

DEVELOPMENT: Regulatory takings measures fail in Calif., Idaho and Wash.

Voters in California, Idaho and Washington yesterday rejected regulatory takings measures that could have dramatically altered private property rights and land-use patterns.

However, states nationwide overwhelmingly approved ballot initiatives that attempt to address the government's use of eminent domain in response to last year's Supreme Court *Kelo v. City of New London* decision. Florida, Georgia, Louisiana, Michigan, Nevada, New Hampshire, North Dakota, Oregon and South Carolina all passed initiatives that target the *Kelo* decision in various ways.

In rejecting California's Proposition 90, Idaho's Prop. 2 and Washington's Initiative 933, while approving other eminent domain measures, voters demonstrated their distaste for efforts to change regulatory takings laws despite often confusing campaigns that tie takings and eminent domain reform together.

"The voters clearly distinguished between the *Kelo* issue and the takings measures designed to make it impossible for communities to enforce land-use regulations and largely rejected the measures that were designed to undermine land-use and environmental protections," said John Echeverria, executive director of the Georgetown Environmental Law and Policy Institute.

Only Arizona approved a combination eminent domain and regulatory takings measure -- Prop. 207.

Glenn Sugameli of Earthjustice said supporters of the takings measures had their best shot this year because of voter dissatisfaction with the *Kelo* ruling. "If there was going to be a time they would pass it was this year because of the confusion with *Kelo*," Sugameli said. "By wrapping a totally different issue within that, it can intentionally confuse the voters."

California's Prop. 90 would have required the state to pay property owners when environmental rules cause land values to decline. It would also have amended the state constitution to allow challenges by landowners or businesses whenever the state or local government passes laws that result in "substantial economic loss" of property, in a similar vein to Oregon's Measure 37, which passed in 2004.

Opponents of the takings measures pointed to Oregon's experience as a cautionary tale. A recent Defenders of Wildlife and the Izaak Walton League of America poll showed 49 percent of Oregon residents now say they would oppose the measure, with only 29 percent supporting it ([E&ENews PM](#), Oct. 25).

Washington's Initiative 933 would have been retroactive, meaning property owners could make claims on loss of property value going back as far as 1995. It would also have allowed landowners to get waivers for laws prohibiting logging or land clearing on their property but did not clearly authorize the waivers.

California Gov. Arnold Schwarzenegger (R), who cruised to a re-election win last night, opposed Prop. 90 because of the potential costs to state and local governments, upsetting some Republicans in the Golden State. The California Republican Party, the conservative Howard Jarvis Taxpayers Association and GOP lieutenant governor candidate supported the measure.

"The measure is so broad and poorly drafted that I fear it will result in a barrage of frivolous lawsuits from individuals and property owners who claim the most rudimentary new laws have caused them economic harm," Schwarzenegger stated in a memo last week. "Its provisions would allow lawsuits and potential payouts of taxpayer dollars over new laws and regulations intended to protect open space and the environment; laws and regulations intended to protect consumers; and laws and regulations designed to restrict undesirable businesses in our neighborhoods" ([Greenwire](#), Nov. 3).

Reporter Debra Kahn contributed to this report.

Reprinted with permission from E&E Publishing. www.eedaily.com 202.628.6500. Copyright [2006]. All rights reserved.