



Privatization Watch

Celebrating 30 Years of Privatization and Government Reform

Vol. 30, No. 2 2006



Contents

How to Create a Housing Crisis...2
Privatization Briefs... 3
Higher Impact Fees in Raleigh...5
Property Rights Trailblazer...6

Urban Homestead Zones...7
Protecting Landowners...8
States Take Action on Takings...10
Adding FAST Lanes in Milwaukee...11

Poor Marks for Early Education...12
Detroit's Peers Are Privatizing ...12
Negotiating Transit in Pittsburgh and Denver...13
Who, What, Where... 16

Privatization Watch

Editor



Ted Balaker (ted.balaker@reason.org)

Balaker is co-author (with Samuel R. Staley) of a new book about mobility and congestion (Rowman & Littlefield, fall 2006).

Managing Editor



Leonard Gilroy (leonard.gilroy@reason.org) Leonard Gilroy, a certified planner (AICP), researches housing, urban growth, privatization, and government reform.

Staff Writers

Shikha Dalmia (shikha.dalmia@reason.org)

George Passantino (george.passantino@reason.org)

Robert W. Poole, Jr. (bob.poole@reason.org)

Geoffrey F. Segal (geoffrey.segal@reason.org)

Lisa Snell (lisa.snell@reason.org)

Samuel R. Staley (sam.staley@reason.org)

Adam B. Summers (adam.summers@reason.org)

Steven Titch (steven.titch@reason.org)

Vice President, Reason Foundation



Adrian T. Moore (adrian.moore@reason.org)

Frequently cited by journalists and sought after by policymakers, Moore is one of privatization's leading authorities.

President, Reason Foundation



David Nott (david.nott@reason.org) Nott leads

Reason Foundation, a national organization dedicated to advancing a free society through the promotion of choice and competition.



Published by Reason Foundation

3415 S. Sepulveda Blvd., Suite 400 ■

Los Angeles, CA 90034 ■

800/582-2245; 310/391-4395 (fax) ■

www.reason.org ■

Copyright © 2006 Reason Foundation. All rights reserved.

How to Create a Housing Crisis

Relaxing Growth Management Rules Can Remove Obstacles, Reduce Housing Shortage

By Leonard Gilroy



Contrary to popular belief, California's skyrocketing housing prices—with a median single-family home price of \$548,400 last year, compared to \$215,000 nationally—are not due to greedy developers and homeowners charging exorbitant prices for homes: the real culprits are stringent state and local government regulations, which have increasingly placed land off limits and prevented new housing from coming on the market where it is most needed.

A new report by the Oregon-based Thoreau Institute concludes that housing costs in California and many other parts of the country have been steadily driven up by a housing supply crunch caused by urban planning and land use regulations aimed at controlling growth. These regulations take a variety of forms, such as urban growth boundaries that restrict development on land outside cities, limitations on building permits, cumbersome development approval processes, and numerous environmental and open space preservation rules. But they share two things in common: they make land harder to develop and they prevent new housing from keeping up with demand.

The Thoreau Institute's report estimates the costs imposed by growth management regulations on the price of a median-priced home in hundreds of metropolitan areas, and these costs are enormous. For example, regulation alone added over \$850,000 to the cost of a median-priced home (\$1.1 million in 2005) in San Francisco last year, totaling \$591 billion across the San Francisco and Oakland metro areas. Similarly, growth management tacked on \$316,000 to the cost of the median home in Los Angeles (\$463,000 in 2005), and the aggregate costs across the entire metro area total almost \$700 billion, the highest of any major U.S. metro area.

Looking at the state as a whole, regulation increased housing costs in all California metropolitan areas by a staggering \$2.7 trillion, which accounts for almost half of the nationwide total of \$5.5 trillion. Nearly \$2.5 trillion of these costs are attributable to growth management regulations in the state's coastal metro areas—like the Bay Area, Los Angeles, and San Diego—alone.

Privatization Briefs

The Death and Life of Jane Jacobs

Legendary author and urban theorist Jane Jacobs passed away in April at the age of 89. Her classic 1961 book, “The Death and Life of Great American Cities,” delivered a damning indictment of postwar city planning and urban renewal efforts, revolutionizing the way we think about and plan our cities. Given urban planners’ almost universal reverence for Jacobs, it is ironic that many have largely ignored or misinterpreted the central lesson of “Death and Life.”

Modern planners have contorted Jacobs’s beliefs in hopes of imposing their static, end-state vision of a city. They use a set of highly prescriptive policy tools—like urban growth boundaries, smart growth, and high-density development built around light-rail transit systems—to design the city they envision. They try to “create” livable cities from the ground up and micromanage urban form through regulation.

[T]hese planning trends run completely counter to Jacobs’s vision of cities... Jacobs believed the most organic and healthy communities are diverse, messy and arise out of spontaneous order, not from a scheme that tries to dictate how people should live and how neighborhoods should look.

Privatization Watch *Managing Editor Leonard Gilroy, writing in The Wall Street Journal, opinionjournal.com/la/?id=110008319.*



Jane Jacobs
1917-2006

“The main responsibility of city planning and design should be to develop ... cities that are congenial places for a great range of unofficial plans, ideas, and opportunities to flourish.”

“It’s Like an Upside-Down Bungee Jump”

That’s how Jon Logsdon of the Space Policy Institute describes what a trip into suborbital space will feel like. Tourists could be catapulted into space as early as next year and Futron, a Bethesda, Maryland-based aerospace consulting firm, estimates that revenues in the space tourism industry could exceed \$1 billion a year by 2021.

Who will be taking us into space? Space tourists already have plenty of choices.

Virginia-based Space Adventures expects to begin flights by 2008, the same year PlanetSpace plans to enter suborbital space. Oklahoma’s Rocketplane Kistler hopes to start flying



its modified Lear jets commercially by next summer. And of course there is X Prize winner Burt Rutan. His company, California-based Scaled Composites, is busy building a fleet of suborbital spaceliners for

Richard Branson’s Virgin Galactic. Branson’s company is already accepting reservations and has decided to locate its world headquarters and Mission Control in New Mexico.

Reason’s *interview with Burt Rutan is available online: reason.com/hod/tb033105.shtml*

Competition Comes to Washington

The federal government isn’t exactly known for its competitive spirit. And while the percentage of federal jobs exposed to private-sector competition is tiny, it’s not as tiny as it used to be. An April Office of Management and Budget report notes that the federal government plans to open more than 26,000 federal jobs to competition, a five-fold increase over last year. The OMB expects the competitive sourcing efforts that took place from 2003 to 2005 to yield \$5.6 billion in savings.

