

June 29, 2005

## Property Rights Battle Now Shifts to the States

*By Matt Warner*

The U.S. Supreme Court's unconscionable decision approving local governments' abuse of their powers of eminent domain seems more suited to the People's Republic of China than to the United States of America.

In China, the Communist regime, in preparation for the 2008 summer Olympics, is displacing thousands of residents from their homes in an ambitious effort to rebuild parts of Beijing and other host cities. Centuries-old neighborhoods and recently inhabited apartments are being razed to make room for sports stadiums, public parks and large-scale sculptural displays.

Totalitarian governments with a socialist bent are experts when it comes to trampling on individual rights in the name of benefiting the masses. If it had ever come to a debate in China, the government could argue that it will get a good return on its investment; despite the economic hardship it is causing many of its people.

Sadly, that's essentially the same argument used by the U.S. Supreme Court's majority in the eminent domain case. In its 5-4 decision announced on Thursday, the Court ruled that local governments may seize private homes if they think doing so will mean additional tax revenues or other economic benefits.

The "takings clause" of the U.S. Constitution's Fifth Amendment gives

governments the power to take private property from unwilling sellers for "public use." This Constitutional provision, also known as the power of eminent domain, has historically been exercised for the building of roads, parks and schools to be used by the public.

In recent years, however, revenue-hungry municipal and county governments have been using the power of eminent domain to take property away from its owners and convey it to other private interests – often well-heeled business interests that play an influential role in funding politicians' campaigns and lobbying for government largesse.

What rationale is most often used for this kind of forced transfer of property from one private owner to another? "Economic development." In the recent Supreme Court case, for instance, the town of New London, Connecticut, wanted to roll out the red carpet for the pharmaceutical giant Pfizer, Inc. to build a new office complex.

Seduced by the promise of new jobs, more tax revenues, and incentives for other new businesses to come into the area, New London's city government resorted to using its eminent domain powers after several residents declined offers to buy their homes.

In the majority opinion, Justice John Paul Stevens argued that the intended use

of the property qualified as a public use because “promoting economic development is a traditional and long-accepted function of government.” In other words, it’s acceptable because we accept it.

Unfortunately, Justice Stevens and the four associate justices who joined him in the majority evidently have forgotten that the proper role of the judiciary in our system of checks and balances is to determine whether various practices are Constitutional, not whether such practices are indeed being practiced.

Assuming that economic development is, in fact, a legitimate function of government does not mean that there are no rules or constraints on how government can go about it. It is a legitimate function of government to protect its citizens, but police officers cannot trample our civil liberties simply because they have a job to do.

In this case, the U.S. Supreme Court has made the wrong decision, one that gives local governments far too much unbridled power. Advocates of property rights and individual liberty, having lost at the federal level, will now need to work within their states to ensure that their state constitutions preclude these kinds of abuses.

In Florida, several eminent domain cases are pending. The City of Daytona Beach, for example, is trying to take three properties on the Daytona Boardwalk because a California developer wants to build a \$120 million hotel tower there, complete with retail shops and restaurants.

But one of three properties is already a restaurant. The market hasn’t shut it down, but local government says a better restaurant is needed for economic development. Chinese, no doubt.

---

*Matt Warner is Director of Public Affairs at The James Madison Institute, a non-partisan, free-market policy center based in Tallahassee. This article appeared in the Tallahassee Democrat on June 29, 2005.*

***As a 501(c)(3) organization, The James Madison Institute does not support, endorse, or oppose candidates or proposed legislation. For more information, visit <http://www.jamesmadison.org>.***

***CONTACT: Matt Warner (850) 383-4633 [matt@jamesmadison.org](mailto:matt@jamesmadison.org)***