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EMINENT DOMAIN & PROPERTY RIGHTS LAWYERS

Attorney asks whether this land really is your land

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On the federal level, it appears we have lost our way. The Supreme Court June 23 decided *Kelo v. City of New London*, a case receiving national attention for the taking of private property to achieve the purpose of economic development. In a 5-4 opinion, the majority found that Susette Kelo's home could be taken under the power of eminent domain so that pharmaceutical giant Pfizer could build a new research facility. Home is not your castle anymore as far as government is concerned; cash is king.

American citizens are asking, "Where are the courts when you need them?" Property owners have been fighting for decades local government's stretching of the rubber band of what judges and lawyers call "blight" as a pretext to take private property for the bigger, better and more beautiful. Local politicians are now in favor of pursuing the visions of politically favored corporations or developers instead of protecting the homeowners and entrepreneurs who voted them into office. The Supreme Court offers a new brand of "legislative deference" that requires government only to show an increase in the tax base or "plan" for economic rejuvenation without even requiring a reasonable certainty that the plan has any chance of success. The emperor is not only without obligation to wear a coat in finding a blight that is truly genuine prior to taking someone's property, but can now walk around comfortably naked with only the pretense of doing a little economic good by putting land to a higher use in the name of increasing the tax dollar.

While Justice Stevens' majority opinion found promoting economic development as a traditional and long accepted government function, Justice O'Connor's dissent recognizes that the 5-4 majority opinion was "an abdication of our responsibility" in regards to interpreting the 5th Amendment guarantee that private property shall not be taken except for public use. Justice Thomas' dissent noted that so-called "urban renewal" programs applied most to the least politically powerful in our communities. This, without compensation for subjective values of properties owned by individuals and businesses, creates a hardship by uprooting and displacing them. Notwithstanding sharply contrasting judicial opinions, the court's majority and dissenting opinions agreed it is now for states to consider their own constitutional or statutory limits to provide some parameters to a seemingly boundless power of eminent domain.

Florida, for instance, does not have a statute available to local government to take private property for economic development, only to prevent slum or blight. Thus, up until now, the debate in Florida courts has been centered on state constitutional law that requires a predominance of public purpose. Takings where there is only an incidental public benefit have, in some instances, been denied. Likewise, Florida's existing statute has undergone revision to the definition of blight to render it so vague that any subdivision or business district with "diverse ownership" or "small lots" meets the dubious definition of blight. With greater frequency, those in cities throughout Florida are scratching their heads attempting to figure out how some of the most desirable properties in their communities could ever be seen as "blighted." Courts, more and more, are seeing through the charade and finding that the definition, both on its face and as applied, is too vague.

Yet, Kelo encourages local governments to abandon the definition of blight altogether and try something new. Local governments will be lining up at state legislatures to pass "new and improved" economic development legislation. Those who seek to protect private property had better get in line in front of them. It is now incumbent on those who value private property rights to stand up and be heard and seek redress in their state legislatures and state courts which interpret the Florida Constitution.

In the battle for our state, one large hurdle remains for those who advocate for private property rights. While government lobbyists are paid by our tax dollars and appear behind every tree and bush in state capitals, the numbers of those who advocate for private rights are few because most of us take property rights for granted until it is our property that is being taken. Where Florida draws the line on the use of the sovereign power of eminent domain is up for grabs; much will depend on Florida's citizens communicating their views to the legislators before the next legislative session commences and in Florida courts on cases before our judiciary.

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