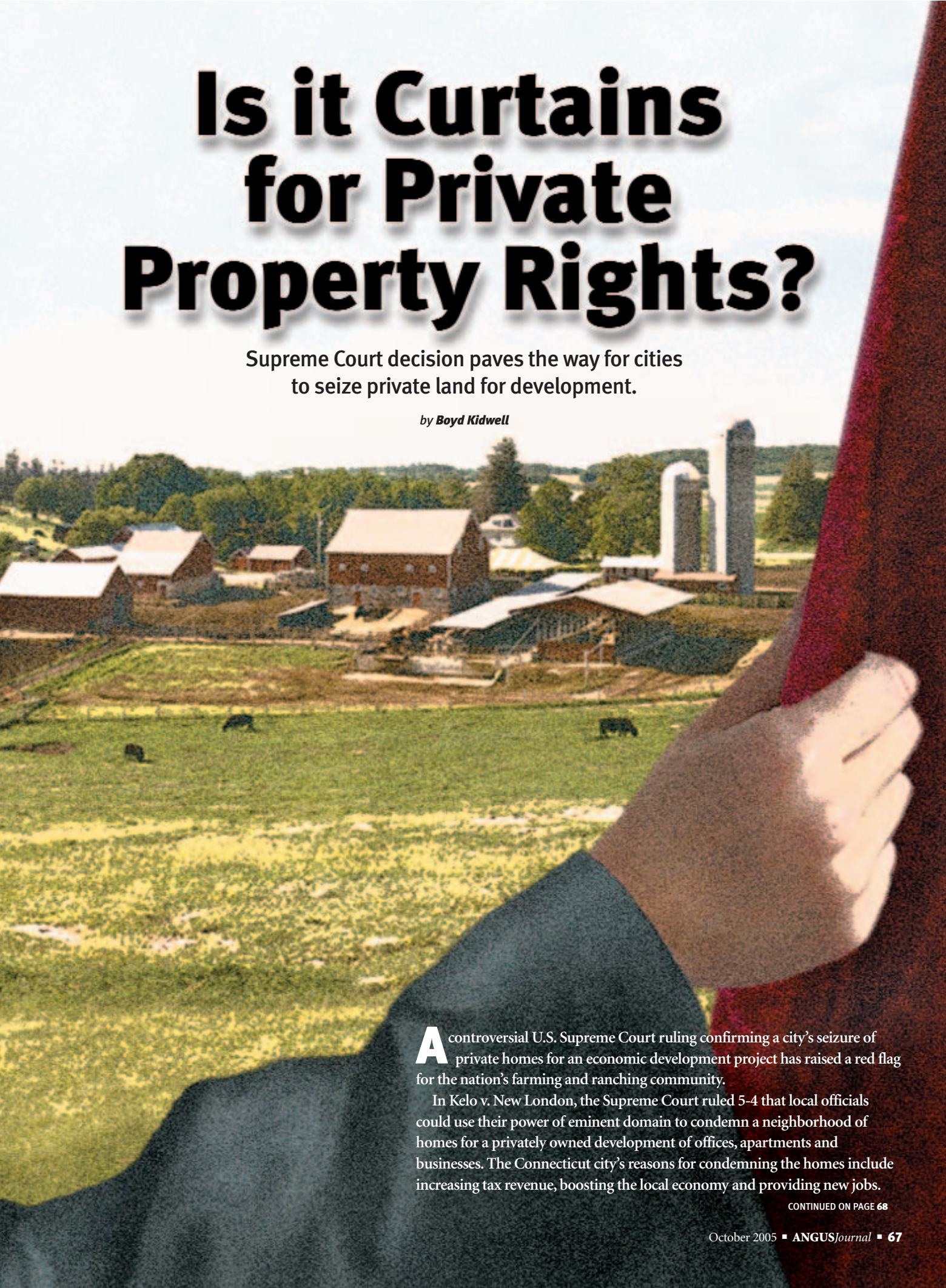


Is it Curtains for Private Property Rights?

Supreme Court decision paves the way for cities to seize private land for development.

by *Boyd Kidwell*

A hand in a dark suit sleeve is pulling a thick red curtain from the right side of the frame. Behind the curtain, a rural farm scene is visible, featuring several wooden barns, a large white silo, and a green field with a few cows grazing. The background shows rolling green hills under a clear sky.

A controversial U.S. Supreme Court ruling confirming a city's seizure of private homes for an economic development project has raised a red flag for the nation's farming and ranching community.

In *Kelo v. New London*, the Supreme Court ruled 5-4 that local officials could use their power of eminent domain to condemn a neighborhood of homes for a privately owned development of offices, apartments and businesses. The Connecticut city's reasons for condemning the homes include increasing tax revenue, boosting the local economy and providing new jobs.

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The Supreme Court's endorsement of condemning private property for business development stunned agricultural leaders.

"This decision makes it possible for local governments across the country to decide they'd rather have a Wal-Mart than a farm or ranch," says Preston Wright, a cattle rancher from Elko, Nev. Wright is also a member of the Public Lands Council (PLC), which is affiliated with the National Cattlemen's Beef Association (NCBA).

"It's one thing for municipalities to take private land to build infrastructure, such as roads and schools, for public use. But it's another thing to take land from one private entity and give it to another private entity for a business development," Wright concludes.

