

Eminent Domain: Community versus Individual Property Rights

By

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New London, Connecticut is a small town of 26,000 residents that lies midway between New York City and Boston on the northeastern coast of the United States. In the 1800's, it was a thriving whaling town. Later it became a manufacturing center but in recent years; many companies left the area along with many residents. Then in 1998, the drug company Pfizer, decided to locate its global research headquarters on an abandoned river front factory site on the outskirts of New London. There was also a plan to build a waterfront complex of offices, condos, a hotel and conference center...all a very short distance from the Pfizer compound. Although most of the land was vacant, a neighborhood of about 75 homes known as Fort Trumbull was in between the two developments. A government entity called the New London Development Corporation was authorized to use eminent domain powers to seize and destroy any property where the homeowners refused to leave voluntarily. Once the land was cleared, the land was to be leased for \$1.00 per year for 99 years to a private company to build and manage the project. All profits go to the company. The city would receive increased tax revenues. The residents were not opposed to the re-development and most of the homeowners took advantage of the buyout but Susette Kelo and six other homeowners in this working class neighborhood could not understand why their 1.6 acre of a 90 acre development could not be included in the project. According to the attorney for the NLDC, it's up to the city counsel to decide the best plan, "not a couple of holdouts". The residents were told they had no choice but to accept the amount of money being offered or the land would be seized under "eminent domain". So the "holdouts" filed a law suit to protect their property. This set into place a 7 year court battle that went all the way to the United States Supreme Court. The 5th amendment of the United States Constitution, under the legal principle of "eminent domain", states that the government could seize property in exchange for just compensation if the land was for public use such as roads, schools, or parks. In this case of *Kelo Vs. New London Development Corporation*, the question was "Does the government have the right to seize property, then turn it over to a private developer in order to receive increased tax revenues?"

On June 23, 2005, in a 5-4 decision, the Supreme Court ruled that the government has the right to seize and destroy homes and businesses against their will for private development for increased tax revenues. Now retailers such as Wal-Mart and Target can come in and eliminate small businesses by arguing that their stores will increase tax revenues and jobs. Adrian Moore, vice president of the Los Angeles Based Reason Public Policy Institute, a non-profit organization opposed to eminent domain states, "It's crazy to think about replacing existing successful small businesses with other businesses. There are many, many instances where we've found that the cities that agreed to eminent domain use not only destroy local businesses but the tax revenue that the local government had hoped to generate did not come to pass." Prior to this ruling, in California, eminent

domain use is only allowed if the area is considered “blighted” or in ruin. In 1993, the town of Indio destroyed more than 90 homes and apartments in a predominantly black neighborhood for an extension of a shopping mall. It never got built. Then the local government in California City, in the Mojave Desert, declared a patch of unused desert “blighted” and forced the private owner to turn over the land to a car dealership. The Supreme Court has only made it easier for the local governments to bully people who least deserve it and do not have the money, power or resources to fight it.

Justice John Paul Stevens, writing the majority opinion backing New London’s authority to use eminent domain stated, “The city has carefully formulated an economic development that it believes will provide appreciable benefits to the community, including by no means limited to new jobs and increased tax revenue.” But Sandra Day O’Connor, in dissent, stated, “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.” And finally from Bill Von Winkle, New London resident, “It’s a little shocking to believe you and lose your home in this country. I won’t be going anywhere. Not my house. This is definitely not the last word.” Under the ruling, residents still will be entitled to “just compensation” for their homes under the Constitution. However Von Winkle, Kelo and the other homeowners have refused to move at any price, calling it unjustifiable seizure of their property.

To close on a positive note, legislators in 28 states are making moves to restrict this practice. Suzette Kelo recently testified before a Congressional Committee. Kelo, as well as the six other “holdouts” , are still living their homes.

Sources:

“The Battle of Fort Trumbull” by Warren Richey, CBS News.com

“Court Rules Against Fort Trumbull Residents”, WFSD Eyewitness News

“Eminent Domain: A big –box Bonanza?” by Parija Bhatnagar, CNN/Money staff writer

“The Left’s Eyeing Your Home” by Matt Welch, Los Angeles Times

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