

Detroit Local Govt. Comm.

Exhibit No. 15Date Feb 17, 2005Bill No. SB 382

Eminent domain abuse

By Anthony Sanders - IR Your Turn - 02/16/05

May corporations such as Best Buy or Target collude with the government and take away your house or business for their own use?

Can a city council throw an 80-year-old couple out of their life-long home because the land would generate higher tax revenues if luxury condos were built there instead? Although Americans may believe the answer to these questions is obvious, the truth in fact is far from clear. All across this country, local governments employing their powers of eminent domain are forcibly relocating long-established homeowners and mom-and-pop businesses and giving the property to wealthy corporations. In the wake of this abuse, next week the U.S. Supreme Court takes up the case of *Kelo v. City of New London*.

The case arises out of a ~~community~~ in New London, Connecticut, where the city council wants to turn an entire neighborhood over to the drug company Pfizer. The company plans to build a hotel, condos, and other facilities on the land. Some of the residents threatened by the action have resided in the community their entire lives. The council's justification? The city needs more taxes. A company like Pfizer will pay higher taxes for a plot of land than a single-family homeowner. Therefore, argues the council, the families must take their compensation and leave the homes they know and love.

Instead of bowing to their government's wishes, many of the homeowners sued. Now they hope the Supreme Court will do something it has not had the courage to carry out in decades — enforce two little words: "public use." The 5th Amendment to the Constitution commands "nor shall private property be taken for public use without just compensation." This implies that private property may not be taken for private use at all. For most of our nation's history the courts interpreted "public use" to mean what speakers of the English language think it means — roads, railways, schoolhouses, post offices, and other projects that benefit the public as a whole. Taking away someone's home or business and giving it to another private home or business owner was considered unconstitutional.

Then, as our country grew more and more enamored with central planning and the power of the state, courts began to interpret "public use" much more broadly. A famous case in 1981, the hugely-influential *Poletown* decision, allowed the city of Detroit to bulldoze over 1,000 homes and 600 businesses so that GM could build an auto plant. This set the stage for the rampant eminent domain abuse of the last few decades. Often the justifications for the takings are flimsy at best. In one Ohio case, the city argued that a neighborhood was "blighted," and that therefore it had to tear down the homes and give the land to a private developer. Why was it "blighted?" One reason proffered was that most of the homes did not have two-car garages. Under this logic your home is your castle unless someone else can build a better one on top of it.

However, not all the news is bad. Last summer the Michigan Supreme Court unanimously overruled its decision in *Poletown*, admitting that its prior interpretation of "public use" was a "radical departure from fundamental constitutional principles." Also, some American localities have refused to jump on the bandwagon. A recent nationwide study of eminent domain abuse found that, from 1998 to 2003, Montana had no reported instances of governments taking property to give to private parties. The legislature has sought to give such powers to the government, but, encouragingly, such efforts have failed.

The temptation to enrich politically-connected businessmen and corporations will remain, however,

unless the Supreme Court gives a strong indication that in America the rights of property owners remain inviolate. Many groups from all sides of the political spectrum understand this, which is why the New London homeowners enjoy support from organizations as diverse as the NAACP, the American Farm Bureau, the AARP, and the Cato Institute. They understand that if the Supreme Court sides with the City of New London, the courts will be powerless in stopping a local government from taking your home. After all, any large corporation will provide higher tax revenues than a home or small business. Understanding "public use" to mean "higher taxes" reads that protection out of the Constitution. Let's hope the court agrees and helps reinstall a firm foundation under the American dream.

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