



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

KELO V. NEW LONDON (2005) MONDAY, APRIL 24, 2006

OVERVIEW

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One of the most controversial Supreme Court rulings of the past year was the decision in *Kelo v. New London* (2005.) The Court held that that the phrase “public use” from the Fifth Amendment can be interpreted as “public benefit.” Therefore, the government can take private property from an individual in order to turn it over to a private developer if the taking will result in “economic development” for the region.

RESOURCES

- <http://www.law.cornell.edu/supct/html/04-108.ZS.html>
- <http://www.latimes.com/news/nationworld/politics/la-na-eminent16apr16,1,1238641.story?coll=la-news-politics-national&ctrack=1&cset=true>

ACTIVITY

Suzette Kelo stood in front of her pink Victorian house and gazed across the Connecticut Thames River. She smiled, but the flicker of concern across her brow was unmistakable. How much longer would she be able to live in this home she had carefully restored over seven years? The city wanted to buy the land her home was on, and then tear it and over 100 other houses down in order to allow private developers to revitalize the area—there were plans for a resort hotel, a conference center, and new condominiums. She and fourteen other property owners in New London were the last holdouts, refusing to sell their land to the city.

The city then invoked its power of eminent domain in order to take the land. The Takings Clause of the Fifth Amendment says “...nor shall private property be taken for public use without just compensation.” The city offered to pay the owners fair market value for their homes, meeting the requirement for “just compensation.” But Kelo and the other property owners claimed that “public use” in the Takings Clause means that the land must be taken to in order build a school, road, courthouse, or other facility the public will use. The government, they argued, does not have the constitutional power to take private property in order to turn it over to a private developer.

The city countered that the private development would be for the “benefit of the entire community.” The city’s attorney pointed out that hundreds of jobs would be created, tax revenue increased by \$680,000, and greater public access to the river would be created.

The Supreme Court ruled on *Kelo v. New London* in 2005. The Court agreed with the city of New London and held that the government could take privately-owned land in order to turn it over to a private developer. The Court explained that it had “rejected a literal requirement” of the phrase “public use” in the Takings Clause of the Fifth Amendment. The phrase “public use” could be interpreted as “public benefit.” Therefore, the government can take private property from an individual in order to turn it over to a private developer, because the taking will result in “economic development” for the region.

QUESTIONS

1. How did the city of New London plan to use the land on which Kelo’s house was situated?
2. What is eminent domain?
3. How did the city justify its plans? Why did Kelo and the other holdout property owners say the city was acting unconstitutionally?
4. How did the Supreme Court rule?
5. Read the following two quotations (see page 2). The first is from the majority opinion by Justice Stevens and the second is from Justice O’Connor’s dissent. With whom do you agree, and why? Is “public purpose” an appropriate interpretation of the words “public use”? How should the Supreme Court interpret the words in the Constitution?



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The Court held, *“The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue. ...Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the Fifth Amendment.”*

In her dissent, Justice Sandra Day O’Connor wrote, *“To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings “for public use” is to wash out any distinction between private and public use of property—and thereby effectively to delete the words “for public use” from the Takings Clause of the Fifth Amendment.”*



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ANSWERS

1. The city planned to turn the land over to private developers to revitalize the area and build a resort hotel, a conference center, and new condominiums.
2. Eminent domain refers to the power of government to take private property for public use.
3. The city argued that the private development would be for the “benefit of the entire community.” The city’s attorney pointed out that hundreds of jobs would be created, tax revenue increased by \$680,000, and greater public access to the river would be created. Kelo and the other property owners countered that “public use” in the Takings Clause means that the land must be taken in order to build a school, road, courthouse, or other facility the public will use. The government, they argued, does not have the constitutional power to take private property in order to turn it over to a private developer.
4. The Court ruled in favor of the city.
5. Answers will vary. Some students will say the interpretation is appropriate, and that all the city’s residents will “use” the beneficial resources that come from the increased jobs, tax revenue, and general revitalization generated by the new, private development. Others will say the interpretation ignores the language of the Fifth Amendment and is too vague to offer any restraint on the power of government to transfer land from one private party to another.