



Direct Democracy *and* Land Use:

**Eminent Domain and Big Box
Development at the Local Ballot Box**

By Phyllis Myers, State Resource
Strategies, Washington, D.C.

*The USC-Caltech Center
for the Study of Law and Politics
The Initiative and Referendum Institute*

USC Law
699 Exposition Boulevard
Los Angeles, CA 90089-0071

law.usc.edu/academics/centers/cslp/index



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It is increasingly difficult to understand the development of American cities without taking into account direct democracy. Citizens are taking lawmaking power into their own hands, approving propositions that restrict growth, limit eminent domain, require compensation for regulatory takings, permit or prohibit big box stores, set aside land for parks and wildlife, and a host of other issues. The reason for the growing importance of direct democracy is easy to see: well educated citizens with access to vast amounts of information via the internet, talk radio, etc., feel competent to make public decisions that they would previously have delegated to their representatives, coupled with a growing perception (true or not) that elected officials are unduly influenced by special interests.

With the surge in ballot box zoning, it is increasingly important to understand how this form of policymaking is changing our cities, and whether those changes are for better or worse. Are citizens competent to make public decisions, or are they easy targets for sophisticated special interests? Unfortunately, our knowledge about local ballot propositions is extremely limited. We lack answers to even the most basic questions: How many cities allow initiatives and referendums? How common are land use measures? How often do they pass and how often do they fail?

To help close this knowledge gap, the Initiative and Referendum Institute together with the USC-Caltech Center for the Study of Law and Politics has embarked on a multi-year program to collect data and report on the state of direct democracy at the local level, funded in part by a grant from the John Randolph Haynes and Dora Haynes Foundation. Phyllis Myers' report on local land use propositions is part of this effort, and represents an important contribution to our understanding of local direct democracy. Her report provides for the first time a nearly comprehensive listing of ballot propositions on land use measures over a multi-year period, and illustrates the surprising extent to which citizen lawmaking is playing a role in land use decisions across the country. Her analysis of this raw data, based on more than three decades of studying land use decisions, provides a road map of current controversies and sketches the contours of the uncharted territory where we are heading.

— John G. Matsusaka
*President, Initiative and Referendum Institute
University of Southern California, Los Angeles*

About the Initiative and Referendum Institute

The Initiative and Referendum Institute is a non-profit, nonpartisan educational institution headquartered at the University of Southern California. The Institute's mission is to provide information to the public, scholars, policymakers, and journalists about ballot propositions, and to promote the study of direct democracy. The Institute's Ballotwatch reports track all statewide ballot propositions, and provide analysis of trends and election results, and periodic special reports focus on emerging issues such as restrictions on petitioning and long run trends in initiative use. All of these reports are available at www.iandrinstitute.org. The Institute also collects and maintains several databases of propositions at the state and local level that are provided at no charge to scholars and students, and together with the Center for the Study of Law and Politics at USC sponsors conferences involving scholars and practitioners. The Institute was established in 1998 and originally headquartered in Washington, D.C., moving to the University of Southern California in 2004. The Institute is also affiliated internationally with IRI-Europe in Marburg, Germany and IRI-Asia in Taipei, Taiwan.

About the USC-Caltech Center for the Study of Law and Politics

The USC-Caltech Center for the Study of Law and Politics (CSLP) is a network of inter-connected scholars, drawn from diverse disciplines such as law, political science, economics, public administration, psychology, and communications. Since its creation in 2000, the Center's scholars have combined law and the social sciences to study voters, democratic institutions, the political process and the law. In January 2004, the Initiative and Referendum Institute (IRI) the nation's most prominent educational and research organization focused on direct democracy, moved to USC and joined the CSLP. Together, these two institutions form the leading center in the United States to study the tools of popular government: initiative, referendum and recall. Recent conferences sponsored by CSLP include "When Voters Make Laws: How Direct Democracy is Reshaping American Cities" (2007), "Fiscal Challenges: An Interdisciplinary Approach to Budget Policy" (2006), "Behavioral Public Finance" (2004), and "Modeling the Constitution" (2003).

Abstract

This report presents the results of a unique survey of recent local ballot proposals involving eminent domain, regulatory compensation, and big box development. Despite their importance in determining how cities and towns develop, there has been little systematic inquiry into the key features, political dynamics, and impact of local land use measures. The 114 measures identified in the study dealing with large scale economic development, part of a larger group of measures proposed, threatened, or derailed by court action, were distributed throughout the country. Most of the eminent domain measures were referred to ballot by local officials after the Supreme Court's *Kelo* decision and, like their state counterparts, were virtually all approved with large majorities. Big box ballot measures, in contrast, were primarily petitioned by citizens or, increasingly, by developers to challenge official zoning decisions. Measures were about evenly divided between proposals to limit or accommodate big box stores, with a similar success rate (about half) for each type. Few regulatory compensation, or regulatory takings, ballot measures, which attracted so much attention in the November 2006 statewide ballot elections, appeared on local ballots. The issues raised by these measures, reflecting both top-down and bottom-up momentum, ignited conversations around the country about site-specific and broader policy changes which are likely to continue as local ballot measures and legislative proposals are shaped for 2008 and beyond.

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Eminent Domain
Regulatory Compensation

Introduction

*Land use decisions in American cities and counties are increasingly being made by citizens directly through ballot propositions rather than by elected officials. Growth control has been popular for decades, and a variety of other issues impacting land use continue to appear, such as annexations, public funding for stadiums and arenas, public transportation, and creation of parks and nature preserves. In recent years, developers and citizen groups have regularly contested large scale retail development, especially Wal-Mart, through initiatives and referendums, and following the U. S. Supreme Court's *Kelo* decision in 2005, a host of measures limiting eminent domain or featuring "pay-or-waive" regulatory compensation provisions were proposed or placed on ballots. In some parts of the country, it is now difficult to understand the development of cities and counties without considering the land use decisions made directly by voters at the ballot box.*

Yet despite the vital importance of direct democracy for local land use decisions, there is little systematic evidence about land use ballot propositions.¹ The paucity of information stems from the diversity of local land use authority in the country's tens of thousands of local jurisdictions and the

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© Phyllis Myers, SRS 2007. The author gratefully acknowledges the invaluable support of the Initiative and Referendum Institute and its President, Professor John G. Matsusaka. Financial support was provided by the USC-Caltech Center for the Study of Law and Politics through a grant from the John Randolph Haynes and Dora Haynes Foundation. Expert research assistance was provided by David Warren, Thomas Hensley, and David Park and editing by Betsey Hawkins, and the contributions of scores of people around the country interviewed for this report. Paul Shigley, Tracy Gordon, Edward McMahon, and Gordon Binder provided helpful comments on earlier drafts of this report. The author is of course solely responsible for its findings and conclusions.

¹ Exceptions include annual surveys focused on specific issues by the Trust for Public Land (tpl.org) and Center for Transportation Excellence (cte.org), and two studies published by the Brookings Institution Metropolitan Policy Program: Phyllis Myers, *Livability at the Ballot Box: State and Local Referenda on Parks, Conservation, and Smarter Growth* (January 1999); and Phyllis Myers and Robert Puentes, *Growth at the Ballot Box: Electing the Shape of Communities in November 2000* (February 2001).

difficulty, even in an electronic age, of identifying and arraying relevant, accurate information. With information scarce, even the most basic questions are difficult to answer: How many such propositions are there? What do they propose to do? What authority do they rest on? How often are they approved? What is the relationship of local land use ballots to issues that attract national attention? How are the politics of these measures evolving over time? The purpose of this study is to investigate these questions by examining an array of recent land use ballot propositions.

