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EMINENT DOMAIN. LIMITS ON
GOVERNMENT ACQUISITION OF
OWNER-OCCUPIED RESIDENCE

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

- Bars state and local governments from using eminent domain to acquire an owner-occupied residence, as defined, for conveyance to a private person or business entity.
- Creates exceptions for public work or improvement, public health and safety protection, and crime prevention.

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

- No significant fiscal impact on state or local governments.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California state and local governments frequently acquire private property to build public facilities (such as roads, parks, and schools) or to promote public objectives (such as economic development and 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 certain business losses).

This government power to take property for a public use is called “eminent domain.” The nearby box provides additional information regarding the terms public use, just compensation, and relocation costs.

PROPOSAL

This constitutional amendment limits state and local government’s use of eminent domain in certain circumstances. Specifically, the measure prohibits government from using eminent domain to take a single-family home (including a condominium) for the purpose of transferring it to another private party (such as a person, business, or association).

This prohibition, however, would not apply if government was taking the home to:

- Protect public health and safety.
- Prevent serious, repeated criminal activity.
- Respond to an emergency.
- Remedy environmental contamination that posed a threat to public health and safety.
- Use the property for a public work, such as a toll road or airport operated by a private party.

In addition, the prohibition would not apply if the property owner did not live in the home or had lived there for less than a year.

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.

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

FISCAL EFFECTS

Under current law and practice, government seldom uses eminent domain to take single-family homes. Even when it does so, the acquisition often is for a purpose that is permitted under the measure (such as construction of a road or school). Accordingly, this measure would not change significantly current government land acquisition practices.

In a very limited number of cases, however, this measure might result in government:

- Savings—because government could not acquire a home that the owner did not wish to sell.
- Costs—because government might pay more to buy a home than would have been the case if it could have taken the home using eminent domain.

The net fiscal effect of such actions would not be significant.

★ ARGUMENT IN FAVOR OF PROPOSITION 99 ★

YES on PROP. 99.

Real Eminent Domain Reform—No Hidden Agendas
We need to act now to PROTECT HOMEOWNERS.

In 2005, the U.S. Supreme Court ruled that government can use eminent domain to take a person's home and give it to a private developer. Since then, more than 40 states have reformed their eminent domain laws, but California has failed to act. We need to act now to close this legal loophole created by the Supreme Court decision and to protect California homeowners from abuses of eminent domain.

Prop. 99 is the straightforward solution we need to PROTECT AGAINST EMINENT DOMAIN ABUSES.

Prop. 99 provides simple, powerful eminent domain reform.

- Prop. 99 prohibits government from using eminent domain to take a home to transfer it to a private developer.
- Prop. 99 places this vital protection into our state Constitution to ensure that the government cannot remove it without a vote of the people.
- Unlike other deceptive proposals, Prop. 99 has NO HIDDEN AGENDAS. Read it for yourself. What you see is what you get. Prop. 99 is straightforward eminent domain reform that protects homeowners *now*.

Homeowner, community, and senior groups have united to support this critical reform.

“As an official proponent of Prop. 99, I urge all Californians to vote YES. Prop. 99 provides urgently needed eminent domain reform to protect homeowners across California.”

—Ken Willis, President, League of California Homeowners

“The League of Women Voters of California has carefully examined Prop. 99. This is a straightforward measure that does what it says: prohibits the seizure of homes for private development projects.”

—Janis R. Hirohama, President, League of Women Voters of California

“Prop. 99 ensures that seniors and other vulnerable citizens are protected from losing their homes to a private developer.”

—Nan Brasmer, President, California Alliance for Retired Americans

ACCEPT NO SUBSTITUTES: Prop. 99 is the only real eminent domain reform on the ballot.

Other measures may pretend to reform eminent domain, but Prop. 99 is the best way to protect homeowners and prevent future abuses. Prop. 99 is straightforward and strong. It protects our homes from eminent domain abuse. Pure and simple. No hidden agendas.

Vote YES to Protect California's Homeowners.

Vote YES on Prop. 99.

KEN WILLIS, President
League of California Homeowners

NAN BRASMER, President
California Alliance for Retired Americans

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

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 99 ★

According to California's nonpartisan Legislative Analyst's Office Proposition 99 *“is not likely to significantly alter current government land acquisition practices.”*

Meaning: “Proposition 99 does nothing.”

