Written by **William F. Jasper** on November 17, 2009

Kelo v. New London: All for Naught, or Not?

The city of New London, Connecticut, fought for and won at the highest level permission to take private property from one person and give it to another. Now that victorious "person" (i.e., pharmaceutical giant Pfizer, Inc.) is closing its New London facility and moving it to Groton. Was it all for naught?

Some think so. Matthew Dery, a property owner forced from the home his family owned for nearly a century, said, "We were supposed to sacrifice for the greater good. As it turns out, there was no greater good."

And Susette Kelo, the owner of a pink house in the path of the Pfizer redevelopment, and the lead plaintiff in *Kelo v. City of New London*, said, "We always thought it was foolish [to use eminent domain] from the beginning."

Others consider "turnabout to be fair play." Pfizer was the largest taxpayer in New London until its departure for Groton (due to its merger with Wyeth, according to Pfizer officials), and it is costing the city, and many of its residents, significant financial hardship.

Paty Daignault, who owns Paty's Shaw's Cove Deli, estimated that Pfizer's move out of the city has cost her nearly a third of her business.

Others who were impacted by the eminent domain takeover moved away, and have no plans to return. Dery, who was sales manager for *The Day* newspaper in New London, moved to Waterford. He said, "I would never go back there. That was our property. That's our water view. Those are our homes. It didn't belong to the community at large."

The issue of eminent domain has been a lightning rod for many who consider the "taking" clause in the Constitution to be very dangerous to private property and personal freedom, if misused.

The Fifth Amendment, in part, says: "Nor shall private property be taken for public use without just compensation."

And therein lies the difficulty. Proponents of free markets look at this as a further limitation on the power of government. Justices on the Supreme Court have, on the other hand, held that there is "no set formula" and that the courts "must look to the particular circumstances of the case."

A number of other Supreme Court cases in recent years (*Penn Central*, *Dolan*, *Lucas*, *Tahoe*) have only served to broaden the powers of "taking." But nothing shook the foundations as *Kelo* did in 2005.

Justice Stevens found the donation of the property taken from private citizens to the New London Development Corporation for development for Pfize, to be a "public use." He went on to say that the Fifth Amendment clause gave "broad latitude" to determine exactly what uses might be "public."

Outrage reached ear-shattering levels. Some proposed the taking of private property belonging to the Justices and turning them over to private developers for the construction of bed-and-breakfasts inns.

Others took a much longer view, and began campaigns, many spearheaded by Susette Kelo, to rewrite state laws to reduce the opportunity for such injustice in the future.

Dana Berliner, a senior attorney for the Institute of Justice who represented Kelo and other homeowners in the case, said this underscores the dangers of local governments making such deals under the taking clause.

Is there any good news? ISJ now says that more than 40 states have taken steps to protect private property owners from seizures by eminent domain.

It truly is "an ill wind that bloweth no man good."

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