

# spotlight

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## BLOCKING EMINENT DOMAIN ABUSE IN NC

*It's past time for well-crafted constitutional amendment*

**KEY FACTS:** • There is optimism that an eminent domain amendment will pass this upcoming legislative session. The amendment must be carefully drafted, however, to properly protect property owners.

• An amendment is necessary for many reasons including:

– There is no state constitutional protection from eminent domain abuse, such as the government seizing private property for economic development.

– In fact, North Carolina has the weakest property rights protection in the country; it is the only state in the country that does not have a Constitution that expressly addresses eminent domain.

– The North Carolina Supreme Court has held that the government can take private property and transfer an interest in that property to a private company for its sole and exclusive use.

– The government seizes private property for other private parties through various means, such as blight laws.

• After *Kelo*, eight states passed constitutional amendments, including the two neighboring states of Georgia and South Carolina.

• A model amendment would, among other things:

– Prohibit takings for private uses. A prohibition on takings for economic development is not enough, since many takings that involve the transfer of property from one private party to another private party are not connected to economic development.

– Prohibit the government from improperly using “blight” and other pretexts for seizing private property in order to promote economic development or to achieve some other improper objective.

– Require the government to have the burden of proof to demonstrate that a taking is for a proper public use.

– Require just compensation to make property owners whole, by including the payment of relocation costs, loss of business goodwill, and attorneys fees.

200 W. Morgan, #200

Raleigh, NC 27601

phone: 919-828-3876

fax: 919-821-5117

[www.johnlocke.org](http://www.johnlocke.org)

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**S**ince 2006, the North Carolina House twice passed a constitutional amendment to address eminent domain abuse.<sup>1</sup> Both times, those amendments failed to be considered in the North Carolina Senate.<sup>2</sup>

As the new legislative session begins with a new political make-up for both chambers, there is hope that the North Carolina legislature will finally pass an eminent domain amendment. Even if an amendment does get passed, however, it must be carefully drafted to properly address eminent domain abuse. The House-enacted eminent domain amendments were very narrow in scope and provided little protection for property owners.<sup>3</sup> Recently, the House introduced an amendment that is identical to the weak amendment it passed in 2010.<sup>4</sup>

An amendment certainly should be drafted in response to the United States Supreme Court case, *Kelo v. City of New London* (2005).<sup>5</sup> In that case, the Court held that the government could seize private property and transfer it to another private party if the taking is for economic development.<sup>6</sup> As a result, the government, for example, can take a person's home and give it to a developer who could supposedly generate more tax revenue off the property by building a strip mall.

While the amendment must feature a clear prohibition against these "economic development takings," it should also protect against the ways the government finds end runs around such a prohibition.

Furthermore, while economic development takings receive most of the attention, they are simply a subcategory of takings that make up the real problem. The amendment should specifically prohibit the taking of private property to benefit another private party, whether it be for economic development or another reason.

This *Spotlight* will briefly explain why North Carolina needs an eminent domain amendment. It will outline the key protections that are necessary in an eminent domain amendment and provide model language for an effective amendment.

## **Why An Amendment is Necessary**

### *1) Fundamental rights should be protected by the Constitution.*

If the United States Supreme Court gutted a fundamental right such as free speech, it would be highly unlikely that legislators or the public would want free speech to be protected by state statutes alone that could change at the whim of political interests.

The same logic applies to property rights, which are also fundamental rights. Property rights were gutted in the *Kelo* case, and currently the only thing that may provide limited protection from economic development takings are state statutes.

An amendment is the only way to provide the necessary protection from economic development takings. Since it would require the legislature to obtain a three-fifths vote in both chambers and a majority vote of the public to get rid of the amendment,<sup>7</sup> an eminent domain amendment could not easily be scrapped due to political interests.

### *2) North Carolina has the weakest property rights protection in the country.*

North Carolina is the only state in the country that does not have a "takings clause" in its state constitution, which is a provision that expressly states the government may only take private property for a public use upon the payment of just compensation.<sup>8</sup>

The North Carolina Supreme Court has had to read this protection into the Constitution.<sup>9</sup> As a result of this weak constitutional protection, even had *Kelo* never occurred, North Carolina would have needed an eminent domain amendment.

