

## 2006 PROPERTY MEASURES - AT A GLANCE

Most of the 2006 ballot measures have two distinct components:

- 1) They outlaw "*Kelo*-style eminent domain," a specific way in which a government condemns private property and hands it over to a private party;
- 2) they introduce a "**pay-or-waive**" scheme: when new laws or regulations reduce the value of private property, the government must either compensate landowners or waive the law.

### WASHINGTON \_\_\_\_\_ INITIATIVE 933

Introduces a pay-or-waive scheme affecting both real and personal property, retroactive to at least 1996; and creates extensive new requirements for property impact assessments. 933 mentions eminent domain, but includes no language that would change current eminent domain policy. (*Kelo*-style eminent domain is already outlawed under the Washington State Constitution.)

**Status:** 933 contains few safeguards for health and safety, public nuisances, or applying federal law. The measure's retroactive clause will almost certainly clog the state's courts with lawsuits—a danger worsened by a provision that taxpayers pay legal fees for both sides, win or lose. Unique among the 2006 measures, 933 applies to both real estate and personal property (which includes stocks and bonds, contracts, vehicles, livestock, and much more). Two independent analyses from the state's Office of Financial Management and the University of Washington estimate that 933 would cost taxpayers approximately \$8 billion in compensation in the first several years after it became law.<sup>7</sup> Opposed by a broad cross-section of Washington organizations, including many farm groups.

### CALIFORNIA \_\_\_\_\_ PROPOSITION 90

Outlaws *Kelo*-style eminent domain; and introduces a pay-or-waive scheme for new laws.

**Status:** Opposed by a large and diverse array of California organizations, including the state's Farm Bureau, Chamber of Commerce, NAACP, and police, fire, labor, conservation, and homeowner groups. If enacted, Proposition 90 is estimated to cost California taxpayers tens of billions of dollars.<sup>6</sup>

### IDAHO \_\_\_\_\_ PROPOSITION 2

Outlaws *Kelo*-style eminent domain; and introduces a pay-or-waive scheme for new laws.

**Status:** *Kelo*-style eminent domain is already outlawed in Idaho. Local opponents warn that under Proposition 2's pay-or-waive scheme recent community victories—such as a proposed coal-fired power plant near Burley, Idaho, which was turned away with broad populist support—could be overturned, with few rules or regulations remaining to protect local residents.

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### MONTANA INITIATIVE 154

Outlaws *Kelo*-style eminent domain; and introduces a pay-or-waive scheme for new laws.

**Status:** Struck down by the Montana courts in September, along with two companion measures, because signature-gatherers engaged in what the judge termed a "pervasive and general pattern and practice of deceit, fraud and procedural non-compliance." The Montana decision may have a ripple effect in other states because many of the tactics used by signature-gatherers in Montana were used to put property measures on the ballot in the other Western states. As of early October 2006, the Montana Supreme Court had not yet ruled in the case.

### OREGON MEASURE 37

Introduced the nation's first pay-or-waive scheme, retroactive for landowners who owned their property prior to the enactment of a regulation affecting their property's value.

**Status:** Passed by voters in 2004. Key elements are still being litigated, but counties are actively granting waivers from land-use laws for Measure 37 claimants. There's growing concern among Oregon's residents that the measure goes too far in reducing protections for communities. As of August 2006, property owners had filed more than 2,200 claims totaling more than \$5 billion.

### NEVADA PISTOL

Outlaws *Kelo*-style eminent domain; and introduces a pay-or-waive scheme for new laws.

**Status:** The People's Initiative to Stop the Taking of Our Land (PISTOL) was partially invalidated by the Nevada Supreme Court because it violates Nevada's rule that initiatives may contain only a single subject. Only the *Kelo*-related portion will go before voters. Like Montana's court decision, Nevada's ruling may echo in the four other states where the property ballot measures contain both eminent domain reform and a pay-or-waive scheme.

### ARIZONA PROPOSITION 207

Outlaws *Kelo*-style eminent domain; and introduces a pay-or-waive scheme for new laws.

**Status:** Opposed by the state's conservation community, including the Grand Canyon chapter of the Sierra Club and other groups.