

WATERFRONT REVITALIZATION CONDEMNNS HOMES

Kelo v. City of New London, Connecticut, 125 S. Ct. 2655; 162 L. Ed. 2d 439 (U.S. 2005)

whether the government's taking of private property qualified as a proper "public use" within the meaning of the Takings Clause of the Fifth Amendment to the United States Constitution.

Takings Clause prohibits the taking of private property for public use without just compensation.

just compensation is the fair market value of the property at the time of the taking by the government.

January 1998, the State of Connecticut authorized a \$5.35 million bond issue to support the city of New London's planning activities and a \$10 million bond issue toward the creation of a Fort Trumbull State Park.

2000, the city of New London approved a development plan to revitalize the city's economically distressed downtown and waterfront areas.

city intended to use its "power of eminent domain to acquire the remainder of the property from unwilling owners in exchange for just compensation."

creating jobs, generating tax revenue, and helping to "build momentum for the revitalization of downtown New London,"

plan was also designed to make the City more attractive and to create leisure and recreational opportunities on the waterfront and in the park.

Fort Trumbull area comprised approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by a formal naval facility. Trumbull State Park occupied 18 of those 32 acres.

New London Development Corporation (NLDC)

city's development agent in charge of implementation. NLDC, a private nonprofit entity, had been established some years earlier to assist the City in planning economic development.

city council also authorized the NLDC to purchase property or to acquire property by exercising eminent domain in the City's name.

negotiated the purchase of most of the real estate in the 90-acre area, but its negotiations with several property owners failed.

November 2000

condemnation proceedings that gave rise to the lawsuit which ultimately went to the U.S. Supreme Court.

nine petitioners in the case before the Supreme Court owned 15 properties in Fort Trumbull

no allegation that any of these properties was blighted or otherwise in poor condition.

Rather, they were condemned only because they happened to be located in the development area.

STATE COURT

Kelo claimed, among other things, that the taking of their properties would violate the "public use" restriction in the Fifth Amendment.

NLDC announced that it would lease some of the parcels to private developers in exchange for their agreement to develop the land according to the terms of the development plan.

state supreme court held, over a dissent, that all of the City's proposed takings were valid.

state supreme court began by upholding the lower court's determination that the takings were authorized by chapter 132, the State's municipal development statute. Conn. Gen. Stat. § 8-186 et seq. (2005).

state statute expressed a legislative determination that the taking of land, even developed land, as part of an economic development project was a "public use" and in the "public interest."

state supreme court held that such economic development qualified as a valid public use under both the Federal and State Constitutions.

state supreme court determined that the takings of the particular properties at issue were "reasonably necessary" to address "reasonably foreseeable needs" in achieving the City's intended public use.

state supreme court, the intended use of this land was sufficiently definite and had been given "reasonable attention" during the planning process.

Supreme Court granted Kelo's petition to review this decision to determine whether the city's decision to take property for the purpose of economic development satisfied the "public use" requirement of the Fifth Amendment.

Supreme Court, the Takings Clause would prohibit the City from taking Kelo's land for the purpose of conferring a private benefit on a particular private party.

purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void.

take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit.

Supreme Court found that the challenged taking of private property was "executed pursuant to a 'carefully considered' development plan."

no evidence of an illegitimate purpose in this case

City's development plan was not adopted "to benefit a particular class of identifiable individuals."

City intends to transfer certain of the parcels to a private developer in a long-term lease

the identities of those private parties were not known when the plan was adopted.

difficult to accuse the government of having taken A's property to benefit the private interests of B when the identity of B was unknown.

Supreme Court acknowledged that the City was not "planning to open the condemned land -- at least not in its entirety -- to use by the general public."

Court recognized that the private parties who would eventually lease the condemned lands would not be required to make their services available to all comers

Court, however, found that the "public use" requirement of the Takings Clause did not impose "any literal requirement that condemned property be put into use for the general public."

Court would apply a "broader and more natural interpretation of public use as "public purpose" which reflected the Court's "longstanding policy of deference to legislative judgments in this field."

in determining whether the City's development plan served a "public purpose," the Court held that "community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis -- lot by lot, building by building."

Court found that it was not the role of the Court to determine whether a particular "project is or is not desirable."

Court found, “[i]t is only the taking's purpose, and not its mechanics" that matters in determining public use.

our jurisprudence has recognized that the needs of society have varied between different parts of the Nation

our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.

Supreme Court concluded that the City's decision to condemn and acquire private property through eminent domain was entitled to deference by the Court.

such deference, the Court found the City was justified in developing a program of economic rejuvenation for a sufficiently distressed area of the City, “even though the City was not confronted with the need to remove blight in the Fort Trumbull area.”

City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including -- but by no means limited to -- new jobs and increased tax revenue.

City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development

Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.

Kelo had urged the Supreme Court to “adopt a new bright-line rule that economic development does not qualify as a public use.”

no basis for exempting economic development from our traditionally broad understanding of public purpose... Promoting economic development is a traditional and long accepted function of government

Kelo had further contended that the use of “eminent domain for economic development impermissibly blurs the boundary between public and private takings.”

Court recognized that “the government's pursuit of a public purpose will often benefit individual private parties.”

public end may be as well or better served through an agency of private enterprise than through a department of government

Kelo had also argued that “nothing would stop a city from transferring citizen A's property to citizen B for the sole reason that citizen B will put the property to a more productive use and thus pay more taxes.”

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Court, however, found that no such “one-to-one transfer of property, executed outside the confines of an integrated development plan,” was presented by facts of this particular case.

Kelo had urged the Court to “require a ‘reasonable certainty’ that the expected public benefits will actually accrue.”

Court, however, found that such a requirement “would represent an even greater departure from our precedent.”

When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings

-- no less than debates over the wisdom of other kinds of socioeconomic legislation -- are not to be carried out in the federal courts...

Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch.

Supreme Court acknowledged “the hardship that condemnations may entail, notwithstanding the payment of just compensation” to private property owners.

Court emphasized that the holding in this case “extends only to determining whether the City's proposed condemnations are for a ‘public use’ within the meaning of the Fifth Amendment to the Federal Constitution.”

Court underscored the fact that “nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.”

many States already impose “public use” requirements that are stricter than the federal baseline.

Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised.

under California law, the Supreme Court noted that “a city may only take land for economic development purposes in blighted areas.”

Supreme Court, in a 5-4 vote, affirmed the judgment of the Connecticut state supreme court in favor of the City of New London.