

The Evolution and Consequences of *Kelo v. City of New London*

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INTRODUCTION

THE FIRST TEN AMENDMENTS TO THE UNITED STATES Constitution, the Bill of Rights, were created to save us from what John Stuart Mill called tyranny by the majority. The purpose of the Bill of Rights is to protect the individual from the power of government, and in theory, from the will of the majority by protecting individual liberty. For example, the First Amendment protects the dissemination of unpopular ideas, protects the press, provides for religious freedom, and gives people the right to collectively assemble and complain to and about the government. Each one of these protections has been given specific legal meaning.

At least since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), courts have been charged with determining the constitutionality of governmental action. By this process courts have protected the individual from the government, and therefore from tyranny by the majority. Never has a court said that the phrase “Congress shall make no law...abridging the freedom of speech...” was not subject to judicial interpretation. Obviously, if liberty of free speech, as provided by the First Amendment to the Constitution, extends only as far as Congress says it extends, then we have no free speech. Since the Bill of Rights was established to protect the individual from the majority, it would defeat its purpose to have the majority determine what freedom of speech meant. Therefore, time and again, courts have given specific meaning to the phrase “freedom of speech” and have continually risen to the occasion by defeating the legislative will and protecting the individual.¹

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The Fifth Amendment to the Constitution states, in part, "...nor shall private property be taken for public use, without just compensation." That clause originally applied only to the federal government, but was made applicable to the states by the Fourteenth Amendment.² It is hard to imagine that the drafters of the Bill of Rights envisioned that some of the language they were debating would simply have no meaning. However, the United States Supreme Court made exactly that determination in the case of *Kelo v. City of New London*, 125 S. Ct. 2655; 162 L. Ed. 2d 439 (2005) (*Kelo*).

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The issue presented to the Supreme Court in *Kelo* was the specific meaning of the phrase "public use" as it is used in the Fifth Amendment. In *Kelo* the Court was presented with exactly the situation that the Bill of Rights was meant to prevent. A few families were seeking the protection of law from the power of the majority. The families involved lived in the Fort Trumbull neighborhood in New London, Connecticut. The economic base of New London had weakened considerably in preceding years. The Naval Undersea Warfare Center had closed down in 1996 and many of New London's jobs left with it. The population in and around New London dropped to its lowest level since the 1920s. The most blighted area of New London was its Fort Trumbull area. This area is located on a peninsula in the Thames River.

In the New London area there existed a private, nonprofit entity called the New London Development Corporation (NLDC). This organization was reactivated in January 1998 with the idea of assisting the city with economic development. At about the same time as the group's reactivation, the city of New London received news that Pfizer Pharmaceuticals was planning to build a \$3 million research center in the Fort Trumbull area which would, presumably, rejuvenate the area and bring in needed employment.

The NLDC crafted a redevelopment plan which it hoped would complement the new Pfizer facility and revitalize this area of New London. In January of 2000 the New London City Council approved the plan and designated the NLDC as being in charge of implementation. The council further delegated to this private corporation its power to purchase property pursuant to the plan, and to exercise eminent domain in the name of the city of New London if necessary.

The Fort Trumbull area was composed of approximately 115 privately owned properties and 32 acres of a former

naval facility. The NLDC's development plan encompassed approximately 90 acres, divided into seven parcels, with a different use contemplated for each parcel. These uses included a waterfront conference hotel, retail shops and restaurants, a pedestrian river walk, a residential neighborhood, marinas and a new U.S. Coast Guard museum.

The majority of landowners in this 90-acre area of interest agreed to sell their property to the NLDC. Nine families, owning 15 properties, could not come to terms and had their properties condemned by the NLDC via the power granted to them by the New London City Council. Eleven of these properties were in Parcel 4A and four were in Parcel 3. As stated in the *Kelo* opinion: "Petitioner Susette Kelo had lived in the Fort Trumbull area since 1997. She had made extensive improvements to her house, which she prized for its water view. Petitioner Wilhelmina Dery was born in her Fort Trumbull house in 1918 and had lived there her entire life. Her husband Charles (also a petitioner) had lived in the house since they married some 60 years ago."

Interestingly, the NLDC had no firm plans for the use of Parcel 4A, a site composed of only 2.4 acres which included eleven of the properties at issue. In fact, the Supreme Court rendered its decision in *Kelo* before any specific plans had been made for the site's use. All the NLDC could tell the Court was that the subject property might be used to support a local marina or as a parking lot for a nearby state park. Parcel 3, which contained the other properties at issue, was to be used as office space for research and development. This area was located immediately north of the newly planned Pfizer facility.

