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#### WASHINGTON REPORT

## Congress strikes back after seizure of homes

Legislators approve bill to discourage the taking of homes for privately owned redevelopment projects.

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If you were disturbed by the Supreme Court's controversial decision this summer that allowed a city to seize the homes of its citizens for a privately owned redevelopment project, you can breathe a little easier.

The House of Representatives overwhelmingly approved a bill on Nov. 3 that would strip all economic development-related federal funds from any municipality or state that uses its eminent domain powers to transfer real property from one set of private owners to another.

The bipartisan Private Property Rights Protection Act of 2005 (H.R. 4128) now moves to the Senate for action. The vote in the House was 376-38. Co-sponsors and supporters ranged from conservative Republicans to some of the House's most liberal Democrats.

The bill would revoke for two fiscal years all federal economic development-related funding -- a significantly large pot of money for most localities and states -- from jurisdictions that violated the new eminent domain restriction. The idea, say supporters, is to make local governments think twice about condemning privately owned houses and other non-blighted property simply to be transferred to private developers of office buildings, condominiums and shopping malls.

The bill represents Congress' answer to the Supreme Court's June 23 decision in the case of *Kelo v. City of New London*. In that decision, the court ruled 5-4 that a municipality's eminent domain powers permit it to seize privately owned real estate for transfer to private developers if the municipality discerns a "public" benefit in so doing.

The decision, accompanied by a stinging dissent by Justice Sandra Day O'Connor, raised immediate howls of protest across the country and across the political spectrum. Critics charged that by handing local governments virtually unfettered rights to decide what constitutes a "public" purpose, the court abdicated its own duty to protect citizens from unconstitutional seizures of their private property under the Fifth Amendment.

O'Connor wrote that in the wake of the decision, "the specter of condemnation hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

The Fifth Amendment prohibits eminent domain takings of private property "for public use" without just compensation. Though for 150 years "public use" was interpreted strictly to mean public ownership and use -- highways, schools, municipal buildings -- the Supreme Court since the 1950s has relaxed that standard to encompass broader "public benefit" purposes such as clearing privately owned blighted neighborhoods for privately owned redevelopments that produced jobs and stimulated local economies. It was that broader purpose that New London invoked to justify its condemnation of 15 non-blighted houses near its waterfront for a private commercial redevelopment.

If the Private Property Rights Protection Act were federal law today, New London could face the loss of potentially millions of dollars of federal funding for approving the seizures. The bill defines "federal economic development funds" as any monies distributed to states or political subdivisions "designed to improve or increase the size of the economies" of those jurisdictions. The definition would cover everything from public infrastructure financing, community development and housing assistance and a wide variety of other federal programs for states and localities.

The bill would not interfere with traditional eminent domain seizures -- those where the "public use" is obvious and inherent -- nor would it bar seizures of abandoned or blighted property to protect the public from health or safety threats.

Opposition to the Supreme Court's *Kelo* decision continues to grow not only on Capitol Hill, but at the grass-roots level as well. According to Steven Anderson, executive director of the Castle Coalition, a property rights advocacy group based in Washington, D.C., over three-dozen states are considering new restrictions on localities' eminent domain powers. Alabama and Texas already have reined in municipal powers to condemn private property for "economic development."

Speaking at the annual convention of the National Association of Realtors in San Francisco, Anderson said the Supreme Court and *Kelo* "created a new land lottery for any government cravenly allied with a well-heeled developer with a dollar and a scheme."

With new federal and state restrictions on the horizon, many local governments may already be thinking twice about taking homes from their citizens for private development projects.

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