Yet the politicians and developers spent \$4,000,000.00+ to put Prop. 99 on the ballot, when it does almost nothing!

Why? Because they filed 99 only after homeowners, family farmers, and small business owners filed Proposition 98.

The politicians and developers don't want you to vote Yes on 98, so they are trying to trick you into voting for “do-nothing” Proposition 99 instead.

Prop. 99 took out every protection for farmers, small businesses, rented homes. Read Prop. 99 in this Voter Guide. Small businesses? Family Farmers? Renters? Places of Worship? All gone.

But homeowners? 99 looks like it protects homeowners. Again the nonpartisan analysis: Proposition 99 *“is not likely to significantly alter current government land acquisition practices.”* Meaning 99 protects virtually nothing. Homeowners have virtually no protection under 99.

Worst yet! If 99 gets more votes than 98—EVEN IF PROPOSITION 98 GETS A MAJORITY—99 kills ALL the Proposition 98 protections for everyone, INCLUDING HOMEOWNERS! Read it yourself in Proposition 99, SECTION 9, in this Guide.

Stick together, protect everyone, not just the few. That's fair. Vote Yes on 98.

Vote No on 99. The politicians and developers who paid \$4,000,000.00+ to put 99 on your ballot are trying an old election trick. They did not trick us back when we passed Proposition 13; don't let them trick you now!

Visit YesProp98.com.

No on 99!

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

★ ARGUMENT AGAINST PROPOSITION 99 ★

The State of California’s nonpartisan Legislative Analyst’s Office, says that Proposition 99 “is not likely to significantly alter current government land acquisition practices.”

In everyday language: “Proposition 99 does nothing.”

So why did the politicians and developers spend \$4,000,000.00+ to put Prop. 99 on the ballot, when it does almost nothing?

They filed Proposition 99 and spent \$4 million+ on it, only after homeowners, family farmers, and small business owners filed Proposition 98.

Proposition 98 protects ALL private property in California. Proposition 99 protects virtually nothing.

The politicians and developers don’t want you to vote Yes on 98, so they are trying to trick you into voting for “do-nothing” Proposition 99 instead.

In past elections, you have seen powerful special interests use this trick to try to defeat popular ballot propositions. Two propositions on the same subject matter can confuse voters.

The politicians who are against Proposition 98 tried the same trick years ago when they opposed Proposition 13. They put on a weak, do-nothing Proposition hoping to trick voters into being against Prop. 13!

Well the old game of “let’s trick the voter” is back—brought to you, this time, by the very politicians and developers who seize homes, small businesses, family farms, and places of worship from owners who don’t want to sell and turn them into car dealerships, chain stores, and the like.

In 99 they took out every protection for farmers, small businesses, second homes, and rented homes. Read Prop. 99 carefully in this Voter Guide. Small businesses? Family Farmers? Renters? Places of Worship? All gone. No protection whatsoever.

But homeowners? 99 looks like it protects homeowners. But the devil is in the details. Under 99 they can easily seize

your home. *Read 99, it says houses can be taken “under certain circumstances.” And these “certain circumstances” are many!*

In the end, homeowners have virtually no protection under 99. Read again the nonpartisan analysis: Proposition 99 “is not likely to significantly alter current government land acquisition practices.” This means 99 protects virtually nothing.

But it gets even worse! The politicians and developers added that if 99 gets more votes than Proposition 98—EVEN IF PROPOSITION 98 GETS A MAJORITY—99 kills all the protections in Proposition 98 for everyone, INCLUDING HOMEOWNERS! REALLY! If you don’t believe us, read it for yourself in SECTION 9 of Proposition 99 in this Voter Guide.

Renters, small business owners, homeowners, religious congregations, family farmers . . . none of us want to see our homes and property bulldozed. *Let’s stick together, protect everyone, not just the few. It is only fair. Vote Yes on 98.*

Remember, only Prop. 98 protects all private property in California, Prop. 99 protects virtually nothing.

Vote No on Proposition 99, the politicians and developers who paid \$4,000,000.00+ to put it on your ballot are trying to pull off an old election trick. They did not trick us back when we passed Proposition 13; don’t let them trick you now!

Visit YesProp98.com.
No on 99!

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 AGAINST PROPOSITION 99 ★

The people opposing Proposition 99 are the same apartment and mobile home park owners who want to trick you into passing Proposition 98—the flawed measure on this ballot that’s a bait and switch scheme by wealthy landlords to abolish rent control and other renter protections.

