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Guest: Bob Rackleff (**BR**) commissioner, Leon County Commission

Guest: Matt Warner (**MW**) director of public affairs, The James Madison Institute

ZS: Welcome back. You're listening to "Perspectives" on 88.9 FM, I'm Zach Seidenberg. Late last month the U.S. Supreme Court ruled in a Connecticut case that the city of New London could use eminent domain to tear down homes for private development. Historically the practice has been used for public works projects, such as roads and bridges. Now, some property owners across the nations are worried that their homes could be next. And while Florida lawmakers are looking into greater property protections for state residents, Senator Bill Nelson is looking into federal legislation to counteract the court's decision. Today we'll talk about the Supreme Court case, the history behind eminent domain, and its use in Florida. Joining us today by phone is J.B. Ruhl, the Matthews & Hawkins professor of property at the Florida State University College of Law. Good morning.

JR: Good morning.

ZS: Also with us is Leon County Commissioner Bob Rackleff. Good morning Bob.

BR: Good morning Zach. Glad to be here.

ZS: And our final guest today is Matthew Warner, the public policy director at the James Madison Institute in Tallahassee. Good morning Matt.

MW: Good morning. It's public affairs director.

ZS: Oh, I'm sorry. And I also want to welcome our listeners to the program. If you have comments or questions for today's guests on eminent domain and property rights issues, give us a call. The numbers are 414-1234 and 1-800-926-8809 or send your emails to perspectives@wfsu.org. And if you miss any of today's show or want more information about the program, visit our website wfsu.org and click on "Perspectives".

ZS: Now before we talk about the recent court decision and eminent domain, why don't we talk a little bit about the history behind the process. When and how has this practice been used in this county historically? Who wants to take that first? Matt?

MW: I'll say that historically, I think this was envisioned as sort of a last resort use for public needs. The courts over the last century have sort of gone from public use, to public purpose, to public benefit, sort of ever-broadening that term in the Constitution in the 5th amendment. And there were times at which extraordinary circumstances sort of laid the groundwork for that. There was the common carrier concept, when railroads were becoming very heavily used, paving the way, and these were of course private companies that were the railroads. But because they would have such a broad public use, the term "public use" was brought in for that. And these sort of things have continued as more precedent that I'm sure we'll get into has established under circumstances that I would say are extraordinary, where you have a broad, public need that has sort of opened the door to broadening that language.

ZS: Professor Ruhl, you obviously teach property in a law school setting, how do you teach the history of eminent domain?

JR: Well to be perfectly honest, until this case came along, most of the instruction on eminent domain focused on a prior case, called *Midkiff* from Hawaii, that illustrated some of the points about the expansion of the scope of the power. But in general, it follows pretty much the historical timeline of initially being used by governments for purposes of acquiring property strictly for public use: roads, building, public works, expanding into the realm of the common carrier and the mill acts, which allowed private entities to take land and pound land for purposes of generating power and running millhouses. But in all those case, the private entity was subject to something like what we would call common carrier regulation. And this is the next phase that we are seeing, which the court has endorsed, and that is allowing the transfer of property from one private entity to another, and that the transferee, the private entity who receives the property is simply putting it to a higher and better ordinary use, and that results in incidental benefits for the government. So it's a progression of different purposes, and which each progression the scope of the power is sort of increasing. There was nothing controversial about the use of eminent domain for the public works. I mean, that's contemplated in the Constitution. The magnitude, the frequency that that happens today is certainly beyond what one might think the Founders would have anticipated. Still, they contemplated that local, state, and federal government would have that power.

ZS: Commissioner Rackleff, did you want to add anything?

