

Ruling Sets Off Tug of War Over Private Property

SANTA CRUZ, Calif. - More than a month after the Supreme Court ruled that governments could take one person's property and give it to another in the name of public interest, the decision has set off a storm of legislative action and protest, as states have moved to protect homes and businesses from the expanded reach of eminent domain.

In California and Texas, legislators have proposed constitutional amendments, while at least a dozen other states and some cities are floating similar changes designed to rein in the power to take property.

But at the same time, the ruling has emboldened some cities to take property for development plans on private land. Here in Santa Cruz, for example, city officials started legal action this month to seize a parcel of family-owned land that holds a restaurant with a high Zagat rating, two other businesses and a conspicuous hole in the ground and force a sale to a developer who plans to build 54 condominiums.

Far from clarifying government's ability to take private property, the 5-to-4 Supreme Court decision has set up a summer of scrutiny over a power that has been regularly used but little-discussed for decades.

"The intense reaction - this backlash - has caught a lot of people off guard," said Larry Morandi, who tracks land use developments for the National Conference of State Legislatures.

In Connecticut, where the court case originated, Gov. M. Jodi Rell, a Republican, has likened the reaction to the Boston Tea Party and called for a moratorium on land takings until the legislature can revisit the law.

California's proposal would prohibit the use of eminent domain, a process in which governments force a sale of someone's property, in cases like Santa Cruz's.

"This decision opens a new era when the rich and powerful can use government to seize the property of ordinary citizens for private gain," said State Senator Tom McClintock, a Republican who proposed the amendment.

In Congress, liberals like Representative Maxine Waters, Democrat of California, have joined conservatives like Representative Tom DeLay of Texas, the House majority leader, in criticizing the ruling. The House voted 365 to 33 to pass a resolution condemning the decision, and proposals in both the House and the Senate would prevent the federal government from using eminent domain for private development, as well as local governments using federal money on such projects.

The Fifth Amendment allows the taking of land for "public use" with "just compensation," and governments have long used the practice to build roads and schools and to allow utilities to run service lines. In its June 23 ruling regarding efforts by the City of New London, Conn., to condemn homes in an old part of town to make way for a private development, the Supreme Court said public use could mean something that brings a public benefit - like jobs or increased tax revenue.

But at the same time, the court invited states to tailor their own laws. While only one state, Delaware, has changed its law, most states are likely to have a proposed change by next year, Mr. Morandi said.

"The initial outcry after the court case was: Nobody's house is safe, we've got to do something now," he said. "But as more states take a look at this they will respond in some form, but they won't want to take away a valuable tool."

In Texas, Gov. Rick Perry added the issue to a special legislative session initially called for education. Both houses passed bills limiting eminent domain with some exceptions, including one allowing the City of Arlington to condemn homes for a new Dallas Cowboys football stadium, a project already under way. The two versions of the bills were not reconciled before the session ended.

But some cities view the ruling as blessing their redevelopment plans; Arlington filed condemnation lawsuits against some holdout property owners this month. Officials in Sunset Hills, Mo., outside St. Louis, voted to condemn a cluster of homes to make way for a shopping center, despite the pleas of some elderly homeowners who said they had nowhere else to go and no desire to move. Officials in Oakland, Calif., evicted a tire shop and an auto repair shop to make room for a development that is part of Mayor Jerry Brown's plan to bring 10,000 residents to the central part of the city.

In Santa Cruz, the plans pit one family against the city's long effort to redevelop a downtown hit by the 1989 earthquake. With the Supreme Court's ruling, city officials here said they felt free to seize a 20,000-square-foot lot they considered a blight.

To the city, the lot owned by the Lau family is a drag on other businesses, because the hole, left by the earthquake, has never been redeveloped. To the family, the seizure is legalized theft and shows how the court decision can be used to take anyone's property under the broad rubric of public use.

"My family has owned this land for 36 years," said Eric Lau, who laid bricks to shore up the building that would become his thriving restaurant, which is adjacent to the hole. "And now they're trying to erase us from this place, to take it and say we don't have any choice."

The ruling has struck a chord; in a Wall Street Journal/NBC News poll this month, the legal issue that Americans said most concerned them was "private property rights," ahead of parental notification for minors' abortions or the right-to-die debate. Property rights groups have united with more liberal organizations in arguing that taking property for economic use usually favors the rich over the poor.