The Supreme Court held that the city's proposed disposition of petitioners' property qualified as a "public use" within the meaning of the Fifth Amendment. In so doing they cited *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158-164 as standing for the position that "public use" should be interpreted as "public purpose." They went on to state that the Court has defined the concept of "public purpose" broadly, in deference to legislative judgments as to what public needs justify the use of the takings power of the Fifth Amendment. In other words, the Court was saying that the use of eminent domain is limited only to showings of "public purpose," and local governments are the appropriate parties to determine when "public purpose" is best served by the use of that power. So long as the local governmental body has satisfied its duty of due diligence by "carefully formulating its plan" and "thoroughly deliberating its (the plan's) adoption," the Court will defer to that judgment.

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The Court specifically rejected a request that economic development should not qualify as a public use. It also rejected petitioners' argument that for takings of this kind, the Court should require a "reasonable certainty" that the expected public benefits will actually accrue. The Court did recognize that "...the city could not take petitioners' land simply to confer a private benefit on a particular private party. ..." However, it dismissed this important limitation in *Kelo* merely by stating that "...the takings at issue here would be executed pursuant to a carefully considered development plan, which was not adopted 'to benefit a particular class of identifiable individuals.' ..."

In its opinion, the Court cited its decision in *Berman v. Parker*, 348 U.S. 26 (1954) (*Berman*) in which it held that eminent domain could be properly used for the elimination of slums or blight. Interestingly, neither the city of New London nor the NLDC made any allegation that the subject properties in *Kelo* were blighted in any way. Rather, the Court expressly noted that they were condemned only because they happened to be located in the development area. Many of the properties were located on valuable beach front and were being transferred to a private developer by the NLDC. The Court found no problem with this and left the definition of the phrase "public use" completely to the whim of local government—in this case the unelected officials of a development corporation.

How has the interpretation of "public use" evolved into such a broad application that it has supported taking private property to give to another private individual? The Supreme Court in 1798 stated: "[A] law that takes property from A and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers; and, therefore, it cannot be presumed that they have done it. The genius, the nature, and the spirit of our State Governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them. ..." Today, pursuant to the decision in *Kelo*, "such powers" are an acceptable power of state and local governments. The determination as to what is a public use or a public purpose is now wholly a local government determination, and further, it essentially matters not that the land is taken by the governmental entity and given to another private owner, so long as the government's plan is carefully considered and does not identify a particular individual or group of individuals to be benefited. This dramatic reversal of constitutional determination was arrived at through a slow and incre-

mental process which began in the nineteenth century.

THE EVOLUTION OF A DECISION

In some ways, things have come a long way since the Supreme Court in *Calder* described what was to eventually happen in the *Kelo* case as being "against all reason and justice." In other ways, things are right back where they started. Initially, the Takings Clause, that section in the Fifth Amendment stating the government can take property only for public use and with just compensation, applied to actions of only the federal government. In *Baron v. City of Baltimore*, 32 U.S. 243 (1833), the Supreme Court was confronted with the question of whether the Takings Clause could prevent the destruction of harbor property by the City of Baltimore without just compensation. The Court said it could not, that the states were not subject to the restrictions of the U.S. Constitution. It stated, "The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states." Therefore, as regarded state action, the definition of public use was left to the states.

History teaches us what happened when the states were given this power. Beginning with the discovery of the Comstock Lode in 1859, mining and mining companies controlled Nevada politics. Thus it was not a surprise when mining interests were able to get the Nevada legislature to declare that any land needed for the mining industry was serving a "public use." Specifically Nevada's statute stated that, "the production and reduction of ores are of vital necessity to the people of this state; are pursuits in which all are interested and from which all derive a benefit; so the mining, milling, smelting, or other reduction of ores are hereby declared to be for the public use, and the right of eminent domain may be exercised therefore."⁴ A challenge to this law was brought to the Nevada Supreme Court in the autumn of 1876. A mining corporation decided that it would be easier to transport lumber and other materials to its mining operation if it could take land belonging to James Waddell. Since Waddell had no desire to part with his land, the mining company simply had the local government take his property by eminent domain and deed it to the company. The Nevada Supreme Court found no problem with taking land from a relatively powerless individual and giving it to one of the most powerful interests in Nevada at the time—a mining corporation. The Court obviously did not base its decision on any theory supported by the Bill of Rights, such as protection of individual liberty. As