Unions fear such reforms, but exposing jobs to competition is a far cry from privatization. In fact, the *Federal Times* reports that federal employees won 61 percent of the 4,876 positions that were opened to competition in 2005. For more on competitive sourcing, see the Reason policy brief, *Exposing the Myths and Realities of Competitive Sourcing*, available online: reason.org/pb32.pdf. ■

Do the Suburbs Make You Fat?

By Ted Balaker



At the turn of the 20th century, officials worried about the health impact of high-density areas where infectious diseases could spread quickly. They thought America would be healthier if densities were lowered.

So should we listen to those who tell us that high-density living is better for us after all? It sure seems like the case is closed, and that everybody agrees that auto-oriented suburban lifestyles make us lazy, soft, and sickly.

A recent study seemed to challenge that assumption. In February researchers from the University of Illinois at Chicago studied 10 counties in the Chicago area and reported that the slender people were not concentrated in the densely-packed center city, but in suburban neighborhoods. However, errors in the study were discovered and once the numbers were crunched properly the salubrious effect of suburban living disappeared.

Still, other research, from institutions like the University of Michigan and the Centers for Disease Control, has associated suburbia with healthier living. And this May Australian academics found that a big backyard—that very suburban fixture—can help children stay fit. The Flinders University Achieving a Healthy Home Environment study surveyed the homes and lifestyles of 280 families from suburban areas in South Australia. Preliminary data suggest that the size and set-up of homes played a big role in determining the health of young children. Researchers discovered that children with large backyards are less likely to be overweight and inactive than those with small yards. “We found the bigger the backyard, the more active the kids,” said pediatrician Dr. Nicola Spurrier.

Yet we shouldn’t jump to the other side and assume that suburbia makes us fit. Indeed, the link between suburbia and health is so tenuous that about all we do know is that we don’t know much. In 2005 the Institute of Medicine and the Transportation Research Board conducted what is probably the most extensive analysis on the subject and found that evidence that suggests suburban sprawl makes us slothful is “currently sparse.”

Yet when discussion turns to the relationship between suburbia and health, we are so quick to assume that suburbia is bad for us. Why? One reason is the nature of news. A study that finds no link between suburbia and something horrible prob-



ably isn’t going to interest many local news directors. They’re more likely to run another segment on the cockroaches their hidden cameras spotted at local restaurants. But produce a study that reveals something dangerous and the news director’s eyes widen. A 2004 study suggested suburbanites die sooner than other people and it quickly made its way through local media outlets, as well as big-time national venues like CNN and *Newsweek*.

Evidence that suggests suburban sprawl makes us slothful is “currently sparse.”

Intuition is another reason we’re quick to assume suburbia is harmful to our health. We all know plenty of suburban couch potatoes and we recognize that suburban living can make it easy to avoid exercise. Yes tract home dwellers often substitute driving for walking, but it’s more than that. All sorts of new gadgets and products make it easier for us to do less. Today’s teenagers forget that people used to have to get up off the couch to change the TV channel. We no longer have to push our lawnmowers; we just ride them. Bags of pre-chopped salad spare us from chopping lettuce ourselves and battery-operated toothbrushes let us avoid burning another handful of calories.

It also seems intuitively obvious that city living would help offset the sloth-enabling aspects of modern life. And since they often run errands by walking, urbanites often do find it easier to incorporate activity into their everyday lives. But such an arrangement isn’t necessarily healthier.

Imagine you live in the epicenter of American urbanism, New York. After a long day at work, you hop on the subway



and travel to the station closest to your apartment. You walk from the subway station to the grocery store, buy some groceries and head home. From a health perspective, some exercise is better than none, but intensity matters too. At the end of your long day, you might be too tired to go to the health club for the type of target-heart-rate-achieving exercise that doctors say is so important. And even if you still have the energy, you might not have the time. One must also consider personal security. Depending where you live, an evening jog around the block may

not be safe in a high-density, urban neighborhood.

Contrary to conventional wisdom, commutes tend to be longer in higher density areas and how you travel also figures into how long you travel. Traveling the suburban way (by car) is usually much faster than traveling by public transit, which is more common in big cities. According to the Census Bureau, transit commuting—even in New York—typically takes twice as long as car commuting. Over the course of a month that’s an extra 16 hours that could be spent on treadmills, swimming laps or playing tennis. And so while suburban living can make it easier for us to get flabby, it can also provide us with more time to get fit.

Many researchers seem eager to find a link between sprawl and bad health, but why not study those who don’t exercise because they just don’t have enough time? The Institute of Medicine/Transportation Research Board study notes that “the role of time has not been well accounted for in examining the relationship between the built environment and physical activity.”

We should continue to investigate how our physical environment affects health, but we shouldn’t let this debate distract us from the big picture. Neighborhood design might make it a little easier or a little harder to stay in shape, but other factors, from education to income, are much more closely tied to good health. And ultimately, the key to healthy living is self-discipline, and that’s something that can be practiced anywhere.

Ted Balaker is editor of Privatization Watch and co-author (with Samuel R. Staley) of The Road More Traveled: Why the Congestion Crisis Matters More Than You Think, and What We Can Do About It (Rowman & Littlefield). ■

Raleigh Passes Major Impact Fee Increase

By Samuel R. Staley



On April 18, 2006, the Raleigh, North Carolina City Council voted 5-3 in favor of a 72 percent increase in the city’s impact fee schedule (from \$682 to \$1,172 for single-family homes). This is the first significant hike in the city’s impact fees in almost 20 years. According to Mayor Charles Meeker, the fee increase was necessary to prevent existing Raleigh taxpayers from paying the bulk of the costs for rapid growth.

Yet, a March 2006 John Locke Foundation report (johnlocke.org/acrobat/spotlights/spotlight_284_impactfee.pdf) found that the consultant’s report that serves as the basis for the increase is flawed. In fact, Raleigh has collected impact fees for nearly 20 years without conducting a comprehensive economic analysis that calculates the amount of taxes paid by the new residents or comparing them to public service costs.

Municipalities assess impact fees on new home construction to cover the costs of public service improvements associated with new development, such as new roads, infrastructure, and parks. Yet, often overlooked in the debate over impact fees are the increased property tax revenues cities collect as development converts low-value land to higher-value land. In Raleigh’s case, the city is in the position of imposing an impact fee to pay for infrastructure while simultaneously reaping large increases in property taxes that could be used for infrastructure, but are used for other purposes.

