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[Property seizure revolt heads for California ballot Initiative would limit use of eminent domain](#)

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A revolt that began when the U.S. Supreme Court upheld government's right to take private property for economic development a year ago is sweeping much of the nation.

Legislatures in 25 states, as well as numerous local governments, including at least seven in California, have passed a variety of laws and ordinances to blunt the court's June 2005 ruling that the city of New London, Conn., was justified in using the legal process known as eminent domain to seize private land for a different owner to develop a hotel, condominiums and commercial space.

Property rights activists in 11 states, including California, also are responding to the ruling, called *Kelo vs. City of New London*, by supporting ballot initiatives to restrict land seizures and protect landowners. But California's proposed Protect Our Homes Act may be the most controversial.

"This is one of the most dynamic issues in urban policy in decades," said Sam Staley, director of urban and land use policy for the Reason Foundation, a libertarian think tank in Los Angeles. "I would never have predicted before *Kelo* the kind of reaction we've seen in the state legislatures."

The proposed ballot measure would require governments that seize property either to occupy it themselves or rent it out for public use; they could not seize it for private development. The measure also would increase how much governments must pay for seized property, and it would require governments to compensate landowners if

regulations not directly related to public safety hurt their property's value -- unless the property is exempted from the new restrictions.

Redevelopment officials, other city leaders and environmentalists said these provisions would increase prices so much they would limit governments' ability to acquire property for any purpose. And they said the proposition would undermine efforts to redevelop blighted areas and regulate land use in general.

With nearly \$2 million from a New York donor and an obscure Montana group, activists have gathered close to 1 million signatures for the measure, about 400,000 more than they needed to qualify the proposed measure for November's statewide ballot.

Max Neiman, director of the government and public finance program at the Public Policy Institute of California in San Francisco, said the national debate over property rights "certainly is heating up."

"The Kelo decision basically triggered a kind of social movement across the United States," Neiman said. "But it will probably have its most glorious and baroque manifestation here in California."

Michael Berger, a Los Angeles eminent domain lawyer who backs the California initiative, said society as a whole ought to bear the cost of preservation and economic development; government shouldn't be able to saddle individual property owners with that burden.

"They've been doing it on the cheap for years," he said.

The measure would not restrict government's ability to use eminent domain for public uses such as roads, schools and libraries. But the new valuation criteria would probably likely increase costs because governments would have to pay whichever is higher of the land's current market value or its value with the new use officials envision.

Critics say the measure would hamper the ability of California's nearly 350 local redevelopment agencies to renew blighted areas and build affordable housing because holdout property owners could demand unreasonable prices and make it difficult to assemble the land necessary for redevelopment.

"This sets the bar much higher for all governmental acquisitions. We can't estimate the cost increase. The legislative analyst simply said it would be significant," said John Shirey, executive director of the California Redevelopment Association.

Shirey worries that the unpopularity of eminent domain, especially since the Kelo ruling, will lead voters to approve the measure without understanding the broader implications.

He maintained that eminent domain is an important tool and said he hopes the Legislature can enact a less destructive reform. For example, owner-occupied homes could be exempted from seizure for economic development -- a tack some jurisdictions already take.

The League of California Cities and other critics also say the measure could play havoc with land-use regulation by subjecting a vast array of government actions to costly litigation, which could make officials fearful of bold initiatives.

"It is a wolf in sheep's clothing," said Tom Adams, president of the board of the California League of Conservation Voters.

Virtually every environmental group in the state will fight the measure, he said.

On the other side, veteran Sacramento Republican insider Kevin Spillane, who is managing the Protect Our Homes campaign, has asked former Oakland auto shop owner John Revelli to be a spokesman for the initiative. Revelli, 66, hasn't decided whether he will.

The city of Oakland took Revelli's 56-year-old shop and his neighbor Tony Fung's auto repair shop so that Ohio-based real estate behemoth Forest City Enterprises could build a publicly subsidized housing project that includes roughly 700 units, 20,000 square feet of commercial space and a park. About 25 percent of the units will be priced below market rates.

The Oakland Redevelopment Agency offered him only \$331,625 for his roughly 2,000-square-foot building, 2,000-square-foot parking lot and his equipment. Revelli refused to sell the shop, which his father started in 1949, long before the construction of the nearby 19th Street BART station.

"I just could not take that amount. It was an insult," said Revelli, who has still not taken any money from the city in anticipation of a possible legal challenge, particularly if the statewide initiative is successful.

Daniel Vanderprien, Oakland's redevelopment director, said that since taking the building, the city offered Revelli well over \$500,000, and he was still hopeful there would be a settlement.

"We've almost always been able to settle these out of court in the last 15 years," he said.

Fung and Revelli were evicted July 1, and their buildings were demolished on Feb. 3. Revelli began crying as he recalled how by chance he and his wife drove to Oakland and

saw a wrecking crew tearing his shop to pieces.

"When you spend that many years in a building, that building becomes part of you," said a tearful Revelli.

After mediation, Fung in November accepted about \$500,000 for his wholly owned 2,400-square-foot shop, which he bought in 1992 and where he employed two people.

In October, after an extensive search, Fung bought a building in Hayward, and today he has a large mortgage and a more than one-hour commute from his home in El Sobrante, where he lives with his wife and 3-year-old son.

"Right now I am financially strapped. As soon as I have a little breathing room financially, I'm going to move," he said.

Vanderprieem said the city paid fair market value for Fung's property and covered his "relocation and moving costs and business reestablishment costs."

But Fung said city officials did little to help him relocate other than periodically send him real estate listings, which his commercial broker already had.

"They didn't even try," he said.

Dozens of similar eminent domain disputes continue around the state and the Bay Area.

In Contra Costa County, the Hercules redevelopment agency last month made international headlines when they voted to initiate proceedings to take 17.27 acres from Wal-Mart Stores Inc., the first time a government has used such a tactic against the world's largest retailer. In the past, Wal-Mart stores have been built on land that cities took through eminent domain on the company's behalf.

In Pittsburg, by contrast, the city redevelopment agency's decision to seize a building owned by John and Elaine Caprio has gone largely unnoticed.

The city plans to demolish the 5,600-square-foot brick structure to make way for 195 housing units and nearly 40,000 square feet of commercial space. Local historic preservationists have sued to save the building, built in 1925.

City Manager Marc Grisham insisted that the property -- which housed a church and a storage facility -- is blighted for various reasons, including deferred maintenance and because it is made of unreinforced masonry

The building, which is now in the city's possession, is a modest brick structure with arched brick windows that does not appear to be in great disrepair from the exterior, though there is a small hole in one window, another window pane is loose and some openings are covered with plywood.

If the Caprios want to invest in Pittsburg, Grisham said, they should spend the money they get from the city on a second historic building they own downtown that is boarded up on the ground floor. "The fact of the matter is they have a beautiful building that could be restored that is currently blighted," Grisham said.

John Caprio, 65, insisted that the building that was taken from him cannot be called blighted, noting that it has a new roof and paint. Caprio said he has never been cited for blight nor been given an opportunity to correct any problems, and he can afford any repairs necessary.

Caprio said he was not given an opportunity to participate in the redevelopment plan, even though he owned the building for three decades. And finally, he said the city offered him too little money for the property, which he now values at \$860,000, first offering \$207,000 and lately nearly \$600,000.

"They stole my building," he said.

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