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REGION: Dueling propositions target eminent domain

By GARY WARTH - Staff Writer

California voters will once again weigh private-property rights against public needs when they consider two initiatives aimed at reforming eminent domain in June.

Coming two years after state voters last considered and rejected a proposition to rein in the government's power to seize private property, Propositions 98 and 99 both are billed as true eminent-domain reforms. Likewise, both propositions are called shams by their opponents.

The propositions are on the June 3 ballot and represent the latest in a string of eminent-domain reforms that have been introduced since a controversial 2005 U.S. Supreme Court ruling that allowed the city of New London, Conn., to seize private property for private development.

States across the nation since then have been considering or adopting ways to restrict eminent domain. Californians considered eminent domain reform under Proposition 90 in 2006, but narrowly defeated the initiative amid concerns about its effect on environmental protection and local zoning laws.

Both sides involved in the Prop. 90 campaign last year united to try to bring reform through a state constitutional amendment, but later split and wrote the dueling initiatives on this year's ballot.

Too much, or not enough

Prop. 98 would prohibit governments from using eminent domain to take any private property for private use, such as shopping centers or industrial parks. Private property still could be taken for public use, such as freeways, parks or schools, but it could not be taken to convert the property to a similar use, such as turning residential housing into government housing.

Also known as the California Property Owners and Farmland Protection Act, Prop. 98 is co-sponsored by the Howard Jarvis Taxpayers Association and the California Alliance to Protect Private Property Rights.

Critics of Prop. 98 say it is a Trojan horse, as its real goal is the elimination of rent control. The proposition is backed by owners of mobile home parks, which in many California cities are required to have rent control.

Under the alternate Prop. 99, governments could not take owner-occupied residences through eminent domain, but could take apartments, commercial property or rental homes.

Also known as the Homeowners Protection Act, Prop. 99 is backed by the League of California Cities and the California Redevelopment Association.

Critics of Prop. 99 include the Institute for Justice, a nonprofit public interest law firm formed to fight eminent domain abuse, which says the initiative does not go far enough, but is simply a ploy by cities wanting to retain their power to seize property.

Proposition 98 and rent control

Besides including broad protection for private property owners, Prop. 98 would phase out rent control in California. Residents now living in rent-control units would not be affected, but the landlords could raise rent on the units once the tenants move out.

Marko Mlikotin, a spokesman for Prop. 98, said the rent-control provision is related to eminent domain because both are about private property rights. Just as a property owner should have the right to decide whether to sell his property, he also should have the right to set the rent, Mlikotin said.

Mlikotin also said the provision was necessary because without it, the government could get control over a building it cannot physically seize through eminent domain. Taking over the building's rent would be just another way of taking over the building itself, he explained.

"The drafters of the measure have learned that when the government is prohibited from doing one thing, they'll get around it," he said from Sacramento.

Oceanside Mayor Jim Wood said he opposes Prop. 98 because ending rent control would hurt many of the city's seniors living in mobile home parks.

"This would be devastating to our senior citizens," he said.

Twelve California cities have rent-control ordinances, and about 110 mobile home parks throughout the state are under rent control. Escondido, Oceanside and San Marcos have mobile home parks with rent control.

Wood said he's not "overly thrilled" with Prop. 99, but plans to ask the City Council to endorse the measure.

Although Prop. 98 would phase out rent control only after a tenant has moved out, Wood said he worries owners would begin bullying elderly tenants to move out as soon as the proposition passes.

Tim Sheahan, present of Golden State Manufactured-Home Owners League Inc., agreed.

"If 98 is passed, think of the rampant elder abuse and exploitation that can happen," he said.

Kay Parker, an Oceanside Housing Commission commissioner, said she opposes Prop. 98 because it is "draconian" and takes away local control.

Besides protecting many property owners from eminent domain seizures, Mlikotin said Prop. 98 also would help business owners who lose their property to the government. The proposition would lift a \$10,000 cap placed on the amount business owners are reimbursed when they are displaced, allowing them more money to relocate.

In another change, Prop. 98 also relieves private property owners of having to accept take-it-or-leave-it deals, Mlikotin said.

"The government can take your property without even compensating you," he said about eminent domain. "The catch under the current law is if you take money, it's an agreement. This (proposition) would allow you to take the money and still challenge it if you haven't been fairly compensated."

Proposition 99

In Vista, where some fear they may lose property as the city embarks on a large redevelopment project, the dueling propositions have many residents' attention.

While the City Council has endorsed Prop. 99, resident Michael Booth called it a fraud that offers no real protection for private-property owners or even the homeowners it claims to protect.

"Ninety-eight sees what the cities are doing," he said. "They're trying to boost tax revenues by pushing people out, buying property, selling it to developers. Whatever they have to do to boost tax revenues."

Booth is a member of Vista's Project Area Committee, a citizen committee required by the state to oversee any redevelopment plans that affect a large number of residents. While the city has never claimed a home through eminent domain, Booth said the city's latest proposed redevelopment plan could affect at least 3,000 residences, which has some people concerned.

"I think they're very justifiably worried about the power of eminent domain," he said.

Booth said he has no problem with the rent-control component of Prop. 98.

"A lot of elderly are concerned about that," he said. "They shouldn't be. They're thinking that 98 is going to hurt them. It keeps the rent control they have, but over a period of time it phases it out."

Other critics say cities still could seize owner-occupied homes under Prop. 99 simply by rezoning the property from residential to commercial.

Cathy Fairbanks, a spokeswoman for No on 98/Yes on 99 in Sacramento, said that's just wrong.

"The property is protected no matter how it's zoned," she said. "It (Proposition 99) doesn't mention zoning, and that was on purpose. If it's a home in a commercial business, in a residential neighborhood or a commercial area, it's still a home."

Fairbanks said Prop. 99 does not cover everything, but said more protection can be added later. Its strong point, she argues, is its simplicity.

"It offers very, very strong eminent domain protection for homeowners," she said. "It says your home will never be taken for eminent domain and turned over to a private developer."

From ashes of Prop. 90

Fairbanks said the two propositions came from the aborted Assembly Constitutional Amendment 8, which would have offered broad protection from eminent domain seizures. The amendment was written in part by the Howard Jarvis Taxpayers Association.

Fairbanks said the proposed amendment did not have enough support from state Republicans. The Howard Jarvis Taxpayers Association began working with mobile home park owners, who funded the alternative initiative. Meanwhile, the League of California Cities prepared its own alternative bill, Prop. 99.

Fairbanks said Prop. 98 is flawed because it attempts to do too much. In one example, the proposition prohibits the "transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner."

By including "natural resources" in the wording, Fairbanks said the proposition could mean the government is prohibited from using eminent domain to obtain water, which she said is why agricultural groups are opposed to it.

Western Growers Association and the Association of California Water Agencies are opposed to Prop. 98.

Contact staff writer Gary Warth at (760) 740-5410 or gwarth@nctimes.com.