



California Church **IMPACT**

BALLOT RECOMMENDATIONS for the June 3, 2008 Primary Election

SUMMARY:

Proposition 98: NO

Proposition 99: YES

Propositions 98 and 99 - Eminent Domain: Background

The use of eminent domain historically has been grounded in the Common Law of England. Royal sovereignty gave monarchs unlimited authority over all real property in which they and only they held *allodial title* giving them ultimate control over the use, exchange, and inheritance of land. After independence in America control of allodial title shifted to the states. The presumption was retained that the state government should be the sole arbiter between individual property rights and the Common Good.

Eminent domain is the right of the state to exercise the taking of private property for the greater public good. The Fifth Amendment of the US Constitution mandates just compensation for that taking or expropriation. Historically this 'taking' has been for projects that benefit everyone such as waterways, roads, bridges, and the like. In contemporary times, however, there have been changes in the notions of what is the public good. The transfer of private property from one private owner to another who will develop it to a 'higher and greater use' has become a controversial aspect of eminent domain. In 2005 the US Supreme Court ruled in *Kelo v. City of New London* (CT) that private homes could be taken for redevelopment into casinos or hotels since the latter would bring more tax money to a governmental entity. However, the Court also ruled that states may make laws prohibiting this extensive reach in the uses of eminent domain. Both Proposition 98 and 99 are direct responses to the *Kelo* decision. Each, however, has a very different set of consequences.

Proposition 98 Government Acquisition, Regulation of Private Property. Constitutional Amendment.

***IMPACT Recommendation* – OPPOSE**

This proposition, in addition to challenging the *Kelo* decision on the governmental acquisition of private land for other private uses, sets a broad prohibition on virtually all forms of government intervention. One of the initial supporters, the Farm Bureau, has strongly divided membership since the proposition language is so broad it would prevent the construction of waterways that benefit agriculture. It would also prohibit rent control which is a key issue in affordable housing in mobile home parks where many seniors reside. It would bar many environmental protections, would curtail protection of wetlands, would bar species protection, would eliminate urban limits on development and sprawl, and could seriously inhibit even zoning regulations that prohibit 'big box' stores in residential areas, restriction on polluting industries and power plants, adult businesses, and other issues conventionally evaluated and limited by cities and regions in the best interests of all people. If Proposition 98 were to pass, individual property owners would have unlimited rights to challenge any governmental action that curtailed their private property such as violations of our state's path-breaking AB 32 environmental regulation of greenhouse gasses, and the numbers of lawsuits by property owners would escalate exponentially. This initiative, like several of its predecessors, is aimed at curtailing all government actions and thus places the rights of private property entirely ahead of any notion of the Common Good. Rather than address just the *Kelo* decision, it over-reaches and is a genuine threat to all of our ability for government to function in the best interests of society.

Proposition 99. Eminent Domain. Acquisition of Owner-Occupied Residence. Constitutional Amendment.
IMPACT Recommendation – SUPPORT

Proposition 99 also is a direct response to the Kelo decision of the US Supreme Court. Unlike Proposition 98, this proposition prohibits only one thing: the taking or damaging of a private, owner-occupied home under certain conditions. This proposition protects homeowners from having property taken to be given to another private entity even if that entity promises greater tax income or some other supposed ‘higher use’ such as attracting tourism.

The right of any governmental entity to take private property for a public use with just compensation is retained as an existing Constitutional measure. State and local government may continue to use eminent domain for purposes of protecting public health and safety, responding to an emergency, preventing repeated serious criminal activity (e.g., houses routinely used for major drug transactions), or dealing with environmental contamination that poses a threat to public health and safety. This measured and thoughtful response to the inherent inequities of the Kelo decision is even-handed and just. Proposition 99 strikes a solid balance between individual homeowner rights and the preservation of the interests of the public well being

Spread the Word!

We encourage members and friends to distribute these ballot guides from now until the election through “IMPACT Sundays.” Share them with members of your own congregation plus other churches, temples, synagogues, mosques, and temples and any other places of worship. Please ask for permission first if you are distributing inside any place of worship or feel free to stand outside to distribute them. We thank you for your interest in encouraging active deliberation on these and all issues that affect our democratic process and our moral perspectives as people of faith. A PDF version of these recommendations are available for download and printing at www.churchimpact.org.

If you find these recommendations helpful, please help defray the considerable cost by sending your contribution to California Church IMPACT.

For more information and the latest updates, please visit www.churchimpact.org

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Ballot Proposition Recommendations
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