

Anniversary of Kelo Decision Passes With No Reforms in California; Reflections on the Prop. 98 Campaign by *Jon Coupal, President of the Howard Jarvis Taxpayers Association.*

As the 3rd anniversary of the U.S. Supreme Court's *Kelo v. New London* decision came and went on June 23rd, California remains among the few states that has failed to join over 40 states in curbing eminent domain abuse.

Despite passage of Prop. 99, a sham sponsored by development interests, government can still profit today by seizing private property to give to politically connected developers for private use. Prop. 99 left out protections for small businesses, family farms, places of worship, rentals and all homes. How could voters support a sham measure sponsored by the very interests that abuse the system?

For the answer, consider that nowhere in the country are the interests that want to protect abusive practices of eminent domain more powerful and well financed. And **California is one of the states most in need of greater reform**, according to the Institute for Justice, the non-profit organization which litigated the Kelo case.

In 2006, Prop. 90, an eminent domain measure similar to Prop. 98, was defeated by a narrow margin. Fearing that a better financed effort led by property owners would win, the League of California Cities (League) and the California State Association of Counties (CSAC) sought a different strategy by qualifying a competing ballot measure called Prop. 99, a measure that the State's non-partisan Legislative Analyst's Office said is "not likely to significantly alter current government land acquisition practices." In other words, it doesn't do anything.

The Los Angeles Times was among several newspapers which opposed Prop. 98 that has called for additional reforms, and has challenged the motives of Prop. 99's proponents. After Election Day they said, "But voters shouldn't be deceived into thinking it (Prop. 99) solves the eminent domain problem or that the measure's backers were acting in their interest." Right, but unfortunately the media largely ignored these points during the campaign.

By demonizing Prop. 98, our opponents were largely successful in convincing voters that Prop. 98 would lead to catastrophic or unintended consequences, including threats to the environment and water projects, and even tossing renters out on the street, none of which could be independently substantiated by impartial parties. All the while, millions were spent to present Prop. 99 as the sensible alternative.

Like Prop. 90 in the past, Prop. 98 was seriously outspent. In fact, it was outspent nearly 2-1 (\$12.1m to \$6.5m), and more than five to one in paid advertisement during the final week before Election Day. Prop. 99 was hardly a populist campaign for it had a mere 235 donors and its donors gave an average of \$51,000! In contrast, Prop. 98 had over 11,000 donors giving an average of about \$560.

In the end, Prop. 98's proponents were unable to mount an effective Yes Prop. 98/No Prop. 99 campaign at the same time and as a result, the second rebellion to restore private property rights in two years was defeated.

This was not the first time big money was used to defeat property rights reforms in California. A 2007 report by The Institute for Money in State Politics, a non-profit organization that monitors campaign spending, concluded that the League, CSAC and other redevelopment interests spent more money to defeat Proposition 90 in 2006 than was spent to defeat similar efforts in all other states combined that year.

How they were able to raise their campaign funds against Prop. 90 then and Prop. 98 now is unprecedented and is the subject of an investigation by the Fair Political Practices Commission (FPPC), a state agency that regulates political activity. According to the Orange County Register, the campaign to defeat Prop. 90 in 2006 involved funneling millions of dollars from so called "Non Public Funds" campaign accounts controlled by the League and CSAC with no public oversight. And these same campaign accounts provided over 80% of the money to qualify and over 50% of the resources to defeat Prop. 98.

Had it not been for this funding scheme, Props 98 and 99 would have each raised just over \$6 million, resulting in a far more competitive race.

While critics will point to the inclusion of rent control as a leading factor of Prop. 98's defeat, there is no evidence that rent control alone led to Prop. 98's downfall. All along, surveys showed that voters placed greater importance on eminent domain abuses than rent control. Moreover, while support for Prop. 98 declined in the closing weeks of the campaign, polls did not show increased levels of support for rent control and while insignificant, one state poll showed a decline in support for rent control.

Although this campaign has concluded, we will continue to support calls for a legislative and FPPC investigation into how an obscure public agency, controlled by the League and CSAC, could funnel millions of dollars into their campaign accounts, for again, had it not been for these anonymous campaign accounts Prop. 98 could be law today. If these public agencies used your tax dollars to deny you private property rights, it is all but certain to ignite yet another Kelo rebellion to restore private property rights in California. Since California remains among the biggest abusers of eminent domain [and rent control] in the country, the people of California cannot abandon efforts to restore private property rights and should continue to hold government accountable for eminent domain abuse. Whether protecting private property rights comes in the form of curbing eminent domain [and rent control] abuse or abolishing a housing practice that requires one property owner to subsidize the housing needs of others, it is a pursuit that will not be abandoned.

Jon Coupal is the President of the Howard Jarvis Taxpayers Association. The mission statement of the Howard Jarvis Taxpayers Association reads: The Howard Jarvis Taxpayers Association is dedicated to the protection of Proposition 13 and the advancement of taxpayers' rights including the right to limited taxation, the right to vote

on tax increases and the right of economical, equitable and efficient use of taxpayer dollars.