

## [PROPERTY RIGHTS]

# Gathering Steam

**TWO YEARS AFTER THE U.S. SUPREME** Court ruled that cities can use eminent domain to further private economic development (*Kelo v. City of New London*, 545 U.S. 469), opposition to the ruling shows no sign of abating. Thirty-four states have passed laws that curtail the use of eminent domain, and even Hollywood has weighed in: Last fall, eminent domain was a suspected motive for murder in an episode of *CSI: Miami*, titled "Death Eminent."

The California Legislature has passed five laws in response to *Kelo*, but property-rights advocates still aren't satisfied. In November, voters narrowly rejected Proposition 90, which contained a controversial regulatory-takings provision and would have dramatically circumscribed eminent domain powers. "If Prop. 90 had passed, there would be no more redevelopment as we know it," says Michael M. Berger, a partner at the Los Angeles office of Manatt, Phelps & Phillips.

"People in the Legislature realize that if something isn't done [to limit the broad use of eminent domain], the voters will take it away next time," Berger adds. "And they will provide remedies that are far more stringent than the governing people would like to see."

Several state constitutional amendments, including two ballot initiatives, have risen from the ashes of the Prop. 90 campaign. But so far none has passed muster with property-rights advocates as a whole.

Timothy Sandefur, an attorney with the Pacific Legal Foundation in Sacramento, calls a proposal from the League of California Cities that would protect only owner-occupied homes "an obvious fraud," because most redevelopment takes place in business districts.

Sandefur also faults a ballot initiative proposed by the Howard Jarvis Taxpayers Association. "It contains a



Timothy Sandefur



Michael M. Berger

big, obvious loophole," he says, in the form of regulations that prevent farmers from selling their land to developers when they retire—something "they tend to want to do sometimes," according to Sandefur.

Whatever their differences, property-rights advocates agree that changes in the law will occur at the state, not federal, level. In California, that means more wrangling to come on statewide ballot initiatives. As for those, Wesley W. Horton, who argued for the city of New London in *Kelo*, told a legal symposium in Southern California this spring, "I must confess, I'm glad New England doesn't do that sort of thing." —*Laura McClure*

## [TAX LAW]

# The Bounty Doubles

**Q** uiltam lawyers may be getting a flood of new work as a result of the Tax Relief and Health Care Act of 2006 (26 U.S.C. § 7623), which became law in December. The act provides additional incentives for whistleblowers to come forward with information about companies or high-salaried individuals who have underpaid their taxes. Now informants may receive up to 30 percent of the IRS's recovery—double the previous percentage—with no limit on the collected proceeds. (The information must not have been previously disclosed.)

"The False Claims Act has worked so successfully in uncovering fraud that it made sense to have the same mechanism give people incentives to come forward about underpayment of taxes," says John Phillips, principal in the quit tam firm of Phillips & Cohen in Washington, D.C. Phillips helped Senator Charles Grassley (Iowa) draft the IRS whistleblower section of the new law.

Although the IRS has had an informant-reward program since 1954, attorneys working on contingency have had little incentive to help clients pursue such cases. "Before the changes to the law, there was nothing you could do if the government decided not to give a whistleblower an award," says Paul D. Scott, who handled fraud cases in the U.S. Department of Justice in Washington, D.C., before opening his own whistleblower practice in San Francisco in 1995. "Now a whistleblower can appeal to U.S. Tax Court and enforce his or her right to the award."

Scott expects to add IRS whistleblower claims to his practice. "I've had a cavalcade of calls in response to the change in the law," he says.

Phillips says his office has received a similar response. However, he notes that the new law has very high jurisdictional minimums that are intended to weed out junk or spite cases. The amount of alleged underpayment—including taxes, penalties, and interest—must exceed \$2 million.

According to Phillips, the impetus for congressional action was an acknowledgment of widespread tax fraud involving corporations and their executives, including abusive tax shelters.

In February the IRS appointed Stephen Whitlock, former head of the IRS Office of Professional Responsibility, as director of its new Whistleblower Office. Whitlock says the office has already received several cases in which the claimant is represented by counsel. —*Chloeann Svetvilas*

Top: S. Todd Berger

California Lawyer