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QUI TRANSULIT SUSTINET: He who transplanted sustains; The shift in political alliances on the national, state and local level in the year after Kelo v. New London

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He who transplanted sustains

The shift in political alliances on the national, state and local level in the year after *Kelo v. New London*

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INTRODUCTION

In the past year, the City of New London, Connecticut has become nationally known for the fight of the property owners of the Fort Trumbull neighborhood against the city of New London. Homeowners in the Fort Trumbull neighborhood refused to leave their homes after they were condemned by the government's power of eminent domain. The neighborhood was slated for economic development designed to increase the tax base and revenue for the city. The homeowners brought suit against the city of New London claiming that economic development cannot be classified as a public use and is a violation of the takings clause of the Fifth Amendment of the U.S. Constitution which states that private property shall not be taken for public use without just compensation.[1] The case went all the way to the U.S. Supreme Court where oral arguments began in February 2005. Since the Supreme Court's decision on the case in June there have been national rallies and protests against eminent domain abuse, introduction of state and nationwide legislative initiatives, and the birth of a new political party in New London. The Court's decision in *Kelo v. New London* has had an enormous impact on the community of New London, the state of Connecticut and the United States as a whole and will continue to do so in the foreseeable future.

The impact of this decision extends far beyond the political and legal realm. This decision has had a profound effect on the politics and culture of the city of New London

[1] U.S. Constitution, Amendment V.

as well as other communities around the country. This examination of the impact of the decision in *Kelo v. New London* on the local, state and national level reveals the shift in political and social alliances that has occurred as a result of this decision. The interdisciplinary aspect of this approach lies in the new and unconventional methods of research and examination of the impacts of the case that have been collected and incorporated in this study. New voices and ideas are being heard through grassroots organizations and national coalitions that have formed to fight eminent domain abuse. They are being expressed through politics, journalism, art and many more avenues of communication.

These avenues are markedly different at each level of society (local, state, national) that is examined. The most effective means of communication changes at each level. For example, the national media outlets and government lobbying were the best way for people to communicate their thoughts and ideas about the use of eminent domain on a national level. On a much smaller scale, within the community of New London, there has been a great deal of direct political interaction between the municipal government and the people. The importance of media, specifically The New London Day newspaper remained strong as it did in the national debate surrounding the case.

In the year since *Kelo v. New London* was heard by the Supreme Court eminent domain reform has begun to be addressed in a serious way. The media storm over the case which began in June has not subsided. This case has remained in the forefront of the news as many states struggle with complications arising in their own laws surrounding the use of eminent domain. The *Kelo v. New London* case will be noted among such landmark decisions because of the political and social upheaval that followed the case, brought on by the American people.

Brief History of Eminent Domain

To understand fully the events that led up to the *Kelo v. New London* case and that aftermath that ensued, it is essential to understand the government's traditional use of the power of eminent domain. As a result of the Court's decision in *Kelo v. New London*, the power of eminent domain is very misunderstood. Because of all of the negative press the case received, people see eminent domain as a power utilized by abusive, intrusive government when in reality, it is an essential power of the function of any modern state. The power of eminent domain has existed since the days of the Roman republic.[2] It is clear that the Framers of the U.S. Constitution felt that this was a legitimate power of the government, since it is not even mentioned in the express powers of government in the main articles of the document, but rather in the Bill of Rights, which is made up of things that the government is prohibited from doing. The Fifth Amendment doesn't give the power of eminent domain to the government, it merely restricts its use stating, "Nor shall private property be taken for public use without just compensation."[3] In other words, the Framers accepted its existence but wanted to control possible abuses of the power. This long-standing power of the government is now under a more severe assault than it has been any time in recent American history. Today, in many cases, people feel that this power has gone too far and that the democratic checks put into place to control its use have become obsolete. The current debate over eminent domain abuse addresses the possible need for reform.

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[2]"Eminent Domain Close to Home" Georgetown University News Online. 20 Mar. 2006 <http://explore.georgetown.edu/news/?ID=2526>.

[3] U.S. Constitution Amendment V.

In the past, the power of eminent domain has been checked by the will of the people. As is the case with any issue in democratic government, officials are held accountable for the decisions that they make once in office through scheduled elections which reflect the needs and desires of the community at large. In early American history, this was enough of a safeguard against eminent domain abuse. In *Munn v. Illinois*, an early eminent domain case decided in 1877, Chief Justice Waite delivered the majority opinion, expressing the Court's automatic deference to the legislature. He wrote,

> Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations…For protection against abuses by legislatures the people must resort to the polls, not the courts.[4]

The Court's historical deference to the legislature was an extremely important part of the decision in the *Kelo v. New London* case. Declaring an act of any local, state or federal legislation unconstitutional severely inhibits the legislature's power and should only be done in the most severe circumstances.

The power of eminent domain is a useful and necessary power of any modern state. In the United States in particular, it is essential that local governments possess the autonomy to encourage economic development in an area. In most cases, the Court making a decision which would arrest economic development would be unwise and potentially dangerous. Conversely, the judicial system exists to protect the American people from unwarranted intrusiveness and abuse by the government. When the government has abused the rights of the individual, it is the Court's job to protect those individuals against the will of the majority.

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[4] Murphy, Walter F., James E. Fleming, Sotirios A. Barber, and Stephen Macedo. American Constitutional Interpretation. 3rd Ed. New York: Foundation Press, 2003. p. 1196

Along with the growth of the federal government in modern years, particularly in the second half of the twentieth century, the needs of people and communities have changed. The concept of public use has broadened due to technological innovation and other modern developments. As the majority opinion stressed in *Hawaii Housing Authority v. Midkiff*, an extremely important eminent domain case, "this Court long ago rejected the literal requirement that condemned property be put into use by the public."[5] This broadened definition is at the root of the contemporary debate over the use of the eminent domain power. This debate is over the widened scope of the meaning of public use.

The people of New London in opposition to the redevelopment plan for Fort Trumbull feel that the democratic checks in place do not do enough to protect them against eminent domain abuse. These checks against eminent domain abuse have been weakened in many municipalities due to the strong connections that have formed among big businesses, developers and local government. The alliances that form in many cities among these interests make it very difficult for anyone to challenge incumbents and bring about reform. This problem in contemporary politics forced the homeowners in the City of New London to pursue another avenue of civic engagement, through the court system.

History and Economic Background of New London

The city of New London has a strong history of independence and activism. Its citizens take great pride in this history, from the city's defiance of the Stamp Act in 1765 which incited the American Revolution, to the fight for the Fort Trumbull neighborhood

[5]*Kelo v. New London*, 545 U.S. ____ (2005).

two hundred and forty years later.[6] Connecticut established representative democracy in 1639 under the "Fundamental Orders" which are said to be the first ever written constitution, earning the state its nickname, "The Constitution State." During British colonialism, New London was a "hotbed of radicalism against the crown."[7] Passages from Connecticut's declaration of independence, authored by Governor Jonathan Trumbull for which Fort Trumbull was named, were used in the final version of the Declaration of Independence from Great Britain. Before the onset of the Revolution, Governor Jonathan Trumbull was the only colonial governor to support American independence from Great Britain.[8]

The history of the City of New London has also largely been shaped by its unique economic development. Throughout much of its history, New London's economy has relied on one thriving industry in the area. Whaling and shipbuilding were each such an industry at different times. The effects of the decline of these industries upset the economy significantly because the city was so heavily dependant upon each at different times. From the seventeenth through the nineteenth centuries the base of New London's economy was supported almost exclusively by the whaling industry.[9] During this time, a high demand for oil from sperm whales as well as other products such as candles and perfumes made whaling a highly lucrative industry. New London's economy remained dependent upon the whaling industry until the latter part of the nineteenth century at which time a general decline in the demand for whale oil combined with the development

[6] *Kelo v. New London* lecture sponsored by the Connecticut College Republicans. October 2005.
[7] "The American Revolution Began Here." New London Gazette Nov. 2005: 1
[8] State of Connecticut. 2005. Nov. 2005 <http://www.ct.gov/>.
[9] Decker, Robert. The New London Whaling Industry. Pennsylvania: Liberty Cap Books, 1973. p.91

of high-efficiency steam whalers in the Pacific causing remaining business to move west, devastating the New London economy.[10]

The shipbuilding industry managed to survive the decline in whaling and continued production of vessels other than whaling ships. The industry expanded its production of military vessels, specifically submarines, in the early twentieth century.[11] Employment declined again after World War II which brought another period of readjustment for the city's economy until the 1960's when the U.S. Navy began development of a sophisticated submarine force in the area, bringing new jobs and economic growth to the area again.

After the resurgence in the area's economy from the submarine industry in the 1960's, economic conditions began to decline again. During the 1960's and 1970's the government initiated a series of urban renewal projects in downtown New London aimed at revitalizing the waterfront area. A development plan for Captain's Walk was designed to "revitalize" the area by building offices and parking garages. At one point, there was even a proposal to demolish Union Station in downtown New London.[12]

In 1990 the state of Connecticut declared New London a "distressed municipality" to be targeted for economic revitalization.[13] The city was targeted by a program introduced by former Governor John Rowland in an effort to improve the urban centers of the state. The label of "distressed municipality" marked the city of New London for improvements its waterfront area, and the creation of more jobs to increase tax revenue and economic growth. In 1996, economic conditions went from bad to worse

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[10]Decker, Robert. The New London Whaling Industry. Pennsylvania: Liberty Cap Books, 1973. p.91
[11]Decker, Robert. The New London Whaling Industry. Pennsylvania: Liberty Cap Books, 1973. p.171
[12] Hosley, William. "Making Sense of Place: Lyman Allan Museum Exlpores New London's State Street." CT Trust for Preservation. 2006. 24 Apr. 2006 < http://www.cttrust.org/index.cgi/7682>.
[13]*Kelo v. New London*, 545 U.S. ____ (2005).

when the federal government shut down the Naval Undersea Warfare Center, located in the Fort Trumbull Area of New London, which employed over fifteen thousand people. This devastated the population of New London and unemployment rose dramatically. In 1998 the city's unemployment rate was almost double the average of the state and the population was at its lowest since 1920.[14] The loss of the base prompted New London officials to try to find a way to increase the city's revenue to lower the taxes and provide new jobs for the people of New London. This resulted in the resurrection of the New London Development Corporation, which had existed for years but had not been granted power for a long time.

Throughout this time Pfizer Inc., a major pharmaceutical company employed workers in the New London area. In 1946, Charles Pfizer opened a chemical plant in nearby Groton and, in 1960, a Medical Research Center across the river in New London.[15] In the years that followed, Pfizer grew into a huge multibillion dollar, multinational corporation with research facilities all around the world. Today, Pfizer is the largest pharmaceutical corporation in the world.[16] In 1998 Pfizer stated that it planned to construct a three hundred million dollar research facility in New London.

In February of 1998, just before Pfizer announced its plans for construction the New London Development Corporation (NLDC), a state-established non-profit corporation dedicated to the revitalization the city's economy, was issued over fifteen million dollars in bonds by the state dedicated to redevelop the Fort Trumbull area. The New London Development Corporation is directed through the State Department for Economic and Community Development, an agency in charge of implementing policies

[14]*Kelo v. New London*, 545 U.S. ____ (2005).
[15]Decker, Robert. The New London Whaling Industry. Pennsylvania: Liberty Cap Books, 1973. p. 173
[16]Pfizer Website. 2005. Nov. 2005 <http://www.pfizer.com/pfizer/main/jep>.

and programs to enhance community and business growth around the state.[17] The NLDC is partnered with the city of New London, Pfizer Inc. and the state of Connecticut. The NLDC receives its direction primarily from the state government which established the organization years before and resurrected it for its new development project. As part of the state's revitalization plan for the urban areas of Connecticut, the NLDC began work on an "integrated development plan" designed to attract business to the area and jumpstart New London's economy. The NLDC has a board of directors as well as a staff which includes planners and advisors on each project. From 1997 to 2002 the president of the New London Development Corporation was Claire Gaudiani, president of Connecticut College.