While Prop. 98 is full of hidden agendas, Prop. 99 is straightforward and powerful eminent domain reform: it stops the government from taking homes to transfer to a private developer.

California’s independent nonpartisan Legislative Analyst writes: Prop. 99 “prohibits government from using eminent domain to acquire a home . . .”

The State Attorney General reviewed Proposition 99 and in the official summary writes: Prop. 99 “Bars state and local governments from using eminent domain to acquire an owner-occupied residence . . .”

And the League of Women Voters of California says: “This is a straightforward measure that does what it says: prohibits the seizure of homes for private development projects.”

LEADING CALIFORNIA ORGANIZATIONS SUPPORT PROP. 99, including:

- League of California Homeowners
- League of Women Voters of California
- California Police Chiefs Association
- California Alliance for Retired Americans
- Consumer Federation of California

Proposition 99 is the only measure on this ballot that contains pure eminent domain reform, with *no* hidden provisions written to benefit special interest sponsors.

Prop. 99 would stop government from taking homes to give to a private developer. No hidden agendas. No costly and damaging consequences.

Vote Yes on Prop. 99—Protect California Homeowners.
www.YesProp99.org

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

RICHARD WORD, President
California Police Chiefs Association

KEN WILLIS, President
League of California Homeowners

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

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*

public health and safety; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.

(d) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of acquiring private property for a public work or improvement.

(e) For the purpose of this section:

1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise, or otherwise.

2. "Local government" means any city, including a charter city, county, city and county, school district, special district, authority, regional entity, redevelopment agency, or any other political subdivision within the State.

3. "Owner-occupied residence" means real property that is improved with a single-family residence such as a detached home, condominium, or townhouse and that is the owner or owners' principal place of residence for at least one year prior to the State or local government's initial written offer to purchase the property. Owner-occupied residence also includes a residential dwelling unit attached to or detached from such a single-family residence which provides complete independent living facilities for one or more persons.

4. "Person" means any individual or association, or any business entity, including, but not limited to, a partnership, corporation, or limited liability company.

5. "Public work or improvement" means facilities or infrastructure for the delivery of public services such as education, police, fire protection, parks, recreation, emergency medical, public health, libraries, flood protection, streets or highways, public transit, railroad, airports and seaports; utility, common carrier or other similar projects such as energy-related, communication-related, water-related and wastewater-related facilities or infrastructure; projects identified by a State or local government for recovery from natural disasters; and private uses incidental to, or necessary for, the public work or improvement.

6. "State" means the State of California and any of its agencies or departments.

SECTION 3. By enacting this measure, the voters do not intend to change the meaning of the terms in subdivision (a) of Section 19, Article I of the California Constitution, including, without limitation, "taken," "damaged," "public use," and "just compensation," and deliberately do not impose any restrictions on the exercise of power pursuant to Section 19, Article I, other than as expressly provided for in this measure.

SECTION 4. The provisions of Section 19, Article I, together with the amendments made by this initiative, constitute the exclusive and comprehensive authority in the California Constitution for the exercise of the power of eminent domain and for the payment of compensation to property owners when private property is taken or damaged by state or local government. Nothing in this initiative shall limit the ability of the Legislature to provide compensation in addition to that which is required by Section 19 of Article I to property owners whose property is taken or damaged by eminent domain.

SECTION 5. The amendments made by this initiative shall not apply to the acquisition of real property if the initial written offer to purchase the property was made on or before the date on which this initiative becomes effective, and a resolution of necessity to acquire the real property by eminent domain was adopted on or before 180 days after that date.

SECTION 6. The words and phrases used in the amendments to Section 19, Article I of the California Constitution made by this initiative which are not defined in subdivision (e), shall be defined and interpreted in a manner that is consistent with the law in effect on January 1, 2007, and as that law may be amended or interpreted thereafter.

SECTION 7. The provisions of this measure shall be liberally construed in furtherance of its intent to provide homeowners with protection against exercises of eminent domain in which an owner-occupied residence is subsequently conveyed to a private person.

SECTION 8. The provisions of this measure are severable. If any provision of this measure 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 9. In the event that this measure appears on the same statewide election ballot as another initiative measure or measures that seek to affect the rights of property owners by directly or indirectly amending Section 19, Article I of the California Constitution, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and each and every provision of the other measure or measures shall be null and void.