

INFORMATION PACKET

*Government Acquisition of Private Property.
Initiative Constitutional Amendment.*

(1198. SA2005RF0135)

Proponent: Douglas Adams McNea and Karin Annette Hipona

ATTENTION ALL CALIFORNIANS:

If you are ready to do something about ending eminent domain abuse, it's time to join the people's Initiative to Limit Eminent Domain. We stand for a single-issue: to simply fix the kind of abuse that has so outraged the nation in the Kelo v. New London Supreme Court decision. We are using the initiative process in the way it was intended – to give voters a voice and a vote when the courts and our legislative process failed us.

Our “people’s” initiative (Sec. of State #1198) is an all volunteer, non-partisan, grassroots effort that brings together people from every political persuasion. We have set aside our partisan differences to focus on this one all-important issue of protecting our homes, businesses and places of worship from eminent domain seizures for private gain.

We received official Title and Summary on February 15th and we will be mobilizing a statewide cyber-campaign to spread the word through our website www.LimitEminentDomain.org, where petitions and full instructions will be available to download. You will be able to print copies of the initiative to begin gathering signatures. Campaign updates will be regularly posted at the website, where you may send email messages to volunteer, request presentations on the initiatives, make donations online through PayPal, and contact Initiative representatives for public comments for the media or articles for your publications. In many areas we will have county coordinators to offer support and coordinate efforts. We will also be mailing signature gathering packets to people who make their request by phone.

We have about 3 months to mobilize the entire state – each one must reach many. Political and financial influence created this abuse, and now the only way to fix the problem is to take it to the people.

INFORMATION PACKET (following pages):

“Take the Initiative” Public appeal letter	Page 2
Donation Form	Page 3
Initiative Text	Page 4
Frequently Asked Questions	Page 5
Why support our People’s Initiative?	Page 5
Who are we?.....	Page 5-6
Why so many initiatives on eminent domain?.....	Page 7
Are you competing with the McClintock initiatives?....	Page 7
Eminent Domain Primer.....	Page 8-12

TAKE THE INITIATIVE TO LIMIT EMINENT DOMAIN!

Do you remember the day this past summer when you first heard the US Supreme Court decision that sanctioned the use of eminent domain to take one person's home or business to give it to another for private profit? School teacher Suzette Kelo had turned a rundown Victorian into her dream home only to have the City of New London, Connecticut try to seize it by eminent domain for the benefit of a large private corporation. Most people think that eminent domain can only be used for a legitimate public use like a school or fire station. The Kelo decision confirmed a practice of abuse that has been happening all over California and the nation. Many homes, businesses, and places of worship have been seized and many more are threatened. If owners resist, their property can be forcibly taken by the government and given to another private owner just because the new use might generate more revenue. Thanks to the Kelo decision, now the whole country knows this dirty secret.

But who would have ever thought that this terrible ruling by the Supreme Court would be such an extraordinary opportunity? People everywhere are overwhelmingly condemning the Kelo decision and numerous states have already passed laws to limit eminent domain powers. Our California legislature has been unable to stand up to the special interests that benefit from eminent domain property seizures. So now it's up to us. Our People's Initiative to Limit Eminent Domain is doing just what the initiative process was meant to do – give the people a voice when government fails us. The time is right for a **non-partisan** initiative by the people, for the people, that places reasonable limits on the power of eminent domain.

Our grassroots alliance of neighborhood people representing all Californians has filed initiative #1198 SA2005RF0135, the People's Initiative to Limit Eminent Domain. It is simply "no eminent domain for private gain." Nothing added by Sacramento lobbyists or power-brokers to serve other agendas. How are we different from the other California Initiatives on eminent domain? We are not Sacramento insiders; we are people just like Suzette Kelo who face the threat of eminent domain in our neighborhoods across California. We have created a nonpartisan, single-issue initiative that simply fixes the kind of abuse that has so outraged the nation in the Kelo decision. With your help, we will gather nearly a million signatures to put the People's Initiative to Limit Eminent Domain on the November 2006 ballot!

But now we face our first major hurdle. We need funds desperately in a very short time. It will cost many thousands of dollars just to print petitions and there will be many additional expenses. **Please be as generous as possible.** We received Title & Summary on February 15th, and you may now download petitions from our website or call to have petitions mailed to begin gathering signatures. We have a dream that all Californians will soon sleep well at night knowing their homes, businesses and places of worship are safe from unjust seizures.

Join us and make this dream a reality. There is no limit as to what you can give. We are grateful for your contribution in any amount. Send your checks made payable to "Limit Eminent Domain" along with the enclosed Contribution form:

Limit Eminent Domain - The People's Initiative
P.O. Box 90220, San Jose, CA 95109-3220.

Thank you for your support,
Loraine Wallace Rowe, Chair, Limit Eminent Domain Coordinating Committee
Diana Davenport Padilla, Limit Eminent Domain Treasurer
Doug McNea, Initiative Proponent & Annette Hipona, Initiative Proponent

Yes, I support the People's Initiative to Limit Eminent Domain

#1198 SA2005RF0135

- Enclosed is my check for \$_____ (No Limit for Initiative Donations)
 - I will volunteer my time to help get the Initiative qualified and passed
 - I will donate a product or service (in kind donation) _____
 - I would like to help organize a fundraiser.
 - I would like to circulate petitions
 - I agree that my name can be used as an endorser
- Signature_____

To comply with FPPC regulations, you must complete all information (**in bold**) listed below and include with your check:

Full Name:_____

Street Address:_____

City:_____ **State:**_____ **Zip:**_____

Employer (or Name of Business if Self Employed)

Occupation:_____

Phone:_____

Email:_____

Phone: 408-882-5008 Fax: 408-516-8035

Email: LimitEminentDomain@yahoo.com

Web: www.LimitEminentDomain.org

Make Checks Payable To:

Limit Eminent Domain

P.O. Box 90220

San Jose, Ca 95109

Donations are not tax deductible

FPPC ID# 1281864

This past November, the U.S. House of Representatives passed on to the Senate, by a wide bipartisan majority, The Private Property Rights Protection Act (H.R. 4128). This Act discontinues certain federal funding where eminent domain powers are used for economic development rather than strictly limited to public uses. The language of our initiative is consistent with H.R. 4128 and its definition of public use and economic use.

THE PEOPLE'S INITIATIVE TO LIMIT EMINENT DOMAIN
#1198 SA2005RF0135
Government Acquisition of Private Property.
Initiative Constitutional Amendment.

Section 19 of Article I Declaration of Rights of the California Constitution is amended to read:

~~SECTION 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.~~

Private property may not be taken or damaged for public use, without just compensation. Seizure of private property by eminent domain will not take place until a jury has ascertained just compensation and a court has affirmed an appropriate public use, or these rights are waived by the owner of the property, and just compensation has been deposited with the court. Eminent domain proceedings will only commence after notice upon property owner and public notice of a stated public use for the property.

The power of eminent domain shall not be used for economic development. The term "economic development" means taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise, or to increase tax revenue, tax base, employment, housing density, or general economic health, except that such term shall not include:

- (A) conveying private property to public ownership, such as for a road, hospital, or military base, or to an entity, such as a common carrier, that makes the property available for use by the general public as of right, such as a railroad, or public facility, or for use as a right of way, aqueduct, pipeline, or similar use;
- (B) leasing property to a private person or entity that occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;
- (C) acquiring abandoned property;
- (D) taking private property for use by a public utility;
- (E) clearing defective chains of title; and
- (F) removing harmful uses of a specific parcel of land provided such uses of that parcel constitute an immediate threat to public health and safety.

Why support our people's initiative?

Short Answer: It is the simple, single-issue Initiative which provides: "No eminent domain for private gain."

Our "people's" initiative is an all volunteer, non-partisan, grassroots effort that brings together people from every political persuasion. Our initiative was written by people representing the full spectrum of political values from conservative to liberal. One proponent of our initiative is an active Republican and one is an active Democrat. We have set aside our partisan differences to focus on this one all-important issue of protecting our homes, businesses and places of worship from eminent domain seizures for private gain. With public opinion polls showing 80-90% of Californians opposed to the use of eminent domain for private profit in the Kelo v. New London Supreme Court decision, this is the one issue we can all get behind. Overwhelming public support for this one issue, and this one issue only, will end eminent domain abuse in California.

We call ourselves "The People's Initiative" because we represent and base our campaign on a groundswell of support from ordinary Californians like you. We stand for a single-issue that simply fixes the kind of abuse that has so outraged the nation in the Kelo decision. Our cause and our initiative is simply "no eminent domain for private gain." Nothing has been added to attract funding from special interest groups to finance a paid signature gathering effort. We are not playing politics and using the public's passion for eminent domain reform to further other political or economic agendas. We are using the initiative process in the way it was intended – to give voters a voice and a vote when the courts and our legislative process fails us.

This isn't about politics, it's about people. In her testimony at the Supreme Court, Suzette Kelo says it best: *"This battle against eminent domain abuse may have started as a way to save my little pink cottage, but it has rightfully grown into something much larger – the fight to restore the American Dream and the sacredness and security of each one of our homes."*

Who are we?

Short Answer: We are an all volunteer, non-partisan grassroots effort without ties to any political or economic agenda with the one goal of stopping eminent domain for private gain.

We are people very much like Suzette Kelo and we live in neighborhoods like New Trumbull that have been victimized or are threatened by the abuse of eminent domain powers. We are grassroots activists who believe in the democratic process. We come from the full diversity of the political spectrum. Political and financial influence created this abuse, and now the only way to fix the problem is to take it to the people. As Margaret Mead said: *"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has."*

The Coalition for Redevelopment Reform (CRR)

The lead organization coordinating our statewide grassroots campaign is the Coalition for Redevelopment Reform (CRR) in San Jose. CRR grew out of a group formed in 2001 to fight the proposed taking of approximately 150 properties – "the 40 Sites" – when the Redevelopment Agency sought to take the non-blighted properties and transfer title of all the properties in each site to private developers to build high rise, high density, high priced housing. Small businesses were also targeted for eminent domain to be replaced by a proposed mall to attract a "critical mass" of shoppers. These takings were successfully fought and the properties saved for their owners. In 2002, the City of San Jose declared a full third of its area "blighted" to

create one massive merged redevelopment zone, the largest in the State of California – the entire area was declared subject to the Agency's eminent domain power to take private property for private gain. In response, CRR was founded and became the nucleus of an effort to organize local groups in the San Francisco Bay Area and now the State to protect communities from eminent domain for private domain. After the Kelo Supreme Court decision, CRR sponsored a statewide event, the "Kelo Call For Action," that rallied over 300 eminent domain reform activists from all over the state. The response at that event was the genesis of the drafting and filing of the *People's Initiative*.

Initiative Proponent Doug McNea: Republican Doug McNea is a CRR board member, father of four, Vietnam Veteran, surfer, computer engineer and an active member on the board of the Silicon Valley Taxpayer's Association. Doug is a "take it to the streets" activist who is passionate about our personal rights and freedoms. He marched to City Hall to stop the eminent domain takeover of the Tropicana Shopping Center by the San Jose Redevelopment Agency. The ethnically diverse and family-owned local businesses at the Tropicana were threatened by eminent domain for the benefit of a proposed new upscale corporate mall. He has traveled to Sacramento as a citizen witness in support of legislation to defend our property rights. He is a candidate for the 24th Assembly District.

Original Daly City Protective Association (ODCPA) and its political action committee, Neighbors for Responsible Redevelopment (NFRR) -

Original Daly City Protective Association (ODCPA) was formed in Daly City, a suburb on the Southern border of San Francisco, in 1972 to fight a plan to clear the area of homes to make way for luxury high-rise commercial redevelopment surrounding a new subway station. The coming of BART (Bay Area Rapid Transit) was expected to bring economic vitality to the older, working class part of town. Locals soon found out they were not included in that rosy future. After a long and heated battle with city hall, the neighborhood prevailed and most of the residential area and the homes of 14,000 people were saved from the redevelopment bulldozers.

Initiative Proponent Annette Hipona: Democrat Annette Hipona, current President of ODCPA, continues efforts to prevent expansion of redevelopment into residential areas and to increase community involvement in planning new developments. The neighborhood of Original Daly City lies in a 5-block area between two commercial redevelopment areas. – quite literally the "meat in the redevelopment sandwich." Annette's family owns an auto body repair shop in one of the commercial redevelopment areas, along with over 60 auto-related local businesses that face the potential of eminent domain seizure. A mother of three, Annette serves on the elementary school board and just announced her candidacy to bring a second voice to the City Council to oppose eminent domain abuse in Daly City and to defend cultural and economic diversity in her town.

Neighbors for Responsible Redevelopment members met the founders of CRR several years ago while leafletting on the dangers of displacement at a regional planning conference in San Jose. The CRR coalition is spreading the word about eminent domain abuse regionally and statewide, providing support and information to help neighborhoods all over California organize and fight the common threat of eminent domain abuse.

Why so many initiatives on eminent domain?

Short Answer: Because the other initiatives have included other partisan issues. We filed a separate initiative that was written by Democrats and Republicans to be a nonpartisan proposal for the single issue of eminent domain reform.

The McClintock/Jarvis Taxpayer Association Initiatives have made the decision to join eminent domain reform with other partisan issues of ending rent control and limiting regulations (such as environmental regulations) on land use. This strategy brings financial support from various lobbyist groups to fund a paid initiative drive, but these additional issues do not bring the kind of broad, nonpartisan support for eminent domain reform that has galvanized public opinion across political lines. They risk losing the majority of voters needed to pass our single most important issue: **eminent domain reform**.

Are you competing with the McClintock initiatives?

Short Answer: There is room for all parallel efforts.

If more than one Initiative makes it to the ballot, many people may decide to support more than one. Having a variety of opinions is what democracy is all about.

We are asking everyone to PLEASE give your strong support the #1198, the people's initiative to limit eminent domain, regardless of your support for other initiatives. Our people's initiative offers an opportunity for all Californians, regardless of where they are on the political spectrum, to vote their conscience.

We must face some political realities in California. There are more Democrats than there are Republicans. Statewide issues are often controlled by Democrats, as are the majority of our Statewide offices and our Legislature. All of us, regardless of party, appreciate Republican Senator McClintock's outspoken and passionate support for eminent domain reform. In like fashion, we all appreciate Democrat U.S. Representative Maxine Waters for carrying the eminent domain reform battle to the U.S. Congress. Eminent domain reform is too important an issue to put all our hopes on any single political party, or to let the issue become divided between liberals and conservatives. Winning this battle against entrenched special interests will be difficult enough without dividing our base of support. Our foes can't wait for liberals and conservatives to be at each other's throats, making it impossible for any of our initiatives to be successful.

Is partisan politics more important than winning the battle against eminent domain abuse? In the final analysis, our nonpartisan, single-issue initiative may be the only one that can win in a statewide election.

EMINENT DOMAIN 101 – A PRIMER

What is eminent domain?

There are two kinds of eminent domain you should know about.

1) There is the commonly known use of eminent domain as the power of government to seize private property by force for essential public uses such as schools, fire stations, roads, and to eliminate threats to public health and safety. **We accept the necessity that legitimate public uses may occasionally take precedence over our private property rights.**

2) **There is another use of eminent domain that threatens every person in California and throughout the nation.** In California, as in many other states, our homes, businesses and places of worship can be seized by a Redevelopment Agency and turned over to another private entity for their financial gain. Since 1954 the U.S. Supreme Court has allowed expansion of the meaning of public use to include economic development.

What is the Kelo vs. New London Supreme Court Case and why is it important?

This past summer, the Kelo Supreme Court case was the first review of eminent domain powers in over 50 years. The Fifth Amendment prohibits the taking of property by government except for “public use.” The Supreme Court confirmed by a 5-4 decision an interpretation that considers economic development a public use.

Most people thought that eminent domain could only be used for a legitimate public use like a school or fire station. The Kelo decision confirmed a practice of abuse that has been happening all over California and the nation for decades. To understand how public use could become so distorted, we need to look back in time to the federal urban renewal programs that began after World War II. to improve housing in urban slums that had been abandoned by absentee landlords. These programs expanded to focus on modernizing decaying downtown areas and developing municipal facilities. In 1952 California law gave cities the power to create a separate government agency know as a Redevelopment Agency (RDA) to revitalize urban areas. Nearly 400 cities in California now have RDAs and all are legally empowered to use eminent domain. States all over the nation created RDAs and it didn't take long for good intentions to go awry as developers and large corporations realized vast opportunities to make private profit.

This led to one of the most notorious eminent abuse cases in the nation, the destruction of the working class neighborhood of Poletown in Detroit, Michigan. More than 1,000 homes, 600 businesses, and many churches were seized by redevelopment eminent domain to build a General Motors Plant. In Washington, D.C. another notorious abuse of eminent domain occurred. Entire neighborhoods of predominantly low-income African Americans were displaced for upscale privately owned developments.

In 1999 the City of New London, Connecticut moved to seize 90 acres in the working class neighborhood of Fort Trumbull by eminent domain for a luxury waterfront development of offices, condominiums and a four-star hotel with river views. Nearly 80 mostly elderly property owners gave up their homes, but the remaining seven put up signs “This house not for sale” and fought eminent domain seizures all the way to the Supreme Court. School teacher Suzette Kelo had turned a rundown pink Victorian into her dream home and she is the “Kelo” in the Supreme Court case of *Kelo vs. New London*.

Although there are no accurate records, the Castle Coalition at the Institute on Justice is compiling a growing nationwide list that documents over 10,000 property seizures for private uses in just the past five years. See their website at www.castlecoalition.org The Institute on Justice represented Suzette Kelo and her neighbors in the Supreme Court case.

Can my home or business in California be taken by eminent domain?

Yes. What happened to Suzette Kelo can happen in California. In California property must be declared “blighted” in order for a redevelopment agency to use the power of eminent domain. Section 33030-33039 of the California Health and Safety Code defines conditions that determine redevelopment “blight.” These conditions include small parcel size, multiple ownership of properties, incompatible uses with adjacent or nearby properties, and economic under-utilization. All properties within a redevelopment project area, including new and well-maintained buildings, are blighted by legal definition. In some instances new housing tracts, vital local businesses, and even open space have been declared blighted because they were deemed economically underutilized. What wouldn’t be underutilized compared to a high-rise development?

“Public use” can be almost anything the Redevelopment Directors decide to do. City governments can become the purchasing agent for a large parcel land grab for big business. If a property owner disputes the determination of blight or the so-called “fair market price” offered by the Redevelopment Agency, they must fight a court battle with the city. Less than 1% of eminent domain cases are successfully fought in California courts.

Is it true that cities rarely use eminent domain powers?

The mere threat of eminent domain is like a brandished gun, you don't have to fire it to coerce. Most abuse of eminent domain power is coercion – people give up and take whatever the city will offer rather than risk a costly court case they can't afford and are unlikely to win. When cities claim “we've only used eminent domain in rare cases,” what they often mean is the threat was enough and they didn't have to complete a property seizure through the courts. Ask them how many times they have begun the process by threatening the powers of eminent domain.

Isn't it true that the community decides if they want redevelopment and the powers of eminent domain?

The public never gets to vote on whether a redevelopment project area is formed, expanded, or whether eminent domain is used. In California it usually takes about a year of public meetings before an RDA can be established. Public input is “advisory only,” and its common practice for City Council members to appoint themselves to serve in the dual role of Redevelopment Directors. If the public wants to challenge this process, they must do so through the difficult referendum or initiative process to put it on the ballot.

Powerful land developers lobbied in Sacramento to create our redevelopment laws. They use their political and financial clout, including campaign contributions, to oppose reforms. Our redevelopment laws would shock anyone with the time and patience to read through over 800 pages of the Health and Safety Code. You would discover a shocking lack of conflict of interest protections and required public notice. For instance, RDAs do not even have to mail notices to people within a project area if they decide it's too expensive. Redevelopment Directors can take financial contributions from developers whose projects they review.

Don't we need eminent domain powers for urban revitalization, new housing and new jobs?

Since the founding of this country, free enterprise has successfully provided economic development through negotiations in the marketplace between willing buyer and willing seller. New jobs and housing are created without the misuse of eminent domain powers. The history of eminent domain abuse in this country has left a trail of failures. Redevelopment in many urban areas, like San Francisco's Fillmore District, displaced the traditional ethnic community and left urban cores bulldozed wastelands for decades.

Small locally-owned businesses, which provide the vast majority of jobs, are the main target of eminent domain. They are often displaced by national and international corporate chains that drain profits from the local economy and often do not provide living wages and benefits. Both the homes and livelihoods of Californians equally deserve our protection.

In the California legislature there have been attempts to “divide and conquer” opponents to eminent domain abuse by protecting only single-family, owner-occupied homes. These homeowners are protected, while renters, those who provide rental housing and local businesses are sacrificed.

The Kelo Supreme Court decision shakes us to the very core of our faith in an economic system and government that rewards hard work and playing by the rules. In her scathing dissent, Supreme Court Justice Sandra Day O’Connors says: “*The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.*” Revitalization can have a pretty hollow ring in a country that sacrifices the homes and livelihoods of the weak for the benefit of the powerful and well connected. If Suzette Kelo’s house is not safe from this arbitrary seizure for corporate profit, no home, business, or place of worship is safe.

Should this be happening in a democratic society?

Government sanctioned displacement and economic exploitation do not belong in a democratic society. A democracy is based on equal protection under the law, not sacrificing the rights of one group to benefit another group. Public uses such as roads and schools benefit everyone and cannot be compared to some abstract concept of a greater good through increased tax revenue or economic development provided by luxury hotels and condominiums, or corporate office towers that provide profit and benefits to a particular sector of society. Without the freedom to acquire, possess, and defend property, all other guaranteed rights are meaningless. Thomas Jefferson wrote that the true foundation of government “*is the equal right of every citizen in his person and property.*” Supreme Court Chief Justice John Marshall wrote “*the right of acquiring and possessing property and having it protected is one of the natural, inherent and inalienable rights of man.*”