In May of 1998, the New London Development Corporation's plan was finalized and approved by the state. This plan focused on the development of the Fort Trumbull area. The Fort Trumbull neighborhood lies on a peninsula of land on the edge of the Thames River. The area is adjacent to the Pfizer research facility and encompasses 90 acres of land. The development plan details how each part of the land, which has been divided into seven parcels, will be used. In the Supreme Court majority opinion on *Kelo v. New London* Justice Stevens describes the development plan for the area:

> The area comprises approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by the naval facility (Trumbull State Park now occupies 18 of those 32 acres). The development plan encompasses seven parcels. Parcel 1 is designated for a waterfront conference hotel at the center of a "small urban village" that will include restaurants and shopping. This parcel will also have marinas for both recreational and commercial uses. A pedestrian "river walk" will originate here and continue down the coast connecting the waterfront areas of the development. Parcel 2 will be the site of approximately 80 new residences organized into an urban neighborhood and linked by public walkway to the remainder of the

[17] New London Development Corporation Website. 2006. Mar. 2006 <http://www.nldc.org/>. State of Connecticut. 2005. Nov. 2005 <http://www.ct.gov/>.

> development including the state park. This parcel also includes space reserved for a new U.S. Coast Guard Museum. Parcel 3, which is located immediately north of the Pfizer facility, will contain at least 90,000 square feet of research and development office space. Parcel 4A is a 2.4 acre site that will be either used to support the adjacent state park, by providing parking or retail services for visitors, or to support the nearby marina. Parcel 4B will include a renovated marina, as well as the final stretch of the river walk. Parcels 5,6 and 7 will provide land for office and retail space, parking, and water-dependant commercial uses.[18]

In January of 2000 the Planning and Zoning Commission, the Redevelopment Agency, City Council and the board of directors of the NLDC approved the redevelopment plan for Fort Trumbull.[19] The city was in dire need of money and the state was offering large sums for the redevelopment project. The only way that New London could get the money was if this plan was approved. Regardless of how effective the members of the city council felt the plan was, they approved it in the interest of bringing much needed money into the city. The NLDC was in charge of putting the plan into action and, additionally, was granted the power of eminent domain by the city after the plan was approved.

Trouble did not arise immediately when the NLDC began buying property in the Fort Trumbull neighborhood. The willingness of most property owners to sell allowed the NLDC to acquire most of the land fairly quickly. Most of the homes in the area were bulldozed in preparation for clearing the space. However, several property owners refused to sell. The NLDC offered the eleven remaining homeowners over 2.7 million dollars for their homes in November of 2000, an offer which they rejected.[20] The NLDC voted to take the properties of the people who refused to sell in Fort Trumbull by eminent domain. Shortly after, the citizens of New London formed the "Coalition to Save Fort

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[18] *Kelo v. New London*, 545 U.S. ____ (2005).
[19] Eminent Domain Chronology The New London Day 25 June 2005.
[20] Eminent Domain Chronology The New London Day 25 June 2005

Trumbull" and submitted a petition to the city council with more than 400 signatures on it demanding that the seizure of the remaining properties stop. The city law director ruled the petition invalid.[21] The NLDC made its last effort to buy the homes from the eleven residents who refused to move for a total of 2.7 million dollars which they refused.[22] The condemnation proceedings then began in November 2000.

The power of eminent domain is reserved to the federal government through the Fifth Amendment which states that no public property shall be taken for public use without just compensation. This power was subsequently granted to the states through the Fourteenth Amendment which provides equal protection for all citizens under the law. The power of eminent domain is also granted to the government in the Connecticut state constitution. When the city turned the power of eminent domain over to the NLDC it made the members of the city council less directly accountable for the actions that would soon be taken which were sure to be politically unpopular.

Suzette Kelo, and others then received their condemnation notices in the mail in November of 2000. Eight other property owners in the area had refused to sell their property to the NLDC. Then publicly, Suzette Kelo and her neighbors stated that there was no amount of money that they wanted for their homes; they simply wanted to remain living there. They felt that just because the property could technically be made more profitable and be used to increase New London's tax base the NLDC should not be able to force them out of their homes. Many have also argued that this economic plan would actually bring any about positive economic change in the community. This was not the first time that the government condemned property for economic development in New

[21] Eminent Domain Chronology The New London Day 25 June 2005.
[22] Eminent Domain Chronology The New London Day 25 June 2005.

London. Both in the 1960's and the 1970's the city condemned land in New London along Bank Street and Shaw's Cove. Much of this land still stands empty today. Many of the people of New London were not convinced that the new redevelopment plan would be any different. The homeowners also felt that the state government was trying to make New London into something that it is not. Mike Christofarano, who lives in Fort Trumbull and ran for city council in 2005 said, "The demographics of New London don't suit Starbucks and Timberland. The town is supported by locally owned small businesses."[23] He says that the problem is that the people in charge don't know what New London wants and they are just looking for the silver bullet that will cure all of the economic problems in New London and that they really lack an understanding of the complexity of the situation.

City officials in favor of the plan assured the people of New London that they had the city's best interest at heart. The city sees drastic efforts toward redevelopment as the only way for New London to survive. Those in favor of the plan consider the benefits brought the community by such a plan to far outweigh the sentimental attachments of the few owners to their Fort Trumbull homes.

The Case: Kelo v. New London

The homeowners decided to bring the case to New London Superior Court in December of 2000 after which the NLDC agreed to allow the remaining Fort Trumbull residents to stay in their homes while the case was heard in New London superior court. The homeowners asserted that the government's delegation of the eminent domain power to the NLDC in order to promote economic development violated the "public use" clause

[23] *Kelo v. New London* lecture sponsored by the Connecticut College Republicans. October 2005.

of the Fifth Amendment. This clause states "Nor shall private property be taken for public use, without just compensation" (U.S. Constitution Amendment 5). This clause traditionally limits the government's eminent domain power to public uses such as bridges, roads and parks. As society has evolved, and technology has blurred the definition of public use this clause has come under increased debate.

The homeowners initially sought representation from attorney Scott Sawyer, a local attorney in their case against the city. Then in December of 2000, before the case even reached the superior court in New London, the Institute for Justice agreed to represent the homeowners along with Sawyer. The Institute for Justice is a libertarian organization dedicated to safeguarding citizens from what they see as unreasonable encroachment of individual rights by the government.[24] The Institute for Justice took interest in the *Kelo* controversy because it had the opportunity to set a new precedent for public use in the Court. Attorney Scott Bullock, senior counsel for the Institute for Justice represented the homeowners along with Sawyer through the legal proceedings over the next four years. The government was represented by Thomas Londregan, a New London city attorney.

In March of 2002, New London Superior Court, Judge Thomas J. Corradino ruled partially in favor of the property owners and partially in favor of the city. The property in parcel 4A (designated for park or marina support) could not be taken but the property in parcel 3 (office space) could be taken. The Superior Court ruled against the takings in parcel 4A on the grounds that the condemnations were not necessary and that the

[24]Institute for Justice Website. March 2006. 20 March 2006 <http://www.ij.org>.

intended use for parcel 4A in the NLDC's plan was not specific enough to guarantee economic development and justify the use of eminent domain.[25]

Neither side felt it had won the case. Both sides appealed the decision to the Supreme Court of Connecticut. City officials were not satisfied with the court's decision because it limited their power in what they saw as an arbitrary fashion. The homeowners were unsatisfied as well. Their main contention was that the use of eminent domain anywhere for economic development is unconstitutional and the municipal court had ruled in favor of some of the takings in Fort Trumbull.

The case was heard in the Connecticut state supreme court beginning in December 2002. The decision was not handed down until March 3rd, 2004. The state court then ruled that all of the NLDC's proposed takings were valid reversing, in part, the previous court's ruling. The majority in this case concluded that, "an economic plan that…will promote significant economic development constitutes a valid public use for the exercise of the eminent domain power under both the federal and Connecticut constitutions." The Connecticut Supreme Court examined the motivation of the city in developing such an economic plan and concluded that the government was not seizing property simply to transfer it from owner A to owner B, but with the intention of promoting economic development for the benefit of the entire community.[26]

The court upheld the takings on the grounds that they are authorized by the state's municipal development statute which "expresses a legislative determination that the taking of land, even developed land as part of an economic development project is a

[25]Eminent Domain Chronology The New London Day 25 June 2005.
[26]*Kelo v. New London*, 545 U.S. ____ (2005).

'public use' and in the 'public interest."[27] Those in favor of the plan left the state court happy while the homeowners left more determined than ever to fight for their homes.

The homeowners appealed the case to the United States Supreme Court in July of 2004. It was granted certiorari in September and argued before the Court in February of 2005. This was the first eminent domain case to reach the U.S. Supreme Court in over twenty years.[28] The reason this case was granted certiorari was to decide whether or not economic development can, in fact, be categorized as public use.

In June of 2005, the Court ruled in a 5-4 vote in favor of the City of New London. The decision was based on precedents set in several previous eminent domain cases and further detailed the Court's modern interpretation of the definition of "public use." This decision has been accused of eliminating the private property rights of people everywhere and serving only the interests of big government and big business. Though new standards were set forth by this ruling, a decision in favor of the property owners would have been a greater departure from the previously established scope of eminent domain.

The Aftermath

The U.S. Supreme Court decision in *Kelo v. New London* in June 2005 generated a great deal of media interest in the story. For example, media discovered that the story generates a great deal of sympathy for the homeowners and was subsequently played by the media as a human interest story in which innocent people are being taken advantage of and one of the most sacred rights of the American people, the right to private property, is being violated. Immediately after the case, it was difficult to find any media coverage

[27] *Kelo v. New London*, 545 U.S. ____ (2005).
[28] Eminent Domain Chronology The New London Day 25 June 2005.

that was not supporting the case of the homeowners. Given the supposed liberal bias in the media, this was unusual since the ruling against the homeowners was supported by the more liberal justices on the Court. The three staunch conservatives, Justices Rehnquist, Scalia and Thomas voted against the decision joined by Justice O'Connor's swing vote. Unlike contemporary politicians today who all seem to advocate big government spending and unnecessary intrusion into the private lives of the people no matter what their political affiliation, the Court remains, at least somewhat, more in line with traditional conservative and liberal ideology, as it has been defined in America over the past century. The majority opinion in this case advocates community growth over individual rights. The tension between individual rights versus the well-being of the community is at the crux of the conflict between conservative and liberal ideology. Unfortunately, this ideology is very misunderstood by the American people due to the nature of contemporary politics.

The more conservative of the two major parties, the Republican Party is often thought of as the big-business corporate interest party while the more liberal, Democratic Party was once the party of the working class. In this case, the conservatives are siding against the working-class homeowners and the liberals are siding with the corporate interest of Pfizer and other businesses looking to profit from the economic development plan in New London. These cross-cutting political issues have had a great impact on local, state and national politics, especially over new issues arising over the use of the government's power of eminent domain. This issue has united people across the political spectrum on an issue that lies at the root of the debate between competing ideologies. New political alliances have formed and new questions have been raised about where each party stands on this issue.

The political realignment by government representatives over this issue is purely politically motivated. No one wants to be caught on the side of an issue with unanimous support of the public on the other side. This issue has now been addressed in communities around the country. Just days after the decision was handed down by the Court, members of Congress rushed to speak out against it. Governors and state legislators introduced proposals limiting the use of eminent domain in their own states. Lobbyists and grassroots organizations formed coalitions against eminent domain abuse. Now, almost a year after the case was decided in the Supreme Court the dust has settled. Suzette Kelo and her fellow petitioners remain in their homes in Fort Trumbull. But the controversy is far from over. In Washington, members of Congress scramble to stake out a position on this issue and virtually every state legislature that has come into session this year has addressed the issues surrounding the *Kelo v. New London* case. In the coming months, the political consequences of this decision will be fully realized as the 2006 election campaigns get into full swing.

The identities of the modern Democratic and Republican parties have been formed from controversies surrounding landmark cases and issues such as eminent domain. Major political alliances have been re-formed in the twentieth century due to the impact of events and issues such as President Roosevelt's economic revitalization plan during the Great Depression and ending legal segregation in the South. The Court's decision in *Kelo v. New London* has triggered another shift in the connection between traditional liberal ideology and the Democratic Party and traditional conservative ideology and the Republican Party, increasing the disconnect between these traditional ideologies and contemporary politics in the United States.

