Commentary from
Congressman Joe Pitts
Sixteenth Congressional District of Pennsylvania
221 Cannon House Office Building, Washington DC 20515 202 225-2411 www.house.gov/pitts Derek Karchner, Communications Director

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Life, Liberty, and the Pursuit of the "Public Benefit"?

By Congressman Joe Pitts

For many outside Washington, debates and battles over court cases and judicial appointments often seem unimportant, conducted at the expense of other priorities that affect American families. Decisions made by the Court, however, reach every corner of the country and touch on nearly every issue facing the nation. A recent decision Supreme Court ruling proves this point.

In 1998, Pfizer, the pharmaceutical maker, announced plans to construct a $270 million research facility in New London, Connecticut, along the Thames River. The company purchased the land from the State for $10 million. The land sits adjacent to the historic Fort Trumbull neighborhood settled by Italian immigrants more than a century ago. Pfizer completed the plant in 2001.

In January 2000, the City of New London hired the New London Development Corporation (NLDC) to carry out its "Municipal Development Plan," which proposed to seize homes in the 90-acre Fort Trumbull neighborhood to build a hotel, office space, high-end housing, and other development projects to supplement the Pfizer plant. The Council asked the NLDC to exercise the City's eminent domain power – the authority to take private property for public use – to clear out the neighborhood to make room for the new buildings.

On November 29, 2000, the day before Thanksgiving, the NLDC posted eviction notices on the doors of Fort Trumbull residents. Today, fifteen homes and a small group of families, some of whom have lived there for more than a century, are all that is left of a neighborhood that once teemed with families and small businesses.

In the case *Kelo v. City of New London,* the Supreme Court ruled that the NLDC, acting on behalf of the City of New London, may seize the remaining homes. The Court agreed with the City that its economic development plan would result in higher tax revenue for the government and yield general economic benefits for the area.

At issue in the case was the meaning of a clause of the Constitution called the "takings clause" found in the Fifth Amendment. The same Amendment that

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offers protection against self-incrimination ("I plead the Fifth") and guarantees due process of law states that private property shall not be "taken for public use, without just compensation."

Historically, "public use" meant highways, roads, train tracks, military bases, schools, fire houses, and so on. Things that the public would use. However over the last fifty years the Court has granted elected legislatures more leeway in seizing private property, even when it means forcing a property owner to sell his property to another private entity who, in the government's view, would use it in a more publicly beneficial way (i.e. pay more taxes). So, this case seems to explicitly expand the term "public use" to mean "public benefit" as well.

The case raises concerns for an area like ours facing the tension associated with rapid development, the demand for more housing, and the need for tax revenue. These issues should not be viewed lightly, nor should the views of those who actually wrote the Constitution.

The right to hold property was viewed by our Founders as essential to our understanding of government and a bedrock element of American liberty. John Adams went so far as to say, "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

Property was a sphere of sovereignty – and a right granted by God himself – that gave its owner a place to raise a family, make a living, and defend him or herself from tyrants. It encouraged civic engagement, wealth creation, and community ownership. It discouraged central planning and abuse of power.

The government's ability to seize property for public uses was viewed, therefore, with an eye towards limiting that power where possible while balancing the need for public works projects and infrastructure improvement. Over the years, local and state governments have employed it to accommodate new development in suburban areas and economic renewal projects in urban neighborhoods.

The question is whether this ruling goes too far, whether it crosses a bright line the Founders were gravely, and correctly, concerned about crossing.

Because the definition of "public use" now includes the idea that government can choose which property owner would utilize the property in the most publicly beneficial way, I am concerned about how the ruling affects homeowners, churches, non-profit organizations, and other community groups.

Surely, a large corporation or developer would generate more tax revenue than these types of owners. If a company wanted to challenge their presence or push them off the land, this decision allows them to make the case that they are entitled to the land because they will pay more taxes and create jobs. Both are public benefits, but at what cost?

This impact of this decision will be watched closely. Local and state governments make day-to-day decisions about eminent domain, but their

choices, regardless of intent, do not trump the individual's Constitutional protection from unjust seizures of property. Central planning was never intended to trump private property rights.

If this decision emboldens those who would stamp out property rights in the name of economic development or higher tax revenue, we should all be concerned.

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