

The Capitola Rent Control Roller Coaster



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When we began writing this article, it was envisioned as a story about a rare and important victory for property rights for, of all places, the City of Capitola. On March 25, 2011, the City voted to amend its rent control ordinance in a way that would make rent control far less burdensome and lead to the end of rent control in the City. That victory was then seemingly put on hold, as the tenants were able to turn in enough signatures to qualify a referendum petition that gave the Capitola City Council the option of either putting the amendment to a vote or rescinding the challenged amendment. On May 3, 2011, the story took another surprising twist - the city clerk deemed the referendum legally inadequate. As a result, the amended rent control ordinance is now in effect. The twists and turns may not be over. The tenants may bring a legal challenge to the City's decision to reject the petition.

The parkowners in Capitola now find themselves in the unusual position of being aligned with the City, which is defending the phasing out of rent control, and against the mobilehome park tenants. The basic change in the City's perspective on rent control is surprising, to say the least.

For years, the City has been aggressively defending its right to impose space rents on mobilehome parkowners at a fraction of the fair market rate. One by one, the City forced the owners in Capitola to sell to the tenants, or non-profit entities, at a fraction of the fair market value, typically with substantial financial support from the City.

Today, only three parkowners are left standing. One of the remaining owners is Ron Reed, who owns Surf and Sand Mobilehome Park, a 73-space park perched in a beautiful coastline location. Ron helped build the park with his father and hoped to pass it on to his children. The City has imposed space rents of approximately \$300, in the range of 20 percent of the fair market value. For the past four years, the Reeds have fought the City "tooth-and-nail" to regain the value of their property from government confiscation. Because they owned the property before rent control, they were in a strong position to prevail on their claim in court - if they could get a hearing on the merits in a court willing to simply apply the law.

Increasing rents under the City's strict rent control ordinance is not a real option. As a result, the Reeds sought permission to close and subdivide the park. Predictably, both applications were denied. The City denied Surf and Sand's closure application because it claimed there were inadequate relocation benefits, but the City Council, at the request of the park tenants, refused to state what constituted "adequate" relocation benefits. The City's aggressive position, and its tactics in processing of the applications, reflected the strong political opposition to any change of use that would not protect the "equity" of the tenants. That "equity" was, in reality, a premium many tenants paid for their home as a result of the existence of rent control. The City wanted the Reeds to follow

the path of prior owners by forcing them to sell at a price that largely reflected the rent controlled value of the property. The Reeds would have none of it and the City's aggressive tactics helped set the stage for a strong case in court.

The Reeds filed suit in federal court. More importantly, they stayed in federal court, surviving a motion to dismiss. They also prevailed in motions designed to strictly limit discovery, allowing them to do extensive written discovery and depositions, including deposing the entire Capitola City Council. This discovery helped build the case that the City's actions were a calculated effort to confiscate the property of the Reeds for the benefit of the tenants.

As the case approached trial and the City faced the prospect of a large judgment, it reached out for a settlement that would allow the rent control ordinance to be amended. On March 25, 2011, the City of Capitola voted 4 to 1 to radically amend its rent control ordinance in a way that allows current space rents to increase substantially for all mobilehome spaces in the City, eliminates rent control for people who own other residential real estate or are "part timers," and creates vacancy decontrol and an eventual end to rent control in the City.

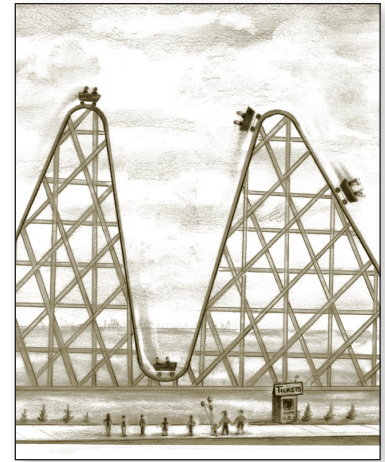
The filing of the referendum petition initially prevented these changes from coming into effect. If it had not been rejected, it would have subjected these changes to the rent control ordinance to a vote of the citizens. The idea of making property rights subject to a popular vote is deeply concerning. In fact, one of the primary animating concerns that led to the adoption of the Fifth Amendment of the U.S. Constitution was the natural incentive for powerful political majorities to effectively

vote to confiscate the wealth of minorities. As James Madison, one of the primary authors of the Constitution observed, "Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions."¹ As the U.S. Supreme Court observed:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."²

The mobilehome park tenants of

Capitola should not have the power to vote to take the property owned by the parkowner for their own benefit. Yet, that is exactly what a referendum would allow to happen. ■



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¹ James Madison, on Property, *The Papers of James Madison*. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962-77 (vols. 1-10)
² *West Virginia B. of Ed. v. Barnette*, 319 U.S. 624,638 (1943)