

STEVE CHAPMAN

Confiscating homes

What would you call it if someone forced you to sell your home, even though you didn't want to sell and didn't agree to the price? You would call it theft and phone 911.

But the realm of government is cloaked in terminology designed to hide unpleasant realities. When the government does this, it's called "eminent domain," and it's legal.

Wilhelmina Dery has lived her entire life in the house where she was born in 1918, in a modest section of New London, Conn. But if she hopes to depart this world from the same place she entered it, she will need help from the U.S. Supreme Court. This week, it agreed to decide whether Mrs. Dery and others can be deprived of their homes merely because the city thinks the property could be put to a more lucrative use.

Municipal authorities want to demolish her house, and others, to make room for a commercial development next to the new Pfizer Corp. research headquarters. Most houses in the neighborhood have already been razed, but a few residents

have dared insist on staying, despite the inconvenience they cause city planners.

Development backers are not moved by the notion homeowners should be allowed to stand in the way of economic progress. The former head of the New London Development Corp., which oversees the project, offered a reflective defense of the confiscation plan: "Anything that's working in our great nation is working because somebody left skin on the sidewalk."

The U.S. Constitution authorizes eminent domain, as a regrettable necessity. In one sense, the city is using a time-honored instrument of government. What it may have overlooked is that the Fifth Amendment, like most of the Constitution, not only grants power but restricts it.

The amendment says, "nor shall private property be taken for public use, without just compensation." There are two specific conditions: The owner has to be fully compensated, and the property has to be needed for public use. The provision means, when the government decides to build a road, create a national forest or erect an Army

base where you live, it can condemn your home as long as it's willing to pay a fair price for it.

In this case, though, there is no "public use." The city is simply confiscating private property from one set of owners so it can give it to another set. The rationale is the seizure will "reverse decades of economic decline, create thousands of jobs and significantly increase property taxes and other sources of revenue for the city." Unlike a road or a military base, the anticipated economic and revenue growth are not a tangible certainty but a speculative hope.

The Connecticut Supreme Court, however, took what it called "a flexible approach" to the concept of public use, giving "substantial deference to the legislative determination of purpose." English translation: If the city says a private use is a public use, who are we to quibble?

But if this sort of redevelopment can pass through the eye of the needle, make way for a herd of camels. "Using eminent domain for 'economic development' alone is a new phenomenon," says the Institute for Justice, a libertarian public interest

law firm representing Ms. Dery and other aggrieved homeowners. "Usually governments try to at least claim that the area is a 'slum' or 'blighted,' but Connecticut has dispensed with that pretense and admits outright that if another business could make a profit on your land, the government can take it."

Under this reading, the public-use restriction amounts to no restriction at all. "Whose land wouldn't produce more taxes if it were an office building instead of a home?" asks the Institute for Justice. Nice house you have there. Wouldn't it be the perfect site for a shopping mall?

Politically powerful developers throughout the country would be free to use their connections to acquire land for their own profit — even if the owners refuse to sell. And some municipal governments would happily indulge them, while claiming to serve the needs of the public.

The U.S. Supreme Court should recognize the public use requirement is a sturdy barrier against government power bursting its bounds. Allowing Connecticut's "flexible approach" would be the equivalent of replacing the Hoover Dam with a picket fence.

Steve Chapman is a nationally syndicated columnist.