



Update on the Preakness Takings Case

Ilya Somin

July 11, 2019

Back in March, I wrote about the City of Baltimore's lawsuit attempting to use eminent domain to take the Preakness Stakes Triple Crown horse race, in order to prevent the owners from moving it to a different location. As explained in the previous post, the case raised several important legal issues. This post is a brief update on developments since then.

In mid-June, the City dropped its lawsuit, apparently as part of an agreement with the owners to continue negotiating on possible ways to ensure that the race will stay in its current location in Baltimore, instead of moving elsewhere in Maryland (as the owners previously hoped to do). Later that same month, the owners and the City entered into a "new phase of negotiations" intended to keep the race at the deteriorating Pimlico Race Course, which is badly in need of repair.

At least for the moment, the City is no longer trying to condemn either the Pimlico Race Course, or the Preakness Stakes horse race. The legal community may therefore miss out on a case that raises multiple thorny issues, such as whether the intellectual property and trade marks associated with the race are within Baltimore's jurisdiction, and whether condemning a horse race to keep it from moving to a new location violates the Dormant Commerce Clause. Had the lawsuit gone forward, it would have been a virtual full-employment act for eminent domain experts!

However, the dismissal of the case of was "without prejudice." That means the city could potential refile it, if negotiations go badly. Moreover, it is hard to say to what extent the threat of condemnation might have been a factor in forcing the owners to reconsider their apparent plan to move. If the business community is left with the impression that the owners gave in under the threat of eminent domain, it could incentivize other enterprises to flee before they suffer the same fate.

The negotiations also raise the possibility that either the city or the state government will subsidize the refurbishing of Pimlico, thus in effect paying the owners of the Preakness to stay. Economists across the political spectrum recognize that government subsidies for sports stadiums are a terrible idea, and almost always have costs that outweigh any benefits to local economic development.

The (for now) abortive effort to condemn the Preakness Stakes is just part of a long history of Maryland efforts to try to keep businesses from leaving by threatening them with the use of eminent domain. I summarized it in my earlier post about this case:

This is not the first time Maryland authorities have tried to use eminent domain to keep a prominent entertainment business from moving. In 1984, the state famously tried to condemn the Baltimore Colts to keep them from moving to Indianapolis. The plan failed when the franchise literally escaped in the dead of night. As [Walter] Olson notes, the state used the threat of eminent domain to keep the Preakness from moving in 2009—only to end up with an increasingly troubled enterprise, and a decaying race track. In 2014, the state legislature considered, but ultimately rejected an ill-considered plan to condemn the popular TV show "House of Cards" in order to prevent it from filming in another state.

Hopefully, the city and state governments have finally figured out that the better way to grow their economies is to create an environment where people will want to locate of their own free will. The threat of eminent domain might force some businesses to stay when they might otherwise have left. But such shenanigans are also likely to scare away other entrepreneurs and investors, who are not likely to do business in the state if doing so risks having their property condemned if things go badly.

While these kinds of cases are a bonanza for takings lawyers, Baltimore is unlikely to succeed in condemning its way to prosperity. When it comes to using eminent domain to keep horse races and other enterprises from moving, I remain a "neighsayer."