BR: Well, eminent domain is something we grapple with on a daily basis in the Leon County government because of our transportation projects and similar kinds of projects where we go to property owners and buy their property. It is-we have not used that eminent domain authority for any kind of private economic development, to my knowledge. We are certainly not contemplating it, so I'm not sure how the recent decision really plays out here locally, even in Florida. My understanding is, and observation has been, that the property owners have a lot of rights, to the extent that the condemning authority is required to pay the attorney's fees and other expenses of the property owner, so that he or she gets more than adequate representation. As a result, most state and local agencies don't go to court to take somebody's property, but simply pay whatever the property owner wants.

ZS: And until this case I guess, was eminent domain more of an issue rapid periods of growth and development historically, in earlier parts of I guess of the 1900's and even before then?

BR: Well, Matt brought up the example of the railroads in the 19th century. And actually, most of the railroads, the long haul lines were built with public land, public land grants. In Florida for example, in the 1850's and 60's, the Florida legislature granted virtually 1/3 of Florida's land to railroad companies as a way to encourage them to expand. And that's one of the reasons there are lots of very large landholdings to this day, because of that.

ZS: Matt?

MW: Well, yeah. I think-Bob brought up that this may not be something that is being heavily abused. I would say that there are countless examples across the nation as well as in Florida where, you know, some homeowners might see it a little differently.

ZS: Go ahead, and then I was going to ask, why don't you talk a little about maybe some of those Florida examples.

MW: Right. Well, the one that comes to mind is Daytona Beach, where we have a California developer who wants to sort of redo the boardwalk there. We have examples of citizens, sometimes multi-generational family owned businesses, where the market certainly has not shut down their operations, they're maintaining their books and paying their taxes. But because of this sort of seductive idea of bigger, better development, the business owners are having to exercise these rights, and I would agree that they have rights, as well they should. For instance in the city of New London case, they were given the opportunity to sort of give alternative proposals, and they said "why do I need to create a proposal for the city's development that includes my property, when I already own it?" And the other thing-in 1990, the attorney general's office established an eminent domain section to facilitate government agencies in carrying out these eminent domain proceedings. And with that comes the full range of legal services and expertise, and there's certainly nothing wrong with that, but I think it puts into context what the homeowners are up against sometimes. We have not only this awesome power of eminent domain knocking on their door, sometimes literally with a notice, but you know, we have almost unlimited resources in manpower and legal expertise to combat.

ZS: Matt brought up the Daytona Beach case. Obviously in Florida there's an infinite number of coastline communities or coastline property. Could this become more of an issue along Florida's coast all the way around, as the state grows? Obviously there is an infinite number of property on the coast.

BR: Well I think this is a good opportunity for us to take a deep breath and relax and think about-study the real extent of the problem, find out what it is and how serious it is. You know, I guess I don't like to conduct government by anecdote, and I'm sure there are plenty of horrors out there that we can dig up. But I just don't see it as a very widespread problem in Florida. And as Charlie Crist had said, and I'm quoting from a statement he made, "Under Florida law, only if property is designated as a blighted area can it be taken, and then only if it would primarily serve a public purpose. Florida law allows for the taking of private property for redevelopment purposes only where there exists a substantial number of deteriorated structures, economic distress, or danger to life and property." And it goes on. But there are times when there is a genuine problem. I think-I agree that the Daytona Beach example is a good one. And then we have the example of local governments condemning land to build a sports stadium or sports arena, and then turn it over to the sports team owner, which I object to just on its face.

ZS: Would that though go right in the face of the definition of what that is in the public good?

BR: Well I think that-in many ways-I don't know that the law has to be changed to any great extent in Florida, because of that. I think its more of a matter of the public being alert about this, and knowing how to defend their property interests. So, it's-what I'm saying is "let's not overreact to this."

ZS: I want to pause here and give out the number real quick, before the break. If you have comments or questions for today's guests on property rights and eminent domain, give us a call. The numbers are 414-1234 and 1-800-926-8809, or you can send your emails to perspectives@wfsu.org. Matt, did you want to jump in there?

