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Prop 90—A Trojan Horse for California

By John Russo

Over the past 10 years many pernicious and deceptive propositions have been placed before California voters, but none have been more potentially devastating to the common good than Proposition 90. Californians are being told that Proposition 90 is a needed defense against government's ability to take property from private individuals. In reality, Proposition 90 is a Trojan horse packed with lawyers poised to file actions by any person or business who dislikes any restriction on their right to do as they please without regard to the consequences of their actions – and all on the taxpayer's dime. Proposition 90 is not the eminent domain "reform" it presents itself to be. It is, rather, an attack on the very idea of The Commons. Proposition 90 would drive a dagger through the heart of Representative Democracy. This is not an unintended consequence; it is the malignant idea at the core of Proposition 90.

Perhaps the most insidious provision of Proposition 90 requires government to compensate for "damage" to private property -- even when government does not use eminent domain. Just what constitutes damage is overbroad and vague, but the measure's examples include rezoning property and limiting building heights. Proposition 90 would create a legal cause of action against California taxpayers whenever laws are passed or regulations adopted which protect the public's interest.

A look at Oregon's experience with a similar proposition in 2004 is instructive in predicting the damage to California taxpayers. To date, more than 2,200 claims have been filed by property owners seeking more than \$5 billion from the state and local governments. Note that Oregon has only one-tenth the population of California, and that the Oregon law, unlike Proposition 90, is limited to real property claims.

Landowners are forcing projects on communities because Oregon's law now permits them to sue for millions in lost profits if approval is denied. In Clackamas County, for example, a gravel pit mine, complete with blasting and a rock-crushing machine may be

opened just a few hundred feet from homes. In other areas, builders are trying to force huge developments into previously protected farmland. Perhaps the most egregious example of the disastrous consequences of the Oregon law is the case of a property owner with a small plot of land next to a volcanic national monument. He is seeking \$203 million because he says proximity to the protected area has impeded his potential for growth and lowered his property value.

Naturally, Oregon can't pay for all of these claims. And that is the whole point. The wealthy out of state ideologues who have forced measures like Proposition 90 onto state ballots across America don't want government to pay citizen claims - they want the laws that protect your community to be eliminated. Under Proposition 90's mandate, taxpayers would have to hand over money to property owners if a community wanted lower-density development, or chose to protect watersheds, or to preserve historical buildings, or to enact consumer regulations, or to change police staffing patterns, or to change the timing of traffic lights. . . the list is as expansive as the imagination of the legal eagles who will prosper under this law.

Once Proposition 90 passed even the most frivolous lawsuits would lead to costly litigation. A more accurate title for the proposition would be "The Full Employment for Lawyers Act." Proposition 90 also contains the equivalent of "Lawyer Catnip" - payment for damages for government action AND inaction. And, get this, plaintiffs who prevail under Proposition 90 get their attorneys fees paid for by the taxpayers. If plaintiffs lose, the taxpayers still get to pay for their own defense. The taxpayers pay either way.

Prop.90 will instigate numerous lawsuits, potentially bankrupting the state. It will remove any ability for a community to protect itself from unmitigated development and sprawl. It will stifle consumer protections. It will paralyze government, but that is what it is meant to do. Prop. 90 goes far beyond reasonable eminent-domain reform. Don't be fooled by the trap. Vote no Prop. 90.

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