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the Court succinctly stated, "...that mining is the paramount interest of the state is not questioned; that anything which tends directly to encourage mineral developments and increase the mineral resources of the state is for the benefit of the public and is calculated to advance the general welfare and prosperity of the people of this state, is a self-evident proposition."⁵

Nevada was not alone in its view of the broad applicability of eminent domain and the broad definition of public use and purpose. As mining interests controlled Nevada, steel companies and railroads controlled Pennsylvania during this era. In 1858, a coal company decided that it wanted to shorten its route to the Monongahela River by building a railroad through the farm of James H. Hays. Since Hays preferred not to lose productive farm land, nor have his peace and solitude destroyed by a noisy and smelly coal fired train, he refused to sell an easement to the corporation. The coal company contacted the local government who took the right-of-way by eminent domain and gave it the company.⁶

Hays brought his argument to the Supreme Court of Pennsylvania. He argued that this taking was not for a public use. The Court rejected this argument, finding that the mining of coal was a financial benefit to the state. James Hays also argued that the company should take a shorter and more direct route to the river that would not damage his land as severely. The Court reasoned that the coal company was best able to determine its own most appropriate route. However the Court did not stop with taking the land of this private citizen to give to a private corporation. It also found it necessary to disparage Hays for his rudeness in thinking that his land should not be made available for taking by a powerful corporation. The Court called him the "unneighbourly owner." It also found that the actions of a private corporation and the actions of the government were one and the same since the government granted the right to take private lands through the *Lateral Railroad Act* 67 P.S. § 781. The Court further chastised Hays for arguing the outlandish idea that private lands should be taken only for a "public purpose." It stated: "The Constitution was not made to prevent or hinder the government from improving the country and promoting the general welfare of the citizens; and when the selfish passions of individuals attempt to set up the instrument for such purposes they misapply it, and cannot expect the courts to help them." At this point in our history, while state and local governments, without the restrictions of the Fifth Amendment, were running

roughshod over private landowners at the behest of the powerful, the federal courts, constrained by the Fifth Amendment, were following a different route.

In 1897, a case reached the U.S. Supreme Court involving the Gettysburg Battlefield. Congress had decided to preserve the battlefield and erect tablets and statues at various places on the site. On June 5, 1894, by joint resolution of Congress, and with approval of the President, the federal government was further authorized to take any necessary land by eminent domain. The Court determined that a taking could only occur if its purpose was both a public one and within the powers granted to government by the U.S. Constitution.⁷ "It [the government] has authority to do so [take property] whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution. Is the proposed use, to which this land is to be put, a public use within this limitation?"⁸ After an exhaustive analysis of the public benefits of preserving the battlefield, the Court determined that "...when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation." Thus a two-pronged test emerged for the use of eminent domain by the federal government. First, was the goal within the powers granted by the U.S. Constitution, and second, was there a public use to which the land was going to be put?

Therefore, as we approached the end of the nineteenth century, the United States had two distinct legal approaches regarding eminent domain. One, followed by the states, allowed the taking of private property and subsequent transfer to another private individual so long as the taking indirectly, or even arguably, advanced the economic welfare of the state or its citizens. The other approach required that the federal government, operating under the restraints of the Fifth Amendment's Takings Clause, act only within its constitutional authority and exercise the right of eminent domain only for a truly public use.

It was not until the adoption of the 14th Amendment in 1868 that people began to contemplate the application of the Bill of Rights to state and local actions. Even though Congressman John Bingham, the drafter of the 14th Amendment, argued that he was proposing the amendment specifically to make the first eight amendments to the Constitution applicable to state and local action; the courts did not agree. It was not until 1897 that the first section of the Bill of Rights was incorporated into the 14th Amendment and made applicable to the states.⁹

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The decision in *Cincinnati v. Vestor*, 281 U.S. 439 (1930) (*Cincinnati*) is telling on the issue of public use under the new standard of federal liberty guarantees being made applicable to state and local actions. In this case the city of Cincinnati decided to take property via eminent domain for the widening of Fifth Street. No one contested the expansion as being for a public use. However, the city attempted to condemn an area wider than was necessary for the public use. In its decision the U.S. Supreme Court began by laying out what it viewed as current precedent.