MW: Well, I agree with Bob on several points. I think one interesting thing this ruling will mean is heightened awareness of this issue. And I think that's a very healthy thing, we're going to have a lot of discussion, that's promised. The House Speaker has appointed a committee, or is in the process of doing so, that as I understand might be traveling around to several cities so the people can have an opportunity to participate. But I think on the same token, because these anecdotes are going on, there's no reason to sort of sit on our laurels and think everything's fine and just proceed with business as usual. This is such an awesome power that it deserves to have high scrutiny and high standards of review. And for reasons such as a stadium subsidy, which I agree is an egregious use of eminent domain, we should be looking at these sort of issues.

ZS: I want to get Professor Ruhl in here really quick before the break. We maybe should've done this earlier in the program but, why don't you give us a set definition or how you teach what eminent domain is, or does it vary by municipality and court?

JR: I think we have to start, at least for purposes of thinking about the Supreme Court's recent decision. The Constitution, the 5th amendment, prohibits government from taking private property for public use without just compensation. Okay, so we got a couple of ideas floating around in there. But clearly, one implication of that prohibition is that private property can be taken for public use with just compensation. That is the source of the power of eminent domain, in that sense. Now, that applies to state and local governments through the 14th amendment. The 5th amendment really is restricted to the federal government. But the 14th amendment incorporates that protection for citizens against state and local governments. So, you know, that's the baseline, right. Every state and local government, those are the engines of eminent domain, for the most part, must ensure that it abides by that constitutional restriction. It has to provide just compensation, and it has to ensure that the taking is for a public purpose. Every state can provide more protection, either constitutionally or by statute, than that federal baseline. So, some states say, "well, if a local government wants to take private property for public use, it also has to meet these following tests or conditions." Now, states can provide more compensation than the federal minimum, as that has been determined by the courts. But here, what we're really talking about is not whether the compensation is just, of course we know its' private property being taken, it's whether or not it's for public use. That's the constitutional term of art, public use. What is a public use? It historically, we had some objective indicators of the public use aspects of the reason behind the taking. So, for example, a road, a public road, it's a public thoroughfare. We can see that the public is able to use this property that's been transferred from the private domain to the public domain. The common carriers, again, because of the regulated nature, and the fact that they had to provide service to the public, as Justice O'Connor explains in her opinion, that's really the kind of public use that the Founders would have had in mind. We're taking a little bit of a leap when we think about the "blighted area" redevelopment, although Justice O'Connor, in her dissent, says "well that's still okay, because what's going on there is, you have a public harm taking place, dilapidated buildings, increased incidence of crime, etcetera." And the government, whether its state or local, has decided that the only way to really get rid of the harm, right, is to redevelop. And so the Berman case, that comes up many times in the opinion, is the case the Supreme Court decided several decades ago that said "that kind of redevelopment is still a public use, even though there will be incidents where the ultimate landowner is private." We've now

taken the next leap, and that is, “there’s no harm, we just want to enhance public revenue. This is not a blighted area at stake in New London, it was, perhaps, it was on “on the skids”, so to speak, but it wasn’t blighted, there was nothing about it that was blighted. And that’s the real problem, is, what are we doing, other than simply shifting the tax revenue potential and the economic incidental benefits of the property to a higher and better use, ultimately a private entity is supposed to generate those public benefits. But it’s really putting the property back in the hands of-you know, it’s changing a Motel 6 to a Ritz-Carlton.

ZS: I want to talk more about the New London case which the professor’s been talking about, but we have to take a quick break. If you have comments or questions for today’s guests about property rights and eminent domain, give us a call. The numbers are 414-1234 and 1-800-926-8809, or send your emails to perspectives@wfsu.org. We’ll be right back.

