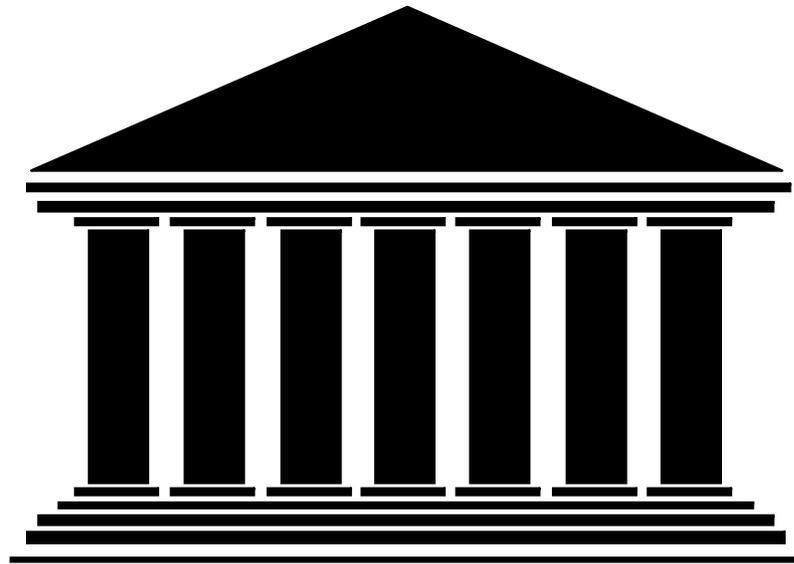


EMINENT DOMAIN and the KELO DECISION



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WHAT IS EMINENT DOMAIN?

- **Power of the government to take private property for public purposes without the owner's consent**
- **Inherent in the sovereign**
- **Over time the duty to provide compensation has been included**

Federal Constitution

- **United States Constitution:**
 - **“...nor shall private property be taken for public use without just compensation.”**
(U. S. Constitution, Fifth Amendment)
 - **Applicable to the states by the Fourteenth Amendment**

State Constitution

- **Constitution of Virginia:**
 - **“[T]he General Assembly shall not pass any law...whereby private property shall be taken or damaged for public uses without just compensation...”**
(VA Constitution Article I, § 11)

Evolution of “Takings clause”

- **Included in the State Constitution since 1830**
- **In 1902 “or damaged” added**
- **In 1928 language specifying that the General Assembly should determine what constitutes “public uses”**

Kelo v. City of New London

- **Economically distressed city**
- **Need for a major, comprehensive plan**
- **Major pharmaceutical company to build \$300 million research facility**
- **Catalyst for economic development of surrounding area**
- **Development plan included 90 acres**

Kelo v. City of New London

- **115 privately owned properties**
- **Purchases successfully negotiated except for 15 properties owned by Susette Kelo and 8 other homeowners**
 - **10 parcels occupied by owner/family member**
- **Condemnation proceeding initiated**

Kelo v. City of New London

- **Homeowners:**
 - **Strict interpretation of “public use” restriction**
 - **Economic development could not be sufficient basis for public use**
- **Trial court held in favor of the owners of 11 properties**
- **Connecticut Supreme Court held that economic development qualified as a valid public use under both the United States and Connecticut Constitutions.**

Issue on Appeal

- **Does the City’s redevelopment plan serve a “public purpose”?**
- **In a 5-4 decision, the Court said “Yes”**
- **RATIONALE:**
 - **Plan was comprehensive**
 - **Thoroughly deliberated prior to adoption**
 - **Required private developers to carry out the plan, and**
 - **The court has a limited scope of review**

O'Conner Dissent

- **Fifth Amendment serves to protect the security of property**
- **Requiring “public use” safeguards excessive or unfair use of eminent domain authority**
- **Recognizes three categories of takings that comply with the public use requirement**

O'Conner Dissent

- **For public ownership**
- **For private ownership, but the property is made available for the public's use**
- **For private ownership even if the property is for private use BUT only in certain circumstances, such as the removal of blight**

Thomas Dissent

- **Original purpose of the public use clause was to provide a meaningful limit on the government's eminent domain power**
- **Prohibits taking property except for public uses**
- **“Public use” means either the government or its citizens as a whole must actually have use of the property rather than just receive “incidental benefits”**

Affect of Kelo on State Laws

“We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many states already impose ‘public use’ requirements that are stricter than the federal baseline”

“Public Use” in Virginia

- **§ 15.2-1900 (Code of Virginia)**
- **“The term ‘public uses’ mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace all uses which are necessary for public purposes.”**

Virginia Case law

- **Definition of “public use”**
- **Primary purpose**
- **Public interest must dominate any private gain**

On the Horizon

- **Federal legislative action**
- **Virginia Housing Commission proposals**