

COMING MONDAY
■ Only 20 percent of those summoned for jury service in Harris County actually respond or report to serve.

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TRANSPORTATION

AMENDING THE CONSTITUTION

Protect the rights of Texas property owners

■ Proposition 11 would restrict eminent domain

By MATTHEW C. DEAL

VOTERS will decide in November whether Article I, Section 17, of the Texas Constitution — the “takings clause” that sets forth government’s power of eminent domain — will be amended. Proposition 11 tightens the reins on government’s ability to acquire private property for public use upon payment of just compensation.

The origins of Proposition 11 date to 2005, when the U.S. Supreme Court ruled in *Kelo v. City of New London, Conn.*, that condemning property for purely economic development purposes was constitutional. More surprisingly, the court ruled government could rightly delegate its eminent domain power to private entities. Justice Sandra Day O’Connor’s succinctly summed up public opinion, stating, “Under the banner of economic development,

all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded.”

Texas legislators countered the ruling by adding the Limitations on Use of Eminent Domain statute to the Texas Government Code. The statute holds, in part, that a governmental or private entity may not take private property through the use of eminent domain if the taking: (i) confers a private benefit on a particular private party; (ii) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or (iii) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society. Voter approval of Proposition 11 would put these concepts in the Texas Constitution.

While most takings legitimately benefit the public — widening congested roadways, developing mass-transit



JACK SAUER : ASSOCIATED PRESS

CONDEMNED: The home of Susette Kelo in New London, Conn., became the subject of a landmark U.S. Supreme Court case expanding the government’s power of eminent domain in 2005.

rail facilities, building schools for expanding populations, improving detention to reduce flooding — a sporadic wrangling over what consti-

tutes a public use may still remain if Proposition 11 is approved. For example, government will continue to have eminent domain power over

blighted areas, but the definition of blighted remains ambiguous. Also not addressed by Proposition 11 are important elements of eminent domain actions, including the manner in which government acquires property and the debate concerning those elements of market value loss that constitute just compensation.

Senate Bill 18, which was not voted on by the House of Representatives, sets forth numerous landowner-leaning provisions dealing with the manner in which government acquires private property. Among other provisions are more strict guidelines concerning good faith negotiations criteria; the creation of a “Truth in Condemnation Procedures Act” that stiffens procedures relating to bona fide offers; and a tightly defined buyback provision. No doubt these issues will be the subject of spirited future debates.

The Legislature also debated extensively the market value loss component of the just compensation question without enacting legislation. The measuring stick for just compensation is always mar-

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RIGHTS: Vote for Proposition 11 to protect property rights

CONTINUED FROM PAGE B10 ket value. In eminent domain matters involving partial acquisitions, property owners are due the market value of the partial acquisition, plus the change in market value of the remainder property, if any, caused by the acquisition. The disparity of opinion between landowner and government concerning the market value of the partial acquisition is typically within a negotiable range. However, the quantification of the market value loss of the remainder property is significantly more complicated, and opinions vary greatly among qualified experts. There remain contrasting views concerning those elements of market value loss that should be considered: Proposition 11 does not address these issues.

Texas should vote in favor of Proposition 11. The resulting constitutional amendment

will prevent would-be renegade public agencies from trampling the rights of property owners. Regardless of the outcome, however, the Texas debate on eminent domain will be far from settled.

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PROTECTING PROPERTY: Susette Kelo, the name plaintiff in a landmark property rights case, appears with Gov. Rick Perry to discuss legislation restricting government eminent domain powers in Texas.



HARRY CABLUCK : AP