

Freedom Matters

A News & Opinion Paper

Dane County, Wisconsin

Preserving Property Rights

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Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

Proposal to Restore Property Rights in Wisconsin – AB 675 by Rep. Albers

by Bob Bowman

Freedom Matters interrupts its account of the leftist-induced debacle in county comprehensive planning in Dane County, to bring its readers news of property rights developments on the state legislative front. This past Wednesday (Sep. 21), hearings were held on Assembly Bill 675, introduced by Rep. Sheryl Albers, that would enact a Wisconsin version of Oregon's Measure 37, to provide for the compensation of property owners for regulatory takings of land use value.

The bill provides that a landowner may file a claim for loss of property value due to regulatory prohibition on its use where well-established, rational reasons of public health, safety and protection from nuisance do not exist to justify such prohibition. In other words, if the regulation is merely to protect "farmland" or "open space" or "viewshed" or "environmentally sensitive areas," etc., the costs of which noble goals should be borne by all citizens, not merely by landowners, this legislation will ensure that the cost indeed is borne by all.

A pdf copy of AB 675 can be obtained from the State of Wisconsin's web site (click on "government," then on "legislature" and enter the bill number where asked). We will also post it on our web site (see bottom of page).

Make no mistake that this bill will be viciously opposed by the political left; it is already happening. We have inherited a political era in which theft of property value by our government has been condoned by the very judiciary charged in our constitution with preventing it. This political war is by no means over. The recent Kelo decision by the U.S. Supreme Court is a notorious example of this kleptocratic corruption in our judiciary.

For a modern expression of the original and classical meaning of our constitutional rights, a particularly brilliant voice is that of Richard Epstein, Professor of Law at the University of Chicago and a Fellow at the Hoover Institution. His first column of a weekly series titled "Rule of Law" in the Wall Street Journal appeared September 17, in which his capstone comment is: "We cannot wring a New Deal activist state out of our Lockean Constitution." He earlier wrote a profound account of the regrettable and injudicious Kelo decision in the Wall Street Journal (June 27, 2005).

Perhaps the only bright spot in the Kelo decision was the Supreme Court's declaration that states could protect property rights from their Kelo decision. That also is now underway in a number of states, including Wisconsin. AB 657 by Rep. Mary Williams is designed to prevent the abuses of the Kelo decision.

Read De Soto's *Mystery of Capital*, the chapter on the history of property rights in the U.S.A., to see that local insistence on property rights has historically driven the U.S. Supreme Court to protect those rights. It was only from the 1920's onward that local complacency, and not a little local foolishness, gave up so much of the strong property rights protection that was the foundation for the prodigious prosperity of our nation. (See *Freedom Matters*, vol. 3, issues 4 and 5 for a review of it.)

Following are two examples of the kind of local opposition that these bills face. The issues of AB 675 were the topic of a discussion panel at this year's Wisconsin Counties Association convention. One of the panelists was Prof. Steven Born, U.W.-Madison. He compared ownership of land to the ownership of slaves, and argued that just as our nation evolved away from slaves as property, we are now evolving away from land as property. In a word, we are evolving away from private citizens having any ownership of land. This was reported to me by Jay Verhulst, Vilas County Supervisor and Executive Director of Citizens for Fair Zoning, who attended and also spoke in that discussion.

Verhulst also provided *Freedom Matters* a copy of testimony by Lisa McKinnon, Policy Director of *1000 Friends of Wisconsin*, an environmentalist organization patterned after a similar one in the State of Oregon. This testimony was given at the hearing on AB 675. She argued that AB 675 would stymie "the necessary ability of a government to do land use regulation." Regarding the latter, she says, "We think that these type of decisions should be addressed and made, instead, through a solid planning and decision-making process that includes landowners on the front end."

This is the first time I have ever seen *1000 Friends* concerned to involve landowners. It also begs the fact that the law does not allow the kind of harm to adjacent property that she raises as a bogey man. Finally, she ignores economics, which demonstrates by both theory and data that government is incapable of solid planning and decision-making involving the economic matrix based on land use. That's the fight we face.

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