Conservatives on the March for Private Property

by Phyllis Schlafly October 4, 2006

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Grassroots conservatives are again asserting themselves forcefully and effectively against governmental impudence. Having defeated the Harriet Miers Supreme Court nomination and the Dubai Ports sellout, conservatives are now flexing their muscles against supremacist judges and money-grasping public officials.

It is remarkable how the 2005 Supreme Court's 5-4 decision in Kelo v. City of New London has riled normally apathetic American people and motivated them into asserting people power over the twin powers of government and money. Thirty state legislatures have passed laws or constitutional amendments to limit the effect of the Kelo ruling and provide protection against abusive takings of private property for other private purposes.

In addition, eleven states will have ballot measures this year to protect private property rights. The issue carries double-barrelled clout because the voters are both repudiating government takings of private property AND repudiating the favorite liberal goal of increasing the flow of tax money into government's clutches.

These slaps at local public officials and increased taxes also include a reprimand of the Supreme Court in the Kelo case, which has endangered the ownership of every

home, business, church and farm. The Supremes thought they could evolve the U.S. Constitution's words "public use" (which would include a highway or a public building) into the words "public purpose" (defined to include transferring private property of lower-income people to higher-income people who will pay higher taxes, and just about anything that comes under a redevelopment plan).

Taking private property in order to get more money into government is not authorized by the U.S. Constitution or any statute. Justice Thomas wrote in dissent in the Kelo case: "Something has gone seriously awry with this Court's interpretation of the Constitution."

The justices only get away with this sort of decision because law schools have propagated the myth that whatever the Supreme Court says is the law of the land. The issue for the American people is: are we a nation of self-government, or are we going to submit to rule by black-robed judges?

Since the Kelo decision, more than 5,700 private properties have been threatened by or taken over by this power of eminent domain, a tremendous increase over the preceding five years. The Kelo decision made local officials and developers bolder and bolder in the taking of private property.

We don't expect the Supreme Court always to defer to the legislative process. We do expect the Court to implement the text of the Constitution as written, and that means defending our constitutional right to private property even when that requires knocking down a legislative action.

Even some judges are getting the message. On July 26, 2006 the Ohio Supreme Court handed down a stunning unanimous decision against a $125 million development project in a suburb of Cincinnati. This case, City of Norwood v Horney, illustrates how abusive eminent domain takings are motivated by local governments seeking new sources of revenue.

The City of Norwood had hoped to get $2 million a year in new taxes from the new property owners. The developer had already bulldozed every house on the site except three, including Joy Gamble's home where she had lived in for 35 years, raised her children, and hoped to remain for the rest of her life.

When the mayor of Norwood heard that the homeowners had won in the Ohio Supreme Court, he predicted that the city would run out of money by October, and it might actually have to lay off a government worker.

But the Ohio Supreme Court concluded that "economic benefits alone," such as increased taxes, do not justify a taking of private property. The court stated that "Ohio has always considered the right of property to be a fundamental right," and that property rights are "Believed to be derived fundamentally from a higher authority and natural law . . ."

However, state legislation is needed in most states to prevent government from ruining private property while a dispute is going on. By the time Joy Gamble won her appeal, she had been barred from her property for a year and a half during which time the utilities were disconnected and the property vandalized and looted.

State legislatures should be alert to draft their new laws against governmental takings to make clear that condemning authorities may not take possession of property until appeals are exhausted and the property is paid for, and that blight is defined as a danger to public health and safety (not mere underutilization or diversity of ownership).

The Ohio Supreme Court's decision underscores the fact that the U.S. Supreme Court is not infallible and we have every right to criticize and work to overturn wrong decisions made by supremacist judges who think they can rewrite the U.S. Constitution.