

Justices Affirm Property Seizures

5-4 Ruling Backs Forced Sales for Private Development

By Charles Lane

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The Supreme Court ruled that local governments may force property owners to sell out and make way for private economic development when officials decide it would benefit the public, even if the property is not blighted and the new project's success is not guaranteed.

The 5 to 4 ruling provided the strong affirmation that state and local governments had sought for their increasing use of eminent domain for urban revitalization, especially in the Northeast, where many city centers have decayed and the suburban land supply is dwindling.

Opponents, including property-rights activists and advocates for elderly and low-income urban residents, argued that forcibly shifting land from one private owner to another, even with fair compensation, violates the Fifth Amendment to the Constitution, which prohibits the taking of property by government except for "public use."

But Justice John Paul Stevens, writing for the majority, cited cases in which the court has interpreted "public use" to include not only such traditional projects as bridges or highways but also slum clearance and land redistribution. He concluded that a "public purpose" such as creating jobs in a depressed city can also satisfy the Fifth Amendment.

The court should not "second-guess" local governments, Stevens added, noting that

"[p]romoting economic development is a traditional and long accepted function of government."

Stevens's opinion provoked a strongly worded dissent from Justice Sandra Day O'Connor, who wrote that the ruling favors the most powerful and influential in society and leaves small property owners little recourse. Now, she wrote, the "specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

D.C. Mayor Anthony A. Williams, who serves as president of the National League of Cities, issued a statement praising the court for upholding "one of the most powerful tools city officials have to rejuvenate their neighborhoods."

In addition to its national repercussions, the court's decision removed a possible obstacle to the District's plans to build a baseball stadium along the Anacostia River waterfront and to redevelop the Skyland Shopping Center in Southeast -- a project Williams said could generate 300 jobs and \$3.3 million in tax revenue.

A number of property owners in those areas had hoped the court ruling would help them resist the city's exercise of eminent domain. But David A.

Fuss, an attorney for several of them, acknowledged that the court's ruling "is going to have a major impact."

The redevelopment program at issue in this case - the plan of the Connecticut city of New London to turn 90 acres of waterfront land into office buildings, upscale housing, a marina and other facilities near a \$300 million research center being built by pharmaceuticals giant Pfizer -- was also expected to generate hundreds of jobs and, city officials say, \$680,000 in property tax revenue.

New London, with a population of about 24,000, is reeling from the 1996 closing of the Naval Undersea Warfare Center, which had employed more than 1,500 people.

But owners of 15 homes on 1.54 acres of the proposed site had refused to go. One of them, Susette Kelo, had extensively remodeled her home and wanted to stay for its view of the water. Another, Wilhelmina Dery, was born in her house in 1918 and has lived there her entire life.

The Connecticut Supreme Court upheld the city's plan, so the homeowners, represented by lawyers from the libertarian Institute for Justice, appealed the case to the U.S. Supreme Court.

According to the institute, the New London plan, which the City Council approved in 2000, is typical of "eminent domain abuse," which has spawned more than 10,000 threatened or filed condemnations involving a transfer of property from one private party to another in 41 states between 1998 and 2002.

Scott Bullock, a lawyer for the institute, said that the only recourse for property owners facing condemnation under eminent domain would be to sue in state court based on the property rights provisions of each state's constitution.

New London City Manager Richard M. Brown said he was "very pleased" by the court's decision. He said the city hopes to restart its redevelopment plan, which has lost money so far, partly because of the litigation.

In the disputed neighborhood, known as Fort Trumbull, most residents sold out and their homes were demolished. The site is now a flat expanse of dusty, rock-strewn soil dotted by the few remaining houses. Signs advertising the

development site are withered and torn; builders who once considered projects have moved on, deterred by the controversy.

What are Your Thoughts?

1. Do you agree with the recent Supreme Court Ruling? Why? Why Not?
2. Does this decision violate the 5th amendment to the Constitution?
3. Do you agree that the terms "public use" and "public purpose" satisfy the meaning behind the 5th amendment?
4. If you were a Supreme Court Justice, how would you have ruled? Please give some comments that you would have written in your formal decision.
5. Does this decision aid potential redevelopment efforts in communities?
6. Please offer your suggestion (s) as to how redevelopment efforts in communities should be approached and accomplished.
7. Does this decision affect the future of individual property owner's rights in a positive way or a negative way?
8. If you were a resident of New London, would you have left your house willingly or refused to move?
9. Do you believe that the government can offer fair compensation for acquirement of private property?
10. What percentage should the government offer for claiming property?
 - a. equal value
 - b. 10% over market value
 - c. 15% over market value
 - d. > 15% over market value

**Please email your responses to:
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