Recent research has revealed that local initiative and referendum authority is surprisingly pervasive.² More than two-thirds of Americans live in states or cities with some form of initiative and referendum authority.³ Availability of initiative and referendum authority at the state level – the case in 24 states – is a good barometer of its availability in a particular town or city, since citizens in these states are likely

to have these powers.⁴ Although initiative and referendum authority is most associated with California and other states in the West, it exists in all regions of the country. Very little information is available about the extent to which local initiative and referendum rights can be applied to various types of land decisions.⁵

Despite the prevalence of direct democracy, its use remains controversial, especially for land use decisions. To supporters, initiatives and referendums are a legitimate and often effective way to bring unresponsive or gridlocked government actions closer to majority preferences and empower citizens with a stronger voice in close-to-home development decisions affecting the balance of individual rights and community benefits and quality.⁶ Critics charge that initiatives and referendums unwisely elevate the influence of narrow interests, erode representative government, and add inefficient uncertainty to land use decisions.⁷

This report presents the results of a unique survey of hundreds of local ballot propositions on the most prominent land use issues in recent years – eminent domain, big box development, and regulatory compensation.⁸ These issues, while different in detail, are responses to deep and long-running development trends that are transforming America’s cities, suburbs, and urbanizing edges of metropolitan and rural settlement. “Big is beautiful” is back in style, as mega office, retail, housing, and “lifestyle” complexes sprout in the landscape. These large, complex projects often involve public and private domestic and global partners, tax-supported incentives, sophisticated financing, and planning and regulatory reviews, and potentially bring about radical change to land use, governance, and ownership in neighborhoods and downtowns.

The main findings of this survey include:

1. Local ballot measures on eminent domain and big box development appear across the country. More measures originate in California and the West than other regions of the country, but there have been many in the Northeast as well.
2. The overwhelming majority of measures to limit eminent domain after the Supreme Court’s unpopular *Kelo* decision were placed on the ballot by local

officials, not by citizen initiatives. Mirroring the results of statewide eminent domain ballot measures, almost all of these measures were approved by voters. Some local ballots involved site-specific controversies over the use of eminent domain.

3. Big box measures are about evenly divided between measures that limit and measures that accommodate large scale retail development. About half of each type of proposal was approved. Wal-Mart is the predominant but not the only player in these proposals. Developer-driven referendums are increasing in number and cost, while citizen-initiated referendums have succeeded in modifying projects and local policies to manage big box development.

4. Regulatory compensation, or regulatory takings, ballot measures, which attracted so much attention in the November 2006 statewide elections, have not been prominent in local elections to date.

5. While many local measures are authentically grassroots-driven, they also influence and are influenced by regional, statewide and even national interests. They increasingly reflect the homogenizing effects of rapid communication, similar pressures in communities’ economic and policy environments, and campaign strategists’ use of local ballots to attract targeted voter groups to the polls.

² The Initiative and Referendum Institute’s *Legal Landscape* database is the most comprehensive data source available on initiative provisions in American cities.

³ John G. Matsusaka, *For the Many or the Few: The Initiative, Public Policy, and American Democracy*, University of Chicago Press, 2004.

⁴ John G. Matsusaka, “Direct Democracy and Public Employees,” Working Paper, USC-Caltech Center for the Study of Law and Politics, April 2007.

⁵ A critical distinction is whether a jurisdiction considers a land decision, such as a comprehensive plan amendment or zoning action, to be an administrative or legislative act. The initiative process generally applies to legislative decisions. The distinction is liberally construed in California and contested in a number of places. See William Fulton and Paul Shigley, *Guide to California Planning*, 3rd Edition (California: Solano Press, 2005).

⁶ See John G. Matsusaka, *For the Many or the Few: op. cit.*, and “Direct Democracy Works,” *Journal of Economic Perspectives*, Volume 19, Number 2, Spring 2005.

⁷ David S. Broder, *Democracy Derailed: Initiative Campaigns and the Power of Money* (New York: Harcourt, 2000) and Samuel R. Staley, “Ballot Box Zoning, Transaction Costs, and Land Development,” Reason Public Policy Institute, June 1998.

⁸ The term “regulatory compensation” is used here rather than “regulatory takings,” since it more accurately describes the intent of these measures. See Jennifer Bradley, “Property Wrongs,” *The American Prospect*, who argues that the conflation of eminent domain takings with the attack on regulation has “muddled” critical distinctions.

Methodology

This report is based on a nationwide survey of recent local ballot propositions overseen by the author. Propositions were identified from a variety of sources, including traditional and nontraditional national, regional, and local media; city, county, and town web pages; and published and unpublished scholarly, professional, business, and popular articles and reports. Researchers also talked with scores of state and local officials, especially county and city elections officials.

From hundreds of leads, we identified 114 relevant ballot propositions considered by voters. The 114 measures were analyzed in detail to determine what they proposed, who proposed them, the process and politics of bringing them to ballot, and the outcomes.

This database probably presents a conservative picture of eminent domain and big box ballot activity during the study period because, despite careful research methods, some local measures were undoubtedly missed. Also, the text of ballot measures is not always clear about whether a large redevelopment project involves big box stores and/or eminent domain.

Measures are sometimes presented to voters with double negatives or confusing language that makes it hard for both voters and researchers to determine what a “yes” or “no” vote means. While many elections officials interviewed were professional and knowledgeable – noticeably more so than in earlier such studies undertaken by the author – they may not always have accurately reported whether a measure referred to ballot by elected officials was initially a citizen initiative, a distinction that was important for the purposes of this study. Newspaper articles and interviews helped clarify ambiguities.

The report uses the following conventional terminology for ballot measures: *initiatives* are measures drafted by citizens and placed directly on the bal-

lot by petition; *popular referendums* are decisions by locally elected officials that are placed on the ballot by petition for voters’ confirmation or rejection; and *legislative referrals* are measures placed before voters by elected legislative bodies, either voluntarily or because of a constitutional or statutory mandate. The report provides information about the spectrum of voter responses, including town meetings, where citizen access to the voting agenda has similarities to the initiative and referendum process. This inclusive framework is especially useful because of the prominence of legislative referrals in the eminent domain measures and popular referendums in big box measures.

Eminent Domain/ Regulatory Compensation

Eminent domain leaped to state legislatures and the ballot box after the Supreme Court's controversial 5-4 Kelo decision in June 2005.⁹ Deferring to precedent and the state's interpretation of public use, the Court sustained New London, Connecticut's condemnation of homes for a 90-acre redevelopment plan that involved leasing the land to private developers to build an upscale retail, condo, and office waterfront complex. The Court observed that states could adopt more restrictive legislation on takings.

Public furor quickly ignited state legislative action to rein in the use of eminent domain for purposes of economic development. Property rights activists joined the debate, hoping to gain traction for “pay-or-waive” legislation modeled on Oregon’s Measure 37, approved by voters in 2004, which requires land owners to be compensated for losses of property value or use attributable to a land use regulation or else the government responsible for the regulation may choose to modify, remove or not apply it.¹⁰

Statewide Measures

State legislatures dealt with the challenge of balancing individual rights and public benefit posed by the *Kelo* decision in a variety of ways. Some 40 states approved legislation limiting or banning the use of eminent domain for private development, including six constitutional amendments that required voter approval in the November 2006 election. Legislation stalled in some states, however, and did not go far enough for proponents in others. Disappointment led to seven citizen initiatives: four (California, Arizona, Idaho, and Nevada)¹¹ combined eminent domain limits with regulatory compensation, two (Oregon and North Dakota) restricted eminent domain; and one (Washington State) dealt only with regulatory compensation (see Chart 1).¹² Judicial challenges derailed initiatives in Missouri, Montana, and other states.

⁹ Kelo et al v. City of New London, 125 S.Ct. 2655 (2005).

¹⁰ On November 6, 2007, Oregon voters approved Measure 49, scaling back compensable development authorized by Measure 37. State lawmakers referred this proposition to voters after some 7,500 claims were filed.

¹¹ The Nevada Supreme Court removed regulatory compensation language in that state’s initiative prior to Election Day.

¹² See “Election Results 2006,” Ballotwatch 2005-6, published by the Initiative and Referendum Institute.

