**Kelo v. City Of New London**

**545 U.S. 469 (2005).**

**A Legal Brief Analysis**

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**I. Background to the Problem**

Eminent domain is a legal strategy that allows both Federal or local government   
to seize private property for public use. The seizing authority is required to pay fair market   
value for the property seized. The 5th Amendment to the U.S Constitution requires the   
government to provide just compensation to the owners of the private property. A variety   
of properties can be subjected to eminent domain, including air, water, beach and land rights.[[1]](#endnote-1)  
Throughout any eminent domain legal proceedings, the property holder is entitled to due   
process. The concept of eminent domain is not new. It has existed since biblical times. Similarly, the government of France recognized property owner rights to compensation for property taken in the French Declaration of Rights of Man. The ongoing challenge with any eminent domain legal challenge is the reason for taking such property and the degree to   
which individual land owners have the right to say no.

**II. Problem Defined**

The case of *Kelo v. New London* raises the question as to whether eminent domain should

be applied in a situation where the land being sought is for private commercial development

Does that serve the public interest? Is that a fair application of the principle of eminent domain?[[2]](#endnote-2)

Does the taking of private property for commercial development use run contrary to the spirit

and intentions of the 5th Amendment even if it does provide some public benefit?

**III. Case Description**

After the Fort Trunbull area of the town of New London had gone through a rough economic depression, the city put together an organization in 2000 to revitalize the economy by doing an economic planning and zoning overhaul of businesses. This organization bought out the properties needed to spark the economic project, but some residents did not comply. 110 parcels of land were acquired, but 15 others were not.[[3]](#endnote-3) The City of New London then used eminent domain to take the land and use it for their development, claiming that the public use would be the profit and jobs that it creates.[[4]](#endnote-4)

Susette Kelo and other disgruntled citizens that were owners of these parcels sued, claiming that the 5th Amendment protects them from this seizure. The argument was that the property was going to be used for private interests, therefore not falling in compliance with said amendment. In state court, the Connecticut Supreme Court rules in favor of New London, citing the cases of *Hawaii Housing Auth. v. Midkiff* as precedent for the city to seize this land.[[5]](#endnote-5)   
The Hawaii Housing Authority case spoke clearly on what “public use” might entail.

The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. Government does not itself have to use property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause. And the fact that a state legislature, and not Congress, made the public use determination does not mean that judicial deference is less appropriate. [[6]](#endnote-6)

This sets the standard that it is not how the seized property is used to the public that is the issue, but why it was taken. This supports New London in the case, because it shows that it does not matter if the property ends up having a private purpose. What matters is that the economic plan that will help the financial state of the public. However, one could question the efficiency or effectiveness of said plan, and claim that it is indeed not going to help the public. After the ruling, Kelo et al. appealed to the U.S. Supreme Court.

**IV. Outcome**

The U.S. Supreme Court ruled 5-4 in favor of the City of New London. They cited  
the legal precedent set forth in the Hawaii housing authority case. In addition, the high court  
cited the decision-making process established in Berman v. Parker.[[7]](#endnote-7) This case took a specific  
look at the issue of redevelopment.

This Court cannot say that public ownership is the sole method of promoting the public purposes of a community redevelopment project, and it is not beyond the power of Congress to utilize an agency of private enterprise for this purpose, or to authorize the taking of private property and its resale or lease to the same or other private parties as part of such a project.

(h) It is not beyond the power of Congress or its authorized agencies to attack the problem of the blighted parts of the community on an area, rather than on a structure-by-structure basis. Redevelopment of an entire area under a balanced integrated plan so as to include not only new homes, but also schools, churches, parks, streets, and shopping centers is plainly relevant to the maintenance of the desired housing standards, and therefore within congressional power.[[8]](#endnote-8)

This case tackles the concept of using eminent domain for resale as part of a development project. The courts decided that if there is an integrated plan to redesign a community for the greater good, the taking of private properties for resale is something that the government has the legal ability to do. There is also an assumption that the community that the local government is redoing is blighted and/or affected by poverty in some way, as to not redevelop areas that are perfectly fine. Due to its similarity to *Kelo v. City of New London* , this and the *Hawaii Housing Auth.* precedents were the tipping point of the 5-4 decision to side with New London. If other cases had come to basically the same conclusion, there was a set order to follow now.

