

VA: Property rights hinge on election, delegate says

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By Kathryn Watson – Watchdog Virginia Bureau



CONSTITUTIONAL QUESTION: Virginia voters will have the chance to further restrict eminent domain Tuesday at the polls.

ALEXANDRIA — All eyes may be on the top of the ticket Tuesday, but Virginians have an important question to answer as well.

Voters will decide the future of eminent domain — the government’s authority to seize private property — and codify it into the Virginia Constitution.

Question One — with its three parts — asks:

“Shall Section 11 of Article I (Bill of Rights) of the Constitution of Virginia be amended (i) to require that eminent domain only be exercised where the property taken or damaged is for public use and, except for utilities or the elimination of a public nuisance, not where the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic

development; (ii) to define what is included in just compensation for such taking or damaging of property; and (iii) to prohibit the taking or damaging of more private property than is necessary for the public use?”

Ever since a **U.S. Supreme Court** [ruling \(Kelo v. New London\) upheld the seizure of private property for economic development purposes in 2005](#), Virginia legislators have fought against it, [inserting restrictions on eminent domain in Virginia Code in 2007](#). But a constitutional amendment carries more weight and is far more difficult to alter than state code.

“Obviously, 100 years from now if the voters decide to amend the constitution again they can, but it won’t be something that on the shifting whim of a General Assembly majority can be changed out from under them,” Delegate **Rob Bell**, R-**Charlottesville**, the bill’s sponsor and a lawyer by profession, told Watchdog.org. **Trevor Burrus**, a legal associate with the free-market oriented **Cato Institute**, said Virginia’s proposed constitutional amendment is a good step, but the language has loopholes.

For one, it says economic gain can’t be the “primary” reason for property seizure — but government authorities often offer another reason when truly motivated by financial gain, said Burrus. And for two, the proposed amendment doesn’t discuss “blight determination,” giving little protection to property owners in areas governments deem rundown or substandard.

“Generally, (governments) just describe these neighborhoods (as blighted) because they want to take property,” said Burrus. “And this really hurts poor people the most.”

In September, 43 percent of those surveyed favored the constitutional amendment, 19 percent opposed it, and 38 percent were unsure, [according to a Public Policy Polling survey of 1,021 likely Virginia voters](#). The poll, conducted Sept. 13-16 by automated telephone interviews, had a margin of error of plus or minus 3.1 percent. The fight to restrict eminent domain in recent years has pitted local governments against business organizations. The **Virginia Farm Bureau** has been one of its strongest advocates while group like the **Virginia Municipal League** and **Virginia**

Association of Counties have voiced opposition in the past. Opponents, however, have been quiet on the question now with the matter is on the ballot.

“VML is taking no position on the ballot measure itself,” **Mark Flynn**, director of legal services for the Virginia Municipal League, told Watchdog.org.

Opponents argue that, since governments would have to compensate private property owners for the value of the property, plus “lost profits and lost access, and damages to the residue caused by the taking,” public projects for things like roads or schools would cost more. That’s the case the **Democratic Party of Virginia State Central Committee** [made in a resolution offered](#) earlier this fall. The **Washington Post** [in an editorial last week](#) called the proposed amendment a “staggering act of corporate welfare.”

“In addition to making owners whole by paying them the market value of seized property, the state would also compensate them for ‘lost profit’ and ‘lost access,’” the editorial reads. “In other words, the sky’s the limit.”

But Bell said local governments’ opposition indicates that they’ve been taking advantage of private property owners.

“We think that if the government is going to take your property over your objection, they should at least pay the correct compensation for that,” said Bell.

“The fact that the opponents keep bringing this up underscores that they have been under-compensating people. In other words, the only way this will have big costs to them is if in fact, yes, indeed, they have been under-compensating. So it actually underlines the reason we need the amendment.”