3) *The North Carolina Supreme Court has given the green light to takings for private uses.*

In a case called *Piedmont Triad Airport Authority v. Urbine* (the Federal Express case),<sup>10</sup> an airport authority seized private property for a cargo facility. Federal Express was given sole use of the facility, and the general public had no right to use the property.<sup>11</sup>

The North Carolina Supreme Court held that the purpose of the taking was to improve the airport, not to benefit Federal Express — the use by Federal Express was incidental to the public use of improving the airport.<sup>12</sup>

That is the type of “game” common with eminent domain — so long as any public use can be identified for seizing private property, even if it is obviously secondary to the real reason for seizing property, it will likely be found constitutional.

It should be noted that this case had nothing to do with economic development. The alleged public use was the improvement of the airport, not economic development. Yet it still is a case of eminent domain abuse because property was taken for a private use.

An amendment is needed to overturn the result of this absurd case and ensure that the government is unable to seize private property just because it can identify some secondary public use for seizing private property. The Federal Express case is a great example of why a prohibition on economic development takings alone is not sufficient.

4) *The Triangle Transit Authority and public transportation: more takings for private use.*

In 2006, the Triangle Transit Authority had a potential arrangement with a private developer, Cherokee Partners, to develop areas around speculative local rail sites.<sup>13</sup> At the time, the TTA knew that it was highly unlikely that property seized for a rail system would be used — the federal funding required for the project had fallen through.<sup>14</sup>

After repeatedly stating that eminent domain would not be used for economic development reasons,<sup>15</sup> the TTA finally admitted that an eminent domain amendment “threatens TTA’s partnership with Cherokee because it prohibits

**The Triangle Transit Authority and Eminent Domain Abuse**

*May 27, 2006: TTA Board of Trustees meeting*

This author made the following comments regarding the proposed public/private partnership between the TTA and Cherokee Partner:

We are told that economic development takings can’t occur in this state. If the TTA seizes private property for high-density development, this authority will clearly show that economic development takings are alive and well in North Carolina.

Taking or threatening to take property for high-density development because it might help a rail that someday could exist is not a proper public use and clearly is an economic development taking.<sup>16</sup>

TTA General Counsel Wib Gulley responded (as described in the TTA minutes):

He added that TTA has not and will not engage in economic development takings and that it is stated clearly in the agreement that TTA’s eminent domain authority cannot be used to acquire peripheral properties.<sup>17</sup>

*May 27, 2006: From a Carolina Journal Exclusive that ran the same day as the TTA meeting:*

Private-property advocates wonder whether TTA could seize land because North Carolina law allows eminent domain when “it is useful for the purposes of public transportation.” But TTA’s interim director, Wib Gulley, ruled out the possibility that the agency would take any land for private development.

condemnation of private property to be conveyed to other private owners for economic development.”<sup>18</sup>

The TTA likely would justify the takings based on a public use that is incidental to the primary purpose of benefiting a private party. In this instance, the argument would be that the taking is really for a public transportation purpose (which would constitute a public use), not for the private developer. This despite the fact that the rail system was almost certainly a dead deal at the time and speculative at best.

#### 5) Abuse of blight / urban redevelopment laws

The most common way the government seizes private property for economic development reasons is by claiming property is in a blighted area (see the sidebar on the following page).

North Carolina’s blight (urban redevelopment) law was so broad that property could have been in pristine condition, but so long as it was in some arbitrary blighted area, it would have been permissible to take the property and provide it to a developer.<sup>19</sup> Furthermore, the definition of “blight” was so broad as to make it possible to take almost any property.<sup>20</sup>

Fortunately, in 2006, North Carolina did tighten up the blight law by mandating that only property that itself is blighted can be taken (no more “blighted areas) and, secondly, by narrowing the definition of blight.<sup>21</sup>

Regardless, the definition of blight is still too broad,<sup>22</sup> and the legislature can always change the statute whenever it wants, making eminent domain abuse based on blight the biggest end run around a prohibition on economic development takings that must be addressed.

### What Other States Have Done

The first thing to remember is that every state except North Carolina has constitutional language addressing eminent domain abuse. Many states have extremely detailed language, some of which are more than a page long

“That’s not something I think is lawful or appropriate,” Gulley said, “so it’s not going to happen.” ...