The five justices who sided with New London were taking “public use” to be a non-literal statement, as any involvement of private businesses in these seizures would automatically break the rules of the 5th if taken to exact word. However, since the court cases before it set this “private use can equal public use”, the literal definition is no longer the most recent or most accurate representation of what “public use” pertains to. A very early case of this definition comes from *Fallbrook Irrigation Dist. v. Bradley* in 1896.

There is no specific prohibition in the federal Constitution which acts upon the states in regard to their taking private property for any but a public use. What is a public use for which private property may be taken by due process of law depends upon the particular facts and circumstances connected with the particular subject matter.[[9]](#endnote-9)

While it is older, this is a good example of why originalism as it pertains to the constitution is slightly faulted in this situation, because the meaning of words in legal terms can change very much over time. Also, the process by which the government uses eminent domain is more important than the end goal. If taken parcels of land are acquired with the intention of improving the public’s quality of life, and then used to implement private businesses, that is not   
a violation of law.

Another important factor of the *Kelo* decision was to implement rational-basis review   
as the Justices went over this case to see if it contradicted the Equal Protection Clause of the Constitution. This form of review requires the minimal amount of judicial scrutiny, and will uphold the law if it is directly related to a legitimate government purpose. [[10]](#endnote-10) This made it easier for New London to make their seizure of land look constitutional.[[11]](#endnote-11)

The takings before us, however, would be executed pursuant to a carefully considered development plan. 268 Conn., at 54, 843 A. 2d, at 536. The trial judge and all the members of the Supreme Court of Connecticut agreed that there was no evidence of an illegitimate purpose in this case. Therefore, as was true of the statute challenged   
  
in *Midkiff,* 467 U. S., at 245, the City’s development plan was not adopted “to benefit   
a particular class of identifiable individuals.[[12]](#endnote-12)

As long as there was no favoring of private entities with little benefit to the public, this was a clear pass of the rational-basis test.

One reason against this ruling provided by the dissenting opinion was that the Public Use Clause had been reduced to nothing by labeling “economic development” as means for a seizure. Any reason could be given for eminent domain claims in the name of improving local   
economies. [[13]](#endnote-13) Justice Clarence Thomas make the point that the Court’s decision has strayed too far from was originally intended by the principle of eminent domain. He cites *Cole v. La Grange* to show that the wording now contradicts itself and this selling of seized property to private businesses is not unlike the bonds given to the steel corporation in *Cole*. [[14]](#endnote-14) In Justice Clarence’s view, the government helping the private sector in this way creates a conflict of interest, since it will want to use eminent domain as much as possible in order to gain profit and sell property to whomever they choose. This is not in the public interest and is therefore in a direct violation of the 5th Amendment.

Overall, this decision came down to what the Justices valued more; up to date and changed meaning of the Public Use Clause, or complete original meaning as written in the Constitution. The intersection of public and private interests is a blurred zone with the new adaptation, as the seizure and selling of a property by the government becomes legal, if you have a thought out economic development plan.

**V. Significance**

This decision has a variety of unintended consequences By their decision, the   
U.S. Supreme Court gave the go ahead for city planners across the United States to identify poverty-stricken areas that needed to be scrapped and redone in the image of a nice, marketable town with plentiful jobs. An issue that comes with this is the potential for corruption that  
might occur by allowing governments to take someone’s property and then sell it to a business. Government officials may be influenced to sell certain business owners these properties when perhaps another one deserved it more. Justice Kennedy talks about this in his concurring opinion[[15]](#endnote-15), referencing suspicious transfers and abusive procedures as reasons to still use the Public Use Clause in courts.

While the decision was important, it was nullified in part by states passing anti-eminent domain laws. This excerpt from a Minnesota Law Review article shows how states completely rejected the new ruling.