CHART 1: State Eminent Domain and Regulatory Compensation Measures, 2006

State	Type of Measure	Outcome	Subject	Partisan Control of State Legislature, 2004 Election
Arizona, Prop 207	Citizen initiative	Approved, 65.2%/34.8%	Eminent domain/ Regulatory compensation	R,R
California, Prop 90	Citizen initiative	Failed, 47.5%/52.5%	Eminent domain/ Regulatory compensation	D,D
Florida, Amendment 8	Legislative referral, constitutional amendment	Approved, 69.1%/30.9%	Eminent domain	R,R
Georgia, Constitutional Amendment No. 1	Legislative referral, constitutional amendment	Approved, 82.7%/17.3%	Eminent domain	R,R
Idaho, Prop 2	Citizen initiative	Failed, 24%/76%	Eminent domain/ Regulatory compensation	R,R
Louisiana, Amendment 5	Legislative referral, constitutional amendment (September 2006)	Approved, 55%/45%	Eminent domain	D,D
Michigan, Prop 06-4	Legislative referral, constitutional amendment	Approved, 80.1%/19.9%	Eminent domain	R,R
Nevada, State Question No. 2	Citizen initiative, constitutional amendment (Property Owner’s Bill of Rights)	Approved, 63%/37%	Eminent domain **	R,D
New Hampshire, Question No. 1	Legislative referral, constitutional amendment	Approved, 86%/14%	Eminent domain	R,R
North Dakota, Measure No. 1	Citizen initiative constitutional amendment	Approved, 67.5%/32.5%	Eminent domain	R,R
Oregon, Measure 39	Citizen initiative, statute	Approved, 67%/ 33%	Eminent domain	D,R
South Carolina, Amendment 5	Legislative referral, constitutional amendment	Approved, 86.1%/13.9%	Eminent domain	R,R
Washington State, Initiative 933	Citizen initiative	Failed, 42.2%/57.8%	Regulatory compensation	D,D

** Regulatory compensation provisions removed by state supreme court prior to election. Must be approved by 2008 legislature to take effect.

SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*, based on data from Initiative and Referendum Institute, www.iandr.org, *Ballotwatch*, November 2006; Institute for Justice, www.ij.org; and National Conference of State Legislatures, www.ncsl.org

The ballot measures cannot be explained simply by partisanship because eight of the measures appeared in states where the legislature was controlled by Republicans, three appeared in states with Democratic control, and two appeared in states where the parties split control of the legislature. Interestingly, states where ballot measures appeared did not necessarily have a history of eminent domain abuse. According to Timothy Sandefur of the Pacific Legal Foundation, a property rights group, some conservative rural states wanted to amend their constitutions to make sure abuse would not occur in the future.¹³

National groups participated robustly in the state campaigns. The Institute for Justice, a libertarian organization that represented Susette Kelo before the Supreme Court, filed additional lawsuits, and provided technical assistance, including model legislation, to a virtual state and local network. Smart Growth America spearheaded a broad coalition of environmental, planning, city government, and urban redevelopment groups to push back on what was perceived as a broad attack on planning.¹⁴ Howard Rich, a prominent libertarian from New York City, infused millions of dollars into the ballot measure campaigns. The National League of Cities, which supported the

Kelo decision, provided success stories to demonstrate the importance of the eminent domain tool, prudently used, for urban revitalization and the development of vibrant, attractive cities.¹⁵

Voters handily approved the statewide measures that focused solely on eminent domain and rejected two (California and Idaho) of the three initiatives that combined eminent domain and regulatory compensation. Planning groups and city officials celebrated the defeat of propositions that combined eminent domain and regulatory takings, including Proposition 90 in California. Conservative groups were buoyed by voters' responses to eminent domain measures.¹⁶ But critics had hoped for a larger margin of victory in California and property rights activists conceded that exceptions and ambiguous language in many new laws would lead to lawsuits and another round of legislation.

At this writing, observers predict that the new statewide and local measures will be put to the test politically and legally in the near future. They foresee more referendums up ahead, possibly with greater attention to local measures given the decisive role that local officials play in land use decisions and the strategic value of local ballot successes in shaping the national agenda.¹⁷

¹³ Interview with author, December 1, 2006.

¹⁴ Smart Growth America, "National Call to Action on Regulatory Takings and Eminent Domain Ballot Initiatives and Legislation," June 27, 2006; and Dan Richardson and Sam Lowry, "The Campaign Against Land Use Planning," *New West Growth & Public Policy*, September 8, 2005.

¹⁵ National League of Cities, "Supreme Court Decision in Eminent Domain Case Supported by Cities," June 23, 2006

¹⁶ Smart Growth America, "Tuesday's Elections Full of Positive News," *The SGA Newsletter*, Issue 46; Leonard Gilroy, "Protecting Property Rights in a Landslide," November 8, 2006, Reason.org; and Roger Pilon, "Property Rights on the March: Where from Here?," a Cato Institute forum, December 1, 2006.

¹⁷ Paul Shigley, "Round 3 for Eminent Domain," *Planning*, March 2007; and interview with Leonard Gilroy. In October 2007, voters in Mat-Su Borough, Alaska, defeated a property rights measure modeled after Oregon's Measure 37, possibly a trial balloon for this strategy.

CHART 2: *Local Eminent Domain/Regulatory Compensation Ballot Measures 1999-2006 Summary of Survey Findings*

Number of Measures 1999-2006:

47 (45 eminent domain, 2 regulatory takings)

Number of States:

15

Geographic Distribution:

Northeast	14
Midwest	8
South	12
West	13

Number of Measures in States:

With initiative/popular referendum	32
Without initiative/popular referendum	15

How measures were placed on ballots:

Referred by officials	28
Popular referendum	4
Citizen initiative	9
Town meeting	6

Election Outcome:

Limit eminent domain	40
Expand eminent domain	5

Years that Measures Appeared on Ballots:

1999	1
2000	2
2001	0
2002	2
2003	8
2004	4
2005	6
2006	22

Political preference of counties where election results limited or expanded eminent domain:

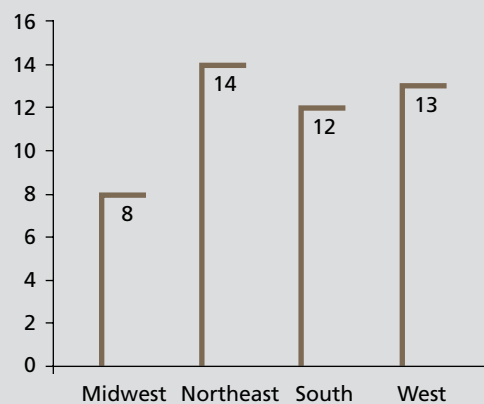
Limit:	Rep 9, "swing" 21, Dem 10
Expand:	Rep 0, "swing" 3, Dem 2

SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey and CNN data*

Local Measures: Survey Findings

The survey identified 47 ballot measures on eminent domain and regulatory compensation in 15 states between 1999 and 2006 (see summary of findings in Chart 2). Almost 60% of the eminent domain measures were placed on ballots after the *Kelo* decision – 16 in November 2006 alone. Before the *Kelo* decision, most of the ballot measures dealt with controversial redevelopment plans that involved eminent domain; afterwards, the measures mostly involved policy changes: clearer definition of blight, restrictions on takings of private property for transfer to other private parties and bans on the use of eminent domain

CHART 3: *Local Eminent Domain/Regulatory Measures by Region 1999-2006*



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

solely for economic development. Some measures required a referendum on the use of eminent domain for privately driven redevelopment or approval by both houses of the legislature.

Despite an intensive search, the survey identified only two local anti-regulatory compensation measures. These citizen initiatives appeared in Nevada and Napa Counties, California, in 2002 and 2006, respectively. Both were defeated.

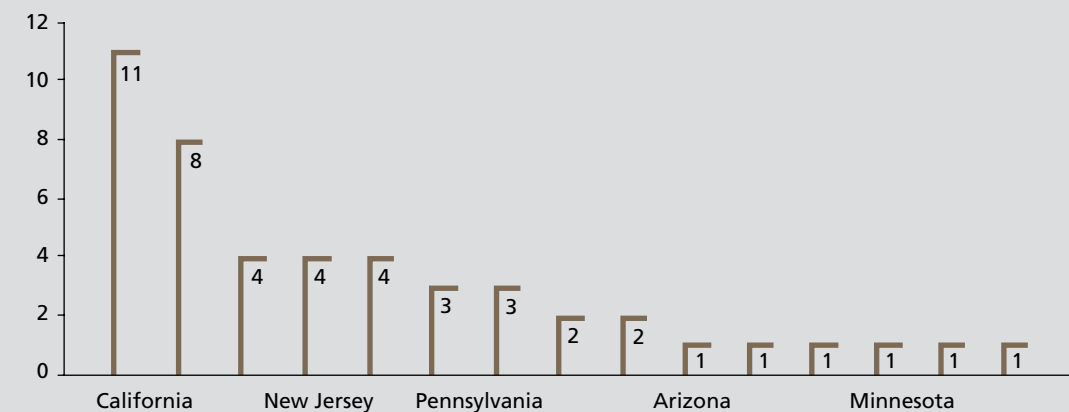
The Geography of Local Eminent Domain Ballot Measures

Almost half of the local measures originated in the West, with 11 in California alone (see Charts 3 and 4 for regional and state breakdowns). Many (14) measures appeared in the Northeast, partly due to the numerous small communities in Maine, Massachusetts, New Jersey, and Connecticut and prevalence of the town meeting form of government that permits citizens to place measures, or articles, directly before voters. The South had 12 measures, including eight from Florida. The Midwest had the fewest measures of any region (8). There are interesting clusters of measures, for example, in Connecticut and Florida.

