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## Daniel Weintraub: Eminent domain reform morphs into broader battle

**By Daniel Weintraub -- Bee Columnist**

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It's beginning to look as if Californians will be asked to vote later this year to reform the laws of eminent domain - and do a lot more to protect private property rights.

Several separate ballot measure drives have begun, and sputtered, since a U.S. Supreme Court decision last year confirmed the power of government to force the sale of private property then transfer that property to another private owner for development.

But now a New York-based foundation has dropped \$1.5 million into a campaign led by Americans for Limited Government, a national libertarian group, to qualify an eminent domain reform initiative in California. With that kind of money behind it, the measure is almost certain to qualify for the November ballot.

The far-reaching proposal, however, is also likely to shatter what had been a fragile but growing bipartisan consensus on the need for reform.

Known as the "Protect Our Homes" initiative, the measure would prohibit the government from using eminent domain to force the transfer of property from one private owner to another. Any property purchased by the government without the consent of the owner would have to remain in government hands or for a public use regulated by the government.

That's an idea that has won support from Republican state Sen. Tom McClintock of Thousand Oaks, a fierce advocate of private property rights, and the California Democratic Party, which was persuaded that eminent domain is often abused by local government to take the property of homeowners and small business owners, often minorities, and sell it to wealthy developers. Many inner-city Democrats,

including Rep. Maxine Waters of Los Angeles, have joined a movement in Congress to limit eminent domain.

But the new proposal heading for the ballot here would also require the government to compensate property owners for what are known as "regulatory takings" - actions that reduce the value of property without forcing its sale, typically associated with regulations designed to protect the environment.

That idea is likely to be far more controversial, because it will be seen as a threat to California's existing environmental laws - even though the measure would apply only to takings that grew out of laws and regulations adopted after the initiative took effect.

McClintock has dropped his narrower proposal on eminent domain - he said he couldn't raise the money needed to qualify it for the ballot - and thrown his support behind the Protect Our Homes measure.

"I preferred a clean version that simply dealt with the issue of rich people taking poor people's property," McClintock told me. But he said he also believes that property owners should be compensated for regulatory takings, and he thinks the issue can win support in California, as it has in Oregon, another state with a strong environmental constituency.

"Most people instinctively realize that if a government agency by its own actions reduces the value of your property, that they ought to pay you for the damage they have done," McClintock said. "The cost should not be borne by the property owner."

But others in the movement to limit eminent domain are not as comfortable with the broader idea.

Loraine Wallace Rowe, a spokeswoman for the San Jose-based Coalition for Redevelopment Reform, said she is personally sympathetic to the idea of limiting regulatory takings, but she believes the issue would likely kill the concept of eminent domain reform in California. Wallace Rowe is leading an initiative drive for the California Eminent Domain Limitations Act.

"We had a lot of public meetings when we were drafting our initiative, and many people who came said they would do anything to stop eminent domain, but this is a whole different ballgame," she said. "They would say, 'I can't support this because of what would happen with respect to the Endangered Species Act, with respect to these environmental regulations.'"

Wallace Rowe said her group has been collecting signatures using an entirely volunteer, grass-roots effort. They have until April 30 to gather about 600,000

valid signatures for their measure.

"We're working really hard," she said. "We're really happy with the way it is moving."

In recent history, however, very few initiatives have qualified for the ballot in California without the help of professional petition circulators who are paid to gather signatures.

That means that, most likely, the Protect Our Homes measure will be the only eminent domain initiative on the ballot this fall.

And Californians who believe that it's wrong for the government to force you to sell your home or business so that someone else can develop the land will have to vote for the broader reform if they want any reform at all.

There is one other possibility. Eminent domain reform stalled in the Legislature last year when Democrats who were skeptical of the proposed changes blocked McClintock's bill and tried to push for a moratorium and a study of the issue.

Perhaps now, with the very real possibility of a much more far-reaching measure moving to the ballot, the Legislature will reconsider the narrower version so that voters have a true choice among policies rather than the all-or-nothing confrontation that seems to be heading our way.

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