

2008

PROPOSITION 98 EMINENT DOMAIN. LIMITS ON GOVERNMENT AUTHORITY.

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EMINENT DOMAIN. LIMITS ON GOVERNMENT AUTHORITY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Bars state and local governments from taking or damaging private property for private uses.
- Prohibits rent control and similar measures.
- Prohibits deference to government in takings cases.
- Defines “just compensation.”
- Requires an award of attorneys fees and costs if a property owner obtains a judgment for more than the amount offered by the government.
- Requires government to offer to original owner of condemned property the right to repurchase property at condemned price when property is put to substantially different use than was publicly stated.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Increased costs to many governments due to the measure’s restrictions. The net statewide fiscal effect, however, probably would not be significant.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Government Actions to Take Property— “Eminent Domain”

Every year, California state and local governments buy hundreds of millions of dollars of property from private owners. Government uses most of this property for purposes such as roads, schools, and public utilities. In other cases, government buys property for different purposes, such as to transfer it to (1) private owners to develop new businesses or (2) nonprofit organizations to provide affordable housing.

Most of the time, government buys property from willing sellers. Sometimes, however, property owners do not want to sell their property or do not agree on a sales price. In these cases, California law allows government to take property from a private owner provided that government:

- Uses the property for a “public use” (a term that has been broadly interpreted to mean a variety of public purposes).

- Pays the property owner “just compensation” (generally, the property’s fair market value) and relocation costs (including some business losses).

This government power to take property for a public use is called “eminent domain.” (The nearby box provides additional information about its use.)

Eminent Domain Challenges. Property owners are not required to accept the amount of compensation government offers. Instead, they may make a counteroffer or challenge the amount in court. Under the State Constitution, property owners are entitled to have the amount of compensation determined by a jury. While property owners also may challenge government’s right to take a property, these challenges are more difficult. In part, this is because courts give significant weight to government’s findings and perspectives when ruling on disputes as to whether an eminent domain action is for public use.

Government's Authority to Take Property by Eminent Domain

Government may use eminent domain to take property for a public use if it pays just compensation and relocation costs.

What Is a Public Use?

Common examples of public use include providing new schools, roads, government buildings, parks, and public utility facilities. The term public use also includes broad public objectives, such as economic development, eliminating urban blight and public nuisances, and public ownership of utility services. The following activities have been considered a public use:

- Promoting downtown redevelopment by transferring property to other owners to construct new stores, hotels, and other businesses.
- Reducing urban blight and crime by transferring substandard apartments in a high-crime area to a nonprofit housing organization to renovate and manage.
- Securing public control of utility services by acquiring private water and other utility systems and placing them under government ownership.

What Are Just Compensation and Relocation Costs?

Just compensation includes (1) the fair market value of the property taken and (2) any reduction in value of the remaining property when only part of a parcel is taken. In addition to the payment of just compensation, California law requires governments to pay property owners for certain other expenses and losses associated with the transfer of property ownership.

May Government Take Property Before Just Compensation Has Been Determined?

Sometimes government wants to take property quickly, before the amount of just compensation has been fully determined. In these cases, California laws allow government to deposit the probable amount of just compensation and take property within a few months. This is called a "quick take" eminent domain action. If a property owner accepts these funds, the owner gives up the right to challenge whether government's action is for a public use. The owner can still challenge the amount of just compensation.

Programs to Promote Affordable Housing

Rent Control. Over a dozen California cities have some form of rent control law. These cities include Los Angeles, San Francisco, Oakland, Berkeley, Santa Monica, and San Jose. In addition, about 100 cities and counties have laws limiting the rent mobile home park owners may charge people who lease space in their park. Altogether, about one million California households live in rent-controlled apartments or mobile home parks. While the provisions of these rent control laws vary, they typically restrict the amount of money by which a landlord (or park owner) may increase a tenant's rent each year. If a tenant moves out of a housing unit or mobile home park, property owners may reset rents to market rates. Once the

unit or space is rented again, however, rent control laws restrict the rate of future rent increases.

