

Maine Attorneys Opposed to Takings Legislation – LD 1810

[Letter signed by 43 Maine Attorneys, including five former Maine Attorneys General, several Assistant Attorneys General, two constitutional law professors, and lawyers with hundreds of years of experience representing public and private parties.]

February 21, 2012

Dear Members of the Judiciary Committee:

As current and former members of the Maine Bar, we write to express our strong concerns with proposed legislation that would replace well-settled constitutional principles with untested statutory standards involving so-called regulatory takings. LD 1810 would impose a costly but unfunded burden upon Maine taxpayers, the Maine Attorney General's Office, and the Maine Judicial System. Moreover, it would substantially impair the enactment and enforcement of environmental and land use laws that the Legislature deems necessary to protect the public in the future.

LD 1810 would create a statutory scheme by which individual or corporate property owners could pursue compensation from the State Treasury in response to laws that these owners claim decrease the value of their property. Under the bill, claims for compensation could be pursued through the courts or through an informal and unregulated process whereby state agencies could either make payments to property owners or selectively waive provisions of Maine law at their discretion.

This bill is a complete and radical departure from settled Constitutional principles regarding the "taking" of private property rights. Those rights have been interpreted and applied in an extensive body of judicial decisions at both the federal and state levels.

By departing from constitutional jurisprudence on takings, LD 1810 would thrust Maine into uncharted waters in which the rights, entitlements, standards, and avenues of relief all would be subject to administrative and court interpretation and costly litigation. The Maine Attorney General would have to defend against these newfound compensation claims in order to protect Maine taxpayers. If the waiver provision of the law were invoked by state agencies, the result would be a patchwork of environmental and land use regulation across the State. And if waivers were granted, abutters to those properties likely would have grounds for legal action against the State, creating additional claims upon already overburdened State resources.

Some suggest that LD 1810 is consistent with Florida's regulatory takings law (the Bert Harris Act), but it is substantially different, and in ways that would make its application more problematic. LD 1810 has a completely different standard for establishing a regulatory takings claim, requires a jury for cases that go to trial, includes a vexing cumulative claims provision, has a longer statute of limitations, does not require informal dispute resolution before a claim can be filed, and is rife with ambiguous standards and processes. These differences increase the likelihood of costly litigation and would further subvert the ability of the Legislature to enact laws deemed necessary to protect Maine people, communities, and the environment, just as it has impaired the enactment and enforcement of land use and environmental laws in Florida.

For these reasons and more, over the past 20 years, the Maine Legislature has carefully considered and rejected proposals similar to LD 1810. We urge Maine lawmakers to do so again by voting against LD 1810. Doing so will uphold settled Constitutional principles and protect the rights of all Maine people to property values supported by the uniform and fair application of Maine law.

Respectfully,

Dan Amory

David Backer

Madge Baker

John Bannon

Carol Blasi

Peter Brann

John Brautigam

Juliet Brown

Brenda Buchanan

Greg Cunningham

Mary Denison

Peter DeTroy

Jon Edwards

Eliot Field

Ivy Frignoca

Robert Gips

Dennis Harnish

Michael High

Ernie Hilton

Hope Hilton

Horace Hildreth

Jamie Kilbreth

David Kallin

Andrew Ketterer

Howard Lake

Robert Levin

Bonnie Lounsbury

Jon Lund

Sean Mahoney

Sarah McDaniel

Janet Mills

Jeff Piampiano

Jeff Pidot

Russell Pierce

Steven Rowe

John Shumadine

Kaighn Smith

Jim Tierney

Sharon Tisher

Bill Townsend

Curtis Webber

John Whitman

Martin Wormer