

accompanying and resulting economic development plan filed suit challenging New London's legal authority to take their homes. The trial court issued an injunction preventing New London from taking certain of the properties but allowing others to be taken. The appellate court found for New London on all the claims, and the landowners (petitioners) appealed.

JUDICIAL OPINION

STEVENS, Justice

Two polar propositions are perfectly clear. On the one hand, 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, even though A is paid just compensation. On the other hand, it is equally clear that a State may transfer property from one private party to another if future "use by the public" is the purpose of the taking; the condemnation of land for a railroad with common-carrier duties is a familiar example. Neither of these propositions, however, determines the disposition of this case.

The disposition of this case therefore turns on the question whether the City's development plan serves a "public purpose." Without exception, our

the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

In *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 104 S. Ct. 2321, 81 L.Ed.2d 186 (1984), the Court considered a Hawaii statute whereby fee title was taken from lessors and transferred to lessees (for just compensation) in order to reduce the concentration of land ownership. We unanimously upheld the statute and rejected the Ninth Circuit's view that it was "a naked attempt on the part of the state of Hawaii to take the property of A and transfer it to B solely for B's private use and benefit." Reaffirming *Berman's* deferential approach to legislative judgments in this field, we concluded that the State's purpose of eliminating the "social and economic evils of a land oligopoly" qualified as a valid public use.

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the question whether the City's development plan serves a "public purpose." Without exception, our cases have defined that concept broadly, reflecting our long-standing policy of deference to legislative judgments in this field.

In *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954), this Court upheld a redevelopment plan targeting a blighted area of Washington, D.C., in which most of the housing for the area's 5,000 inhabitants was beyond repair. Under the plan, the area would be condemned and part of it utilized for the construction of streets, schools, and other public facilities. The remainder of the land would be leased or sold to private parties for the purpose of redevelopment, including the construction of low-cost housing.

The owner of a department store located in the area challenged the condemnation, pointing out that his store was not itself blighted and arguing that the creation of a "better balanced, more attractive community" was not a valid public use. Writing for a unanimous Court, Justice Douglas refused to evaluate this claim in isolation, deferring instead to the legislative and agency judgment that the area "must be planned as a whole" for the plan to be successful. The Court explained that "community redevelopment programs need not, by

qualified as a valid public use.

Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including—but by no means limited to—new jobs and increased tax revenue. To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. 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, as it was in *Berman*, 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.

Petitioners contend that using eminent domain for economic development impermissibly blurs the boundary between public and private takings. Again, our cases foreclose this objection. We cannot say that

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.

Just as we decline to second-guess the City's considered judgments about the efficacy of its development plan, we also decline to second-guess the City's determinations as to what lands it needs to acquire in order to effectuate the project. "It is not for the courts to over-see the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch."

The judgment of the Supreme Court of Connecticut is affirmed.

DISSENTING OPINION

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DISSENTING OPINION

O'CONNOR, Justice, joined by Justices SCALIA, THOMAS, and REHNQUIST
Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to

wash out any distinction between private and public use of property—and thereby effectively to delete the words "for public use" from the Takings Clause of the Fifth Amendment. Accordingly I respectfully dissent.

Where is the line between "public" and "private" property use? We give considerable deference to legislatures' determinations about what governmental activities will advantage the public. But were the political branches the sole arbiters of the public-private distinction, the Public Use Clause would amount to little more than hortatory fluff. An external, judicial check on how the public use requirement is interpreted, however limited, is necessary if this constraint on government power is to retain any meaning.

Even if there were a practical way to isolate the motives behind a given taking, the gesture toward a purpose test is theoretically flawed. If it is true that incidental public benefits from new private use are enough to ensure the "public purpose" in a taking, why should it matter, as far as the Fifth Amendment is concerned, what inspired the taking in the first place? And whatever the reason for a given condemnation, the effect is the same from the constitutional perspective—private property is forcibly relinquished to new private ownership.

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CASE QUESTIONS

1. What is different between this case and a case in which property is taken for constructing a freeway?
2. What is the concern of the dissent about the decision?
3. Why does the majority state that the courts should be reluctant to get involved in local government eminent domain activities?