Other Housing Programs and Laws. About one-third of California cities and counties have laws referred to as "inclusionary housing." These laws (which can be mandatory or voluntary in nature) have the goal of providing lower-cost housing units in new developments. Mandatory inclusionary laws require developers to construct affordable housing on part of their land or contribute funds to develop such housing. Voluntary laws offer developers incentives to provide affordable housing. (For example, a city might permit a developer to build an increased number of housing units if some of them are affordable to lower-income households.) In

addition, many California cities have ordinances requiring apartment owners to provide relocation benefits to tenants if they convert their property into condominiums.

PROPOSAL

This measure amends the State Constitution to (1) constrain state and local governments' authority to take private property and (2) phase out rent control. The measure also might constrain government's authority to implement certain other programs and laws, such as mandatory inclusionary housing programs and tenant relocation benefits. The measure's provisions apply to all governmental agencies.

Taking Property

The measure prohibits government from taking ownership of property to transfer it to a private party—such as a person, business, or nonprofit organization. In addition, government could not take property to use it for (1) a purpose substantially similar to how the private owner used it (such as public operation of a water or electricity delivery system formerly owned by a private company) or (2) the purpose of consuming its natural resources (such as its oil or minerals). These restrictions on government's authority to take property also would apply to cases when government transfers the right to use or occupy property (but does not take ownership of it). None of these restrictions would apply, however, if government was addressing a public nuisance or criminal activity or as part of a state of emergency declared by the Governor.

Under the measure, government could continue to take property for facilities that it would own and use, such as new schools, roads, parks, and public facilities. Government could not take property for one purpose, however, and then use it for a different purpose unless it offered to sell the property back to its previous owner.

Property Owner Challenges. If a property owner challenged government's authority to use eminent domain, the measure directs the court to exercise its independent judgment and not defer to the findings of the government agency. In addition, property owners could challenge government's right to take the property even if they accepted funds that government deposited as part of an accelerated eminent domain action.

Property Owner Compensation. The measure contains provisions that would increase the amount of compensation provided to property owners. For example, property owners would be entitled to reimbursement for all business relocation costs, which could exceed the maximum amounts specified under current law. In addition, property owners would be entitled to compensation for their attorney costs if the property owner was successful in an eminent domain challenge.

Rent Control

The measure generally prohibits government from limiting the price property owners may charge others to purchase, occupy, or use their land or buildings. This provision would affect local rent control measures. Specifically, government could not enact new rent control measures, and any rent control measure enacted after January 1, 2007 would end. Other rent control measures (those enacted before January 1, 2007) would be phased out on a unit-by-unit basis after an apartment unit or mobile home park space is vacated. Once a tenant left an apartment or mobile home space, property owners could charge market rate rents, and that apartment unit or mobile home space would not be subject to rent control again.

Other Government Laws and Programs

The measure appears to limit government's authority to impose restrictions on the "ownership, occupancy, or use of property" if the restrictions were imposed "in order to transfer an economic

benefit” from one property owner to other private persons. The range of government laws and programs that would be affected by these provisions is not clear and would be determined by the courts. Given the wording of the measure, however, programs such as mandatory inclusionary housing and condominium conversion relocation benefits might be prohibited.

Related Measure on Ballot. This ballot contains two measures related to eminent domain: Proposition 98 (this measure) and Proposition 99. If this measure were approved by more votes than Proposition 99, the provisions of Proposition 99 probably would not take effect.

FISCAL EFFECTS

Eminent Domain Changes

Much of the property state and local government acquires is bought from willing sellers or is taken by eminent domain for purposes that would still be allowed under the measure. In these cases, government could continue to acquire these properties, but might need to pay somewhat more for them. This is because the measure increases the amount of compensation provided for properties taken by eminent domain and willing sellers are likely to demand similar increased amounts.

