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Private vs. Public Property

Rebellion at the nation and local level

By JIM NIELSEN
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Under the nom de plume "Publius" Alexander Hamilton wrote in "The Federalist LXX, " (One of the Federalist Papers) calling for restraint on the "Energy in the executive," meaning excessive power of the executive branch. Hamilton offered, "It is not less essential to the steady administration of the laws, to the protection of property against those irregular and high handed combinations, which sometimes interrupt the ordinary course of justice to the security of liberty against the enterprises and assaults of ambition, of faction and anarchy."

Hamilton's treatise and reference to private property is as applicable today as then in light of the U.S. Supreme Court's decision in *Kelo v. New London*.

It applies as well to the attempt of Yolo County to seize the Conaway Ranch by exercising eminent domain. Private property rights have historically been important to the citizens of Europe and the United States. Public reaction to the Supreme Court's decision and the County of Yolo suit are testimony that citizens still care.

The *Kelo* decision was prompted by homeowners fighting back as a city exploited its redevelopment authority to transfer private homes to other private development interests in order to gain more tax revenue. I contend the Yolo County eminent domain suit was also financially driven. What these local governments did not anticipate was the public outrage that has ensued.

Former U.S. Attorney General Edwin Meese wrote in an Op Ed in the Wall Street Journal, "Few constitutional protections are less ambiguous than the requirement that private property must not be taken for public use 'without just compensation' (key word just). It is rooted in common law and is almost as ancient as common law itself. To guard against abuse, the Framers made these principles explicit, matching the government's blunt power to compel sale of private property with an equally blunt obligation to pay for it. When another branch attempts to shirk this duty, the Constitution requires the judiciary to defend property owners."

The Court's egregious extension of public use and the County's unsupported and unjustified "taking attempt" qualify as "shirking." The citizens are now compelled to provide remedy through public objection, legislation and direct democracy.

A private property rights rebellion may be in the making. In 1978 two obscure yet outspoken crusaders, Paul Gann and Howard Jarvis launched the "Property Tax Rebellion" that enduringly changed public policy and the property tax burden on Americans. In 2005 individuals and groups across the land are rallying in response to governments' newfound disdain for private property rights.

The American Farm Bureau Federation, Congressman Richard Pombo, Senator Tom McClintock and Assemblyman Doug LaMalfa and other legislators across America and the locally founded "California Alliance To Protect Private Property Rights" are organizing to stem the tide set awash by the Court and our supervisors.

The Texas legislature acted in August to prohibit the use of eminent domain to benefit a private party, as a pretext of benefiting a private party or for economic development purposes. Texas Farm Bureau President Kenneth Dierschke said, "We view the right to own property and use it as a fundamental right, no less important than the other rights specified in the U.S. Constitution." His organization intends to follow state legislation with a constitutional amendment.

Even Democratic legislators in Sacramento were concerned enough to initiate legislation. Senator Christine Kehoe and Assemblyman Gene Mullin introduced bills limited to protecting homeowners for a short time, but excluding

farms. Senator McClintock and Assemblyman LaMalfa introduced more expansive legislative remedies. The session ended last week in stalemate. Congressman Pombo is leading a response in the House of Representatives. McClintock and LaMalfa will proceed with an initiative if there is no legislative satisfaction.

The American Farm Bureau Federation has started an organization called "STOP" (for Stop Taking Our Property) to raise the national conscience and to achieve reaction and redress for those who have been and may be aggrieved by the Kelo decision.

The California Alliance To Protect Private Property Rights includes as founders The Yolo County Taxpayers Association and The Family Water Alliance and already has received support from around the state. The Alliance is committed to "initiating and supporting local, state and national efforts rebut those who attempt to compromise our rights to own and use property."

Justice Sandra Day O'Connor, in her dissent to the Kelo decision wrote, "The specter of condemnation hangs over all property. Nothing is to prevent (local government) from replacing any Motel 6 with a Ritz-Carlton and any home with a shopping mall or any farm with a factory." Or, I might add, replacing a farm with a Joint Powers Authority.

It is time to heed Alexander Hamilton and stand up "against those irregular and high handed combinations."

- Jim Nielsen is a former state senator who writes for The Daily Democrat.