

## **Analysis of Proposition 90**

A controversial topic regarding cities today is eminent domain. Eminent domain is defined as the government's right to take private property for public use, with just compensation awarded to the property owners. Traditionally, redevelopment being the exception, where private property is taken to be used for other private uses, eminent domain is reserved lands that will be used for public uses, such as highways, schools, and other infrastructure. This changed in 2005, when a case came to the Supreme Court: *Kelo v. New London*. This case was over whether taking private property for other private uses in the hopes of spurring economic growth in the City of New London was a valid public use. The Supreme Court ruled in favor of New London, saying that taking private uses for other private uses as a way to spur economic growth was a legitimate public use (Walters). As a result of this decision, many cities, regions, and states quickly passed laws to discourage and limit the rampant use of eminent domain (Hamm & Dickey).

As a result of the *Kelo v. New London* case, California has been discussing a new proposition, Proposition 90, which if passed, would, in addition to restricting the government's power of eminent domain, determine that regulatory actions by governments to also be a form of eminent domain (Hamm & Dickey). Regulatory takings differ from the land takings in that regulations do not take actual property, but just deny the owner or developer the full potential to develop the property. Governments regularly pass and enact a variety of regulations, laws, and other actions which purpose is to promote the welfare of the city and its people. If Proposition 90 is passed, any of these actions which diminishes or denies property owners the opportunity to attain a higher value on their property, such as for example, the denial to build an additional stories on an apartment complex, would allow them to be compensated by the government (Hamm & Dickey). This will cause governments to spend more money as they have to provide more compensation to property owners, not just for the use of eminent domain on land, but also on regulatory takings.

Proponents of Proposition 90 see the proposition as a way to stop the government from intruding on property owners' rights. First, they argue that Proposition 90 will stop governments from abusing their power of eminent domain, as in the case of the Government in *Kelo v City of New London* case. Proponents do not want to see governments take land from small business owners, seniors, and other low-income families and give them to developers for big commercial projects, condominiums, and hotels (Walters, et al). For example, in Long Beach, a church is currently being threatened with eminent domain. The church will be torn down and the land will be used to make condos (Walters). If Proposition 90 was passed, this would not be allowed, and the members of the church would not have to worry about the threat of their church being taken to be turned into condos. Second, proponents argue that passing Proposition 90 will stop governments from regulating property owners' rights without just

compensation. This is usually done through zoning laws and growth ordinances. An example is limiting housing density in a neighborhood by zoning an area for single-family housing units. Proponents of Proposition 90 believe that when a regulatory taking occurs, property owners should have the right to be compensated for the lost value that they could've attained if they were not regulated by the government (Walters, et al).

Opponents of Proposition 90 view the proposition that, if passed, will hinder the welfare of the public and the government's power to protect it, and will encourage land owners to build whatever they want, causing damage to the community and natural environment. First, approval of Proposition 90 would require that governments compensate property owners for any regulatory actions. So for example, any zoning changes that affect the type of uses or even the height of structures could cause the property owner to be compensated. This must be done even if the zoning change benefits the city or its residents. In addition, any other measures that help protect the community, such as historic preservation, noise ordinances, restrictions on adult businesses, etc. will require property owners to be compensated (Vote No on Prop 90). Next, the passing of this proposition will lead to a tougher effort for governments to protect and conserve the environment. As with the other cases, any action on property owners that would conserve the environment would lead to compensation for property owners. An example of this is growth boundaries. Any enactment of growth boundaries, which is used to conserve valuable natural land, would mean compensation for any developers who would like to develop on that land. The passing of Proposition 90 will place a heavy burden on both the government and taxpayers. Governments, whenever enacting any regulations or laws, would have to pay considerable amounts of compensation to any affected landowners. In Oregon, where a similar proposition was passed, since 2004, the government has had to pay over \$5 billion in compensation to property owners (No on Proposition 90). In California, if governments have to compensate property owners, the burden of payment would be passed to the community, specifically, taxpayers. This will cause a bigger burden on them. Lastly, for governments to limit having to compensation to property owners they will be reluctant to pass new regulations, which will lead to less control on development, and unregulated development and sprawl would result.