In some cases, the measure would prevent government from taking property by eminent domain. This reduced ability to take property could apply to many government plans for redevelopment, affordable housing, and public ownership of water or electric utility services. As a result of this reduced authority to take property, government might (1) buy fewer properties and have lower costs or (2) offer property owners more to purchase their properties and thus have higher costs.

The net fiscal effect of these potential changes in the number and price of properties acquired cannot be determined. Overall, we estimate that many governments would have net increased costs to acquire property, but that the net statewide fiscal effect probably would not be significant.

Other Changes

It is difficult to estimate the fiscal impact of the measure’s phase out of rent control and limitation of other programs that transfer economic benefits from property owners to private parties. In response to these provisions, governments might choose to change their policies in ways that do not increase their costs. For example, a government might repeal a mandatory inclusionary housing ordinance and not enact a replacement policy, or repeal the ordinance and enact land-use regulations that encourage the construction of lower-cost housing.

In other cases, conforming to the measure’s provisions could result in new costs. For example, a government could respond to the elimination of rent control by creating publicly funded programs to subsidize affordable housing. Given the uncertainty regarding some of the measure’s provisions, some governments might be unaware that their policies conflicted with the measure’s provisions and be required to pay damages to property owners.

The fiscal effect on state and local governments associated with these changes in rent control and other policies is not possible to determine, but there probably would be increased costs to many governments. The net statewide fiscal effect, however, probably would not be significant.

PROP 98 EMINENT DOMAIN. LIMITS ON GOVERNMENT AUTHORITY. INITIATIVE CONSTITUTIONAL AMENDMENT.

★ **ARGUMENT IN FAVOR OF PROPOSITION 98** ★

Proposition 98 is clear, simple, and straightforward, with only one purpose: to protect our homes, farmland, and small businesses . . . all private property.

Proposition 98 does this by:

1. Making it illegal for government to seize homes, small businesses, family farms, and places of worship and transfer them to private parties for their private use and profit.
2. Making it illegal to force the sale or rental of private homes, apartments, or other residences at below market prices.

This is all there is to Proposition 98, nothing tricky, nothing hidden. Read the Proposition 98 text carefully and you'll find it has the purpose of saving our homes, farms, small businesses, and places of worship from being seized from their owners for the benefit and profit of private developers.

WHY IS PROPOSITION 98 NEEDED?

First, because state and local governments are seizing private homes, apartments, small businesses, family farms, and places of worship for the benefit of politically well-connected developers. These seizures enable tax collectors to get around Proposition 13's limitations on property taxes, allowing them to reap huge property tax increases on the seized property.

Second, developers make huge profits when they develop seized land. The politicians can help friends and financial supporters make big profits by seizing other peoples' property.

Third, California is losing open space, farmland, and orchards at a distressing rate. Proposition 98 will prevent the seizure of these lands for developers who would otherwise cement over farmland and forever convert farms to tract homes and shopping malls.

Fourth, government has many fair and legitimate ways to help the elderly, poor, disabled, veterans, students, and others with their rent and other housing needs. Government can provide rental assistance and housing programs. Government can buy or build residential housing and provide it to the needy at low cost or even no cost. But government should not force a private property owner alone to bear the entire cost

of renting his or her home or apartment at less than the fair rental value. Forty-five of the other 49 states provide this basic protection. We are long overdue in protecting our property owners.

WHAT PROPOSITION 98 WILL NOT DO

Proposition 98 will never cause renters who now have their rents limited to lose their current rent control.

Proposition 98 DOES NOT affect the acquisition of property needed for legitimate public purposes. Property for the public good, such as schools, fire stations, highways, police stations, water projects, flood control, emergency services, parks, and environmental conservation, can still be acquired by eminent domain.

SUMMARY—ONLY 98 PROTECTS ALL PRIVATE PROPERTY

Currently, tax hungry governments get around Proposition 13, dramatically increasing property taxes by seizing homes, small businesses, apartments, family farms, and places of worship.

