

KELO V. CITY OF NEW LONDON

Supreme Court of the United States, 2005.
545 U.S. 469, 125 S.Ct. 2655, 162 L.Ed.2d 439.

JUSTICE STEVENS delivered the opinion of the Court.

In 2000, the city of New London approved a development plan that, in the words of the Supreme Court of Connecticut, was “projected to create in excess of 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas.” 268 Conn. 1, 5, 843 A.2d 500, 507 (2004). In assembling the land needed for this project, the city’s development agent has purchased property from willing sellers and proposes to use the power of eminent domain to acquire the remainder of the property from unwilling owners in exchange for just compensation. The question presented is whether the city’s proposed disposition of this property qualifies as a “public use” within the meaning of the Takings Clause of the Fifth Amendment to the Constitution.¹ * * *

The city of New London (hereinafter City) sits at the junction of the Thames River and the Long Island Sound in southeastern Connecticut. Decades of economic decline led a state agency in 1990 to designate the City a “distressed municipality.” In 1996, the Federal Government closed the Naval Undersea Warfare Center, which had been located in the Fort Trumbull area of the City and had employed over 1,500 people. In 1998, the City’s unemployment rate was nearly double that of the State, and its population of just under 24,000 residents was at its lowest since 1920.

These conditions prompted state and local officials to target New London, and particularly its Fort Trumbull area, for economic revitalization. To this end, respondent New London Development Corporation (NLDC), a private nonprofit entity established some years earlier to assist the City in planning economic development, was reactivated. In January 1998, the State authorized * * * a \$10 million bond issue toward the creation of a Fort Trumbull State Park. In February, the pharmaceutical company Pfizer Inc. announced that it would build a \$300 million research facility on a site immediately adjacent to Fort Trumbull; local planners hoped that Pfizer would draw new business to the area, thereby serving as a catalyst to the area’s rejuvenation. After receiving initial approval from the city council, the NLDC continued its planning activities and held a series of neighborhood meetings to educate the public about the process. In May, the city council authorized the NLDC to formally submit its plans to the relevant state agencies for review. * * *

The Fort Trumbull area is situated on a peninsula that juts into the Thames River. The area comprises approximately 115 privately owned

¹ “[N]or shall private property be taken for public use, without just compensation.” U.S. Const., Amdt. 5. That Clause is made applicable to the States by the Fourteenth Amendment.

properties, as well as the 32 acres of land formerly occupied by the naval facility (Trumbull State Park now occupies 18 of those 32 acres). The development plan encompasses seven parcels. Parcel 1 is designated for a waterfront conference hotel at the center of a "small urban village" that will include restaurants and shopping. This parcel will also have marinas for both recreational and commercial uses. A pedestrian "riverwalk" will originate here and continue down the coast, connecting the waterfront areas of the development. Parcel 2 will be the site of approximately 80 new residences organized into an urban neighborhood and linked by public walkway to the remainder of the development, including the state park. This parcel also includes space reserved for a new U.S. Coast Guard Museum. Parcel 3, which is located immediately north of the Pfizer facility, will contain at least 90,000 square feet of research and development office space. Parcel 4A is a 2.4-acre site that will be used either to support the adjacent state park, by providing parking or retail services for visitors, or to support the nearby marina. Parcel 4B will include a renovated marina, as well as the final stretch of the riverwalk. Parcels 5, 6, and 7 will provide land for office and retail space, parking, and water-dependent commercial uses. * * *

The city council approved the plan in January 2000, and designated the NLDC as its development agent in charge of implementation. The city council also authorized the NLDC to purchase property or to acquire property by exercising eminent domain in the City's name. The NLDC successfully negotiated the purchase of most of the real estate in the 90-acre area, but its negotiations with petitioners failed. As a consequence, in November 2000, the NLDC initiated the condemnation proceedings that gave rise to this case. * * * Petitioner Susette Kelo has lived in the Fort Trumbull area since 1997. She has made extensive improvements to her house, which she prizes for its water view. * * * In all, the nine petitioners own 15 properties in Fort Trumbull—4 in parcel 3 of the development plan and 11 in parcel 4A. Ten of the parcels are occupied by the owner or a family member; the other five are held as investment properties. There is no allegation that any of these properties is blighted or otherwise in poor condition; rather, they were condemned only because they happen to be located in the development area. * * *

