

Central Valley Business Journal

Potential for two eminent domain initiatives to battle it out on June ballot

By Craig W. Anderson

February 2008

Voters will cast their votes this June on at least one measure to add new property right protections to the California Constitution as the California Secretary of State has certified the California Property Owners and Farmland Protection Act and it will appear on the June ballot.

More than one million signatures were gathered and the state has determined that at least 694,354 are valid, thus qualifying the measure for the June election.

That eminent domain can be used unfairly came to light via the U. S. Supreme Court's controversial decision in *Kelo v. City of New London* when it ruled that governments can take property from one private individual and transfer it to another for the purpose of economic development.

Sponsored by Californians for Property Rights Protection (a coalition of homeowners, family farmers and small business owners led by the California Farm Bureau Federation, the Howard Jarvis Taxpayers Association and the California Alliance to Protect Private Property Rights) the CPOFPA would reform government power to seize private property with eminent domain, mandating it be used only for legitimate public purposes such as building roads, schools, other government buildings and water projects.

A competing initiative, the Homeowners and Private Property Protection Act – sponsored by the League of California Cities, the California State Association of Counties and the California Redevelopment Association – has yet to be certified by the state as of this writing.

"The major difference between the two measures is that the property owner and farmland protection act provides protection for all property owners," said Kiran Black, Manager of Political Affairs for the California Farm Bureau Federation. "Our philosophy is that if someone has acquired land legally, it cannot be taken by eminent domain to give to another private person or entity."

And, said the State of California's Legislative Analyst's Office, the Homeowner's and Private Property Protection Act "is not likely to significantly alter current government land acquisition practices."

According to the California's for Property Rights Protection coalition, the CPOFPA initiative "restores constitutional protections against eminent domain abuse, and would ensure all homes and small businesses, churches and farms remain in the hands of those that own them."

Ms. Black said the eminent domain process usually offers about 40 percent of what the landowner feel their land is worth. "The value is determined by appraisal done by appraisers hired by the public agency wanting the land" which seems to stack the deck in favor of the public agency.

The CPOFPA is driven by frustration that California has taken little action to control eminent domain transgressions. Since the *Kelo* decision in 2005, more than 40 states have reformed their eminent domain laws while California has not taken significant action.

Even though Senate Bills 53, 1206, 1210, 1650, and 1809 were signed into law in 2006 they only added a few additional procedures for condemning authorities to meet such as requiring more details about the proposed use of the targeted property and additional findings of blight when renewing a blight designation.

"Essentially, in the Kelo decision the Supreme Court said it's up to the states to have their own eminent domain laws," said Ms. Black. "California hasn't moved on this issue to provide necessary protection against eminent domain abuse so it was time to use the initiative process."

Unfortunately, it appears eminent domain reforms may come too late to help some communities such as Southern California's Baldwin Park where the city government is expediting eminent domain proceedings to demolish more than 500 homes and small businesses to make room for an "urban village" project in downtown Baldwin Park.

Why the rush? In a letter to Mr. Vijay Singhal, Chief Executive Officer of the city, Robert Bisno, CEO of Bisno Development Co. LLC says it is clearly not in the city's interest to move forward in an "unnecessarily slow manner" and to complete the plan development process within a year "so as to enable us to embark on the actual delivery of that project as the law in California presently permits and encourages."

In other words, acquire the property via eminent domain and get the development project underway before the law changes.

Ms. Black pointed out that "local governments throughout California are abusing the eminent domain powers and taking people's property for redevelopment," and that seems to be the case with Baldwin Park.

The eminent domain threat is real to a variety of business sectors, including agriculture, the Hispanic business arena and independent businesses in general.

Because eminent domain is putting family farms and ranches at risk the measure is needed to "protect against sprawl and assure that farmland stays in private ownership," said Kenny Watkins, Linden farmer and CFBF second vice president.

Ken Macias, chairman of the California Hispanic Chambers of Commerce commented, "Hispanic business owners deserve private property protections" and the CPOFPA will "protect our members from eminent domain abuse."

And John Kabateck, executive director of the California NFIB checks in with, "California laws need to be changed to prohibit eminent domain abuse that allows government to profit by seizing homes and small businesses and giving it to politically connected developers."

Well. Those are surely fightin' words for developers, politically connected or not.

But what does the CPOFPA intend to accomplish?

The key points are:

- Private property may not be taken by eminent domain for private use under any circumstance, i.e. to build a shopping center, auto mall or industrial park.
- Property may be taken by eminent domain only for public use.
- Property may not be taken by government and used for the same purposes, i.e. residential housing for government housing.
- Family farms and open space are protected from government seizure for the purpose of selling the natural resources.
- Public agencies cannot seize family farms, ranches and other property in order to acquire water rights or to enable urban sprawl.
- If the property is taken under false pretenses, or abandons its plans, the property must be offered for sale to the original owner at the original price and the property tax assessed at the value of the property when it was originally condemned.

- If land or business owners are evicted by eminent domain they are entitled to compensation for temporary business losses, relocation expenses, business reestablishment costs and other reasonable expenses.
- Prevents government from setting the price at which property owners sell or lease their property, but tenants who live in rent-regulated communities will continue to receive the benefit of those regulations as long as they live in their apartments or mobile homes.

Ms. Black noted, "There is more and more pressure for urban growth and more and more liberal governments are looking to take farmland and as development pressure mounts throughout the state, there will be increasing occurrences of eminent domain abuse."

She added that Farm Bureau has received calls from many members "who are dealing with eminent domain situations."

On the other hand, Vivian Kahn, a planning consultant who teaches UC extension programs at Berkeley, Davis and UCLA, said the CPOFPA is "...out to undermine the ability of California's communities to make decisions about how they're going to grow, preserve natural resources, and maintain and provide affordable housing."

Ms. Kahn also accused the measure of prohibiting or requiring compensation for local zoning and other land use decisions, abolishing local rent control and affordable housing laws and barring "state and local water agencies from using eminent domain to acquire land for new water storage and delivery systems."

Obviously, the debate has been joined and California voters will ultimately decide if the California Property Owners and Farmland Protection Act or – should it make the ballot – the Homeowners and Private Property Protection Act will change the constitution regarding eminent domain.

Whatever the future holds, it may be a good idea to remember what the California constitution says about the topic: "All people by nature are free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property..."