

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

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.

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?

Eminent Domain in the Post-Kelo World

The impact of the *Kelo* case has been substantial. The decision resulted in backlash from landowners and paved the way for legislative reforms that restrict eminent domain powers at the state and local levels. Following the *Kelo* decision and because 80% of the public disapproved of the court's decision, 45 states have passed some form of limitation on the exercise of eminent domain for economic development either through ballot propositions, constitutional amendments, or legislation.

However, many of those states still allow eminent domain proceedings to eliminate "blight," with blight carrying a broad definition. Still, Arizona and Florida have placed substantial curbs on the exercise of eminent domain for economic development purposes. In November 2005, the U.S. House of Representatives passed the Private Property Rights Protection Act of 2005 (also known as House Resolution 4128) by a vote of 376 to 38. The bill died in the Senate. In 2006,