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George F. Will: High court must curb tyranny by government

George F. Will

The U.S. Constitution, properly construed by a vigilant Supreme Court, prevents untrammelled power, which is the definition of despotism.

But the human propensity for abusing power - a propensity the Constitution's unsentimental Framers understood and tried to shackle with prudent language - is perennial. There always are people trying to carve crevices in constitutional terminology to allow scope for despotism. Such carving is occurring in Connecticut.

Soon the high court will announce whether it will hear an appeal against a 4-3 ruling last March by Connecticut's Supreme Court. That ruling effectively repeals a crucial portion of the Bill of Rights.

If you think the term "despotism" exaggerates what this repeal permits, consider the life-shattering power wielded by the government of New London, Conn.

That city, like many cities, needs more revenues. To enhance the Pfizer pharmaceutical company's \$270 million research facility, it empowered a private entity, the New London Development Corp., to exercise the power of eminent domain to condemn most of the Fort Trumbull neighborhood along the Thames River.

The aim is to make space for upscale condominiums, a luxury hotel and private offices that would yield the city more tax revenues than can be extracted from the neighborhood's middle-class homeowners.

The question is: Does the Constitution empower governments to seize a person's most precious property - a home, a business - and give it to more wealthy interests so that the government can reap, in taxes,

ancillary benefits of that wealth?

Connecticut's court says yes, which turns the Fifth Amendment from a protection of the individual against overbearing government into a license for government to coerce individuals on behalf of society's strongest interests.

Henceforth, what home or business will be safe from grasping governments pursuing their own convenience? But the Fifth Amendment says, among other things: "nor shall private property be taken for public use, without just compensation." Every state constitution also stipulates takings only for "public use."

The Framers of the Bill of Rights used language carefully; clearly they intended the adjective "public" to restrict government takings to uses that are directly owned or primarily used by the general public, such as roads, bridges or public buildings.

The Connecticut court, like the courts of six other states, says the "public use" restriction does not really restrict takings at all: It merely means a taking must have some anticipated public benefit, however indirect and derivative, at the end of some chain of causation. Hence, New London can evict Wilhelmina Dery from the home in which she has lived since her birth there in 1918.

Fifty years have passed since the court considered whether the "public use" clause allows condemnation for private development.

The 1954 case from southwest Washington, D.C., concerned "urban renewal," as such social engineering was confidently called before it became accurately known as "Negro removal."

To empower government to condemn slum property - most dwellings had no baths, indoor toilets or central heating; the neighborhood's tuberculosis and syphilis rates were high - the court held that "public use" can mean "public purpose" when the aim is to cure blight harmful to the larger community.

But the Fort Trumbull neighborhood - what remains of it; many residents have been bullied into moving - is middle class. *That* is the "problem":

Residents are not rich enough to pay the sort of taxes that can be extracted from the wealthy interests to whom New London's

government wants to give other people's property.

Another step in cutting the Constitution's leash on the awesome power of eminent domain came in 1981.

Michigan's Supreme Court allowed the bulldozing of Detroit's Poletown neighborhood - more than 1,000 residences, 600 businesses and many churches - so the property could be given to a more lucrative revenue source, a General Motors plant.

In the New London decision, Connecticut's Supreme Court relied on the Michigan decision, which was the principal precedent justifying seizure of individuals' properties in order to increase tax revenues.

But just 149 days after Connecticut's court ruled, Michigan's Supreme Court unanimously reversed the Poletown decision, denouncing it as "a radical departure from fundamental constitutional principles."

In considering whether to take the New London case, the U.S. Supreme Court surely sees, at a minimum, the dangerous emptying of meaning from the Fifth Amendment's "public use" provision.

If the court refuses to review the Connecticut ruling, its silence will effectively ratify state-level judicial vandalism that is draining the phrase "public use" of its power to perform the Framers' clearly intended function. That function is to prevent untrammelled government power - in a word, despotism.

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