125 S.Ct. 2655 ← Citation
Supreme Court of the United States

Susette KELO, et al., Petitioners,
v.
CITY OF NEW LONDON, CONNECTICUT, et al.

Party Name

Docket Number → No. 04-108. Argued Feb. 22, 2005. Decided June 23, 2005. Rehearing Denied Aug. 22, 2005. See 545 U.S. 1158, 126 S.Ct. 24.

Synopsis

Synopsis

Background: Owners of condemned property challenged city's exercise of eminent domain power on ground takings were not for public use. The Superior Court, Judicial District of New London, Corradino, J., granted partial relief for owners, and cross-appeals were taken. The Supreme Court, Norcott, J., 268 Conn. 1, 843 A.2d 500, upheld takings. Certiorari was granted.

Background

Holding: The Supreme Court, Justice Stevens, held that city's exercise of eminent domain power in furtherance of economic development plan satisfied constitutional "public use" requirement.

Holding

Affirmed.

Justice Kennedy concurred and filed opinion.

Justice O'Connor dissented and filed opinion in which Chief Justice Rehnquist and Justices Scalia and Thomas joined.

Digest

West Headnotes (7)

Change View

1 **Eminent Domain** ← Topic

Headnote

Sovereign may not use its eminent domain power to take property of one private party for sole purpose of transferring it to another private party, even if first party is paid just compensation. U.S.C.A. Const.Amend. 5

Cases that cite this headnote

Topics

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k60 Taking for Private Use
148k61 In General

Panel

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a concurring opinion, post, p. 2669. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined, post, p. 2671. THOMAS, J., filed a dissenting opinion, post, p. 2677.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

Attorneys and Law Firms

Attorney

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Opinion

Opinion

Lead

Justice STEVENS delivered the opinion of the Court. ← Judge

***472** In 2000, the city of New London approved a development plan that, in the words of the Supreme Court of Connecticut, was "projected to create in excess of 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas." 268 Conn. 1, 5, 843 A.2d 500, 507 (2004). In assembling the land needed for this project, the city's development agent has purchased property from willing sellers and proposes to use the power of eminent domain to acquire the remainder of the property from unwilling owners in exchange for just compensation. The question presented is whether the city's proposed disposition of this property qualifies as a "public use" within the meaning of the Takings Clause of the Fifth Amendment to the Constitution.

Opinion

Opinion

Concurring

Justice KENNEDY, concurring.

I join the opinion for the Court and add these further observations.

This Court has declared that a taking should be upheld as consistent with the Public Use Clause, U.S. Const., Amdt. 5, as long as it is "rationally related to a conceivable public purpose." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 241, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984); see also Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954). This deferential standard of review echoes the rational-basis test used to review economic regulation under the Due Process and Equal Protection Clauses, see, e.g., FCC v. Beach Communications, Inc., 508 U.S. 307, 313-314, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993); Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955). The determination that a rational-basis standard of review is appropriate does not, however, alter the fact that transfers intended to confer benefits on particular, favored private entities, and with only incidental or pretextual public benefits, are forbidden by the Public Use Clause.

***491** A court applying rational-basis review under the Public Use Clause should strike down a taking that, by a clear showing, is intended to favor a particular private party, with only incidental or pretextual public benefits, just as a court applying rational-basis review under the Equal Protection Clause must

Opinion

***494** Justice O'CONNOR, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join, dissenting.

Over two centuries ago, just after the Bill of Rights was ratified, Justice Chase wrote:

> "An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority .... A few instances will suffice to explain what I mean ....[A] law that takes property from A. and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with such powers; and, therefore, it cannot be presumed that they have done it." Calder v. Bull, 3 Dall. 386, 388, 1 L.Ed. 648 (1798) (emphasis deleted).

Opinion

Today the Court abandons this long-held, basic limitation on government power. 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.

Dissenting

I

Petitioners are nine resident or investment owners of 15 homes in the Fort Trumbull neighborhood of New London, Connecticut. Petitioner Wilhelmina Dery, for example, lives in a house on Walbach Street that has been in her family for over 100 years. She was born in the house in 1918; her husband, petitioner Charles Dery, moved into the house when they married in 1946. Their son lives next door with ***495** his family in the house he received as a wedding gift, and joins his parents in this suit. Two petitioners keep rental properties in the neighborhood.

In February 1998, Pfizer Inc., the pharmaceuticals manufacturer, announced that it would build a global research facility near the Fort Trumbull neighborhood. Two months later, New London's city council gave initial approval for the New London Development Corporation (NLDC) to prepare the development plan at issue here. The NLDC is a private, nonprofit corporation whose mission is to assist the city council in economic development planning. It is not elected by popular vote, and its directors and employees are privately appointed. Consistent with its mandate, the NLDC generated an ambitious plan for redeveloping 90 acres of Fort Trumbull in order to "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." App. to Pet. for Cert. 5.

Petitioners own properties in two of the plan's seven parcels-Parcel 3 and Parcel 4A. Under the plan, Parcel 3 is slated for the construction of research and office space as a market develops for such space. It will also retain the existing Italian Dramatic Club (a private cultural organization) **2672 though the homes of three plaintiffs in that parcel are to be demolished. Parcel 4A is slated, mysteriously, for " 'park support.' " Id., at 345-346. At oral argument, counsel for respondents conceded the vagueness of this