



RIGHTING PROPERTY WRONGS

Proposition 90

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Proposition 90 requires government to pay property owners if it passes certain new laws or rules that result in substantial economic losses to their property.

Five Key Ways that Prop. 90 Offers Meaningful Protections

- Limits eminent domain to public use, and defines public use in the traditional, constitutional manner.
- Tightens up the current definition of blight, which gives governments too much leeway in condemning property.
- Promotes due process by providing a jury trial before the taking and requiring governments to provide government appraisal information to property owners.
- Promotes just compensation by requiring valuation to be done at the highest and best use and requiring that property owners are made whole.
- Requires the government to pay compensation for property damage, except for health and safety reasons.

Reasons Why Reform is Needed

- **Eminent-domain abuse is rampant in California**
The Institute for Justice reports that California is one of the worst states in abusing eminent domain. The ability of cities to use eminent domain dramatically changes the terms of negotiation, and causes many property owners to sell their property at unfavorable terms rather than fight city hall.
- **The U.S. Constitution's Fifth Amendment, allowing takings only for public uses, after due process has been given and after just compensation has been paid, has been undermined by the courts**
The U.S. Constitution's Fifth Amendment states that no person "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." These days, throughout the country, private property

is taken without normal standards of due process—a fair trial, proper notice, opportunity to be represented by an attorney. It is often transferred to other private parties with decidedly non-public uses in mind, such as to build shopping centers. Owners are rarely made whole financially after the taking, given that cities rarely pay “goodwill”—the value of the location, reputation and other non-property related aspects of a business—and property owners in every state except Florida must pay their own legal fees when they challenge a taking or challenge the amount of “just compensation” offered by the government.

- **Blight requirements offer no serious protection for property owners**

Groups like the League of California Cities and the California Redevelopment Association argue that agencies must find blight before using eminent domain. This is perhaps the weakest argument one will find in this entire debate. It is true that blight must be declared in California and most other states, but blight is such a fluid definition, that whatever cities say is blight is, in reality, blight. Furthermore, once a blight designation is made, the property remains “blighted” for decades, even after the area is rebuilt.

- **Government routinely takes property by regulation, and tries to get away without paying any compensation**

A ‘regulatory taking’ is an even more noxious and common form of governmental property-rights abuse than eminent domain. This is when the government does not take control of the property itself, but regulates away a significant amount of the value of the property. Agencies that do this say they owe no compensation to the property owners as long as the owners retain title and some use of the property. The courts have generally sided with the government.

- **The status quo undermines freedom, erodes the market economy, and transfers wealth from poor and middle class people to wealthy, well-connected developers**

The proper goal of government is not to create more tax revenue, or a better life for government workers, or to revive downtowns, or even clear out slums. The proper purpose of government is to protect our fundamental rights, property being one of them. To allow rampant abuse of property rights, through improper uses of eminent domain or uncompensated regulatory takings, is to erode individual freedom—the ability of American citizens to pursue their lives in their own way.

In sum, Proposition 90 would dramatically limit the uses of eminent domain by governments by allowing them to use this police power only for genuine public uses. It would require higher payments of “just compensation” even in legitimate public uses, give property owners an opportunity to contest the taking in a jury trial before the property is taken, and would require governments to pay compensation for down-zoning and other regulatory takings.