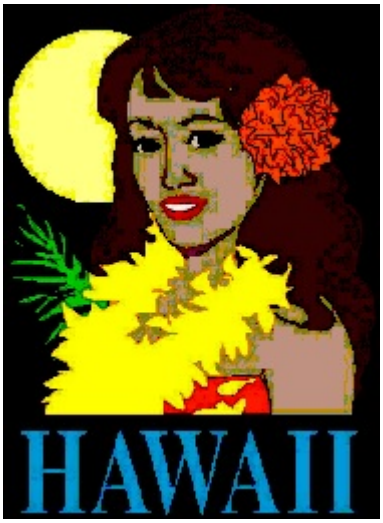

HAWAII HOUSING AUTHORITY v MIDKIFF

SUPREME COURT OF THE UNITED STATES

467 U.S. 229

May 30, 1984

JUSTICE O'CONNOR...The 5th Amendment of the United States Constitution provides...that "private property [shall not] be taken for public use, without just compensation." These cases present the question whether the Public Use Clause of that Amendment, made applicable to the States through the 14th Amendment, prohibits the State of Hawaii from taking, with just compensation, title in real property from lessors and transferring it to lessees in order to reduce the concentration of [real estate ownership in the State]. We conclude that it does not.

The Hawaiian Islands were originally settled by Polynesian immigrants from the western Pacific. These settlers developed an economy around a feudal land tenure system in which one island high chief, the ali'i nui, controlled the land...There was no private ownership of land...In the mid-1960's,...the Hawaii Legislature discovered that, while the State and Federal Governments owned almost 49% of the State's land, another 47% was in the hands of only 72 private land-owners...**The legislature concluded that concentrated land ownership was responsible for skewing the State's residential fee simple market, inflating land prices, and injuring the public tranquility and welfare.**

Fee simple is a type of title in real estate that describes a complete ownership interest.

To redress these problems, the legislature decided to compel the large landowners to break up their estates [and] considered requiring [them] to sell lands which they were leasing to homeowners. However, the landowners strongly resisted this scheme, pointing out the significant federal tax liabilities they would incur. Indeed, the landowners claimed that the federal tax laws were the primary reason they previously had chosen to lease, and not sell, their lands. Therefore, **to accommodate the needs of both lessors and lessees, the Hawaii Legislature enacted the Land Reform Act of 1967 which created a mechanism for condemning residential tracts and for transferring ownership of the condemned fees simple to existing lessees.** By condemning the land in question, the Hawaii Legislature intended to make the land sales involuntary, thereby making the federal tax consequences less severe while still facilitating the redistribution of [land].

...After compensation has been set, the Hawaiian Housing Authority (HHA) may sell the land titles to tenants who have applied for fee simple ownership. HHA is authorized to lend these tenants up to 90% of the purchase price, and it may condition final transfer on a right of first refusal for the first 10 years following sale. If HHA does not sell the lot to the tenant residing there, it may lease the lot or sell it to someone else, provided that public notice has been given. However, HHA may not sell to any one purchaser, or lease to any one tenant, more than one lot, and it may not operate for profit...

The District Court...found...the Act's goals were within the bounds of the State's police powers and that the means the legislature had chosen to serve those goals were not arbitrary, capricious, or selected in bad faith. The Court of Appeals...reversed, [holding that] the Act was simply "a naked attempt on the part of...Hawaii to take the private property of A and transfer it to B solely for B's private use and benefit."...We now reverse [the Court of Appeals].

...In *Berman v. Parker*[1], the Court upheld...the District of Columbia Redevelopment Act of 1945. That Act provided both for the comprehensive use of the eminent domain power to redevelop slum areas and for the possible sale or lease of the condemned lands to private interests. In discussing whether the takings authorized by that Act were for a "public use," the *Berman* Court stated:

> "**We deal...with...the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts...Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive**. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia...or the States legislating concerning local affairs...This principle admits of no exception merely because the power of eminent domain is involved..."

The *Berman* Court explicitly recognized the breadth of the principle it was announcing, noting:

> "...Once the object is within the authority of Congress, the means by which it will be

---

[1]Case 5A-E-8 on this website.

attained is also for Congress to determine. Here one of the means chosen is the use of **private enterprise for redevelopment** of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established."

The "public use" requirement is thus coterminous with the scope of a sovereign's police powers.

Private enterprise for redevelopment? Sound like anything you have heard lately? Police powers are very, very broad; therefore, the Court is saying that the definition of "public use" is very, very broad. The author of this majority opinion is **Justice O'Connor**. Guess who authored a dissenting opinion in the *Kelo* case?

...The Court has made clear that **it will not substitute its judgment for a legislature's judgment as to what constitutes a public use "unless the use be palpably without reasonable foundation**." *United States v. Gettysburg Electric R. Co.*[2]

To be sure, the Court's cases have repeatedly stated that "one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."...**Where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause.** *Berman v. Parker.*

...On this basis, we have no trouble concluding that the Hawaii Act is constitutional. **The people of Hawaii have attempted, much as the settlers of the original 13 Colonies did, to reduce the perceived social and economic evils of a land oligopoly traceable to their monarchs. The land oligopoly has, according to the Hawaii Legislature, created artificial deterrents to the normal functioning of the State's residential land market and forced thousands of individual homeowners to lease, rather than buy, the land underneath their homes. Regulating oligopoly and the evils associated with it is a classic exercise of a State's police powers...We cannot disapprove of Hawaii's exercise of this power.**

...Of course, this Act...may not be successful in achieving its intended goals. But "**whether *in fact* the provision will accomplish its objectives is not the question: the constitutional requirement is satisfied if...the...state Legislature *rationally could have believed* that the Act would promote its objective**."...When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings...are not to be carried out in the federal courts. Redistribution of [land ownership] to correct deficiencies...attributable to land oligopoly is a rational exercise of the eminent domain power. Therefore, the Hawaii statute must pass the scrutiny of the Public Use Clause.

[2]Case 5A-E-4 on this website.

...The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. **The Court long ago rejected any literal requirement that condemned property be put into use for the general public**. "It is not essential that the entire community, nor even any considerable portion, ...directly enjoy or participate in any improvement in order for it to constitute a public use." *Rindge Co*. v. *Los Angeles.* "What in its immediate aspect is only a private transaction may...be raised by its class or character to a public affair." As the unique way titles were held in Hawaii skewed the land market, exercise of the power of eminent domain was justified. The Act advances its purposes without the State's taking actual possession of the land. In such cases, **government does not itself have to use property to legitimate the taking; it is only the taking's purpose, and not its mechanics, that must pass scrutiny under the Public Use Clause**...

Once again, remember these are **Justice O'Connor**'s words: "**Government does not have to use the property it takes**."

Judicial deference is required because...legislatures are better able to assess what public purposes should be advanced by...the taking power...*Berman v. Parker.* Thus, if a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use.

This gives near total command of the taking power to legislatures. Why does anyone think *Kelo* is "the day freedom died?" ***IF*** (repeating, ***IF***) the 5th Amendment has been misconstrued, it has been so misconstrued over and over again since the late 1800s.

...The Hawaii Legislature enacted its Land Reform Act not to benefit a particular class of identifiable individuals but to attack certain perceived evils of concentrated property ownership in Hawaii -- a legitimate public purpose. Use of the condemnation power to achieve this purpose is not irrational ....Accordingly, we reverse the judgment of the Court of Appeals...

This case was decided **8 to 0** with Justice Thurgood Marshall "not taking part." Remember that:
EIGHT TO ZERO!!!