The disposition of this case * * * turns on the question whether the City's development plan serves a "public purpose." Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field. * * * Viewed as a whole, our jurisprudence has recognized that the needs of society have varied between different parts of the Nation, just as they have evolved over time in response to changed circumstances. Our earliest cases in particular embodied a strong theme of federalism, emphasizing the "great respect" that we owe to state legislatures and state courts in discerning local public

needs. * * * Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us * * * to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.

To avoid this result, petitioners urge us to adopt a new bright-line rule that economic development does not qualify as a public use. * * * [N]either precedent nor logic supports petitioners' proposal. Promoting economic development is a traditional and long accepted function of government. There is, moreover, no principled way of distinguishing economic development from the other public purposes that we have recognized. In our cases upholding takings that facilitated agriculture and mining, for example, we emphasized the importance of those industries to the welfare of the States in question * * *; in *Berman [v. Parker]*, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954),] we endorsed the purpose of transforming a blighted area into a "well-balanced" community through redevelopment * * *. It would be incongruous to hold that the City's interest in the economic benefits to be derived from the development of the Fort Trumbull area has less of a public character than any of those other interests. Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose.

Petitioners contend that using eminent domain for economic development impermissibly blurs the boundary between public and private takings. Again, our cases foreclose this objection. Quite simply, the government's pursuit of a public purpose will often benefit individual private parties. * * * The owner of the department store in *Berman* objected to "taking from one businessman for the benefit of another businessman," referring to the fact that under the redevelopment plan land would be leased or sold to private developers for redevelopment. Our rejection of that contention has particular relevance to the instant case: "The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects."

It is further argued that without a bright-line rule nothing would stop a city from transferring citizen A's property to citizen B for the sole reason that citizen B will put the property to a more productive use and thus pay more taxes. Such a one-to-one transfer of property, executed outside the confines of an integrated development plan, is not presented in this case. While such an unusual exercise of government power would certainly raise a suspicion that a private purpose was afoot, the hypothetical cases posited by petitioners can be confronted if and when they arise. They do not

warrant the crafting of an artificial restriction on the concept of public use.
* * *

In affirming the City's authority to take petitioners' properties, we do not minimize the hardship that condemnations may entail, notwithstanding the payment of just compensation. 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. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. As the submissions of the parties and their amici make clear, the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate. This Court's authority, however, extends only to determining whether the City's proposed condemnations are for a "public use" within the meaning of the Fifth Amendment to the Federal Constitution. Because over a century of our case law interpreting that provision dictates an affirmative answer to that question, we may not grant petitioners the relief that they seek. * * *

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting. * * *

This case * * * presents an issue of first impression: Are economic development takings constitutional? I would hold that they are not. * * * The Court's holding[] in *Berman* * * * [was] true to the principle underlying the Public Use Clause. * * * [T]he extraordinary, precondemnation use of the targeted property inflicted affirmative harm on society * * * through blight resulting from extreme poverty * * *. [T]he relevant legislative body had found that eliminating the existing property use was necessary to remedy the harm. Thus a public purpose was realized when the harmful use was eliminated. * * * Here, in contrast, New London does not claim that Susette Kelo's and Wilhelmina Dery's well-maintained homes are the source of any social harm. Indeed, it could not so claim without adopting the absurd argument that any single-family home that might be razed to make way for an apartment building, or any church that might be replaced with a retail store, or any small business that might be more lucrative if it were instead part of a national franchise, is inherently harmful to society and thus within the government's power to condemn.