Why the Propositions Came to the Ballot

Many local eminent domain measures were triggered by the *Kelo* decision and the prospect of state legislation (see Chart 2 for year-by-year referendum details). Preambles and explanatory text often mentioned that the proposed referendum was motivated by the *Kelo* decision, sometimes adding that the community

CHART 4: *Local Eminent Domain/Regulatory Measures by State 1999-2006*



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

had never used eminent domain to uproot reluctant homeowners or transfer acquired properties to private developers. Virtually every post-*Kelo* eminent domain proposition was placed on the ballot by local officials. Again mirroring statewide ballot outcomes, the post-*Kelo* measures, with one exception, were approved, typically with large majorities. The officials referring these measures to the ballot evidently sought to assure local residents that their elected leaders had no intention of acting like the officials in New London, now or in the future. They also wanted to show grassroots support for state legislation while committing local officials to restrict eminent domain use regardless of what happened in the state legislature. Occasionally, a difference of opinion among officials surfaced about the wisdom of sponsoring a strict

ban on eminent domain use for private development. While the measures appear spontaneous and locally driven, the similarity of language and the clusters noted earlier suggest internet and other networking among state and national property rights groups.

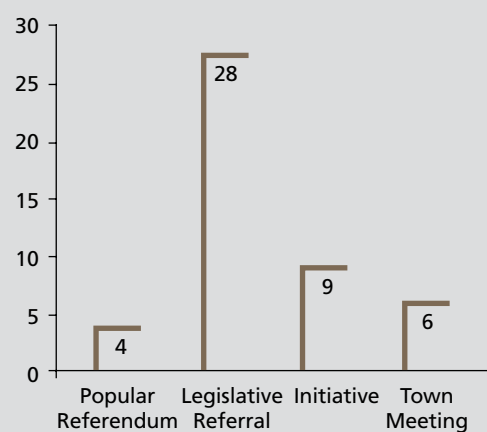
The availability of initiative and referendum authority at the state level is an important but not decisive factor in these referendums. Eminent domain measures were twice as likely to appear in a communities located in a states with initiative and referendum authority than in a communities lacking this authority. A third of the ballots appeared in communities without statewide initiative and referendum authority.

The ballot measures on specific city-approved projects involving eminent domain (Ventura, California,

1999; Lakewood, Ohio, 2003 and 2004; Brooklyn Park, Minnesota, 2004; and Maplewood and Clayton, Missouri, 2003 and 2006) were supported by coalitions that included residents, property owners, and businesses in the redevelopment area, clergy, unions and other social advocacy groups, and environmental organizations, depending on the issue.

Two measures in Maryland in 2000 were sponsored by county officials who sought firmer legal authority to condemn blighted and non-blighted properties for redevelopment and public use. Both were defeated.

CHART 5: *Local Eminent Domain/
Regulatory Measures by Type
1999-2006*



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

Authority

Apart from the measures referred to referendum by elected officials and town meetings, the authority to place these measures before voters rests on state or local legal language that provides for initiatives and referendums on planning and zoning decisions or mandates voter approval of general obligation bonds (see Chart 5). In Brooklyn Park, Minnesota, for example, voter approval was required to float the bond to finance the development project, while in Ventura, California, voters petitioned for a referendum on the council's plan approval. Some measures are advisory, usually because citizens lack authority to place a binding measure on the ballot or their authority is challenged. Still, nonbinding ballot measures can be quite effective: while local land use ballot measures are not binding in New Jersey, a town clerk observed, "If citizens come in with a thousand signatures, it's unlikely that the selectmen would ignore them."

Limits to Eminent Domain

In all, voters approved 36 of the 37 measures aimed at limiting eminent domain either in specific projects or with broader policy changes. Of these, the 27 post-*Kelo* measures that limited the use of eminent domain for private economic development primarily prohibited taking private property from an unwilling owner to transfer to another private entity. Some measures said little more than this, while others provided either more prohibitive language or "wiggle room." These measures called for a more transparent process, such as appraisals, negotiations with the property owner prior to a taking, and a public hearing

on each proposed taking of private property; a clearer definition of public use; a closer nexus between health and safety and the taking; and assurances that a property's condition was causing harm. One measure called for voter approval of takings. A proposition in Chula Vista, California required the city to hold onto the acquired property for ten years prior to sale or lease to a developer.

Outcomes

Voters approved all of the post-*Kelo* measures referred by officials to limit eminent domain, many overwhelmingly. Voter guides on these measures seldom contained counter-arguments. Election results crossed political lines. Approval was as likely in places that had voted Republican in the last election as in places that had voted Democratic. Most of the ballot measures appeared in places without a strong partisan affiliation.

Six of the eight measures that sought to expand the use of eminent domain for specific projects failed. Voters rejected a Ventura, California midtown redevelopment plan even though the city council deleted eminent domain authority from the proposal and said participation would be "entirely voluntary." Brooklyn Park, Minnesota, rejected a bond to finance the demolition of apartments to promote vitality and increase the tax base. Lakewood, Ohio voters narrowly turned down the biggest redevelopment project in the city's history. Citizens did approve projects that involved simpler, traditional uses of eminent domain: Nashua, New Hampshire voters favored city takeover

of a private waterworks company and Clifton, New Jersey citizens approved condemnation of private land for a school.

Several examples show the relation between local ballot measures and state or national actions. A village trustee in Wisconsin proposed a charter amendment limiting eminent domain based on model language provided by the Institute of Justice. He was confident of easy passage until the mayor said that he did not want to limit this authority, even though the village had never used it. The village council deferred action because state legislation, since approved, was being considered by the Wisconsin legislature.

Berkeley, California approved regulatory measures prior to Election Day with the proviso that these would be void if Proposition 90, a statewide measure that combined eminent domain and regulatory compensation, was not approved. Officials were concerned that if Proposition 90 were approved, the city would have to compensate property owners for this regulation.

In one community, the proponent of a local eminent domain measure said that the measure he proposed was needed despite the passage of state legislation because it provided more robust protection against eminent domain abuse. In San Bernardino County, however, passage of an eminent domain measure was needed, according to its sponsor, because it was less restrictive than Proposition 90, should a statewide measure fail in November.

Big Box Development

Despite extensive discussion in the popular and professional press of big box development and community resistance, this survey appears to be the first systematic examination of the role of big box ballot propositions in this resistance.¹⁸ In all, we identified 67 measures that appeared in 18 states between 2000 and 2006 dealing with large scale retail projects (see summary of findings in Chart 6). Many more measures were initially identified, but eliminated when further research found that a proposed referendum did not materialize, the issue was resolved by negotiation, the developer withdrew its application, or the vote was delayed due to legal challenges.

While Wal-Mart inevitably dominates any discussion about big box development – in 2005, it operated some 3,800 stores in the United States, employed 1.8 million people worldwide, generated net sales of \$312.7 billion, and earned \$11.2 billion – national chains such as Lowe’s, Home Depot, Ikea, Target, and regional retail stores are also players in these local elections. Wal-Mart is, however, in its own words, the “largest and most visible retailer in the world,” and by sheer size, a major presence in community controversies and ballot campaigns. With a carefully honed “everybody-loves-us” image, Wal-Mart has been uniquely sensitive to rejection at the ballot box.

