

SACRAMENTO REPORT

They're Back!

by Greg McConnell, Legislative Advocate

On November 21, 2006, the Howard Jarvis Taxpayers Association (HJTPA) re-submitted a proposed initiative to the Attorney General entitled the California Property Owners Protection Act (The Act) that would amend the California Constitution to prohibit government from taking or damaging private property and transferring it from a private owner to another private person. If it gets on the ballot, the initiative will be voted on in 2008.

You may recall that HJTPA submitted an identical initiative last year but did not pursue it through the election. Instead, Californian's were asked to vote on Proposition 90 which was promoted primarily by a New Yorker and seen as vastly greater in reach and scope. Proposition 90 would have halted eminent domain, rent control and many other regulatory practices.

As the election drew near, the measure had a significant lead in the polls. However, at the very end a strange coalition of businesses, developers, and others joined with the League of Cities to pump millions of dollars into a successful last minute opposition campaign and defeated the proposition. The final vote was 48% in favor to 52% opposed.

Many pundits have speculated that Proposition 90 was defeated because it went too far – according to opponents it could have prevented environmental regulation and some even argued that it would limit intellectual property regulation. Another reason cited for defeat of the measure was that it was allegedly primarily supported by outsiders.

If HJTPA is going to be successful in this arena it will have to address those two points. It will also have to sell their initiative in a simple and compelling way. I like this argument: “if government wants to promote regulations that benefit society as a whole, then society as a whole should pay the price of those regulations.” In other words, if government chooses to restrict the price of rents to help low income residents, then it should tax everyone and reimburse private property owners so the individual does not have to bear the price of the regulation on his /her own. The following excerpts are from an analysis that we prepared on this issue last year.

Included in California Property Owners Protection Act (The Act) is a prohibition on damaging private property for “private use” which is defined as “use which provides an economic benefit to one or more private persons at the expense of the private property owner such as a limitation on the amount a property owner may charge another private person to purchase or use his or her property.” (Emphasis added) In other words, if The Act were to become law, a municipality could not limit the amount that a landlord could charge a tenant for the use of his or her property. Rent control throughout the state would be abolished.

According to the proponents, their action is the result of growing frustration over the inability to protect private property rights from erosion by government officials. In The Act, the proponents cite two examples of recent Supreme Court cases where they contend private property rights were taken by government and court action:

(1) “A recent decision of the United States Supreme Court (Kelo v. City of New London) permitted a city to exercise its power of eminent domain to take private property for the purpose of transferring ownership to a private developer.”

(2) “In Lingle v. Chevron U.S.A. Inc., the Court further eroded our constitutional protections against government takings by abandoning the requirement that a government regulation of property must substantially advance a legitimate government interest.”

The proponents find it repugnant that government can take a home or small business and sell it to a developer simply because the resulting use may generate more local taxes. Similarly, they object to the laws of local governments that force private owners to bear the burden of supplying low rent housing to tenants under rent control, especially where it cannot be shown that doing so advances a legitimate state interest.

But are good fair market arguments coupled with frustration over Supreme Court decisions that allow governments to take property from one private party and give it to another sufficient to raise the funds that are necessary to qualify an initiative for the ballot and then get the voters of California to agree? That is the \$50 million question. Make no mistake about it. If The Act is qualified for the ballot, this will be one of the most contested issues to face the voters of California. By lumping eminent domain with rent control, the proponents hope that they will be able to merge homeowners, small businesses, taxpayers, and disenchanting landlords into a powerful political force.

However, this also merges local governments, redevelopment agencies, tenants and all the lawyers that make a living off of rent control into a strong group of opponents. I have spoken with many people to gauge their reactions to The Act. The bulls say bring it on. For them, it is time to take a stand and end the ongoing erosion of private property rights. Others agree with the intent of the proponents, but are bearish on the initiative. Some in this group express the concern that a wide margin defeat of The Act might embolden tenants and regulators to push for even stronger statewide rent regulation. ***(This issue, at least, can be put to bed. The defeat of Proposition 90 has not lead any tenant groups to announce that they feel they can pass statewide rent control)***

It is far too early to tell if The Act will ever get off the ground. It cost nearly \$4 million just to qualify an initiative. Given the great interest that local governments will have in this matter, you can be assured that their attorneys, paid for with your tax dollars, will scrutinize The Act to try to find ways to bring court actions in hopes of preventing it from ever seeing the light of day. Even if it clears these hurdles, the question becomes, will the proponents be able to raise the millions of dollars that a full fledged campaign will cost.

We will follow developments and report as warranted. If you want to get more information, contact the proponents. They request that any correspondence regarding this initiative should be directed to Jon Coupal, Howard Jarvis Taxpayers Association, 921 Eleventh Street, Suite 1201, Sacramento, CA 95814, (916) 444-9950.

2007 Legislation

When they come back from break, the Senate and Assembly will commence work on a new two year legislative session. Legislators will have until January 26 to submit bill request to the Office of Legislative Council (this office drafts legislation) and until February 23 to actually introduce new bills. It is far too early to report on specific legislation that will be considered this year. However, we anticipate that the current crop of legislators will be as eager to make their mark this session as their colleagues were last session. Thus, we expect thousands of bills and a lot of interest in landlord tenant affairs. We will keep you updated on issues that can affect your interests.

Greg McConnell is a rental housing consultant and legislative advocate. He represents and advises apartment associations, property management companies, and individual owners throughout California. For more information please visit www.themcconnellgroup.com. © This article is copyrighted and cannot be republished without the consent of the author.