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Eminent domain is cities' right

High court says property seizure for economic development OK

By HOPE YEN, Associated Press
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WASHINGTON - Ernest Hewett was torn.

Pfizer Inc. had come calling on New London, Conn., in 1997, proposing a new research center that offered the promise of thousands of jobs.

New London's economy was languishing. But the drug maker was seeking a 90-acre development that would uproot dozens of homes in a working-class neighborhood.

"It was the worst decision that I've ever had to make in my life," said Hewett, who served on the city council at the time and now is a state representative. "But I am charged with doing what's best for the 26,000 people that live in New London."

Hewett voted to approve the multimillion-dollar development. Then he braced for the legal challenges. After eight years, he and other officials finally prevailed Thursday in the U.S. Supreme Court.

In a 5-4 ruling, the court said cities have broad power to bulldoze people's homes to make way for shopping malls or other private development to generate tax revenue.

The decision drew a scathing dissent from Justice Sandra Day O'Connor as favoring rich corporations. As a result of the ruling, homeowners will have more limited rights.

Still, legal experts said they did not expect a rush to claim homes.

"The message of the case to cities is yes, you can use eminent domain, but you better be careful and conduct hearings," said Thomas Merrill, a Columbia law professor who specializes in property rights.

The closely watched case was one of six decisions issued Thursday as the court neared the end of its term.

The justices are scheduled to release their final six rulings, including one on the constitutionality of Ten Commandments displays on public property, on Monday.

Justice John Paul Stevens, writing for the majority, said New London could pursue private development under the Fifth Amendment, which allows governments to take private property if the land is for public use. He said the project the city has in mind promises to bring more jobs and revenue.

"Promoting economic development is a traditional and long-accepted function of government," Stevens wrote. He added that local officials are better positioned than federal judges to decide what's best for a community.

He was joined in his opinion by other members of the court's liberal wing - David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer, as well as Reagan appointee Justice Anthony Kennedy, in noting that states are free to pass additional

protections if they see fit.

The four-member liberal bloc typically has favored greater deference to cities, which historically have used the takings power for urban renewal projects.

At least eight states - Arkansas, Florida, Illinois, Kentucky, Maine, Montana, South Carolina and Washington - forbid the use of eminent domain for economic development unless it is to eliminate blight.

Other states either expressly allow a taking for private economic purposes or have not spoken clearly to the question.

O'Connor criticized the majority for abandoning the conservative principle of individual property rights and handing "disproportionate influence and power" to the well heeled.

"The specter of condemnation hangs over all property," O'Connor wrote. "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."

Connecticut resident Susette Kelo and others in the lawsuit pledged to continue their fight. Nationwide, more than 10,000 properties were threatened or condemned in recent years, according to the Institute for Justice, a Washington public interest law firm representing the New London homeowners.

"It's a little shocking to believe you can lose your home in this country," said resident Bill Von Winkle, who said he would keep fighting the bulldozers. "I won't be going anywhere. Not my house. This is definitely not the last word."

New London once was a center for the whaling industry and later became a manufacturing hub. More recently the city has suffered the kind of economic woes afflicting urban areas across the country.

City officials envision a commercial development including a riverfront hotel, health club and offices that would attract tourists to the Thames riverfront, complementing the adjoining Pfizer center and a proposed Coast Guard museum.

New London was backed in its appeal by the National League of Cities, which argued that a city's eminent domain power was critical to spurring urban renewal with development projects such as Baltimore's Inner Harbor and Kansas City's Kansas Speedway.

Under the ruling, residents still will be entitled to "just compensation" for their homes as provided under the Fifth Amendment. However, Kelo and the other homeowners had refused to move at any price, calling it an unjustified taking of their property.

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