Now that the company [Cherokee Partners] is on the verge of an agreement with TTA, can it count on the agency’s power to condemn private property to help it seize the land it wants for development? Gulley said the issue was discussed with Cherokee.

“We told Cherokee that’s not something that’s even going to be considered,” Gulley said.<sup>23</sup>

*May 23, 2007: TTA Board of Trustees meeting*

The following comes from the minutes of the TTA meeting; again, it demonstrates the games played with eminent domain:

Gulley then distributed copies of House Bill 878, a proposed constitutional amendment regarding eminent domain. *He said this bill threatens TTA’s partnership with Cherokee because it prohibits condemnation of private property to be conveyed to other private owners for economic development.* He said TTA was asked to comment and suggested language that it would not apply to the taking of properties for which the public use is preserved or utilized.<sup>24</sup> [Emphasis added.]

On its face, the language used by Gulley is contradictory. The likely argument as to why a taking for Cherokee is permissible would be grounded in the argument that the taking is really for a public transportation purpose, not for the private developer. That is in spite of the fact that, as noted, any rail development at the time was speculative at best because federal funding for a rail system had fallen through. Again, the government would be using an incidental public use to justify a taking for a private use.

— these protections existed before any amendments were ever passed to address *Kelo*.

After *Kelo*, eight states passed constitutional amendments, including the two neighboring states of Georgia and South Carolina.<sup>25</sup> The citizens in these eight states overwhelmingly passed the constitutional amendments.<sup>26</sup>

### The Model Amendment

There are many ways to draft a constitutional amendment to address eminent domain abuse. Each provision in the model amendment provided below has been carefully chosen, and removing one may affect the entire amendment. Regardless, the primary purpose of providing the language is to offer a logical starting point to provide protection from eminent domain abuse.

The primary purpose in discussing a model amendment is to identify what protections need to be in place regardless of how an amendment affords those protections. Once it is clear what needs to be addressed, then an amendment can be drafted to achieve those objectives.

#### *What Protections Need to Be in Place*

There is overlap between the following items:

1. *Prohibit takings for private uses.* There should be a prohibition against taking property from one private party and giving it to another private party. The one exception would be when property is taken for common carriers or public utilities when they are going to use the property for the use of the public generally (i.e., to run sewer lines, not to build a building at corporate headquarters).
2. *Prohibit economic development takings.* There should be a prohibition against economic development takings.
3. *Public use should have its traditional meaning.* Public use should mean what it has traditionally been understood to mean: the use of property by the government, by utilities for conducting their utility business, or by the public as a matter of right. For example, a public use would include seizing property for a highway or a courthouse.
4. *Prohibit end runs around prohibitions.* There should be no end-runs allowed.
  - a) The government should not be able to use the blight excuse to seize property for private uses, and
  - b) The government should not be able to identify some public use as an excuse to seize property to primarily benefit a private party.
5. *Government should have the burden of proof.* There are many situations in which a court must decide the real reason for a taking. If the government does not have the burden to show that the reason for the taking is proper, it will

### The Blight of Blight/Urban Redevelopment Laws

“Indeed, the displacement of African-Americans and urban renewal projects are so intertwined that ‘urban renewal’ was often referred to as ‘Black Removal.’”<sup>27</sup>

— Hilary O. Shelton, NAACP Washington Bureau Director, testifying before the Senate Judiciary Committee

“Under that act [Federal Housing Act of 1949], which was in force between 1949 and 1973, cities were authorized to use the power of eminent domain to clear ‘blighted neighborhoods’ for ‘higher uses.’ In 24 years, 2,532 projects were carried out in 992 cities that displaced one million people, two-thirds of them African American.”<sup>28</sup>

— Mindy Thomas Fullilove, “Eminent Domain & African Americans,” *Institute for Justice, Perspectives on Eminent Domain Abuse series, Vol. 1.*

easily be able to do end runs around prohibitions by simply identifying pretexts for seizing property.

6. *Just compensation should make property owners whole.* Even if a property owner receives fair market value for property, that alone will never put the individual in the same position he would have been in had the property not been seized. In tort law, defendants are expected to make plaintiffs whole, but for some reason the government is not held to the same standard when seizing someone's private property.
7. *Juries should determine just compensation.* A jury of one's peers should decide compensation, if requested by the property owner.