CHAPTER 2

The Federal Level

Each level of examination of the political effects of the *Kelo v. New London* case reveals different ways in which the shift in political alliances over the decision have occurred. This examination explains the case at the national level and the ideology behind the Supreme Court decision. It also focuses on efforts to pass eminent domain reform bills in Congress. Additionally, the national media attention that the case received, and continues to receive in newspaper articles editorials and political cartoons illustrate the widespread support for the homeowners and against the decision in *Kelo v. New London*. The general population is nearly unanimously in opposition to the decision which can be argued as the cause for, or a result of, the biased media attention the case has received. Either way, eminent domain is now considered an important national issue whereas before it very rarely made it on the news. The media attention that *Kelo v. New London* received permanently altered the government's power of eminent domain regardless of whether any eminent domain reform laws go into effect in the future.

The Ideology of the Court

The decision made by the Supreme Court in *Kelo v. New London* was split down strict ideological lines. The tension between equality and liberty which is at the core of

the controversy in *Kelo v. New London* has been battled over for centuries in the United States. The very first words of the U.S. Constitution address this delicate balance:

> We the People of the United States, in Order to form a more perfect Union, *establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty* to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America (Emphasis Added).[29]

This tension between equality and liberty is at the center of the conflict between liberal and conservative ideology in the United States. Providing for the general welfare promotes equality while "securing the Blessings of Liberty" ensures the rights of the individual. Both are highly valued in American society, but because they are often at odds, one must take priority over another.

At the time this decision was made, the Court was fairly evenly split ideologically with Justice O'Connor and Justice Kennedy, the two swing votes on the Court siding with the conservative and liberal opinion, respectively. Justices' tend to lean towards libertarianism rather than populism and are generally skeptical of an overly active federal government. The Rehnquist Court was known for dividing along ideological lines on issues such as eminent domain.

This decision advocated the rights of the community over the individual. The government's victory is seen as a loss for private property interests everywhere, which is not necessarily true. Rather than actively supporting the NLDC's use of the eminent domain power, the Court held its traditional deference to the legislature above all else.

[29] U.S. Constitution, Preamble.

The Public Use Doctrine

The Court has asserted in all previous eminent domain cases that its right to interpret the meaning of "public use" is extremely narrow and only to be asserted in the most unreasonable applications of the police power. This assertion is central to the decision made in *Kelo v. New London*. The Court claims that it does not have the ability or desire to "discern the local public needs."[30]

The Court is unwilling to define public use to broadly incorporate economic development, or narrow its scope to exclude the plan of the NLDC. The main tenant of Justice Steven's majority opinion is that it is not up to the Court to evaluate the plan of the NLDC. However, the dissenting justices believe that it is within the Court's jurisdiction to rule on the exact definition of the words public use. They argue that this is what the Court does in interpreting the Constitution. Many precedents have been set simply by defining the words written in the Constitution.

Clearly there is motivation in the liberal justices' refusal to narrow the definition of public use in the Fifth Amendment. Allowing the New London government to interpret public use as public benefit more closely follows liberal ideology surrounding the issue. The conservative justices are much more willing to take action against the city council of New London to protect the individual rights of the citizens living there and see no problem with interfering with the affairs of local government to do so.

The role of the Court in interpreting the words of the Constitution is notable in this case because of the importance it plays for either side of the argument. Each side focuses on different issues in its defense. For example, the majority opinion issued by Justice Stevens focuses the most on the judiciary's role in interpreting the Constitution

[30]*Kelo v. New London*, 545 U.S. ____ (2005).

and its deference to the legislature. The dissent, Justice Thomas' in particular, spends a great deal of time discussing the importance of the definition of "use." Major disagreement among the opinions arises from the weight of the issues at hand and which issue takes priority over another. The majority opinion affords wide latitude in the definition of public use. This opinion accepts the liberal notion that government exists to help people and consider the community over the individual. Critics of this perspective view it as the government being distrustful of human nature, and thinking that it knows what is in their best interest when even they do not know it themselves.

Precedent: Midkiff, Berman, Bradley and Poletown

The two cases most frequently cited in *Kelo v. New London* are *Hawaii Housing Authority v. Midkiff* and *Berman v. Parker*. Other cases such as *Fallbrook Irrigation District v. Bradley* also played an important role in defining the modern interpretation of the eminent domain clause.

The last eminent domain case that the United States Supreme Court ruled on was in *Hawaii Housing Authority v. Midkiff*. In 1984, the Hawaii legislature found that seventy-two people held more than ninety percent of the land in the state. To put the land back in the hands of the people, the legislature passed the Land Reform Act of 1967 which authorized the Hawaii Housing Authority to condemn the land on which single family homes were built and being rented, buy it from the owners and sell it to the people living in the homes. The legislature claimed that such concentrated land ownership was inflating real estate prices and contributing to public unrest.[31] Frank Midkiff brought suit

[31]Murphy, Walter F., James E. Fleming, Sotirios A. Barber, and Stephen Macedo. American Constitutional Interpretation. 3rd Ed. New York: Foundation Press, 2003. p. 1223

against the Hawaii government in district court seeking an injunction against the enforcement of the Land Reform Act. When he lost, he appealed to the Court of Appeals which reversed the district court's ruling. This decision was appealed again to the Supreme Court by the government and the Act was upheld as Constitutional. Many people viewed this decision as an abuse of the exercise of eminent domain claiming that simply transferring property from one party to another cannot be justified in any way as public use. The Court defended the legislation by saying that the Land Reform Act was not benefiting a select group of individuals but rather the society as a whole and could therefore be classified as public use. In the majority opinion of the case, which was decided unanimously in favor of the Hawaii Housing Authority, Justice O'Connor explains, "Regulating oligopoly and the evils associated with it is a classic exercise of a state's police powers." This was also an instance in which the Court's deference to the legislature was demonstrated. The opinion additionally stated, "The Court has made clear that it will not substitute its judgment for a legislature's as to what constitutes taking of private property for a public use unless the use be palpably without reasonable foundation."[32] The judiciary's deference to the legislature became a central issue in *Kelo v. New London*. In *Midkiff*, the Court unanimously ruled that the Land Reform Act was Constitutional under the main premise that it was not for the Court to be determining the meaning of public use.

The other case most frequently cited in *Kelo v. New London* is *Berman v. Parker*, decided in 1954 by the U.S. Supreme Court. This decision shares many key principles with *Kelo*. The Court's decision upheld economic development as public use and greatly

[32]Murphy, Walter F., James E. Fleming, Sotirios A. Barber, and Stephen Macedo. American Constitutional Interpretation. 3rd Ed. New York: Foundation Press, 2003. p.1223

stressed the legislature's prerogative to determine on its own what is and what is not public use. In this case, the Court ruled in favor the District of Columbia's Redevelopment Act of 1945 which took blighted as well as non-blighted property for redevelopment. In this decision the Court stated,

> We deal…with what traditionally has been known as the police power… The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia…or the states legislating concerning local affairs…This principle admits of no exception merely because the power of eminent domain is involved.[33]

This argument begs the question of when the judiciary finds it appropriate not to defer to the legislature, when it feels that the rights of the citizens have in fact been violated by the government and must be protected by the Court. In *Kelo*, the defendants contend that the government has violated those rights expressly protected by the U.S. Constitution. In his dissent Justice Thomas asserts the importance of the protection of the individual's right to property as equally important to the rest we hold so sacred in the Bill of Rights. "In my view it is imperative that the Court maintain absolute fidelity to the Clause's express limit on the power of the government over the individual, no less than with every other liberty expressly enumerated in the Fifth Amendment or the Bill of Rights more generally."[34]

Both *Midkiff* and *Berman* held a broad interpretation of the public use clause, interpreting the phrase to be generally equated with public purpose. The interpretation of this phrase has, over the course of American history become more inclusive than it was

[33]Murphy, Walter F., James E. Fleming, Sotirios A. Barber, and Stephen Macedo. American Constitutional Interpretation. 3rd Ed. New York: Foundation Press, 2003

[34]*Kelo v. New London*, 545 U.S. ____ (2005).

most likely originally intended. The original intent of the public use clause was more synonymous with "public necessity" more so than "public purpose." Through the mid-nineteenth century the Court equated "use by the public" as "public use" but this interpretation has since proven arbitrary as our needs and sophistication as a society have evolved past physical presence exclusively defining use. Though the interpretation of public use has unarguably broadened over the past two hundred years, there is still debate over its breadth. The interpretation of public use by the majority opinion *Kelo v. New London* is synonymous with public purpose. This interpretation is vehemently rejected in the dissenting opinions. Justice Thomas reminds the Court, "The Takings Clause is a prohibition, not a grant of power" and that "the phrase 'public use' contrasts with the very different phrase 'general welfare' used elsewhere in the Constitution."[35]

The first time that a broader interpretation of public use was established in the Court was in *Fallbrook Irrigation District v. Bradley* in 1896 which upheld a mining company's use of an aerial bucket line to transport ore over property it did not own.[36] This case called into question the right of the government to condemn property using eminent domain for something that was not specifically for use by the public, but rather to provide a public service. Though seemingly uncontroversial today, this case opened the door for arguments to be made for all wider interpretations of the public use clause. Since this case, the Court has generally accepted a broader notion of public use. The lack of the public's ability to physically employ the space condemned for development in *Kelo v. New London* is not a central issue in the case. The issue at stake in *Kelo v. New*

[35] *Kelo v. New London*, 545 U.S. ____ (2005).
[36] *Kelo v. New London*, 545 U.S. ____ (2005).

London is whether or not within this already broadened framework of "public use," economic development can be justified as public use.

The Michigan Supreme Court case, *Poletown Neighborhood Council v. City of Detroit* in 1981 considered whether economic development can be classified as public use. In 1981 the city passed legislation authorizing the use of the eminent domain power to condemn property and to transfer it to an industrial corporation with the intention of providing economic development in a depressed area. This court's opinion stated:

> The Economic Development Corporations Act is a part of the comprehensive legislation dealing with planning, housing and zoning whereby the State of Michigan is attempting to provide for the general health, safety, and welfare through alleviating unemployment, providing economic assistance to industry, assisting the rehabilitation of blighted areas, and fostering urban redevelopment. … To further the objectives of this act, the legislature has authorized municipalities to acquire property by condemnation in order to provide industrial and commercial sites and the means of transfer from the municipality to private users.[37]

The decision in *Poletown* allowed the city to seize the property of all of the residences in the Poletown neighborhood for the construction of a General Motors plant in the area. This case caused a huge amount of controversy because the properties were not blighted and the property was being directly handed over to General Motors. The decision was extremely unpopular but stood for over twenty years, until it was overturned by the Michigan Supreme Court in a unanimous vote in June of 2004 in the case *Wayne County v. Hatchcock*. Until it was overturned, the *Poletown* ruling was commonly sited as a precedent in favor of cities looking to revitalize their ailing economies.

The *Kelo* decision was heavily based upon these precedents. It was the history of the issue of eminent domain and the public use clause in the court that influenced the final decision by the U.S. Supreme Court, not the economic history of New London or

[37] *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, 410 Mich. 616 (1981)

anything else unique about its particular situation. The Court was ruling on the larger issues, ones that are most likely to come up in future litigation surrounding eminent domain. In this case, the Court chose to defer to the legislature for fear that striking down the actions of the NLDC and the New London government would greatly limit the ability of states to use the power of eminent domain without fear of suit being brought by homeowners against the government in almost every situation.

Although not a departure from earlier precedents set which define the limits of eminent domain, *Kelo v. New London* does have several features which set it apart from the above mentioned cases. Even though the decision in the case was seen as a defeat for property owners in some ways, it did narrow the definition of public use by calling for further examinations of development plans, such as the one implemented by the New London Development Corporation, in future cases. The Court ruled that the public use clause of the Fifth Amendment does in fact encompass takings for economic development but the Court laid out specific requirements for what a plan must include to qualify as economic development.