ZS: Welcome back, you’re listening to “Perspectives” on 88.9 FM, I’m Zach Seidenberg. Last month’s US Supreme Court ruling on eminent domain has already drawn mixed reactions from some in Congress in property advocates but what does this exactly mean for the property owners? Today we are discussing the ruling on eminent domain with Leon County commissioner Bob Rackleff, FSU Law professor J.B. Ruhl, and Matthew Warner, public affairs director with the James Madison Institute in Tallahassee. If you have comments or questions for today’s guests, give us a call. The numbers are 414-1234 and 1-800-926-8809, or send your emails to perspectives@wfsu.org. And before the break, Professor Ruhl, you were giving a brief overview of the court case and I want to open it up to the panel here. What were your reactions to the decision? Were any of you surprised?

JR: Well, I don’t know how surprised I was, but when I looked at the facts of the case it seemed to me it was the local governments overreaching and I think that was what the people really object to about the court decision. Did the county really have due process in that or were their rights adequately protected? I think a lot of people would conclude that they were not and that is what they object to about the court decision.

BR: I for sure would really a matter of due process I mean you could have provided all the process that anyone could have asked for the issue would still boil down to (constitutionality) Can you do it? That is really what troubles me about the opinion in the sense that the majority basis much of its rational on the fact that there was a well thought out plan and the city had jumped through a lot of hoops for the process. Fundamentally that does not answer the question of whether or not transferring property from private party A to private party B is constitutional and of course it is just a matter of process then as Justice O’Conner points out in her dissent and city that wants to do this will provide the right amount of process to make this happen they will develop a record and it will be bullet proof in court. So there is really nothing behind that side of it, it really comes down to when there is nothing happening other than enhancing property value and business potential of property can the government essential force that to happen.

ZS: Professor Ruhl, we will get Matt’s comment but before that, Professor Ruhl you probably know the intricacies of this case. How many property owners do you know have decided to sell? And how many had no interest in giving up their homes?

JR: Well the vast majority did agree to sell the numbers aren’t at the tip of my tongue. Of course two in particular were petitioners who objected to the sale. But by and large

most of the property owners did agree to sell. It was a classic case of the hold out. If this had been Walt Disney trying to buy the land of course they have all sorts of techniques to wind up in a hold out situation. But this was a hold out. So they stood in the way let's assume it was a well conceived planned public project. Just the public project was one just to transfer land into private hand either by lease or sale.

ZS: And Matt, your reaction to the case?

MW: I was surprised by the ruling because it seemed like a blatant misuse of eminent domain. We are talking about a neighborhood that is not blighted it might not have met the standards of Donald Trump but the petitioners were people who bought these properties improved them over time, care about them, like the waterfront, and planned to spend the rest of their days there. There was even one of the parcels 4A is a two and half acre parcel that was never given a designation of its intended use in the redevelopment plan and that raises the question how are you successfully arguing that these is for public use when you haven't explained what the use will be. And so for those reasons it seems that this needed some judicial oversight and Justice Stevens in his opinion went on and on about the great respect that the judiciary needs to have for the local governments in looking at these plans and making these decisions about the public interest. But I think that is just wrong. Justice O'Connor said in her dissent that they have abdicated their responsibility here. She cited a precedent that it's well-established that the question of "what is a public use?" is a judicial one. And so, this was an opportunity for them to protect the little guy, which they didn't do.

ZS: Alright, I want to go to the phones now, we have Jeff on the line in Tallahassee. Jeff, good morning.

Jeff: Hi, I make my living as an eminent domain attorney. In fact, I'm the past chair of the Florida Bar Eminent Domain Committee. We had our seminar the day after the hearing-after the decision, which was kind of interesting, to have a hundred or so eminent domain attorneys talking about the decision and what it meant. One of the things, Jack, you asked before, it seemed to be a question for you, is how many people sold and how many people held out? One of the things you have to understand in eminent domain: frequently, people come in with the attitude that you can't fight city hall. So, even a non-CRA situation, people are selling. The DOT, primarily in Florida, comes in, they have right-of-way agents that are very aggressive, and they file out of the properties, but you talk some of these people, and they had no interest whatsoever, they just thought-it was just a question of stopping the bleeding-getting the stress behind them, and just moving on. And that's one of the things that sometimes gets lost in these things, there's a lot of folks-you know, the old "you can't fight city hall."