"Typically, you have these corporate lobbyists who go down to a city council and say, 'Take this person's property and we'll build you a shopping center,' " said Timothy Sandefur, a lawyer with the Pacific Legal Foundation, a libertarian-leaning legal group that helped draft the proposed California amendment.

Opponents of the Supreme Court decision also point to San Diego, where Ahmed Mesdaq lost his prosperous cigar and coffee shop in the trendy Gaslamp Quarter to a hotel project, which the city said would bring more tax revenue.

Many city officials say eminent domain is crucial for creating jobs, expanding tax bases and keeping their communities economically viable.

"Redevelopment is sometimes the only tool a community has to jump-start revitalization of downtrodden, blighted communities," officials at the California League of Cities wrote in a response to the proposed amendment.

Mayor Brown of Oakland said it was inevitable that some small businesses would have to be relocated, and he urged caution in any efforts to pass laws. "I understand the horror of urban renewal," he said. "But you don't want to take away a tool that a city has to reform itself. If you did, Oakland would suffer greatly."

During the 1970's, the Lau property, with its bookstore and cafe in the pre-Starbucks age, was a central hangout in funky Santa Cruz, neighbors say. Eric Lau watched his father's bookstore come to life and then die in the Loma Prieta earthquake, which destroyed the building.

The family's restaurant, Oswald, would not be considered blight by many standards. There is ivy on the outside walls, art on the inside, and the tables are covered with fresh-pressed linen. The restaurant is packed on most nights, neighbors say. And it has consistently been voted one of the best places to dine in Santa Cruz, a beach town of 54,000 people south of San Jose, known for its university and the carpet of redwoods on its fog-shrouded hills.

Ron Lau, who is 69, has long tried to build something on the undeveloped part of the property - the hole in the ground. The problem, city officials say, is that Mr. Lau has proposed hard-to-build, idealistic plans, involving alternative energy sources and unusual designs, that have never gotten off the ground, angering some nearby property owners.

"We do not use eminent domain frivolously," said Ceil Cirillo, executive director of the Santa Cruz Redevelopment Agency. "I feel we have been very fair and very patient."

Taking the Lau property would serve the public good, Ms. Cirillo said, "because there is a hole in the center of our retail district."

Eric Lau and his sister Lani say the city is taking their property simply because their father took so much time to try to build something unusual.

"My dad was hellbent on getting his dream project built, nothing less, and that has been his biggest weakness," Eric Lau said.

The city agency has offered the family \$1.6 million for the property, and the Laus plan to fight it. It is unclear whether the amendment would protect the Laus, but they hope to hang on to the property long enough to find out. A vote on the amendment would come no sooner than next June, legislative leaders say. Meanwhile, the Laus say they are willing to modify their plans and build something close to what the city has agreed to with a developer. But city officials say that they have run out of patience and that it is too late for the Laus to come up with new designs. They have an exclusive agreement, Ms. Cirillo said, with a developer, Bolton Hill, to take over the property and build on it.

"The project is moving forward," Ms. Cirillo said. "The Supreme Court gave us reassurance of our ability to proceed."

As for Laus and their restaurant, Ms. Cirillo said there might still be a place for them in the new development - after they sell out.

"Ideally, we would like to see them relocated in some way to the project," she said.

Read and answer the questions on the article “Ruling Sets Off Tug of War Over Private Property”

1. What is happening as a result of the Supreme Court ruling?
2. How have various states responded to the ruling?
3. How has Congress responded to the ruling?
4. According to the Supreme Court ruling, what is “public use” when it comes to eminent domain?
5. What seems to be at stake at the heart of the argument surrounding eminent domain?
6. According to a Wall Street Journal/NBC News poll, what legal issue are Americans most concerned about?
7. According to officials at the California League of Cities, what purpose does redevelopment serve?
8. How does the struggle of the Lau family illustrate the challenges presented by eminent domain? Why do you think the author featured this particular situation in the article?
9. Should the United States government get involved in issues of private land use? Why or why not?
10. What arguments might the United States government use to support the fact that they can take property under eminent domain laws? (think about the Constitution)
11. Is seizure of property under the Fifth Amendment legalized theft? Why or why not?