It is well established that in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question what is a public use is a judicial one. In deciding such a question, the Court has appropriate regard to the diversity of local conditions and considers with great respect legislative declarations and in particular the judgments of state courts as to the uses considered to be public in the light of local exigencies. But the question remains a judicial one which this Court must decide in performing its duty of enforcing the provisions of the Federal Constitution.¹⁰

This is a statement of the law that gives due regard to the Bill of Rights and the Court's responsibilities to use it to insure our freedoms. In the end, the U.S. Supreme Court did not allow the city of Cincinnati to take the excess property because it could not delineate a public use for it that was specific enough to pass Fifth Amendment or Ohio statutory law scrutiny.

The Court's decision in *Kelo* discounted the earlier case of *Cincinnati v. Vestor* and instead turned to two cases that were decided in the latter half of the twentieth century: *Berman* (above) and *Hawaii v. Midkiff*.¹¹ Justice Stevens, writing the majority opinion in *Kelo*, relied heavily on these two cases for the proposition that the Court must "...decline to second-guess the city's considered judgments about the efficacy of its development plan." The Court's reliance on these cases is arguably misplaced.

Rather than simply deferring to the opinion of a locally appointed corporation, the U.S. Supreme Court in *Berman* took a hard look at the public purpose involved in the taking. *Berman* concerned a redevelopment project in Washington, D.C. The Court was persuaded to allow the exercise of eminent domain by the fact that the areas being condemned were slums that adversely affected the health and welfare of the inhabitants of Washington, D.C. The Court in *Berman* stated:

In 1950 the Planning Commission prepared and published a comprehensive plan for the District. Surveys revealed that in Area B, 64.3% of the dwellings were beyond repair, 18.4% needed major repairs, only 17.3% were satisfactory; 57.8% of the dwellings had outside toilets, 60.3% had no baths, 29.3% lacked electricity, 82.2% had no wash basins or laundry tubs, 83.8% lacked central heating. In the judgment of the District's Director of Health it was necessary to redevelop Area B in the interests of public health. The population of Area B amounted to 5,012 persons, of whom 97.5% were Negroes.

It is extremely hard to argue that the eradication of such conditions does not serve a public purpose. Rather than displacing the affected persons, the plan required the construction of low-cost housing that was clean and sanitary. It is extremely easy to see the public use here, and a unanimous Court had no difficulty in finding the eradication of squalor to be a public purpose.

In 1984 the U.S. Supreme Court revisited the issue of public use in deciding an appeal in the case of *Hawaii v. Midkiff*. Hawaii had been settled by Polynesian peoples from the western Pacific. When they arrived they established a feudal system whereby the land was owned by the king. The peasants worked land they did not own, and never could own. By the mid 1960s Hawaii was still owned by only a few people. On Oahu, 72 percent of the land was owned by 22 landowners. Overall, 49 percent of all the Hawaiian Islands was owned by the state and federal government, while 47 percent was owned by 72 private landowners. Hawaii attempted to end the remnants of its feudal system by having the government purchase all land in excess of five acres that was leased to a private individual. It paid the owners just compensation.

Justice O'Connor, who would later dissent in *Kelo*, wrote the Court's opinion in *Midkiff*. She determined that the ages-old Hawaiian land system had "...created artificial deterrents to the normal functioning of the State's residential land market and forced thousands of individual homeowners to lease, rather than buy, the land underneath their homes. Regulating oligopoly and the evils associated with it is a classic exercise of a State's police powers."¹²

In the case of *Kelo*, however, there was no such limitation concerning a public use or a public purpose. In *Berman* and *Midkiff* there was an evil that had been perceived by the state and the state acted to eradicate that evil, e.g., the existence of unsafe, blighted properties and an antiquated

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feudal system of land ownership. These cases dealt with an easily recognizable public use or purpose in eradicating these recognized evils. Neither problem existed in the *Kelo* case.

In *Kelo*, the City of New London simply made a determination that one private citizen could provide more economic benefit to the community than another private citizen. Perhaps there is some public purpose in attempting to create a better economic climate or to collect more tax revenue. However, as a result of the *Kelo* decision, there is now no distinction between a public purpose and a private purpose. The Court specifically addressed the instance of a “one-to-one transfer, executed outside the confines of an integrated development plan,” but found that such a transfer was not present in the instant case, presumably because the beneficiary of the transfer was not specifically identified at the time of the trial. Therefore, the definition of a public purpose is left to the local government so long as its planned use for the property is considered and does not name a specific person or group to be benefited thereby. The logic of this decision would allow a city to condemn a church to build a retail store because it would provide jobs or to condemn modest housing because an expensive high rise would yield higher tax revenue. As Justice O’Connor stated in her dissenting opinion: “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.”