Local city and county tax revenues outpaced the public costs by nearly \$77,000 per year over a 10-year period.

The report cites a North Carolina State University report that calculates the total economic impact of constructing 100 new single-family homes and 100 multi-family housing units in the Research Triangle area. It found that local city and county tax revenues outpaced the public costs by nearly \$77,000 per year over a 10-year period. In addition, building these homes also produced \$64.7 million in new economic activity and almost 600 new jobs. The report concludes that new home construction more than pays for itself, and no impact fee is justified. ■



Property Rights Trailblazer

Interview by Leonard Gilroy



The brainchild behind Oregon's Measure 37, Oregonians in Action Executive Director David Hunnicutt, has become a tireless defender of private property rights (for more on Measure 37, see p.8, "Protecting Landowners from Regulatory Takings"). He has visited numerous states since Oregon voters passed Measure 37 in November 2004 to offer guidance on how activists and elected officials can enact regulatory takings measures across the country. He is also leading the push to get Initiative 57—which would prevent the use of eminent domain for economic development purposes—on Oregon's November 2006 ballot.

PW managing editor Leonard Gilroy interviewed Hunnicutt about the current state of the property rights movement.

Gilroy: *How has the U.S. Supreme Court's Kelo vs. New London decision affected the strategy, or the message, of addressing regulatory takings at the state level?*

Hunnicutt: I may be in the minority on this, but I think *Kelo* was the greatest thing that ever happened to the property rights movement because it really points out to people that you can't expect to rely on the courts to protect your property rights. And one of the nice things about the *Kelo* opinion is that Justice Stevens says right in the majority opinion that there's nothing that prevents states from being more protective of property rights than the Court was willing to be under the U.S. Constitution.

And as a result of that decision, it spurred legislatures across the country—and the people in the 20 or so states that have the initiative—to act. And so I would suspect that in relatively short order you'll have states passing legislation that specifically prohibits what the City of New London did to Susette Kelo in Connecticut from ever happening in that state. Prior to the *Kelo* decision and the issue being pressed forward I don't think there was a recognition among folks that aren't active in the property rights movement of the power of government to take land from Private Citizen A and give it to Private Citizen B, or to use regulation to essentially take away any ability you had to use your property, via wildlife habitat overlay zones, scenic views, historic resource designations...whatever the government decides would further the interest of the public.

Gilroy: *Do you see more of an opportunity now for combining eminent domain reform with measures to address*

In *Kelo vs. City of New London* the Supreme Court ruled that eminent domain can be used to transfer property from one private party to another for the purposes of economic development.



regulatory takings, in effect addressing both physical and regulatory takings simultaneously?

Hunnicutt: Absolutely. We call them "*Kelo* Plus" measures—eminent domain and regulatory takings reforms combined. There are a number of states—such as Arizona, California, Idaho, and Missouri—in which *Kelo* Plus measures are either being introduced in the legislature or working their way through the initiative process. The thinking is that if the people of Oregon—which is considered to be a "blue" state—can pass Measure 37, then other states ought to be able to do it too. Property ownership and the protection of property rights cross party lines and all classifications of age, race, and gender. It's really a fundamental American concept.

The only reason that the environmental community and the planning community have been able to enact the system that they have in so many states is that people haven't been paying attention. It's easy to adopt a zoning regulation that targets a select and ever-shifting minority of property owners to provide benefits for the majority. And until it actually happens to you, then it's hard to fathom the impacts that some of these planning schemes have on people.

Gilroy: *In terms of strategy, do you think that the Kelo Plus route is the way to go? Do you feel that it's more powerful to combine the two together, rather than approach the two takings issues separately?*

Hunnicutt: Absolutely. I don't think one works as well alone as they do together. As we demonstrated with Measure 37, you can have a regulatory takings measure without *Kelo* language, and I'm 99 percent sure you could pass a *Kelo* measure without regulatory takings language. But the success of both shows that if they work well alone, they'll work well together, and frankly, if your mission is to protect the rights of property owners, I don't see how you could do one without the other.

Gilroy: *In Oregon, you had an overbearing land use planning system and a sympathetic victim, Dorothy English, who is the functional equivalent of Susette Kelo in galvanizing public opinion. In other states with less visible and less oner-*

See TRAILBLAZER on Page 15

Revitalizing Cities with Urban Homestead Zones



What follows are portions of testimony Samuel R. Staley recently gave before Ohio's House Economic Development and Environment Committee. The entire testimony is available online: reason.org/commentaries/staley_20060201.shtml.

Major Program Components

Urban Homestead Zones are intended to encourage the revitalization of our inner cities. The zones would be the voluntary creation of property owners in Ohio's largest cities (the "Big 8"—Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown) and cover between 10 and 150 acres.

In order to become an Urban Homestead Zone, the area would have to be considered "blighted."

An area would be considered blighted if the following trends were evident over the last 50-years:

- The area experienced a 50 percent decline in population;
- Violent crime has increased at least 30 percent; and
- Poverty has increased 50 percent.

These zones would be allowed to take two very important independent steps that help encourage revitalization:

1. Establish a private security force, financed by a special assessment on properties within the zone; and
2. Establish a legal right to an educational voucher for households that invested in residential renovation (a minimum of \$120,000 under current legislation) that can be used to offset tuition at private schools.

Thus, the legislation directly tackles two core issues—personal safety and educational opportunity—that are critical to the revival of our central cities.

Fresh Thinking About Revitalization

Urban Homestead Zones reflect fresh thinking about urban revitalization and have the potential to give new, important tools to citizens and public officials.

I've been working in the area of urban revitalization for 20 years, beginning as a researcher examining the effects of urban enterprise zones as a graduate student at Wright State University. Since then, I have come to realize that a critical factor in revitalizing urban areas is making sure the fundamentals



Dayton, Ohio would like to be able to revitalize blighted areas with Urban Homestead Zones.

are in place. Two of the most important obstacles to retaining and attracting families in our larger cities are concerns about personal safety and the quality of education.

The concept of an Urban Homestead Zone also reflects a shift in thinking about public policy's role in revitalizing inner-city neighborhoods. Rather than use a more traditional approach emphasizing large-scale projects like sports stadiums, city-wide administered community programs, more visible marketing, or simply transferring more resources to existing city governments, the Urban Homestead Zone focuses directly on the needs, aspirations and expectations of citizens and residents (both existing and future).