Also, by seizing private property, politicians can help their financial contributors get the property and profits those developers want.

Proposition 98 is the only measure on the ballot that restores private property protections for all Californians—everyone.

Visit YesProp98.com.

Vote Yes on Proposition 98.

JON COUPAL, President

Howard Jarvis Taxpayers Association,
Protect Prop. 13 Committee

DOUG MOSEBAR, President

California Farm Bureau

STEVE L. CAUGHRAN, 2007 California Small Business Owner of the Year, National Federation of Independent Business

★ **REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 98** ★

According to Secretary of State records, apartment and mobilehome park landlords paid MILLIONS to get this proposition on the ballot.

These landlords are trying the oldest political trick in the book—THE BAIT AND SWITCH. They want you to believe 98 is about eminent domain, but what they really want is to eliminate the most basic protections renters have against unfair landlords.

Here are some facts:

- Prop. 98 **ELIMINATES RENT CONTROL**. Landlords could raise rents as high as they want. Prop. 98 allows rents that are well above fair—it sanctions rent gouging where rentals are in short supply.

- 98 **WIPES OUT BASIC PROTECTIONS FOR ALL RENTERS**, including laws requiring fair return of rental deposits and laws protecting renters against unfair evictions.

- 98 IS **BAD FOR TAXPAYERS**. In their own arguments above, the landlords admit that rent control laws “help the elderly, poor, disabled, veterans, students, and others.” But they argue, instead, that taxpayers should pay for more subsidized housing and rental assistance.

Boiled down, the landlords want to pass 98 so they can raise rents as high as they want. And they want us, taxpayers, to pay for it.

• 98's **EMINENT DOMAIN PROVISIONS ARE DEEPLY FLAWED**.

Prop. 98's supposed eminent domain provisions are so poorly drafted that they will lead to frivolous lawsuits, more bureaucracy and red tape, and actually hurt homeowners and all property owners.

Reject the landlords' attack on renters and our communities.

Vote NO on Prop. 98.

Visit www.NoProp98.org.

JEANNINE ENGLISH, California State President

AARP

DEAN PRESTON, Co-Chair

Coalition to Protect California Renters

KEN WILLIS, President

League of California Homeowners

★ **ARGUMENT AGAINST PROPOSITION 98** ★

Proposition 98 is a DECEPTIVE SCHEME by wealthy landlords to abolish rent control and other renter protections. Their deeply flawed measure also contains hidden provisions that would harm the environment and our communities. **VOTE NO.**

Wealthy apartment and mobilehome park owners are spending millions on a deceptive campaign to pass Prop. 98. Ask yourself why?

They don't care about eminent domain. What these landlords really care about is eliminating rent control so they can raise rents and make millions.

Read the initiative yourself. You'll see Prop. 98:

- Eliminates rent control.
- Wipes out basic renter protections like requiring the fair return of rental deposits.
- Takes away protections requiring 60-day notice before forcing renters out of homes.

Prop. 98 would DEVASTATE MILLIONS OF RENTERS including veterans, seniors, and young families.

Prop. 98 is the worst kind of special interest proposition. It benefits a few wealthy landlords at the expense of millions protected by rent control and other laws that ensure renters are treated fairly.

• *"I'm a retiree and a veteran, and I've lived in my studio apartment for 30 years. Rent control is the only way I can afford a roof over my head. If 98 passes, hundreds of thousands of seniors could face skyrocketing rents."*

—Robert C. Potter, 80, U.S. Army Veteran, San Francisco

• *"I'm a retired widow on a fixed income. Prop. 98 would financially devastate many seniors like me who depend on rent control and other laws that protect us against unfair landlords. Vote NO on Prop. 98."*

—Helen J. Furber, 85, retired, Calistoga

The problems with 98 go far beyond ending rent control. HIDDEN PROVISIONS ALSO JEOPARDIZE ENVIRONMENTAL PROTECTIONS.

In the fine print of 98 are provisions that could prohibit important laws that protect the environment and ensure responsible growth.