Justice Stevens, writing for the majority in *Kelo*, did not provide a standard by which to interpret the phrase “public use;” he simply explained why one standard after another could not work and left the determination to local government. In other words, the Court declined to address the issue. This is more than a little troubling as the question at hand was a fundamental right guaranteed by the Bill of Rights. As stated by the Court in *Cincinnati* (above) “...the question remains a judicial one which this Court must decide in performing its duty of enforcing the provisions of the Federal Constitution.” Unfortunately, the Court in *Kelo* abandoned its responsibility to develop standards by which to interpret the Bill of Rights in a way that protects the citizenry from tyranny by the majority. It failed its fundamental task.

The result of the *Kelo* decision has been to return us to the days prior to the Incorporation Doctrine which made the Takings Clause applicable to state action. The protection of individual liberty is essentially now left to the whim of local government.

POST-KELO

As mentioned above, the petitioners in *Kelo* maintained that for takings of the kind present in the instant case the Court should require a “reasonable certainty” that the expected public benefits would actually accrue. The majority rejected this argument, stating: “Such a rule, however, would represent an even greater departure from our precedent. ‘When the legislature’s purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the federal courts.’”

Three years after the Supreme Court case was decided, Susette Kelo’s house was relocated to another site. The city’s redevelopment plan, which figured so prominently in the Supreme Court opinion as justification for the taking, failed. The redeveloper was unable to obtain financing and the redevelopment project was abandoned. The promised new jobs and increased tax revenues did not materialize. In September 2009, four years after the *Kelo* decision, Pfizer completed a merger with Wyeth and in late 2010 chose to close its New London facility prior to the expiration of its tax breaks on the New London site.¹³ The land was never deeded back to the original homeowners, most of whom left New London for nearby communities.¹⁴ As of early 2011, the original *Kelo* property was a vacant lot, generating no tax revenue for the city. The cost to the city and state for the purchase and bulldozing of the formerly privately held property, as of 2009, was \$78 million.¹⁵

Prior to *Kelo* only eight states specifically prohibited the use of eminent domain for economic development (except to eliminate blight). These states were Arkansas, Florida, Illinois, Kentucky, Maine, Montana, South Carolina and Washington. By July 2009, 43 states had enacted some type of reform legislation in response to the *Kelo* decision. Of those 43 states, 22 enacted laws that substantially inhibited the takings allowed by the *Kelo* decision, while 21 states enacted laws that placed some limits on the power of municipalities to invoke eminent domain for economic development.¹⁶

CONCLUSION

The Supreme Court Building in Washington, D.C., has a statue of Lady Justice, as do many courthouses in this country. She is a woman, often blindfolded, holding a set of scales and a sword. The sword represents reason and justice, and may be used for or against either party. The

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blindfold represents her lack of concern for the social status of the individuals before her. The scales hold all of the many items that must be weighed to achieve justice and promise that the evidence will be weighed fairly and objectively. The statue has been prominent since the ancient Greek civilization and adorns courthouses throughout Europe and the Americas. She does not depict law. She depicts justice. The goal of our legal system is not the enforcement of laws, but rather the pursuit of the elusive goal of justice. Justice is made up of many things of which law itself is but one small part. The laws created by our legislature attempt to create justice for the majority. The Bill of Rights in our Constitution protects the minority from the majority, thereby ensuring individual justice.

The U.S. Supreme Court ignored individual justice with its decision in *Kelo*, returning to the days when local government is free to select winners and losers without the constitutional restraint of the Fifth Amendment. Unfortunately, local government is not equipped to balance liberty interests; that can be done only by an independent judiciary.

The *Kelo* decision raises several disturbing issues. First, in light of the lack of standards defining public use, are there any private property rights left in this country? Ownership and future control of property is potentially subject to the whim of local government to favor one owner over another for some possibly nebulous reason such as the desire to collect more tax revenue from the property. It does not seem difficult for a local governmental entity to satisfy Justice Stevens' requirements of a "carefully considered development plan ... not adopted to benefit a particular class of identifiable individuals." Even more disturbing, as pointed out by Justice Thomas in his dissent, is the possibility that local governments might use eminent domain to rid themselves of housing opportunities for the economically disadvantaged, thus driving the poor from the community.

