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Dan Walters: Most ballot issues have deep ideological splits, but not this one

By Dan Walters -- Bee Columnist

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Most ballot measures have a strong ideological content and not surprisingly, therefore, Democratic and Republican voters tend to divide sharply on them.

A new statewide Field Poll, for example, finds that 67 percent of Republican voters favor Proposition 85, which would require parents to be notified when their teenage daughters sought abortions, while 61 percent of Democrats oppose it -- thereby creating a virtual tie in overall sentiment.

Some issues, however, transcend partisan and/or ideological divisions, such as Proposition 83, the so-called Jessica's Law initiative that would toughen penalties on sex offenders. The Field Poll found overall support overwhelming -- 76 percent to 11 percent -- because strong majorities of voters from both parties, as well as independents, plan to vote for it.

Perhaps the most intriguing example of cross-party solidarity this year is Proposition 90, which would make it more difficult for local and state governments to seize private property through eminent domain and require governments to compensate property owners for any "substantial economic losses" from land use restrictions.

Proposition 90's origins are on the political right. The Fund for Democracy, created and largely funded by New York City developer Howard Rich, put up the lion's share -- some \$1.5 million -- of the money to qualify it for the ballot as part of a nationwide drive by Rich and other property rights advocates.

The drive was given a big boost when the U.S. Supreme Court, in its now-famous *Kelo v. New London* decision, last year approved eminent domain seizure of private property for hotels, shopping centers and other essentially private

developments.

Throughout the country, including California, conservative legislators pushed bills that would curb any such seizures, but the Democrat-controlled California Legislature, while acknowledging the furor generated by the Kelo decision, torpedoed major changes at the behest of local governments.

Local officials are concerned about having more restrictions on eminent domain for redevelopment projects, including a ban on taking land for private use, but it's the other provision of Proposition 90, requiring payment to property owners for so-called "inverse condemnation" from land use restrictions that worries them even more because they see it as open-ended and potentially very costly.

Property rights advocates, however, see the inverse condemnation language as a vital protection because in the name of environmentalism or other causes, state and local agencies, they say, are making it increasingly difficult, bordering on the impossible, for landowners to build and otherwise use their property.

"Modern political leaders have come to ignore the lessons the Founders taught," Sacramento property rights attorney Timothy Sandefur argues in a just-released book, "Cornerstone of Liberty: Property Rights in 21st Century America." He adds that, "Government at every level infringes on private property rights with regulations that take away (properties and) transfer them to people bureaucrats believe are better suited to use them."

Sandefur, an attorney with the Pacific Legal Foundation, thus makes the classic conservative case for enacting new protections for property rights. But as framed in Proposition 90, it's an issue that, the Field Poll has found, is drawing across-the-board political support. Overall, Field found 46 percent of likely voters backing the measure after it was briefly explained, while 31 percent were opposed.

The 51 percent support among Republicans is not surprising, but Democrats at 42 percent and independents at 43 percent are not far behind, and the "no" side trails among both of the latter groups. Only self-identified liberals oppose the measure, and then by just a scant margin.

What's happening here? Although they may come at it from different perspectives, and with differing definitions, members of both parties tend to value individual rights, and Proposition 90's cross-party support may reflect that common view. In fact, Sandefur and other property rights advocates contend that the most egregious cases of property seizure tend to affect property owners on the lower end of the economic scale, not the rich.

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