



Judicial Decision-Making and the Constitution

OVERVIEW: The goal of this activity is to understand how judges make decisions through the interpretation and application of law. In this lesson, students will apply the Constitution and case precedent to a real case scenario. The balancing of government power with individual rights/liberties will be explored.

OBJECTIVES: Upon successful completion of this activity, students will be able to:

- Analyze the Takings Clause of the Fifth Amendment;
- Apply the Takings Clause and case precedent to specific case studies; and
- Weigh issues of government interests and individual rights from a constitutional framework.

MATERIALS NEEDED: Copy of Takings Clause of Fifth Amendment/Handout A
PowerPoint Presentation
Supreme Court Case Study Form/Handout B
Fact Sheet for Kelo v. City of New London/Handout C
Constitutional Question/Handout D
Court Decision (for facilitator only)
Supplemental cases (for facilitator only)

TIME REQUIRED: 90 minutes recommended. Can be shortened or lengthened. Can also be divided into two lessons.

SUNSHINE STATE STANDARDS:

Grades 6-8	Grades 9-12:
SS.C.1.3(3)	SS.C.2.4(3)
SS.C.1.3(5)	SS.C.2.4(5)

ACTIVITIES:

This handout will be used in conjunction with the PowerPoint presentation titled: “The Courts and the Takings Clause: Kelo v. City of New London, 545 U.S. 469 (2005).”

1. **Slide 1:** Introduce yourself and inform the students that they will be given an opportunity to act like real judges to decide an actual issue that was decided by the United States Supreme Court.
2. **Slides 2–7:** Begin the course by asking participants what knowledge, skills, and qualities they think judges should have. Discuss their answers. Continue the discussion by distinguishing judges from politicians.



3. **Slides 8:** Inform students that today they will be experiencing the judicial branch first hand. Today they will become judges.
4. **Slides 9-10:** Dissect the Takings Clause of the Fifth Amendment with the students. Using the PowerPoint, have a student read one section of the Takings Clause and then follow it with a discussion.

Sample Discussion:

“Private property shall not be taken . . .”

STOP

Ask Students:

- Does “taken” mean physically taking or moving a house?
- How about a business?
- Can the government prevent you from entering your own home?
- Can the government erect a statue on your front lawn?

Do the same for the remaining three sections (each labeled in a different color on the PowerPoint). Have a student read a section, then follow the reading with a brief discussion about what that particular section means.

5. **Slide 11:** Discuss/present the three-factor test articulated by the Supreme Court in Penn Central Transportation Co. v. New York, 438 U.S. 104 (1978), to determine whether private property has been “taken.”
6. **Slide 12-13:** Discuss Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). Make sure to highlight that, in this case, the United States Supreme Court held that the property was considered to be “taken.”
7. **Slides 14:** Preview the next case by informing the students that they are about to see an example of a case where the Supreme Court held that private property was not taken.
8. **Slide 15-16:** Discuss Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002). Compare the facts of that case with Lucas.
9. **Slide 17:** Introduce the “rationally related” test to assess public use that was articulated by the High Court in National R.R. Passenger Corp. v. Boston and Maine Corp., 503 U.S. 407, 421 (1992).



10. **Slide 18:** Discuss U.S. v. Miller, 317 U.S. 369 (1943), and U.S. v. 50 Acres of Land, 469 U.S. 24 (1984), with regard to the just compensation requirement of the Takings Clause.
11. **Slide 19:** Inform students that the Takings Clause, and the Fifth Amendment as a whole, did not apply to the states until Chicago v. Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226 (1897).
12. **Slide 20:** Define “eminent domain” utilizing the Black’s Law Dictionary definition.
13. **Slide 21:** Using the case study form and case abstract, review the attached case with the full group. Have the group read silently and underline all relevant facts.
14. **Slides 22-25:** Work through the slides slowly to provide the students with an example of a case working up the judicial ladder. Highlight the following facts:
 - The case originated in a Connecticut state court
 - The case was appealed directly from the Connecticut Supreme Court to the United States Supreme Court, bypassing federal trial and appellate courts

After discussing slide 25, DO NOT TELL THE STUDENTS HOW THE ACTUAL SUPREME COURT DECIDED THE CASE.

15. **Slide 26:** Tell the students that now they will have the chance to act like Supreme Court justices and will have an opportunity to decide the case.
16. **Slide 27:** Phrase the legal question before the Court.
17. **Slide 28:** Consider other legal questions that may be relevant to the Court’s ultimate decision.
18. **Slides 29-31:** Divide participants into groups of five to simulate a Supreme Court conference. In this Supreme Court conference activity, each group should:
 - Select a Chief Justice to maintain order and lead discussions. Remaining participants are associate justices.
 - Discuss whether the alleged “taking” was constitutional or unconstitutional based on participants’ knowledge of the Takings Clause of the Fifth Amendment and relevant case law.
 - The Chief Justice will poll the justices to determine the final decision of the Court. Urge each group to try and reach a unanimous decision. Give at least 10-15 minutes.
19. Have each group’s Chief Justice come to the front and present the decision of his/her court. Tally responses.



