

Ballot Measure 39 is controversial at best

In November, Oregonians will vote on Measure 39, a response to the U.S. Supreme Court's 2005 decision in *Kelo v. City of New London* by Oregonians In Action, authors of the controversial Measure 37 land-use initiative that voters passed in November 2004.

To better understand the newly proposed Measure 39, it helps to know the measure's background and how it may or may not solve the condemnation problem in Oregon.

Background

The *Kelo* case, decided June 23, 2005, involved the taking of private property by the city of New London's development agent so the city could execute a development and revitalization plan.

In the 1990s, New London suffered high rates of unemployment and a decreasing population. In response, the state of Connecticut and local governments created a development plan focused on about 90 acres on a peninsula that extends into the Thames River.

New London was able to negotiate the acquisition of most of the properties in the development area, but a few property owners refused to sell. To acquire the remaining properties, the city exercised its power of eminent domain.

The issue before the Supreme

Court was the meaning of the "public use" restriction of the Fifth Amendment. The restric-



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tion prohibits government from taking private property for public use without just compensation.

The court, in a 5-4 decision, held that the city's proposed development constituted a public use. It reasoned that "public use" does not mean "use by the public" but rather means "public purpose." In *Kelo*, the court held, the taking of property for economic development constituted a public purpose. However, the court also said states were free to place greater restrictions on eminent domain.

Kelo's effect

That is exactly what is happening across the nation.

The *Kelo* decision has triggered a flurry of attempts at eminent domain reform at the federal and state level. Across the United States, swift reaction to the *Kelo* decision has resulted in failed legislation or the passage of legislation that has created more problems than it solved. We will face this issue in

November in Oregon.

In 2005, the Oregon House of Representatives passed House Bill 3505, which restricted the use of the power of eminent domain but made an exception for private property "within a blighted area or slum area." Even though HB 3505 did not pass the Oregon Senate, we will see the eminent domain issue on the November ballot in the form of Measure 39.

The problem with Measure 39 is that it fails to adequately address the issue of blight. Measure 39 would provide that the government cannot take private property if the government intends to convey any portion of the property to another private party, except if the property constitutes a danger to the health or safety of the community or will be used for transportation or utilities. If passed, Measure 39 would prevent a traditional use of the power of eminent domain - the acquisition of the separate pieces of property necessary for urban renewal of blighted areas.

The problem with the *Kelo* decision is that the case did not involve a blighted area, only an economically distressed city. There was no allegation that the 90-acre area designated for urban renewal was blighted. In fact, the court noted that although New London was dis-

tressed, neither party asserted that the condemned area was blighted.

Effects on livability

Portland is a great example of the need for a blight exception.

Across the country, Portland is known as a leader in innovative development because of its success in controlling low-density sprawl through mixed-use development. Examples of urban development in Portland made possible because of the condemnation of blighted areas include Pioneer Place and RiverPlace. Both projects included public and private uses of the redeveloped area.

If Measure 39 were to pass, local governments would not be able to improve the livability or quality of life in blighted areas and the greater community unless every house in the proposed development area were to be purchased through private negotiations or deemed a danger to health or safety. A single holdout would be enough to kill a project.

Good, bad or unnecessary, Measure 39 is destined to be as controversial as its older sibling, Measure 37.

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