

STATE BALLOT INITIATIVES COULD UNDERMINE MILITARY BUFFER ZONE EFFORTS

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Several similar property use initiatives appearing on state ballots throughout the West Nov. 7 could hamper efforts to establish buffer zones around military bases, a key tool the military has used to prevent civilian encroachment and allow training to proceed without legal difficulties, sources in and out of the military say.

With the midterm election looming, the initiatives have received little notice in the military planning community until recently, a DOD source says. As DOD officials have become aware of the proposals -- which they believe would make it financially difficult for local governments to assist military anti-encroachment efforts -- military leaders are hastening to get the word out to base commanders that the propositions are unpopular with Pentagon officials.

California, Arizona, Washington state, Montana and Idaho each have relevant proposals on this year's ballot. The proposals, written similarly in each state, would require a local government entity to pay a landowner "fair market value" for taking any action that makes it more difficult to build on his or her property. Such laws, opponents fear, could make it expensive for local governments to grant conservation easements or partner in training range buffer projects because the government would then have to pay for each hypothetical housing or building project that would no longer be possible. Opponents also fear the proposals could impact a variety of broad environmental conservation efforts, including endangered species habitat management and wetlands protection.

As a result, the measures would prompt local governments -- typically cities and counties -- to forgo such buffer land projects or to pay fees to prospective developers that could reach into the billions of dollars, opponents say. "DOD would be very concerned about any legislation that would limit the ability of local zoning boards to do these functions," the DOD source says. "The best way to avoid encroachment is to work with them. If the process is now eviscerated, that makes [zoning] boards reluctant to do anything. Then we've lost a powerful tool."

The source says purchasing buffer zones is "a last resort. Generally, we can avoid that situation in the first place with good planning," including conservation and land use agreements with local government entities. But such planning may be complicated, especially in California, where it "would be a major problem if it passed."

The propositions are ostensibly a reaction to last year's Supreme Court decision in *Kelo v. City of New London*, which dramatically expanded the scope of the so-called takings

clause of the Fifth Amendment. But mandating fair market value payments for preventing private land development "really doesn't change eminent domain laws" in a way that is relevant to the decision in *Kelo*, an opponent of the Arizona version of the measure says, because the ruling has no effect on the policies the proposals ultimately address.

Local groups in the affected states attempting to defeat the proposals are also now arguing that if they pass, it would be hard for local governments to effectively join with the military to prevent encroachment.

Opponents of the measures point to the results of Oregon's 2004 approval of a similar proposal, which has led to approximately \$5 billion in claims against local governments around the state and resulted in major court battles, and are now highlighting the potential impact on military bases. "This threatens to throw [buffer plans] back into the trash can," the Arizona source says. "On its face, protecting property [rights] sounds good . . . but it won't be good for the economy" if it passes. Furthermore, "I think this thing will be wonderful for lawyers, and that will be another taxpayer cost."

All of the state proposals include the phrase "Government actions which result in substantial economic loss to private property shall require the payment of just compensation" or very similar language.

The proposals exempt government actions explicitly taken to protect public health and safety, but some opponents are unsure that such an exemption will make much difference to their impacts. A source fighting the California version says the measure "is a real concern to those who want to plan and manage at bases." The source, a member of the No on 90 group against the measure, says it is "impossible to protect military bases without involving local governments. We have a tremendous amount of military bases here with tremendous encroachment potential." The group estimates it would lead to \$15 billion in taxpayer costs in the first seven years if it passes.

The California source contends the proposal "is not really about eminent domain" and points out that No on 90 includes an extremely wide coalition, including the state chapters of the Chamber of Commerce and Farm Bureau as well as the League of Conservation Voters and other environmental groups. "We expect to defeat Proposition 90 but it's important that people are as informed as possible, that they understand the negative impacts," the source says.

The measures' chances for success are unclear. The Arizona source says D-M 50, a Tucson business group opposing the state's measure, doesn't have polling data on its popularity. "Conservation groups have been more out front than the business community, and most newspapers are urging a no vote, but we're kind of late in the game," the source says.

The source points out that a land use study at Davis-Monthan Air Force Base, the focus of ongoing anti-encroachment efforts near Tucson, has resulted in recommendations

adopted by the city council but not yet by Pima County. The county may decide against adopting such efforts if the Arizona proposal passes because of the fear of having to pay large new fees, the source says.

The eminent domain measures are Arizona's Proposition 207, California's Proposition 90, Idaho's Proposition 2, Montana's Initiative 154, and Washington's Initiative 933. Nevada's PISTOL, or People's Initiative to Stop the Taking of Our Land, includes similar language but is facing court challenges. Each is being bankrolled directly or indirectly by Americans for Limited Government (ALG), a free-market political group headed by New York City real estate developer Howard Rich, according to campaign finance documents reviewed by the California source and ALG state affiliate Web sites.

But the measures in Montana and Nevada have been thrown into doubt. In Montana, the state Supreme Court is expected to rule soon on whether there were irregularities in the signatures to put the measure on the ballot. And the Nevada Supreme Court last month struck the compensation provisions from the ballot.

An ALG source did not respond to a request for comment.

A fact sheet prepared by Arizona HOPE, an ALG affiliate promoting Proposition 207, says the military base controversy is "designed to distract people's attention away from the real issues" and highlights differences between the Arizona and Oregon measures.