There certainly are other protections that could be added to this list (e.g., protections against regulatory takings, requirement that government prove alternatives had been considered prior to taking a property). For purposes of addressing the primary problems of the government seizing private property, however, this list would afford strong protection. Some protections can be left to statutes, and there also is a concern that too much in one amendment would undermine achieving these already significant goals.

### *The Language of the Amendment*

Private property shall not be taken except for a public use. Private property shall not be taken and an interest in that property transferred from one private party to another private party, unless the transfer is to a common carrier or public utility for the use of the public generally or the transfer is clearly unrelated to the reason for the taking. Public use may include the taking of property to address blight only when the physical condition of the specific parcel of property poses a concrete threat to health or safety.

Just compensation shall be paid to property owners and shall include loss of business goodwill, relocation costs, reasonable attorneys fees, and other costs necessary to put the property owners in the same position they would have been in had their properties not been taken. If demanded, a jury shall determine just compensation. Condemnors shall prove by clear and convincing evidence that a taking is for a public use and that compensation is just.

### *Sentence By Sentence*

The following is a sentence-by-sentence analysis of the constitutional amendment. It provides the reasoning behind the specific language used to provide protection for property owners from eminent domain abuse.

- **Sentence 1:** *Private property shall not be taken except for a public use.*

This is simply a general statement regarding takings.

- **Sentence 2:** *Private property shall not be taken and an interest in that property transferred from one private party to another private party, unless the transfer is to a common carrier or public utility for the use of the public generally or the transfer is clearly unrelated to the reason for the taking.*

Parts of this sentence were taken from the recent amendments passed in Louisiana and Nevada.<sup>29</sup>

- *Objective Language:* This sentence is designed to address any transfers of private property for private uses (this would include economic development takings) — it uses the *objective* language of prohibiting transfers from A to B because were it to state that takings are prohibited *for* economic development or *for* private uses, it would create a question of intent.

The word “for” signals to a court that the intent of the government must be determined — that is what

causes significant problems, because improper economic development reasons can easily be argued to be secondary reasons, especially if the government has no burden to prove that the economic development reason is not the primary reason for the taking.

- *“Interest” Language*: The language tries to protect against situations where the government seizes property but leases an interest in the property to a private property.
- *Public Utilities*: The language creates a specific exception for common carriers and public utilities that obtain an interest in private property for the use of the public generally.
- *“Unrelated” Language*: The “unrelated” language was included in the event of a situation where there is truly an unrelated private benefit with the taking of private property. For example, if the government seizes property for a courthouse and then wants to lease a small amount of space to a private company to run a cafeteria within the courthouse, that would be allowed. The language also ensures that if the government seizes property and years later wants to transfer it, it may do so.

Admittedly, the “unrelated” language creates a subjective standard, but it should be a very tough standard to meet.

- *Overturing the Federal Express Case*: This sentence also is designed to ensure that the Federal Express case is overturned.

- **Sentence 3**: *Public use may include the taking of property to address blight only when the physical condition of the specific parcel of property poses a concrete threat to health or safety.*

This sentence expressly addresses the blight issue. There are two specific problems with blight laws. First, the laws do not require that a specific property be blighted, and the definition of blight is too broad. This language addresses these problems. It also is not that different from North Carolina’s amended blight statute, although it strengthens the definition of blight.

- **Sentence 4**: *Just compensation shall be paid to property owners and shall include loss of business goodwill, relocation costs, reasonable attorneys fees, and other costs necessary to put the property owners in the same position they would have been in had their properties not been taken.*

This sentence defines just compensation to make property owners whole.

- **Sentence 5**: *If demanded, a jury shall determine just compensation.*

This sentence clarifies that a jury can decide just compensation. This language has been included in both amendments passed by the North Carolina House.<sup>30</sup>

- **Sentence 6**: *Condemnors shall prove by clear and convincing evidence that a taking is for a public use and that compensation is just.*

This sentence creates the much-needed burden-of-proof language. This language is very important because the government can often identify a pretext for seizing private property, and courts will allow it.

It ensures that courts will not allow the fake reasons for seizing property. Two of the states that passed amendments in 2006 have burden-of-proof language (Michigan and Nevada).<sup>31</sup>

This language becomes an absolute must if the prohibition on takings requires courts to look at the intent of the takings.

