

POSITION PAPER

EMINENT DOMAIN AND PROPERTY RIGHTS

By: John W. Wallace

The regulatory taking of private property by state and local governments, without just compensation, has become a growing problem across the nation. As federal, state, and local regulations have increased in number and scope, private property owners have increasingly found themselves unable to remain in their property and/or to get fair market value compensation for their properties when taken by the governments using the Eminent Domain process. For the last 50 years or so, unrestrained state and local governments have begun taking private property not for "public uses" such as roads, bridges or public buildings, which is permitted by the U.S. Constitution, but for private real estate development in the name of "economic development." Private homes and commercial properties have been bulldozed, replaced by upscale condo developments, office buildings, casinos and other development projects owned not by the public, but by private, politically powerful individuals and corporations.

In 2005, the U.S. Supreme Court, in *Kelo v. City of New London* (545 U.S. 469), decided that it was legal for state and local governments to use Eminent Domain to transfer land from one private owner to another private owner, in order to further economic development. The case arose from the City of New London's condemnation of an individual's private property so that it could be used as part of a comprehensive redevelopment plan. The Court held in a 5-4 decision that the general benefits a community enjoyed from economic growth qualified such redevelopment plans as a permissible "public use" under the Takings Clause of the Fifth Amendment. Most Americans have viewed this decision as a gross violation of property rights and as a misinterpretation of the Fifth Amendment Takings Clause which states in part: "nor shall private property be taken for public use without just compensation." The ultimate consequence of this Supreme Court decision is that it benefits politically connected corporations and developers at the expense of the property rights of private individuals.

Justice O'Connor wrote in her scathing dissent of this decision, "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded – i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public – in the process."

A man's or woman's home is supposed to be their castle, but since the 2005 court decision, additional American property owners have been deprived of their right to remain in their homes and farms by local politicians and developers who have conspired to have their properties confiscated for the supposed "public good." American citizens have always believed that if they buy a home, or even a small commercial investment property, that they will be able to keep that home or commercial property until they pass it on to their heirs or decide to sell it. After all,

the Fifth Amendment guarantees that “private property [shall not] be taken for public use, without just compensation.”

Not surprisingly, most Americans were outraged by the Supreme Court’s decision in Kelo vs New London. Since the decision, some states have passed legislation aimed at curbing an abuse of Eminent Domain powers by state and local governments. In 2006, 12 states held referendums proposing to limit state governments’ abilities to confiscate property and ten of these states approved the proposals, each with strong majorities. Local politicians and their special interest supporters at all levels of government must be stopped from trampling over the property rights of American citizens and literally driving families from their homes, farms and ranches in the interest of making money for special interest groups and developers and/or increasing the tax base for the local governments.

The nation’s founders clearly identified the respect for private property ownership as a key principle when writing our nation’s Constitution. This principle is even more important today, as homeownership has become an increasingly integral part of our citizens’ aspirations for a better future for themselves and their families. If the U.S. Supreme Court will not protect our right to property ownership, then members of congress must step up to the challenge.

I support legislation that prohibits any state or local government from exercising its power of Eminent Domain over private property, non-profit and tax-exempt property that is to be taken and used for economic development, if the state or local government receives federal economic development funds during any fiscal year in which the property is so used or intended to be used. Any proposed law should also establish legal remedies for any property owner or tenant who suffers injury as a result of a violation of this Act and it should also deny state and local governments immunity in federal or state court.

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