• *"Prop. 98 goes beyond canceling rent control. It would gut important laws that protect our air, land, water, coasts and wildlife, and laws we need to combat global warming."*

—Jim Lyon, Vice President for Conservation, National Wildlife Federation

Prop. 98's hidden provisions THREATEN OUR SUPPLY OF SAFE, CLEAN DRINKING WATER and our ability to protect the public's safety. The measure also cripples our ability to create communities that are "livable" for those who are aging—with housing options, ways of getting around, and access to services that promote independence.

• *"Prop. 98 would jeopardize our ability to protect the quality of our drinking water and to secure new sources of water to prevent water shortages."*

—Tim Quinn, Executive Director, Association of California Water Agencies

• *"In addition to abolishing rent control, Prop. 98 contains hidden provisions that prevent law enforcement officials from dealing with slum-like conditions that contribute to crime."*

—Richard Word, President, California Police Chiefs Association

Don't let the wealthy landlords get away with their scheme to abolish rent control and eliminate protections for our environment and our communities. Join senior, homeowner, conservation, public safety, and renters' rights organizations in voting NO ON PROP. 98.

JEANNINE ENGLISH, California State President
AARP

JANIS R. HIROHAMA, President
League of Women Voters of California

RICHARD WORD, President
California Police Chiefs Association

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 98** ★

The opponents fail to even mention Proposition 98 protects homes, rental units, family farms, small businesses, and places of worship from being seized and bulldozed by politicians and developers to be converted to commercial developments for their private profit!

NO WONDER THEY DON'T MENTION THESE VITAL PROTECTIONS!—The opponents ARE the politicians and developers who are seizing the private property they want, to increase taxes and make huge development profits!

The opponents talk about wealthy landlords being the big Proposition 98 supporters. Nonsense! It is the individual homeowners whose voluntary donations sustain the Howard Jarvis Taxpayers Association's efforts to protect Proposition 13 and our homes who are the biggest contributors to Proposition 98.

And the biggest opponents of 98? The politicians and their big developer buddies!

Shame on the opponents for convincing 80-year-old veteran Robert and 85-year-old widow Helen to suggest

Proposition 98 would end the rent controls Robert and Helen depend upon. The truth: Proposition 98, Section 6, specifically provides that rent controls for everyone now covered by rent controls can remain fully in effect for an unlimited period of time. Read Proposition 98, Section 6 in this Voter Guide, and you will see that Robert and Helen and everyone now covered by rent controls are fully protected.

The greater risk for Robert, Helen, and thousands of others losing their rent controlled homes is if the opponents of Proposition 98 are allowed to seize and bulldoze them and replace rent controlled homes with strip malls.

CRUZ BACA SEMBELLO, Victim of Government Home Taking
City of Baldwin Park

JOHN REVELLI, Victim of Government Business Taking
City of Oakland

JOEL AYALA, President
California Hispanic Chambers of Commerce

QUICK-REFERENCE GUIDE

PROP 98 EMINENT DOMAIN. LIMITS ON GOVERNMENT AUTHORITY. INITIATIVE CONSTITUTIONAL AMENDMENT.

SUMMARY *Put on the Ballot by Petition Signatures*

Bars state and local governments from taking or damaging private property for private uses. Prohibits rent control and similar measures. Eliminates deference to government in property rights cases. Changes condemnation rules. Fiscal Impact: Increased costs to many governments due to the measure's restrictions. The net statewide fiscal effect, however, probably would not be significant.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: Government authority to take private property in order to transfer it to another private party would be greatly reduced. Rent control would be phased out.

NO A NO vote on this measure means: There would be no change to government's authority to take property. That is, government could take property for a public purpose if government paid the owner for its value. Government could continue to control rent increases.

ARGUMENTS

PRO Today government seizes private property to benefit politically connected developers and to get around Proposition 13 by dramatically increasing property taxes. Proposition 98 prohibits the seizing of homes, small businesses, farms, and places of worship for developers' profit and prohibits forcing owners to rent their homes below fair market value.