## Conclusion

Constitutional amendments should be enacted only when there is a significant issue that must be addressed. The need for an eminent domain amendment is clear, and the issue certainly is significant. The legislature would not be creating new rights but instead preserving the rights that North Carolinians already are supposed to possess.

There will only be one bite at the apple, though, if an amendment becomes law — it will be very difficult to address eminent domain abuse through an amendment again, at least for the foreseeable future. That means the legislature needs to get the amendment correct and not push an amendment simply to get something through to claim a hollow, political victory. The North Carolina legislature has a chance to make a real difference this upcoming term when it comes to eminent domain abuse and should take advantage of the unique opportunity.

*Daren Bakst, J.D., LL.M., is Director of Legal and Regulatory Studies at the John Locke Foundation.*

## End Notes

1. North Carolina House Bill 1659, 2010, [www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2009&BillID=H1659](http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2009&BillID=H1659); North Carolina House Bill 878, 2007, [www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=H878](http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=H878).
2. *Ibid.*
3. For example, the amendments did not prohibit all takings for private use and did not prohibit the government from doing end runs around a prohibition against takings for economic development, such as through the abuse of blight laws.
4. North Carolina House Bill 8, 2011, [www.ncga.state.nc.us/Sessions/2011/Bills/House/HTML/H8v0.html](http://www.ncga.state.nc.us/Sessions/2011/Bills/House/HTML/H8v0.html).
5. *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), [laws.findlaw.com/us/000/04-108.html](http://laws.findlaw.com/us/000/04-108.html).
6. *Ibid.*
7. North Carolina Constitution, Article XIII, § 4.
8. See e.g. *Bailey v. State*, 348 N.C. 130 (1998), citing *Long v. City of Charlotte*, 306 N.C. 187, 195, 293 S.E.2d 101, 107 (1982):  
*Every state constitution, except North Carolina's, contains similar provisions prohibiting the taking of private property for public use without just compensation. While North Carolina does not have an express constitutional provision against the "taking" or "damaging" of private property for public use without payment of just compensation, this Court has allowed recovery for a taking on constitutional as well as common law principles. We recognize the fundamental right to just compensation as so grounded in natural law and justice that it is part of the fundamental law of this State, and imposes upon a governmental agency taking private property for public use a correlative duty to make just compensation to the owner of the property taken. This principle is considered in North Carolina as an integral part of "the law of the land" within the meaning of Article I, Section 19 of our State Constitution.*
9. *Ibid.*
10. *Piedmont Triad Airport Authority v. Urbine*, 354 N.C. 336, 554 S.E.2d 331 (2001).
11. *Ibid.*
12. *Ibid.*
13. David Ranii and Bruce Sicheloff, "Rail is stalled, but developer soldiers on," *The News & Observer* (Raleigh), Aug. 30, 2006; there also is a draft agreement that this author has on file.
14. "Triangle Regional Rail System to Take New Direction: TTA Removes Planned Rail System from Federal New Starts Process," Triangle Transit Authority press release, August 18, 2006; see also Daren Bakst "Riding the Eminent Domain Rail," John Locke Foundation *Spotlight* No. 296, Sept. 22, 2006, [www.johnlocke.org/research/show/spotlights/143](http://www.johnlocke.org/research/show/spotlights/143).
15. Triangle Transit Authority Board of Trustees, Meeting Minutes, Sept. 27, 2006, [www.ridetta.org/Inside\\_TTA/Board\\_Of\\_Trustees/documents/BOT\\_Minutes\\_September27\\_2006.pdf](http://www.ridetta.org/Inside_TTA/Board_Of_Trustees/documents/BOT_Minutes_September27_2006.pdf).
16. Written comments of Daren Bakst prepared for the Triangle Transit Authority Board of Trustees meeting, Sept. 27, 2006.
17. *Op. cit.*, note 15.
18. Triangle Transit Authority Board of Trustees, Meeting Minutes, May 23, 2007, [www.ridetta.org/Inside\\_TTA/Board\\_Of\\_Trustees/documents/BOT\\_Minutes\\_May23\\_2007.pdf](http://www.ridetta.org/Inside_TTA/Board_Of_Trustees/documents/BOT_Minutes_May23_2007.pdf).
19. Daren Bakst, "A Threat to Private Property: N.C.'s Broad and Subjective Urban Redevelopment Law," John Locke Foundation *Spotlight* No. 279, February 6, 2006, [www.johnlocke.org/research/show/spotlights/143](http://www.johnlocke.org/research/show/spotlights/143).
20. *Ibid.*
21. S.L. 2006-224 (HB 1965), [www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H1965v6.html](http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H1965v6.html).
22. The following comes from Daren Bakst, "Eminent Domain in NC: The Case for Real Reform," John Locke Foundation *Policy Report*, May 2007, [www.johnlocke.org/acrobat/policyReports/eminentdomainnc.pdf](http://www.johnlocke.org/acrobat/policyReports/eminentdomainnc.pdf):  
*Takings for blight are allowed, for instance, if it can be shown that a parcel of property by reason of its age substantially impairs the sound growth of the community and is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, and is*



