

Tuesday, May 9, 2006

## Editorial: Latest front in property rights fight

Following the U.S. Supreme Court's *Kelo v. City of New London* (Conn.) decision last June, allowing a city to take private property in order to promote economic development, a backlash against eminent-domain abuse has been growing across the country. Advocates for eminent domain continue to insist that such reforms are not necessary because governments use eminent domain only in rare instances.

Yet cities and counties routinely use it or threaten to use it to transfer property from current owners to developers favored by the government. Post-*Kelo*, the abuses keep getting more egregious. The current poster child for eminent-domain abuse is taking place in Yolo County, west of Sacramento. County supervisors have invoked eminent domain to take a 17,300-acre Conaway Ranch from its owners, developers who view it as "a collection of assets, sort of a financial pie that can be cut into water rights, marketable preserve land, acreage for potential development, farmland and mineral rights," reported the Sacramento Business Journal.

In other words, the owners aren't going to cover the empty land with wall-to-wall strip malls and housing tracts (not that there's anything wrong with that!) but are going to leave much of it for conservation, develop parts of it, take advantage of the water rights and use it for hunting grounds. This is the American way – the investment in property and the creation of potentially lucrative business deals in accordance with the owners' vision.

Yolo County, however, has a different vision. Government officials claim they want to use the land for conservation. They want to leave it largely as it is now, they say. But, given the enormous market value of the land (at least \$500 million), there's little chance that this relatively small county can come up with the cash to pay the owners for its value. Critics of the plan suspect that the county has development ideas of its own, and the proposed financing of the purchase by a band of Indians that operates a Northern California casino naturally leads one to conclude that the property might one day also be home to casinos. The current owners complain that these financing proposals and other aspects of the county's plan have been pursued with little public scrutiny, with only a six-week process with one public hearing.

The matter is headed to court in June, primarily to determine the fair-market value of the 26-square-mile property.

As the Conaway Ranch situation shows, America has reached the point where governments can take property for any reason, which is far removed from what the founders envisioned – i.e., the use of eminent domain only for necessary public projects. Taking more than 17,000 acres for unclear reasons is a far cry from the taking of a narrow piece of land to make way for a freeway or court-house. It shows the degree to which governments perceive themselves as economic central planners, rather than agencies that set some ground rules and enforce people's rights.

Reform is desperately needed, especially in California. Although Democrats (and a handful of Republicans, such as Brea Assemblywoman Lynn Daucher) in the Legislature have stopped any serious reform of such abuses, two initiative drives are now gathering signatures to place on the November ballot restrictions on the power of government to take homes and small businesses and give them to developers. One of them would also limit regulatory takings, in which the government simply takes private property by regulating away any practical uses of it. These initiatives deserve widespread support.

In June, Orange County voters will decide on Measure A, which would stop county government from using eminent domain for private development, thus halting the possibility of the type of abuse we're seeing in Yolo. These are necessary efforts to push the property-rights pendulum back in the right direction.

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