

Institute for Justice Property Rights Cases: New London, CT

One Year After Kelo

New Reports Document Skyrocketing Eminent Domain Abuse, Chronicle the Legislative Response to Kelo, and Expose Myths and Development Failures

WEB RELEASE: June 20, 2006

CONTACT:

John E. Kramer or Lisa Knepper

(703) 682-9320

[Private Property]

PICATIONS

Opening the Floodgates: Eminent Domain Abuse in a Post-Kelo World

Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse

Myths and Realities of Eminent Domain Abuse: In the debate over eminent domain abuse, municipalities and developers often advance myths in defense of the government's use of this power for private commercial development. In response to those myths, the Castle Coalition offers something far more compelling—the truth.

Legislative Action Since Kelo: an overview of the states' legislative responses to Kelo.

Eminent Domain Abuse Survival Guide: Activists nationwide have used the Eminent Domain Abuse Survival Guide to successfully fight illegitimate land-grabs. Expanding on the most effective practical strategies to protect your property outside of the courtroom, the Survival Guide is designed to be a comprehensive roadmap for any grassroots battle against eminent domain for private development.

Arlington, Va—Wonder whether the threat of eminent domain abuse has grown worse since the U.S. Supreme Court's Kelo ruling one year ago this week?

Consider this fact: in just the past year, more than 5,700 properties nationwide have been threatened by or taken with eminent domain for private development—a figure that compares with more than 10,000 examples **over a five-year period** preceding the Kelo argument, according to one of five reports released today by the Institute for Justice (which argued the Kelo case before the U.S. Supreme Court) and its grassroots activism project, the Castle Coalition. Coupled with this increase in eminent domain abuse, however, has been a virtually unprecedented grassroots and legislative response to the most universally despised Supreme Court ruling in recent memory.

Friday, June 23, is the one-year anniversary of the now-infamous U.S. Supreme Court decision that stripped Americans of any meaningful federal constitutional protection for their private property. To mark that date, the Institute for Justice and the Castle Coalition issued four separate reports today that 1) document the growing problem of eminent domain for private development, 2) chronicle the legislative response to Kelo, 3) demonstrate failed redevelopments that followed government's use of force to acquire property, and 4) expose the common myths put forward by developers and cities defending eminent domain for private use. In another document also released today, the Castle Coalition offers homeowners who face eminent domain abuse an "Eminent Domain Survival Guide." All are available at www.CastleCoalition.org

Opening The Floodgates

Source: <http://www.castlecoalition.org/pdf/publications/floodgates-report-low.pdf>

In its report, "," the Institute for Justice documents how the U.S. Supreme Court's Kelo ruling opened the floodgates that had once partially restrained land-hungry developers and tax-hungry cities. In just one year since the ruling, local governments pressed forward with more than 117 projects involving the use of eminent domain for private development. Local governments threatened to use eminent domain against more than 5,429 homes, businesses, churches, and other properties if the owners did not agree to sell, and government also filed or authorized at least 354 condemnation actions. These 5,783 properties either threatened or condemned for private development in a single year are more than half the 10,282 in the five years between 1998 and 2002.

Before the Supreme Court's Kelo decision, cities abused the power of eminent domain. But Kelo became the green light that Justice O'Connor and Justice Thomas warned of in their dissents. The Court ruled that the U.S. Constitution allows government to use eminent domain to take and bulldoze existing homes and businesses for new private commercial development, holding that the mere possibility that a different private use could produce more taxes or jobs is enough reason for condemnation.

Justice O'Connor predicted that in the wake of the decision, any Motel 6 could be taken for a Ritz-Carlton, any home for a shopping mall, and any farm for a factory. As documented in *Opening the Floodgates*, her predictions are coming true—cities are pushing out motels for commercial development and replacing small businesses with upscale hotels. Homes are being replaced by shopping malls, but the stronger trend has been the replacement of middle-class residences for other, more upscale ones. Agricultural land has been taken for still more retail development.

Institute for Justice Senior Attorney Dana Berliner authored the report. She said, "The Kelo decision emboldened officials and developers, who started new projects, moved existing ones forward, and, especially, threatened and filed condemnation actions. The threat of condemnation for private development is just as much an abuse of eminent domain as the actual filing of condemnation proceedings. Cities know that now they rarely need to file condemnation actions

because owners largely give in rather than fight what they believe, after Kelo, to be a hopeless battle.”

