

Will Brett Kavanaugh Stand For Property Rights?

There's lots of talk about where Supreme Court nominee Brett Kavanaugh stands on the Roe v Wade abortion decision and if he would vote to rescind it. There is another very controversial Supreme Court decision made just few years ago, supported by the Anthony Kennedy, the justice he seeks to replace. That is the Kelo decision that basically obliterated private property rights in America. So, where does Brett Kananaugh stand on protection of private property rights? With Kennedy or the Constitution?

In 2005, the Supreme Court of the United States handed down an opinion that shocked the nation. It was the case of Susette Kelo, et al. v City of New London, Connecticut, et al. The issue: "Does the government taking of property from one private owner to give to another private entity for economic development constitutes a permissible 'public use' under the Fifth Amendment?"

In 2000, the city of New London saw a chance to rake in big bucks through tax revenues for a new downtown development project that was to be anchored by pharmaceutical giant Pfizer. The company announced a plan to build a \$270 million dollar global research facility in the city. The local government jumped at the chance to transform 90 acres of an area right next to the proposed research facility. Their plans called for the creation of the Fort Trumbull development project which would provide hotels, housing and shopping areas for the expected influx of Pfizer employees. There were going to be jobs and revenues A-Go-Go in New London. Just one obstacle stood in the way of these grand plans. There were private homes in that space.

No muss – no fuss. The city fathers had a valuable tool in

their favor. They would just issue an edict that they were taking the land by eminent domain. The city created a private development corporation to lead the project. First priority for the new corporation was to obtain the needed property.

In July, 1997, Susette Kelo bought a nice little pink house in a quiet fort Trumbull neighborhood of New London. Little did she imagine that warm, comfy place would soon become the center of a firestorm.

She had no intention of selling. She'd spent a considerable amount of money and time fixing up her little pink house, a home with a beautiful view of the waterfront that she could afford. She planted flowers in the yard, braided her own rugs for the floors, filled the rooms with antiques and created the home she wanted.

Less than a year later, the trouble started. A real estate broker suddenly showed up at her door representing an unknown client. Susette said she wasn't interested in selling. The realtor's demeanor then changed, warning that the property was going to be condemned by the city. One year later, on the day before Thanksgiving, the sheriff taped a letter to Kelo's door, stating that her home had been condemned by the City of New London.

Then the pressure began. A notice came in the mail telling her that the city intended to take her land. An offer of compensation was made, but it was below the market price. The explanation given was that, since the government was going to take the land, it was no longer worth the old market price, therefore the lower price was "just compensation," as called for in the Fifth Amendment. It was a "fair price," Kelo and the homeowners were told over and over.

Some neighbors quickly gave up, took the money and moved away. With the loss of each one, the pressure mounted. Visits from government agents became routine. They knocked on the door at

all hours, demanding she sell. Newspaper articles depicted her as unreasonably holding up community progress. They called her greedy. Finally, the bulldozers moved in on the properties already sold. As they crushed down the houses, the neighborhood became unlivable. It looked like a war zone.

In Susette Kelo's neighborhood, the imposing bulldozer was sadistically parked in front of a house, waiting. The homeowner came under greater pressure to sell. More phone calls, threatening letters, visits by city officials at all hours demanding they sign the contract to sell. It just didn't stop. Finally the intimidation began to break down the most dedicated homeowners' resolve. In tears, they gave in and sold. Amazingly, once they sold, the homeowners were then classified as "willing sellers!"

Immediately, as each house was bulldozed, the monster machine was moved to the next house, sitting there like a huffing, puffing dragon, ready to strike.

Finally Susette's little pink house stood nearly alone in the middle of a destruction site. Over 80 homes were gone: seven remained. As if under attack by a conquering army, she was finally surrounded, with no place to run but to the courts. Under any circumstances the actions of the New London government and its sham development corporation should have been considered criminal behavior. It used to be. If city officials were caught padding their own pockets, or those of their friends, it was considered graft. That's why RICO laws were created.

The United States was built on the very premise of the protection of private property rights. How could a government possibly be allowed to take anyone's home for private gain? Surely justice would finally prevail.

The city was backed in its appeal by the National League of Cities, one of the largest proponents of eminent domain use,

saying the policy was critical to spurring urban renewal with development projects. However, the Supreme Court had always stood with the founders of the nation on the vital importance of private property. There was precedent after precedent to back up the optimism that they would do so again.

Finally, her case was heard by the highest court in the land. It was such an obvious case of government overreach against private property owners that no one considered there was a chance of New London winning. That's why it was a shock to nearly everyone involved that private property rights sustained a near-death blow that day.

This time, five black robes named Stevens, Souter, Ginsburg, Kennedy, and Breyer shocked the nation by ruling that officials who had behaved like Tony Soprano were in the right and Susette Kelo had no ground to stand on, literally or figuratively.

These four men and one woman ruled that the United States Constitution is meaningless as a tool to protect individuals against the wants and desires of government. Their ruling in the Kelo case declared that Americans own nothing. After deciding that any property is subject to the whim of a government official, it was just a short trip to declaring that government could now confiscate anything we own, anything we create, anything we've worked for – in the name of an undefined common good.

Justice Sandra Day O'Connor, who opposed the Court's decision, vigorously rebutted the Majority's argument, as she wrote in dissent of the majority opinion, "The specter of condemnation hangs over all property. Nothing is to prevent the state from replacing a Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

Justice Clarence Thomas issued his own rebuttal to the decision, specifically attacking the argument that this was a

case about “public use.” He accused the Majority of replacing the Fifth Amendment’s “Public Use” clause with a very different “Public Purpose” test. Said Justice Thomas “This deferential shift in phraseology enables the Court to hold against all common sense, that a costly urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue, but which is also suspiciously agreeable to the Pfizer Corporation, is for a public use.”

Astonishingly the members of the Supreme Court have no other job but to protect the Constitution and defend it from bad legislation. They sit in their lofty ivory tower, with their lifetime appointments, never actually having to worry about job security or the need to answer to political pressure. Yet, these five black robes obviously missed finding a single copy of the Federalist Papers, which were written by many of the Founders to explain to the American people how they envisioned the new government was to work. In addition, they apparently missed the collected writings of James Madison, Thomas Jefferson, John Adams and George Washington, just to mention a very few. It’s obvious because otherwise, there is simply no way they could have reached this decision.

So, in a five to four vote, the Supreme Court said that it was okay for a community to use eminent domain to take land, shut down a business, or destroy and reorganize an entire neighborhood, if it benefited the community in a positive way. Specifically, “positive” meant unquestioned government control and more tax dollars.

The Institute for Justice, the group that defended Susette Kelo before the Supreme Court, reported that it found 10,000 cases in which condemnation was used or threatened for the benefit of private developers. These cases were all within a five-year period after the Kelo decision. Today, that figure is dwarfed as there is seemingly no limit on government takings of private property.

The Kelo decision changed the rules. The precedent was set. Land can now be taken anytime at the whim of a power elite. So again, the question must be asked: if Brett Kavanaugh is confirmed to the U.S. Supreme Court, will he stand to protect private property rights against massive overreach by local, state, and federal governments? Will he support an effort to overturn the Kelo Decision?

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