Don't Take My Property!

by Phyllis Schlafly Oct. 13, 2004

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The American Dream is to start a small business and develop it through years of hard work and investment. Millions of small businesses form the backbone of our economy, annually creating 60 to 80 percent of all new jobs.

Location is the key to most businesses, and the entrepreneurs typically build their reputation at a particular spot. But lately, many have been greeted by a surprise message from City Hall: their town is taking their property for the benefit of someone else.

A lifetime of effort is suddenly snuffed out by the arbitrary decision of a few councilmen or unelected city planners. The business owner can claim only an appraised value for the hollow building and land that he actually owns, and he receives $0 for the good will and revenue stream from customers he has nourished over the years. A business leasing its property usually receives no compensation, and the employees get nothing.

Citizen outrage about these intrusions into private enterprise has reached the Supreme Court, which just announced it will address this controversy. It has been 50 years since the high Court has issued a major ruling in this area, and much mischief has happened in the meantime.

U.S. and state constitutions recognize the power of eminent domain but prohibit governments from taking property unless for a "public use," which traditionally meant building a public facility. The rationale was that some properties are essential to public functions, such as roads or even a city hospital, and there must be some way to deal with owners who refuse to sell.

But activist judges have redefined "public use" to mean almost anything, including unproven claims of economic benefit to the community. Increasingly, local politicians are ignoring constitutional limits.

Towns are seizing properties from small businesses to hand over to big businesses for private development. A small business that has existed successfully on a street corner for 40 years can be taken and replaced by a big shopping mall or office building that might end up in a massive bankruptcy a few years later.

The sharp increase in these "takings" of private property from one business to give to another is often traced to the infamous "Poletown" decision by the Michigan Supreme Court in 1981. That ruling authorized the demolition of hundreds of businesses, more than 1,000 homes, and even several churches in a Polish community near Detroit in order to build a new General Motors plant there.

Many states now have thousands of businesses under the threat of having their properties confiscated by local government, typically for the benefit of large corporations. This deters investment and subjects millions of workers to the risk that a bureaucrat may force them out of their jobs.

In some cases, a town even announces a massive plan to seize properties for development long before it could become a reality. That depresses property values, scares away improvements, and lowers the appraised value, thereby reducing the price the town eventually pays.

Good news arrived in July when the Michigan Supreme Court unanimously repudiated its own Poletown decision and held in favor of property owners. Siding with Edward Hathcock against the County of Wayne, the court declared its prior ruling against private property to be a "radical departure from fundamental constitutional principles."

But that "radical departure" lives on in other states, and even the new Michigan decision continues to allow takings of so-called "blighted" property. It's not too hard for a town to hang the "blighted" label on almost any property it wants to seize for a lucrative development project.

In the densely populated Northeast, outrage over threatened seizure of property has boiled over in local elections. In the Democratic township of Franklin, New Jersey, a powerful incumbent mayor was upset last November by a Republican challenger who opposed a planned use of eminent domain.

Elderly homeowners are just as angry as businessmen. Costco or Home Depot may look at a group of modest attached houses and dream of a parking lot, but the residents see their lifetime of memories.

Often the projects are financed on the backs of the same taxpayers fighting to oppose them. Development bonds are guaranteed at public expense, with the ultimate benefits going to the large corporations that flatten the area for a megastore to sell goods made in China.

In March, a 4-to-3 decision by the Connecticut Supreme Court authorized the town of New London to take the properties of Susette Kelo and many others for a private development by the wealthy pharmaceutical corporation Pfizer. Manufacturing Viagra surely is not the "public use" that our Founders had in mind when they wrote eminent domain into the Constitution.

President Bush has an excellent opportunity to win the support of small business in the coming election. He should announce that his Administration will defend private property before the Supreme Court this fall.