American Farm Bureau Federation (AFBF) President Bob Stallman, a Texas family rancher, issued a scathing statement

on the Supreme Court decision.

"Apparently no one's home, or farm or ranchland, is safe from government seizure because of this ruling," Stallman says. "The American Farm Bureau Federation has preservation of private property rights as a major policy position. Farm Bureau members and staff will assess the full impact of this ruling to local communities and work in the legislative arena to determine what can be done to limit the effect of the ruling."

Fighting for the farm

Even before this ruling, farmers and ranchers had serious problems with urban sprawl and eminent domain condemnations. This Supreme Court decision gives local politicians free rein to condemn land for just about any reason, Stallman says. The AFBF, 18 state Farm Bureaus and one county Farm

Bureau filed friend-of-the court briefs on the side of the homeowners in the Connecticut case.

On the winning side, the National League of Cities (NLC) hailed the Supreme Court decision because it affirms a city's use of eminent domain to promote economic development. To urban politicians, this tool is vital for redeveloping blighted areas while creating jobs and boosting tax revenue.

While urban development is usually directed at crime-ridden slums, the Connecticut case involved a well-kept, working-class neighborhood that happens to have a beautiful waterfront view. The property owners turned down offers from the developers because they simply wanted to continue living in their family homes. In some cases, the families have owned the homes for nearly a century. And, the city

What to do

It didn't take long for local governments and developers to capitalize on the *Kelo v. New London* ruling. Within days of the U.S. Supreme Court decision, local officials in Texas and Missouri moved forward with private property condemnations for development projects.

Preston Wright is a Nevada rancher and a member of the Public Lands Council (PLC), which is affiliated with the National Cattlemen's Beef Association (NCBA). As a result of the Supreme Court decision in *Kelo v. New London*, the PLC is stepping up its fight for private property rights, Wright says.

The council is supporting two bills in Congress that bar the federal government from condemning property for private development. The bills also limit the availability of federal funds for state governments to use in condemning private property for economic development. Of course, local governments are working just as hard to encourage politicians to keep eminent domain available as a tool for economic development.

Virginia Farm Bureau Federation (VFBF) was one of the 18 state organizations that supported the *Kelo* position. VFBF is also working closely with its state legislature to solve eminent domain issues.

Two bills were passed in recent sessions of the Virginia legislature. A right-of-entry bill entitles landowners to be notified before an entity enters their property to make tests and surveys. In the past, VFBF received complaints from landowners that work crews had driven across their properties and had placed survey stakes without prior notification.

"The *Kelo* case has raised the issue of eminent domain, and people are now much more aware.

Farmers are more often affected by eminent domain since their

operations usually cover many acres," says Susan Rubin of VFBF.

The news generated by this decision has placed the issue of private property rights in the spotlight nationwide. Several states are considering legislation that prohibits cities from using eminent domain for development projects. In response to concerns from property owners, the Utah legislature passed a law in February that bans the use of eminent domain to promote economic development. Utah is also the only state with a property rights ombudsman. Utah Private Property Ombudsman Craig Call works with property owners to solve local land use disagreements.

"In Utah, we feel that if property owners have complaints about government actions, they shouldn't have to hire lawyers and go to court," Call explains. "There has been a lot of buzz about the *Kelo* case in this state. In the long run, this decision may encourage legislatures to pass new restrictions on the use of eminent domain by cities across the nation."



made no effort to argue that the Kelo neighborhood was blighted.

In fairness to the city, the property owners were offered compensation for their property. New London has also suffered from job losses due to the closing of a military facility, and the city is eager to increase its economic activity.

However, Wright sees this use of eminent domain as a form of discrimination by well-connected businessmen and politicians against private property owners of modest means who can't afford long legal fights against condemnation proceedings.

"My concern is that out West we have lands with high wildlife values. Well-connected wealthy individuals could use this decision as a tool to take control of exceptional lands that people don't want to sell," Wright says.

Dissenting opinions

Former Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas joined outgoing Supreme Court Justice Sandra Day O'Connor in dissent on the decision. Justice O'Connor stated her legal opinion this way: "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded — given to an owner who will use it in a way that the legislature deems more beneficial to the public — in the process."

Justice Thomas filed a separate dissenting opinion to say that seizing homes for private development, even with compensation, is unconstitutional.

"The consequences of today's decision are not difficult to predict and promise to be harmful," Thomas wrote. "So-called urban renewal programs provide some compensation for the properties they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted."

However, the majority of the Supreme Court justices agreed that promoting economic development is a traditional function of government and that local officials should be able to formulate development plans that benefit their communities.

The majority opinion also cited several previous court cases that affirmed the rights of governments to take property from individual owners and to use it for community development projects.

Justice O'Connor remained steadfast in her dissent. "The fallout from this decision

will not be random," O'Connor wrote. "The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."

This is exactly what Wright and many other private property owners are concerned about: As cities and towns continue to gobble up land on their outskirts, *Kelo v. New London* could become a device for acquiring land that private owners won't sell.

"This is very alarming. As Sandra Day

O'Connor said, this decision gives wealthy private entities more power over the rest of us," Wright says.

In a final slap in the face, the New London economic development corporation charged the homeowners rent for the months they lived in their homes during the court battle. In addition to losing her home, lead plaintiff Susette Kelo received a bill from the development corporation for thousands of dollars in back rent.

