

Testimony of
The Honorable Eddie A. Perez

Mayor
Representing the National League of Cities
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Written Testimony of

The Honorable Eddie A. Perez,
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On behalf of the National League of Cities

Before the Senate Judiciary Committee

On

"The Kelo Decision: Investigating Takings of Homes and Other Private Property"
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Good morning, Mr. Chairman, and members of the Committee. I am Mayor Eddie A. Perez of Hartford, Connecticut, and I am testifying this morning on behalf of the National League of Cities ("NLC").

NLC is the country's largest and oldest organization serving municipal government, with more than 1,800 direct member cities and 49 state municipal leagues, which collectively represents more than 18,000 United States communities. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance, and to serve as a national resource and advocate for the municipal governments it represents.

NLC appreciates the opportunity to present a municipal perspective on the Supreme Court's decision in *Kelo v. City of New London*. Since the Court issued its decision last June, the frenzied rhetoric and mis-information about the use of eminent domain for economic development purposes has been overwhelming and disappointing. To paraphrase Will Rogers, one of the early Twentieth Century's best political commentators, if all I knew about the Kelo decision was what I read in the newspapers, then even I would be worried that my hometown of Hartford would bulldoze my house.

Once we get past the hype, two important points stand out. First, eminent domain is a powerful economic development tool used sparingly that helps cities create jobs, grow business and strengthen neighborhoods. No locally-elected official whom I know would use eminent domain to undermine the integrity of or confidence in homeownership in his or her community. For urban America and communities of color, in particular, homeownership is the ticket to the American Dream. Second, if Congress were to pass legislation to hamstring state and local governments from using eminent domain, in some of our poorest communities I believe that we would have fewer people becoming homeowners, which means fewer participants in the Administration's concept of an "ownership society."

The Supreme Court's decision opened rather than settled the debate on the use of eminent domain for economic development purposes. It touched a raw nerve for most people about the boundaries between property rights of individuals and the authority of government. From the resulting fury, however, the Court's opinion creates opportunities like this morning's hearing for municipalities to contribute to a necessary national discussion about eminent domain.

I. The Kelo Decision Does Not Expand Municipal Power

The rumored death of private property rights is greatly exaggerated. The Kelo decision does not expand the use or powers of eminent domain by states or municipalities. Nor does the Court's decision overturn existing restrictions imposed at the state or local levels. The Kelo decision, as applied to the specific set of facts in New London, simply reaffirmed years of precedent that economic development is a "public use" under the Takings Clause. The Takings Clause, moreover, retains its constitutional requirement that property owners receive just compensation for their property.

Some legal scholars argue that the Kelo Court actually narrowed the eminent domain power. The majority opinion and concurrence by Justice Kennedy outline that eminent domain should only be exercised to implement a comprehensive plan for community redevelopment (1) based on wide public consultation and input, (2) that contains identifiable public benefits, (3) with reasonable promise of results that meet an evident public need, captured in a contract like a development agreement, and (4) with the approval of the highest political authority in the jurisdiction.

Hartford has pursued a model of public development based on transparency, community consensus building and true public benefit. As a result, we have used eminent domain as a last resort on six projects in the past 30 years. However, without the unambiguous authority to take land for a public purpose, the City would have had school, housing and development projects that cost hundreds of millions of dollars stalled or completed over budget.

The Kelo decision affirmed that eminent domain, a power derived from state law, is one best governed by the states and their political subdivisions. The Kelo Court affirmed federalism and the Tenth Amendment. Its opinion does not preclude "any State from placing further restrictions" on the exercise of eminent domain." Since the opinion's release, state after state - including Connecticut - have taken the Court at its word. Many state legislators have begun, or will begin during upcoming legislative sessions to examine their laws governing the use of eminent domain through proposed bills and study commissions. Regardless of the individual state outcomes, the Court correctly concluded that eminent domain is not a one-size-fits-all power, and that states are better suited than Congress to govern its use.

Hartford's use of eminent domain in the past has underscored the City's appreciation for those individuals affected so that the Hartford community can prosper. Frequently, these individuals are not only compensated for their property at prices well above market value, but receive significant and lengthy additional government funding for their relocation.

Recognizing that owner-occupied homes are more than just an investment for homeowners, I would advocate that governments that do not already do so explore ways to provide additional compensation to homeowners beyond "fair market" value where eminent domain is used for economic development.

II. Post-Kelo Caution with Eminent Domain Increases Among Cities

Cities, which generally use eminent domain as a last resort because of its significant cost in financial, political, and human terms, are now under an even brighter spotlight when it comes to the use of eminent domain.

In today's post-Kelo environment, there will be increased public pressure to prevent the use of eminent domain and more public scrutiny applied to municipal decisions to insure that its use occurs sparingly and only after exhausting all other options.