Personal safety and educational opportunity are critical to the revival of our central cities.

Revitalization in established urban areas happens on an incremental scale, often through the ongoing and interconnected decisions of individuals and households. Few urban areas or inner city neighborhoods, for example, are revitalized by large-scale redevelopment of entire blocks (commercial or residential). On the contrary, revitalization happens parcel by parcel. Urban Homestead Zones recognize this process and provide a mechanism for reinforcing this dynamic.

The Urban Homestead Zone also encourages cities to think at the neighborhood level, at the kinds of personal and physical investments on the parcel level that provide a foundation for long-term, sustainable redevelopment. Central cities already have distinctive neighborhood qualities, and the homestead zones provide a way for these neighborhoods to further tailor public services to their specific needs.

Samuel Staley is director of urban and land-use policy at Reason Foundation. ■

Protecting Landowners From Regulatory Takings

Oregon's Measure 37 a Model of Reform for Other States

By Leonard Gilroy



After decades of increasingly burdensome state and local land use regulation, a majority of Oregon voters took a decisive stand in favor of property rights in November 2004 and passed Measure 37, a ballot initiative designed to provide relief to landowners whose properties have been devalued by three decades of regulation, and to protect Oregon's property owners from economic hardship that may result from future regulations.

Measure 37 requires that local governments either: (1) compensate landowners when land use restrictions reduce the value of their property (so-called "regulatory takings"), or (2) waive the restrictions and reinstate the rights that property owners had at the time they bought their land. Proponents argue that Measure 37 restores to landowners property rights that have been taken away from them by land use regulations. In this view, the regulation of private property for the public benefit should be paid by all taxpayers instead of by individual landowners.

Measure 37 also provides a check on government power by ensuring that state and local governments adequately weigh the costs and benefits of public action. In fact, Oregon's experience suggests that property rights are critical to successful planning efforts in the United States and that urban planning may not be sustainable unless it incorporates property rights into the regulatory framework.

Measure 37 specifically exempts several types of land use regulations from compensation claims, including historically recognized public nuisances, public health and safety regulations (such as building codes, health and sanitation regulations, and pollution controls), regulations enacted to comply with federal law, and regulations restricting or prohibiting pornography sales or nude dancing.

Measure 37 gives local governments 180 days from the date the owner submits a written request for compensation to process the claim and make a decision on a remedy if it finds that compensation is due. Property owners found to have successful Measure 37 claims are also entitled to reimbursement for attorney fees, expenses, and other costs associated with filing their claims. If the government has not resolved a



Citizens can take steps to protect private property rights from the expanding reach of government.

Measure 37 claim after 180 days, then the owner may file a lawsuit in the circuit court in the county in which the property is located.

Finally, Measure 37 offers much discretion to state and local governments in creating their processes for handling compensation claims, while simultaneously protecting property owners from any onerous administrative burdens (such as exorbitant claim processing fees or excessive documentation requirements) that governments may choose to impose upon Measure 37 claimants.

Exporting Measure 37 to Other States

Measure 37, and the lessons learned from both the campaign behind it and its implementation since its adoption by voters, offers a template for property rights advocates to follow in their efforts to enact meaningful regulatory takings reform in other states. Some of the issues other states will need to consider are listed below:

- **Choice of Vehicle:** Drafters will need to decide if they want to amend the state constitution or, alternatively, state statutes. Depending on state law, constitutional amendments or statutory changes may be achieved either through citizen initiative or state legislative action.
- **Combining eminent domain and regulatory takings reform:** In the wake of the U.S. Supreme Court's *Kelo* vs. New London decision defending local governments' right to take private land via eminent domain for purely private development purposes, dozens of states have taken steps toward restricting the use of eminent domain to a narrower set of justifiable circumstances. At the same time, legislators and activists in several states have indicated

interest in “Kelo-Plus” measures that combine, in one comprehensive set of statutory changes, increased protections against physical takings via eminent domain with increased protections against regulatory takings along the lines of Measure 37.

- **Retroactive or Prospective?:** Measure 37 was designed to cover both new regulations adopted by state and local governments as well as those that are already on the books. However, most states have been far less aggressive than Oregon in extending their regulatory reach through land use controls, so it may make more sense to design regulatory takings measures on a prospective basis. The concept underlying a prospective-based measure is clear and easy to understand: if government wants to adopt a regulation that reduces the value of privately owned land, then it will need to compensate landowners for that impact.

If government wants to adopt a regulation that reduces the value of privately owned land, then it will need to compensate landowners for that impact.

- **Choice of Remedy:** From a financial perspective, allowing both compensation and waivers as remedies gives the most flexibility to government in how it addresses valid regulatory takings claims. Under Measure 37, cash-strapped cities and counties have chosen to issue waivers to settle most of

the claims processed to date, ensuring that property owners are granted the rights they received when they originally bought their property, while simultaneously giving government an option to avoid monetary liability.

- **Identifying Victims of Regulatory Takings:** In terms of messaging and making an impression on voters, one of the central lessons learned from the Measure 37 campaign was that it is essential to find a human face to associate with a regulatory takings measure. Doing so offers two strategic benefits: (1) it conveys to voters that their own property rights are not immune from regulatory takings; and (2) it conveys a legitimate message about the importance of protecting the minority against the abuse of the majority.

By learning from Oregon’s experience with Measure 37, citizens, activists, and elected officials across the nation can accelerate their efforts to develop statewide regulatory takings measures aimed at protecting private property rights from the expanding reach of government and preventing landowners from being forced to bear the hidden costs associated with government regulation.

Leonard Gilroy is managing editor of Privatization Watch and a certified planner. The preceding was excerpted from the policy study, Statewide Regulatory Takings Reform: Exporting Oregon’s Measure 37 to Other States, which is available online: reason.org/ps343.pdf. ■

Debunking Measure 37 Myths

- **Myth: Measure 37 Destroys Land Use Regulation:** Measure 37 does not apply to all land use regulations, and it does not prohibit state and/or local governments from adopting laws that regulate public health and safety.
- **Myth: Measure 37 is Costly and Complex:** State and local governments have favored waiving regulations rather than compensating successful claimants, limiting the cost burden they bear under Measure 37.
- **Myth: The Measure 37 Claims Process is Arbitrary:** Opponents complain that the Measure 37 claims process is arbitrary since it provides no standards for how government decides who gets paid and who doesn’t. However, Measure 37 can be seen as an effort to correct for the unfairness that results from traditional zoning, where some property owners are limited and others are not. The measure gives every property owner exactly the same right: the right that he had to develop his property at the time he bought it.
- **Myth: Measure 37 Will Harm Agriculture:** Though most of Oregon’s County Farm Bureaus supported Measure 37, some opposed it on the basis that it would hurt farmers by leading to increased taxes and rolling back safeguards that protect Oregon farmland from over-development. But only around 6 percent of the nation is urbanized, and most states have more than three-quarters of their land devoted to rural, agricultural, and open space uses. There is little evidence to suggest that the nation or individual states face a farmland shortage or crisis.

