Traditional Values COALITION

SPECIAL REPORT

Our Robed Masters Assault Private Property And Religious Freedom

A 5-4 majority on the U.S. Supreme Court has determined that private property rights no longer exist—and churches will be primary targets of tax-hungry city planners.

The United States Supreme Court handed down its decision in *Kelo v. City of New London* [Connecticut] on June 23, 2005.

In this case, a 5-4 majority decided that the 5th Amendment to the Constitution no longer protects private property from the economic desires of the wealthy or city planners. Five robed masters also declared that the "public use" clause of the 5th Amendment should be interpreted to mean "public purpose" – a term with greatly expanded meaning—and one that flies in the face of more than 200 years of constitutional history.

Justice Clarence Thomas says a 5-4 majority on the U.S. Supreme Court has effectively wiped out a key phrase in the 5th Amendment in the* Kelo *decision.

The Kelo case involved the city of New London, Connecticut and its desire to revitalize a section of the town known as Fort Trumbull. In its goal of revitalizing this area, the city decided to exercise "eminent domain" against the home of Susette Kelo and other homeowners in the neighborhood. The city planned on taking these properties and having a private developer construct a hotel and office buildings on the land once owned by Kelo and other homeowners.

The 5-4 majority on the Supreme Court declared that the city of New London had the right to take private property from these individuals and give it to private developers because economic development served a public purpose.

The Court decided that the 5th Amendment's prohibition against the taking of private property without just compensation for "public use" (building of roads, bridges, etc.) actually meant "public purpose." In reinterpreting "public use" – a term that has been clearly understood by constitutionalists for more than 200 years – to "public purpose," the Court has effectively wiped out the right to private property.

In his dissent, Justice Clarence Thomas correctly observed: "If such 'economic development' takings are for a 'public use,' any taking is, and the court has erased the public use clause from our Constitution."

Justice Thomas also stated that Kelo: "wash[es] out any distinction between private and public use of property—and thereby effectively deletes the words 'for public use' from the Takings Clause of the Fifth Amendment."

He said that the Constitution allows the government

to take property not for "public necessity" but instead for public use. He mockingly noted that the majority on the Court had apparently decided that the public use clause of the 5th Amendment was now the "Diverse and Always Evolving Needs of Society Clause" instead.

How Does 'Kelo' Impact Churches?

The threat to private property is clear. Any city is now free under Kelo to take a person's home and build a mall or other facility on the land. Cities can now exercise eminent domain as long as it claims there is a public purpose for it.

The threat to churches is far more likely and could be the death knell for many churches in poor neighborhoods targeted for redevelopment. Churches in areas where property values are high will also be targeted for their tax-exempt lands.

The Becket Fund for Religious Liberty filed a lengthy Friend of the Court brief in the Kelo case and noted that a wrong decision in this case would be a serious assault on religious freedom in America.

Writing in its brief, Fund lawyers observed:

> To affirm this broad expansion of eminent domain power is to grant municipalities a special license to invade the autonomy of and take the property of religious institutions. Houses of worship and other religious institutions are, by their very nature, non-profit and almost universally tax-exempt. These fundamental characteristics of religious institutions render their property singularly vulnerable to being taken under the rational approved by the lower court.
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> For municipalities that lack the self-control to raise taxes or cut spending to balance budgets, a rule that allows them to transfer the tax-exempt property of religious institutions to a private business that will immediately to the tax rolls is often too tempting to pass up – especially in times of municipal budget deficits and recession.
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> … municipalities will have permission to declare open season on the property of religious institutions of all faiths and functions in the name of padding the public purse. Moreover, the religious organizations most at risk under such a regime are those small groups of believers, those minority faiths, those poor religious institutions, that cannot hope to stand up to the power of large commercial enterprises aided and abetted by municipal governments.

Protection Of Homes, Small Businesses, And Private Property Act Of 2005

Several Conservative legislators in the House and Senate have reacted strongly to the Supreme Court's attack on private property in *Kelo.* In fact, Senator John Cornyn (R-TX) has introduced the "Protection Of Homes, Small Businesses, And Private Property Act Of 2005" to provide some protections for private property owners. Sen. Cornyn formerly served as Texas Attorney General and as a Texas Supreme Court Justice. He is well-qualified to discuss constitutional issues.

Rep. Tom DeLay (R-TX), Senator Cornyn and several other associates held a press conference on June 30, 2005, to announce the introduction of legislation to deal with the *Kelo* decision against private property.

Rep. DeLay told reporters:

> Let me just say that there should be no mistake about Kelo v. New London, Connecticut. And this is a horrible decision by the Supreme Court. No politician or lawyer or judge can gloss over that fact. And, quite frankly, we shouldn't even try.
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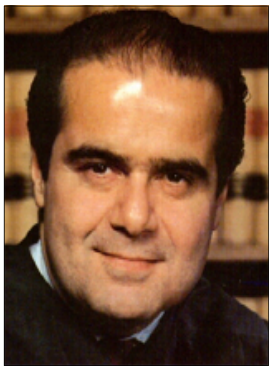
> Kelo is not a slippery slope. It's a bag of rocks falling out of the sky that, sooner or later, is going to land on somebody's underprivileged family home. In the post-Kelo world, someone could knock on your door and tell you that the city council has voted to give your house to someone else because they have nicer plans for the property.

The people most vulnerable in this new George Orwell novel of a court decision will be, predictably, poor families, immigrants, racial minorities and the elderly. The Supreme Court voted last week to undo private property rights and to empower governments to kick people out of their homes and give them to someone else because they feel like it.