However, the availability of eminent domain to the City of Hartford has facilitated great economic and community growth. Projects such as Adriaen's Landing, a \$500 million mixed use development including a convention center, hotel, condominiums and retail, and The Learning Corridor, a \$120 million, 16 acre complex of magnet schools developed by a non-profit developer in one of Hartford's poorest neighborhoods, would not have been possible without the City having eminent domain available as a development tool. These projects are pillars in our efforts to revitalize the City. These projects have created thousands of construction and permanent jobs. They have attracted new business, increased home values, and sparked millions of dollars in new private investment ranging from first-time homebuyers to large financial services companies. Their effect on the Hartford economy and the overall quality of life for our citizens is tremendous.

In addition to the economic value that these two projects create, it is important to consider both the short and long-term social implications of having these facilities and services available to Hartford citizens and the region as a whole. As Hartford continues to grow and become one of New England's most vibrant cities, the need for attracting new businesses is larger now than ever. Adriaen's Landing and The Learning Corridor will help foster a growing desire of businesses throughout the region to locate their headquarters in Hartford. The social and educational benefits of these projects will also provide a continuously more educated and more attractive work force for businesses looking to relocate in the region. It is also important to consider the increase in potential homeownership gained through projects such as these. By creating economic growth, these development projects provide the City with the increased capital it needs to continue providing affordable homeownership opportunities for Hartford residents. The power of eminent domain helped bring these projects to life.

The Kelo decision did not condone eminent domain abuse. "There may be private transfers in which the risk of undetected impermissible favoritism of private parties is so acute that a presumption of invalidity is warranted under the Public Use Clause," wrote Justice Kennedy in his concurrence. Let me remind the Committee that neither the majority nor dissent in any court found that the City of New London engaged in any illegal or improper action involving eminent domain for economic development. The U.S. Supreme Court wrote "the trial judge and all members of the Supreme Court of Connecticut agreed that there was no evidence of an

illegitimate purpose in this case...promoting economic development is a traditional and long-accepted function of government."

There is a way for citizens that are particularly upset with the use of eminent domain to voice their discontent. Hartford residents vote policy makers into office. If there is a concern over a certain policy, the remedy for citizens is to make their opinions heard not only through civic involvement and awareness, but also through the ballot box.

III. The Kelo Decision Highlights the Natural Tension Public Officials Confront Daily between Individual Rights and Community Needs

The anxiety people feel about eminent domain is real. Historical examples of governmental abuse to construct the interstate highway system and for urban renewal make people suspicious about how governments intend to use eminent domain following the Kelo decision. This history imposes a duty on local officials to explain governmental use of eminent domain with greater sensitivity to its personal impact on individuals.

The press has incorrectly reported that the Kelo decision greatly expands local government authority giving city leaders permission to take homes without warning and without adequate compensation. This feeds the public's fears that bulldozers, which allegedly stand at Grandma's gate, engines roaring, are heading next for their homes.

A faulty distinction that places individual property rights in direct opposition to the use of eminent domain has emerged since the Kelo decision. Let me set the record straight with a brief review of the City of Hartford's commitment to homeownership. The City of Hartford has been at the forefront of the movement to increase homeownership in the State of Connecticut. Increasing the number of residents in Hartford who are able to own a home has been a cornerstone of my administration. I have a great concern for the City's homeowners whose opinions are of the utmost importance when discussing any development project in Hartford. The City has continued to take dramatic steps to provide millions of dollars each year to support citizens in their efforts to become homeowners. In the last year alone, the City of Hartford has spent over \$5 million dollars on various initiatives to increase the homeownership rate, providing numerous Hartford residents with their first opportunity to own a home.

Additionally, the Neighborhoods of Hartford Initiative was developed to focus on the needs of each neighborhood and provide continuous support in helping each individual community address the issue of homeownership. From these initiatives and numerous others, there have been more than 1,000 new homeowners in the City of Hartford since 2001. Protecting and advocating for homeownership in Hartford is critical to help provide for the well-being of the Hartford community as a whole.

One of the most important responsibilities of any city government is to provide for the economic and cultural growth of the community while balancing the rights of the individuals that make up that community.

IV. Conclusion

Municipal officials know from experience what the judiciary has affirmed through precedent that economic development is a public use. By subjecting development projects to public debate and by planning these projects with the public welfare in mind, Hartford is able to use eminent domain prudently to allow the City and its citizens to develop the community in a way that is transparent and beneficial for all residents. The limited use of eminent domain for economic projects geared towards the well-being of the community will only increase the potential for more Hartford residents to realize their dream of owning a home.

Legislation that prohibits the use of eminent domain solely to provide for private gain is understandable. Property rights activists, however, cloud the issue for the public by linking the accepted legal principle that economic development is a public use with the inappropriate tactic of taking real property from A and giving it to B, for B's sole, private benefit.

NLC urges a careful examination of the underlying premise of the anti-Kelo bills pending in Congress. NLC also urges Congress generally, and the Senate in particular during its upcoming consideration of the Transportation, Treasury and HUD appropriations bill for fiscal year 2006, not to use the appropriations process to legislate on eminent domain.

Municipal leaders have a responsibility to engage in public conversation about eminent domain that can help dispel inaccuracies and stereotypes.

Property rights activists, on the other hand, need to understand there is a delicate balance between minimizing the burdens on individuals and maximizing benefits to the community.

The art of compromise is essential going forward.

Thank you.