States Take Action on Takings

By Leonard Gilroy



Property rights activists and legislators in several states are already taking steps to enact regulatory takings reform, capitalizing on the momentum generated by the successful passage of Measure 37 in Oregon in 2004 and the state Supreme Court ruling upholding Measure 37's constitutionality in February 2006. Several of these states are also combining regulatory takings reform with curbs on the use of eminent domain in what have come to be known as "Kelo-Plus" measures (see discussion in previous article).

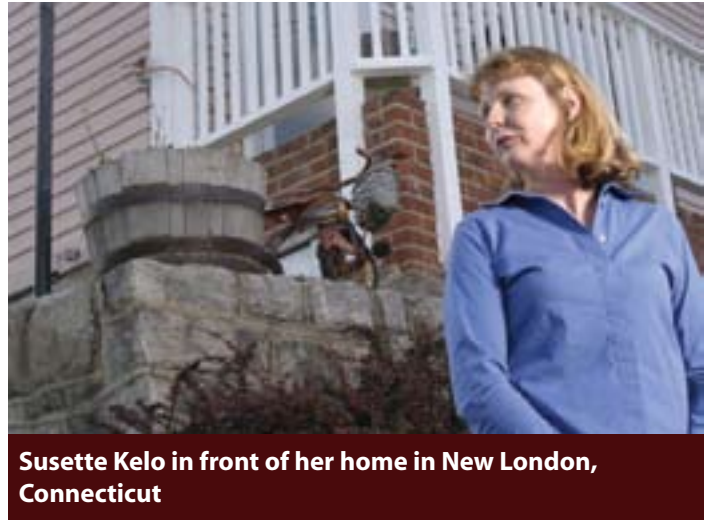
For example:

Arizona: The citizen-led Homeowners Protection Effort (HOPE) is gathering petitions to place a property rights protection initiative on the November 2006 ballot. The initiative would stop local governments from using eminent domain to take private property for private development in order to generate more tax revenue. It would also give property owners an opportunity to seek compensation when government adopts land use regulations that decrease their property's fair market value.

California: Property rights activists in California gathered enough signatures to place the "Protect Our Homes Act" on the November 2006 ballot. This initiative would amend the state Constitution to tighten the rules on the use of eminent domain and ensure just compensation to landowners whose properties have been devalued through government regulatory actions.

Georgia: Senate Resolution 1040 (S.R. 1040) passed the Senate Judiciary Committee on March 3, 2006. S.R. 1040 would create a constitutional amendment authorizing the General Assembly to pass a bill in 2007 requiring local governments to pay compensation to property owners for the imposition of "unreasonably burdensome governmental actions," including land use and zoning regulations.

Idaho: Citizens in Idaho gathered enough signatures to place the Idaho Private Property Rights Protection Initiative on the November 2006 ballot. Similar to Measure 37, the Initiative would provide just compensation when a government entity reduces one's home or property values through zoning and other land use regulations. It would also limit governments' ability to take one's property and give it to another private party or person.



Susette Kelo in front of her home in New London, Connecticut

Missouri: The supporters of two competing citizen initiatives aimed at curbing eminent domain abuse face a May 9, 2006 deadline for collecting the signatures necessary to get these initiatives placed on the November ballot. One of these initiatives, a constitutional amendment proposed by the group Missourians in Charge, would restrict the use of eminent domain while also providing compensation to landowners whose property values decline because of government regulations enacted after October 7, 2006.

Montana: Citizens are currently collecting signatures to place Initiative 154 (I-154) on the November ballot. I-154 would require state and local governments to compensate property owners for diminished value resulting from a regulation enacted after the acquisition of their property, unless the government repeals the regulation or waives its application for the affected property. I-154 would also prohibit the government condemnation of private property if it intends to transfer an interest in the condemned property to a different private party.

South Carolina: On March 15, 2006, the state House approved two bills that limit governments' ability to take property. By an overwhelming vote, the House approved H.B. 4503, which tightens state statutes governing the exercise of the eminent domain power and includes a provision that requires local governments to compensate landowners if new regulations decrease private property values. The regulatory takings provision was stripped from a companion bill, H.B. 4502, which would place a constitutional amendment on the ballot in November.

Washington: In February 2006, the Washington Farm Bureau filed final language with the Secretary of State's Office

See TAKINGS on Page 15

Adding FAST Lanes to Milwaukee's Freeways

Congestion Relief, Improved Transit, and Help with Funding Reconstruction

By Robert W. Poole, Jr. and Kevin Soucie



Greater Milwaukee has a large and growing problem of traffic congestion. This report proposes that on the most congested core portion of the rebuilt freeway system, the inner lane in each direction be configured as a “FAST Lane,” on which traffic always flows at the freeway speed limit thanks to variable pricing—adjusting tolls to maintain free-flow traffic conditions. The use of pricing means there will be tolls, but no toll booths. The variable tolls will be charged electronically, via transponder. There is no need for stopping, slowing down, or using coins. Nearly a decade of experience with such priced lanes on two California freeways shows that variable pricing works well to keep such lanes flowing freely, at the speed limit, during highly congested peak periods. The pricing also generates revenue that more than covers the cost of constructing the FAST Lanes.

FAST Lanes assure motorists that no matter how bad traffic gets, they will always have a relief-valve available when they really need it. Some have begun to call this concept “congestion insurance.” Just as people purchase insurance to guard them against life’s other hazards (fire, theft, accidents), with a network of FAST Lanes they will be able to purchase insurance to guard them against being late. The initial cost of this “insurance” is very low: simply the cost of opening an account and installing a transponder on the car’s windshield. From that point on, account-holders have the peace of mind that whenever they are running late and really need to be somewhere on time, they have a means of buying that faster trip for a price that is lower than the cost of being late. This will always be true since it will be the individual driver who chooses whether or not to pay for a specific trip. Data from the long-established California HOT lanes support the premise that most people don’t use these lanes every day (which for most would be quite costly). Rather, the overwhelming majority uses the lanes in the “congestion insurance” mode, once or twice a week. Data also show that the system is popular with people of all income levels, so all segments of society benefit from the availability of FAST Lanes.

