

# *The Homeowner & Property Protection Act*

*Final Version*

A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article I thereof, relating to eminent domain.

WHEREAS, This measure shall be known and may be cited as “The Homeowner and Property Protection Act”; and

WHEREAS, Eminent domain has been subject to widespread abuse in California, whereby local governmental entities have condemned property and transferred it, by sale, lease, or otherwise, to the control, management, or exploitation of private entities for private use and profit on the theory that generalized public benefits will flow therefrom; and

WHEREAS, The United States Supreme Court, in *Kelo v. City of New London*, \_\_\_ U.S. \_\_\_ (2005), has held that the United States Constitution does not prevent the transfer of property, seized through eminent domain, to private entities for private profit; and

WHEREAS, The rights guaranteed in the California Constitution are not dependent on rights guaranteed under the United States Constitution (Section 24 of Article I of the California Constitution), and the California Constitution should protect the property rights of Californians to a greater degree than does the United States Constitution; nor should the term “public use” in the California Constitution be construed as identical to that phrase as employed in the Fifth Amendment to the United States Constitution; and

WHEREAS, It is the intent of the Legislature that private property shall not be taken or damaged for the use, exploitation, or management of any private party, including, but not limited to, the use, exploitation, or management of property taken or damaged by a corporation or other business entity for private profit, as is currently permitted under the United States Constitution under *Kelo v. City of New London*, \_\_\_ U.S. \_\_\_ (2005); and

WHEREAS, It is not the intent of this amendment to prevent the rental of space in a government building or any other government-owned property, for incidental commercial enterprises, including, but not limited to, gift shops, newsstands, or shoeshine stands; and

*Resolved by the Senate, the Assembly concurring*, That the Legislature of the State of California at its 2005-06 Regular Session commencing on the sixth day of December 2004, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

That Section 19 of Article I thereof is amended to read:

SEC. 19. (a) Private property may be taken or damaged for a stated public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. ~~The Private property may not be taken or damaged for private use.~~

(b) Private property may be taken by eminent domain only for a stated public use and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists. Property taken by eminent domain shall be owned and occupied by the condemnor or may be leased only to entities that are regulated by the Public Utilities Commission. All property that is taken by eminent domain shall be used only for the stated public use.

(c) If any property taken through eminent domain after the effective date of this subdivision ceases to be used for the stated public use, the former owner of the property or a beneficiary or an heir, if a beneficiary or heir has been designated for this purpose, shall have the right to reacquire the property for the compensated amount or the fair market value of the property, whichever is less, before the property may be sold or transferred.

(d) 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.