ZS: Matt?

MW: Yeah. The Institute for Justice did a study looking at five years fairly recently of eminent domain takings, and they included in the study the effective use of eminent domain as a threat. And they came up with over 10,000 cases where you essentially get a notice on your door, and either don't have the resources or don't know you might have the resources, or don't believe that there's any hope in fighting. So, the eminent domain is a useful tool, not just in its full effect, but in the threat of it.

ZS: Well, Commissioner Rackleff, why don't we throw that to you? You obviously, being a county commissioner, are a part of the process, so to speak. How does this work? Is there a bullying-a bully pulpit, so to speak, in how these cases play out sometimes?

BR: Well, you know, I have to remind everybody that what we-our eminent domain activities are almost exclusively for public purposes; things like roadways, or stormwater ponds, or conservation lands, that kind of thing that doesn't involve turning it over to a private owner. But it-we almost always negotiate a price. And the price is almost always a good one for the seller. For example, we're multi-laning Capital Circle Northwest from I-10 to US-90, its about 3 miles long. The construction costs are about 25 million dollars, the right-of-way costs are 50 million dollars. And it is a widely acknowledged problem in Florida that the right-of-way costs are just sky-high for just about any kind of public project. So, in that case, it has a clear public purpose, the owners are usually very alert to their interests, and they protect them very fiercely, and that's why they keep our caller in business.

ZS: And in this case, obviously, the New London case, you talked about, Professor Ruhl, public use, public good, in their decision, what was that based on? Is it the tax revenue that would be generated from this development?

JR: Right. Just to go back to an earlier question, and I'll certainly answer this one. My class, I taught property law this spring while this case was in the Supreme Court. We read the transcript from the oral argument, and the class overwhelmingly, I would say, the students in my class, about 80 of them, overwhelmingly was absolutely appalled at the possibility of this kind of use of eminent domain. But they also overwhelmingly predicted that the court would uphold it. And they were pretty much right on point, they thought it would be a 5-4 decision. And so, I guess, I suppose they're happy they predicted right, but disturbed by the fact that the opinion came out the way it did. But, going back to this whole question, what is the law after this case? I think Justice O'Connor summed it up pretty nicely in that, the court, after this opinion, it's difficult to conceive of when local or state or federal government couldn't use public domain. Because other than simply transferring property for the raw purpose of inconceivable incidental benefits by sort of changing the use of property from residential to commercial. That goes on all the times when we debate rezonings for higher-more intense uses. And as Justice O'Connor sums it up, she says basically you'd have to have your lights out, just not even thinking as a local government, to fail the standard that the court has articulated. And when you think about it, I know that the commissioner says "well, I'm not sure how big a problem this is." Well, part of the reason why we're not sure how big a problem it is because local governments have not really had the green light they now have. I mean, they also have the possibility of a fight on their hands, not on whether compensation is adequate, but whether the power is even there for the government to do it.

ZS: I guess that leads to my next question then. What does this all mean then, both for property owners in general, and local governments?

JR: Well, you know what, I tell this to my students when we talk about zoning and other government powers like this one, there's a story. If you give a mouse a cookie, right, it'll want something else. I fear that this is a wide-open green light to local and state governments to use eminent domain for this purpose, for economic enhancement, enhancement of public revenue, enhancement of jobs, all of which-everyone agrees those are public purposes. The question is, can you take private property and transfer it to other private entities to facilitate those purposes? And I think this just makes it too easy to do that, it's irresistible at this point.

ZS: Okay, Commissioner Rackleff, your response.

BR: Yeah, Jack. I'm very interested in what you said, and I hear you when you say that there's a potential for abuse in Florida, and that it will give impetus to local governments to jump in and do more of this. But, we're in Florida, we have a set of laws that govern eminent domain, do you have any suggested changes to our eminent domain law?

