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## Fight the power of eminent domain

By STEVEN GREENHUT

A little over nine months ago, people's eyes would glaze over in utter boredom when I would rant about one of my favorite topics: eminent-domain abuse. By the time I could define eminent domain - the power of the government to take property by force, upon compensation to the owner - and then describe how that ability is twisted by local governments to benefit developers rather than to build public works, well ... I typically lost my audience.

I couldn't even get to the part about how cities typically rip off the property owners in their payment of "just compensation," or how they avoid the "due process" requirement in the Constitution.

These days, people come up to me and rant about the topic - and not just policy wonks, but ordinary folks of various political perspectives. Friends from all over the country send me newspaper clips of eminent-domain abuses in their community, with yellow sticky notes bearing their outraged comments.

The sea change occurred June 23, 2005, when the U.S. Supreme Court ruled, 5-4, that cities should be granted the utmost latitude when they decide to condemn homes, businesses and whole neighborhoods and turn the properties over to big-box retailers, auto malls, condo developers or whatnot.

The lights went off. Most of the public understood what Justice Sandra Day O'Connor explained in her dissent: "Today nearly all real property is susceptible to condemnation on the Court's theory. In the prescient words of a dissenter from the infamous decision in Poletown, '[n]ow that we have authorized local legislative bodies to decide that a different commercial or industrial use of property will produce greater public benefits than its present use, no homeowner's, merchant's or manufacturer's property, however productive or valuable to its owner, is immune from condemnation for the benefit of other private interests that will put it to a "higher" use.'"

It's been a different game since then. Redevelopment advocates are in a dither now that more than 40 state legislatures have proposed some limits on eminent domain for economic development. Local projects, such as the Yorba Linda Town Center, have been abandoned in the wake of fevered public opposition because of the likely abuse of eminent domain. The County Board of Supervisors has voted to place Measure A on the ballot in June, which would outlaw nonpublic uses of eminent domain by county government.

"This issue is the third rail right now," said one eminent-domain advocate in a Jan. 18 New York Times article. "You step on it, you die."

Unfortunately, Democrats in California's Legislature stopped meaningful reform, even though the state Democratic Party later approved a resolution condemning the use of eminent domain for economic development.

Although his tough eminent-domain reform proposal failed in the Legislature in 2005, state Sen. Tom McClintock had planned to introduce it as an initiative. The Howard Jarvis Taxpayers Association had also planned an initiative drive on its separate anti-eminent-domain measure, although it would have included limits on rent control. Neither one is moving forward, due to a lack of sufficient money to collect enough signatures for the November ballot.

But petition-gatherers are on the streets hawking the Protect Our Homes initiative, which already has \$1.5 million in backing, from the New York-based group the Fund for Democracy. The honorary state chairwoman is Assemblywoman Mimi Walters, R-Laguna Niguel. Republicans who support property rights should jump on this campaign, but so should Democrats. As Justice O'Connor noted in her dissent in the so-called Kelo case: "[T]he government now has license to transfer property from those with fewer resources to those with more." Since when do Democrats believe in robbing the poor, minorities, the elderly and the working class to benefit developers and companies such as Wal-Mart?

The most significant provision in Protect Our Homes: "'Public use' shall have a distinct and more narrow meaning than the term 'public purpose'; its limiting effect prohibits takings expected to result in transfers to non-governmental owners on economic development or tax revenue enhancement grounds, or for any other actual uses that are not public in fact, even though these uses may serve otherwise legitimate public purposes."

That's significant, given that redevelopment officials and the courts have allowed the clear meaning of public use - i.e., a government-owned project such as a road or school - to morph into the amorphous "public purpose." City officials use fanciful arguments to explain why, say, a Costco is a public purpose because it brings in more tax revenue than the neighborhood that was there before it. With that simple twist of a phrase, essential constitutional property protections have been obliterated.

The other wonderful verbiage from the initiative: "If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken."

You might own a small warehouse, but a developer wants to build a new high rise on the site. The government will come in and offer you the value of the warehouse (and will usually lowball the price and often force you to go to court to get a higher price, where you will pay your own legal fees). Then the city turns the land over to a favored developer, who gains vast value in the changed use from warehouses to high rise.

The initiative would force the city to pay the warehouse owner based on the land's true worth as determined by the new use, not the old value. The current situation results in vast government-enforced wealth transfers from owners, who may have sat on a property for decades waiting for values to go up, to newcomer developers who cast their greedy eyes on other people's land.

City officials and developers have been trying to convince the public that none of these changes are necessary, that property rights are safe and sound in California. But that's a lie. Take a look at Long Beach, where the City Council voted 6-0 this month to take the Filipino Baptist Fellowship Church and give it to a condo developer. The church building is quite nice, by no means a blighted facility, but the property is in a prime location near downtown.

Such abuses will continue unabated until the state passes an initiative similar to the one being circulated. So, don't get angry and don't give yourself heartburn over the ongoing injustices. Get busy circulating petitions and getting voters out to the polls once Protect Our Homes qualifies for the ballot.

Let's give the redevelopment industry heartache for a change.