

## Your private property rights: Safer, but ...

By Bob McClure – June 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 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. A special committee led by House Speaker-designate Marco Rubio (R-Miami) held a series of public hearings around the state and studied the issue in depth. Many legislators and other state officials attended The James Madison Institute's Tallahassee seminar on eminent domain, which brought together noted scholars on the subject of property rights. JMI also published a policy paper written by seminar panelist and Florida State University law professor J.B. Ruhl.

As a result, when the Legislature convened in Tallahassee in March, lawmakers had the information they needed to take decisive action on this complex issue. They passed model legislation that was signed into law by Gov. Jeb Bush. The new law 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.

Calling it a model bill for other legislatures to emulate, Senior Attorney Dana Berliner of the Washington-based Institute for Justice – one of the attorneys who argued before the U.S. Supreme Court on behalf of Ms. Kelo and her neighbors -- said “Florida now offers some of the best protection in the nation for homes, businesses and churches that could have been threatened by eminent domain for private development....It prohibits eminent domain abuse while still allowing the government to condemn property for public uses just as the Constitution allows.”

### Life, Liberty, and Property?

Throughout our nation’s history, the right to own private property has been an American ideal. The Founding Fathers believed so much in its fundamental importance that an initial draft of The Declaration of Independence read “life, liberty, and property” rather than “life, liberty, and the pursuit of happiness.” The Founders understood that for a people to be truly free from tyranny, the right to own property – be it a home, a farm, or a business – was a moral imperative.

Conversely, it was Karl Marx’s collaborator Friedrich Engels who said “the theory of the Communists may be summed up in the single sentence: Abolition of private property.” What these naïve theoreticians thought would lead to the eventual disappearance of the need for government instead resulted in one of history’s worst examples of tyranny.

The ability to buy, own, and sell property in a free marketplace is important for several reasons. It promotes economic growth for the commonweal and the establishment of personal wealth for individuals and families.

Moreover, property rights promote the value of personal responsibility because we mortals tend to take better care of things that belong to us. Conversely, what collectively belongs to everyone too often tends to fall into neglect. For a sad illustration of this principle, just compare the typical rental housing area to a neighborhood of owner-occupied homes.

Finally, when private property rights are strong, the raw power of government is diffused to the people. Anyone who has sought to correct a problem or cut through the red tape of any governmental bureaucracy understands the power that can be brought to bear by such a concentration of power in the hands of government, whether local, state, or federal.

James Madison himself understood the importance of private property in the battle against tyranny when he wrote Federalist Paper Number 10. Madison declared that the protection of private property rights is “the first object of government.”

Thanks to the actions of the 2006 Florida Legislature, the private property rights of Florida residents are safer from eminent domain abuse than they were before. Similarly, many other states are also in the process of taking action to limit the damage of the U.S. Supreme Court’s supremely misguided *Kelo* decision.

Americans cannot become complacent, however. While government’s abuse of its eminent domain authority is being reined in, there are other examples in which the erosion of property rights continues unabated. For instance, woe to those landowners whose property is suddenly found to be the habitat of some rare species of plant or animal protected by the outdated Endangered Species Act. Such a discovery can put a piece of property off limits for any useful purpose. In these cases, the land itself isn’t taken away; its value is taken away.

Many Florida property owners are also discovering that governments still may try to tax away what they may no longer take away through eminent domain. The unintended cumulative consequence of the popular “Save Our Homes Amendment” limiting taxes on owner-occupied dwellings had caused a seismic shift of the property-tax burden to businesses, renters, and seasonal residents whose properties are not protected.

Throughout Florida, property values have soared during the recent real estate boom. Instead of reducing tax rates, however, many elected officials in Florida have watched as the flood of new dollars rolled in – then figured out ways to spend the money instead of giving property owners a tax break.

So, are Floridians’ private property rights safer as a result of the new curbs on eminent domain abuse? Yes. Is all of your property now secure? Not necessarily. After all, the money in your bank account is also your private property – and the tax man cometh.

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