

- A. No, because a property owner can challenge an exercise of eminent domain only on the ground of the sufficiency of the compensation.
- B. No, because the planned sale to the private developer to increase the tourist trade qualifies as a public use.
- C. Yes, because a public entity cannot seize the property of one person in order to transfer that property intact to other private parties.
- D. Yes, because the city's action would deprive the owners of all economic use of their property.

### Explanation:

The Fifth Amendment **takings clause** requires the government to pay **just compensation** (ie, fair market value) when exercising its power of **eminent domain**—ie, taking private property for public use. **Public use** is broadly defined as any use that is **rationally related** to a **legitimate public purpose**.

Here, the city initiated eminent domain proceedings to seize 40 beachfront houses and plans to pay the owners the fair market value of their property. The city also plans to sell the houses to a company that will build a luxury hotel in their place. This planned sale qualifies as a public use because it is rationally related to the city's interest in increasing tourist trade and reviving the local economy. Therefore, the beach-house owners will likely fail.

**(Choice A)** A property owner can challenge an exercise of eminent domain on two grounds: (1) that the compensation is insufficient and (2) that the taking is not for a public use.

**(Choice C)** A public entity (eg, the city) *can* seize private property to transfer it—intact or otherwise—to other private parties if doing so would primarily benefit the public (eg, economic redevelopment).

**(Choice D)** The government commits a **regulatory taking** when its actions deprive an owner of all economically beneficial uses of the property—even when the owner retains possession of that property. But any taking is constitutional when, as here, property is taken for public use and the owners receive just compensation.

### Educational objective:

The takings clause requires the government to pay just compensation when it exercises its eminent domain powers by taking private property for public use. Public use encompasses any use that is rationally related to a legitimate public purpose (eg, economic redevelopment).

### References

- Kelo v. City of New London, 545 U.S. 469, 488–89 (2005) (holding that a taking is for a public use when the government transfers private property to another private party as part of an economic redevelopment plan).
- 26 Am. Jur. 2d Eminent Domain § 44 (2019) (explaining that a taking is for a public use if it is rationally related to a legitimate public purpose).

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## Fifth Amendment taking

