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## Coates' Canons Blog: Kelo Revisited: Eminent Domain for Economic Development in North Carolina

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A New York Times article on Friday covered Pfizer's announcement that it will be leaving New London, Connecticut, the city at the center of the landmark eminent domain case, *Kelo v. City of New London*, 545 U.S. 469 (2005). In *Kelo*, a 5-4 majority of the U.S. Supreme Court decided that the Fifth Amendment of the U.S. Constitution permits the condemnation of private property for the purpose of carrying out a comprehensive economic development plan, even if the condemned property is not blighted. The decision permitted the city to condemn Susette Kelo's New London home to make way for an "urban village" adjacent to Pfizer's property. According to the article, Pfizer asserts that it had no interest in the condemnation case, but the city touted its comprehensive plan in its efforts to lure the company to New London.

The Supreme Court's decision proved to be unpopular. In response, a number of states enacted amendments to their state constitutions to restrict or prohibit the exercise of eminent domain for economic development, except to eliminate blight. A similar amendment was proposed in North Carolina during the 2009 session of the General Assembly (House Bill 1268), but it did not make it out of the House. Bills containing constitutional amendments are eligible for consideration in the upcoming short session, so the proposed amendment could be put forward again in 2010.

If North Carolina were to enact such an amendment, would it result in any changes to current eminent domain practices? Not really. That's because the General Assembly already addressed this issue in 2006 when it enacted Session Law 2006-224 to clarify the extent of eminent domain authority of North Carolina local governments. Some of the act's modifications seemed directed at the result in *Kelo*; namely, the act modified North Carolina's Urban Redevelopment Law so that eminent domain could be exercised in a redevelopment area only on a "blighted parcel" as defined by G.S. 160A-503(2a).

Accordingly, North Carolina local governments have no current authority to exercise eminent domain to the extent seen in *Kelo*. They are simply not permitted to condemn private property for economic development purposes, except in the case of a parcel found to be blighted. The limits of this authority are no broader than the limits imposed by many states in reaction to *Kelo*, so such amendments would have no effect on current North Carolina law.

So what would be the effect of passing a similar constitutional amendment in North Carolina?

In its present form, North Carolina's constitution does not *prohibit* a broader exercise of eminent domain authority, such as that employed by North Carolina local governments before 2006. Prior to the 2006 modifications, eminent domain could be exercised in a "blighted area," which is a slightly broader term than "blighted parcel." The broader scope, while not as expansive as the exercise seen in *Kelo*, permitted condemnation of unblighted parcels alongside blighted ones in limited circumstances. The North Carolina Court of Appeals upheld that broader exercise of the eminent domain power, even for unblighted parcels, in *Redevelopment Com'n of Greensboro v. Johnson*, 129 N.C. App. 630 (1998). The General Assembly could therefore restore that earlier authority at any time by returning to the earlier form of the law. The proposed constitutional amendment would take that option off the table.

## Links

- [www.nytimes.com/2009/11/13/nyregion/13pfizer.html?\\_r=1&emc=eta1](http://www.nytimes.com/2009/11/13/nyregion/13pfizer.html?_r=1&emc=eta1)
- [www4.law.cornell.edu/supct/html/04-108.ZS.html](http://www4.law.cornell.edu/supct/html/04-108.ZS.html)
- [www.law.cornell.edu/constitution/constitution.billofrights.html](http://www.law.cornell.edu/constitution/constitution.billofrights.html)
- [www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2009&BillID=h+1268](http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2009&BillID=h+1268)



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- [www.ncga.state.nc.us/Sessions/2005/Bills/House/PDF/H1965v6.pdf](http://www.ncga.state.nc.us/Sessions/2005/Bills/House/PDF/H1965v6.pdf)
  - [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_160A/Article\\_22.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_22.html)
  - [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-503.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-503.html)