The information in *Opening the Floodgates* comes from news stories, public documents and court decisions. All sources are footnoted. Because there is no official data available on the use of eminent domain for private parties, there are undoubtedly many other projects, threats and takings for private use that have not been included; this report thus represents merely a fraction of the private-to-private takings since Kelo.

“A vast majority of Americans have expressed outrage over the Kelo decision because they understand the dangers of eminent domain abuse,” said Chip Mellor, president and general counsel of the Institute for Justice. “These reports underscore how valid their outrage is.”

Legislative Action Since Kelo

Source: <http://www.castlecoalition.org/pdf/publications/State-Summary-Publication.pdf>

At the same time Kelo encouraged the use of eminent domain for private development, it has become a catalyst for national reform. One year after what appeared to be a total victory for local governments allied with private developers, 25 states (out of the 45 that had legislative sessions this year) enacted legislation aimed at curbing the abuse of eminent domain. If governors sign additional bills that have already been passed by their state legislatures, that number will grow to 28—meaning that more than half the states will have passed eminent domain reforms. In “,” the Institute for Justice and the Castle Coalition detail the legislative response to Kelo in each of the 50 states and Congress.

“Given the political muscle of local governments and developers, the passage of so much reform legislation is a remarkable and historic response to the most reviled Supreme Court decision of our time,” said Berliner. “Of course, more work is needed, because many states have yet to pass reform, and some states’ reforms are incomplete. That’s all the more reason why Congress needs to pass legislation preventing the use of federal economic development funds to those state and local agencies that use eminent domain for private commercial development.” Currently, a bill that would do just that—the Private Property Rights Protection Act of 2005 (HR 4128)—is stalled in the U.S. Senate. It passed the House by a vote of 376-38 in November 2005.

Redevelopment Wrecks

Source: <http://www.castlecoalition.org/pdf/publications/Redevelopment%20Wrecks.pdf>

Do private redevelopment projects that use government force live up to their billing? Hardly. Many are outright failures, as demonstrated by “,” the first-ever collection of failed redevelopment projects that used eminent domain to acquire property.

This report details 20 prominent examples of those failures that fall into two categories. The first kind occurs when, after cities and developers condemn homes and businesses to make way for private redevelopment projects, the promised projects never materialize. The second kind of failure involves projects that, although completed, simply do not live up to the grandiose promises and lofty projections that were used to justify the abuse of eminent domain. For example, the new developments eventually fold, or, even if they survive, they produce fewer jobs and less tax revenues than promised—sometimes less than before the project was built. Quite often, the public’s financial costs—in the form of new debt, subsidies, other spending and foregone revenues—go through the roof.

Bert Gall, an Institute for Justice attorney, said, “The argument is always the same: bureaucrats and developers with big visions of how other people should live claim that the use of eminent domain is necessary for economic development. They promise glitzy development in the name of more taxes and jobs. There is a strong incentive for cities and developers to over-hype the benefits of private development projects involving eminent domain in order to garner political and public support. But it turns out that many of these projects are failures.”

Battling Myths

Source: http://www.castlecoalition.org/pdf/publications/CC_Myths_Reality%20Final.pdf

Since Kelo, municipalities and developers have begun to spin myths in defense of the government’s use of eminent domain for private commercial development. In response to those myths, the Castle Coalition offers something far more compelling—the truth. Among the myths debunked in “” are:

- Eminent domain is used only as a last resort.
- The political process is enough of a check against eminent domain abuse.
- Economic development requires eminent domain.

Eminent Domain Abuse Survival Guide

Source: <http://www.castlecoalition.org/pdf/publications/survival-guide.pdf>

Activists nationwide have used the Castle Coalition’s online “” to successfully fight illegitimate land-grabs. Now the Castle Coalition has released this information in a easy-to-follow printed guide. The guide expands on the most effective practical strategies to protect property outside of

the courtroom and provides a comprehensive roadmap for any grassroots battle against eminent domain for private development.

Institute for Justice 901 N. Glebe Road Suite 900 Arlington, VA 22203
Tel 703.682.9320 Fax 703.682.9321
Copyright © 1991-2006