ZS: Professor Ruhl?

JR: Oh I'm sorry, I thought you were-Well, I think that the limitation to blighted areas is even Justice O'Connor agrees this is an adequate safeguard so to speak for private property owners. I'm not limiting my remarks to Florida, per se, on the other hand, that limitation, as I understand it in Florida, is a statutory limitation, I may be-

BR: No that's-right.

JR: Yeah, so again, I'd much rather see that embodied in some constitutional standard that the legislature couldn't change if indeed it decides on some future date that, "well, you know, let's relax that." But of course, the definition of "blighted" is pretty loose. There are areas, there's certainly been many concerns expressed, that areas, even here in Tallahassee, that are described or even designated as "blighted", the average person, if placed there, would not immediately say "hey, I'm in a blighted area," because there are other reasons why the designation as "blighted" might facilitate economic development. So, you have to ensure, first of all, that what's designated as "blighted" really is blighted, really is, as Justice O'Connor said, "causing a public harm," rather than standing in the way of more public benefit. So, you know, maybe it is time to reexamine exactly what qualifies as "blighted" in Florida and whether or not that safeguard is a check on the power that now the Supreme Court has said local and state governments have.

ZS: Alright, we have to take another quick break, but I want to give out the numbers once again. If you have comments or questions on property rights or eminent domain issues, give us a call. The numbers are 414-1234 and 1-800-926-8809, or send your emails to perspectives@wfsu.org. We'll be right back.

ZS: Welcome back, you're listening to "Perspectives" on 88.9 FM, I'm Zach Seidenberg. Today we're talking about property rights issues and eminent domain in the wake of the latest Supreme Court case about property in Connecticut. If you have comments or questions for today's guests, give us a call. The numbers are 414-1234 and 1-800-926-8809, or send your emails to perspectives@wfsu.org. And quickly, before we move on, I want to talk about some federal legislation in the works to counteract what the court has done. What does this ruling say about the current makeup or thought patterns of the current Supreme Court, that we have sitting right now. Professor Ruhl, you want to take that?

JR: Well, I don't think I'm surprised by the way the justices aligned themselves. The transcript-the oral argument transcripts were pretty predictable in terms of how the justices aligned. In general you have the five justices that are normally associated with more liberal political leanings, upholding the power of government and not as sensitive to property rights, and you have just the reverse on the other four. So, in that sense, it wasn't that really surprising. I think that the swing vote probably-well, and it turned out to be Justice Kennedy, who did express some concerns at the oral argument about whether this is just unfair, from the point of view that the private property owner giving up the property, or having to provide the private property for this purpose, doesn't share in any of the revenue enhancement. It's sort of like, "here, we're gonna take your property and give you 'fair market value' today, and then we're hoping that someone will

redevelopment it and everyone else is going to benefit except you.” And he was troubled by that. So I thought Justice Kennedy might have either tried to develop some different approach for compensation. But in the end, the 5-4 opinion, didn’t-I don’t think it surprised many lawyers or law professors.

ZS: Maybe we can also open this up to the entire panel. Should this case have even been heard before the U.S. Supreme Court? Was this the right place for this decision to be made?

BR: I mean, yes, of course. That’s where you get a clear rule, to define the law, and I think that was a very appropriate place for it.

MW: Absolutely. This-you know-we’ve talked a little bit about whether this is a widespread problem, and as someone who is sensitive to it and has been watching, I would say that is has. So, I was eager to hear a decision from the Supreme Court to sort of reign us in and focus on constitutionality, on the constitutional right. Of course I was disappointed by the decision, but we have examples all over Florida and all over the country, and unfortunately they sort of gave too much deference to local governments in this case.

ZS: Professor Ruhl, surprised at all that this case made it to the U.S. Supreme Court?

