



# Kelo v. City of New London Case Brief

545 U.S. 1158, 126 S.Ct. 24. (2005)

## Facts

- New London, CT declared a "distressed municipality" due to decades of economic decline.
- State and local officials targeted New London for economic revitalization.
- State authorized bonds to support planning activities including a state park and private development. Pfizer announced that it planned to build on the Fort Trumbull area.
- Fort Trumbull comprises 115 privately-owned properties. Development plan encompasses seven parcels:
  - Waterfront conference hotel at the center of a small urban village.
  - 80 new residences organized into an urban neighborhood linked by a public walkway.
  - Office space.
  - A- support site for state park or marina; B- marina/riverwalk.
  - Land for office and retail space.
- Plan designed to revitalize the downtown area and make the city more attractive and create leisure and recreational opportunities.
- City Council authorized NLDC to purchase property or acquire it through eminent domain.
  - Negotiations with Plaintiffs failed, and so condemnation proceeding was initiated.

## Procedural History

- Superior Court granted a permanent restraining order prohibiting the takings of properties in 4A, but not in parcel 3.
- Supreme Ct of CT held that the takings were valid.

## Issues

- Can a city condemn private land under the Takings Clause with the intent of giving that land directly to private developers to encourage economic development?
- Does the city's plan have a public purpose?

## Holding/Rule

- A city can condemn private lands with the intent of giving that land to private developers to encourage economic development because economic development is a public purpose.

## Reasoning

- 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 with just compensation.
  - Also can't take it for the pretext of a public purpose when real purpose is private.
- However, a State may transfer the property if future use by the public is the purpose of the taking.
- Here, the City's development plan was not adopted to benefit a particular class of identifiable individuals.
  - However, the land is not going to be completely opened up to the public. This literal reading has been rejected long ago.
  - Proved impractical given the diverse and evolving needs of society.
- Our cases have defined the concept of a public purpose broadly.
  - In Berman, the Court upheld a redevelopment plan in DC where land was sold or leased to private parties for redevelopment and low- cost housing.
  - In Midkiff, the Court unanimously upheld HI statute that gave land to lessees.
- The City's determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference.
  - Promoting economic development is a traditional and long-accepted function of government.
  - The gov't's pursuit of a public purpose will often benefit individual private parties.
- We also don't second guess the city's determination as to what lands it needs to acquire in order to effectuate the project

## Dissent

- Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner.
- This effectively deletes the words "for public use" from the Takings Clause.
- An external, judicial check on how the public use requirement is interpreted is necessary if this constraint on government power is to retain any meaning.
- Three categories of takings comply with public use requirement:
  - Private property transferred to public ownership.
  - Private property transferred to private parties who make the property available for the public's use (stadium, railroad, etc.).
  - Under certain circumstances, private property can be taken when it is destined for subsequent private use.
- However, economic development is not a constitutional reason for a taking.
  - Berman can be distinguished because the neighborhood was injurious to public health, safety, and morals.
  - Midkiff can be distinguished because the state was attempting to rectify an imbalance in ownership and an oligopoly.
  - But, both these cases recognized that a purely private taking could not withstand scrutiny of the public use requirement because it would serve no legitimate purpose of government.
  - Also, in both these cases, the extraordinary pre-condemnation use of the targeted property inflicted affirmative harm on society. This harm had to be eliminated.
- Here, the city does not claim that Plaintiffs' homes are harmful.
- Basically, the Court is saying that the sovereign can take private property currently put to ordinary private use and give it over for new, ordinary private use so long as there might be some secondary benefit for the public.
  - But, nearly any lawful use of real private property can be said to generate some incidental benefit to the public.
  - The specter of condemnation hangs over all property.
  - The founders cannot have intended this perverse purpose.