detrimental to the public health, safety, morals, or welfare. That may sound like a tough standard, but it is not.

Courts give the government significant deference in determining issues regarding blight— which spells trouble for property owners when a blight law is overbroad.

According to North Carolina's amended blight law, the government has to overcome three hurdles. First, the government may take property based on a subjective decision as to whether sound growth is substantially impaired in a community by the parcel of property. If a community is experiencing economic growth, the government might still be able to take the property because "sound growth," not economic growth in general, has to be substantially impaired. Besides this hurdle applying economic development factors to determine blight, which should be impermissible, it also is an easy standard to meet — properties that are in communities that are growing economically could be taken.

The second hurdle, which would appear to be the toughest for the government, deals with the long list of conditions, which includes ill health and transmission of disease, among others. However, the law does not say that these conditions actually have to exist or will likely exist in the future, only that the property is conducive to these conditions — which could mean almost anything.

The third hurdle is the easiest to meet. It requires that the property be detrimental to the public health, safety, morals, or welfare. If the "or" was an "and," this might offer some protection, but taking property because it hurts "public welfare" is so broad that it also could mean almost anything.

23. Paul Chesser, "Will TTA use eminent domain?" *Carolina Journal*, Sept. 27, 2006, [www.carolinajournal.com/exclusives/display\\_exclusive.html?id=3604](http://www.carolinajournal.com/exclusives/display_exclusive.html?id=3604).
24. *Op. cit.*, note 18.
25. *Agenda 2010*, "Eminent Domain," John Locke Foundation, [www.johnlocke.org/agenda2010/eminentdomain.html](http://www.johnlocke.org/agenda2010/eminentdomain.html), citing the Castle Coalition.
26. *Ibid.*
27. "The *Kelo* Decision: Investigating Takings of Homes and Other Private Property," Testimony of Hilary O. Shelton before the Senate Judiciary Committee, Sept. 20, 2005, [judiciary.senate.gov/testimony.cfm?id=1612&wit\\_id=4660](http://judiciary.senate.gov/testimony.cfm?id=1612&wit_id=4660).
28. Fullilove, Mindy Thomas, "Eminent Domain & African Americans," Institute for Justice, *Perspectives on Eminent Domain Abuse* series, Vol. 1.
29. Louisiana Senate Bill No.1, Regular Session, 2006, [www.legis.state.la.us/billdata/streamdocument.asp?did=407125](http://www.legis.state.la.us/billdata/streamdocument.asp?did=407125); Nevada State Question No. 2, 2006, [www.law.georgetown.edu/gelpi/current\\_research/documents/ED\\_Leg\\_Nevada.pdf](http://www.law.georgetown.edu/gelpi/current_research/documents/ED_Leg_Nevada.pdf).
30. *Op. cit.*, note 1.
31. Michigan Proposal 06-4, 2006, see, e.g., this summary of the ballot measure: [www.house.mi.gov/hfa/PDFs/Ballot%20Prop4\\_2006.pdf](http://www.house.mi.gov/hfa/PDFs/Ballot%20Prop4_2006.pdf); Nevada State Question No. 2, 2006, [www.law.georgetown.edu/gelpi/current\\_research/documents/ED\\_Leg\\_Nevada.pdf](http://www.law.georgetown.edu/gelpi/current_research/documents/ED_Leg_Nevada.pdf).