In moving away from our decisions sanctioning the condemnation of harmful property use, the Court today significantly expands the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public—such as increased tax revenue, more jobs, maybe

even aesthetic pleasure. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words "for public use" do not realistically exclude any takings, and thus do not exert any constraint on the eminent domain power. * * *

The Court protests that it does not sanction the bare transfer from A to B for B's benefit. * * * First, it maintains a role for courts in ferreting out takings whose sole purpose is to bestow a benefit on the private transferee—without detailing how courts are to conduct that complicated inquiry. * * * The trouble with economic development takings is that private benefit and incidental public benefit are, by definition, merged and mutually reinforcing. In this case, for example, any boon for Pfizer or the plan's developer is difficult to disaggregate from the promised public gains in taxes and jobs. * * *

A second proposed limitation is implicit in the Court's opinion. The logic of today's decision is that eminent domain may only be used to upgrade—not downgrade—property. * * * [W]ho among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory. * * * It was possible after *Berman* * * * to imagine unconstitutional transfers from A to B. * * * [The decision] endorsed government intervention when private property use had veered to such an extreme that the public was suffering as a consequence. Today nearly all real property is susceptible to condemnation on the Court's theory. * * * Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. * * *

JUSTICE THOMAS, dissenting. * * *

The consequences of today's decision are not difficult to predict, and promise to be harmful. So-called "urban renewal" programs provide some compensation for the properties they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them from their homes. Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities. * * * In the 1950's, no doubt emboldened in part by the

expansive understanding of "public use" this Court adopted in *Berman*, cities "rushed to draw plans" for downtown development. B. Frieden & L. Sagalayn, *Downtown, Inc. How America Rebuilds Cities* 17 (1989). "Of all the families displaced by urban renewal from 1949 through 1963, 63 percent of those whose race was known were nonwhite, and of these families, 56 percent of nonwhites and 38 percent of whites had incomes low enough to qualify for public housing, which, however, was seldom available to them." Public works projects in the 1950's and 1960's destroyed predominantly minority communities in St. Paul, Minnesota, and Baltimore, Maryland. In 1981, urban planners in Detroit, Michigan, uprooted the largely "lower-income and elderly" Poletown neighborhood for the benefit of the General Motors Corporation. J. Wylie, *Poletown: Community Betrayed* 58 (1989). Urban renewal projects have long been associated with the displacement of blacks; "[i]n cities across the country, urban renewal came to be known as 'Negro removal.'" Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 *Yale L. & Pol'y Rev.* 1, 47 (2003). Over 97 percent of the individuals forcibly removed from their homes by the "slum-clearance" project upheld by this Court in *Berman* were black. Regrettably, the predictable consequence of the Court's decision will be to exacerbate these effects. * * *

MATTER OF KAUR V. NEW YORK STATE URBAN DEV. CORP.

Court of Appeals of New York, 2010.
15 N.Y.3d 235.

CIPARICK, J.

In this appeal, we are called upon to determine whether respondent's exercise of its power of eminent domain to acquire petitioners' property for the development of a new Columbia University campus was supported by a sufficient public use, benefit or purpose (see NY Const, art I, § 7 [a]; EDPL 207[C][4]). We answer this question in the affirmative and conclude, pursuant to our recent holding in *Matter of Goldstein v. New York State Urban Dev. Corp.*, 13 NY3d 511 [2009]), that the Empire State Development Corporation's (ESDC) findings of blight and determination that the condemnation of petitioners' property qualified as a "land use improvement project" were rationally based and entitled to deference. We also conclude that the alternative finding of "civic purpose," likewise, had a rational basis.

Petitioners in this proceeding are the owners of different commercial establishments located in the West Harlem neighborhood of Manhattan. * * * On December 18, 2008, respondent ESDC issued a determination * * * concluding that it should use its power of condemnation to purchase 17 acres of privately owned property, including petitioners', in connection with the Columbia University Educational Mixed Use Development Land Use