

Kelo V City of New London - Is Your Property In Good Hands?

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The House of Representatives overwhelmingly approved a bill last Thursday to restrict the eminent domain powers of state and local governments. The Bill, which passed by a 376-38 margin, would withhold federal money from state and local governments if they used their eminent domain powers to confiscate private property and sell it to private developers.

The action by the House is in response to the Supreme Court's ruling in *Kelo vs. City of New London*. In that landmark case, which was decided on June 23rd of this year, the Supreme Court held that the City of New London, Connecticut, could take private property from working-class citizens and sell it to a wealthy developer to build a riverfront hotel and office complex.

The ruling sent shock waves throughout the ranks of property owners everywhere and caused politicians at all levels to propose legislation that would restrict the taking of private property. The House bill that passed last Thursday is a direct reaction to the *Kelo* ruling. But, whether the bill ever becomes law or not, the real concern is a growing trend in this country toward the concentration of power and wealth among a few individuals at the expense of ordinary citizens.

For those not totally familiar with the *Kelo* case, a brief summary may be helpful. In 1998, the City of New London adopted a development plan for approximately 90 acres of its Fort Trumbull area. The plan included a waterfront conference hotel, a riverwalk, restaurants, shops, 80 new residences, a new U.S. Coast Guard Museum, and a renovated marina - all of which would be immediately adjacent to a \$300 million research facility to be built by Pfizer, Inc., the pharmaceutical company.

In January of 2000, the city council approved the plan and authorized the NLDC, its development agent, to purchase the property or acquire it by eminent domain. Most of the properties were purchases but a few, notably that of Susette Kelo and several others, refused to sell. As a result, the NLDC initiated condemnation proceedings, which gave rise to the *Kelo* case.

Susette Kelo and the other opponents argued that the City of New London's attempt to take their property by eminent domain was a violation of their constitutional rights because their property was not being taken for public use. Instead, it was being sold to private developers to build a riverfront hotel, which would be privately owned and operated. The opponents cited the Fifth Amendment to the Constitution, which reads - in relevant part - as follows:

" . . . ; nor shall private property be taken for public use, without just compensation." [Emphasis added.]

In a 5-4 decision, the Supreme Court held that the City of New London did not violate the opponent's rights under the Fifth Amendment's so-called "taking clause." The rationale for the decision, according to Justice Steven's majority opinion, was not whether the property to be condemned by the City of New London would be put to a public use, but whether the City of New London's development plan - as a whole - served a "public purpose." In deciding that question, he noted that the Court had a history of construing a "public purpose" broadly and that deference had to be given to a legislature's determination in that regard. "When the legislature's purpose is legitimate and its means are not irrational," the Supreme Court will not second guess the legislature. In this case, the City of New London's development plan was, according to the Court, "carefully formatted" and the city believed that the development would "provide appreciable benefits to the community, including--but by no means limited to--new jobs and increased tax revenue."

However one defines the rationale of the Court, it is clear that property rights under the Fifth Amendment were substantially eroded by the *Kelo* decision. Before the *Kelo* decision, private property could only be taken for a public use; i.e., for use as a road, a museum, a public office building, etc. Now, following *Kelo*, a local or state government is able to take private property and transfer it to a private developer as part of a so-called development plan.

The Court made it clear, however, that a local or state government can only give confiscated property to private developers when it is part of a development plan that serves a "public purpose." The Court did not define "public purpose." Instead, it said that the term "public purpose" had to be broadly defined and that deference had to be given to a legislature's determination in that regard. So, not only did the Court give local and state governments the right to take private property and give it to private developers, it also left it up to local and state governments to decide for itself when it was appropriate to do so. In so doing, the Court gave every local and state government the right to take private property without so much as a wink and a nod from the Courts.

But that's not the end of it. Legislators are, for the most part, good and decent people who generally want to do right by their constituencies. The problem comes from big corporations and wealthy individuals who want more. In the past, their efforts to acquire property were relegated solely to negotiating with property owners, who often demanded a premium for their property or sometimes refused to sell altogether. Now, following *Kelo*, if their efforts to negotiate with property owners are not successful, they'll go directly to the politicians to have the property confiscated.

Can we be comforted by the fact that our local and state politicians will not be unduly influenced by big corporations

and wealthy individuals? Certainly, the citizens of Connecticut already know how undue influence and corruption can affect their politicians - their former governor and a host of his lieutenants are already in jail or packing their bags because they steered lucrative land deals to private developers. In his dissenting opinion in the Kelo case, Justice Thomas also recognized this inherent danger when he stated that, "It encourages 'those citizens with disproportionate influence and power in the political process, including large corporations and development firms' to victimize the weak."

Justice Stevens also recognized the danger inherent in the Court's decision. In the final paragraph of his opinion he states that, "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power." Of course, if private interest groups will try to influence local and state politicians in order to obtain private property through eminent domain, then it's not unreasonable to believe that they will also try to influence those same politicians in order to defeat any restrictions on their eminent domain powers.

So, we come back to the bill overwhelmingly approved by the House of Representatives. The question now is what effect will private interest groups have on the upcoming Senate vote. If they are successful in killing this bill, then we can be fairly sure that local and state politicians, as well as property owners everywhere, will have to brace themselves for a tough ride. Attorney Michael P. Pancheri is the founder and CEO of the Living Trust Network. You may contact him by email at info@livingtrustnetwork.com. You may also contact him at the Living Trust Network's web site. Its URL is <http://www.livingtrustnetwork.com>

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