

The Power to Condemn: Cities Enjoy Broadened Eminent Domain

In June the Supreme Court ruled that a local government may seize private property for purposes of private profit-making redevelopment. The decision in *Kelo v. New London* has significant implications for many areas, particularly growing urban and suburban areas facing pressures to revitalize and develop.

In New London, Connecticut, city officials envision turning 90 acres of Thames waterfront land into office buildings, upscale housing, a marina and other facilities in an effort to attract tourists, bring in jobs, and boost tax revenues. But owners of 15 homes on the proposed site refused to go. One resident, Susette Kelo, had just remodeled her home and wanted to stay for the waterfront view. Another resident, Wilhelmina Dery, had been born in her house in 1918 and lived there her entire life.

The government's eminent-domain power originates from the Constitution's Fifth Amendment, which allows government to take private property for "public use" and requires "just compensation." Reading the constitutional phrase "public use" in an expansive way, the Court majority declared: "For more than a century, our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power."

Although the majority opinion by Justice John Paul Stevens said a local government could not take a homeowners' property "simply to confer a private benefit on a particular private party," the New London project would not be completely open for use by the general public. The Court reasoned that there is no literal requirement for general public access and the government taking was justified because the redevelopment would bring in "new jobs and increased tax revenue."

The *Kelo* ruling was a controversial split decision, 5-4, that has received a litany of criticism, both within the Court and from a diverse group of officials and activists. Justice Sandra Day O'Connor assailed the decision in her dissent for handing "disproportionate influence and power" to "large corporations and development firms." She warned that "[a]ny property may now be taken for the benefit of another private party . . ."

In Connecticut, where the case originated, lawmakers notified local governments to "put on hold" any "local land takeover plans" as the legislature begins a study on possible changes in state law on eminent domain. Although the Supreme Court's decision broadens local government authority, it still leaves states with the option of limiting or even prohibiting the use of eminent domain. With widespread opposition to the Court's *Kelo* decision its long term future remains uncertain. But for now, at least, economic development and revitalization pressures can trump private property rights.

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