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Dan Walters: A muddle on property seizures

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An organization that calls itself Californians for Eminent Domain Reform should, one might think, be in favor of reforming eminent domain -- the process by which governments take property, ostensibly for public purposes.

However, the government-labor-environmentalist coalition that has adopted that name really doesn't want to change eminent domain laws so much as prevent someone else from changing them in ways that cities, counties, unions and environmentalists wouldn't like.

It's not the first time a group has adopted a misleading moniker, nor will it be the last, but the politics of this issue lend themselves to misinformation because they are complex.

Eminent domain, or the implicit threat of seizure, is widely used in California not only for its original purpose -- acquiring land for roads and other public works -- but to take property for private developers. Somebody comes along and dangles an auto mall, shopping center or hotel in front of local officials, with a promise to generate new tax revenues -- but conditioned on the local government's assembling the site without the developer's having to negotiate with property owners.

Two years ago, in its highly controversial Kelo decision, the U.S. Supreme Court sanctioned the seizure of private property for private purposes. It energized anti-eminent domain forces, which began demanding that states pass reform and threatening ballot measures.

One such measure was placed on the California ballot last year, but its backers -- New York investor Howie Rich, most prominently -- overreached, not only banning seizure for private development, but requiring compensation to landowners when their property lost value due to zoning or other regulatory actions. That drew opposition from business and agricultural groups and the measure, Proposition 90, lost, albeit by just five percentage points.

Critics of eminent domain are back with a new ballot measure declaring, "private property may not be taken or damaged for private use." And this time it has the support of some groups that opposed Proposition 90, such as the California Farm Bureau.

Local officials are worried that with last year's narrow loss, a simpler measure without Proposition 90's baggage could pass. Therefore, the League of California Cities and its allies have created Californians for Eminent Domain Reform and are pursuing a two-pronged strategy. They've written their own initiative that would bar seizure of owner-occupied housing for private purposes -- albeit with some loopholes -- and a legislative measure that would duplicate the initiative in many respects but also include businesses with 25 or fewer employees under its protections.

Assemblyman Hector De La Torre, D-South Gate, unveiled the latter on Monday, declaring it to be "comprehensive and fair." Both are questionable characterizations since it's very limited and unfair on its face by treating different kinds of property differently. A large multifamily project with just one owner-occupied unit would be protected from seizure, for example, while another occupied by

renters could be seized.

Predictably, the De La Torre measure drew fire from sponsors of the broader measure, who have their own front group called the California Alliance to Protect Private Property Rights.

"De La Torre's legislation gives the appearance of reform when in fact it maintains the status quo -- preserving government's ability to profit by seizing private property from unwilling sellers and giving it to wealthy and politically connected developers," said Marko Mlikotin, president of the rival group.

It's likely that both measures will appear on the ballot next year -- and that voters will be vastly confused over who's truly for what and who's not.

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