

Land-use initiative makes November ballot

Proponents say it will protect landowners; critics fear initiative would limit cities' planning for growth

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Idaho Statesman

The Idaho Statesman | Edition Date: 06-29-2006

Idaho voters have another question to answer in November.

An initiative to change the state's eminent domain and "regulatory takings" laws qualified for the ballot Wednesday with 49,053 signatures — more than the 47,881 required by law.

Pushed by conservative advocate Laird Maxwell of Boise, the initiative would restrict governments from making decisions that lower a property's value without "just compensation" to the landowner.

"We now are gearing up for the campaign to get it passed in November," Maxwell said.

But local governments fear the changes could sharply limit their ability to manage and plan for growth by adding new costs to land-use decisions — costs that taxpayers would have to pay.

"It could very well put local government in the position of paying compensation every time a planning and zoning decision is made," said Dan Chadwick, director of the Idaho Association of Counties.

Folks around the country cried out against rampant eminent domain after the Supreme Court ruled a year ago that it was OK for a Connecticut government to condemn middle-class waterfront homes to help a major private development.

The Idaho Legislature reacted by passing laws this year to keep anything like that from happening here. But Maxwell's initiative, which will be Proposition 2 on the November ballot, deals not just with eminent domain, but with regulatory takings.

The law change could require taxpayers to cover the costs of property value lost because of planning, zoning and other land-use decisions by cities, counties and other governmental bodies.

"People know, inside their gut, what's fair about private-property rights," Maxwell said. "It's a legal process, and it's a fair process."

And it's being demanded here and everywhere else, he said.

"Why would the whole country erupt?" he asked. "Because it's out of whack."

Petition drive criticized

Maxwell used \$330,000 from two out-of-state groups to pay signature-gatherers to meet the state's requirements. The money came from New York term-limits and property rights supporter Howard Rich and from "America at its Best," a group based in the Montana law office of Duncan Scott, a former Republican state senator from New Mexico. Maxwell is the chairman of that group.

Some opponents say the signature gatherers misled Idahoans.

Jon Barrett, who works with Idaho Smart Growth, a pro-city-planning group in Boise, said the gatherers he watched stressed the eminent domain changes — which basically echo laws the Legislature passed this winter — and didn't mention the dramatic changes to the takings laws.

Similar attempts have failed in the Legislature. Barrett said Idaho voters might have thought differently about the initiative if they knew the Legislature had answered their eminent domain fears.

"I would call this a classic bait and switch, but that would be too kind," he said. "It's worse than that — it's classic bait and lie."

Maxwell, though, pointed out that the short title of the initiative mentioned both eminent domain and "just compensation for regulatory takings."

"It was printed on the front and back of every petition, and it's not even a paragraph in length," he said.

Takings: a quick primer

Eminent domain has been a buzz term of the past year, but takings have been a topic at the Capitol for more than a decade. Though protecting private property rights has always been popular among lawmakers, a bill requiring taxpayers to pay for impeded rights has never passed.

Former Gov. Cecil Andrus vetoed two takings bills. Other ideas hatched and faded away throughout the 1990s. An interim legislative committee tackled the issue in 1998 but failed to reach consensus.

In 2002, the House seemed ready to pass a proposal to strengthen protections from takings in the Idaho Constitution, but House Speaker Bruce Newcomb, R-Burley, said lawyers from all sides needed to sit down and rewrite it.

Two bills finally passed in 2003 requiring governments to analyze the impact their decisions will have on private-property rights.

Powerful groups like real estate professionals, water users and the Idaho Farm Bureau have always lined up behind the proposed changes. But city and county governments have influence in the Statehouse, too, and local leaders fear takings laws could limit their ability to plan for growth.

Ada County and its six cities have spent more than \$800,000 on a "Blueprint for Good Growth" to map out land-use priorities for the future, Barrett said.

If the initiative passes, each of the local governments may be too scared to pass any of the zoning and other law changes the blueprint requires, he said.

Paid signature-gatherers found widespread support

Laird Maxwell's petition drive gathered more names than the law requires — 6 percent of the qualified electors registered in November 2004. At least some voters in every county but Butte signed on. About 32 percent of the signatures came from Ada County, and 14 percent each from Kootenai and Bonneville counties.

Comparing the numbers to voters registered for the May primary election shows that 16 percent of all voters in Bonneville County signed the petition, as did 11 percent of Kootenai County voters and 10 percent in both Gem and Jefferson counties.

One secret to the success was the spectacular water show at Shoshone Falls, which drew visitors from around the

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