CON Wealthy landlords spent millions to get 98 on the ballot NOT to reform eminent domain, but to eliminate rent control and renter protections like fair return of deposits. 98 is deceptive, deeply flawed, and would lead to frivolous lawsuits and increased taxpayer costs. AARP, League of Women Voters: NO 98.

FOR ADDITIONAL INFORMATION

FOR
Yes on Prop. 98 –
Californians for Property
Rights Protection
921 11th Street, Suite 1201
Sacramento, CA 95814
(916) 556-1110
info@YesProp98.com
www.YesProp98.com

AGAINST
No on 98, Stop the
Landlords' Hidden
Agendas Scheme
1121 L Street #803
Sacramento, CA 95814
(888) 362-2337
www.NoProp98.org

PROP 99 EMINENT DOMAIN. LIMITS ON GOVERNMENT ACQUISITION OF OWNER-OCCUPIED RESIDENCE. INITIATIVE CONSTITUTIONAL AMENDMENT.

SUMMARY *Put on the Ballot by Petition Signatures*

Bars use of eminent domain to acquire an owner-occupied residence for conveyance to a private person or business entity. Creates exceptions for public works, public health and safety, and crime prevention. Fiscal Impact: No significant fiscal impact on state or local governments.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: In a limited number of cases, government would no longer have the authority to take a single-family home.

NO A NO vote on this measure means: There would be no change to government's authority to take single-family homes. That is, government could take a home for a public purpose if government paid the owner for its value.

ARGUMENTS

PRO 99 prohibits government from taking homes for private development. 41 other states reformed eminent domain laws after the Supreme Court ruled it OK for government to take homes for private development. It's time for California to act. 99 is straightforward reform: no loopholes, no hidden agendas. Protect homes. Yes 99.

CON The nonpartisan Legislative Analyst states Proposition 99 "is not likely to significantly alter current government land acquisition practices." Meaning: "Proposition 99 protects nothing." Politicians and developers spent \$4,000,000.00+ on Proposition 99 to kill every Proposition 98 property protection. Proposition 99 was written to trick voters, and destroy 98's property protections.

FOR ADDITIONAL INFORMATION

FOR
Yes on 99, Protect
Homeowners from
Eminent Domain
1121 L Street #803
Sacramento, CA 95814
(888) 362-2337
www.YesProp99.org

AGAINST
Yes on Prop. 98 –
Californians for Property
Rights Protection
921 11th Street, Suite 1201
Sacramento, CA 95814
(916) 556-1110
info@YesProp98.com
www.YesProp98.com

PROPOSITION 98

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW**SECTION 1. STATEMENT OF FINDINGS**

(a) Our state Constitution, while granting government the power of eminent domain, also provides that the people have an inalienable right to own, possess, and protect private property. It further provides that no person may be deprived of property without due process of law, and that private property may not be taken or damaged by eminent domain except for public use and only after just compensation has been paid to the property owner.

(b) Notwithstanding these clear constitutional guarantees, the courts have not protected the people's rights from being violated by state and local governments through the exercise of their power of eminent domain.

(c) For example, the U.S. Supreme Court, in *Kelo v. City of New London*, held that the government may use eminent domain to take property from its owner for the purpose of transferring it to a private developer. In other cases, the courts have allowed the government to set the price an owner can charge to sell or rent his or her property, and have allowed the government to take property for the purpose of seizing the income or business assets of the property.

(d) Farmland is especially vulnerable to these types of eminent domain abuses.

SECTION 2. STATEMENT OF PURPOSE

(a) State and local governments may use eminent domain to take private property only for public uses, such as roads, parks, and public facilities.

(b) State and local governments may not use their power to take or damage property for the benefit of any private person or entity.

(c) State and local governments may not take private property by eminent domain to put it to the same use as that made by the private owner.

