



ANALYSIS OF PROPOSITION 99 April 16, 2008

The League of California Cities placed an initiative on the ballot to amend the state constitution for the purpose of protecting homes from eminent domain abuse.¹ Proposition 99, the “Homeowners and Private Property Protection Act” (“Prop 99”), as it is called, is both a response to the U.S. Supreme Court’s infamous decision in *Kelo v. City of New London*, and Proposition 90, a combination eminent domain and regulatory takings measure that was narrowly defeated in 2006. Unfortunately, Prop 99 allows a considerable amount of abuse to continue.

Despite its lofty language of intent, Prop 99 would only protect “owner-occupied residence[s]” from being acquired by eminent domain and subsequently transferred to a private party for private development. While that is certainly necessary and worthwhile, as defined in Prop 99, “owner-occupied residence” specifically *excludes* all small business owners, all renters and even all new homeowners if they have lived in their residences for less than a year. Prop 99 would provide even *less* protection than would have been provided by ACA 8, a League-backed—and recently defeated—constitutional amendment considered by the Legislature. Over the years, the Institute for Justice has found over 1,000 instances of eminent domain abuse in California,² many of which would not be stopped by Prop 99 because it seeks to prevent abuse against such a small proportion of the properties subject to abuse. Prop 99 will do little to prevent eminent domain abuse in California³—and this flaw is fatal.

In addition, Prop 99 only applies to owner-occupied residences when the government’s “purpose” is to convey property to another private party, so it is unclear if Prop 99 would protect *any* property. Government can always claim that its purpose is something else. For example, under the Prop 99 “purpose” test, a government could change the zoning of an area—from residential to commercial, for example—and then, with the alleged purpose of making the properties in the area meet the new zoning requirements, use eminent domain to transfer homes to private developers. Courts give great deference to a government’s claim of purpose, so Prop 99 would be of little use to homeowners whose cities are determined to take their properties.

Finally, Prop 99 contains a provision that would nullify any other attempts to amend Article I, Section 19 of the constitution—a clear attack on another ballot measure, which promises broad-reaching, non-discriminatory protection of homes, farms, business and houses of worship from the abuse of eminent domain.⁴ Filed by a group consisting of the California Farm Bureau Federation, Howard Jarvis Taxpayers Association and California Alliance to Protect Private Property Rights, Prop 98, the “California Property Owners and Farmland Protection Act” (“Prop 98”), will appear on the same June 2008 ballot. In the event that both pass, Prop 99’s specific provision would wipe out Prop 98 in its entirety.

In the end, Prop 99 will provide insubstantial protection against the use of eminent domain for private commercial development. Small business owners will continue to lose not only their buildings, but also their incomes. All farmers and working class renters are at risk. Homeowners may not even be protected. Californians require real, substantive reform for everyone and Prop 99 does not come close to providing it.

The Institute for Justice is a non-profit, public interest law firm dedicated to fighting the abuse of eminent domain. IJ litigated the controversial Kelo v. City of New London case before the U.S. Supreme Court and is currently in litigation against National City, Calif., challenging that city’s blight designation and plans to bulldoze a community gym for luxury condominiums.

¹ The initiative may be found at http://ag.ca.gov/cms_attachments/initiatives/pdfs/2007-05-14_07-0018_Initiative.pdf.

² The studies, *Public Power, Private Gain* and *Opening the Floodgates*, may be found at <http://www.castlecoalition.org/publications/index.html>.

³ An analysis of California’s eminent domain problem, as detailed in *California Scheming*, may be found at <http://castlecoalition.org/images/publications/californiaschemingfinal.pdf>.

⁴ The initiative may be found at http://ag.ca.gov/cms_attachments/initiatives/pdfs/i684_2007-05-03_07-0015_Initiative.pdf.