I am against the passage of Proposition 90. First, passage of Proposition 90 would mean that governments would have less power to control growth and maintain the welfare of the city (Hamm & Dickey). Any sort of planning or zoning regulation will result in compensation for property owners, which will make governments reluctant to influence how their cities or regions grow and develop. They do not want to have to pay so much compensation or be involved in lawsuits with property owners. For example, the City of Pacifica, where I currently work as a planner, has regulations on development on the hillside facing the Pacific Ocean. The City wants to maintain views of the hill itself and the view from the hill to the ocean. If Proposition 90 is passed, any property owner or developer who wants to develop on the hill would have to be compensated if their proposed project is regulated. This would mean that the city planners, including me, would either be reluctant to tell property owners to regulate the type of development they want done on their land, and face the consequences of a built-up hillside, or face lawsuits from those property owners. Also, governments would face more difficulties providing

public safety for the cities and communities (No on Proposition 90). First, money that would be used for public safety would be needed to settle lawsuits (No on Proposition 90). That means less police officers and firefighters positions can be funded to protect the cities' citizens. Second, cities and governments would have a more difficult time regulating properties and businesses that historically have threatened the welfare of cities or attracted crime. These include liquor stores and adult businesses. For example, usually, adult businesses are not permitted in a certain radius from any schools. If proposition 90 is passed, adult business owners can be compensated for not being able to open up near schools, and governments would be reluctant to enforce that regulation on other adult business owners who wish to open up near schools.

Second, if Proposition 90 is passed, it would result in undesirable communities, planning, and growth. First, since regulation and zoning changes would be more difficult to utilize and enforce, development would occur more haphazardly. This would result in sprawl and the development of less cohesive communities (Hamm & Dickey). The government would have less control to preserve historical communities, promote suitable changes to areas in need of change, and to maintain the sense of community (Vote No on Prop 90). For example, in the case of historical communities, if a city wanted structures in a certain area to remain similar to how it was historically in a way to preserve the character of the neighborhood, such as a home, property owners could sue and be compensated. Another example is if in an attempt to revitalize a community, certain uses, such as liquor stores, are not permitted; developers could sue, even though a liquor store would not be a practical use for a community in need of revitalization. Lastly, even if property owners voted to restrict the density of housing in their neighborhood, and subsequently, the community was zoned for low-density housing, a developer who wanted higher-density housing can get compensated, in spite of the community's wishes to remain a low-density neighborhood. Also, the passage of Proposition 90 would promote intrusion into natural and environmentally-sensitive lands. Passing growth ordinances and limiting development which would protect the environment would result in compensation for property owners (Vote No on Prop 90). An example, other than the previously-mentioned one about the hillside in Pacifica, is if a city such as Redwood City wanted to restrict development by the wetlands in San Francisco Bay. Developers could sue for the restriction of their right to build there. Passage of Proposition 90 would also threaten plants and wildlife. If an EIR concluded that animals and plants would be affected, and would call for an alteration to a development, the developer can get compensated. So instead of being able to regulate pollution and environmental destruction, governments would have to pay developers to stop harming the environment (Kahn, 6).

Lastly, the passage of Proposition 90 would lead to increased taxes and additional burdens on citizens. Lawsuits from property owners would drain a government's resources. To compensate, government would likely pass their increased spending on lawsuits and attorneys to the taxpayers by raising taxes (No on Proposition 90). Taxpayers would in effect, end up paying developers when the developers sue the government. Also, governments would ask for more money to fund services, as lawsuits would cut into their budget. To maintain or even expand their services, the government

would call on taxpayers to pay even higher taxes overall, which would be a big burden for all citizens, especially for low-income citizens. Lastly, government projects, as for example, infrastructure projects, would skyrocket in cost as property owners who are affected may sue for higher-than usual claims (Kahn, 7). As also in the case of lawsuits, this cost is passed on to taxpayers.

Proposition 90 would cause problems for both citizens and the government in California and should not be passed. The results would be less power for the government to maintain the welfare of the cities and its citizens, bad planning and development, and additional burdens on citizens in the form of taxes. Even though proponents say that the proposition would limit government, in actuality, it would cause more government involvement, as the government would be involved in more lawsuits and tax increases with its citizens (No on Proposition 90). This proposition will not solve government interaction with its citizens. Rather, it would just shift government-property owner interaction from one form to another, from regulation in the planning sector to lawsuits in the legal sector. Unfortunately, lawsuits which go on for years result in the stoppage and delay of important projects, regulations, and laws that will benefit cities and its citizens. That is why I will be voting no on Proposition 90 come Election Day.

## **Bibliography**

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