

Eminent domain controversy concerns property rights

by Randy Bright <http://www.tulsabeacon.com/?p=5848>

A bill is slowly making its way through the legislature in Washington that could possibly be the beginning of the end of the flawed U.S. Supreme Court decision for the Kelo v. City of New London case in 2005.

The Kelo case involved the taking of private property by the City of New London to give to a private developer that was to develop the property for the pharmaceutical giant Pfizer. After years of litigation costing taxpayers a reported \$80 million in legal costs, the City of New London prevailed, a number of homes were taken and torn down, only to have Pfizer abandon the project and leave town.

That year, a bill was passed in the House with a clear majority that would have made the taking of private property for economic reasons illegal, but the bill died in the Senate when it failed to vote on it.

In the years since Kelo, over forty states have passed legislation to limit or prohibit the abuse of eminent domain in cases that involved the taking of private property for economic development reasons. In three states – Illinois, Ohio and Michigan – Supreme Courts have prohibited the practice.

Even U.S. Supreme Court Justice Sandra Day O'Connor, who is liberal, disagreed with the decision. She said, "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... The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."

In April of 2011, a similar bill to the one that failed in 2005 was introduced in the House as H.R. 1433, known as the "Private Property Rights Protection Act of 2011." In January of this year, the House Judiciary Committee approved the bill, and it passed in the House by voice vote on February 28. The bill was sent to the Senate the following day.

The bill was sponsored by U.S. Rep. Maxine Waters, D-Calif., and Rep. James Sensenbrenner, R-Wis.

Waters' sponsorship of the bill is puzzling. In 2008, she told an oil company executive, "guess what this liberal would be all about? This liberal would be all about socializing-uh, uh, would be about basically...taking over and the government running all of your companies." She seems an unlikely author of a bill invoking property rights.

The bill would prohibit governments from using eminent domain to take private property for economic development if they have received funding from the federal government for economic development involving the taken property.

The bill defines economic development as “taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health...”

The bill also imposes a two-year moratorium on federal funding to any government agency that breaks the law. Most of the bill speaks to the involvement of the federal government for enforcement of the law, even on other agencies of the federal government.

My question would be, why does this bill only apply to cases where federal funding is involved? I saw no specific prohibitions in the bill against the abuse of eminent domain in cases that do not involve federal funding.

To be sure, there are portions of the bill that affirm the Founder’s original intent regarding the use of eminent domain and the importance of private property rights. It specifically addresses the threat of the *Kelo v. New London* decision to the rights of property owners, and further singles out the threat to rural property owners and to tax-exempt non-profit property owners.

The bill says, “Americans should not have to fear the government’s taking their homes, farms or businesses to give to other persons. Governments should not abuse the power of eminent domain to force rural property owners from their land in order to develop rural land into industrial and commercial property.”

But in regards to tax-exempt non-profits, the bill prohibits the abuse of eminent domain if the government doing the taking is receiving federal funds.

There is more to this bill than I can address in this article, but it seems to me that we have a long way to go to protect all private property rights legislatively. Would it not be better for the US Supreme Court to simply reverse its decision and affirm the Constitution to be interpreted as it was written?

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