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Real vs. bogus reforms on land grabs

Fans of eminent domain craft a sham reform measure to run against a legitimate rival.



An Orange County Register Editorial

Two very different approaches to reforming eminent domain – one a fake and the other the real thing – are being considered by state legislators, and understanding the distinction could make all the difference for future property rights in California.

After the U.S. Supreme Court's Kelo decision in June 2005 that upheld the "right" of cities to use eminent domain to take private property and transfer it to other private owners, various government officials and big-government organizations were ecstatic. Kelo didn't change existing law – it simply upheld the despicable way that cities and developers trod on the property rights of homeowners and small-business owners.

Supporters' initial celebration turned to concern, and then downright fear as an angry backlash took place by the public. More than 41 states have now passed some level of protection for property owners. Unfortunately, California has only passed a handful of minor reforms, but efforts continue to find ways to stop the practice of cities taking properties and handing them over to favored developers.

The most recent, but unsuccessful, attempt was Proposition 90, defeated last November. The initiative would have stopped eminent domain abuse as well as reined-in another objectionable practice called "regulatory takings," which happens when government decreases a property's value through regulation, without paying compensation to the owner. Prop. 90 was defeated after a well-funded campaign by the League of California Cities, the California Redevelopment Association, the League of Conservation Voters and other enemies of private property rights. These groups argued that they, too, understood the problems of eminent domain abuse, but claimed to have merely opposed the regulatory takings provisions in the initiative. Prop. 90 lost a close race – surprisingly close given how much the pro-redevelopment side spent, and how inactive was the pro-reform campaign.

It's not over.

The redevelopment industry, fearing real reform, has come up with a devious plan to promote a fake reform measure that does basically nothing to change the current scenario.

Separately, the Howard Jarvis Taxpayers Association and the California Farm Bureau are circulating an initiative for a 2008 ballot that would effectively bar eminent domain by cities for the benefit of other private parties. And, the Assembly Judiciary Committee today was scheduled to consider ACA2, introduced by Assemblywoman Mimi Walters, R-Laguna Niguel. It is similar to Prop. 90, except that it removes the more controversial limits on regulatory takings, which Prop. 90 foes claimed was at the heart of their opposition.

Even though ACA2 is a Kelo-only fix, no one from the League of Cities or the redevelopment association or the environmental groups that opposed Prop. 90 is backing it. They and their Democratic allies have signed on to ACA8, one of the most deceptive pieces of legislation we've seen in our years writing about Sacramento.

ACA8, which passed out of the Judiciary Committee last week, claims to stop eminent domain abuse, but it really is about stopping true eminent-domain reform. This solution has so many loopholes and is so limited that it will be worse than doing nothing because it would create the illusion of reform while cementing in the current status quo. No wonder the state's biggest cheerleaders for eminent domain are behind it.

It is a sham. But this sham needs a two-thirds vote of the Assembly to move it to the ballot; so, supporters are putting pressure on Republicans to endorse it. Make no mistake: Any Republican who votes for ACA8 is casting his lot with the enemies of property rights, and is, in essence, saying that he or she believes that it's OK for cities to take private property and give it to big developers. Likewise, any legislator who opposes Assemblywoman Walters' legislation is saying the same thing.

It is telling that supporters of the status quo have to rely on deception – ACA8 – to stifle eminent domain reform.

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