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## Memorandum

**To:** Interested Parties

**From:** Karen Budd-Falen  
Budd-Falen Law Offices, LLC

**Date:** August 7, 2012

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Since election season is in full swing, I wanted to pass along some things to think about. Feel free to distribute and publish as you see fit.

### Property Rights and Election Year Politics

- “No other rights are safe where property is not safe.” Daniel Webster (1782 - 1852).
  - “Among the natural rights of the colonists are these: First a right to life, secondly to liberty, and thirdly to property; together with the right to defend them in the best manner they can.” Samuel Adams (1722 - 1803).
  - “The Right of property is the guardian of every other Right, and to deprive the people of this, is in fact to deprive them of their Liberty.” American diplomat Arthur Lee (1740 - 1792).
- In this election year, it is critical to ask what your current elected representatives – or those who want to be your elected representatives – believe
- when it comes to private property and private property rights.
- Private property is all tangible and intangible things owned by individuals or organizations over which their owners have legal rights, such as land, buildings, money, copyrights, patents, etc. Unless the mandates of the Fifth Amendment are met, private property can be transferred only with its owner's agreement. Property can include every valuable right that can be owned, has an exchangeable value, or adds to one's wealth or estate. Property describes a person's exclusive right to possess, use, and dispose of something. It has been said that the rights to the ownership and use of property and property rights is a basic element of the capitalist system, and is even the basis for the rights guaranteed in the First Amendment of the U.S. Constitution. “In its larger and

juster meaning, [property] embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage. In the former sense, a man's land, or merchandise, or money is called his property. In the latter sense, a man has a property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them." James Madison (1751-1836), author of the First Amendment to the United States Constitution.

Under the Fifth Amendment of the U.S. Constitution, private property cannot be taken unless it is for a public purpose, without due process and just compensation. The Fifth Amendment was written to protect individuals against abuse of government authority by requiring due process (i.e. a legal procedure). The Fifth Amendment's guarantees stem from English common law which traces back to Magna Carta of 1215. For example, the Fifth Amendment protects individuals from criminal double jeopardy and self incrimination; it also protects property from being taken unless there is a "public purpose," without due process and just compensation.

Although often overlooked, in this election year, we the people should focus our thoughts on the Fifth Amendment's requirement that property cannot be taken unless there is a public purpose. The courts have allowed legislative bodies, such as a city council, county commission or the state legislature to determine what is in the public purpose. The determination of a "public purpose"

by your federal, state and local elected officials extends to determining if eminent domain will be granted to companies for rights-of-ways, limiting land use through restrictive zoning decisions and taking private properties "for a higher and better use."

In this election year, it is up to you to determine how far your elected officials go in either eliminating or defending all forms of private property. As John Locke (1632 - 1704) stated, "[t]he great chief end therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property. . . . Whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people . . . ."

There is nothing your elected officials have adopted in the past that cannot be changed by a new elected body with the will to do so. So I would encourage you to ask these questions of yourself and your elected officials:

- How important is the guarantee of the ownership and use of private property and property rights?
- Do you have elected officials who listen to the citizens, treat them with respect and represent the people in the City, County, State or Country or do they merely represent the county employees who want to retain power to themselves?

As stated by Thomas Jefferson (1743 - 1826), "All tyranny needs to gain a foothold is for people of good conscience to remain silent." And while not necessarily a Constitutional scholar, a famous singer/songwriter once stated, "[g]et up, stand up, stand up for your rights. Get up, stand up, Don't give up the fight." Bob Marley (1945 - 1981).