

Thursday, March 22, 2007

Today's editorial: Property rights back on the radar

The 2008 ballot may feature dueling initiatives to limit government land grabs.



The League of California Cities has opposed all meaningful reform in the Capitol to rein in the rampant abuse of eminent domain by its member cities, so mark us down as skeptical that a draft June 2008 statewide initiative that the taxpayer-funded group is pushing will do anything to seriously reform the way cities operate.

The U.S. Supreme Court's June 2005 Kelo decision, upholding the "right" of New London, Conn., to transfer historic homes to a private developer of condos and offices, reminded Americans of the sorry state of property rights. We have long reported on the fact that cities routinely drive small businesses and homeowners off of their property so that the land can be transferred to big developers who promise tax windfalls to government.

While Kelo upheld a sorry state of affairs, it also awakened a nationwide movement to stop the use of eminent domain for private uses. The justices said, forthrightly, that nothing in its decision could stop states and localities from dealing with the problem on their own. Groups such as the league and the California Redevelopment Association have been terrified of the backlash, despite the failure in California of Proposition 90 on last November's ballot. These groups heavily funded the effort to stop the proposed statewide ban on eminent domain for private use and the requirement that government compensate owners when regulations effectively deprive them of their property.

So now the league has submitted to the state Attorney General's Office something of a pre-emptive strike in the ongoing battle, called the Homeowners and Private Property Protection Act. It purports to limit eminent domain, but does so only for owner-occupied homes. Most cities rarely target single-family properties. They focus more on businesses, farmland and rental housing. The league's proposed initiative is laden with loopholes. According to the Howard Jarvis Taxpayers Association, which has proposed a competing measure for the same election, the league's draft initiative doesn't even offer serious restrictions on taking owner-occupied homes because it allows a blanket exception for "zoning" changes, which means that cities would simply rezone properties they covet.

Likely, the league wants to create the impression that reform has taken place, without backing substantial reform.

The Jarvis group is pushing what it calls the California Property Owners Protection Act. Unlike Prop. 90, it does not offer protections against property value lost to rezoning or other regulations. But the initiative does protect businesses and rental housing, along with owner-occupied properties, from eminent domain for private uses.

The initiative also has a useful abandonment clause. The Register reported on the way Caltrans often has failed to use property it has taken through eminent domain. Although Caltrans uses eminent domain for public uses (i.e., roads and highways), it (and other agencies) would still be required to return the property to the original owner at the price at which it was taken if the property is ever abandoned. The initiative also restricts the ability of government to take property from a private owner

and use it for the same use as the owner – i.e., taking an apartment building to use as low-income housing. The Jarvis initiative boosts the number of reasonable costs to which an owner is entitled. These are all good provisions.

The most controversial provision would restrict future rent-control laws.

We would have preferred a straight Kelo-only initiative, although we certainly support any restriction on the ability of government to limit the rents that private owners can charge. This feature could make it more difficult to pass, however. If both initiatives are on the ballot, the one with the highest vote totals would become law. It's still early in the process, but we're pleased that the eminent domain issue will again be addressed despite Prop. 90's narrow defeat. Still, voters need to be savvy and distinguish between true reform and phony reform pushed by a group that benefits the most from current abuses.

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