20. **Slide 32-33:** Debrief with the actual U.S. Supreme Court decision.
21. **Slide 34-36:** Discuss with students the aftermath of the decision.



COURT DECISIONS: FOR THE FACILITATOR

A single New London Superior Court judge granted Kelo's request for an injunction with regard to property that was intended for car and boat parking, but denied her request with regard to property that was intended for office space. On direct appeal to the Connecticut Supreme Court, that court held that all of the property in question could be taken under the City's eminent domain power, reversing, in part, the decision of the trial court. Kelo petitioned for certiorari review before the Supreme Court of the United States.

DO NOT ANNOUNCE UNTIL CONCLUSION OF THE ACTIVITY:

In a 5-4 decision, the United States Supreme Court concluded that private property can be taken in furtherance of economic development that benefited a private corporation, ruling in favor of the City of New London.



FIFTH AMENDMENT – UNITED STATES CONSTITUTION

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; **nor shall private property be taken for public use, without just compensation.**



Case Study/Supreme Court Conference

I. What are the Facts? _____

II. State the Issue to be Decided: _____

III. Arguments For Petitioner/Appellant: _____

IV. Arguments For Respondent/Appellee: _____

V. What Would You Decide? _____

VI. Reasons/Evaluation: _____

VII. Mock Supreme Court Conference Decision: _____

VIII. Actual Decision of the Court: _____



Kelo v. City of New London, 545 U.S. 469 (2005)

Decades of economic decline led a state agency in 1990 to designate the City of New London, Connecticut a “distressed municipality.” In 1998, the City’s unemployment rate was nearly double that of Connecticut, and its population of just under 24,000 residents was at its lowest since 1920. These conditions prompted state and local officials to target New London for economic revitalization. To this end, New London Development Corporation (NLDC), a private nonprofit entity established years earlier to assist the City in planning economic development, was reactivated.

In January 1998, the State authorized a \$5.35 million bond issue to support the NLDC’s planning activities. In February, the pharmaceutical company Pfizer, Inc. announced that it would build a \$300 million research facility on a site in New London; local planners hoped that Pfizer would draw new business to the area, thereby serving as a catalyst to the area’s rejuvenation. Upon obtaining state-level approval, the NLDC finalized an integrated development plan that was focused on 90 acres. The city council approved the plan in January 2000 and authorized the NLDC to purchase property or acquire property by exercising eminent domain in the City’s name. The 90 acres were designated for the following purposes:

- A waterfront conference hotel at the center of a “small urban village” that would include restaurants and shopping, and would be equipped with marinas for both recreational and commercial uses.
- 80 new residences, organized into an urban neighborhood and linked by public walkway to the remainder of the development, including the state park and space reserved for a new U.S. Coast Guard Museum.
- At least 90,000 square feet of research and development office space.
- A 2.4-acre site that would be used to support the adjacent state park, by providing parking or retail services for visitors, or to support the nearby marina.
- A renovated marina and a pedestrian “riverwalk.”

Petitioner Susette Kelo moved into her water-view New London home in 1997, making extensive renovations to it shortly thereafter. Another Petitioner, Wilhelmina Dery, was born in her home in 1918 and has lived there her entire life. There was no allegation that any of these properties were blighted or otherwise in poor condition; rather, they were condemned only because they happened to be located in the development area. The NLDC successfully negotiated the purchase of most of the real estate in the 90-acre area, but its negotiations with petitioners failed. As a consequence, in November 2000, the NLDC initiated the condemnation proceedings that gave rise to this case.

After the NLDC initiated condemnation proceedings, petitioners sued the NLDC in a Connecticut trial court alleging that the taking of their property would violate the public use restriction in the Takings Clause of the Fifth Amendment. The trial court granted a permanent restraining order with regard to property designated for parking and marina support, but denied relief for the rest of the property. On direct appeal, the Connecticut Supreme Court held that all of the property was subject to the eminent domain power of the City, ruling entirely in favor of the NLDC. The petitioners then sought review in the United States Supreme Court.

Handout C



Main Issue: Can private property be taken in furtherance of economic development benefiting a private corporation?

Other Issues:

- Is the property in question “Private Property”?
- Is the City looking to “take” the private property?
- Will the property be taken for “public use”?
- Is the private property owner being provided “just compensation”?