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**Proposition 99:
California Voters Choose Modest Reforms**

Yesterday California voters approved the lesser of two restrictive **eminent domain** initiatives which were on the statewide ballot in response to the U.S. Supreme Court's decision in *Kelo v. City of New London*.

Brief Background: In 2005 the U. S. Supreme Court unleashed a wave of property rights voter initiatives with its ruling in *Kelo v. City of New London*. In *Kelo*, the Court upheld the government's right to use eminent domain powers to force the sale of private homes for economic redevelopment carried out by private developers. Voters reacted to *Kelo* in other states by passing strict laws to curtail government eminent domain powers, often restricting land use planning in the process.

Government eminent domain powers are enshrined in the last line of the U.S. Constitution's 5th Amendment and applied to the states through the 14th Amendment: "...[N]or shall private property be taken for public use, without just compensation." Eminent domain allows government to force the sale of private property at its current market value if used for a public purpose. In eminent domain lawsuits, courts balance whether the government has paid a fair price (just compensation) and if the government's purpose qualifies as an appropriate "public use." The Court followed its own prior case law to decide that economic redevelopment, even when carried out by a private developer, *is* a valid public use under the 5th Amendment.

But the facts of the *Kelo* case outraged the public. A working class neighborhood, with many well kept, owner occupied residences, was condemned under the City's eminent domain laws to make way for upscale hotels and new homes. The City's redevelopment plan included land deals with private developers and the goal of improving the City's tax base. The City hoped to capitalize on the recent construction of a nearby private pharmaceutical company's headquarters. Many agreed that the ruling in the *Kelo* case required legislative modification.

Yesterday's Election Results: Proposition 99 is California's modest reaction to ease public concern after the *Kelo* decision. The new law addresses the disturbing facts of the *Kelo* case without substantially limiting the power of California's local government to regulate land use. Prop 99 limits the power of government to take private property for use by private developers. It bars state and local governments from using eminent domain to acquire an owner-occupied residence for conveyance to a private person or business entity. The new law creates exceptions for public works or improvements, public health and safety protection, and crime prevention. California voters selected Prop 99 over another voter initiative that would have placed broader restrictions on eminent domain. California had previously rejected another voter initiative to strictly proscribe state and local land use regulation and eminent domain powers.

What Does This Mean For Us? As it is, Proposition 99 will not have much impact on land use policy in California, but it does narrowly address the concerns that homeowners felt after the *Kelo* decision. Under this new law, homeowners have assurance that their well kept homes will not be taken for private redevelopment projects. Although Prop 99 will not have a big impact on the use of eminent domain in California, many homeowners will sleep better at night.

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