

Life after Amendment 8

By J. Robert McClure and Tanja Clendinen – November 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 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.

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.

Astoundingly, in 2005 The U.S. Supreme Court ruled against the property rights of 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 for the "public purpose" of enhancing their tax revenue through economic development.

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 by enfeebling the Constitutional impediment preventing governments from taking private property and conveying it to other private parties. What was once a slow erosion of private property rights now became a potential avalanche as many municipalities across the country hastened to take advantage of this dubious opportunity. Florida was not immune—among others, the city government of Riviera Beach moved to displace 6,000 residents for the purpose of letting a private developer build a yacht club, pricey shops, and upscale condominiums.

The Florida Legislature took notice of this dangerous trend, and in the spring of 2006 passed a law that restricts the use of eminent domain for these types of "public purposes." Additionally, policymakers raised the threshold of what constituted "blight" – previously a frequent rationale for eminent domain takings. Ultimately, in November Florida voters resoundingly passed Amendment 8 which "slam[med] the door on any attempt at *Kelo*-style use of eminent domain in Florida" (J.B. Ruhl, Matthews & Hawkins Professor of Property at the Florida State University College of Law, *Fall 2006 Journal of the James Madison Institute*).

Does this mean that Florida homes and businesses are now safe from government evictions? Unfortunately, no. There are battles still to be fought in the areas of regulatory takings and escalating property taxes. Regulatory takings have resulted from new laws or zoning changes that affected allowable land uses, endangered species protections, anti-sprawl measures, etc. Insurmountable property tax bills have been generated when municipalities viewed soaring property values as their personal gravy train or well-intentioned legislation caused destructive shifts in property-tax burdens.

John Locke, James Madison, Theodore Roosevelt and many others throughout history have spoken on government's responsibility to protect private property rights. With Amendment 8 and similar initiatives in eight other states, Americans have reminded elected officials that they are to protect property, not take it away. And with that in mind, there is more work to be done.

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