JR: Oh no. It had to, it absolutely had to. I mean I think there was-it was very appropriate. The court had to essentially explain whether the prior opinion in *Midkiff*, which was the opinion that addresses Hawaii’s efforts to break the oligopoly in land ownership in Hawaii, by transferring it from approximately 72 people to, you know, to the previous tenants. There was a lot of loose language in that opinion, a lot of very broad language, which Justice O’Connor, who wrote that opinion, conceives in her dissent here was too broad. It was-it invited the kind of behavior by local governments that we saw happen in the 80’s and 90’s and into this decade. And she said, “yeah, that’s not what I meant when I wrote that opinion.” So we really had to have it addressed by the Supreme Court. I’m not surprised they took the case, again I’m not surprised by the way it turned out, I’m disappointed by the way it turned out.

ZS: Alright, let’s go back to the phones now, we have Tom on the line in Tallahassee. Tom, go ahead.

Tom: Hey. I was very disappointed with this decision too, and in some ways I regret that it’s Ms. O’Connor that’s retiring, when it sounds like Kennedy who would be a more appropriate retiree at this point. But, if one looks at our situation here in Florida, you can see all sorts of possible ramifications, because it’s almost like what’s going on in business. It gets to a point where some businesses start to thin their employees-you know, use employees overseas, and then the ones who are the holdouts are the ones who go out of business. Well you look at our local governments along the panhandle, ones like Franklin County and stuff, they have a very small tax base, and they look at all the other Florida communities, and they see skyscrapers and tremendous amounts of taxes rolling in from seaside property and these large, giant condominiums. Then they look at their own beach and they say, “hey, we’ve only got 100 people owning a 5-mile stretch of land. We have to, out of obligation to our residents, sweep these people off the map and replace them with these giant condominiums. We can improve our tax rolls a hundred fold, a thousand fold, maybe ten thousand fold. And this bears very badly, well it looks very distressing in the future if this is the map that’s going to be laid out in front of these politicians as they’re considering the consequences of the tax results of this sort of thing.

They just have to look at the highest and best use, and I don't see how, ultimately, they're going to be able to avoid making these types of decisions, unless something is changed.

ZS: Tom, thanks for your call Tom.

MW: Tom makes a very good point here. Justice Stevens in his opinion even acknowledged that property rights-or this-yeah, these property rights have been eroding over the last century. We're taking a very awesome power and spreading it across to, not only, you know, numerous local governments, but often times they're sort of handing off this power to their development agencies, who aren't elected officials, and we almost can't expect them to use it carefully. I mean, we talk often in this state about competing for new companies and new developments and those sort of things, and I think it's a reasonable expectation that, with this sort of a green light, that people are going to be more creative with their planning, start to use their imagination more, and all that that does is it puts a premium on being politically connected. And conversely, leaves the victims of eminent domain without much power.

ZS: And on that note, you said politically connected, and I want to talk about this politically for just a moment. Could this be a difficult case, I guess we've heard some legislation might come out of this, could this be a difficult case for some conservatives or Republicans who often favor private development who favor private development and business growth, but also understand that property rights and the freedom from an overburdening government are core principles to them as well. So could that be a difficult one?

MW: Well, I think a harder conflict is those who see government as the ultimate solution and think that central planning is going to solve some of our sprawl problems, and so on and so forth, but at the same time want to stand up for the minority or the little guy. At the same time, I think-while I certainly don't speak for any particular party or even any group of people, the-perhaps there is some self-examination here to be more focused on limiting government power, so that the free market and free will of people can express itself.

ZS: Commissioner Rackleff?

