Thoughts From . . .

CAPITOL HILL

By Congressman Rodney Alexander

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The Assault On Private Property Rights

WASHINGTON, D.C. --From time to time, the federal government can still leave me scratching my head thinking "how can this be?" I am particularly perplexed this week by two property-rights issues which, when taken together, reveal a disregard--if not hostility--for fundamental American rights.

The first example is a recent U.S. Supreme Court decision of Kelo v. City of New London. The Court's holding, broad and unprecedented, directly involves the "takings" clause of the Fifth Amendment to the Constitution. This power, commonly referred to as the power of Eminent Domain, is one which allows government to seize private property for some purportedly "public use" provided there is "just compensation." Typically, government has exercised this power for such public purposes as the building of public roads, bridges, parks, a public utility or some other such purpose so that the seized property is used in a manner that is generally and tangibly beneficial to all. However, in this case the U.S. Supreme Court, in a 5-4 decision, held that the City of New London could take private property (one of the seized and evicted property owners was born in her home and has lived there since 1918) to promote economic development and generate greater tax revenue. In short, the City could seize private property to use for a revitalization project designed to benefit a private corporation's re-development plans--anchored by a $300 million Pfizer research facility in the city.

In a scathing dissent, Justice Sandra Day O' Connor criticized the idea of public bodies seizing private land in this fashion and predicted "the beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." Justice O' Connor also lamented that as a result of the ruling "the specter of condemnation hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any house with a shopping mall, or any farm with a factory." Justice Clarence Thomas, who called the decision "far-reaching and dangerous," also dissented, adding "[a]llowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities."

The second recent degradation of private property rights involves the Army Corps of Engineers. There is a federal law, the Rivers and Harbors Act, passed in 1899, which for approximately 100 years was interpreted to limit the harvesting of timber in truly navigable waterways. Recently, however, the Corps has begun to interpret Section 10 of the Act to prohibit private property

owners from harvesting cypress timber in "wetland" forests saying that logging is an impediment to navigation. However, the logging practices the Corps seeks to prohibit often occur miles away from any navigable waters--and in areas that during most of the year are dry enough for normal forestry activities. Private landowners simply seek to be allowed to do their cypress logging on those wetlands where trees can be and are regenerated. However, the Corps, based upon an interpretation I find to be misguided and disingenuous, is using this arcane federal rule as a tool to prevent logging in all wetlands, not just where reasonable navigation could occur. In short, the Corps is regulating logging activity miles off of the banks of navigable waterways. This action by the Corps is interrupting economic development efforts and hurting private landowners and loggers by diminishing timber value and disrupting forestry activities.

This Supreme Court decision and the activities of the Corps of Engineers are two clear examples of government and regulation gone awry. The Supreme Court decision contains no real limiting principle: government can now theoretically seize private property for any reason at all. The Corps of Engineers is also unrestrained: virtually any puddle of water on private property can now be deemed a "navigable" waterway. These perverse and tortured interpretations of property rights are not, I would respectfully submit, what the Founders intended; private property ownership and succession were sacrosanct to the Framers of our constitution and only to be subordinated to a genuine public interest; not because a city, such as New London, decided that it wanted the substantially larger tax base that would come from new private facilities and more affluent residents; and not because the Corps chooses to give an extremely broad interpretation to an otherwise straight-forward statute.

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