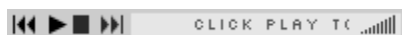




Inland News

Riverside eminent-domain foes take a hit on appeal



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By DOUG HABERMAN
The Press-Enterprise

RIVERSIDE - A Riverside resident may lose his battle against the city over an anti-eminent-domain ballot measure.

In fall 2005, Ken Stansbury began gathering signatures on a petition for a proposed city ballot measure. The initiative would have barred the city Redevelopment Agency from using eminent domain to acquire private property to transfer it to a developer.

The city filed suit, saying eminent domain is a state issue, not a local issue. It asked a judge to rule on the validity of Stansbury's measure.

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Mark Zaleski / The Press-Enterprise

The Fourth District Court of Appeal has issued a tentative decision reversing a trial court judge's ruling that found the city of Riverside tried to stifle Ken Stansbury's, left, First Amendment rights. Stansbury's attorney Richard Reed, right, says the ruling is "profoundly anti-democratic."

The judge threw out the city's suit, finding it was meant to squelch Stansbury's First Amendment rights to

petition the government.

But a state appeals court has issued a tentative opinion that would reverse the trial-court ruling.

"If the trial court's ruling is allowed to stand, no one could ever challenge an initiative's constitutionality prior to the election, which is contrary to law," the appeals panel wrote.

On Wednesday, City Attorney Greg Priamos called the appeals court opinion "a clarification of existing law."

The law now allows asking a judge to review a ballot measure for its legality before it goes to the voters.

Stansbury's attorney, Riverside-based Richard Brent Reed, said existing law needs to be corrected.

If people considering whether to put a measure on the ballot know a city might sue them over it, it could scare them away from the attempt, Reed said. That is profoundly anti-democratic, he said.

The tentative ruling will become final if neither party requests oral arguments -- the chance to argue their case in front of the 4th District Court of Appeal, Division 2, in Riverside. The hearing would likely take place within 90 days of any request, and the final ruling would come after that.

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Reed said he will request oral arguments.

Stansbury and Reed vowed to take the issue to the state Supreme Court, if necessary, because they see it as a battle for constitutional rights.

"I'm in it for the long haul," Stansbury said.

Controversial Acquisitions

Eminent domain has been an especially hot topic across the nation since a June 2005 U.S. Supreme Court ruling.

Public agencies use eminent domain, also called condemnation, to acquire private property from owners unwilling to sell. It is typically employed to buy property for public uses, such as parks, libraries and street-widening projects. The agency condemning the property must pay fair market value for it.

The U.S. Supreme Court ruling upheld the government's right to use eminent domain for another purpose: to acquire land for private developers whose projects would create jobs and boost tax revenues.

Many people, including Stansbury, saw the ruling as an affront to private property rights.

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Soon after he began circulating his petition in Riverside, the city filed a lawsuit that said eminent domain is a state issue and city voters could not strip it away except through a statewide ballot measure. The city asked a judge to rule on the validity of Stansbury's proposed measure. In response, Stansbury and the group he fronted, Riversiders for Property Rights, filed a motion saying the city suit was a blatant attempt to stop the signature-gathering drive, thus depriving residents of their right under the First Amendment to petition the city government and their right to vote on the measure. In March 2006, Riverside County Superior Court Judge E. Michael Kaiser granted the motion by Stansbury and Riversiders for Property Rights and threw out the city suit.

Kaiser said eminent domain is a local issue. He also said any ruling he might make on the ballot measure's legality before the public voted on it would be premature because the measure might not pass.

The city appealed Kaiser's decision. The appeals court issued its tentative opinion June 13, saying Kaiser's ruling was in error.

Riversiders for Property Rights disbanded after Kaiser's ruling and reached an \$11,000 settlement with the city in which the group gave up any further legal challenge. The anti-eminent-domain measure never made it onto a city ballot. The appeals court's tentative decision said that, under California law, a pre-election review of a ballot measure is acceptable when the validity of the proposal is in serious question.

That's because, the appeals court said, "there is no constitutional right to place an invalid initiative on the ballot."

Right To Sue

Reed said he would argue before the appeals court that the city had no right to sue over the proposed ballot measure unless it did so with someone who had a real interest in what the measure would accomplish.

A developer hoping to build a project on land the city Redevelopment Agency was looking to acquire through eminent domain would be one such partner, he said.

"The city doesn't have anything to lose" with passage of a ballot measure, "because their interests are supposed to be their voters' interests," Reed said.

Priamos said the appeals court's tentative opinion makes cities' rights clear.

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