The Future of Kelo in the Court

Since the appointment of two new Supreme Court justices this summer, following the ruling on *Kelo v. New London*, there has been discussion on whether the "new Court" will tackle the private property debate, possibly resulting in narrowing the definition of the public use clause. Justice O'Connor announced her retirement from the Court in July 2005. Chief Justice Rehnquist died of throat cancer at the age of eighty in early September. Former Chief Justice Rehnquist and Justice O'Connor both voted against the majority decision in *Kelo v. New London*. Thus, the ideological split in the Court over

Kelo is unlikely to be upset by their replacements. Though both justices were replaced by equally or more conservative justices, this case is unlikely to be challenged the way other issues might be. Issues such as abortion are more likely to be challenged since the vote for legalized abortion, voiced by Justice O'Connor has been replaced by an almost certain vote against legalized abortion by Justice Alito. On this issue, as well as others such as affirmative action, a shift will take place since O'Connor's swing vote on many social issues is being replaced by a much more conservative opinion with Justice Alito.

If the Court is to overturn all or part of the *Kelo* decision in the near future it will not be because of the two new justices on the Court. The shift in the Court's opinion on this decision would take place over time. Because of the controversy this case has generated it is expected that the debate over private property will become a central issue in judicial confirmation both at the state and national level. It is likely that eminent domain will become a new litmus test for judicial nominees the way that other public issues such as abortion have as a result of the case becoming so highly politicized.

Public Outcry and the Media

The intensity of the backlash against the Court's decision in June was not predicted by either its supporters or its critics at the time. The national public outcry against the Court's decision turned the defeat for the homeowners into a victory in many ways. The decision to rule against the homeowners created a great deal of controversy because the media portrayed the homeowners as ordinary Americans whose rights had been abused by large, intrusive government. In her dissent, Justice O'Connor wrote, "the

specter of condemnation hangs over all property."[38] It is essentially saying that if this could happen to Suzette Kelo and her neighbors in Fort Trumbull, it could happen to anyone.

It is very difficult to find editorials and articles that support the Court's decision anywhere in newspaper, magazines or the internet. Political cartoons are perhaps the most striking example of the one-sided support for the homeowners and against the government in this case. Virtually all political cartoons addressing the issue of eminent domain depict a huge, powerful government taking advantage of small, innocent people.

If the Court had decided the other way, the outcry would have come from elite, liberal government officials who would hardly gain sympathy and support in the media. The media attention which the case received after its unpopular ruling contributed to the legal action that has been taken since on the local, state and national level in this case. Most politicians were quick to disassociate themselves with the ruling and spoke out against it even those who had previously supported the actions of the NLDC in the past.

Strange Bedfellows

One of the most obvious illustrations of the new political alliances formed over the controversy generated by the *Kelo v. New London* case is the list of organizations, each with a clearly identified political purpose, which chose to defend the homeowners in this case. This list includes The NAACP, the League of United Latin American Citizens and the National Council of Churches, the Farm Bureau and the National Federation of

[38] *Kelo v. New London*, 545 U.S. ____ (2005).

Independent Businesses. These organizations, among others, came together to form the Castle Coalition, an organization dedicated to stopping eminent domain abuse.[39]

This assortment of high profile organizations advocating the protection of private property rights comes from the conflicting principles which arise in the *Kelo* decision. Traditionally conservative groups are primarily concerned with protecting individual rights and stopping unwarranted government interference while traditionally liberal-minded opponents of the decision are concerned with issues of environmental justice and the disproportionate impact that such a decision will have on minorities and low-income communities.[40]

Over two dozen individuals and advocacy organizations filed amicus briefs in the *Kelo v. New London* case. Renowned urban sociologist Jane Jacobs, author of The Death and Life of Great American Cities completely disagreed with the city's use of eminent domain for purposes of economic development. She wrote, "Far from furthering their supposed goal of promoting economic growth, development condemnations often inflict economic and social harms that far outweigh any possible benefits."[41] Jacobs also contends that the development of communities in such a contrived manner eliminates the possibility of mixed-use communities with people of different socio-economic status living together.

The NAACP and the AARP filed a brief with a different set of concerns, mainly that the Court's decision in favor of the NLDC would disproportionately affect racial minorities and the elderly. Their brief states, "Elimination of the requirement that any

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[39]Chavez, Linda. "Kelo Turns One." Human Events Online. 22 Feb. 2006. 5 Mar. 2006 <http://www.humaneventsonline.com/article.php?id=12626>.

[40] http://www.humaneventsonline.com/article.php?id=12626

[41] Jacobs, Jane. *Brief of Jane Jacobs Amica Curiae in Support of Petitioners*. *Kelo v. New London*, 545 U.S. ____ (2005). December 2004. P.14

taking be for a true public use will disproportionately harm racial and ethnic minorities, the elderly and the economically underprivileged."[42] This is most often the case with cases for economic development in an area, especially when large corporate interests are involved. Governments of struggling cities like New London will do almost anything to attract big businesses that can bring growth to the area. To attract these companies, the local governments must act extremely accommodating, often badly damaging the communities they are trying to save in the process.

Many other organizations from all across the political spectrum filed briefs before the *Kelo v. New London* case was decided in June of 2005. This was the first eminent domain case that the Supreme Court had heard in over fifteen years and whatever the outcome of the case was, it would have far-reaching effects all over the country. This is why the Court considered the principles at stake in the case above the specifics of the NLDC's plan for the redevelopment of the Fort Trumbull neighborhood.

Congressional Action and Separation of Powers

Members of Congress were quick to react after the Court's decision was handed down in June and the unpopularity was made clear by the press and the public. Robert Meltz writes, "*Kelo* sparked a public outcry and a flurry of legislative proposals in Congress and the states to restrict the use of eminent domain."[43] Members of Congress were eager to speak out publicly against eminent domain so that the Court's view did not become the view of the U.S. government as a whole. Only a week after the Court's

[42]Freirer, Jason M. *Brief of Amici Curiae National Association for the Advancement of Colored People, AARP, Hispanic Alliance of Atlantic County, Inc., Citizens in Cation, Cramer Hill Resident Association, Inc., and the Southern Christian Leadership Conference in Support of Petitioners*. *Kelo v. New London*, 545 U.S. ____ (2005). December 2004. P.14
[43] CRS Report p.1

decision, Representative Maxine Waters, a California Democrat spoke out publicly against the ruling, stating that she was outraged and that it is "the most un-American thing that can be done." Former House Majority Leader Tom DeLay added, "The Supreme Court voted last week to undo private property rights and to empower governments to kick people out of their homes and give them to someone else because they feel like it. No court that denies property rights will long respect and recognize other basic human rights."[44] House Judiciary Committee Chairman Sensenbrenner condemned the decision, somewhat incorrectly, stating, "This decision assaults the Constitutional rights of all Americans and unsettles decades of judicial precedent."[45] This fall, the House Judiciary Committee brought House Resolution 4128 to the floor. The bill was titled Condemnation of Private Property for Economic Development, also known as the Private Property Act of 2005. Primarily, the bill prohibits state and local governments from receiving federal aid who are using the power of eminent domain for economic development by transferring property from one owner to another.

The bill was cosponsored by ninety-seven members, nine of which were Democrats.[46]The bill was brought out of committee with a bipartisan majority and passed overwhelmingly on the floor with a vote of 376 to thirty-eight. 218 Republicans and 157 Democrats voted for its passage with one Independent joining. Nineteen members did not vote, including ten Republicans and nine Democrats.[47]

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[44]Hurt, Charles. "Congress Assails Domain Ruling." The Washington Times Online. 1 July 2005. Mar 1 52006 <http://www.washingtontimes.com/national/20050701-010419-9346r.htm>.

[45]Utt, Ronald. "Congress, States, Slow to Confront Kelo." The Heritage Foundation Online. 9 Dec. 2005. 17 Mar. 2006 <http://www.heritage.org/Press/Commentary/ed120905c.cfm>.

[46]H.R. 4128. The United States Library of Congress Thomas Online. November 2005. 17 Mar. 2006 <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR04128:@@@N>

[47]"Final Vote Results for Roll Call 568." Clerk's Website. 3 Nov. 2005. 17 Mar. 2006 <http://clerk.house.gov/evs/2005/roll568.xml>.

The bill's strong support in the House and from the Judiciary Committee in particular is not likely to repeat itself in the Senate. Senator Arlen Specter is the chair of the Judiciary Committee that will bring the bill, to the floor in the Senate.[48] Interestingly, Senator Specter, a moderate Republican, has not shown strong support for the bill. He lies on the other side of the ideological divide. This is unusual because it has been much more common in this case for Democrats to side with the conservative ideology behind this decision than the other way around.

Not every member of Congress assailed the idea of Congressional action to limit federal funds to limit the enforcement of the *Kelo* decision. House Minority Leader Nancy Pelosi stated, "I would oppose any legislation that says that we would withhold funds for the enforcement of any decision of the Supreme Court, no matter how opposed I am to that decision. And I'm not saying that I'm opposed to this decision." Representative Pelosi feels that it is a violation of separation of powers for Congress to interfere with any decision of the Supreme Court unless it wants to amend the Constitution.[49]

This debate calls into question what role the Court's decision should play in shaping legislation limiting eminent domain. The categorization of economic development as public use, the qualification of New London as a "distressed municipality" and the city's authority to grant the NLDC the power of eminent domain are all issues undertaken by the Court. However, Justice Stevens makes it very clear in the majority opinion delivered by the Court that the specific tenants of the development

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[48]De Weese, Tom. "The 'Specter' of Condemnation Hangs Over All Property." The News Media Journal.us 18 Mar. 2006. 17 Mar. 2006 <www.newmediajournal.us/guest/deweese/03182006.htm>.

[49]Hurt, Charles. "Congress Assails Domain Ruling." The Washington Times Online. 1 July 2005. Mar 1 52006 < http://www.washingtontimes.com/national/20050701-010419-9346r.htm>.

plan proposed by the NLDC were not under review by the Court. The deference granted by the Court refers not only to the local legislature of New London but also to Congress. To some, the Court's decision suggests simply that the legislature should decide all limitations on the use of eminent domain while others, such as Representative Pelosi, believe that the Court's decision carries the full weight of law and the legislature can only alter by amending the Constitution.

This debate aside, it is clear that the judiciary and the legislature play very different roles in such a controversy. The members of the Supreme Court are basing their judgment on precedent in past cases and legal principles. Unlike members of Congress, whose principal concern is the political consequences of their actions, Supreme Court justices are not subject to punishment from the American people through elections. While there is little doubt that numerous members of Congress were outraged by the Court's decision in *Kelo v. New London* the way the story was spun in the media which resulted in the public backlash against the case prompted members of Congress to act as quickly as they did. The ideological divide between the members of Congress who voted for H.R. 4128 and the justices who voted in the majority on the *Kelo* decision is, in reality, much smaller than it appears as a result of the pressure put on both branches by much different constituencies. In fact, after the Court's decision on *Kelo* Justice Stevens stated, "My own view is that the free play of market forces is more likely to produce acceptable results in the long run than the best-intentioned plans of public officials." He noted that if he had been a legislator instead of a justice, he would have opposed what the city did in the *Kelo* case.[50]

[50]Chavez, Linda. "Kelo Turns One." Human Events Online. 22 Feb. 2006. 5 Mar. 2006 <http://www.humaneventsonline.com/article.php?id=12626>.

The Future of Kelo in the Legislature

The likelihood of Congress amending the Constitution to limit the use of eminent domain for economic development is slim. The most obvious reason is that it is extremely difficult to amend the Constitution and a broad consensus must be reached in order to do so. It has only been amended five times in the past fifty years. Only two of these amendments have really been substantive. The Twenty-fourth Amendment prohibits poll taxes and the Twenty-Sixth Amendment changes the legal voting age from twenty-one to eighteen. The remaining three grant Washington D.C. three electoral votes where before it had none, changes the details of presidential succession and limit congressional pay raises. An amendment requires a two-thirds vote in Congress to be proposed to the states, three-fourths of which must then ratify the amendment before it expires.

Members' personal opinions on the issue aside, today's polarized political atmosphere decreases any chance of an amendment on any issue of substance. The H.R. 4128 vote is enough of an indication that although this issue may be a highly publicized one in which people are willing to vote outside of party lines, its effect has not been drastic enough all over the country to cause members to completely realign on this issue.

