

## Private Property Rights: “Slamming the Door on *Kelo*”

By J. Robert McClure – November 2006

It all began the day before Thanksgiving 2000. In a land grab that was to reverberate across the nation, Connecticut’s New London Development Corporation announced that an entire neighborhood was to be condemned through the use of eminent domain and given to a private company for “economic development.”

Susette Kelo and other area residents unwilling to sell fought this land grab all the way to the U.S. Supreme Court. Arguing that the City of New London was violating the “takings clause” of the U.S. Constitution’s Fifth Amendment, Ms. Kelo and her attorneys were confident that the High Court would uphold the rights of the area’s property owners.

After all, under the Fifth Amendment, governments’ use of their power of eminent domain historically had been allowed only for a “public use” – i.e. utility rights of way, roads, parks, schools, etc. It had *not* been allowed for vague “public purposes,” a term employed as a kind of fig leaf to conceal private gain for politically connected special interests.

Unfortunately, The U.S. Supreme Court ruled against Ms. Kelo and her neighbors. The Court’s 5-4 decision held that the city could seize these residents’ homes and convey the property to private developers.

This controversial ruling not only displaced Ms. Kelo and her neighbors from homes where many had lived all their life, but it also jeopardized the property rights of every American. How? By holding that there is no Constitutional impediment to prevent governments from taking private property and conveying it to other private parties simply because the governments wished to boost their tax base. In the eyes of the Court’s misguided majority, boosting the tax base served a “public purpose.”

What was once a slow erosion of private property rights had now become a potential avalanche as many municipalities across the country hastened to plow full speed ahead in the name of enhancing their tax base through economic development that entailed the use of eminent domain to seize private property. Judges, including several in Florida, cited the *Kelo* decision in opinions asserting cities’ right to condemn private property for this kind of dubious purpose.

Property owners were stunned as this trend accelerated. In Riviera Beach, where the city government was set to displace 6,000 residents for the purpose of letting a private developer build a yacht club, pricey shops, and upscale condominiums, the homeowners’ efforts to save their modest homes from the wrecking ball gained national media attention.

The Florida Legislature also took notice, and in the spring of this year passed House Bill 1567 that was signed into law by Gov. Jeb Bush. The new law, codified in Florida Statute 73.014, restricts a municipality from taking private property from Citizen A to give it to Citizen B for the purpose of merely enhancing the tax base. Moreover, policymakers also raised the threshold of what constituted “blight” – previously a frequent rationale for eminent domain takings. Ultimately, however, a constitutional amendment would provide the greatest degree of long-term protection against the abuse of eminent domain.

J.B. Ruhl, Matthews & Hawkins Professor of Property at the Florida State University College of Law, eloquently summed up the situation in the Fall 2006 *Journal of the James Madison Institute*. “The combined effect of House Bill 1567 and adoption of Amendment 8 would be to slam the door on any attempt at *Kelo*-style use of eminent domain in Florida. . . For anyone concerned that *Kelo*-style uses of eminent domain are inappropriate, House Bill 1567 provides comfort, but Amendment 8 provides even more.”

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