BR: Well, I just want to point out to our listeners, that just because this Supreme Court decision has been made, that local government can go out and start seizing people's private redevelopment. We're governed by the state law, and the state law right now does not allow what the City of New London was able to do. There are-I think it's going to be a very useful exercise to have this select committee study the problem in Florida, to find out-to take-it's always useful to take another look at something that is so broad and powerful a tool of government. And let's remember that it's not just governments that have the right of eminent domain in Florida. There are public utilities, like electric companies, and then there are unregulated private companies like oil pipelines. They have a right of eminent domain in Florida. They-just by definition, when they want to build a pipeline route, whatever route they choose is by definition a public purpose, and they can go take somebody's property. They have to pay them a fair price, but that is a really unregulated use of eminent domain.

ZS: And, quickly, I know in the meantime, it looks like Congress may step in. I spoke with Florida Senator Bill Nelson yesterday. He's co-sponsoring legislation in Washington aimed at preventing government from seizing property for economic

development. I have a clip from him, why don't we hear what Senator Nelson had to say on eminent domain yesterday.

Senator Nelson (recording): The Constitution of the United States never envisioned that. I think the court's ruling will eventually be reversed, since it was such a narrow ruling of 5-4. It also heightens the interest in Sandra Day O'Connor's position, because she vigorously opposed the majority 5-4 ruling. She was-she wrote a vigorous dissent, and I agree with that. That's why, what we've got to do is, do something to cancel the effects of this Supreme Court decision, until the court can reverse it.

ZS: Alright, that was Senator Bill Nelson yesterday on eminent domain. What are your reactions to Senator Nelson's take and his co-sponsoring of legislation to counteract what the Supreme Court has done?

BR: Well, I'm not sure how it's going to effect people in local governments in Florida. The federal government does have a right of eminent domain in certain cases, and can confer that to others, such as interstate railroads and natural gas pipelines. But, you know, this really is a state by state problem, and what the court did is sort of expand the legally acceptable realm of eminent domain, but it's something we have to look at as a state, and decide what the public interest is.

ZS: Matt?

MW: Yeah, Senator Nelson referenced Justice O'Connor's dissent, which I also agree with. She makes the point that what we're really saying is, we're making private gain and public use indistinguishable. Because, what private gain isn't going to have some incidental public use, and can often be spun to seem very enticing. And I agree with Bob that we have to look at this state by state now, and while Florida is in better shape than most, because of our statutory limitations with blight, there are several homeowners and small business owners in Florida who would take issue with the idea that there isn't a problem.

ZS: Professor Ruhl, do you see the court revisiting this?

JR: I'd be surprised, if anytime soon it would come up again, to be perfectly honest. The court doesn't usually revisit issues of this magnitude lickety-split, I mean it may come up-if it were to come up, it would probably come up in a situation in which the allegation was that a local government was overreaching, was abusive, and really had no plan and didn't meet the rather abstract test even that the court lays out in New London. So we might see litigation over whether or not even these redevelopment plans meet the court's expectations in New London. I'd be surprised though if we saw the Supreme Court take another look at this issue for a good while. I also don't know what Senator Nelson has in mind in terms of legislation, if it's to limit the federal government's power of eminent domain by statute. Certainly the federal government can do that, restrict it's power beyond the restrictions that the Constitution applies. If it were-if he has in mind restricting state and local government powers, I'm not-

ZS: I think that's what it would do. It would limit federal funds.

JR: Okay. Oh, it would limit federal funds?

ZS: Federal funds to local governments that take eminent domain for economic development.

JR: I see. Well, it'd be interesting to see how that plays out. But I agree with Bob, that really the result of the case in the immediate timeframe is to-I would imagine many states now are looking at their own practices and policies and asking, "where do we want to go

with this?" I think people who are aware of and concerned about the results of the opinion, or encouraged by the results of the opinion, will want to take stock of their state and local practices.

ZS: Alright. Well that's all the time we're going to have for today's discussion. I want to thank our callers for taking part, and our guests: J.B. Ruhl, Matt Warner, and Bob Rackleff. Taylor Cox is our technical director, and we had technical assistance from Dorothy St. Jean. For 88.9 AM, WFSU in Tallahassee, I'm Zach Seidenberg, thank you for joining us.