



This Land Is My Land

By U.S. Sen. John Cornyn

Texas is growing and our housing market is strong. The value of housing is rising. New home construction is growing rapidly in many areas.

Encouraging home ownership has been a national priority for decades, for good reason: Nothing better symbolizes achievement of the American dream than owning your own home. It provides economic security, peace of mind and the assurance that you will be able to pass to your heirs something of value.

So imagine this: One day the long arm of the government reaches out and makes a grab for your home – not for a road or a fire station, but for a new shopping center or a manufacturing plant.

The reality of that danger was underscored by a U.S. Supreme Court decision handed down a year ago in the case of *Kelo v. City of New London*.

Disregarding the Constitution's specific protection of private property, the high court ruled that your home, business or family farm – any private property – may be seized by the government not just for public use, but for the benefit of another private entity, such as a real estate developer. The purpose of this could be to generate more tax revenue for government, or even to make the area look more attractive.

The City of New London, Conn. condemned the home of Susette Kelo and 114 other residential and commercial lots to carry out its economic development plan. The plan included a new hotel and conference center to help attract a drug manufacturing plant to the area. Homeowners protested, but the high court agreed with the city.

Our country was founded on a respect for private property. It's troubling to realize that right stands on such shaky ground.

A silver lining has already appeared. The decision sparked a new awareness about abuse of eminent domain – the government's ability to take private property without the owner's consent in particular cases. *Kelo* didn't create the abuse, but it certainly put a spotlight on it across the country, and since the case there's been a major outcry.

The critics have a strong legal argument. The Fifth Amendment makes clear that "private property" shall not "be taken for public use without just compensation." The same amendment provides protection against abusive eminent domain by only permitting the government to seize private property for "public use."

In my view, *Kelo* veered far off course, allowing

property to be taken far outside the limits envisioned by our founding fathers. The Institute for Justice has identified more than 10,000 properties either seized or threatened with condemnation for purposes of private development in a recent five-year period. If anything, *Kelo* encouraged that practice.

But other parts of the government are taking action to bring balance to the practice of eminent domain.

The Texas Legislature last year approved a measure that protects property from being seized for purposes of economic development. The Texas Senate this summer is studying proposals for additional protection for private property owners.

President Bush last month signed an executive order preventing taking of private property by the federal government "merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken."

I've introduced a bill, *The Protection of Homes, Small Businesses and Private Property Act* (S. 1313) to ensure the power of eminent domain is used only for true public uses, as guaranteed by the Fifth Amendment. Under my proposed legislation, the government could not seize property simply for private economic development.

As we work to protect private property rights, I'm well aware we must be cautious. There is no question that, where appropriate, eminent domain can play a positive role in society, through true public use of property.

But no American, rich or poor, should have to live under the constant threat of a questionable taking of his property by the government. The protections of the Fifth Amendment represent some of the most fundamental principles conceived by our nation's Founders, and we must take all necessary actions to preserve them.

Sen. Cornyn is a member of the following Senate Committees: Armed Services, Judiciary, Budget, Small Business and Entrepreneurship, and Joint Economic. He is the chairman of the subcommittees on Immigration, Border Security and Citizenship and Emerging Threats and Capabilities. Cornyn served previously as Texas Attorney General, Texas Supreme Court Justice and Bexar County District Judge.

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