Justice Antonin Scalia is a Constitutionalist who dissented in the* Kelo *decision. He is a vocal opponent of judicial activism.

The decision was characterized by both Justices O'Connor and Thomas as essentially erasing the public use clause from our Constitution. And they're right.

The results of this decision could wreak havoc on our economy, on our society and on the very social contract on which self-government is based. No court that denies property rights will long respect and recognize other basic human rights.

The only silver lining to the cloud of this decision is the possibility that this time the court has finally gone too far and that the American people are ready to reassert their constitutional authority.

In introducing his legislation in the Senate, Sen. Cornyn stated on June 27, 2005:

> Mr. President, I rise today to introduce new legislation, entitled the Protection of Homes, Small Businesses, and Private Property Act of 2005. I introduce this legislation in response to a controversial ruling of the United States Supreme Court issued just last Thursday.
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> The protection of homes, small businesses, and other private property rights against government seizure and other unreasonable government interference is a fundamental principle and core commitment of our nation's Founders. As Thomas Jefferson famously wrote on April 6, 1816, the protection of such rights is "the first principle of association, 'the guarantee to every one of a free exercise of his industry, and the fruits acquired by it.'"
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> The Fifth Amendment of the United States Constitution specifically provides that "private property" shall not "be taken for public use without just compensation." The Fifth Amendment thus provides an essential guarantee of liberty against the abuse of the power of eminent domain, by permitting government to seize private property only "for public use."
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> On June 23, 2005, the U.S. Supreme Court issued its controversial 5-4 decision in Kelo v. City of New London. In that ruling, the Court acknowledged that "it has long been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B," and that under the Fifth Amendment, the power of eminent domain may be used only "for public use."
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> Yet the Court nevertheless held, by a 5-4 vote, that government may seize the home, small business, or other private property of one owner, and transfer that same property to another private owner, simply by concluding that such a transfer would benefit the community through increased economic development.
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> This is an alarming decision. As the Houston Chronicle editorialized this past weekend: "It seems a bizarre anomaly. The government in China or Russia might take private property to hand over to wealthy developers to build shopping malls and office plazas, but it wouldn't happen in the United States. Yet, that is the practice the U.S. Supreme Court narrowly approved this week. Local governments, the court ruled, may seize private homes and businesses so that other private entities can develop the land into enterprises that generate higher taxes." I ask unanimous consent that a copy of this editorial be included in the Record at the close of my remarks.
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> The Court's decision in Kelo is alarming because, as Justice O'Connor accurately noted in her dissenting opinion, joined by the Chief Jus-

tice and Justices Scalia and Thomas, the Court has "effectively . . . delete[d] the words 'for public use' from the Takings Clause of the Fifth Amendment" and thereby "refus[ed] to enforce properly the Federal Constitution."

Under the Court's decision in Kelo, Justice O'Connor warns, "[t]he 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." She further warns that, under Kelo, "[a]ny property may now be taken for the benefit of another private party," and "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. The Founders cannot have intended this perverse result."

Sen. Cornyn's legislation will declare Congress's view that the power of eminent domain should be exercised only for public use—and should not be used to further private economic development. It would prohibit the federal government from exercising eminent domain for uses other than "public use" and would prohibit state and local governments from misusing the power of eminent domain if federal funds are involved in the taking of private property. The bill also encourages states to voluntarily restrict their use of eminent domain to public use only.

Sen. Cornyn concluded his remarks by noting:

The protection of homes, small businesses, and other private property rights against government seizure and other unreasonable government interference is a fundamental principle and core commitment of our nation's Founders. The Kelo decision was a disappointment, but I want to congratulate the attorneys at the Institute for Justice for their exceptional legal work and for their devotion to liberty. We must not give up, and I know that the talented lawyers at the Institute for Justice have no intention of giving up. In the aftermath of Kelo, we must take all necessary action to restore and strengthen the protections of the Fifth Amendment. I ask my colleagues to lend their support to this effort, by supporting the Protection of Homes, Small Businesses, and Private Property Act of 2005.

Justice Clarence Thomas believes in judicial restraint and interpreting the Constitution based upon the original intent of the Founding Fathers—not his own political views or the latest Liberal social agenda.

One More Example Of Judicial Tyranny

The *Kelo* decision is yet another example of judicial tyranny in action. Five robed masters have decided to reinterpret the "public use" term in the 5th Amendment to mean "public purpose" – thus distorting the original meaning of the term and what has been generally accepted for more than 200 years. The Court's robed masters simply redefine terms to accomplish their own social agendas without regard to the original intent of the writers of the Constitution or what words actually mean.

The Liberals on the Court have adopted the view that the Constitution is a "Living Document" that can be altered or redefined as they see fit. Viewing the Constitution as infinitely changeable gives these Justices immense power to restructure our society as they wish.

TVC has supported passage of legislation that restricts the power of the federal courts, including the U.S. Supreme Court, to issue rulings dealing with God, the Pledge of Allegiance, or issues involving traditional marriage. One such bill is the Constitution Restoration Act Of 2005, sponsored by Senators Richard Shelby (R-AL), Zell Miller (D-GA), Sam Brownback (R-KS) and Lindsey Graham (R-SC); and Representatives Robert Aderholt (R-AL) and Mike Pence (R-IN).

Read and distribute TVC's reports on judicial tyranny: *Constitution Restoration Act Of 2005 Needed To Restrict Judicial Activism; Judges: Our Robed Masters; The Ninth Circuit Court Must Be Split; Two Branches Of Government?;* and *Massachusetts Supreme Judicial Court Legalizes Same-Sex Marriage.* These are available for downloading on TVC's web site.