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Today's editorial: Prop. 90: Restoring property rights

Protect Our Homes initiative would curb worst abuses of the process of eminent domain

California residents have a wonderful opportunity on Election Day to restore some semblance of property rights in a state that, for years, has been frighteningly hostile to private property. Called Proposition 90, the Protect Our Homes Initiative is designed mainly to stop cities from taking homes, businesses and farmland and handing it over to private developers who promise to do something "better" with the property.

Eminent domain abuse is rampant throughout our state. It is bad in Orange County, also. In recent years, cities here have tried to take an entire neighborhood to build a theme park, have demolished old downtowns to build new ones and have even invoked eminent domain, though ultimately unsuccessfully, to transfer church property to a Costco. Under the current situation, affirmed by the U.S. Supreme Court in last year's notorious Kelo decision, cities can take anyone's property and give it to any developer, retail store, auto mall, hotel or anyone who promises to pay more taxes than the current owner. The Kelo decision, although wrongheaded, did emphasize that states have every right to restrict eminent domain abuse.

Prop. 90 would do just what the court suggested. The most significant language in the proposition: "Private property may be taken or damaged only for a stated public use. Private property may not be taken or damaged for private use." That phrase would, in essence, reiterate the words of the U.S. Constitution's Fifth Amendment, which allows eminent domain only for public uses. Over the years, however, governments have redefined the meaning of "public," with the slippery slope leading down to the Kelo decision, where the high court said OK to a project that benefited private developers because the public would benefit from the economic development that the new project would create.

Prop. 90 would not allow California governments to twist the meaning of "public" in such a way: "'Public use' shall have a distinct and more narrow meaning than the term 'public purpose'; its limiting effect prohibits takings expected to result in transfers to nongovernmental owners on economic development or tax revenue enhancement grounds."

Furthermore, the initiative would force governments to pay for the property they do take at its highest and best use. Too often governments will take a property for a commercial use, but then only compensate the owner for the old use. That's unfair. Prop. 90 also insists that property owners who lose their property to eminent domain be made whole – currently, owners typically lose out because they have to pay legal fees, moving expenses and other costs related to an unwanted move.

The typical big-government and liberal interest groups are opposed to 90, because, quite frankly, they like things as they are. Cities like to take property on the cheap and to centrally plan their cities. They are accusing the initiative of endangering public safety services, which is an incredible stretch of the truth – a baseless scare tactic.

Many governments have resigned themselves to eminent domain reform, given the public's overwhelming negative reaction to Kelo. What really scares them is initiative language that forces government to pay compensation when it engages in regulatory takings for non-health or non-safety reasons. But this is one of the most laudable parts of the initiative. Cities routinely regulate away the value of private property through down-zoning and other forms of regulatory theft. What happens if, say, you buy a costly property based on current zoning that allows home development, and then the city changes the zone and forbids you from building anything on it as a means to create open space on the cheap? Isn't that a taking? Shouldn't you get compensation even though you still hold title to the now-worthless land?

If you answered yes to that question, you should have no reservations about voting "yes" on Prop. 90.