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## Kelo vs. the City of New London statement

New Jersey currently lacks a statute, like the one at issue in *Kelo*, which permits the use of eminent domain solely for economic development purposes without a precedent finding that the area in question is an “area in need of redevelopment.” Many of the “area in need of redevelopment” criteria focus on blighting influences such as overcrowding, abandonment, dilapidation and obsolescence. As to those criteria, *Kelo* would seem to have little or no relevance. But where *Kelo* may prove relevant, even if only in an incremental way, is with respect to the redevelopment criteria that are unrelated to blight. For example, the 2003 amendments to the Local Re-development and Housing Law establish that an area may be



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designated as being “in need of redevelopment” where “designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.” N.J.S.A. 40A:12A-5.h. The legislative determination, that smart growth planning principles in and of themselves can be a basis to justify a redevelopment designation and, there-

after, the use of eminent domain, is not unlike the findings in *Kelo* that New London was a distressed municipality in need of economic revitalization. The comprehensive nature of the project at issue in *Kelo*, and the extensive planning which took place prior to the use of eminent domain, underscore the importance of comprehensive planning in both justifying and legitimizing the redevelopment process. *Kelo* may make it easier for municipalities to defend “area in need of redevelopment” designations based on criteria other than those involving the physical condition of the property.

The *Kelo* decision has spurred the introduction of legislation relating to the use of condemnation for redevelopment purposes. For example, in

New Jersey, S-2739 would prohibit the use of eminent domain to acquire residential property for redevelopment, if legally occupied for residential purposes and maintained in accordance with applicable housing codes and standards. If enacted, the bill would prevent the taking of private homes and other residential units, by condemnation, to facilitate economic development.

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