

## US Supreme Court Approves Use of Eminent Domain for Economic Development

The U.S. Supreme Court has ruled that the City of New London, Connecticut acted properly when it used eminent domain to take several private properties for a large-scale redevelopment of part of the City's waterfront. In doing so, the Court confirmed that local governments are permitted to take land for the purpose of economic development. *Kelo v. City of New London*, 545 U.S. \_\_\_\_ (2005).

During the 1990s, New London experienced extremely high unemployment and saw its population dwindle to its lowest level since 1920. These hard times were partly caused by the closure of the Naval Undersea Warfare Center at Fort Trumbull in 1996. In an attempt to revitalize the City, increase employment and increase tax revenues, the New London Development Corporation (NLDC) put forward a plan to redevelop parts of Fort Trumbull and adjacent land. The plan called for the development of, among other things, a state park, a pedestrian walkway along the Thames River, new residences, a U.S. Coast Guard Museum, retail services, and a \$300 million research facility for the pharmaceutical company Pfizer. In all, the final plan would cover 90 acres of land, and require the acquisition of 115 privately owned parcels. After approving the plan, the City Council authorized NLDC to acquire the private land needed for the development through negotiations or, if necessary, eminent domain. After negotiating the purchase of numerous properties, nine landowners were unwilling to sell to NLDC. In response, NLDC exercised the power of eminent domain, delegated to it by the City, and initiated condemnation proceedings against the remaining properties.

The affected property owners filed suit, claiming, among other things, that the takings violated the fifth amendment of the U.S. Constitution which states "nor shall private property be taken for public use, without just compensation." The landowners asserted that because economic development was not a "public use," the takings were not legal. Their argument centered on the fact that because some of the land would end up in private ownership, inaccessible to the public, the takings were carried out to benefit private interests rather than a "public use" as envisioned by the Constitution.

The City contended that because the Connecticut Legislature had determined that taking of land for economic development is a public purpose and because the taking of land, in this case, was reasonably necessary to achieve that purpose, the City, through NLDC, was warranted in using eminent domain. It argued that the courts should defer to the state legislature's judgment of what constitutes a public purpose.

In a 5-4 decision, the Court agreed with the City. In doing so, the Court expressed deference to states to determine what constitutes a public purpose. Citing the fact that economic development has long been a function of government, the Court determined that, in this case, economic development "unquestionably serves a public purpose." It based its reasoning on the fact that the City had gone through a deliberative process to develop a comprehensive plan for redeveloping the area and had made use of a state statute which specifically authorized the taking of land for economic development purposes.

In response to the residents' argument that the project would primarily benefit private interests, the Court cited numerous cases where takings had substantial private benefits but were carried out for public purposes. The Court also pointed to the fact that while some of the land would end up in private hands, when viewed as a whole, the public benefit of the project outweighed the private benefits.

While this case confirms that the U.S. Constitution does not limit the power of states and municipalities to take land for the purpose of economic development, it also reiterates that states are free to enact more restrictive laws or constitutional provisions regarding the use of eminent domain. In Vermont - a Dillon's Rule state - municipalities only possess that authority which is specifically granted to them by the state legislature. Twenty-four V.S.A. Ch. 85 grants municipalities the power to use eminent domain for urban renewal in blighted areas. It is important to note that the law prescribes a lengthy and complex process for using eminent domain for urban renewal purposes, including two votes of the town. The first vote would ask voters to designate certain areas as "blighted." 24 V.S.A. § 3206. This differs from Connecticut law because Connecticut does not require affected properties to be blighted.

For the full text of the *Kelo* opinion, visit <http://www.supremecourtus.gov>.

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