Conclusion

The shift that has occurred in national politics in the aftermath of the *Kelo* decision was unexpected but not totally surprising. The normally ideologically liberal media took the side of the conservatives on almost all counts, but this was not necessarily made clear in the news. The ideology behind conservative individualism versus

community-oriented liberalism was not discussed at great length, which results in confusion when the deeper meaning of the Court's decision is explained to people. Though it is true that the media does often have a liberal bias, it is far from universal and the media's only consistent bias is toward attracting viewers and readers.

Significant change in legislation limiting eminent domain is much more likely to happen at the state level than with national proposals or attempts at a Constitutional Amendment. In fact, the public outcry against the *Kelo* decision has been so strong that it has made it more difficult for states to exercise the power of eminent domain than it would have been if the case had never been heard by the Supreme Court at all. The general public is much more aware of issues surrounding eminent domain than it was before the *Kelo* case received so much publicity.

CHAPTER 3

The State Level

The impact of the decision in *Kelo v. New London* at the state level has been very different from its impact on the federal level. State legislatures and judiciaries have considered an entirely different set of conditions and limitations in altering the scope of the eminent domain power in the past year. Such conditions and limitations can be seen in the variety of proposals introduced at the state level which have been introduced since the *Kelo* decision was handed down in June of 2005. Concurrently, members of Congress were working hard to introduce national legislation that would limit the use of eminent domain. The tension between the state and federal governments on this issue is yet another illustration of the major impact that this case has had and the strange political and ideological lines that have been drawn over *Kelo v. New London*.

States Rights

An interesting conflict lies in the congressional push for legislation which would nationally limit the use of eminent domain by the states. Though this effort has been bipartisan, it has received far greater support from the Republicans, consistent with the conservative ideology of the minority opinion of the Court in *Kelo*. The inconsistency of the Republican Party with the conservative ideology is that the effort to limit the power of eminent domain is being initiated at the national level and would significantly limit

state and local authority in this sphere. The majority opinion in the Supreme Court's ruling on *Kelo v. New London* clearly states that the justices feel that the merits of the New London Development Corporation's redevelopment plan for New London should be judged by the proper state authorities rather than the United States Supreme Court. This deference to the legislature and respect for the states power over their own economic development can be interpreted as an argument for states rights over a more powerful federal government, a central tenant to conservative, Republican ideology.

The national initiatives being introduced with a majority of Republican support aim to enact broad limitations on the use of eminent domain at a national level. However, such legislation would severely limit the ability of local governments to bring much needed growth and urban renewal to struggling areas. The negative publicity that generated over the *Kelo* decision is what inspired members of Congress to act. There has been little consideration on these members' part for the value of the power of eminent domain. Although the legislation being proposed in Congress does not take away the states' power, it severely limits its use. This is very problematic for local governments searching for innovative ways to spur growth in dying cities. The negative publicity has overshadowed the cases in which the use of this power has brought about positive change in cities in recent years. The National League of Cities is one a small number of organizations which has taken an active stand in opposition to House Resolution 4128 which limits the use of eminent domain.

The National League of Cities stresses the importance of the power of eminent domain to local authorities:

> One of the most important responsibilities of any municipal government is to provide for the economic and cultural growth of the community while safeguarding the rights of the individuals that make up that community. At times, the ability to provide for the public good requires municipalities to exercise the power of eminent domain granted by state authority. The prudent use of eminent domain, when excercised in the sunshine of public scrutiny, helps achieve that greater public good. Used carefully, it helps create hope and opportunity for people and communities that have little of both.[51]

This statement stresses the importance that local governments have the tools to bring economic growth to an area. The National League of Cities' statement claims that democracy in itself is a check against eminent domain abuse and that people entrust their local government officials with this power with the understanding that they are responsible to the needs and wishes of the public. In the city of New London, removing the city officials from power who were to blame for the eminent domain takings in Fort Trumbull has done little to solve the controversy.

National legislation such as H.R. 4128 makes broad sweeping changes to the government's power of eminent domain, which would be potentially harmful to cities where special circumstances call for a broader interpretation of the public use clause of the Fifth Amendment. The opposition to this argument is that the Bill of Rights of the U.S. Constitution was written to protect the inalienable rights of the individual which cannot be infringed upon by the government in any circumstance, no matter how dire the needs of the community. Private property rights are viewed by many to be the bedrock of such rights and sacred to the American way of life.

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[51] "Issues: Eminent Domain." National League of Cities. 20 Mar. 2006 <http://www.nlc.org/Issues/more_issues/6235.cfm>.

The question of the rights of the individual over the good of the community is at the center of the debate over the use of eminent domain. One problem that the people of New London have with the development plan proposed by the NLDC is that it would not work. Many citizens expressed that they would not have been so opposed to the plan if they had felt that there was a good chance that the plan would bring significant economic benefit to the community as a whole, not just private investors and developers.[52]

The Force of Law

Legal precedents often carry the full force of law but this is an unusual case which presents somewhat of a paradox in its ruling. The majority opinion in the Court's ruling specifically states the Court's long-standing history of deference to the legislature and its belief that it is not the job of the U.S. Supreme Court to rule on the specific merits of the New London Development Corporation's development plan. In this opinion, the Court is trying not to overstep its bounds and hand down a ruling that would, in effect, curb the autonomy of the local and state governments. Despite this effort, the decision was immediately attacked as violating the separation of powers and as encroaching upon the legislature. Instead of being interpreted as a passive decision, deferential to the legislature, the ruling was criticized as one of a liberal, activist Court.The decision was criticized as being active because it was said to condone the use of eminent domain for economic development and give developers and cities the green light to take anyone's property. In reality, the Court simply said that it was not up to the judiciary to decide this issue and that it should be solved on the local and state level.

[52]*Kelo v. New London* lecture sponsored by the Connecticut College Republicans. October 2005

All sides prepared for battle after the decision was handed down. Redevelopment plans using the power of eminent domain to promote economic development were soon underway all over the country. The Castle Coalition cited numerous examples in California, Florida, Washington D.C., New Jersey, Massachusetts and even Connecticut as well as other states where such preparations were underway.[53] Grassroots organizations quickly responded, pushing for state legislators to consider proposals to limit the government's power of eminent domain. Big business and developers lined up on the side of the majority while an overwhelming majority of the population sided with the homeowners in *Kelo v. New London*. This struggle caught lawmakers in a tug-of-war between the citizens who vote them in and out of office and the small, but powerful group against them who are often large campaign supporters and important to the economic growth of their districts and states.

Cases Around the Country

The Castle Coalition, a national grassroots organization dedicated to stopping eminent domain abuse, documented thousands of cases around the country where private property that has been threatened by eminent domain for private development. Dana Berlinger, senior attorney at the Institue for Justice published the first national study on eminent domain abuse titled, *Public Power, Private Gain*. This report cites over 10,000 cases of condemnation, or threats of condemnation using the eminent domain power for economic development. An updated edition of *Public Power, Private Gain* report issued in early 2006 cites dozens of cases in which city officials and developers initiated

[53]"Floodgates Open." Castle Coalition Website. 20 Mar. 2006 <http://castlecoalition.org/resources/floodgates.html>.

condemnation proceedings within weeks of the Supreme Court's ruling on *Kelo v. New London*. The public's fear that the decision in *Kelo* would open the door for a much wider interpretation of the public use clause of the Fifth Amendment is not unfounded. The report cites more than five cities' plans to take private property for economic development in California in only the first few weeks after the decision was handed down by the Supreme Court. The people of California mobilized against these efforts but were defeated in the legislature. The California legislature did not pass any of the three bills introduced which aimed at limiting the government's power of eminent domain that came before it in the summer of 2005.[54]

State initiatives

The *Kelo* decision has been widely criticized as opening the door for any private property to be taken by the government for no reason other than to replace it with something that will provide increased revenue from taxes. In her dissent, Justice O'Connor lamented, "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."[55] What has gone largely unnoticed about the Court's decision is that it also left the door open for state and local governments to pass more restrictive laws regulating the use of the eminent domain power within their own communities. Since the *Kelo v. New London* decision, legislators in almost every state has introduced their own legislation regulating the use of this power.

[54] National Conference of State Legislators Website. 2006. 25 Mar. 2006 <www.ncsl.org>.
[55] *Kelo v. New London*, 545 U.S. ____ (2005).

In August of 2005, less than two months after the *Kelo* decision was handed down, the Alabama state legislature unanimously passed a bill limiting the state's power to use eminent domain for economic development. The bill specifically prohibited Alabama state and local governments from, "using their eminent domain authority to take privately owned properties for the purpose of turning them over to retail, industrial, office or residential developers."[56] Republican Governor Bob Riley signed the reactionary bill into law and called the Court's June ruling "misguided" and a "threat to all property owners." He added, "A property rights revolt is sweeping the nation, and Alabama is leading it."[57] Critics point out that the legislation still allowed the government to seize property for economic development if the property was blighted. Dana Berlinger, senior attorney at the Institute for Justice stressed that the blight statue is a huge loophole and is "particularly prone to abuse and must be reformed."[58] The blight statute is much less likely to be limited by the Alabama legislature and represents an important battle in the fight against eminent domain abuse by private property rights advocates. An area or property is considered blighted when it is unsafe, unsanitary, overcrowded or generally undesirable by the public.[59] The definition of blight has been central to eminent domain debate over the past fifty years. In the *Midkiff* and *Poletown* cases previously discussed the courts have dealt specifically with the extent to which blight can justify the use of eminent domain. Since the Court's definition of blight has been broad in the past, these

[56]Lambro, Donald. "Alabama Limits Eminent Domain." The Washington Times Online. 4 Aug. 2005. 15 Mar. 2006 < http://washingtontimes.com/national/20050804-120711-4571r.htm>.
[57]Lambro, Donald. "Alabama Limits Eminent Domain." The Washington Times Online. 4 Aug. 2005. 15 Mar. 2006 < http://washingtontimes.com/national/20050804-120711-4571r.htm>.
[58]Lambro, Donald. "Alabama Limits Eminent Domain." The Washington Times Online. 4 Aug. 2005. 15 Mar. 2006 < http://washingtontimes.com/national/20050804-120711-4571r.htm>.
[59] http://lawprofessors.typepad.com/property/2005/10/a_tale_of_two_b.html

statutes leave room for future eminent domain abuse in the eyes of property rights advocates.

Only a few weeks after Governor Bob Riley signed the Alabama eminent domain reform legislation into law, Texas lawmakers followed with similar legislation. Delaware and Ohio also enacted legislation limiting the government's use of eminent domain to a recognized public use. By the end of 2005, thirteen states had introduced legislation in the state legislature aimed at eminent domain reform. Although not all measures introduced at thes tate level have passed, their introduction shows the political importance of the issue in state politics.

The laws that have been passed in these states clearly illustrate the power that the grassroots movement against eminent domain abuse has gathered. The state legislators and governors in these states were quick to respond, with several passing laws less than two months after the Supreme Court ruling. This is not the customary speed at which government operates. Politicians rarely rush to pass laws that limit the use of their own power in any way. However, on this issue it is clear that opposition to eminent domain reform is political suicide.

The legislation that has come forth at the state level is often accused of being watered down and is surrounded by skepticism regarding its actual effectiveness. A new South Dakota law, H.B. 1080, has been praised by property rights advocates as the most meaningful attempt at eminent domain reform. The law passed almost unanimously in both chambers of the state legislature in February of 2006. This legislation provides much stricter regulation over the power of eminent domain. The legislation prohibits government agencies from "seizing private property by eminent domain for transfer to

any private person, nongovernmental entity, or other public-private business entity."[60] This legislation calls for a very strict interpretation of the takings clause as exclusively for use by the public.

Although members of the majority opinion in *Kelo v. New London* support state and local governments coming up with their own restrictions on the use of eminent domain, the majority opinion explicitly rejects the literal interpretation of the public use clause as exclusively, use by the public. Justice Stevens quoted the *Hawaii Housing Authority v. Midkiff* opinion in his majority opinion on *Kelo* remembering, "this Court long ago rejected the literal requirement that condemned property be put to use by the public."[61]

The wide variety of legislation that has been introduced as a reaction to the Court's decision in *Kelo v. New London* illustrates both the universality and the complexity of the issue of eminent domain reform.