The Supreme Court’s decision in Kelo v. City of New London generated a massive backlash from across the political spectrum. Kelo’s holding that the Public Use Clause of the Fifth Amendment allows the taking of private property for transfer to new private owners for the purpose of promoting “economic development” was denounced by many on both the right and the left. Forty-three states have enacted post-Kelo reform legislation to curb eminent domain.[[16]](#endnote-16)

Although the federal government is still upholding this rule, the majority of America rejected it at the state level. The *Kelo* decision led to one of the biggest pushes of state legislature ever, which shows how the public felt about it. It scared citizens who had thoughts of the government knocking down their house for market value because it was “blighted” and there’s a new revitalization project going on.

How to define a community as blighted is a touchy subject as well. These development plans that cities wanted to implement could put disadvantaged citizens out on the streets. In the past, labeling areas as blighted meant the residents were more than likely poor and/or minority race.[[17]](#endnote-17) Just compensation for the property seized will match market value, but it won’t be enough money due to the area that these newly-displaced people are living in. Temporary housing would become packed, and the community can lose its identity if too many businesses/living spaces are changed in the name of development. If this happens, the planners are no longer working in the interest of the public, and are no longer operating correctly under the 5th Amendment.

In the end, this case set a very powerful federal precedent for the way the government can obtain land from citizens for private businesses. However, it is counteracted by the large majority of state’s legislature that banned this reason for claiming eminent domain after the Supreme Court’s decision. The biggest change that occurred due to *Kelo* was the change of what “public use” entails in all future cases concerning reasons for seizing private property. No longer is it just isolated to completely public areas, but extends to city planning and zoning of business as well.

**Endnotes**

1. U.S. Constitution, Amendment 5. [↑](#endnote-ref-1)
2. *Kelo v. New London* 545 U.S. 469 (2005). [↑](#endnote-ref-2)
3. ibid. [↑](#endnote-ref-3)
4. Chicago-Kent College of Law at Illinois Tech. "Kelo v. New London."   
    Oyez. https://www.oyez.org/cases/2004/04-108 (accessed April 5, 2017). [↑](#endnote-ref-4)
5. *Hawaii Housing Auth. v. Midkiff* 467 U.S. 269 (1984). [↑](#endnote-ref-5)
6. ibid. [↑](#endnote-ref-6)
7. *Berman v. Parker* 348 U.S. 26 (1954) [↑](#endnote-ref-7)
8. ibid. [↑](#endnote-ref-8)
9. *Fallbrook Irrigation Dist. v. Bradley* 164 U.S. 112 (1894) [↑](#endnote-ref-9)
10. See supra note 2*.* This deferential standard of review echoes the rational-basis test used to review economic regulation under the Due Process and Equal Protection Clauses, see, e.g., FCC v. Beach Communications, Inc., [508 U. S. 307](https://supreme.justia.com/cases/federal/us/508/307/index.html), 313–314 (1993); Williamson v. Lee Optical of Okla., Inc., [348 U. S. 483](https://supreme.justia.com/cases/federal/us/348/483/index.html) (1955). The determination that a rational-basis standard of review is appropriate does not, however, alter the fact that transfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits, are forbidden by the Public Use Clause. [↑](#endnote-ref-10)
11. Cornell University Law School. “Rational basis test definition.”   
     <https://www.law.cornell.edu/wex/rational_basis_test> (accessed April 5th, 2017) [↑](#endnote-ref-11)
12. See supra note 2. Opinion of the Court [↑](#endnote-ref-12)
13. See supra note 2. Clarence writes in his dissenting opinion about how this decision has essentially ruined a part   
     of the 5th Amendment. [↑](#endnote-ref-13)
14. *Cole v. La Grange* 113 U.S. 1 (1885). [↑](#endnote-ref-14)
15. See supra note 2. In sum, while there may be categories of cases in which the transfers are so suspicious, or the procedures employed so prone to abuse, or the purported benefits are so trivial or implausible, that courts should presume an impermissible private purpose, no such circumstances are present in this case. [↑](#endnote-ref-15)
16. Ilya Somin, “The Limits of Backlash: Assessing the Political Response to Kelo,” *Minnesota Law Review*  
     2009, No. 93: 2101, 2102. [↑](#endnote-ref-16)
17. Asha Alavi, “Kelo Six Years Later: State Responses, Ramifications, and Solutions for the Future.”   
     *Boston College Third World Law Journal*. 2011, No. 2: 313. [↑](#endnote-ref-17)