

## CHAPTER VI

### CONCLUSION

In America the purpose of government is simply to protect the individual rights of life, liberty and property from violations by others. In America the wealthy derives their status from private effort—not from public status—and the purpose of the government is not to do good for all but merely to protect every individual in enjoying his/her rights of life, liberty, property and everybody has to be equal before the law in defending his/her rights.

For Americans, free market is about *moral* values of respecting private property. Curtailing capitalism in free market which generates greater property means moral evils and curtailing individual from making effort to generate greater property is morally wrong. Also, taking individual property without his/ her consent will be simply called a theft.

The important concept of the 5<sup>th</sup> Amendment reading “... nor shall private property be taken for public use, without just compensation” can be interpreted as follows: (1) there has to be recognition of individual’s right of private property, (2) the private property can be taken by government with its power of *eminent domain*, providing (3) the property must be taken for public use, or benefit and (4) the owner must be provided with just compensation.

The Fifth Amendment is part of the Bill of Rights. It restricts government’s power of *eminent domain* by requiring “just compensation” for any private property which is taken for the public use. It is not a must that the property is taken only for the public use; rather, it must be used or disposed in such a manner as to create benefits to the public.

Property taking by the power of eminent domain can be acceptable as long as it does not violate the Constitution which highlights the protection of private property. In light of partial-birth abortion ban, the regulation imposed by the government to restrict woman’s right over her body—her very own property—is definitely a property taking. The government has deprived the woman’s right of her body and the government has no right at all to intervene the woman’s right of her very own private property (body). However, the decision to support the abortion ban is not simply based on woman’s right of her body but it is the life of the fetus (unborn

baby) that has to be protected by the government as referring to in the Constitution. A woman has a full right of her own very private property (body) but she has no right at all to kill the fetus by simply terminating her pregnancy; abortion means depriving the life of the unborn baby.

Viewed from conservatism (religious) and libertarianism (scientific) a pregnant woman has no longer consisted of one but more than one life. Constitutionally, the argument on protecting the life of fetus (unborn baby) can be acceptable. According to the religious conservatives, life belongs to God and no one is allowed to take the life and from the scientific viewpoint (as endorsed by libertarians) a life starts from embryo, thus the Constitution shall protect the life.

For libertarians “God” is unfavorable to scientific theory because God is omnipotent. If one asks why the sky is blue, it might be answered because God makes it blue. Conservatives—particularly the religious—argue that scientific theory i.e. evolution is only a theory that has never been fully proven. No scientific theories have so far been proved to be *absolute*. Scientific theory cannot provide final explanation on everything. Science is simply a relative truth, thus there has to be another truth that it has to refer to. For the religious conservatives an absolute truth is found in religion (God).

Based on the arguments on property takings viewed from conservatism and libertarianism, in solving the research problem i.e. “What makes property-takings in light of Abortion Ban and *Eminent Domain* take place in liberal America”, I have to answer the research questions (one grand tour question followed by two sub-questions):

- **Why are property-takings legitimated in America?**
- What makes America allow abortion ban?
- To what extent can the power of *eminent domain* be applied?

The answer is: Property takings can be legitimated in America because the Constitution—particularly the Fifth and Fourteenth Amendments highlighting on the protection of life, liberty and property—allows them for the sake of the public (society). It is the government’s power of *eminent domain* that makes the government sovereign in doing its task and duty and only a sovereign government can secure the protection of individual’s rights of life, liberty and property. Moreover, it is the legitimate power of the government that makes the property

takings happen in America.

In light of abortion ban, indeed there is a property taking by the government. Viewed from libertarianism, the government's restriction on woman's right of freely using her very private property (body) does violate the Constitution because the government has no right at all to restrict a person of using his/her body as long as (s)he does not violate the right of other individual. In deciding to ban the abortion, the government cannot simply refer to the country's culture, which is much imposed by the religious conservatives based on Judeo-Christian values. In defining a concept of private property the conservatives refer to the Calvinism (Protestant ethics) that body as property belongs to God and other properties belong to humans whereas the libertarians refer natural rights that body as property and others solely belong to humans. In light of abortion ban, the libertarian argument on property taking is constitutionally acceptable since God as the owner of human body (property) is neither tacitly nor explicitly included in the Constitution and none of the Constitution implies that "God" is the owner of individual body. But, how can the abortion ban be legitimated? Legally or philosophically an abortion ban indeed is a property taking.

What is the correct argument that allows the abortion ban? Both the Congress and the Executive ponder on the protection of life rather than woman's right of her property (body). Although it cannot be denied that the two branches of government i.e. the Executive and Legislative (Congress) have used their religious justifications in banning the abortion, but they can prove that that their argument on abortion ban was constitutionally valid since the life of unborn baby (fetus) is included in the protection of the Constitution. A woman is free to use her body as long as she does not cause a danger to the life of her own baby. Although a religious notion on life cannot be accepted in making a judicial decision, but the science has proved that a life begins from embryo, thus it is constitutionally correct for the government to ban the act of terminating the life of the baby. Obviously, the Constitution guarantees the protection of life including the life of unborn baby (fetus). No body can prove that there is no life in the womb of a pregnant woman.