The proposed FAST Lanes system would encompass the

FAST Lanes assure motorists that no matter how bad traffic gets, they will always have a relief-valve available when they really need it.



approaches to downtown on I-94 from the south and west, on I-43 and US 45 from the north, plus the inner core of freeways near downtown (I-894 and I-94/43). This is the portion of the freeway system where congestion is projected to be the worst, even after the widening of the Marquette Interchange. It is consequently the area where relief is most needed and where willingness to pay to avoid congestion will be greatest. Our proposed construction phasing of the FAST Lanes is designed to get the highest revenue-producing segments in operation first.

Our analysis projects traffic on the freeways and on the FAST Lanes segments through 2045. Based on a starting rush-hour toll equivalent to 15 cents/mile (in 2005 dollars), we estimate that the proposed FAST Lanes would generate enough revenues to support a toll revenue bond issue of about \$1 billion. To put it in perspective, that kind of new voluntary (non-tax) revenue could finance the cost of rebuilding the entire Marquette Interchange with money left over. It certainly would make a significant contribution toward the \$6.2 billion cost of the overall freeway reconstruction program.

FAST Lanes also provide uncongested guideways for express buses, enabling Freeway Flyers, UBUSes (University Buses) and other transit services to operate faster, more efficiently, and more reliably than on regular, congested freeway lanes. Restoration of the time-savings advantage can help transit recapture some of its lost share of the commuter market. In addition, FAST Lanes will provide a greatly improved means for emergency vehicles to reach the scene of incidents, or to get to the portion of the metro area where they need to be, in significantly less time.

Robert W. Poole, Jr. is Reason Foundation's Director of Transportation Studies. He has advised the last four White Houses on transportation policy issues. Kevin Soucie is a consultant on transportation policy and government affairs with Milwaukee-based Soucie & Associates. The preceding was excerpted from a Reason policy study, which is available online: reason.org/ps342_FASTlanes.pdf. ■

Poor Marks for Early Education

By Darcy Olsen with Lisa Snell



From Arizona to Virginia, proposals for universal preschool and all-day kindergarten are an increasingly popular policy solution for everything from low academic achievement, to reducing crime, to lowering the dropout rate.

Universal preschool advocates argue that early schooling improves academic achievement and offers children long-term academic and economic benefits. Yet the evidence supporting those claims is unfounded.

To help determine the efficacy of early education programs, we examined the results of some of the programs considered to be education models—including Perry Preschool, Chicago Child Parent Studies, Abecedarian, and Head Start—and found the research to be flawed and therefore of questionable value. We reviewed information from the National Center for Educational Statistics, which reports no lasting reading, math, or science achievement differences between children who attend half-day and full-day kindergarten. We also examined the results of the National Assessment of Education Progress in Georgia and Oklahoma, where universal preschool has been fully implemented without quantifiable benefit. Based on our research, we conclude that the widespread adoption of preschool and full-day kindergarten is unlikely to improve student achievement.

America's flexible approach to early education gives children a strong foundation. Skills assessment at kindergarten entry and reports by kindergarten teachers show a large and increasing majority of preschoolers are prepared for kindergarten. The effectiveness of the current system is also evident in early test scores. At age 10, U.S. children have higher reading, math, and science scores than their European peers who attend government preschools cited by advocates as models for the United States. To the degree that the state remains involved in financing early education, we recommend measures for transparency, program assessment, and improved flexibility through individual student funding.

*Darcy Olsen is President of the Goldwater Institute, an Arizona-based research organization. Lisa Snell directs the Education Program at Reason Foundation. The preceding was excerpted from the Reason study, *Assessing Proposals for Preschool and Kindergarten: Essential Information for Parents, Taxpayers, and Policymakers*. The entire study is available online: reason.org/ps344_universalpreschool.pdf. ■*

Attention Detroit: Your Peers Are Privatizing

By Geoffrey F. Segal



Detroit Mayor Kwame Kilpatrick recently suggested that his peers aren't privatizing, that they're choosing to beef up in-house operations instead. But the opposite is true: big-city mayors of both parties have warmed to privatization.

When Democrat Ed Rendell, the governor of Pennsylvania, was mayor of Philadelphia, he privatized 49 city services, saving \$275 million. The list of services privatized included golf courses and print shops to parking garages and prison services. By privatizing one nursing home, for instance, the city saved nearly \$27 million—a 54 percent reduction.

Indianapolis is often considered the leader in competition and privatization. As mayor, Stephen Goldsmith, a Republican, solicited competitive bids on dozens of services. Public employees managed to keep some services—but at huge savings to city taxpayers. Privatizing the city's sewer plant saved \$68 million, a 44 percent cut, and Indianapolis saves \$15 million annually by privatizing trash collection.

For the time being, Kilpatrick has dismissed privatized trash collection, but private trash collectors are often more productive than their public counterparts because they use larger, more automated trucks that cut personnel, operating and capital costs. No wonder fewer than half of all local governments provide waste services to their residents through a government-operated solid-waste department.

Former Cleveland Mayor Michael White, a Democrat, launched "Cleveland Competes" to allow private vendors to bid on contracts, including downtown trash collection, pothole repair, and payroll services, resulting in millions of dollars in savings. Milwaukee, Jersey City, N.J., and Atlanta have posted similar results.

Chicago's Democratic Mayor Richard Daley has privatized more than 40 services. In fact, he was so satisfied after the privatization of Skyway, one of Chicago's major highways, that he is lobbying for similar deals for city-owned parking lots and the Midway airport. Nearly every service, short of police and fire, has been successfully privatized by a government.

And of course, there is New York's Rudy Giuliani. He pushed through 66 privatization initiatives, saving the Big Apple \$6.2 billion during his eight years in office (See *PW* interview "If It Can Make It There, It Can Make It Anywhere," reason.org/pwvol29no4.pdf).

Geoffrey Segal is Reason's Director of Privatization and Government Reform. ■

Different Planets: Transit Labor Negotiations in Pittsburgh and Denver

By Eric Montarti and Jake Haulk

In response to the recent strike by mass transit workers in Denver, the governor of Colorado made this statement: “Public employees have a public responsibility. I urge them to return to work immediately. And, if not, and the strike continues, I encourage [Denver’s mass transit agency] to consider privatizing more of its bus routes.”

