



Sunday, November 12, 2006

California was behind this trend

Restrictions on government's power to take property approved elsewhere in U.S., not here

Supporters of property rights in California have been disappointed by Tuesday's election results regarding Proposition 90, a statewide initiative that would have restricted the use of eminent domain and required governments to pay for property taken by regulatory fiat. The initiative lost by five percentage points.

But nationwide, it was a different story, with 10 initiatives passing in statewide votes and some of the more complex measures failing. They all were a definitive response to the U.S. Supreme Court's 2005 Kelo decision, which allowed governments to use eminent domain for economic development but also stated that states and localities have the right to rein in this practice.

Critics of the California initiative argued that its inclusion of the regulatory-takings provision brought out unnecessary opposition from environmental and other groups that might have sat out the campaign if the initiative dealt only with eminent domain. That may be true, but the main reason we believe that Prop. 90 lost was that the "yes" side did not mount an aggressive campaign of TV and radio ads explaining why 90's passage is so important. Any serious campaign would have yielded victory, given the public's support for such reforms in general.

Similar measures, funded by New York libertarian Howie Rich, saw mixed results nationwide. One failed in Idaho. A measure that dealt only with regulatory takings failed in Washington. But voters in Arizona and North Dakota passed initiatives that included eminent domain and regulatory takings provisions, according to a post-election analysis by the Washington, D.C.-based Institute for Justice, a libertarian think tank that argued the Kelo case before the Supreme Court.

Measures that were purely about eminent domain, however, fared much better – winning overwhelmingly nationwide. Even locally, the three initiatives that limited eminent domain to public uses, in Anaheim, Newport Beach and Dana Point, passed by significant margins.

The Institute for Justice notes that South Carolina passed an initiative with 85 percent approval that forbids eminent domain for economic development and which narrows the definition of a blighted property so that only properties that pose public health and safety concerns can be taken. Florida voters passed with 70 percent approval a similar measure that bans eminent domain for nonpublic uses and also redefines blight. Georgia voters passed reform with 85 percent approval that requires a

vote by elected officials before eminent domain can be used – something that the institute says completes a series of legislative reforms that outlaw eminent domain abuse. Michigan and New Hampshire voters also passed strongly worded eminent domain limitations.

Those were all constitutional amendments put on the ballot by legislatures. In Oregon, and Nevada, voters approved by margins of more than 60 percent measures that also restrict eminent domain for nonpublic uses, according to the institute.

So, not a bad day overall for property rights. California property-rights activists are now talking about qualifying a ballot initiative for 2008 that would limit eminent domain abuse, but leave out the regulatory takings portion. That would be better than nothing. The sooner Californians pass such a restriction, the better off we all will be.

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