THE CLUB FOR GROWTH

July 14, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member:

I write to express our concern regarding Judge Sonia Sotomayor's views on property rights and to urge all members of the Judiciary Committee to fully explore Judge Sotomayor's views and record to ensure she would not erode property ownership rights that are central to our freedoms and our economic system.

We were greatly troubled by the Second Circuit's 2006 decision in Didden v. Village of Port Chester. Judge Sotomayor sat on the panel that issued the unsigned opinion in this case. In Didden, the plaintiff property owners filed an action alleging that the Village of Port Chester's condemnation of their private property violated their Fifth Amendment rights. Port Chester had categorized a parcel of land within the village as a "redevelopment district" and had appointed a designated developer with authority to condemn property within the district. The plaintiffs wished to construct a pharmacy on their land, part of which lay within the redevelopment district. However, when they conveyed their plan to the developer, he threatened to condemn the plaintiffs' property if they would not promise to pay him $800,000 or give him a partnership interest in the project. When the plaintiffs refused to comply with the developer's threat, he condemned their property.

Despite obvious signs of corruption and Port Chester's tortured defense that the condemnation amounted to a "public use," the Second Circuit panel denied the plaintiffs' right to recover. Although it dismissed the case on procedural grounds, the court also addressed the merits of the plaintiffs' Fifth and Fourteenth Amendment claims. It stated that "we agree with the district court that [the developer's] voluntary attempt to resolve [the plaintiffs'] demands was neither an unconstitutional exaction in the form of extortion nor an equal protection violation."

The Second Circuit's decision in Didden expanded the government's ability to condemn property for public use even beyond that established by the Supreme Court's horribly misguided decision in Kelo v. City of New London. Despite weakening property rights

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protections by broadly defining "public use," Kelo constrained the government's ability "to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit." The circumstances underlying Didden, however, suggest that Port Chester's rationale for condemning the plaintiff's private property was very much a "pretext of a public purpose." The Second Circuit's willingness to abolish nearly all restraints on the government's condemnation power in Didden sets a dangerous precedent for future litigation.

The Second Circuit's tacit approval of such a blatant abuse of government authority and its unwillingness to impose reasonable limits on the Village of Port Chester's condemnation power signify an alarming trend in Fifth Amendment jurisprudence. We are concerned that, if Judge Sotomayor is confirmed to the Supreme Court, she will exercise a similarly dismissive approach to the protection of property rights.

We ask you to very carefully consider Judge Sotomayor's participation in Didden v. Village of Port Chester and question her closely on the meaning of the Fifth Amendment during her confirmation hearing.

Sincerely,

Chris Chocola
President

CC: The Honorable Herb Kohl
The Honorable Orrin G. Hatch
The Honorable Dianne Feinstein
The Honorable Charles E. Grassley
The Honorable Russell D. Feingold
The Honorable Jon Kyl
The Honorable Charles E. Schumer
The Honorable Lindsey Graham
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