

The Conflict Between Private Property and Economic Development

Resolved: Congress Should Pass Legislation to Prevent Abuse of Eminent Domain

The Issue

Should governments have the right to seize land and property belonging to a private individual and transfer that real estate to another private individual or corporation?

Background

The Fifth Amendment to the U.S. Constitution grants the government “eminent domain” over all property within the state, but places three important restrictions on that power. In taking private property, the government must exercise “due process of law,” acquire the property for “public use,” and provide “just compensation” to the owner.

The practice of eminent domain has been used — and abused — throughout U.S. history. When the railroads and many of the Nation’s highways were built, landowners were often told that their properties were condemned, given a dollar, and advised to go to court if they wanted their “just compensation.” (Congressional Digest 2006)

Nevertheless, most eminent domain condemnations were for a clearly delineated public use, such as a road, park, or municipal building. There is little dispute over many kinds of public land use, such as that for schools, roads and water-treatment plants. In the past five decades, however, municipalities have expanded the interpretation of "public use" to include revitalizing dilapidated downtowns, removing urban blight and boosting tourism and tax revenue.

In a ruling announced on June 23, 2005 the Supreme Court ruled 5 to 4 in the case of *Kelo v. New London* (Connecticut) that state and local governments could use eminent domain to take private property against the owners’ will for use in private development. The case involved a redevelopment plan for the City of New London, Connecticut, that was to include commercial, residential, and recreational uses. Connecticut law authorizes the use of eminent domain to promote economic development, but some property owners challenged the city’s authority to exercise such power and charged that the proposed “takings” violated the Fifth Amendment (Cohen 2005).

Importance of the Issue

At issue is the degree of protection afforded by the Fifth Amendment's public use requirement which provides for individuals whose property is being condemned -- not to eliminate slums or blight, but for the sole purpose of "economic development" that will perhaps increase tax revenues and improve the local economy.

Pros & Cons

The Court's difference of opinion on the case was stark. Writing for the majority, Justice John Paul Stevens stated: "The city has carefully formulated an economic development that it believes will provide appreciable benefits to the community, including -- but by no means limited to -- new jobs and increased tax revenue." On the dissenting side, Justice Sandra Day O'Connor countered: "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random..." The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." (Supreme Court, 2005)

FOR the Supreme Court Ruling:

Proponents argue that cities need to retain the power of eminent domain to spur economic revitalization, reduce crime, and strengthen neighborhoods — and local governments should not be hamstrung in their ability to use it wisely. D.C. Mayor Anthony A. Williams (D), who is president of the National League of Cities, said he is worried about "the critical need of cities to use this tool for public purpose and benefits." (Downey, 2005)

Furthering Mayor William's argument, Peter Byrne argued before the Legal Affairs Organization that "... cities need to retain the power to take private property, upon payment of compensation, to spur economic and social revitalization...Why do cities need this power? Cities find it hard to compete with rural, green field sites for large private investments that provide employment and a local tax base." (Byrne, 2005)

In The Wall Street Journal, David Barron contended: "It's hard to know what to make of grand claims about the importance of the right to property necessarily conflicting with the government's power to take it -- given that the right to property grew up along with the government's authority to exercise the power of eminent domain." (Barron, 2005)

AGAINST the Supreme Court Ruling:

Conversely, The Institute for Justice says it accepts the use of eminent domain for roads, schools and parks and opposes it for privately owned, for-profit operations. Lawyers there say they argued Kelo's case because they think it represents a classic case of excessive use of government power. "It's an unholy marriage between land-hungry developers and tax-hungry local governments," said John E. Kramer, an institute spokesman. Institute officials say they found 10,282 incidents of filed or threatened condemnation procedures in which land was given to private, for-profit parties, such as Target or Costco stores or casino parking lots, between Jan. 1, 1998, and Dec. 31, 2002. (Institute for Justice, 2005)