(d) When state or local governments use eminent domain to take or damage private property for

public uses, the owner shall receive just compensation for what has been taken or damaged.

(e) Therefore, the people of the state of California hereby enact the "California Property Owners and Farmland Protection Act."

SECTION 3. AMENDMENT TO CALIFORNIA CONSTITUTION

Section 19 of Article I of the California Constitution is amended to read:

SEC. 19. (a) Private property may be taken or damaged *only* for a *stated* public use ~~only~~ and when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation. *Private property may not be taken or damaged for private use.*

(b) *For purposes of this section:*

(1) *"Taken" includes transferring the ownership, occupancy, or use of property from a private owner to a public agency or to any person or entity other than a public agency, or limiting the price a private owner may charge another person to purchase, occupy or use his or her real property.*

(2) *"Public use" means use and ownership by a public agency or a regulated public utility for the public use stated at the time of the taking, including public facilities, public transportation, and public utilities, except that nothing herein prohibits leasing limited space for private uses incidental to the stated public use; nor is the exercise of eminent domain prohibited to restore utilities or access to a public road for any private property which is cut off from utilities or access to a public road as a result of a taking for public use as otherwise defined herein.*

(3) *"Private use" means:*

(i) *transfer of ownership, occupancy or use of private property or associated property rights to any person or entity other than a public agency or a regulated public utility;*

(ii) *transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner; or*

(iii) *regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer an economic*

benefit to one or more private persons at the expense of the property owner.

(4) “Public agency” means the state, special district, county, city, city and county, including a charter city or county, and any other local or regional governmental entity, municipal corporation, public agency-owned utility or utility district, or the electorate of any public agency.

(5) “Just compensation” means:

(i) for property or associated property rights taken, its fair market value;

(ii) for property or associated property rights damaged, the value fixed by a jury, or by the court if a jury is waived;

(iii) an award of reasonable costs and attorney fees from the public agency if the property owner obtains a judgment for more than the amount offered by a public agency as defined herein; and

(iv) any additional actual and necessary amounts to compensate the property owner for temporary business losses, relocation expenses, business reestablishment costs, other actual and reasonable expenses incurred and other expenses deemed compensable by the Legislature.

(6) “Prompt release” means that the property owner can have immediate possession of the money deposited by the condemnor without prejudicing his or her right to challenge the determination of fair market value or his or her right to challenge the taking as being for a private use.

(7) “Owner” includes a lessee whose property rights are taken or damaged.

(8) “Regulated public utility” means any public utility as described in Article XII, Section 3, that is regulated by the California Public Utilities Commission and is not owned or operated by a public agency. Regulated public utilities are private property owners for purposes of this article.

(c) In any action by a property owner challenging a taking or damaging of his or her property, the court shall consider all relevant evidence and exercise its independent judgment, not limited to the administrative record and without deference to the findings of the public agency. The property owner shall be entitled to an award of reasonable costs and attorney fees from the public agency if the court finds that the agency’s actions are not in compliance with this section. In addition to other legal and equitable remedies that may be available, an owner whose property is taken or damaged for private use may bring an action for an injunction, a writ of mandate, or a declaration invalidating the action of the public agency.

(d) Nothing in this section prohibits a public agency or regulated public utility from entering into an agreement with a private property owner for the voluntary sale of property not subject to eminent domain, or a stipulation regarding the payment of just compensation.

(e) If property is acquired by a public agency through eminent domain, then before the agency may put the property to a use substantially different from the stated public use, or convey the property to another person or unaffiliated agency, the condemning agency must make a good faith effort to locate the private owner from whom the property was taken, and make a written offer to sell the property to him at the price which the agency paid for the property, increased only by the fair market value of any improvements, fixtures, or appurtenances added by the public agency, and reduced by the value attributable to any removal, destruction or waste of improvements, fixtures or appurtenances that had been acquired with the property. If property is repurchased by the former owner under this subdivision, it shall be taxed based on its pre-condemnation enrolled value, increased or decreased only as allowed herein, plus any inflationary adjustments authorized by subdivision (b) of Section 2 of Article XIII A. The right to repurchase shall apply only to the owner from which the property was taken, and does not apply to heirs or successors of the owner or, if the owner was not a natural person, to an entity which ceases to legally exist.