Strong words, indeed. But since there is a history of using private contractors to provide mass transit in the Mile High City with positive results, expanding privatization is an entirely possible option.

We have previously written on the valuable lessons Denver’s mass transit system could provide for the Port Authority and other systems in Pennsylvania. The Colorado governor’s position on the strike could be added to that list of lessons.

In brief, the Denver Regional Transportation District (RTD) has contracted with private operators to drive a percentage of its fixed route bus service since 1988. After subsequent amendments to the state law that mandated privatization, Denver now contracts out about 50 percent of all “rubber tire” service. And, very importantly, the 45 percent of bus service provided by private contractors continued to operate during the strike, much to the good fortune of Denver’s riders.

Besides the continuity of service, the savings and improvements in service generated by privatized service are substantial. In-house RTD drivers earned significantly more than contracted drivers, even before the strike. And the wage progression is much more rapid for the RTD drivers than for the contractors. Those wage differences, when combined with the other costs of operating the transit system, help to explain why the hourly operations cost of contracted service is more than \$10 less than the RTD-provided service.

And, as noted by Colorado’s Independence Institute, the savings provided by contractors are achieved even though they are subject to pay taxes on fuel, sales, property, and fees that the RTD does not have to pay. Clearly, the need for contractors to compete for work requires them to meticulously focus on the bottom line, and that has resulted in substantial cost efficiencies.

However, the RTD is not immune from the same pressures as publicly-operated transit systems around the country. Thus, they strike over wages for drivers and mechanics in the publicly provided portion of service.

The Colorado governor’s statement is not just empty rhetoric, owing to the fact that the RTD is free to privatize as much non-rail service as it likes. The 50 percent statutory requirement is not a maximum threshold. So when there is talk about moving more routes to the private sector, it could become reality.

True, the law does not allow the RTD to lay off drivers; all replacements through outsourcing must be done through attrition. Still, if the RTD board resists giving overly generous wage and benefit increases, it seems likely that retirements will increase, allowing an even greater percentage of service to be contracted out.

Compare that with the situation in Pittsburgh late last year. The Port Authority’s contract offer called for outsourcing 20 percent of bus routes and maintenance. Yet the union characterized that as “giving away their work” and resisted. An impasse resulted and a strike appeared inevitable.

But that did not happen. At the eleventh hour Governor Rendell and County Executive Onorato arrived on the scene and the contract impasse was resolved with the union getting virtually all it wanted, including a “no outsourcing” provision in the new contract. It is extremely doubtful that the issue will ever be broached again in future contract negotiations. Could we imagine a situation where either of these elected officials would have instructed Port Authority’s board to increase the level of proposed outsourcing in the contract to force a settlement? The fact that we can’t is the clearest indication of the gap between a successful state and one that is trapped in below-average performance.

The legislature could make changes to the Port Authority Act to forbid disruptive transit strikes and mandate privatization of portions of the system. But that would mean taking on the state’s most powerful special interests whose continued political imperialism is undermining the Commonwealth’s economic future. Indeed, the state looks more and more like France as public sector unions ride roughshod over taxpayers, both individuals and businesses.

Eric Montarti is a policy analyst with the Pennsylvania-based Allegheny Institute, and Jake Haulk, Ph.D is president of the Allegheny Institute. This article was originally published as a policy brief by the Allegheny Institute for Public Policy. ■



Continued from Page 2
HOUSING CRISIS

Who pays the costs of these regulations? While the community-at-large ostensibly reaps the benefits of local growth management regulation, the costs are largely borne by individual homebuyers who pay artificially inflated housing prices.

Another unintended outcome of growth management regulations is the disproportionate effect on first-time homebuyers, particularly minorities and low-income families. By limiting the supply and raising the costs of housing, these regulations act to price a significant portion of families out of the housing market and erect a barrier to achieving the American Dream of homeownership and wealth generation.

While homeownership is at a record high—almost 70 percent—nationally, the study found that the homeownership rate in California lags behind at 57 percent.

A recent study by the California Building Industry Association (CBIA) puts homeownership in California in perspective. While homeownership is at a record high—almost 70 percent—nationally, the study found that the homeownership rate in California lags behind at 57 percent. Most states have homeownership rates well over 60 percent, and only New York State had a lower homeownership rate than California. The study also found that African-Americans and non-Hispanic whites have far lower homeownership rates, 38.8 percent and 62.6 percent respectively, in California than they do in the rest of the nation.

The CBIA study concludes that if California’s current homeownership rate was increased to the national average of 70 percent, more than 1.6 million additional California families would own homes. Yet, to achieve this rate would require the creation of 81,000 new housing units per year over the next 20 years, an almost impossible feat given California’s current regulatory climate. And this figure does not even account for future population growth, which will steadily add to the demand for new housing.

The only realistic way for California to begin to produce the massive quantities of new housing needed to address the supply-demand imbalance and reduce housing costs is for state and local governments to remove regulatory obstacles to new housing and ensure a sufficient supply of developable land to meet long-term housing needs.

This is no small task. Current homeowners have a strong

incentive to maintain their high property values by keeping a tight rein on new development. California law gives citizens a strong voice in local planning decisions, and in many areas, citizens have successfully used the ballot box to impose strict local growth limits. Likewise, California’s strong environmental lobby is heavily invested in current policies aimed at controlling growth and restricting development and will likely resist any effort to relax growth controls.

The key to California’s future is increasing the awareness on the part of politicians and citizens of the high costs of the state’s current approach to growth management and the severe economic impact on millions of families. Without strengthening the political will to radically revamp growth management in California, we will face the danger of killing the goose that laid the Golden State. ■



Housing Crunch: America’s Least Affordable Metro Areas (1st Quarter 2006)

Rank	Metro Area	Share of Affordable for Median Income Family	Median Family Income (000s)	Median Sales Price (000s)
	National Average	41.3	59.6	250
1.	Los Angeles-Long Beach-Glendale, CA	1.9	56.2	500
2.	Santa Ana-Anaheim-Irvine, CA	2.5	78.3	608
3.	Santa Barbara-Santa Maria, CA	3.2	65.8	580
4.	Modesto, CA	3.9	54.4	380
5.	Salinas, CA	5.0	62.2	600
6.	San Diego-Carlsbad-San Marcos, CA	5.2	64.9	491
7.	Merced, CA	5.5	46.4	365
8.	Napa, CA	5.8	75.0	600
9.	Santa Cruz-Watsonville, CA	5.9	75.1	672
10.	New York-White Plains-Wayne, NY-NJ	6.1	59.2	472
10.	Nassau-Suffolk, NY	6.1	91.0	475

Source: NAHB/Wells Fargo Housing Opportunity Index.