Connecticut State Politics

Each state that passed or rejected eminent domain reform bills had specific circumstances which caused it to do so. States with high percentages of low-income families are more likely to enact laws limiting the use of eminent domain for economic development because many residents fear their property being taken by the government and replaced by something more profitable. States that have not passed eminent domain reform may have more autonomous communities within the state or have developers or labor union interests supporting more government-initiated economic development within

[60]"South Dakota Enacts Meaningful Eminent Domain Reform" Castle Coalition Website. 27 Feb 2006. 20 Mar. 2006 <http://www.castlecoalition.org/media/releases/2_27_06pr.html>.
[61]*Kelo v. New London*, 545 U.S. ____ (2005).

the state. The state of Connecticut has, for obvious reasons, responded to the *Kelo v. New London* case differently than any other state because the conflict originated within the state.

The reaction to the *Kelo v. New London* decision at the state level in Connecticut was unique due to the state's own involvement in the controversy. Many of the state officials involved in the controversy wanted to wash their hands of it after the Supreme Court decision brought such widespread publicity. It is only the past couple of months that the state has begun to address eminent domain reform through state legislation. "While politicians in other states and in the U.S. House of Representatives have leaped to revise eminent domain law in the months since the *Kelo* decision, the state that spawned the controversy has taken a more cautious tack" said Larry Morandi, analyst for the National Conference of State Legislatures.[62]

The Connecticut state legislature is currently considering two legislative proposals aimed at limiting eminent domain reform. One proposed bill would prohibit the government from seizing any property for private development. The second proposal requires development agencies to prove that the property they seize will provide more public than private benefit. The second bill also prohibits takings for the sole purpose of increasing the tax base within a community. The first bill would significantly curtail the government's existing power and will most likely encounter serious opposition by the Democrats in the legislature. The second bill limits the government's power far less and would do nothing to prevent property from being seized as it was in the Fort Trumbull neighborhood.

[62]"Proposed Tweaks to Eminent Domain Debated" The New London Day. 18 Mar 2006.

Scott Bullock, who represented the New London homeowners at the Supreme Court level said,

> Connecticut has perhaps the most sweeping law in the country authorizing eminent domain for private business development, and it must be reformed to protect home and small business owners…Several of the [state's] proposals simply require that local governments and planning bodies produce more paperwork about a plan and its supposed economic benefits before condemning people's homes and businesses.[63]

Mr. Bullock praised the former bill which prohibits taking property for any private development. This bill would impose much stricter standards on the use of eminent domain in the entire state of Connecticut. He also submitted a written testimony to the judiciary committee which would hear the arguments for the proposed legislation. He also proposed the Institute for Justice's model for eminent domain reform legislation to the Connecticut legislature.[64]

Unlike all of the other states addressing eminent domain reform, the Connecticut state government is trying to address specific issues surrounding the *Kelo v. New London* decision. The New London Development Corporation is an organization that was created by the state and entrusted with the power of eminent domain in New London. Since the backlash against the *Kelo* decision, the president of the NLDC has resigned and the agency has been granted little power. Transferring the power of eminent domain to the NLDC allowed city officials to distance themselves from the controversy that originated over the seizure of the homes in Fort Trumbull. Part of the proposal before the legislature now specifically restricts the power of development agencies so that the power of eminent domain and over economic

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[63]"IJ and Homeowners to Connecticut Legislators: Adopt Real Eminent Domain Reform." Castle Coalition Website. 6 Oct. 2005. 20 Mar. 2006 <http://www.ij.org/private_property/connecticut/10_6_05pr.html>.

[64]"IJ and Homeowners to Connecticut Legislators: Adopt Real Eminent Domain Reform." Castle Coalition Website. 6 Oct. 2005. 20 Mar. 2006 <http://www.ij.org/private_property/connecticut/10_6_05pr.html>.

development remains in the hands of elected representatives. Had restrictions such as this been in effect before, the NLDC's condemnation of the Fort Trumbull homes would have been unlawful.[65] This legislation is highly politically motivated as members of both parties attempt to redress the wrongs perpetrated by the state in the extremely unpopular decisions made surrounding the *Kelo v. New London* controversy.

The political atmosphere of Connecticut state politics is upset by this turn of events because it makes the parties harder to pit against one another in forthcoming elections. Because of the attention the *Kelo* controversy has received it will undoubtedly be a major issue in upcoming state elections. Connecticut Governor, Jodi Rell is up for reelection in January of 2007 and has been cautious in her response to the *Kelo* controversy. She entered office in July of 2004 in the midst of the legal proceedings in New London. Immediately after the Court's decision, Governor Rell stated that the legislature should reconsider the state's eminent domain laws. Later that summer the Institute for Justice reported, "Governor Jodi Rell called for a moratorium on the use of eminent domain by all Connecticut cities until the legislature can revise the law to protect proprety owners. The moratorium should put New London's plans to take IJ's clients' homes on hold."[66] Governor Rell has been careful not to enflame the conflict by furthering the power of the NLDC or eminent domain but at the same time, she has not promised support for legislation that severely limits the power of eminent domain.

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[65]"IJ and Homeowners to Connecticut Legislators: Adopt Real Eminent Domain Reform." Castle Coalition Website. 6 Oct. 2005. 20 Mar. 2006 <http://www.ij.org/private_property/connecticut/10_6_05pr.html>.

[66]"Grassroots Groundswell Grows Against Eminent Domain Abuse" Castle Coalition Website. 17 July 2005. 20 Mar. 2006 <http://www.ij.org/private_property/connecticut/7_12_05pr.html>.

Conclusion

Though similar restrictions on the use of eminent domain are being proposed at the state and national level, the federal legislation, such as H.R. 4128 is a result of a much greater compromise across a much wider range of constituencies than those that are being proposed at the state level. Members of Congress are responding to the outrage of their constituents the same way that governors and state legislators are by attempting to pass laws limiting the use of eminent domain. This legislation is not necessary and potentially harmful at the federal level because each state has the capacity to enact its own reforms and a national referendum on eminent domain would not take the needs of every state and locality into acount. It is certain that the effects of the *Kelo v. New London* decision will have an effect on state politics, particularly in Connecticut for years to come.

The greatest chance for eminent domain remains at the state level. In the last paragraph of the majority opinion written on *Kelo*, Justice Stevens urges state legislators to take this matter into their own hands and reform the laws as they see fit. Stevens writes, "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline."[67] There, a compromise between the welfare of the community and the rights of the individual, tailored to fit the needs of individual states, can be reached.

[67] *Kelo v. New London*, 545 U.S. ____ (2005).

CHAPTER 4

The Local Level

The eminent domain controversy in New London brought people from all over the political spectrum together on the national, state and local level. For obvious reasons, this controversy had a particularly drastic effect on the political climate of the city of New London. The *Kelo* controversy has sparked grassroots political efforts and community action. It has inspired art and literature and incited dialogue among the citizens of New London. From the birth of a new political party, to a documentary/drama about eminent domain, the voice of the New London community has spoken out against eminent domain abuse. The community remained united against the development plan even after the Supreme Court's decided against the homeowners. The national support shown for the homeowners in Fort Trumbull in the wake of the Supreme Court decision renewed their strength and resolve to reform city politics.

The history and demographics of New London frame the controversy. Events which have taken place since the Supreme Court's decision in *Kelo v. New London* illustrate the involvement of the community in the fight for the homes in Fort Trumbull. The reaction of the people of New London to the city's attempt to take their homes is what made the story into the national phenomenon that it has become.

Demographics

The city's demographic background provides the backdrop for the *Kelo v. New London* controversy. It is important to understand the circumstances surrounding the establishment of the New London Development Corporation and the actions of the city council and the courts which led to the *Kelo v. New London* case being heard at the Supreme Court level. These facts detail the political and economic background of the people of New London which provide the basis for the shift in political alliances which occurred over the *Kelo v. New London* decision.

The median household income in the City of New London is $33,809. The national average is $41,994.[68] The top five employers in the New London community are Pfizer, Lawrence and Memorial Hospital the U.S. Coast Guard Academy, Connecticut College and the city of New London.[69] Pfizer is by far the largest of these employers and the community is very dependent upon the jobs it provides. When the naval base in New London closed, over 15,000 jobs were lost. The limited diversity of employment opportunity has been a problem throughout the history of New London, as the community has had to adjust itself to constantly fluctuating economic opportunity.

New London is a very racially and ethnically diverse community. Demographic issues such as race, ethnicity, age and income level are of vital importance in any environmental justice case. According to the U.S. census 25,671 people live in New London. The population is just over 60% white, with large Latino (20%) and African-American (19%) populations. Urban renewal programs often displace minority communities in disproportionate numbers. In his dissenting opinion in *Kelo v. New*

[68]"New London, Connecticut Community Profile." EPodunk: The Power of Place webpage. 23 Mar. 2006 <http://www.epodunk.com/cgi-bin/genInfo.php?locIndex=9221>

[69]"New London, Connecticut Community Profile." EPodunk: The Power of Place webpage. 23 Mar. 2006 <http://www.epodunk.com/cgi-bin/genInfo.php?locIndex=9221>.

London Justice Thomas states that "regrettably, the predictable consequence of the Court's decision will be to exacerbate these effects."[70] Issues of environmental justice are of great concern of property rights advocates.

The average home in New London is worth just over $100,000 compared to the rest of the state in which the average is $160,000.[71] The city has seen less than 2% population growth since 2000, making New London county the second slowest growing county in Connecticut.[72] The redevelopment plan for the Fort Trumbull neighborhood was designed to bring new jobs to the area as well as increase the property value and taxability of the land to increase the overall tax base of the city. Rising taxes have been a major issue in New London politics in recent years. As a result of the backlash against the Court's decision, the Fort Trumbull homes have not been seized and development in the area has been stalled. Now the tax base has decreased even more than before the development plan went into action because so many homes were torn down. The now vacant land is costing the taxpayers more than it did when there were houses on it.

History and Geography of the Fort Trumbull Neighborhood

The Fort Trumbull neighborhood is a ninety acre peninsula situated on the Thames River. The neighborhood is named for the fort that sits on the edge of the peninsula. The fort was originally constructed during colonial times and has been rebuilt

[70] *Kelo v. New London*, 545 U.S. ____ (2005).
[71] "New London, Connecticut Community Profile." EPodunk: The Power of Place webpage. 23 Mar. 2006 <http://www.epodunk.com/cgi-bin/genInfo.php?locIndex=9221
[72] "New London, Connecticut Community Profile." EPodunk: The Power of Place webpage. 23 Mar. 2006 <http://www.epodunk.com/cgi-bin/genInfo.php?locIndex=9221>.

three times since then.[73] The only time that the fort saw military action was during Benedict Arnold's famous siege on the city in 1781 under British command.[74]

The neighborhood established itself as an immigrant community of Irish and Italian laborers during the nineteenth century. By the turn of the century, the neighborhood was almost exclusively made up of Northern Italian immigrants. It developed a separate identity from the rest of the city of New London during this time in which the great majority of immigrants came from Southern Italy.[75] The Fort Trumbull neighborhood is a historically close-knit community. The community has suffered numerous trials throughout its history from the devastating hurricane of 1938 to the construction of the sewage plant adjacent to the homes.[76]

Suzette Kelo's home is on 8 East Street overlooking the water off the peninsula. This pink Victorian house was originally constructed in 1890 on Pequot Street in New London, but was later moved to the Fort Trumbull neighborhood.[77] This was not an uncommon practice for homes during this time and has been proposed as an alternative to demolishing the homes there now.

