

### **Protecting Private Property Rights**

The house had been in Mrs. Dery's family for over a century and its sentimental value to her would be difficult to overestimate. She was born in the house in 1918 and when she married in her late twenties, she and her husband decided to live in the family home and raise their own family. Years later, when their son was married, he and his wife moved in next door.

All appeared to be well but trouble was on the horizon. The town where the Dery family lived had suffered from an economic downturn in recent years so local government officials decided something must be done to increase the city's economic vitality. They turned this job over to an unelected group to come up with a plan. This group developed an ambitious scheme that involved building a new hotel, new restaurants, a marina and a new residential neighborhood. However, the crowning jewel of the plan involved bringing in a large pharmaceutical company to build a \$300 million dollar facility in the redevelopment area.

But not everyone agreed with the new plan. Some local homeowners, including the aged Mr. and Mrs. Dery, decided they'd rather stay in their home near the ocean and refused to sell their land. In response, the group who had come up with the redevelopment plan took action. Even though they were not elected, they had been entrusted by the town officials with the tool called eminent domain, the power to take the land of private citizens. The court agreed that they must move and that their house would be torn down.

Perhaps at this point you are wondering where such a thing could happen. Could it happen in America? Doesn't the 5<sup>th</sup> Amendment to the U.S. Constitution say that private property can't be taken by the government unless it is for a "public use"? Surely private property can't be taken just because a new use of the property would create some jobs or raise tax revenue for the city.

Unfortunately, the information above comes from a ruling last month by the U.S. Supreme Court where by one vote, the Court issued a far-reaching decision upholding the power of a town in Connecticut to take the Dery's land. The implications of the decision are sobering. The Court broadly interpreted the 5<sup>th</sup> Amendment to mean that a "public use" can actually include taking the land of one private citizen (like the Derys) and giving it to another private party (like Pfizer Co.).

Most Americans recognize that there are times when the government must exercise the power of eminent domain when one particular land owner refuses to sell their property and stalls an important public project like a highway, a hospital, or a military base. But, as the four dissenting judges led by Justice O'Connor correctly point out, this ruling means that no home or other private property is safe. "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

There is one silver lining to the Court's decision. They point out that the individual States are free to write their laws in such a way to protect individual property rights more aggressively than does their interpretation of the U.S. Constitution.

This is an issue that will be squarely addressed by the Missouri Senate next session. Private property rights are at the very foundation of our nation's freedoms. The power of eminent domain, like any other governmental power, must be exercised carefully and rarely. We will be reviewing Missouri's laws to make sure that property rights are protected.

If you have comments or questions about this week's column or any other matter involving state government, please do not hesitate to contact me. You can reach my office by e-mail at [matt\\_bartle@senate.state.mo.us](mailto:matt_bartle@senate.state.mo.us) or by phone at (888) 711-9278.

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