¹⁸ Stacy Mitchell, *Big Box Swindle: The True Cost of Mega-Retailers and the Fight for America’s Independent Businesses*, Boston: Beacon Press, 2006) estimates that citizens stopped more than 200 big-box development projects between 2004 and 2006. According to a Wall Street research report (Bernstein Research Call, “Not in My Backyard: An Analysis of Community Opposition to U.S. Big Box Retail,” May 2005), community opposition halted 132 stores between 2000 and 2004. Web sites hosted by Home Town Advantage, www.newrules.org/retail and Sprawl-Busters, www.sprawl-busters.com, provide a great deal of information about big box-community controversies.

¹⁹ One measure, in Lakeway, Texas, appeared in a city with local but not statewide initiative and referendum authority.

²⁰ Wisconsin has statewide recall, but not initiative and referendum, authority. One other recall election in the survey took place in California, which has both initiative and referendum as well as recall authority.

CHART 6: *Big Box Ballot Measures*
Survey 2000-2006 Summary of Findings

Number of measures:

67

Number of states:

18

Geographic distribution:

Northeast	17
Midwest	13
South	3
West	34

Number of Measures in States:

With initiative/popular referendum	61 ^{19, 20}
Without initiative/popular referendum	6

How measures were placed on ballots:

Popular referendum	33
Initiative	14
Referred by officials	11
Town meeting	9

Proposals to limit big box development: 37

Approved	19
Failed	18

Proposals to expand big box development 30

Approved	14
Failed	16

Total Outcome:

Limit big box development	35
Expand big box development	32

Year that measures appeared on ballots:

2000	1
2001	2
2002	12
2003	3
2004	13
2005	22
2006	14

Political preference of counties where election results

limited or expanded big box development:

Limit:	Rep 6, “swing” 15, Dem 14
Expand:	Rep 13, “swing” 10, Dem 9

SOURCE: Phyllis Myers, SRS, *Direct Democracy and Land Use* and CNN data.

Unlike the eminent domain measures, which primarily blossomed after the *Kelo* decision, communities have been holding votes on big box stores for more than a decade. Greenfield, Massachusetts was, in 1993, one of the first communities in which citizens used their petition power to call for a referendum on a council decision to rezone land to accommodate a large (250,000 square feet) Wal-Mart store.²¹ In a major strategy shift, the company, which had operated in rural communities off

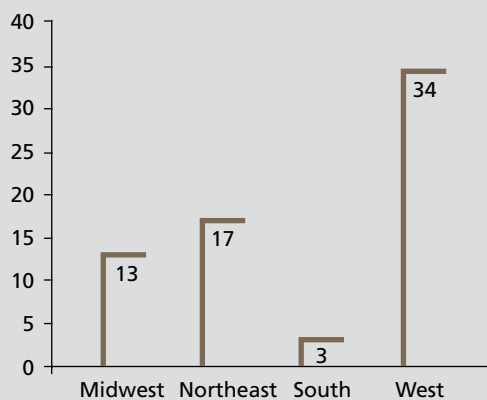
main highways since its founding in 1962, began building larger stores in more populated cities and suburbs. The small towns welcomed the expanded consumer choice, lower prices, increased tax revenues, and jobs that Wal-Mart was famously delivering thanks to its marketing, distribution, and cost-cutting innovations. Now, however, Wal-Mart confronted planning boards, development regulations, organized labor, and politically active residents who questioned whether the costs of welcoming big boxes outweighed the benefits.

Greenfield resident and community organizer Al Norman, who went on to found an influential online clearing house on big box controversies, learned from the town counsel that he could gather signatures for a referendum. Norman made this the linchpin of a successful campaign that turned away Wal-Mart.

The Geography of Local Big Box Ballot Measures

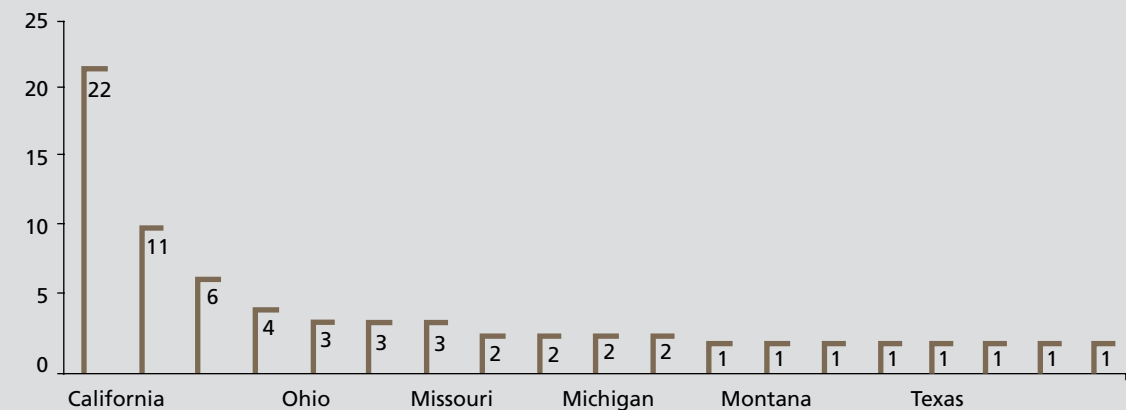
The survey ballot measures appeared in 18 states in every region of the country between 2000 and 2006 (see Charts 7 and 8 for regional and state breakdown). California heads the list with 22 measures, twice as many as Maine, with 11 measures. Half of the measures appeared in the West and a quarter in the Northeast. The Midwest – Ohio, Missouri, Michigan and Wisconsin – accounted for most of the remainder. The South had only three measures.

CHART 7: Local Big Box Measures by Region
2000-2006



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

CHART 8: Local Big Box Measures by State
2000-2006



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

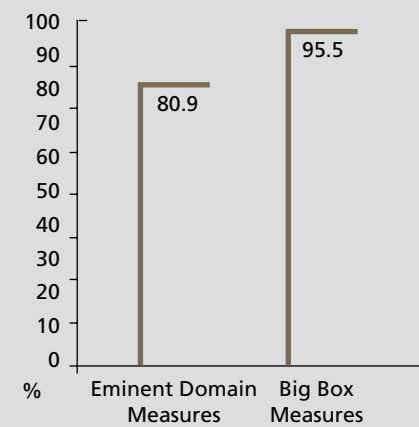
Why the Propositions Came to the Ballot

The most important trigger for these measures, obviously, was an approved or rumored big box proposal. A second important factor was the availability of initiative and referendum authority. Virtually all of the big box ballot measures in the survey (95.5%) appeared in states with either initiative and referendum authority or a town meeting form of governance. In contrast, 80.9% of the local eminent domain measures appeared in initiative or referendum states (see Chart 9). Almost half of the big box measures were initiated by residents or developers who collected signatures in the hope of repealing a decision by local officials that

was counter to their interests. The remainder consisted primarily of citizen initiatives and legislative referrals (see Chart 10).

In the early 2000s, most big box measures were spurred by authentically grassroots groups of citizens, civic groups, local business and labor leaders, linked with anti-sprawl activists, leagues of women voters, and other civic and environmental groups. As time went by, national players became involved and the campaigns became more sophisticated and costly. Large unions, such as United Food & Commercial Workers, which represents supermarket workers, and

CHART 9: *Percent of Local Eminent Domain and Big Box Measures in Initiative and Referendum/Town Meeting States*



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

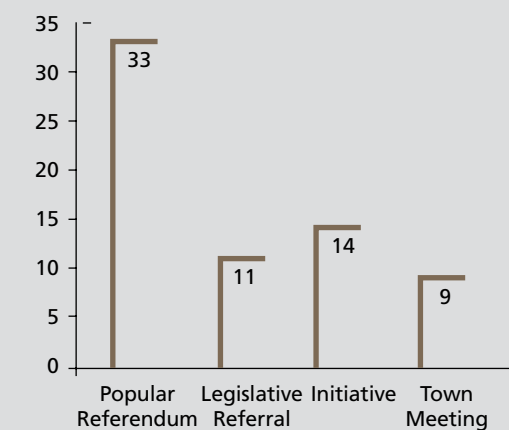
the fast-growing Service Employees International Union, having failed to unionize Wal-Mart employees or to gain wide support for state legislative restrictions on big box activity, found a receptive climate in community anti-Wal-Mart zoning controversies.²² Big box developers, ignoring charges that they were turning democracy upside down, initiated their own ballot measures challenging unfavorable zoning decisions and funding pro-big box citizen organizations (sometimes derisively called “astro-turf” groups) and all-out campaigns.