In light of property taking by the power of *eminent domain*, to what extent can the power be applied? Most Americans—the conservatives and libertarians—hate the Court's decision because they prefer individual right of property to economic

development. For Americans an individual liberty is more precious than an economic benefit for the public. But both the conservatives and the libertarians are aware that the government has to be sovereign in protecting their individual rights. Moreover, they also endorse their cultural values that an individual doesn't belong to land but the land belongs to individual. As a capitalistic society, as long as there is a chance to generate capital (economic benefit), every means of resources should be rationally utilized for the sake of the public (society). The Supreme Court's decision based on governmental sovereignty for the sake of the public (society) is constitutionally legitimated as long as the government can prove that it takes the property in due process of law followed by just compensation.

From the arguments on property takings viewed from the conservatism and the libertarianism I conclude that a taking is defined by the rights of life, liberty and property. Also, the taking of property cannot be separated from the concept of government whose primary function is to protect those rights. The property ownership in America is determined by the concepts of life, liberty and property. Individual rights of liberty and property may be reasonably deprived as long as there is a due process of law and just compensation but individual right of life cannot be deprived at all. The rights of property and liberty are of conventional rights whereas the right of life is of absolute right.

Based on the respective libertarian and conservative arguments on property takings in the case of *Eminent Domain* and abortion ban, the taking of Kelo's land property is allowed due to conventional right and for the sake of public benefit but subject to due process of law and just compensation. The taking of woman's right of her private property (body) in abortion ban is allowed not because of the sake of public benefit or conventional right but it is the right of the life of the baby (fetus) that shall be protected by the Constitution. Moreover the right of life is not of the conventional right but absolute right. Takings of the rights of property and liberty can be compromised due to conventional rights but a compromise of taking of individual's right of life is definitely rejected.

Declarative Statement:

**“Takings of conventional rights are allowed but taking of absolute right is prohibited”**

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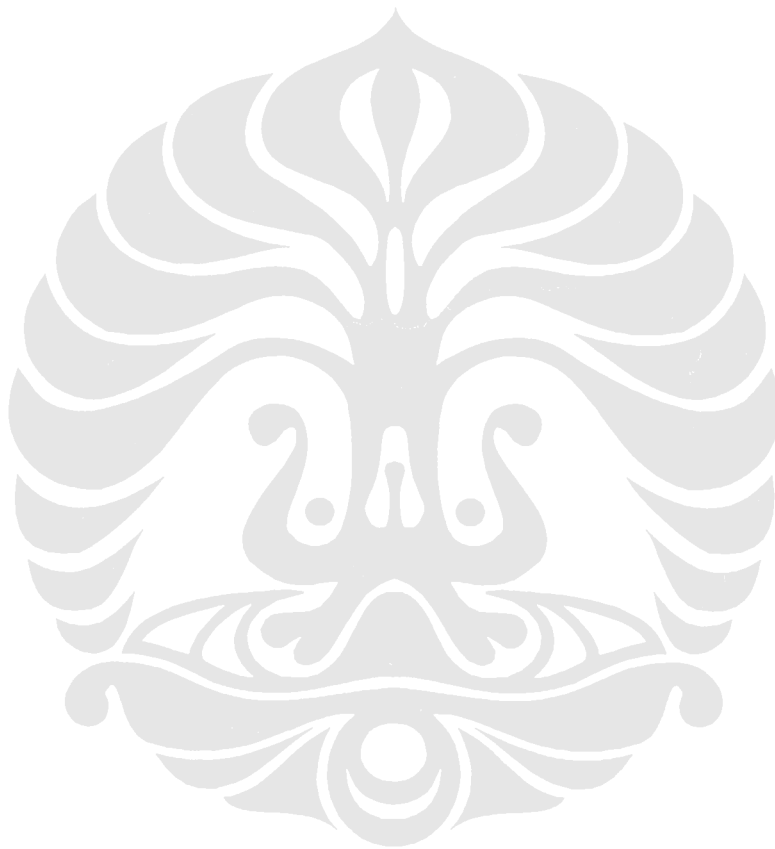
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## ATTACHMENT 1

**S. 1692 The Partial-Birth Abortion Ban Act of 1999**

The complete text of S. 1692 - *The Partial-Birth Abortion Ban Act of 1999* as considered by the United States Senate.

**A BILL**

To amend title 18, United States Code, to ban partial-birth abortions.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Partial-Birth Abortion Ban Act of 1999'.

**SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.**

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 73 the following:

**CHAPTER 74--PARTIAL-BIRTH ABORTIONS**

Sec.

1531. Partial-birth abortions prohibited.

**Sec. 1531. Partial-birth abortions prohibited**

• (a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than two years, or both. This paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury. This paragraph shall become effective one day after enactment.

• (b) (1) As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(2) As used in this section, the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: *Provided, however,* That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section. (3) As used in this section, term 'vaginally delivers a living fetus before killing the fetus' means deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus.

## ATTACHMENT 1 (continuance)

• (c) (1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. (2) Such relief shall include (A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and (B) statutory damages equal to three times the cost of the partial-birth abortion.

• (d) (1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness or injury. (2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

• (e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.!

(b) CLERICAL AMENDMENT- The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

**1531'.**

Calendar No. 300

Source: <http://usgovinfo.about.com/library/weekly/bls1692txt.htm>

**PS:**

The **Partial-Birth Abortion Ban Act** (Public Law 108-105, HR 760, S 3, 18 U.S. Code 1531) (or "PBA Ban") is a United States law prohibiting a form of late-term abortion that the Act calls *partial-birth abortion*. The U.S. Supreme Court has ruled that the term "partial-birth abortion" in the act pertains to a procedure that is scientifically called intact dilation and extraction. Under this law, "Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both." The law was enacted in 2003, and in 2007 its constitutionality was upheld by the U.S. Supreme Court, in the case of *Gonzales v. Carhart*.

***Gonzales v. Carhart*****Supreme Court of the United States****Argued November 8, 2006****Decided April 18, 2007**

Full case name: *Alberto R. Gonzales, Attorney General, Petitioner v. LeRoy Carhart, et al.; Alberto R. Gonzales, Attorney General, Petitioner v. Planned Parenthood Federation of America, Inc., et al.*

Docket #: [05-380](#) [05-1382](#)

Citations: 127 S. Ct. 1610; 167 L. Ed. 2d 480; 75 U.S.L.W. 4210

Argument: [Link to Oral Argument](#)

**Holding**

Respondents have not demonstrated that the Act, as a facial matter, is void for vagueness, or that it imposes an undue burden on a woman's right to abortion based on its overbreadth or lack of a health exception. The decisions of the Courts of Appeals for the Eighth and Ninth Circuits are **reversed**.

**Court membership**

**Chief Justice:** [John Glover Roberts, Jr.](#)

**Associate Justices:** John Paul Stevens, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito

**Case opinions**

**Majority by:** Kennedy

Joined by: Roberts, Scalia, Thomas, Alito

**Concurrence by:** Thomas

Joined by: Scalia

**Dissent by:** Ginsburg

Joined by: Stevens, Souter, Breyer

**Laws applied**

U.S. Const. amend. V; Partial-Birth Abortion Ban Act

Source: [http://en.wikipedia.org/wiki/Gonzales\\_v.\\_Carhart](http://en.wikipedia.org/wiki/Gonzales_v._Carhart)

***Kelo v. City of New London*****Supreme Court of the United States****Argued February 22, 2005****Decided June 23, 2005**

Full case name: *Susette Kelo, et al. v. City of New London, Connecticut, et al.*

Docket #: [04-108](#)

Citations: 545 U.S. 469; 125 S. Ct. 2655; 162 L. Ed. 2d 439; 2005 U.S. LEXIS 5011; 60 ERC (BNA) 1769; 18 Fla. L. Weekly Fed. S 437

Prior history: Judgment defendants as regarding certain plaintiffs, judgment for remaining plaintiffs, *Kelo v. City of New London*, 2002 Conn. Super. LEXIS 789 ([Conn. Super. Ct.](#) Mar. 13, 2002); affirmed and reversed in part, remanded, 843 A.2d 500 ([Conn.](#) 2004); [cert.](#) granted, 542 U.S. 965 (2004)

Subsequent history: Rehearing denied, 126 S. Ct. 24 (2005)

**Holding**

The **governmental taking of property** from one private owner to give to another in furtherance of economic development constitutes a permissible "public use" under the Fifth Amendment. Supreme Court of Connecticut affirmed.

**Court membership**

**Chief Justice:** William Rehnquist

**Associate Justices:** John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer

## ATTACHMENT 3 (continuance)

Case opinions	
<b>Majority by:</b> Stevens Joined by: Kennedy, Souter, Ginsburg, Breyer	
<b>Concurrence by:</b> Kennedy	
<b>Dissent by:</b> O'Connor Joined by: Rehnquist, Scalia, Thomas	
<b>Dissent by:</b> Thomas	
Laws applied	
U.S. Const. amend. V	

Source: [http://en.wikipedia.org/wiki/Kelo\\_v.\\_City\\_of\\_New\\_London](http://en.wikipedia.org/wiki/Kelo_v._City_of_New_London)

