

U.S. SUPREME COURT CONSIDERS GOVERNMENTAL TAKING FOR PRIVATE PURPOSE

The U.S. Supreme Court will hear arguments this month in the case of *Kelo v. City of New London*, where it will consider whether it is constitutionally permissible for a unit of local government to use its power of eminent domain to further economic development. In particular, the City of New London seeks to create a 90-acre development of commercial and industrial properties in a portion of the City that has fallen on difficult times. The decision rests on whether the laws of the State of Connecticut enable the City to take, through its power of eminent domain, property that it has deemed necessary to piece together a large commercial park.

Over the years, the New London economy has faltered, while suburban development in outlying areas has occurred at a ferocious pace. One reason the suburbs have grown while cities have not is the availability of open land for development. In an effort to lift cities such as New London out of this difficulty in attracting developers, the Connecticut Legislature enacted an eminent domain statute which would enable those “distressed municipalities” to assemble numerous small parcels into one large parcel for the purpose of economic development. In particular, the Legislature found that the “acquisition and development” of land needed for economic development “often cannot be accomplished through the ordinary operations of private enterprise at competitive rates of progress and economies of cost,” and that aiding municipalities to acquire “unified land . . . areas” for economic development is a “public use and purpose for which public moneys may be expended.” Conn. Gen. Stat. §§ 8-186 – 8-200.

A number of other states, including New York, New Jersey, Massachusetts, Maryland, and Georgia, have adopted similar provisions to enable economically distressed urban areas to use their power of eminent domain to assemble numerous parcels of land into unified, developable parcels. The U.S. Congress, which is the legislative body for the District of Columbia, has enacted similar legislation for that jurisdiction. The City of New London seeks to use this power to take a number of properties that it was not able to purchase on the open market. Because of this, the land remains undevelopable as a patchwork of parcels.

The owners of these parcels are seeking to prevent the City from taking their property, arguing that the “public use” clause of the 5th Amendment prohibits private property from being taken for economic development, which they contend is not a “public use.”

Vermont municipalities are not likely to be directly impacted by the outcome of this case. Vermont law does not provide municipalities with the same sweeping powers of eminent domain. Moreover, there are fewer heavily urbanized areas in this state, and those areas are generally smaller and not as densely developed as those in more populous states. Even though our landscape and legal framework make this issue less germane, the outcome of this particular case will be useful for Vermont municipalities because it will address both the boundaries of governmental takings under the 5th Amendment, as well as the proclivities of the U.S. Supreme Court to involve itself in issues which are generally reserved for the states and their respective courts to decide. (“We will not cavalierly impede the States’ ability to serve as laboratories for testing solutions to novel legal problems.” *Smith v. Robbins*, 528 U.S. 259, 275(2001).)

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