Big box critics have a litany of complaints about large scale retail stores: they cause local businesses and jobs to wither, offer nonunion jobs that depress prevailing wages and benefits, encourage one-size-fits-all design that erodes distinctive community character and visual quality, cause traffic congestion and air pollution, violate environmental impact review laws, and encourage sprawling, auto-centered development that paves over open space and wetlands. Residents worry about the community’s vulnerability if the retailer moves on, leaving behind a large vacant box.

Big box developers in turn provide glowing economic numbers about the creation of new, flexible jobs; increased sales tax revenues; expanded shopping choices; and lower prices (grocery prices are said to be 10 to 30 percent lower than competitors). They point to their sales and say opponents are elitists who look down on people who shop at big box stores. They make donations to civic groups, parks, and health centers, and warn that if rejected they will move on to a nearby community which will reap the fiscal benefits of their presence, and charge that landowners are being unfairly blocked from developing their properties.

The big box referendums were flashpoints for community activism. Citizens organized into groups whose often similar names disguised competing agendas, for example, “This Is Our Town” versus “Protect Our Town” and “Citizens for Responsible Growth” versus “Citizens for Responsible Development.” Newspaper articles in Flagstaff, Arizona; Lakeway, Texas; Agoura Hills, California; and Damariscotta,

CHART 10: *Type of Big Box Measures 2000-2006*



SOURCE: Phyllis Myers, *Direct Democracy and Land Use Survey*

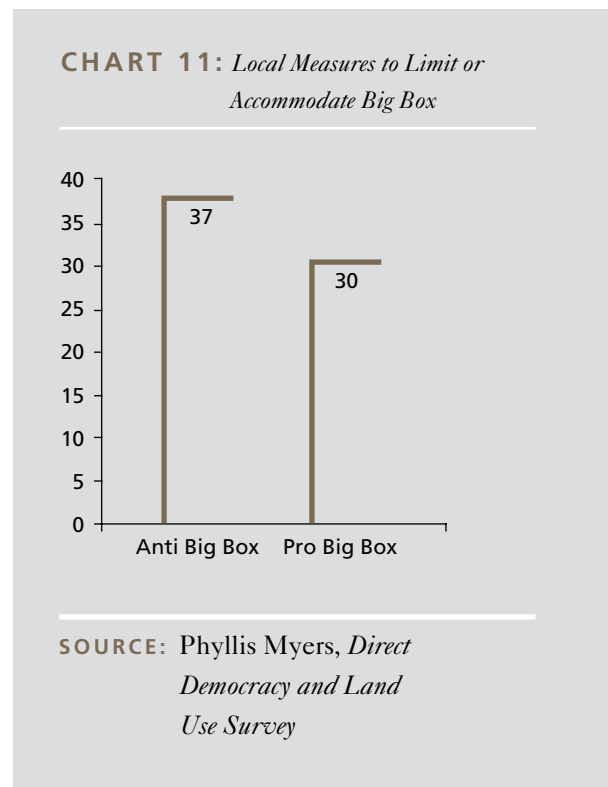
²² Zellner, Wendy and Aaron Bernstein. “Up Against the Wal-Mart: Labor, Antisprawl Activists, and Grocery Rivals Link Hands to Battle the Retail Giant.” *BusinessWeek Online*, March 13, 2000.

Maine describe turnout for elections or public hearings as among the largest in the community's history. Some controversies dragged on over years, with time out for legal challenges to ballot measure wording, signature validity, authority to hold a referendum, and what officials did or failed to do while reviewing a big box application. While votes were overwhelmingly on one side or another in some communities, polarization in others led to whisker-thin results and recounts.

Outcomes: Limiting, Accommodating Big Box Stores

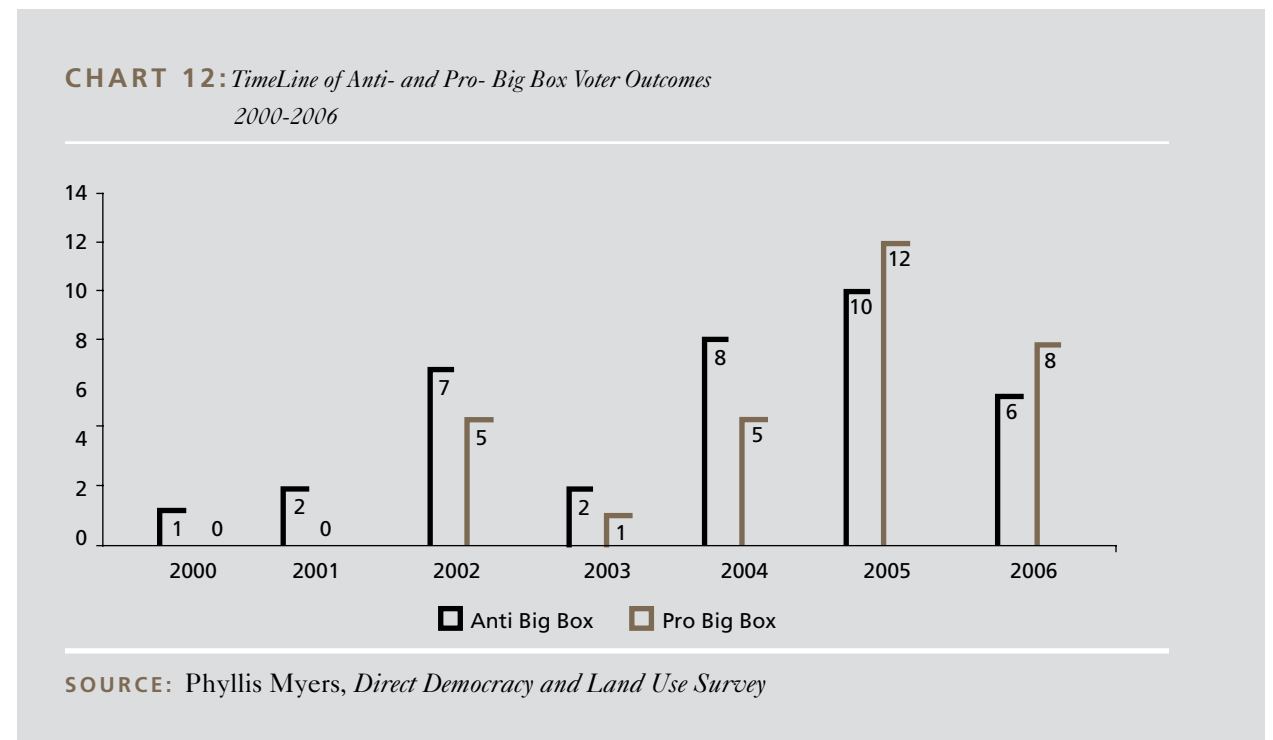
Overall, 55% of the big box measures that appeared during the survey period sought to limit big box development and 45% to accommodate it (see Chart 11). Two-thirds of the measures dealt with specific sites; typically, these measures were placed on the ballot by citizen petition to challenge an official decision. Site-specific measures asked such questions as: Should a city's decision to rezone a property or change the general plan to accommodate a big box store be approved? Should the town earmark sales tax revenue for infrastructure improvements to accommodate a big box store? Should the town or city sell its land for a proposed big box store, or annex an outlying site for the big box developer? Should a redevelopment plan anchored by big box stores be approved?

The other measures, about a third, dealt with general policy vis-à-vis big box stores. The most prevalent involved a cap on store size (either imposing or lifting



a cap), limits to the amount of space given over to sales of groceries or nontaxable items, and requirements for community impact reviews of new stores above a certain size. Seven towns were in various stages of a moratorium – a temporary stay in granting new permits – to give them time to draft permanent guidelines and regulations to manage big box development. Several measures, reflecting the rise of a grassroots movement aimed at strengthening local, independent economies, banned “formula” or chain stores.

Two towns had recall elections: one recalled an official who had blocked an annexation for a Wal-Mart



and another failed to recall officials who were perceived as too friendly to a proposed Wal-Mart.

