

FlashReport

2nd Anniversary of Kelo: Two Years Will Pass with No Limits placed on Government's Power of Eminent Domain!

An exclusive column from retired State Senator Jim Nielson.

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[Publisher's Note: For nearly a year, I have had the opportunity to work with the California Alliance to Protect Private Property Rights in their role as a leading advocate, in California, for curbing eminent domain abuse. I am pleased to bring you this column from retired State Senator Jim Nielsen, who is Chairman of the Alliance - Flash]

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This week marks the second anniversary of the now famous U.S. Supreme Court property rights case: *Kelo v New London*. Now, two years later, California has arguably moved backwards on private property rights.



The Institute for Justice, which represented Susette Kelo before the U.S. Supreme Court in its landmark *Kelo v. New London* case, recently released its [national report card](#) on which states have passed substantive eminent domain reform. Ranking among the bottom was the State of California, receiving a grade of "D-" for failing to consider meaningful legislative reforms and for its "abusive redevelopment statutes" that continue to leave property owners at risk.

And by all accounts, California will not make the grade any time soon and not in time for the second anniversary (June 23rd) of the U.S. Supreme Court's *Kelo* decision that sanctioned government's power to profit by seizing private property from unwilling sellers and giving it to wealthy and politically connected developers.

According to the [Institute for Justice](#), some 41 States have passed some form of eminent domain reform legislation or ballot measures since the *Kelo* decision, and 20 States simply outlawed government's ability to seize property for private purposes, as opposed to traditional government takings that may involve the construction of roads, flood-control projects and schools. Also, in the states where reform has not come, *Kelo*-type takings are on the rise, and why not? For the U.S. Supreme Court's decision was essentially a green light endorsement for some of the most egregious takings of private property!

The defenders of our state's redevelopment statutes, such as League of California Cities, a taxpayer financed organization that lobbies for cities, would cite Assemblyman Hector De La Torre's introduction of [Assembly Constitutional Amendment 8](#) as evidence of eminent domain reform underway. Keeping these assertions in check has been the media, one of which, the [Orange County Register](#), said that ACA 8 is "so dishonest that it's worthy of caution."

Needless to say, the League's futile attempt at eminent domain reform does not meet the grade with the leading private property rights organizations in America either, including the Institute for Justice which said "the Act (ACA 8) will [do little](#) to prevent the actual taking of property in California – and this flaw is fatal."

To understand why ACA 8 will not improve its standing among the 50 States one must examine the legislation beyond sound bites and spin, and consider how those abusing eminent domain benefit from the League of California Cities' legislation.

ACA 8's so-called protections come with so many exceptions (aka loopholes), that the bill is essentially meaningless. For starters, the bill only provides "protections" for "owner occupied" homes. Its supporters offer no protections to businesses, family farms, places of worship, rental property or any other property. Moreover, loopholes in the measure would still allow the seizure of your home or business if it is "incidental" to some broader public use, with no definition as to what constitutes an "incidental" use. For example, government could decide your home was "incidental" to construction of a privately owned sports arena and replace your home with a retail center to help finance the construction of the project. Moreover, "blight," the precondition for taking property, is not specifically defined, allowing public agencies to define standards that will allow them to continue taking homes and profitable businesses.

And lastly, the measure provides no protections for places of worship, leaving many to wonder how a country that prides itself in religious freedom, offers no protections for its institutions of faith!

As a Constitutional Amendment, ACA 8 requires the support of two-thirds of the State Legislature in order for it to be placed on the June 2008 ballot. If approved, it could appear along side a comprehensive ballot measure sponsored the Howard Jarvis Taxpayers Association, the California Farm Bureau and the [California Alliance to Protect Private Property Rights](#). And a poison pill amendment to be inserted by Democrats later in the legislative process, will dictate that whichever ballot measure gets the most votes becomes law. Conceivably, the League's ballot measure could win, giving voters the impression that power of eminent domain has been reformed when, in fact, the status quo has prevailed – and this may be the true motivation of the League's new found "dedication to reform" and not a desire to protect private property rights!

ACA 8 is the strongest indication yet that our State Legislature is not serious about eminent reform and so is the fact that of 120 members of the State Legislature, only 7 have signed the "[Hands Off Our Homes](#)" pledge to reform eminent domain abuse. It is all but certain that the anniversary of the Kelo decision will come and go this week without the passage of true eminent domain reform legislation.

At this rate, voters must come to accept the fact that property owners have been all but abandoned by those professing to protect our interests and it is time to renew the fight to qualify a statewide ballot measure.

[Here is more biographical information on retired State Senator Jim Nielsen](#)

Jim Nielsen is Chairman of the Board of Directors of the [California Alliance to Protect Private Property Rights](#). Nielsen served in the State Senate from 1978-1990, where he served as Republican Leader for several years. Since his time in the Senate, Nielsen has served as a member of the Agricultural Labor Relations Board, Youthful Offender Parole Board and as Chairman of the California Board of Prison Terms.

Mr. Nielsen Co-authored and served as Vice-Chair of 1982's successful Proposition 8, the Crime Victims Bill of Rights Initiative. His interest in private property rights issues dates back to his involvement with the Protect Private Property, No on 14 campaign in the mid-70's. In addition to remaining active in state politics and community organizations, Nielsen owns and operates a small cattle ranch in Sanger, CA and is a political columnist for the Woodland Daily Democrat.