



Proposed Constitutional Amendments

To be voted on at the November 6, 2012 Election

Full text of Amendment [Proposed new language is underlined. Existing language that is deleted is shown as stricken (~~stricken~~)]

1 Article I. Bill of Rights.

Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.

BALLOT QUESTION

Shall Section 11 of Article I (Bill of Rights) of the Constitution of Virginia be amended (i) to require that eminent domain only be exercised where the property taken or damaged is for public use and, except for utilities or the elimination of a public nuisance, not where the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development; (ii) to define what is included in just compensation for such taking or damaging of property; and (iii) to prohibit the taking or damaging of more private property than is necessary for the public use?

EXPLANATION

Current Constitution and Background

Article I, Section 11 of the current Constitution prohibits the taking or damaging of private property for public uses without just compensation. The power to take private property for public uses is known as the power of eminent domain. If a private property owner and the entity acquiring property for a public use cannot agree on the sale of the property, the property may be taken by eminent domain and the amount of just compensation is decided in a court proceeding.

In a 2005 case from Connecticut, the United States Supreme Court upheld the taking of private property and its transfer to a private business for economic development purposes and also said that states could restrict the use of eminent domain (*Kelo v. City of New London*, 545 U.S. 469). Two years later, the Virginia General Assembly enacted § 1-219.1 of the Code of Virginia and set limits on the use of eminent domain powers. For example, § 1-219.1 provides that no more private property may be taken than is necessary for the stated public use, that the public interest for the taking must outweigh any private gain, and that private property cannot be taken for certain primary purposes such as increasing the tax base, revenues, or employment.

Proposed Amendment

The proposed constitutional amendment continues the approach and concepts set out in § 1-219.1. However, while limits in the Code can be amended by any future General Assembly, the proposed amendment, if approved by the voters, could only be changed by a future constitutional amendment approved by the voters.

The proposed amendment includes the following:

- The right to private property is a “fundamental” right.
- The taking or damaging of private property must be for a “public use.”
- No more property may be taken or damaged than is necessary for the stated public use.
- A “public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services.” Elimination of a public nuisance may be a public use. It is not a public use if the “primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development.”
- Just compensation for property taken is expanded and defined to be “no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking.” The terms “lost profits” and “lost access” are to be defined by the General Assembly, and it has done so by separate legislation that will become law if this proposed amendment is approved by the voters (Chapters 699 and 719, 2012 Acts of Assembly).
- The entity condemning property, known as the condemnor, has the burden to prove that the property is being taken for a public use.

Amend Section 11 of Article I of the Constitution of Virginia as follows:

Article I. Bill of Rights

Section 11. Due process of law; obligation of contracts; taking or damaging of private property; prohibited discrimination; jury trial in civil cases.

~~That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses without just compensation; the term “public uses” to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.~~

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms “lost profits” and “lost access” are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.

2 Article IV. Legislature.

Section 6. Legislative sessions.

BALLOT QUESTION

Shall Section 6 of Article IV (Legislature) of the Constitution of Virginia concerning legislative sessions be amended to allow the General Assembly to delay by no more than one week the fixed starting date for the reconvened or “veto” session when the General Assembly meets after a session to consider the bills returned to it by the Governor with vetoes or amendments?

EXPLANATION

Current Constitution and Background

After the end of every legislative session, the General Assembly is required by the Constitution to meet again or reconvene in a “veto” session. The only bills that the General Assembly can consider in a veto session are bills that it had passed during the legislative session and that the Governor has sent back to it with his vetoes or suggested amendments.

The Constitution now requires that the veto session must begin on the sixth Wednesday following the end of each session. The veto session usually lasts for only one day and cannot last more than ten days.

Proposed Amendment

The only change to Section 6 of Article IV, proposed by this amendment will allow the General Assembly to delay the start of the veto session for up to one week. The General Assembly will be able to avoid the possible scheduling of the veto session on a religious holiday such as Passover. The proposed amendment does not change the present limits on the business that can be considered in a veto session or on the length of the veto session.

Amend Section 6 of Article IV of the Constitution of Virginia as follows:

Article IV. Legislature

Section 6. Legislative sessions.

The General Assembly shall meet once each year on the second Wednesday in January. Except as herein provided for reconvened sessions, no regular session of the General Assembly convened in an even-numbered year shall continue longer than sixty days; no regular session of the General Assembly convened in an odd-numbered year shall continue longer than thirty days; but with the concurrence of two-thirds of the members elected to each house, any regular session may be extended for a period not exceeding thirty days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house.

The General Assembly shall reconvene on the sixth Wednesday after adjournment of each regular or special session for the purpose of considering bills which may have been returned by the Governor with recommendations for their amendment and bills and items of appropriation bills which may have been returned by the Governor with his objections. No other business shall be considered at a reconvened session. Such reconvened session shall not continue longer than three days unless the session be extended, for a period not exceeding seven additional days, upon the vote of the majority of the members elected to each house. The General Assembly may provide, by a joint resolution approved during a regular or special session by the vote of the majority of the members elected to each house, that it shall reconvene on a date after the sixth Wednesday after adjournment of the regular or special session but no later than the seventh Wednesday after adjournment.

Don't forget to bring your ID to the polls

Examples of acceptable ID are your voter registration card or valid Virginia driver's license. There are additional forms of acceptable identification. Please see our website for more information: <http://www.sbe.virginia.gov/links/voterID>