Ballot Measure Campaigns

The outcome of big box referendums shifted perceptibly between 2000 and 2006. Successive years saw increasing numbers of developer-initiated referendums along with the citizen-driven measures challenging official decisions on big box development. The campaigns became costlier and less predictable as both citizens and developers clashed in high-profile community controversies. This change is shown quite dramatically in Chart 12, which tracks the year-by-year results of the measures in the survey period. In 2005

and 2006, when more than half of the survey's big box referendums were decided, 16 limited big box stores and 20 favored their expansion.

Inglewood, California. In 2004, Wal-Mart lost a much publicized referendum in Inglewood, California, outside of Los Angeles. The company's plan to build 40 super centers in California, announced a few years earlier, had already run into community resistance. The non-unionized super centers sold groceries, a red flag in places like California with strong unions representing better paid supermarket employees. When officials in Inglewood, a middle class community of about 100,000 black and Latino working families, turned down its request to rezone 60 acres for a super center, Wal-Mart fought back, gathering signatures to

place an initiative measure directly on the ballot to require Inglewood's officials to issue the permit without the customary environmental, regulatory, and planning reviews. The ordinance, if approved, could not be amended without a two-thirds vote in another referendum.²³

The measure was defeated 61%-39%, even though Wal-Mart reportedly spent more than a million dollars on the campaign and assured voters that it would exceed the city's environmental, fire, and building standards. The United Food and Commercial Workers Union, a strong presence in the community, contributed funds and campaign workers, and black and Latino leaders spoke out against the measure. Wal-Mart spokespeople said that the Inglewood vote was an "anomaly" and that people were voting for Wal-Mart with their shopping dollars. "By applying zoning restrictions that prevent 'big box' stores such as Wal-Mart from being built, Inglewood is missing out on an ideal source of new jobs and inexpensive goods," cautioned The Reason Foundation.²⁴ According to a Wall Street financial research report, however, growing community resistance was delaying new store openings and slowing the steady growth in square footage that drove the company's ever-increasing revenues.²⁵

Damariscotta, Maine. Two years later, Wal-Mart faced a series of ballot campaigns in small coastal communities in Maine. It began in Damariscotta with a home-grown citizen initiative to limit the size of new retail stores to 35,000 square feet, a cap aimed directly at Wal-Mart's plans for a store at least three times larger. Wal-Mart officials said that a small group was stifling economic development and preventing their neighbors from stretching their budgets with lower prices and more choices. Residents in nearby towns approved similar measures to try to head off regional site-shopping by big box developers.²⁶

Big box victories. Big-box-developer wins in other referendums showed the effect of increased campaign savvy and money. A Bank of America Securities report said Wal-Mart had tasked a large staff in part to counter critics, especially unions.²⁷ While the company issued denials, Wal-Mart was clearly mounting expensive defensive and proactive ballot campaigns. When a Sandy, Utah citizens group challenged the city's decision to rezone a 107-acre former gravel pit for a mixed use development that would include Wal-Mart and Lowe's, a developer-financed group, Friends of Quarry Bend, successfully rallied the community to sustain the rezoning.

In Michigan, Acme Taxpayers for Responsible Government, whose members included landowners, former officials, and residents, challenged the town's moratorium on retail developments of 50,000 square feet or more. After the moratorium was narrowly overturned, the retailer (Meijer), who planned a 232,000 square foot store, successfully challenged the town's conditions for a special use permit.

And some developer-sponsored measures found opportunity in county jurisdiction over unincorporated lands. Following rejection at the ballot box of its proposal to amend San Luis Obispo's general plan to permit a 530,000 square foot mega mall development, including Target and Lowe's, on prime farmland on the edge of San Luis Obispo, the developer backed a successful county-wide initiative that created a separate zoning district exempt from most county reviews. The developer said his proposal would discourage leapfrog development and urban sprawl, provide community amenities, protect historic and natural resources, and allow longtime landowners to develop their lands.²⁸

The number of local big box measures dropped sharply in 2006 compared to 2004 and 2005. While it is too early to know whether this fall-off is a tempo-

rary bump or has more long term significance, the trend-line bears watching. Possibly, Wal-Mart and other big box developers are taking more care in choosing sites and rolling out less confrontational strategies. Citizens may also have found the referendum route too costly. Norman says he now advises communities that referendums are the "tool of last resort," and warns them to be prepared to be outspent 10 to 1.²⁹

Partisanship

Political preferences appear to be influential in the outcome of big box measures. Communities that voted to accommodate big box development tended to have voted Republican in 2004, and those that voted to limit big box stores tended to vote Democratic. These controversies spilled over into heated local candidate elections from time to time, as sitting officials vied with candidates who disputed their positions on a Wal-Mart or other big box developers. As noted earlier, two measures in the survey involved recalls of officials based on their stance on a proposed Wal-Mart.

²³ Sullivan, Tim, "Wal-Mart's Manifest Destiny," *High Country News*, June 7, 2004; Nancy Cleeland and Abigail Goldman, "Wal-Mart Trying to Put Plan on Ballot," *Los Angeles Times*, August 30, 2003; Laura Mecoy, "Wal-Mart Tries Ballot-Box End Run," *Sacramento Bee*, April 4, 2004; and CNNMoney.com, "No Smiles for Wal-Mart in California," April 7, 2004.

²⁴ Courreges, Owen, "Inglewood Wins Ballot Initiative Against Wal-Mart," *reason.org*, April 28, 2004.

²⁵ *Bernstein Research Call*, op.cit.

²⁶ Mitchell, op. cit.; *Sprawl-Busters.org*.

²⁷ Hudson, Kris, "Analyst Finds Union Groups Have Impact on Wal-Mart," *The Wall Street Journal*, March 9, 2007. The Bank of America analyst noted that "while the union groups want to take credit...they are one of many factors slowing Wal-Mart's momentum."

²⁸ California League of Women Voters, *www.smartvoter.org/ca/slo*, Measure J-06, Dalidio Ranch Initiative, November 7, 2006.

²⁹ Interview, March 21, 2007.

This report presents detailed information about 114 recent local ballot measures on eminent domain, regulatory compensation, and big box development. These referendums are part of a larger group of measures on these topics that were proposed, threatened, withdrawn, or set aside by legal action before being placed before voters. The data collected for this report offer insights about the conversations accompanying these referendums and the role they have played in shaping multilayered responses to the larger policy environment in the communities where these referendums were held and beyond.

Across the country, strong underlying forces are driving investments in large scale public-private developments – robust population growth, demographic shifts and growing affluence, time-challenged multiple worker households, and growing numbers of older persons and unskilled workers; the revived marketability of aging neighborhoods and downtowns; an explosion of the retail economy; the globalization and agglomeration of sourcing, distribution, and financing; traffic congestion, energy and other environmental constraints; and public incentives for projects that are arguably the “right” development – typically involving mixed uses, density, accessibility to major transportation interchanges, pedestrian- and transit-friendliness, and job creation.

As these forces transform America’s cities and regions, we are seeing increased advocacy for stronger municipal planning and regulatory regimes, on the one hand, and for protection of property rights from diminished value attributable to government actions, on the other. These ballot measures reflect the tensions in these trends.

Ballot measures flourish when the existing policy infrastructure has fallen behind what is happening on the ground and traditional institutions and leaders are unwilling or unable to change quickly enough.³⁰ Local ballot measures have helped shape public discourse about these changes, connect conversations in different places, and align fresh constituencies around common concerns. Arising in both conservative and progressive communities, they have moved

³⁰ Matsusaka (2004) finds that citizens may feel that traditional institutions do not allow them to become meaningfully involved in public decisions, lack transparency, or are window dressing on decisions already made.

policies closer and faster to the apparent wishes of the majority by turning back or approving site-specific projects and broader ordinances, charter amendments, and financing. Many tested innovative policies later adopted by legislative bodies.

Eminent domain, regulatory compensation, and big box ballot measures are examples of different models of local ballot influence. Eminent domain measures were generated by top-down events that quickly led to a series of statewide and local ballot measures to restrain state and municipal officials. Big box measures were citizen-generated in many cases, and eventually elevated the issue beyond narrow boundaries to broader regional, state, and even national policy arenas. Despite the significant catalytic influence of these local ballot measures, the issues are likely to continue to resonate in coming years. Although the main arena for policy activity may move beyond the local ballot box, its availability is a potent driver in policy discussions.

