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## Sunday editorial: Reform eminent domain by redefining blight

MediaNews editorial

Article Launched: 06/07/2008 11:02:37 PM PDT  
CALIFORNIA VOTERS split widely on the two statewide ballot initiatives dealing with eminent domain in Tuesday's primary election. However, the issue is far from settled.

Proposition 98 sought severe restrictions on allowing government to forcibly purchase private property for private use. The measure failed, receiving only 39 percent of the vote.

Proposition 99, which offers limited eminent domain restrictions on owner-occupied homes, easily passed with 62.5 percent of the vote.

Prop. 98 was overly aggressive in attacking the use of eminent domain to take property for private development. It would have opened the door to increased government expenses, delays and widespread litigation because of its broad definition of a taking.

Under Prop. 98, any diminution of property value, even on properties near a development area, as a result of eminent domain could be considered a taking worthy of compensation by the government agency involved.

As problematic as was the taking element of Prop. 98, there was an even more onerous aspect of the measure. It also would have eliminated all rent control in California, including mobile home lot rentals.

Current tenants under rent control would not have been affected. But once they left a property, rent control on it would cease.

In most instances, rent control is senseless. It results in fewer rental properties and higher rents over the long run. But the situation is different with owners of mobile homes, which are hardly mobile.

Owners of mobile homes have a considerable investment in their property and cannot easily move. If they sell, they likely only can afford to buy another mobile home. Thus, it is all too easy for mobile home park owners to charge exorbitant rents for lots without some kind of limits.

Many cities that do not have general rent control understand that controls on mobile home lots are fair public policy.

With the baggage of a second agenda on ending rent control, voters wisely rejected Prop. 98. Had the measure focused only on eminent domain, it may have stood a chance of passing.

The problem with Prop. 99 is just the opposite. It does far too little to reform eminent domain. It protects only owner-occupiers of single-family homes and does nothing for businesses or other property owners.

The real purpose of Prop. 99 was to undermine Prop. 98 if it, too, had passed, but with a smaller winning percentage. There was a clause in Prop. 99 that said if it passed, all of Prop. 98 would be killed, not just the conflicting clauses, as is the usual case when differing measures both pass.

So with all the fuming and expense of the two eminent domain dueling propositions, Californians are not likely to notice any significant changes in the way eminent domain is used or abused.

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The issue received considerable national attention in 2005, when the U.S. Supreme Court in a 5-4 ruling said that the city of New London, Conn., was within the law in taking property from some private owners and transferring it to another private owner.

The so-called Kelo v. New London case gave carte blanche to cities to use eminent domain for development in order to increase tax revenues.

Many states had severe restriction on using eminent domain for redevelopment, and others enacted curbs in the wake of the decision.

California has yet to take adequate action, but it does have some limits on the use of eminent domain regarding redevelopment, which Connecticut did not.

Property cannot be taken for redevelopment in California unless it is blighted. Under state law, a blighted area is one that is predominantly urban and is in such bad condition that it causes a serious physical and economic burden on the community that cannot be corrected by private enterprise or government without redevelopment.

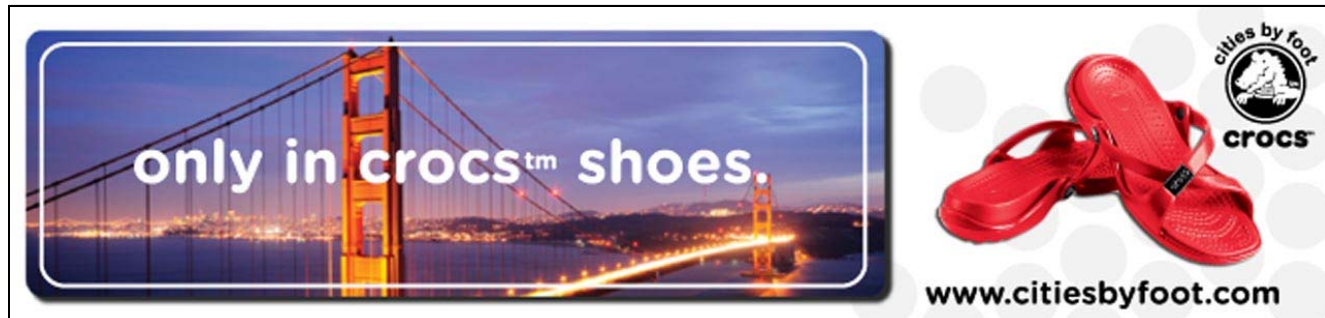
In addition, the property must have one or more of a number of defects such as a health or safety hazard, high vacancy rate, lack of needed services or buildings in disrepair.

In other words, almost any property that could be improved could be declared blighted and taken by eminent domain for redevelopment purposes.

Instead of placing measures on the ballot, especially those with other agendas, California needs to tighten up the legal definition of blight, limiting it to a health or safety hazard or a major economic burden.

A more restricted and reasonable definition of blight could go a long way toward eliminating government abuse of eminent domain without jeopardizing legitimate redevelopment of run-down and dangerous neighborhoods.

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