

HUNTINGTON BEACH INDEPENDENT

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Opinion

Community Commentary: Eminent domain hurts citizens

By Tom Harman

Americans believe that, as citizens of this great land, we are entitled to certain natural rights, such as life, liberty and the right to own property. These civil liberties are, in part, what differentiate us from other nations and have deep roots.

John Locke's "Second Treatise on Government" and later Benjamin Franklin and Samuel Adams' "Natural Rights of the Colonists as Men" expressed the importance to our earliest citizens that these rights are assured. The wording of the 5th Amendment to the U.S. Constitution can be traced directly to these teachings.

The 5th Amendment not only offers citizens protections against self-incrimination, but also protects against the taking of a person's private property by government for public use without just compensation. This part of the 5th Amendment is known as the Takings Clause.

These deep-seated beliefs account for the public uproar over the infamous 2005 U.S. Supreme Court's ruling on eminent domain — *Kelo v. city of New London, Conn.*, in which the court reinterpreted the 5th Amendment in a broad and socialistic manner. After the decision, polls showed a 90% public disapproval rate of the ruling.

In 2000, New London started condemnation proceedings against property owners refusing to sell their property to the city as part of a large redevelopment project. The owners fought back, filing a lawsuit claiming that the condemnation of their private property was a direct violation of the Takings Clause.

The United States Supreme Court, in an absolutely outrageous 5-4 decision, stated that private property can be confiscated from a private citizen and given to another private citizen if that citizen's plans for the property will be of greater public good — i.e. the new owner will pay more property taxes to the city.

Traditionally, private property in America could not be seized by the government except for "public use." Prior to the *Kelo* decision, this meant that if the government seized your property using its power of eminent domain, the property seized must be used for the public good, such as projects like highways, bridges, schools or fire stations.

The city contended this "taking" in fact was for the public good as it would raze the existing lower, middle-class neighborhood and replace it with high-end condos and shopping that would fit together nicely with an expected nearby expansion of Pfizer Pharmaceuticals. This change would then garner the city more tax revenue. The court agreed and the established, well-maintained neighborhood was destroyed in anticipation of a project that would rejuvenate the community. Fast forward to 2009, and the land sits empty, unused and un-taxable.

Loyola Law School professor and eminent domain expert Gideon Kanner reports in the National

Journal that “a viable, well-maintained lower middle-class neighborhood was destroyed, and some 90 acres of urban land were removed from the tax rolls for an indefinite period of time, with nothing to show for it except a tidal wave of public ill will directed at the court and at the process of eminent domain in general.”

Even before the Supreme Court had heard the arguments in the case, the city's redevelopment plans had begun to unravel. The grand, upscale development never materialized, Pfizer was forced to lay off 10,000 people, and the redeveloper chosen by the city, unable to secure financing, withdrew from the project. Besides razing the neighborhood that had existed on the site, no action has been taken. Now New London is left with undeveloped land, no interested redevelopers and no plans for the foreseeable future. A giant waste of taxpayer dollars.

Californians are only too familiar with land grabs for urban renewal projects. These projects, like the New London case, promise great change but, for the most part, bring little.

This terrible decision by the Supreme Court needs to be reversed in order to protect the property rights of citizens.

TOM HARMAN is a state senator overseeing the 35th District, which includes Huntington Beach and Fountain Valley.

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