

U.S. Supreme Court Effectively Expands its Controversial 2005 Kelo Decision

By Jeremy S. Young

The U.S. Supreme Court often makes headlines with its decisions, but even in its inaction, the Court can have an impact on the law. Such was the case with *Eychaner v. The City of Chicago*, which the Court declined to hear last term.

Eychaner was a case involving Chicago's taking of land from one private owner in order to give it to another private owner for the stated public purpose of preventing it from possibly becoming a blighted area.

Three of the conservative Justices dissented from the denial of review, criticizing the majority for refusing to review a lower court ruling that expanded the Court's controversial 2005 *Kelo* decision, which famously permitted the taking of private property in order to hand it over to a developer.

In *Kelo*, the City of New London, Connecticut appropriated property for economic development purposes pursuant to an integrated development plan to revitalize the city's economy through the creation of new jobs and increased tax revenue. Approving the City's action, the U.S. Supreme Court interpreted "public use" broadly to mean "public purpose," in order to hold that the taking satisfied the "public use" requirement for the exercise of eminent domain.

The lower court decision in *Eychaner* went a step further than *Kelo*, permitting the taking of land from one private owner to give it to another—not for a **present** public purpose, but merely for a **potential future** public purpose.

Ohio, like many other States, has opted out of the *Kelo* rule through legislation (Ohio Revised Code Section 163.01(H)) and a State Supreme Court decision narrowly interpreting Ohio's Constitution (*Norwood v. Horney*). But in States that have not done so (like Illinois), the lower court decision in *Eychaner* will likely help large corporations and developers with considerable political influence and power. If they can get a local government to exercise eminent domain for them, then the courts may not stop them from taking land away from other, less-connected private property owners, even when the taking does not serve a present public purpose.

Jeremy S. Young

614.723.2030 | jyoung@ralaw.com

Stephen D. Jones

614.723.2005 | sjones@ralaw.com

Stephen Funk

330.849.6602 | sfunk@ralaw.com

Edward L. Filer

312.582.1627 | efiler@ralaw.com

Michael Scotti III

312.582.1605 | msscotti@ralaw.com

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