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Ruling on Property Seizure Rallies Christian Groups

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Conservative Christian groups seeking to galvanize support for a battle over a Supreme Court nomination are rallying around the unlikely symbol of a mega-church in Los Alamitos, Calif., one of a handful of houses of worship that have tangled with towns over the use of eminent domain to take their properties.

In the aftermath of a Supreme Court ruling two weeks ago in favor of using eminent domain for development that increases a city's tax base, many Christian groups are warning supporters that the tax exempt status of churches may make them targets, often citing the attempt to take a plot of land from the Cottonwood Christian Center in Los Alamitos.

Many legal experts say the fears are unfounded, and a federal appeals court ultimately blocked the condemnation of Cottonwood's property. But calling the decision evidence that the court is out of touch, several Christian groups have seized on the ruling as a potent new motivation to fight for a conservative to replace Justice Sandra Day O'Connor, who is retiring.

"Supreme Court decision threatens property rights putting homes, businesses and churches at risk!" the American Center for Law and Justice said in an e-mail bulletin to supporters. The American Family Association warned its members, "If the government decides a mall would produce more tax income than your home or a church, they can now take your home or a church."

A column distributed via e-mail by the evangelical self-help group Focus on the Family said, "Churches located in prime areas should be especially concerned."

In an interview, Jay Sekulow, a Christian radio host and the chief counsel of the American Center for Law and Justice, said the case had touched a nerve. "We have had more response to this case than we have had to the decision on the Ten Commandments - - how about that?" Mr. Sekulow said. "I think it ranks up there with any case we have ever had in showing that the court does, in fact, impact your life."

Many other legal experts dismiss the threat to churches. They note that a federal law, many state laws and the First Amendment make it virtually impossible to focus on religious institutions for condemnation, to say nothing of political resistance to tearing down church buildings. "I think it is paranoid," said Prof. Thomas W. Merrill of Columbia University's law school.

But Mr. Sekulow said that the Supreme Court ruling could reopen some previously settled issues for churches. And in the atmosphere of the anticipation of a Supreme Court confirmation battle, the idea of a new judicial threat to churches quickly took off.

The Christian opposition to eminent domain shows how the often opposed religious and limited government wings of the conservative movement have come together for the expected court fight. At a moment when the White House is urging its Christian allies to tone down their talk about abortion, school prayer or other cultural issues, others in the movement applauded their Christian counterparts for pulling together. "If you are Jerry Falwell, it is probably wise to spend some of your time reminding the head of the chamber of commerce why he and you are on the same team," said Grover Norquist, the president of Americans for Tax Reform.

The notion of cities seizing churches seems like "a far-fetched scenario," but it resonates for many conservative Christians, said Lyman Kellstedt, an emeritus professor of political science at Wheaton College, an evangelical school in Illinois. The image captures the feeling that the evangelical vision of society is losing ground, often because of court decisions, he said. "From this community's perspective -- and I am part of it -- the culture is moving in a direction that is bad." The reaction began on June 23 when the Supreme Court ruled that the Constitution did not preclude the City of New London, Conn., from using eminent domain to make room for an office complex by displacing homeowners in the name of development. In a dissent, Justice O'Connor said the majority opinion implied an "absurd argument" that, among other things, "any church might be replaced by a retail store" in the name of economic uplift.

The next day, conservative groups convened for conference calls to plan strategy for an expected vacancy on the Supreme Court, and lawyers on the calls urged the groups to warn their supporters about what they said were the implications of the decision.

"It was partly just a meeting of minds across the right," said Sean Rushton, executive director of the Committee for Justice, a group founded to support the president's judicial nominees. The issue gave conservatives a chance to rail against powerful interests on behalf of "the little guy," Mr. Rushton said. "There was an instant recognition that decision was so bad that it's good, from our side's point of view."

Unlike social issues that divide people of different religious faiths or worldviews, the fear of losing a home is nearly universal. Some liberal groups, including the National Association for the Advancement of Colored People and the Congressional Black Caucus, criticized the ruling as a threat to black or low-income neighborhoods.

The idea that economic development is a threat to churches dates at least to 1981, when Detroit used eminent domain to take over the Poletown neighborhood, including its two Roman Catholic parishes, so General Motors could build a plant there. One of the two churches protested the move and drew national attention. (The Michigan Supreme Court later overturned its 1981 ruling in support of the Poletown project, making another similar condemnation unlikely).

But in the Poletown case, the Archdiocese of Detroit had authorized the takeover of the churches. It supported the development project as a boon to the city. In an interview, Bishop Walter A. Hurley of Detroit said the project "was a very positive thing for the community."

The threat to churches resurfaced in Washington conservative circles two years ago when the Institute for Justice, an opponent of eminent domain use, issued a report including the headline "Houses of Worship: Just Another Tax Liability." It listed a handful of religious institutions that had fought with local governments over condemnations in the previous five years, and some

involved potential new locations. Some were averted or unresolved. In 2000, President Bill Clinton signed the Religious Land Use and Institutionalized Persons Act, which addressed complaints about local opposition to the construction of mega-churches by requiring evidence of compelling government interest for any land-use regulations that inhibited a religious group. Cottonwood, a 6,000-member church, was among the first to test the law. In the late 1990's, the church bought a 15-acre plot in Cypress, Calif., to build a new facility, but before construction began the town condemned the land so that the retailer Costco could build a store.

The church sued the town, citing the land-use law and the First Amendment. Courts had ruled that the First Amendment's protection of free expression also protected pornography shops from targeted condemnation. In 2003, the church won a preliminary injunction from the United States Court of Appeals for the Ninth Circuit, leading to a lucrative settlement for the church. Jared Leland, a lawyer for the Becket Fund for Religious Liberty who helped represent the church, acknowledged that the Cottonwood case was a better example of protections for churches than it was of the risks they face. "Unlike private homes, religious institutions still have the First Amendment, federal law and state law to lean on," he said. Still, Mr. Leland argued that letting cities use eminent domain to increase their tax base nonetheless increased the vulnerability of tax-exempt churches. "The decision will inevitably draw the bulldozers toward religious institutions first," he said.