"The question", writes George Will, "is: Does the Constitution empower governments to seize a person's most precious property -- a home, a business -- and give it to more wealthy interests so that the government can reap, in taxes, ancillary benefits of that wealth? Connecticut's court... turns the Fifth Amendment from a protection of the individual against overbearing government into a license for government to coerce individuals on behalf of society's strongest interests. Henceforth, what home or business will be safe from grasping governments pursuing their own convenience?" (Will, 2004)

Minority rights groups agree. "Legislative majorities will [now] be able to infringe on the property rights of minorities and allocate the burdens of economic development to less politically and economically powerful groups — those least able to bear this burden." (NAACP, 2005)

Conclusion

Because of the July 2005 Supreme Court ruling, the government now has license to transfer property from those with fewer resources to those with more, significantly expanding the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use. As Justice O'Connor wrote in her dissent: "Are economic development takings constitutional? I would hold that they are not. The Founders cannot have intended this perverse result." (O'Connor, 2005)

Congress would seem to agree. Within a week of the ruling, Congress passed a resolution disagreeing with the Court's decision, along with an amendment to an appropriations bill that would prevent the Federal Government from spending money to enforce the decision. In November 2005, the House of Representatives overwhelmingly

approved legislation denying economic development funds to state and local governments that use eminent domain for private commercial development.

Consequently, as resolved, additional legislation at both the federal and state levels should be passed to prevent further abuse of eminent domain.

References

- Barron, David (2005). Debate Pits Private Property Against Powers of the State. *Wall Street Journal*, May 19, 2005. Retrieved 17 July 2006 from <http://www.pbs.org/now/politics/domaindebate.html>
- Byrne, Peter (2005). Can Your Town Take Your Home?. Debate Club - *Legal Affairs Magazine* (February 21, 2005). Retrieved 19 July 2006 from http://legalaffairs.org/webexclusive/debateclub_emdom0205.msp
- Cohen, Charles E. (2005). Eminent domain after Kelo v. City of New London: An argument for banning economic development takings. *Harvard Journal of Law & Public Policy*, vol 29 no 2, Spring 2006, ppg 760-761.
- Congressional Digest – excerpted (2006, January). Retrieved 17 July 2006 from <http://www.congressionaldigest.com/pcp/debates/congress/index.html>
- Downey, Kirstin (2005). Revitalization Projects Hinge On Eminent-Domain Lawsuit. *The Washington Post*. Saturday, May 21, 2005; Page E01. Retrieved 11 July 2006 from <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/20/AR2005052001520.html>
- Institute for Justice (2005). Lawsuit Challenging Eminent Domain Abuse in New London, Connecticut. Retrieved 18 July 2006 from http://www.ij.org/Private_property/connecticut
- NAACP, AARP, et. Al. (2005). Amicus Brief to Case no 04-108, pg 16. Retrieved 18 July 2006 from http://supreme.lp.findlaw.com/supreme_court/briefs/04-108/04-108.mer.ami.naacp.pdf
- O'Connor, Justice (2005). Kelo et al v City of New London et al. Certiorari to the Supreme Court of Connecticut, U.S. Supreme Court Decision No. 04–108. ppg 38-39. Retrieved 18 July 2006 from <http://a257.g.akamaitech.net/7/257/2422/23jun20051201/www.supremecourtus.gov/opinions/04pdf/04-108.pdf>
- Reason Institute (2005). Amicus Brief to Case no 04-108, pg 16. Retrieved 18 July 2006 from http://supreme.lp.findlaw.com/supreme_court/briefs/04-108/04-108.mer.ami.reason.pdf
- Supreme Court (2005). Kelo et al v City of New London et al. Certiorari to the Supreme Court of Connecticut, Decision No. 04–108. Argued February 22, 2005—Decided June 23, 2005. Retrieved 18 July 2006 from <http://a257.g.akamaitech.net/7/257/2422/23jun20051201/www.supremecourtus.gov/opinions/04pdf/04-108.pdf>
- Will, George F. (2004). Despotism in New London, *The Washington Post*, (September 19, 2004). Retrieved 18 July 2006 from <http://www.pbs.org/now/politics/domaindebate.html>