

THE SACRAMENTO REPORT
by Greg McConnell, Legislative Advocate

California Property Owners Protection Act

Is 2006 the last year for rent control in California? California State Senator Tom McClintock, Jon Coupal, President of the Howard Jarvis Taxpayers Association, and Chris Norby of the Orange County Board of Supervisors hope so. They have 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 private property and transferring it from one private owner to another private person.

In other words, if The Act were to become law ... rent control throughout the state would be abolished.

Included in 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 disenfranchised 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.

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 \$40 to \$50 million that some political experts estimate a full fledged campaign will cost.

Perhaps as a back-up, in case the rent control provision is too volatile, the proponents have also submitted "The Homeowners & Private Property Protection Act of 2006." A third party has submitted "The California Eminent Domain Limitations Act." These proposed initiatives would restrict the use of eminent domain, but they do not contain prohibitions on rent control.

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. All initiatives under review are available at <http://caag.state.ca.us/initiatives/activeindex.htm>.

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.