Ironically, in response to the *Kelo* decision, a proposal was made to take Justice Souter's home in Weare, New Hampshire, through eminent domain and give it to another individual to make a bed-and-breakfast. While the irony of this situation is humorous, it highlights the possibility that local governments might choose to take properties from private citizens for any number of reasons—to create tourist attractions, to advance business interests, to increase tax revenues—merely by arguing

that such takings would benefit the local economy.

Following the *Kelo* decision, Riviera Beach, a community in Florida, made plans to condemn much of its waterfront property, potentially displacing thousands of people. On May 4, 2006, the state of Florida passed legislation that prohibited the taking of properties through the use of eminent domain where the properties were to be used for private development. Florida's Governor Jeb Bush signed this legislation on May 11, 2006, but the Riviera Beach City Council voted on the night of May 10, 2006, to authorize signing an agreement with developer Viking Harbor Inlet Properties that the city would use eminent domain to take property for the project. As a result, an 800-acre area full of homes and businesses, including as many as 5,100 residents, was to be replaced with a yachting complex, luxury housing and other private commercial uses.

Riviera Beach's mayor announced that the city believed Florida's new law did not apply to Riviera Beach. Riviera Beach's home and business owners filed suit to stop the use of eminent domain for this private development. Shortly thereafter, the mayor was voted out of office, and new city council members were elected. Responding to public outcry, they made clear that plans to use eminent domain for this project were off the table. An editorial by the *St. Augustine Record*, May 14, 2006, stated:

That decision [Kelo] paved the way for cities and counties to take private homes or businesses if they 'believed' the development 'might' generate more tax revenue. And according to the Virginia-based Institute for Justice, hundreds used the ruling to prepare or begin condemnation proceedings across the land. And because of the wording of the Supreme Court opinion, governments did not need to demonstrate any need for the property in the foreseeable future. Some simply began to condemn property with the intent of shopping for a developer down the road.

The Justices did, however, say in the ruling that individual states could enact their own laws to provide more protection to owners than did the court.

Thursday, Florida became one of the first. The legislation signed by Bush prohibits transferring property from one owner to another by use of eminent domain. It forbids the use of eminent domain to eliminate "blight." It does still allow government to take private property, but in the much narrower description written

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in the state constitution. By contrast, Connecticut's statutes allow eminent domain for developments used for 'any commercial, financial or retail enterprise.'

The Florida law has been heralded by property rights groups as a model for other states, although some commentators argue that it goes too far in forbidding takings to eliminate blight. Unfortunately, in light of the U.S. Supreme Court's ruling in *Kelo*, individual state legislative action may be the only avenue remaining to protect individuals from this particular form of "tyranny by the majority." ■

ENDNOTES

1. Laurence Tribe, *2000 American Constitutional Law*, Foundation Press.
2. *Chicago B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 41 L. Ed. 979, 17 S. Ct. 581 (1897).
3. *Calder v. Bull*, 3 U.S. 386, 388-89 (1798).
4. Nevada Statute (1875), 111.
5. *Dayton Gold and Silver Mining Co. v. Seawell*, 11 Nev 394 (1876).
6. *Hays v. Risher*, 32 Pa 169 (1858).
7. *United States v. Gettysburg R.R.*, 160 U.S. 668; 16 S. Ct. 427; 40 L. Ed. 576 (1897).
8. *Ibid.*, p. 679.
9. *B. & Q. R. Co. v. Chicago*, 166 U.S. 266 (1897).
10. *Cincinnati v. Vester*, 281 U.S. 439 (1930), p. 446.
11. *Hawaii v. Midkiff*, 467 U.S. 229; 104 S. Ct. 2321; 81 L. Ed. 2d 186 (1984).
12. *Ibid.*, p. 242.
13. "Pfizer to Close New London Headquarters," *Hartford Courant*, Nov. 9, 2009.
14. "Connecticut Land Taken from Homeowners Still Undeveloped," Associated Press, Sept. 25, 2009.
15. "Pfizer and *Kelo v. City of New London*," *The Wall Street Journal*, Nov. 11, 2009.16. www.castlecoalition.org/legislativecenter.

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