

WSJ Print Edition

A Rare Victory for Property Rights

Unfair government seizure of private property is all too common, so a victory by the Henry family in New Jersey is cause for satisfaction. It's also a reminder that the Supreme Court's 2005 *Kelo v. City of New London* decision continues to haunt the land.

In court papers filed last month, the township of Cranbury, N.J., surrendered its attempt to seize through eminent domain a working farm that a local family has owned for generations—all so that the township could hand the farm to a developer to build 130 affordable housing units on the property.

About the same time, New Jersey Gov. Phil Murphy said the state would revise a building rule that had prevented the township from using alternative sites to build affordable housing. And so the Henry farm is saved from the clutches of government.

This wasn't a predictable outcome six months ago, when the township announced that it planned to take legal action to seize the farm—under pressure because of the state Supreme Court's 1975 "Mount Laurel doctrine," which requires New Jersey towns to build lowrent housing. Cranbury needs to create 265 such units over the next decade, and since the Henry farm was a nearby piece of open land, the township went for it.

The Henrys and their neighbors began to campaign against the decision. Residents filled town-hall meetings, posted signs on their properties, held fundraisers and ginned up social-media campaigns to oppose the seizure. The local agitation spilled into the media and drew national attention from Republican officials, notably Agriculture Secretary Brooke Rollins, who met with the family and helped publicize the case.

The townspeople were objecting to local government taking private property and turning it over to a third party, in the name of some vague public purpose on which the town's people had never voted. But this is what the *Kelo* decision allows. The Supreme Court held that the Fifth Amendment empowers local governments to seize private property and pass it on to private developers if the suggestion of eventual public benefit is alleged.

The victory by the Henrys is a good news story. But this small victory is the result of a large amount of negative publicity and noise. *Kelo* remains the law of the land, and the public won't always rise up in outrage and is weak protection for property rights under the Fifth Amendment.

The Institute for Justice estimates that 5,800 private properties were taken by local governments for use by developers in the year after *Kelo* was decided, and seizures continue. The Supreme Court declined an opportunity this spring to revisit its 5-4 decision, but plaintiffs can keep looking for good cases to bring.

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