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Hinkle: Liberals won a major victory this week

By **A. Barton Hinkle**

This week Virginia Democrats scored a major victory for liberals when the Senate started rolling back eminent-domain abuse in the commonwealth.

That's not how the issue is commonly perceived, of course. In fact, The Washington Post spun it just the other way in its lead paragraph on the story: "The Democratic-led state Senate handed a victory to tea party activists and other conservatives in Virginia on Tuesday by agreeing to start the process of adding new protections for private property to the state constitution," the paper reported.

Well. It's certainly true that the activists pushing back against eminent-domain abuse tend to come from the right side of the political spectrum: Americans for Prosperity (conservative), The Institute for Justice (libertarian), the Cato Institute (libertarian), the Family Foundation of Virginia (conservative) and so on. Generally speaking, government seizures of private property are to right-wingers what rising income inequality is to left-wingers: a profound injustice crying out for redress.

But the issue goes deeper than who's cheering and who's shrugging. Property rights, like free-speech rights, benefit everyone — and eminent-domain reform should be a liberal cause for a number of reasons. Here are four.

First, there's the David-vs.-Goliath aspect. You don't hear about many eminent-domain cases pitting scrappy local governments against Lockheed Martin, Exxon or Proctor & Gamble. To the contrary, recent cases have involved:

- Roanoke seizing a building that belonged to the owners of a mom-and-pop flooring company so it could turn the property over to Carilion, a billion-dollar health-care corporation.
- Norfolk trying to seize the property of Central Radio so it could hand the land over to Old Dominion University.
- VDOT trying to cheat a small day-care owner out of just compensation — and spending more on lawyers to fight the case than it would have shelled out by paying her original asking price.

In these and other cases, those rooting for the underdog share common cause with property-rights activists.

The assembly-passed measure stipulates that private property can be taken only for a genuine public purpose,

covers condemning entities previously exempted (such as utilities and VDOT) and requires truly just compensation for economic losses. (Sponsored by Democratic Del. Johnny Joannou, the measure still must win legislative passage again after the November elections and then be approved by referendum before it is enshrined in the state's Constitution.)

A second, related, reason liberals should support eminent-domain reform is that abuses such as those outlined above represent cases of Robin Hood in reverse. Like the original *Kelo v. New London* case that gave local governments a green light to steal, they take from the poor and give to the rich. Condemnations rarely if ever involve the seizure of fancy McMansions in tony gated communities. Rather, they run roughshod over working-class neighborhoods.

As Justice Sandra Day O'Connor wrote in her *Kelo* dissent, "the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." Indeed, permitting the use of eminent domain for economic development makes that not only possible, but *necessary*. There would be no point in seizing a building from Verizon and giving it to a hair salon. Eminent domain for the purpose of economic development always — *always* — goes in the other direction.

A third reason liberals should like eminent-domain restrictions: They reduce the use of "hard power." When it comes to international relations, liberals (generally speaking) abjure the use of force and prefer the soft-power approach of diplomacy, humanitarian aid and cooperation. They view using the threat of violence to impose America's will on the rest of the world as arrogant, imperialistic bullying.

Well, that's precisely what eminent-domain abuse is. It's the domestic-policy equivalent of telling a small foreign country, "We think we can use your resources better than you are using them. So we're going to take them. But don't worry — we'll pay you. Here, have some pretty beads. All better?"

Finally, even those liberals who don't care about property rights per se should value them for being, as Virginia's Arthur Lee called them, "the guardian of every other right." Liberals who focus only on the word "property" in the phrase "private property rights" ignore the other two terms at their peril. Public spaces are largely closed to religious observances, for instance, and they certainly are closed to sexual activity. Muslims or Pentecostals seeking a safe zone in which to exercise their faiths must retreat inside the bounds of a private house of worship. Gay men have won at least grudging tolerance of their physical intimacy — so long as it is conducted in the privacy of the bedroom. But privacy requires private places, which usually means private property.

That is why first passage of constitutional restrictions on eminent-domain abuse is so important. A small town might not permit a gay-pride parade down Main Street, but it cannot stop exhibitions of gay pride in a gay bar — unless property rights are so weak that it can seize the bar on a trumped-up pretext.

Conservatives may be the ones most loudly cheering passage of the property-rights amendment. But they are far from the only ones who have reason to.