NATIONAL REVIEW

Eminent-Domain Abuse Comes to Paul Ryan's District

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In the infamous 2005 case *Kelo v. City of New London*, the Supreme Court ruled that a Connecticut city could seize and destroy a woman's home in the name of "economic development"; authorities hoped to have a Pfizer plant built on the land. The story, which was recently adapted into the film Little Pink House, became a rallying cry for supporters of property rights and civil rights.

Everyone from the NAACP to the Cato Institute to the Southern Christian Leadership Conference filed briefs in support of Susette Kelo, the homeowner. And when the decision came down, the outcry was particularly pronounced on the right: Despite the divisions within the Republican party — among neocons, tea partiers, technocrats, and so on — its 2016 presidential candidates broadly agreed that eminent-domain abuse was a violation of fundamental rights. Even the party platform rejected this. (Donald Trump, who'd benefited from the use of eminent domain to turn poor people's homes into parking lots at Trump Casinos, was the dissenter.)

By the way, that Pfizer plant? It closed a few years later.

Today, a similar case is playing out in Wisconsin, among the constituents of Paul Ryan. Foxconn, the tech company that manufactures products including the iPhone, Xbox, Kindle, and PlayStation, plans to build a factory in Mount Pleasant, Wis. Just like Pfizer in Connecticut, the company was attracted by subsidies — Republican governor Scott Walker promised them billions of dollars, in keeping with his 2015 grant of $250 million to the billionaire investors who own the Milwaukee Bucks — and the local government hopes to destroy homes to make way for the facility.

Immediately after the *Kelo* decision, Congressman Ryan sponsored the 2005 Private Property Rights Protection Act, which would have denied federal economic-development funds to any state or locality that uses eminent domain to take private property for "economic development." (It passed the House but not the Senate.) But today, he strikes a very different tone. When a constituent whose home faces seizure and detonation asked about the matter, Ryan deflected, stating that he has no jurisdiction to act.

It's true that Ryan is a federal, not state or local, legislator. But his own legislative record suggests there are things the federal government could do to stop this abuse. Furthermore, members of Congress are perfectly free to criticize officials from other levels of government.

It gets worse. Ryan, alongside Trump and Walker, celebrated the Foxconn factory at the White House last summer. Even if we charitably grant that he did not know of the eminent-domain element at the time, Scott Walker had already promised subsidies to Foxconn — which should have raised Ryan's ire. And if it's simply not Ryan's place to talk about state-government actions, as he told his constituent, why did he do so last year?

That such abusive powers, once granted, would be used again is no surprise.

Eminent domain was devised for situations in which a vital public good, such as a road, had to be built and there was no feasible alternative but to take someone's property. The Takings Clause stipulates that the original owner will receive "just compensation," typically taken to mean the market price — though of course people tend to value their homes at more than the market price. (Otherwise they'd sell them.) The Fifth Amendment recognizes this burden, and as such defines the uses of such seizure narrowly: "public use." This stands in stark contrast to the *Kelo* decision's "economic development" rationale, by which the government can transfer property from one private party to another. It's a legalized form of theft, which is far away from the purpose of the amendment.

Justice Samuel Chase, writing in 1798, denied that such behavior deserves even the status of "law" due to its implicit violation of the premises of government:

An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. . . . a law that takes property from A. and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers; and, therefore, it cannot be presumed that they have done it.

Justice Sandra Day O'Connor cited Chase in her dissent, writing:

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. "That alone is a just government," wrote James Madison, "which impartially secures to every man, whatever is his own."

The Supreme Court's ruling in *Kelo v. New London* enshrined as legal doctrine the perverse idea that corporations and the well-connected have privileges that supersede the inalienable rights guaranteed to individuals. That such abusive powers, once granted, would be used again is no surprise. But the abdication of the very watchers who should be criticizing the practice is particularly shameful.