(f) Nothing in this section prohibits a public agency from exercising its power of eminent domain to abate public nuisances or criminal activity.

(g) Nothing in this section shall be construed to prohibit or impair voluntary agreements between a property owner and a public agency to develop or rehabilitate affordable housing.

(h) Nothing in this section prohibits the California Public Utilities Commission from regulating public utility rates.

(i) Nothing in this section shall restrict the powers of the Governor to take or damage private property in connection with his or her powers under a declared state of emergency.

SECTION 4. IMPLEMENTATION AND AMENDMENT

This act shall be self-executing. The Legislature may adopt laws to further the purposes of this act and aid in its implementation. No amendment to this act may be made except by a vote of the people pursuant to Article II or Article XVIII of the California Constitution.

SECTION 5. SEVERABILITY

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 6. EFFECTIVE DATE

The provisions of this act shall become effective on the day following the election (“effective date”); except that any statute, charter provision, ordinance, or regulation by a public agency enacted prior to January 1, 2007, that limits the price a rental property owner may charge a tenant to occupy a residential rental unit (“unit”) or mobile home space (“space”) may remain in effect as to such unit or space after the effective date for so long as, but only so long as, at least one of the tenants of such unit or space as of the effective date (“qualified tenant”) continues to live in such unit or space as his or her principal place of residence. At such time as a unit or space no longer is used by any qualified tenant as his or her principal place of residence because, as to such unit or space, he or she has: (a) voluntarily vacated; (b) assigned, sublet, sold or transferred his or her tenancy rights either voluntarily or by court order; (c) abandoned; (d) died; or he or she has (e) been evicted pursuant to paragraph (2), (3), (4) or (5) of Section 1161 of the Code of Civil Procedure or Section 798.56 of the Civil Code as in effect on January 1, 2007; then, and in such event, the provisions of this act shall be effective immediately as to such unit or space.

PROPOSITION 99

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

TITLE. This measure shall be known as the “Homeowners and Private Property Protection Act.”

PROPOSED LAW**SECTION 1. PURPOSE AND INTENT**

By enacting this measure, the people of California hereby express their intent to:

(a) Protect their homes from eminent domain abuse.

(b) Prohibit government agencies from using eminent domain to take an owner-occupied home to

transfer it to another private owner or developer.

(c) Amend the California Constitution to respond specifically to the facts and the decision of the U.S. Supreme Court in *Kelo v. City of New London*, in which the Court held that it was permissible for a city to use eminent domain to take the home of a Connecticut woman for the purpose of economic development.

(d) Respect the decision of the voters to reject Proposition 90 in November 2006, a measure that included eminent domain reform but also included unrelated provisions that would have subjected taxpayers to enormous financial liability from a wide variety of traditional legislative and administrative actions to protect the public welfare.

(e) Provide additional protection for property owners without including provisions, such as those in Proposition 90, which subjected taxpayers to liability for the enactment of traditional legislative and administrative actions to protect the public welfare.

(f) Maintain the distinction in the California Constitution between Section 19, Article I, which establishes the law for eminent domain, and Section 7, Article XI, which establishes the law for legislative and administrative action to protect the public health, safety and welfare.

(g) Provide a comprehensive and exclusive basis in the California Constitution to compensate property owners when property is taken or damaged by state or local governments, without affecting legislative and administrative actions taken to protect the public health, safety and welfare.

SECTION 2. AMENDMENT TO THE CALIFORNIA CONSTITUTION

Section 19 of Article I of the California Constitution is amended to read:

SEC. 19. (a) Private property may be taken or damaged for a public use *and* only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(b) *The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person.*

(c) *Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting*