

County of Placer

Board of Supervisors

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BILL SANTUCCI
District 1

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District 2

JIM HOLMES
District 3

EDWARD "TED" M. GAINES
District 4

BRUCE KRANZ
District 5



TO: The Honorable Board of Supervisors
FROM: Supervisor Ted Gaines, District 4 and Supervisor Bruce Kranz, District 5
DATE: October 10, 2006
SUBJECT: Support Proposition 90 – "Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment"

ACTION REQUESTED:

Supervisors Gaines and Kranz are requesting that the Board approve a resolution (Attachment 1) in support of Proposition 90 (Attachment 2) entitled "Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment" that will appear on the November 7, 2006 statewide ballot.

BACKGROUND:

Proposition 90, also referred to as the "Protect Our Homes Act", qualified for the ballot in June 2006 under the initiative process and applies to all state and local governmental agencies. The measure makes significant changes to government authority to take property. According to the State Attorney General, and the State's Legislative Analyst, this measure:

- Bars state and local governments from condemning or damaging private property to promote other private projects or uses.
- Limits government's authority to adopt certain land use, housing, consumer, environmental and workplace laws and regulations, except when necessary to preserve public health or safety.
- Voids unpublished eminent domain court decisions.
- Defines "just compensation" (as that sum of money necessary to place the property owner in the same position monetarily, without any governmental offsets, as if the property has never been taken, including compounded interest and all reasonable costs and expenses incurred).
- Requires that condemned private property be offered for resale to prior owner or owner's heir at current fair market value if government abandons condemnation's objective.
- Specifies that all existing laws and rules would be exempt from the measure's compensation requirement.
- New laws and rules also would be exempt from the compensation requirement if government enacted them: (1) To protect public health and safety, (2) Under a declared state emergency, or (3) As part of rate regulation by the California Public Utilities Commission.

EFFECTIVE DATE:

Proposition 90 will become effective on the day following the election if approved by a majority of the state's voters.

BEFORE THE BOARD OF SUPERVISORS COUNTY OF PLACER, STATE OF CALIFORNIA

In the matter of a Resolution in Support
of the Protect Our Homes Initiative –
Proposition 90.

Resolution No. _____

The following **Resolution** was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held, September 26, 2006 by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:
Clerk of the Board

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF CALIFORNIA, DOES HEREBY RESOLVE THAT:

WHEREAS, the right to own one's home and private property is a fundamental right of every American; and

WHEREAS, On June 23, 2005, the U.S. Supreme Court – by a narrow 5-4 vote – issued its opinion in the case of Kelo v. City of New London (Kelo), 2655 S.Ct. 1265; and

WHEREAS, public outrage over the Kelo decision has been overwhelming, as individuals, business owners, churches and other owners of private property learn that their homes, businesses, farms, ranches and churches all may be taken by government and given to another private owner for a private purpose; and

WHEREAS, groups as varied as the NAACP, the AARP, the Southern Christian Leadership Conference all signed an amicus brief in the Kelo case; and

WHEREAS, since the June 2005 decision of the United States Supreme Court in the Kelo case, the California State Legislature has conspicuously, intentionally, and repeatedly defeated EVERY effort – both statutory and constitutional – to overturn the Kelo decision in California, and thereby protect every homeowner, business owner, farmer and rancher, and church from being subject to eminent domain for the specific purpose of taking property from one private citizen or corporation and giving it to another for that individual or corporation's private gain and use, and the government's windfall of increased tax revenue; and

WHEREAS, legislative measures such as Senate Constitutional Amendments 15 and 20 by Tom McClintock, Assembly Constitutional Amendment 22 by Doug LaMalfa, and Assembly Bill 590 by Mimi Walters all were defeated in their very first legislative committee hearing; and

WHEREAS, Justice Sandra Day O'Connor wrote in her powerful dissenting opinion in the Kelo decision, "If predicted (or even guaranteed) positive side effects are enough to render transfer from one private party to another constitutional, then the words "for public use" do not realistically exclude ANY takings, and thus do not exert any constraint on the eminent domain power.... For who among us can say that she already makes the most productive or attractive use of her property..." and

WHEREAS, a recent publication by the Institute for Justice entitled "Public Gain, Private Power," documents that, *"California is one of the most active states in condemning properties for the benefit of other private parties. Between 1998 and 2002, news reports indicate 23 different projects involving condemnation for private use in California. As part of these projects, cities and redevelopment agencies have condemned at least 223 individual properties for the benefit of private parties and have threatened at least another 635..."* and

WHEREAS, nearly one million California citizens, registered voters and property owners, all rightly outraged by both the Kelo decision and the conspicuous failure of the Legislature to take decisive action, signed petitions to place the "Protect Our Homes" initiative on the November 2006 general election ballot

WHEREAS, Proposition 90 – the "Protect Our Homes" initiative – expressly amends Section 19 of Article I of the California Constitution to provide that private property may only be taken for a bona fide public use, such as construction of a road, school, university or other legitimate public works project; and

WHEREAS, Proposition 90 – the "Protect Our Homes" initiative – has been carefully drafted to ensure that both state and local governments may continue to use eminent domain for the legitimate purpose of building vital public infrastructure projects, and in Section 3 of the measure expressly provides that, *"Nothing in this section shall prohibit the use of condemnation powers to abate nuisances such as blight, obscenity, pornography, hazardous substances or environmental conditions provided those condemnations are limited to abatement of specific conditions on specific parcels...."* and

WHEREAS, in addressing the issue of regulatory takings, whereby government can take virtually all of a person's property without ANY compensation whatsoever, **Proposition 90** -- the "Protect Our Homes" initiative -- specifically provides in Section 6 that, *"Other than eminent domain powers, the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results in substantial economic loss to private property..."* thereby once again assuring that state and local governments may act to protect the health and safety of the public while protecting the legitimate property rights of all Californians; and

WHEREAS, the principal opponents of Proposition 90 all filed amicus briefs in the United States Supreme Court, either directly or through their national trade associations, in favor of the Kelo decision to allow government to take private property from one private citizen or corporation and give it to another for that individual or corporation's private gain and use, and the government's windfall of increased tax revenue;

NOW THEREFORE BE IT RESOLVED THAT:

The Placer County Board of Supervisors does hereby formally endorse and support the passage of the Protect Our Homes Initiative (Proposition 90) by the voters of the state of California in the upcoming November 2006 election, to effectively overturn the improperly decided Kelo decision in the state of California, and to ensure that no home, no business, no farm, agricultural or undeveloped land, or any church or church-owned property may be taken by government -- state or local -- for a private purpose, but only for a bona fide public works project such as a school, road, or highway, and only upon just compensation to the owner, and

THEREFORE BE IT FURTHER RESOLVED, THAT:

The Placer County Board of Supervisors does hereby formally endorse and support the passage of the Protect Our Homes Initiative (Proposition 90) -- by the voters of the state of California in the upcoming November 2006 election, to ensure that all owners of private property will be fairly compensated for regulatory takings by government which result in a substantial economic loss to the property owner, while retaining all the powers of state and local government to protect the health and safety of their residents and communities.