Political Affiliation

The majority of the people of New London are solidly Democratic, but the voters support several Republicans in office at the local and state level. In the 2004 presidential

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[73] "History of Fort Trumbull." Connecticut State Parks and Forest Website. 19 Apr. 2006 <http://dep.state.ct.us/stateparks/parks/fort_trumbull.htm>.
[74] Hansen, Sarah. The Fort: A History of Italians in the Fort Trumbull Neighborhood. New London, Connecticut: 2001.
[75] Hansen, Sarah. The Fort: A History of Italians in the Fort Trumbull Neighborhood. New London, Connecticut: 2001. p.1
[76] Hansen, Sarah. The Fort: A History of Italians in the Fort Trumbull Neighborhood. New London, Connecticut: 2001.
[77] Hansen, Sarah. The Fort: A History of Italians in the Fort Trumbull Neighborhood. New London, Connecticut: 2001

election, New London voters preferred John Kerry (55.8%) to George Bush (42.2%) by a sizeable majority. Connecticut has two Democratic senators, both supported strongly in New London. Both the state legislators from the New London district, in the House and Senate are Democrats.[78] Republican representative Rob Simmons won a very closely contested race for the House in 2004. Governor Jodi Rell is also a Republican who was appointed after Governor Rowland resigned and went to jail in June of 2004 after stories of illegal gift giving and contracts surfaced. Governor Rell came into office having to take responsibility for the actions of her predecessor, Governor Rowland, who had shown strong support for the redevelopment plan in New London in earlier years.[79]

The local government of New London is made up of a city council of seven members and an appointed city manager. A large majority of the city council members were Democrats at the time the NLDC's development plan was approved by the city council. Since then, significant changes in the make up of the council have occurred as a reaction to the council's decisions in *Kelo v. New London*. Municipal elections are held in New London every odd year. The redevelopment plan for the Fort Trumbull neighborhood and the government's use of eminent domain was arguably the most important issue of the city council election in 2005.

In the Wake of Kelo

The people of New London were engaged in the battle over the city's use of eminent domain in Fort Trumbull for eight years, beginning in 1998 when the development plan was approved, before it received national attention. The Supreme

[78]"Municipal Elections: Ballot Questions." Connecticut Local Politics Blog. 4 Nov. 2005. 1 Mar. 2006 <http://connecticutlocalpolitics.blogspot.com/2005_10_30_connecticutlocalpolitics_archive.html>.
[79]DeCoster, Stan. "The Battle of Eminet Domain." CC: Connecticut College Magazine. Winter 2006 p.23

Court's decision in June of 2005 brought on a new wave of protest. The homeowners had lost at every level of the fight, in the municipal court and the state supreme court. When the U.S. Supreme Court's decision was handed down, it seemed as though the homeowners' last hope was gone.

In the first weeks after the decision, the community was outraged. The atmosphere in New London became even more charged after the decision was handed down than it was before as the homeowners received an outpouring of support from all over the country and decided the fight was not over. On July 5th a rally was held on the steps of the municipal building in New London where close to 500 people gathered to protest eminent domain abuse. The protests continued all summer long, from the municipal building to the homes of members of the New London Development Corporation.[80]

At the end of July, informational hearings on eminent domain reform in Connecticut were held in Hartford. Governor Rell placed a moratorium on all eminent domain proceedings in the state until the conflict died down. Additionally, Governor Rell released a statement saying that she supported the integration of the remaining homes in Fort Trumbull into the development plan.[81] This unexpected turn of events forced the New London Development Corporation to rethink its strategy. They had not expected homeowners to hold out against the government for so long. The national attention that the case received gave the residents of Fort Trumbull new power in their fight against the government. Any action that was taken against them would have consequences in the media and at the polls. After the summer of 2005, it was clear that

[80] Moran, Kate. "Protestors Target Eminent Domain." The New London Day. 6 July 2005.
[81] Moran, Kate. "Rell Shifts Stance on Fort Trumbull." The New London Day. 30 July 2005.

the development plan for Fort Trumbull could not proceed without some sort of compromise being reached with the homeowners in Fort Trumbull.

The Backlash Against the Backlash

Although the community of New London has seemed nearly unanimous in its disapproval of the actions of the city council, the NLDC and the Supreme Court, some have spoken out in favor of the government's actions in promoting the overall welfare of the community. The backlash occurred as a reaction to the reaction of the people of New London, and the United States, to the *Kelo v. New London* decision. In the first week after the decision, opposition to the decision grew. Every editorial in The New London Day railed against the Court's decision. But a few weeks later, several editorials criticized the people speaking out against the decision. People worried that the overwhelming response against the ruling would incite a hasty reaction from state legislators, anxious to pass eminent domain reform laws that might severely limit their power, perhaps unnecessarily. On July, 20th one person wrote to The New London Day in an editorial that the community was being drastically misrepresented by the homeowners in Fort Trumbull, the Institute for Justice and their supporters. He contended that the "silent majority" in New London agreed that the jobs and welfare of the entire community should be put before the seven homeowners remaining in Fort Trumbull and the redevelopment should proceed as planned.[82]

Among the attacks against the homeowners in Fort Trumbull, a story surfaced in The New London Day claiming that Suzette Kelo did not even live in her home in Fort Trumbull. It was documented that Ms. Kelo had purchased a cottage in Old Lyme,

[82]Butler, Alan. "Eminent Domain is Not Only Issue for City" The New London Day. 20 July 2005.

Connecticut in June of 2004 when she was told that her property was going to be taken by the government.[83] This story promoted the notion that Suzette Kelo was nothing but a pawn of the elite, special-interest, libertarian members of the Institute for Justice who had so willingly taken on her case. Critics say that the Institute for Justice was looking for an eminent domain case to undertake. The president of the NLDC, Michael Joplin, attacked Suzette Kelo stating, "The Institute for Justice has used her as a poster child of someone who is losing her home while we know that she lives part time in Old Lyme and basically told her bank that's her full time residence." Ms. Kelo responded directly to these attacks stating, "This is my property and that's that. It doesn't matter if I own one house or one hundred houses, it's still my property. Since when is it against the law to own more than one?"[84] Her Fort Trumbull neighbors stood by her. Michael Christofaro defended her stating, "Suzette is into buying property and fixing it up. That's what she does. Suzette is here every night."[85] Those outwardly critical of the Fort Trumbull homeowners remain very few in number. The homeowners have made it clear that they do not want to stall the development of the Fort Trumbull area, they just do not feel that people should be made to move out of their homes in order for development to occur.

The list of groups organized in favor of the Supreme Court's decision in *Kelo v. New London* includes some urban planners, labor unions and developers. The American Planning Association's Connecticut chapter filed an amicus brief on behalf of the New London government in *Kelo v. New London* and closely followed the case. Urban planners in the area stress how desperately in need of economic revival New London is. "Nearly 55 percent of the land area is tax exempt" said Bruce Hyde, director of the city's

[83]Moran, Kate. "When Is A House Not a Home?" The New London Day. 23 July 2005
[84]Moran, Kate. "When Is A House Not a Home?" The New London Day. 23 July 2005
[85]Moran, Kate. "When Is A House Not a Home?" The New London Day. 23 July 2005

Office of Development and planning. On the Fort Trumbull neighborhood, Edward O'Connell an NLDC attorney stated, "Twenty percent of the residential properties were vacant, it was not a thriving area. A developer wants the whole area available. Wesley Horton, chief attorney for the city in the case contended that clearing all the land was the only option saying, "A developer wants the whole area available...the problem of assembly of land often acts as a barrier to economic revitalization."[86] The American Planning Association position before the Court ruled cautioned against the Court ruling on the side of the homeowners in *Kelo v. New London*:

> "APA warns that since conditions vary so much form one section of the country to another, the Supreme Court should be wary of imposing a new nationwide standard. APA also says that limiting the use of eminent domain for economic development to cases where property is blighted would generate undesired consequences. For instance, condemnations might gravitate increasingly to poor and minority communities which tend to be more easily classified as blighted.[87]

After the Court's ruling, the American Planning Association condemned the public's extreme reaction to the decision stating, "Since Justice Steven's opinion for the majority merely confirmed a well-established legal doctrine, the media's hyperventilation and the political uproar in many state legislatures has been perplexing and unfortunate." Each of the parties that supported the city in *Kelo v. New London* may, in hindsight, regret the Court's ruling since its ultimate effect was greater public attention to eminent domain and legislative attempts all across the country to further limit its use. Urban planners, especially in the city of New London and the surrounding communities are now under a close watch by the media and the public. The media's portrayal made the government the enemy rather than a provider and protector for the people of New London.

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[86]Langdon, Phillip. "Eminent Domain Goes to Court." The Magazine of the American Planning Association: Planning. April 2005. p.14

[87]Langdon, Phillip. "Eminent Domain Goes to Court." The Magazine of the American Planning Association: Planning. April 2005. p.15

Pre-Election Politics in the City Council

The work for the development plan for the Fort Trumbull neighborhood began in 1998. The condemnation proceedings began in November of 2000. Long before the case received national media attention in the summer of 2005, it was an important issue in New London politics. Several factors contributed to the turnover that resulted from the 2005 election. In the 2001 local election, the city council members who voted in favor of the NLDC's redevelopment plan were punished for their actions. Only two of the six members who voted in favor of the plan returned to office. Unlike the 2001 and 2003 elections in which Republicans candidates were the only ones mounting serious opposition to the Democratic control, third parties have entered the 2005 race. These third parties are giving the Democratic voters of New London an alternative to voting for Republicans. In this race, third party candidates were able to capitalize on the high level of voter discontent in the area and add a new dimension to the race.

Because of the unpopularity of the city council and municipal court's decisions in the *Kelo* case, the New London Development Commission's redevelopment plan was a highly contentious issue in the 2005 municipal elections in New London. In the fall of 2005 as the election drew near, the political atmosphere became increasingly volatile.

In October, the city council voted 6-0 to remove the New London Development Corporation's authority over the condemnation proceedings in the Fort Trumbull neighborhood. The timing of the decision to revoke the NLDC's power is not coincidental. This happened only a month before the city council elections. The state government put a great deal of pressure on the city council to reinstate the power of the NLDC which they did several days later. Very soon after, the chief operating office of

the NLDC, David Goebel, suddenly resigned. Many people saw the city council's efforts to divorce itself from the NLDC as a superficial attempt to separate the council members from the *Kelo* controversy when, in reality, the majority of the council members had given the project strong support from the beginning. An editorial in The New London Day in early November assailed the city council's actions:

> Does the New London City Council expect anyone to fall for the sorry spectacle of their on-again, off-again divorce from NLDC?Or their silly attempt to make David Goebel, chief operating officer of New London Development Corp., a scapegoat for blame that clearly rests on the City Council's shoulders? Numerous votes by this council repeatedly went against the best interests of New London, but were beneficial to the special interests. The same city councilors who for years actively worked with NLDC members and contractors (and have accepted many thousands of their campaign contribution dollars), now pretend they are really, really mad at NLDC for making a mess of our city.[88]

The establishment and empowerment of the NLDC is still considered one of the most contentious issues in the *Kelo* debate. The New London government and the state government of Connecticut have both tried to cut ties with the NLDC because of the political unpopularity of its actions. Although the NLDC was established as somewhat of an independent organization, it is powerless without government support.

Challengers in the race for city council demanded debate on important issues like the redevelopment plan while the incumbents of all parties seemed to be unusually quiet on the subject. An editorial in The New London Day in October titled, "A City Searching for Failure" stated that, "Everyone, including the state, had agreed that all the groups would lie low until after the election." "All the groups" referred to the NLDC, the city council and the state officials involved in the redevelopment plan for Fort

[88]"As New London Turns: Kelo Update." Bizzy Blog. 14 Nov. 2005. 20 Mar. 2006 <http://www.bizzyblog.com/?p=809>.

Trumbull.[89] This plan backfired as the voters' frustration with the behavior of these groups caused them to seek alternatives to the establishment in New London.

The One New London Party

Campaigns against the status quo in New London began to gain strong support in the few months before the 2005 election. The public's dissatisfaction with the government was so high that even the incumbents were campaigning for drastic change and promising that they would be the ones to bring it. Key issues among incumbents and challengers alike included "widespread criticism of the council's entanglements with the New London Development Corporation, the use of eminent domain at Forth Trumbull and the city's fiscal management."[90] The Democratic majority of the council was often blamed for all of these things.

One political party borne out of the *Kelo v. New London* debate was the One New London Party. The members of this party were of all different political affiliations. Some were Green Party members, others were libertarians and Democrats. This independent party had five members on the ballot in the 2005 municipal election. This list included Charles Frink, William Cornish, Richard Humphreville, Thomas Picinich and Michael Christofaro. Although the party held strong positions on many social and economic issues during the campaign, the keystone issue of the campaign was undoubtedly the redevelopment plan for the Fort Trumbull neighborhood. Three of the candidates' homes or the homes of their families were condemned in Fort Trumbull.[91]

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[89]Moran, Kate. "A City Searching For Failure." The New London Day. 20 Oct. 2005.
[90] Mann, Ted. "Quietness of NL Council Race Belies Its Significance." The New London Day. 5 Nov. 2005.
[91] Mann, Ted. "Quietness of NL Council Race Belies Its Significance." The New London Day. 5 Nov. 2005.

