

Sacramento Report by Greg McConnell

Supreme Court Speaks

News does not remain new very long these days. Just a few short weeks ago, we were bombarded everyday with news about Michael Jackson's trial. Then, just a day or so after the verdict, the lights were turned off, the cameras disappeared, and nary a word could be heard on cable or radio info/news shows.

It seems that Americans has become immune to bad news. The sky has fallen so many times that new reports are met with, "so what, let it fall." We are theatergoers ignoring screams of fire as we watch our movie and the building burns down around us.

In fact, that is what happened just the other day. While Santa Maria burned, the U.S. Supreme Court fiddled with important issues, and came down with decisions that strike at the core of fundamental property rights.

This bill seeks to permanently extend the requirement to give tenants a 60 day notice for no fault terminations of tenancy.

In *Chevron v. Lingle*, property owners argued that the state of Hawaii had illegally taken private property through regulation that did not advance a substantial state interest. The Supreme Court, though widely viewed as the most conservative, pro-business court that this country has seen in decades, said, so what? States don't need to show that regulation advances a substantial state interest. All they need to show is that the regulation does not deprive the property owners of all economic benefit from their properties.

This stunning defeat for property rights advocates was followed by the *New London* decision where the Supreme Court found that local governments can take private property from one individual through eminent domain and give it to others if they can demonstrate that the new owners will devote the land to uses that would generate greater tax revenues and enhance the public good. That means that anyone's home or business can be taken if the government thinks some other business will use the property to produce more tax revenue.

In a biting dissent, Justice Sandra Day O'Connor wrote that under the majority ruling, "nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

As with the Michael Jackson case, these court rulings received media review, and a fair share of outrage by conservative commentators. But even as this article is written, the public's outcry has already begun to subside. By the time you read this in August, only the property owners who face loss of their properties will know that these cases have severely impacted private property rights in America.

Unfortunately, I am not surprised by the rulings. I never thought, not for one moment, that the courts would outlaw rent control or government regulation of private property. For over twenty years, I have said as loudly as I can that rent control, and regulatory takings are political activities that require political solutions.

And here we are. The courts cling to the narrow view that they will consider extreme situations and may look at abusive regulatory practices on a case-by-case basis, but they will not stop governments from regulating/taking private property. If that is to be done, the people will have to do it through the ballot box, either by electing officials who protect basic rights or through the initiative process.

There may be one silver lining in all of this. For years, California rental property owners have toyed with the notion of putting forth statewide limits on rent control through the initiative process. The formula for wining, however, was not apparent. Tenants outnumber apartment owners, and the other block of voters, homeowners, just haven't cared because rent control does not affect them directly. Perhaps that will change.

If homeowners feel threatened by the fact that the same people who regulate rents now have the power to take their homes to make room for big box retailers, their attitudes may change

dramatically. After all, nothing gets people motivated like the realization that their heads, too, are on the chopping block.

Let's see how this develops. Maybe some aggressive coalition of interested groups will see this as the time to develop an initiative to prevent California from taking private property and ensuring that only owners can set the price at which properties are sold or rented.

Legislative Update

The Legislature will be in summer recess from July 15 until August 15. When it reconvenes, there will be a sprint to the end of the session to try to get bills passed by the September 9 deadline. Most of the bills that we have been concerned about have either been negotiated or defeated. SB 51 remains high on the "must kill" list.

SB 51 (Kuehl) "60 day termination notices" This bill seeks to permanently extend the requirement to give tenants a 60 day notice for no fault terminations of tenancy. It is the number one target for rental housing industry opposition.

During the last committee hearing on the bill, the Department of Housing and Community Development joined the rental housing industry in officially announcing opposition to the bill. This raises the stakes considerably, as the Legislature is now on notice that a veto is very likely if the bill passes the legislature.

SB 51 could play out any number of ways. The Assembly may defeat it; it may be passed and then vetoed; or, if the votes don't look good, the author could make it a two-year bill and see if there is any horse-trading she can do with the industry to remove our opposition. At this point, unless something changes dramatically, it does not look like this bill is going to become law. That would mean that starting January 1, 2006, the law would revert to a thirty-day notice.

You can follow SB 51 by going to the following site: http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_51&sess=CUR&house=B&author=kuehl

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