

Eminent Domain Isn't a Revenue-Raising Device

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C. M. Glover for The New York Times

Matthew and Suzanne Dery on land near their house, rear right, in a disputed area of New London, Conn.

closed in 1996. The state had agreed to spend \$20 million to create a state park at Fort Trumbull, a mid-19th-century installation where Connecticut troops mustered during the Civil War before heading south.

Despite the Connecticut Supreme Court's ruling, the demolition of the properties has not yet occurred because the Institute for Justice, a public-interest law center in Washington that represents Ms. Kelo and the other homeowners, has asked the United States Supreme Court to review the case. The institute, which has been fighting eminent domain actions all over the country, argues that the case, *Kelo v. City of New London*, demonstrates how government authorities are increasingly abusing condemnation powers to enrich developers at the expense of homeowners and small businesses.

Legal battles like this one, and a recent Michigan case in which a landmark ruling was overturned, have captured the attention of developers and economic development officials. Maureen L. McAvey, a senior fellow for urban development at the Urban Land Institute and a former developer, said eminent domain was essential for assembling tracts of land for development. But she said the cases have had a cautionary effect, prompting many local officials to re-examine their procedures to make sure that they can clearly show how the public will benefit from a particular project. "Most local enti-

The high court is asked to rule on economic redevelopment.

times be used to promote "smart growth" — that is, denser development in older neighborhoods — as a means of reducing suburban sprawl.

From 1998 to 2002, the institute says, more than 10,000 condemnations were filed or threatened in 41 states that involved transfers of property from one private owner to another. But Jeffrey A. Finkle, president of the International Economic Development Council, a professional group based in Washington, estimates that no more than 80 significant projects a year involve eminent domain.

In 1954, the last time the United States Supreme Court ruled on using eminent domain for development, the justices held that redevelopment of a blighted area constituted a "public use" for which property could be taken, expanding the scope of eminent domain beyond the building of a road or other public project.

But the institute contends that *Kelo* poses a novel question for the court — does "public use" include projects that are intended not to alleviate blight but to increase tax revenue and improve the local economy? States have been divided on this is-

Neighborhood Council v. Detroit, the court upheld a decision to displace hundreds of residents and businesses of a working-class Polish neighborhood so that General Motors could build an assembly plant there. G.M. created only about half the promised jobs, according to an editorial in *The Detroit News* on Aug. 3.

The Michigan court ruled that Wayne County officials had violated the state constitution by condemning land near Detroit Metro Airport to build a 1,300-acre industrial and office development known as Pinnacle Aeropark. The decision has no legal force outside Michigan, but it means that property can no longer be condemned in Michigan for economic development alone.

"The Michigan case," Mr. Finkle said, "was a wake-up call." He said his group was developing guidelines to teach communities when eminent domain is appropriate. "We don't think that somebody ought to be able to grab land and buildings based on a higher economic return," he said, noting that this view was not shared by all defenders of eminent domain powers. "You have to have underlying blighted conditions."

Roger Platt, a senior vice president and counsel for the Real Estate Roundtable, an advocacy group in Washington for the chief executives of major real estate companies, acknowledges that eminent domain powers have sometimes been abused. "We don't oppose careful ju-

a particular project. "Most local entities are looking at their ordinances and practices," she said. "They are getting smarter about how they use eminent domain."

The conflict over eminent domain has led to some unusual alliances, with libertarian groups like the Institute for Justice joining forces with the American Civil Liberties Union and Ralph Nader to oppose condemnations, and environmental groups lining up with developers and community development organizations. Environmental groups say that eminent domain powers must some-

states have been divided on this issue, Dana Berliner, a lawyer at the institute said. "The courts have adopted different tests for how they evaluate these cases, without any meaningful guidance," Ms. Berliner said in an interview in Washington. "We are looking for the Supreme Court to establish a base line."

In a decision on July 30 that shocked developers and municipal officials, the Michigan Supreme Court overturned a 1981 ruling that has been repeatedly cited over the last two decades in condemnation litigation. In that 1981 case, Poletown

abused. We don't oppose careful judicial oversight of those powers," he said. "At the same time, we're concerned that this recent case in Michigan suggests a more radical response to the issue that would throw the baby out with the bath water."

In New London, officials say they could have used blight to justify the Fort Trumbull condemnations, even though some homes were in good condition. But Thomas J. Londregan, the city's lawyer, said that condemning for blight would have required the redevelopment agency to find \$70 million to buy the properties. Instead, the money came from state economic development funds.

If cities can no longer use eminent domain for projects to increase taxes and create jobs, they will be unable to compete with the suburbs, Mr. Londregan said.

With a vacancy rate as high as 18 percent for prime office space, there is little likelihood that new office buildings will be built here any time soon. The waterfront hotel seems like a better prospect for the immediate future, said David M. Goebel, a retired rear admiral who serves as chief operating officer of the New London Development Corporation, the agency charged with developing Fort Trumbull. "You will not find another site like this in the state of Connecticut for a hotel," he said.

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