The One New London Party's campaign laid out five major points on its "2005 To Do List" which included, developing New London's tax base through modification of the city's current development plan, improving public housing and making it easier for homeowners to rehabilitate their own housing. The list also included exercising fiscal prudence by limiting city spending and operating under a zero-sum budget, revising the city's charter to create a stronger, more centralized city government and reaffirming the "Constitution's concept" of eminent domain.[92] This definition, according to One New London prohibits the government from taking private property for economic development.

The 2005 Election

The changes that occurred after the 2005 election in New London surprised many people. There was an unusually high turnover of city council representatives. The incumbency rate for local government representatives is very high. The current political atmosphere in New London brought about these results. Third party candidates receive support when voter discontent in an area is high. When people feel that there is little difference between the two major parties or that both parties contribute equally to the problems in government they often seek an alternative.

Nineteen candidates from four different political parties ran for office in the New London city council election. These parties included Democratic, Republican, Green and One New London. The diversity of candidates in the 2005 election is largely attributable to the *Kelo* controversy but it was not the only issue being talked about during the

[92]One New London Party. 2005 *Campaign and Candidate Information*. Novemeber 2005.

campaign. The eminent domain issue opened the door for discussion on a variety of other types of desired reform in the New London community.[93]

The election was held on November 8th 2005. Before the election, the city council was made up of five Democrats and two Republicans. The election weakened the Democratic majority from five to four. The Republican minority also lost one member, leaving it with a single member on the council. The One New London Party gained two seats on the council, forming a three party government. The One New London Party lost a third seat on the council by only nineteen votes. If this seat had been won, the Democratic Party would have lost its majority entirely. Four incumbents retained their seats in the election. Although the Democrats still retain a majority in the council, a three party body changes the operation of the council drastically, forcing increased compromise and change.

The New London Day

The New London Day is the largest circulating newspaper in the New London community. It has been in circulation since 1881 and is not owned by a newspaper chain. The Day is independently run which is a rarity in contemporary print media. This independence contributes to the supportive relationship between the newspaper and the community which has greatly contributed to its success and allowed it to become such a strong social force in the community. The Day's independence is attributable to the financial system under which it operates that was conceived in the 1930's. In the words

[93] *Kelo v. New London* lecture sponsored by the Connecticut College Republicans. October 2005

of Gordon Bodenwein, publisher from 1891-1939, the Day was to be a "protector of public interest and defender of people's rights."[94]

The New London Day has taken strong political positions on many issues in the community. Among these is actively supporting an overhaul of the current form of government in place in New London and creating a system with strong central leadership. The Day is a strong political and social force in the community. Issues such as the reorganization of the municipal government were major issues in the 2005 campaign and a commission has deliberated over this issue. A recommendation from the commission for such an overhaul has not yet been issued.[95]

In the 2005 election, The New London Day endorsed seven candidates. The list included three Democrats, two of whom were incumbents, two Republicans, one of whom was an incumbent, as well as one Green and one One New London party candidate, neither of whom were incumbents. Five of the seven candidates that the Day endorsed were elected to city council positions. Only the three Democrats, who were attacked the most during the campaign, were endorsed by the Day were elected. The other four Democrats, all of whom were incumbents were not reelected. These numbers indicate the social force of the Day in the New London community. The Day has taken an especially strong stance on the redevelopment plan for the Fort Trumbull neighborhood. This issue was a large part of the reason that the Day supported such a high turnover of members in the city council election.

The New London Day is also used as a communication device between elected officials and the public. Members of the city council directly communicate plans and

[94]Stone, Gregory. "About Us." The New London Day Website. 20 Jan. 2003. 25 Mar. 2006 < http://theday.com/theday/aboutus.aspx>.
[95]"Shake Up the New London Mix." The New London Day. Oct. 30, 2005. 20 Mar. 2006.

ideas to the people of New London through the newspaper. This allows the people to have an ongoing dialogue with their elected representatives by submitting their own editorials in response. Recently, councilor Charles Frink of the One New London Party submitted an editorial to the Day outlining a resolution to the stalemate in Fort Trumbull. The resolution proposes to:

1. Move the remaining houses not in parcel 4a to parcel 4a.
2. Return the titles to the property owners.
3. Property owners pay their back taxes from June 2005.
4. Property owners agree to no future lawsuits.[96]

The Day is one of the most important forums for civic debate in New London. The debate for the Fort Trumbull neighborhood still rages in New London. The newspaper's involvement in the fight over Fort Trumbull over the years has chronicled the struggle of the community from the very beginning and continues to explore new issues surrounding this debate.

Art: Trashed

A recent example of civic expression in the New London community was shown in the documentary/drama, *Trashed* produced by Nick Checker's, Nightshade Productions. The fifty minute film is about homelessness in the New London area. It tells the story of a young woman struggling to make ends meet. When the government uses the power of eminent domain to take the apartment that she is living in, she is left without a place to live. The film is a commentary on the NLDC's development plan and the Court's approval of economic development as public use. Checker did not originally

[96]Cornish, Bill. "Councilor Cornish's March 20th Letter to the Editor." One New London Party Website. 20 Mar. 2006. 21 Mar. 2006 <http://www.onenewlondon.org/councilor-cornishs-march-20th-letter-to-the-editor/>.

intend to incorporate eminent domain into the film. The project was originally conceived around homelessness but as Checker worked on the project and talked to people in New London, the more the connections between the plight of the homeless and the government seizing the homes in Fort Trumbull appeared. Checker says the film communicates, "The fact that our society has a penchant for tossing things into the trash bin which we perceive as no longer having value or not enough value. We're just too fond of ditching something in favor of something better."[97] Checker says the theme of the film is the value of a home and the value of a human life. This directly relates to the development plan's stated goal of increasing New London's tax base by replacing the existing homes in Fort Trumbull with more expensive commercial and residential property.

More than 250 people attended the premier of *Trashed* at the Garde Arts Center in downtown New London.[98] Attorney Scott Sawyer who originally represented the homeowners in their case against New London appears in the film and spoke at the premier. The Institute for Justice's counsel, Scott Bullock, who later represented the homeowners at the Supreme Court level traveled to New London from Washington for the premiere and also spoke before the film was shown.

The atmosphere at the Garde on the night of the premier of *Trashed* illustrated the community's ongoing, unwavering opposition to the NLDC's redevelopment plan. The central themes of the film such as the value of the individual and the right to property are also central to the *Kelo* debate. Once again it is easy to see how this issue has transcended political boundaries and united the community against the actions of the government. In the minds of the people of New London, the actions of the city council

[97] "Film Maker Adds Eminent Domain To Plot." WorldNet Daily News. 2 Aug. 2005. 20 Mar. 2006. <http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=45561>.
[98] Penney, John. "Local Film Focuses on Housing Plight." Norwich Bulletin 20 February 2006. B+

and the NLDC are simply un-American. At the premier of *Trashed,* Foe Hammer, a Fort Trumbull resident, said on eminent domain, "It amounts to thievery and it has tarnished America's image."[99] This film is an illustration of how deeply this issue has affected the identity of the people of New London. Here it is not just a legal or political battle, it has transformed the place in which they live which will now always be known for the Suzette Kelo's little pink house.

Conclusion

The U.S. Supreme Court's decision in *Kelo v. New London* has affected political alliances in the city of New London much differently than it has at the state and national levels. On the state and national level, representatives are lining up on different sides of this issue, a majority in support of eminent domain reform, in order to protect themselves against political retribution. The majority of voters all over the country heard Suzette Kelo's story and thought, that could happen to me. In New London, the politics are much more specific. Eminent domain abuse is not an abstract political issue in New London. It has had real effects and has brought the development of the Fort Trumbull area to a standstill.

The political climate in New London has been profoundly affected by this issue, but very different results have been brought about than those brought about on the state and national level. Before the case, members of the city council of both parties voted for the NLDC's redevelopment plan. No significant political realignment occurred in New London politics until the One New London Party, a third party with members from all over the political spectrum challenged the status quo in New London. Rather than

[99]Penney, John. "Local Film Focuses on Housing Plight." Norwich Bulletin 20 February 2006. B1+

resulting in a shift in either one of the major parties, the effects of the *Kelo v. New London* decision on the local level created a new three party government. The factors that resulted in the success of the One New London party in the 2005 election in New London included high voter discontent, a small voter population and the universal reform wanted on eminent domain. Nationally and even on the state level, members of Congress and state legislators are limited by a more diverse constituency and the level of communicability between the representatives and the voters. The voters of New London have taken the Supreme Court's recommendation to change eminent domain policy on the local level by wholly rejecting the redevelopment plan for Fort Trumbull in the 2005 local election.

CONCLUSION

In most instances, the contemporary political atmosphere in the United States does not allow the two major political parties, Republican and Democrat to work together. Short election terms, single issue voters, and sound byte media are all factors which contribute to this problem. On each the national, state and local level, the political partisanship is a serious obstacle to carrying out the will of the American people through the government. This is true for every major issue in politics today. When the *Kelo v. New London* decision was handed down in June of 2005 the status quo of political polarization and partisanship was challenged. People from all across the political spectrum agreed on the need for reforming the government's power of eminent domain.

Political party platforms evolve with changes in public opinion brought on by events such as those surrounding the *Kelo* controversy. The political shifts that have occurred as a result of this decision demonstrate the flexibility as well as stability of American government. This case marks a decisive moment in American politics in which members of both parties as well as others much further outside of mainstream political opinion on both the right and the left, united on an issue. Partisan politics still presented a challenge, but things were still able to be accomplished.

This debate did not only unite people politically, it demonstrated the interdependence of our democracy at many different levels. The actions taken each level in the wake of the Court's decision have all affected one another. If the people of New

London had given up the fight for the Fort Trumbull neighborhood, the debate never would have reached the federal level in the Supreme Court or Congress. Conversely, the national media attention the case received gave the people of New London new power in their fight against the government. This case, which started out in the municipal court in New London and a local grassroots organization which was formed to save the Fort Trumbull neighborhood, evolved into a landmark Supreme Court case and a national movement to reform eminent domain. As Garrison Keillor says, "We're all Republicans now."

As a result of the public's unusual and dramatic response to the Supreme Court's decision, *Kelo v. New London* will be remembered in the years to come not only in the city of New London but all over the United States. Its legacy will not be the defeat of the homeowners in the court room but the power the people gained by speaking out and taking action in communities all over the nation.

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APPENDIX A:

The New London Day Editorials

APPENDIX B

2005 New London Municipal Election Results

2005 New London Municipal Election Results

Candidate	Party	Incumbent	Elected	Day Support
Bill Morse	Democrat	yes	no	
Gerard Gayaert Jr	Democrat	yes	no	
Elizabeth Saccia	Democrat	yes	yes	yes
Jane Clever	Democrat	yes	yes	yes
Kevin Cavanagh	Democrat	no	yes	yes
Margaret Mary Curtin	Democrat	yes	yes	
Elizabeth Garcia Gonzalez	Democrat	no	no	
Jason Catala	Republican	yes	no	
Mike Dayla	Republican	no	no	
Kathryn Schiessle	Republican	no	no	
LeAlyn DeVore	Republican	no	no	yes
Robert Perry	Republican	yes	yes	yes
Charles Frink	One New London	no	yes	yes
William Carroll	One New London	no	yes	
Richard Humphreville	One New London	no	no	
Thomas Peacock	One New London	no	no	
Michael Christoffero	One New London	no	no	
Bob Stuller	Green	no	no	
Andy Derr	Green	no	no	yes

Pre-election: 5D 2R
Post-election: 4D 3R 2ONL

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APPENDIX C:

Photographs of the Fort Trumbull Neighborhood

Fort Trumbull

View of the Water from Fort Trumbull

Suzette Kelo's Little Pink House

Land Adjacent to Kelo's House

Graffiti Supporting Kelo and the Institute for Justice in Fort Trumbull

Land Cleared for Development in Fort Trumbull

Pfizer Global Research Facility