

can require property owners to transfer title for public projects for the public good. The Fifth Amendment provides that "property shall not be taken for a public use without just compensation." For a governmental entity to exercise properly the right of eminent domain, three factors must be present: public purpose, taking (as opposed to regulating), and just compensation.

Public Purpose

To exercise eminent domain, the governmental authority must establish that the taking is necessary for the accomplishment of a government or public purpose. When eminent domain is mentioned, we think of the use of property for highways and schools. However, the right of the government to eminent domain extends much further. For example, the following uses have been held to constitute public purposes: the condemnation of slum housing (for purposes of improving city areas), the limitation of mining and excavation within city limits, the declaration of property as a historic landmark, and the taking of property to provide a firm that is a town's economic base with a large enough tract for expansion. According to the U.S. Supreme Court, the public purpose requirement for eminent domain is to be interpreted broadly, and "the role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one." [*United States ex rel. TVA v Welch*, 327 U.S. 546 (1946)] The *Kelo v City of New London* case (Case 5.6) was the U.S. Supreme Court decision that changed the eminent domain landscape, as it were.

CASE 5.6

Kelo v City of New London
545 U.S. 469 (2005)

Yes, Actually, They Can Take That Away From You

FACTS

In 1978, the city of New London, Connecticut, undertook a redevelopment plan for purposes of creating a redeveloped area in and around the existing park at Fort Trumbull. The plan sought to develop the related ambience a state park should have, including the absence of pink cottages and other architecturally eclectic homes. Part of the redevelopment plan was the city's deal with Pfizer Corporation for the location of its research facility in the area. The preface to the city's development plan included the following statement of goals and purpose:

To create a development that would complement the facility that Pfizer was planning to build, create jobs, increase tax and other revenues, encourage public access to and use of the city's waterfront, and eventually "build momentum" for the revitalization of the rest of the city, including its downtown area.

The affected property owners, including Susette Kelo, live in homes and cottages (15 total) located in and around other existing structures that would be permitted to stay in the area designated for the proposed new structures (under the city's economic development plan) that would be placed there primarily by private land developers and corporations. The city was assisted by a private, nonprofit corporation, the New London Development Corporation (NLDC), in the development of the economic plan and piloting it through the various governmental processes, including that of city council approval. The central focus of the plan was getting Pfizer to the Fort Trumbull area (where the homeowners and their properties were located) with the hope of a resulting economic boost that such a major corporate employer can bring to an area.

Kelo and the other landowners whose homes would be razed to make room for Pfizer and the

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