Eminent domain/regulatory compensation. The post-*Kelo* eminent domain measures offered a way for local politicians to assure their constituents that they would not abuse eminent domain authority, demonstrate support for pending state legislative actions, and provide backup local ordinances in the event the state legislature did not act. Placed on the ballot mostly by local officials, these measures differed from the initiative measures typically examined in direct democracy studies. Most seem to have been locally driven, with some help from state and national groups, and originated in communities regardless of their history of initiative and referendum use and authority.

³¹ Interview, Leonard Gilroy.

The numerous ballot measures that were part of the response to *Kelo* made it clear that projects involving immediate transfers of ownership to private parties and removal of residential and small business properties are risky legally and politically. At the same time, it has proven difficult to come up with language that defines public benefit, blight, ownership rights, and compensation in ways that stop objectionable projects but do not completely rule out the use of eminent domain in certain circumstances. Does the private sector need eminent domain authority to move forward on beneficial development projects? When? Who decides? Will restrictions seriously impair the record of revitalization successes, as many city officials, planners, and developers claim? Or would most find ways to go forward anyway, or be modified in ways that still create jobs, increase revenues, and enhance urban vitality? As states and communities struggle with new statutes and constitutional amendments, another round of ballot box activity, legal challenges, and legislative action appears likely.

A tactical question facing supporters of regulatory compensation measures is whether to continue to couple them with eminent domain reform. The outcomes of local measures – nearly unanimous support for limits to eminent domain and failure of the few local regulatory compensation measures – are a red alert for this alliance. As property rights activists gear up for a new statewide ballot push in California and elsewhere, they may direct more attention to local ballot measures in the hopes of building a record of voter success that has so far eluded regulatory compensation measures, except in Oregon and Arizona.³¹

Big box development. In contrast, the momentum for big box referendums may be slowing in the wake of a broader wave of reform that is now washing over Wal-Mart and other large scale retail development. Big box ballot measures helped communities fend off unwanted huge shopping malls and put in place specific policies and tools, such as size caps, limits on space devoted to grocery sales, and impact reviews that help officials assess and manage big box proposals. Similar reforms were also adopted in communities that did not hold referendums. Yet the visibility of ballot measures and the expressed or implicit threat of more heightened their impact, much as statewide ballot measures on eminent domain took on a larger life than state legislative actions.³²

Despite developers' ability to push back on citizen measures, referendums and community discontent contributed significantly to the drum-roll of resistance. The resistance that began in scattered citizen referendums has merged with a broader set of concerns about big box development based on environmental, labor, health, immigration, and community impacts. These trends have hurt the bottom lines of Wal-Mart and other retail developers and are modifying their business model. While critics have charged that such intervention in the market is bad for America

and American consumers, supporters counter that these changes will result in more equitable, sustainable development in this large, rapidly growing sector of the economy.

Big box developers are coming to communities with offers of parks, green buildings, contributions to local causes, training programs, and other sweeteners which, especially when financed out of future sales tax revenues, appear to make economic sense compared to the fiscal and image costs of ballot measure campaigns. Developers, working with planners, city officials, investors, unions, and citizens, have begun to focus on ways to make big box stores less intrusive and more responsible – with better design, reduced pollution and carbon footprints, improved health coverage – and are demanding that suppliers follow their example.³³

A property rights coalition in Ohio has worked with Toledo officials on design standards that won't drive retailers away from a city, but will "promote quality development and ... best practices."³⁴ To "avoid taking decisions out of the hands of professional planners through the ballot box or litigation" – both equally undesirable in its view – the American Planning Association promotes planning, design, and regulatory approaches that respond to the "demands and desires" of citizens and retailers.³⁵

For some critics, however, this "green-washing" misses the point, since in their view the real struggle is with the homogenization, land-gobbling, and auto-centered American retail landscape that they believe is eroding what remains of locally owned, diverse community economies and social relationships.³⁶ These criticisms raise broader issues whose solutions lie outside the ballot box but whose beginnings can be traced to discontents that surfaced first in local referendums.

The evidence examined in this report should put to rest any notion that land use referendums are rare, confined to California, or the exclusive handmaiden of either conservative or progressive voters. The findings underscore the potency of local land use referendums to affect the policy environment and the intertwining of local outcomes with regional, state, and even national policies.

As Americans contemplate a quarter century of unprecedented growth, the diversity of local governance is daunting and, in the eyes of a growing number of urban experts, painfully out of tune with the global forces pushing in on America's communities. As we consider ideas for reshaping state and local governance to provide a more rational system for metropolitan and regional land use decisions, more attention needs to be given to our democratic heritage of citizen engagement in local affairs, including the land decisions that shape responses to growth and decline. The initiative and referendum process, one important way by which citizens are given a voice in these decisions, has been gaining ground despite the lack of information about many details of this empowerment. While opinions differ about whether this trend threatens or enables vibrant, healthy development, it is a reality whose growing impact on the landscape needs to be better understood in order to respond intelligently to its potential and limits.

³² Theoretical research in political science and economics suggests that the implied or explicit threat of a referendum has a potent effect on policy. See Elisabeth R. Gerber, "Legislative Response to the Threat of Popular Initiatives," *American Journal of Political Science*, 1996; John G. Matsusaka and Nolan M. McCarty, "Political Resource Allocation: Benefits and Costs of Voter Initiatives," *Journal of Law, Economics, and Organization*, 2001.

³³ Evans-Cowley, Jennifer, Meeting the Big Box Challenge: Planning, Design, and Regulatory Strategies, American Planning Association, Planning Advisory Service Report Number 537; Michael Barbaro, "Wal-Mart Puts Some Muscle Behind Power-Sipping Bulbs," *The New York Times*, January 2, 2007; Andrea K. Walker, "Wal-Mart Makes Some Gains by Polishing Image," *Baltimore Sun*, April 22, 2007; Michael Barbaro, "Wal-Mart Effort on Health and Environment is Seen," *The New York Times*, June 22, 2006.

³⁴ Property Rights Coalition, Toledo Ohio, www.propertyrightscoalition.com/local_policy_bigbox.htm

³⁵ Jennifer Evans-Cowley, Meeting the Big Box Challenge: *Planning, Design, and Regulatory Strategies*, The American Planning Association, Planning Advisory Service, Report No. 537, March 2006.

³⁶ Mitchell, op. cit.

About the Author

*Phyllis Myers, president of State Resource Strategies, authored and co-authored the award-winning *Livability at the Ballot Box: State and Local Referenda on Parks, Conservation, and Smarter Growth* and *Growth at the Ballot Box: Electing the Shape of Communities in November 2000*, both published by The Brookings Institution Center on Metropolitan Policy; “Growth Decisions Move to the Ballot Box; A Reconnaissance of ‘Voter Control’ Measures;” “Voter-Approved Land Banks in Cape Cod, Massachusetts: Taxation Politics and Land Protection,” published in *Critical Issues in Environmental Taxation: International and Comparative Perspectives*, J. Milne, editor; and “Direct Democracy and Development,” published in *Urban Land*. Myers was co-creator and author of *GreenSense*, which pioneered the national collection of data on state and local conservation finance ballots. Her work on ballot measures has been reprinted in congressional hearings and published or cited in *The New York Times*, *Washington Post*, *Planning, Governing*, *Journal of Philanthropy*, *Journal of the American Planning Association*, *Common Ground*, *Nation’s Cities*, *Lehrer News Hour*, *C-Span*, and regional and local media.*

Myers serves on the Board of Advisers of the Initiative and Referendum Institute and the National Academy of Public Administration’s Committee on Environment and Equity and earlier, on the boards of the American Planning Association National Capital Region, World Monuments Fund, Committee of 100 on the Federal City, Conservation Biology Institute, and National Coalition for Heritage Areas. She holds a B.A. magna cum laude from New York University, where she was elected to Phi Beta Kappa, and an M.A. in urban and regional planning from George Washington University. She was a Fellow at the National Endowment for the Arts.

Ms. Myers can be reached at srsmyers@earthlink.net or State Resource Strategies, 3248 Patterson Street, N.W., Washington, D.C. 20015, 202-362-1320.