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California Focus: Next round in eminent domain fight

Anti-tax group prepares state constitutional amendment to protect property

By BARBARA LARAIA

The Bay area resident speaks and writes about redevelopment reform

Every California property is fair game for condemnation, seizure and transfer to a private developer under the government's power of eminent domain. New and excessive property regulations also could render anyone's property useless, with no financial compensation required.

The defeat last month of Proposition 90, an initiative that would have erected safeguards against the types of abuses mentioned above, has opened the floodgates of the Kelo decision in which the U.S. Supreme Court ruled last year that elected officials may take anyone's private property – with alleged "just compensation" – and transfer it to a private developer to build things like stadiums, auto malls, shopping centers or any other project that the jurisdiction thinks would generate more tax revenue.

In the year-plus Since Kelo, condemnation proceedings have tripled. Because of Kelo, 34 states, but not California, have passed some kind of eminent domain reform.

So what are the options for protecting private property in this state? One approach is another statutory initiative, which would make the ballot after citizens gather valid signatures from a number of people equal to 3 percent of the voters in the most-recent election and meet all other legal requirements. A statute can contain considerable legal minutiae.

A constitutional amendment is more difficult and expensive for ballot qualification because it requires the signatures of a number equal to 5 percent of the voters in the most-recent election. Like a statutory initiative, it requires majority approval, but it is different in that it establishes a legal framework for enduring legal concepts and principles. This makes a

constitutional amendment stronger and more protective than an initiative, according to policy analyst Leonard Gilroy.

A few weeks ago the Howard Jarvis Taxpayers Association proposed a state constitutional amendment that states, among other things, that private property may be taken by governments only for public uses, such as schools or roads. The California Property Owners Protection Act will cost \$1.3 million to \$1.4 million to qualify for the ballot, according to the group's president, Jon Coupal. He stated that his group will not even consider a statutory initiative and noted that depending on "input from stakeholders" there may be a chance of submitting another measure.

"Failure of Prop. 90 won't make this issue go away," Coupal said.

CPOPA has strong eminent domain protections. "Private property may be taken or damaged for a stated public use. ... Private property may not be taken or damaged for private use." (Sec. 19 (a)). "Public use" means "use and ownership by a public agency or an investor-owned public utility for the public use stated at the time of the taking, including public facilities, public transportation and public utilities," the proposed amendment states.

The definition of public use includes the word "ownership," thereby making the intent of "public use" crystal clear to elected officials who condemn our property.

CPOPA also prohibits property from being "damaged" for any purpose but a stated public use. "Damaged" includes "limiting the price a property owner may charge another person to purchase, occupy or use his or her property." This basically addresses rent control, and might prove a drawback in getting the amendment approved. Rent-control activists may cry foul, even though there are already government programs to help poor, elderly and disabled people with their rent.

Attorney Jennifer Zeigler with the property-rights group the Castle Coalition noted it may be better to put eminent domain reform on the ballot by itself for easier passage and also because of possible legal challenges to the "single subject rule" of ballot measures. However, she agreed that rent control is, in effect, regulatory taking, and reforms of both regulatory takings and eminent domain were allowed on last month's ballot in the form of Prop. 90.

Whichever measure(s) makes it to the ballot, it must be stated that eminent domain will be enacted only for public use and ownership. We need an antidote for the Kelo ruling by amending the state constitution to guarantee our inalienable right to keep and use our property once we purchase it, except in specific instances.

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