Continued from Page 10

TAKINGS

for Initiative 933 (the “Property Fairness Act”) that would require state and local government to compensate landowners when regulations “damage the use or value” of private property. While it bears some similarity with Measure 37, Initiative 933 would go further by requiring agencies and local governments to detail any “actual harm or public nuisance” that proposed regulations are designed to stop or prevent, the extent to which they affect private property owners, and whether the goals of the proposed regulations could be achieved by less restrictive means, such as voluntary programs with willing property owners.

Under the initiative, property owners would be entitled to waivers or compensation for restrictions imposed any time after January 1, 2006. In July, Initiative 933 supporters submitted 315,000 signatures supporting the measure to the Secretary of State’s office, which, if verified, will qualify the measure for the November 2006 ballot.

Wisconsin: In March 2006, the Wisconsin Assembly passed AB 675 by a vote of 56-40, creating a process for a property owner to seek compensation from a municipality when the value of his property is reduced due to the imposition of land use regulations. The bill, introduced by Rep. Sheryl Albers (R-Reedsburg), is modeled after Oregon’s Measure 37. It has been sent to the Senate and referred to the Senate Committee on Housing and Financial Institutions. ■

Continued from Page 6

TRAILBLAZER

ous planning systems, is it likely to expect a landowner stifled by his county planning board to become such a galvanizing force in building public support?

Hunnicutt: Actually, the problem is so pervasive that you can go into the bluest of blue states and find people that have suffered from regulatory takings. We occupy the moral high ground on this issue. The public is with us if they understand the issue, and it’s an issue that’s easy to communicate. Most people either own their own home or they want to own their own property at some point in their lives. So the concept of private ownership of real property is a fundamental part of our society. People get it.

Gilroy: *Looking out five to ten years from now, where do you see the national property rights movement?*

Hunnicutt: I see this measure being enacted in at least 10 states, probably more. The more states that have positive experiences, the easier it will be for states that are on the fence to take the leap. I don’t see the effort by the folks who want to regulate ever diminishing. I just see the push getting stronger across the country as more and more people are subjected to regulations that take value from their land. Here in Oregon we allowed it go on for the better part of three decades before people did something about it. But in other states, I don’t think people will wait that long, and they’ll have our experience to learn from. I think we started the ball rolling. ■

SPEAKING OF PW

“Privatization Watch is an inspiration ... [a] dose of cold sense ... The charm of Privatization Watch is that it is not merely abstract good thinking. It also recounts the experiences of diverse nations ... Reason’s admirable publication is not just for the affluent West. I think privatisation is at its most noble and perhaps most subversive in a Third World damaged by aid. Good intentions in Westminster or Washington crumble to dust in Africa. Only the Swiss banks profit from the millions of aid dollars that pass fleetingly through corrupt tyrannies.”

—**John Blundell, Director General of the Institute of Economic Affairs, writing in *The Business* (UK).**

Learn more about IEA: www.iea.org.uk

Tell us what you think of *Privatization Watch*: ted.balaker@reason.org



Who, What, Where

Reason Studies

Statewide Regulatory Takings Reform: Exporting Oregon's Measure 37 to Other States, Leonard C. Gilroy, Policy Study No. 343: reason.org/ps343.pdf

New Approaches to Affordable Housing, Chris Fiscelli: reason.org/update20_affordablehousing.pdf

Restricting Eminent Domain: Model State Statutory Language & Local Ordinance/Charter Provision: reason.org/eminentdomain/eminentdomaintools.shtml

Eminent Domain, Private Property, and Redevelopment: An Economic Analysis, Samuel Staley and John P. Blair, Policy Study No. 331: reason.org/ps331.pdf

Affordable Housing in Monterey County: Analyzing the General Plan Update and Applied Development Economics Report, Benjamin Powell, Edward Stringham, and Adam Summers, Policy Study No. 323: reason.org/ps323.pdf

Do Affordable Housing Mandates Work? Evidence from Los Angeles County and Orange County, Benjamin Powell and

Edward Stringham, Policy Study No. 320: reason.org/ps320.pdf

Housing Supply and Affordability: Do Affordable Housing Mandates Work? Benjamin Powell and Edward Stringham, Policy Study No. 318: reason.org/ps318.pdf

Is Universal Preschool Beneficial? An Assessment of RAND Corporation's Analysis and the Proposals for California, Christopher F. Cardiff and Edward Stringham, Policy Study No. 345: reason.org/ps345_universalpreschool.pdf

Assessing Proposals for Preschool and Kindergarten: Essential Information for Parents, Taxpayers and Policymakers, Darcy Olsen with Lisa Snell, Policy Study No. 344: reason.org/ps344_universalpreschool.pdf

Reason Foundation studies archived at reason.org/policystudiesbydate.shtml

Privatization Watch Back Issues available at reason.org/pw.shtml

Publications

Urban Growth and Housing Supply, Edward Glaeser, Joseph Gyourko, and Raven E. Saks, Harvard Institute of Economic Research: post.economics.harvard.edu/hier/

Sprawl and Urban Growth, Edward Glaeser and Matthew E. Kahn, Harvard Institute of Economic Research: post.economics.harvard.edu/hier/

This Land is My Land: Reforming Eminent Domain After Kelo v. City of New London, Benjamin Barr and Tim Keller, Goldwater Institute: goldwaterinstitute.org

Property Rights at Risk? Eminent Domain Law in Florida after the Supreme Court Decision in Kelo v. City of New London, J.B. Ruhl, James Madison Institute: jamesmadison.org

Respect for Property Rights in Governmental Action, Donald J. Kochan, Mackinac Center for Public Policy: mackinac.org

Events

Reason in Amsterdam 2006, Reason Foundation, August 23-26. Examine the contemporary struggle for freedom in Europe: reason.org/events

SPN 14th Annual Meeting and K-12 Education Reform Summit, State Policy Network, October 4-7, Milwaukee: spn.org/events

2006 States & National Policy Summit, American Legislative Exchange Council, December 6-9, Phoenix: alec.org

PRIVATIZATION WATCH

Reason Foundation
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
www.reason.org

Nonprofit Org.
U.S. Postage
PAID
Santa Monica, CA
Permit 81