



May 2, 2018

Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

VIA EMAIL sjud.fax@sen.ca.gov

Re: SB 1167

Dear Honorable Members of the Committee on Judiciary:

Pacific Legal Foundation is the nation's leading nonprofit law firm committed to the protection of private property rights. As such, PLF has been involved in numerous cases involving the constitutional requirement that government pay just compensation when it seeks to take private property for a public use. PLF writes to support SB 1167.

The power of eminent domain is one of the most invasive powers of government. Using eminent domain, government may force a law-abiding citizen to sell property against the owner's will so that it can be put to another use. In recognition of the potential for abuse, the Constitution contains two important limits on the power of eminent domain: the property must be taken for a "public use," and government must pay "just compensation." However, under current Supreme Court precedent, almost any use connected to a general public benefit satisfies the public use requirement. This leaves the requirement to pay just compensation as the most meaningful constitutional check on government abuse of eminent domain.

While it may be questioned whether market price is a truly "just" compensation for the loss of a cherished home, there is plenty of evidence that governments regularly make offers based on artificially low appraisals in eminent domain proceedings. *See* C. Jarrett Dieterle, *The Sandbagging Phenomenon: How Governments Lower Eminent Domain Appraisals to Punish Landowners*, 17 Fed. Soc. Rev. No. 3 at 38 (Oct. 2016). Worse, governments often lower their initial appraisals once a property owner refuses an initial offer and seeks compensation in court condemnation proceedings. As Professor Gideon Kanner, an expert in the area of eminent domain law, has suggested, this practice may be intended "to coerce the [land]owner into accepting the pre-litigation offer" out of fear that government will argue for an even lower valuation in court. *See* Gideon Kanner, *Sic Transit Gloria: The Rise and Fall of Mutuality of Discovery in California Eminent Domain Litigation*, 6 Loy. L.A. L. Rev. 447, 461 n.59 (1973); and James S. Burling,

Private Property for the Politically Powerful, 6 Brigham-Kanner Property Rights Conference Journal 179, 204-07 (2017).

For many landowners, the high cost of litigation plus the risk of a verdict below the initial offer may leave them with little practical choice but to accept an initial offer, even if that offer is far below the amount at which they would voluntarily sell to a private party. Worse, the landowners most likely to be deterred by the cost, time, and uncertainty involved in litigating against a government condemnation are those who come from historically marginalized and vulnerable communities. *See* Orange County Register, *The Powerless Have Always Been Targets of Eminent Domain* (Mar. 25, 2007), <https://www.ocregister.com/2007/03/25/the-powerless-have-always-been-targets-of-eminent-domain/>. Prominent examples exist in California of the destruction of minority communities through eminent domain redevelopment, such as the removal of hundreds of Mexican American families from Chavez Ravine in Los Angeles and the displacement of thousands of minority owners and tenants from the Fillmore District in San Francisco.

Fee shifting statutes are a valuable tool for expanding access to the legal system when encouraging representation is deemed to be in the public interest. *See* Robert V. Percival & Geoffrey P. Miller, *The Role of Attorney Fee Shifting in Public Interest Litigation*, 47 Law and Contemporary Problems 233, 239-41 (1984). SB 1167 will ensure that landowners facing eminent domain actions will have access to representation, likely on a contingency basis. Those landowners with the least ability to defend an unjust condemnation will benefit the most, since wealthy landowners are already most likely to challenge eminent domain proceedings in court.

Laws that motivate governments to offer reasonable fair-market compensation may also lead to lower absolute costs when property is condemned. The costs of litigating eminent domain actions can be expensive for both the landowner and the government. When a government must pursue a condemnation action in court, it may pay far more than a fair-market appraisal valuation to acquire a piece of property. Indeed, litigation costs may more than double the total cost of a condemnation action. *See, e.g.*, Kevin Valine, *Eminent Domain Case Costs Modesto \$300,000*, *The Modesto Bee* (Oct. 25, 2013) (reporting that the City of Modesto paid \$180,000 in legal fees to acquire a property through eminent domain for \$120,000), <http://www.modbee.com/latest-news/article3155665.html>.

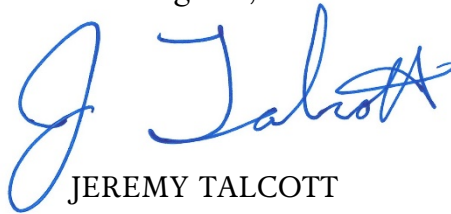
SB 1167 provides valuable incentives for all parties involved in an eminent domain action. Governments will be encouraged to properly and fairly compensate landowners,

Senate Judiciary Committee
May 2, 2018
Page 3

avoiding the costs and delays of litigation. However, when governments fail to make such reasonable offers, attorneys will be ready and willing to represent aggrieved landowners, often solely on a contingency basis.

Eminent domain is an extraordinary power of government and, as such, requires careful protections against abuse. SB 1167 will be a powerful tool to reign in the worst abuses of undercompensation in California, and will increase public confidence in local governments when they resort to condemnation to acquire public property.

Best Regards,

A handwritten signature in blue ink, appearing to read "J Talcott". The signature is fluid and cursive, with a large initial "J" and a stylized "Talcott".

JEREMY TALCOTT
Attorney