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## Would the Fifth Amendment stop Trump's Mexico wall?

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Funding for Donald Trump's Mexico border wall will be front and center in next month's budget debate, but there could be a broader constitution barrier staying in the way of the project's long-term completion.

There has been more media and academic discussion in the past few weeks about the feasibility of the U.S. government acquiring the land needed to build a wall, of any size, that extends over 1,300 additional miles between the United States and Mexico, not including land that doesn't already have walls or natural barriers.

Overall, the Trump wall project would stretch about 2,000 miles, including existing fences and barrier built in past years. According to a GAO report from 2015, about one-third of that land belongs to the federal government and tribal authorities. The other two-thirds of that land, mostly in Texas, belongs to state and private owners.

The Fifth Amendment's Takings Clause would allow the federal government to claim the land for public use, provided it pays a fair price for the land as just compensation. Few experts dispute the Trump administration's ability to buy the land. However, the eminent domain process can be a long, expensive process for even the smallest pieces of land.

The often-cited example in this case is the legal battle involving Eloisa Tamez. About eight years ago, the Bush administration started a program to build more than 600 miles of fencing on the California, New Mexico, Texas, and Arizona borders, and it wanted one acre of Tamez's land in Texas. She went to court and after seven years of litigation, Tamez received \$56,000 for a quarter-acre of land along with a security code for the fence.

Randal John Meyer from the Cato Institute wrote about these potential issues back in 2016 when Trump became the apparent Republican nominee, riding a wave of publicity about the wall.

"The Great Wall of Trump would mean hundreds, if not thousands, of Tamezes," Meyer said. Citing GAO records, Meyer said it took about a decade to settle all the eminent domain

lawsuits involved in the Bush-era fence plan, with about 500 homeowners affected in the plan to put barriers on 700 miles of land - and the federal government owned much of the land used in that project.

The Trump administration wall project is the opposite, Meyer said, since it involves at least 1,000 miles of land that will host a much-bigger wall, and most of that land, especially in Texas, isn't owned by the federal government.

A more recent article by University of Pittsburgh Law School law professor Gerald S. Dickinson gets into specifics about the current wall project. "In trying to take land for the wall, the federal government would be held to time-consuming procedures that include consultation and negotiation with the affected parties — including private landowners, tribes, and state and local governments — before taking any action," Dickinson said.

And then there's the issue of taking property from Native American nations. The members of the Tohono O'odham Nation own 62 miles of border land in Texas, but they also have cultural roots in Mexico. The Supreme Court has ruled that the federal government must take tribal interests into account in these situations. "Trump would need a bill from Congress to acquire the tribal lands, which are protected by treaties and other statutory equivalents," Dickinson said.

The end results could be a series of court fights that extend beyond the term of any Trump administration. "Any federal eminent domain action on such a large scale against even a few landowners could trigger decades of court disputes before anything is built," Dickinson concluded.

President Trump's proposed budget includes expenses for 20 attorneys to litigate eminent domain problems related to the wall. The lawyers are needed to "pursue federal efforts to obtain land and holdings necessary to secure the Southwest border."

Alan Ackerman, an eminent-domain lawyer in Michigan, told The Wall Street Journal that the Trump administration could use a legal tactic by filing large groups of cases. Federal judges have appointed commissioners to oversee disputes over land compensation for very large projects, Ackerman told the Journal.