

C O M M E N T S

Through a Planner's Lens: Voter Responses to Infrastructure, Environment, Clean Energy, and Finance Measures in the November 2008 Elections

by Phyllis Myers

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On November 4, 2008, voters around the country considered 153 statewide ballot measures in 36 states, including 84 measures referred by state legislatures and 59 citizen-driven initiatives. In the post-election media analysis, many ballot pundits focused on the outcomes of elections involving social issues, such as gay marriage and abortion, and gave little attention to the 47 measures—almost one-third of the total—that will arguably more directly influence the pace, direction, and shape of growth in America's communities and regions. To provide a fuller picture of voter responses to planning issues at this time of great uncertainty for the American economy and its impact on development, this Article provides an analysis of these 47 measures and finds surprising grassroots support for publicly supported programs and funding for infrastructure, environment, and renewable energy.¹

As a planner who has tracked state and local development-related measures for almost 15 years, I have often found fresh, important insights bubbling up from these recurring referendums. A 1998 survey for the Brookings Institution Metropolitan Policy Center² caught the nascent wave of discontent about prevailing development that fueled the Smart Growth movement, while scattered grassroots transit measures identified in 2000 helped spark a new era of ballot box fundraising and longer range conversations aimed at revamping transportation finance. In 2006, an unpopular U.S. Supreme Court

decision on eminent domain quickly resonated in a series of statewide referendums that influenced public opinion far more than actions in state legislatures.³

This year, economic turmoil and a scramble for funds to continue states' larger role in community development programs provide a changed context. Voters approved nearly all of the bonds proposing funds for transportation, conservation, and water quality improvements. (This tracks with national trends: according to *Bond Buyer*, "voters were faced with the second largest crop of bonds ever in 2008, and overall approval rates came to more than 80%.")⁴ Voters were also "sophisticated" in their responses to ballot issues, observes National Conference of State Legislatures (NCSL) ballot expert Jennie Drage Bowser, and did not simply vote to cut taxes and lower spending.⁵

I. Eminent Domain and Property Rights

Eminent domain and property rights, prominent in 2006, played minor roles in 2008. Nevada voters approved a mandatory second election for a post-*Kelo* initiative to restrict eminent domain proceedings for private use (Question 2: Eminent Domain), while Louisiana voters narrowly defeated constitutional amendments that would have eased recently approved takings restrictions (Amendment 5: Transfer of the Special Assessment Level to New Property Purchased to Replace Expropriated Property; and Amendment 6: Removal of Restrictions on Disposition of Blighted Property). Ohio

1. The titles and descriptions of the measures in this Article were compiled primarily from the websites of the National Conference of State Legislatures, <http://ncsl.org>, and the Initiative and Referendum Institute, <http://iandrinstitute.org>. Another good compilation of statewide measures can be found at <http://ballotpedia.org>. The sites of secretaries of state typically provide official information about a particular state's ballot measures, outcomes, and initiative and referendum process.

2. Phyllis Myers, *Livability at the Ballot Box: State and Local Referendums on Parks, Conservation, and Smarter Growth, Election Day 1998*, Brookings Institution Metropolitan Policy Center, Jan. 1999.

3. Phyllis Myers, *Direct Democracy and Land Use: Eminent Domain and Big Box Development at the Local Ballot Box*, USC-Caltech Center for the Study of Law and Politics and the Initiative and Referendum Institute, 2008.

4. E-mail from Amy Resnick, editor-in-chief, *Bond Buyer*, Nov. 10, 2008 (on file with author).

5. Remarks at "StateVote 2008," NCSL Conference, Washington, D.C., Nov. 7, 2008.

voters approved a constitutional amendment assuring property owners affected by the Great Lakes Water Compact of their rights to water on or flowing under their land (Issue 3: Protect Private Property Rights to Ground Water, Lakes, and Other Watercourses).

II. Megaballots for Environmental Protection and High-Speed Rail

Two large-ticket infrastructure spending measures were approved: a 3/8-cent sales tax increase to raise \$11 billion over 25 years for a new Minnesota program to support environmental protection and the arts (HF 2285: Dedicated Funding for Natural Resources and Arts) and a \$9.95 billion bond to partly finance a \$40 billion, 800-mile bullet train in California between Los Angeles and San Francisco (Proposition 1A: Safe, Reliable High-Speed Passenger Train Bond Act). The much-debated train, say supporters, will create one-half million jobs, ease congestion, and spark public-private partnerships. Opponents call it a boondoggle that will raise taxes.

III. Bond Finance for Gray, Green, and Blue Infrastructure

Voters handily approved other statewide bonds for transportation, clean water, wetlands, flood control, revitalization of older cities, transportation, and conservation easement purchases. These include Alaska (Bonds for Transportation Projects, \$315 million); Arkansas (Question No. 1: Water, Waste Disposal, and Pollution Abatement Facilities Financing, \$300 million); Maine (Question 3: Bonds for Water Projects, \$3.4 million); Missouri (Constitutional Amendment 4: Grants and Loans for Storm Water Control); Ohio (Issue 2: Authorizing State to Continue the Clean Ohio Program for Environmental Revitalization and Conservation, \$400 million); Pennsylvania (Water and Sewer Improvements Bond, \$400 million); and Rhode Island (Transportation Bonds, \$87.2 million and Open Space and Recreational Development Bonds, \$2.5 million). To gain more control over debt, New Jersey voters said “yes” to a governor-supported constitutional measure requiring referendums on bonds issued by state authorities and independent agencies (Public Question 1: Voters to Approve State Authority Bonds Payable From State Appropriations).

IV. Severance Tax Trust Funds

Voters ratified only two of the six propositions that would authorize states to tap into increased revenues from drilling and leasing oil and gas fields. Utah voters approved a constitutional amendment to expand revenue sources that can be deposited in the state’s trust fund (Constitutional Amendment B: Resolution Regarding Permanent State Trust Fund); and Alabama citizens said “yes” to expanding the programs that can be funded with transfers of moneys from oil and gas drilling and leasing (Statewide Amendment 1: Rainy Day Accounts).

Colorado voters turned down two severance tax proposals. One, supported by the governor and opposed in an \$11 mil-

lion campaign, would have increased revenues, eliminated an industry tax credit, and funded college scholarships, wildlife habitat, and clean energy (Amendment 58: Severance Taxes on the Oil and Natural Gas Industry). The other would have deposited drilling and leasing revenues into a controversial highway-oriented transportation trust fund (Amendment 52: Severance Tax Revenues for Highways). A rejected Louisiana measure proposed to share severance tax revenues with affected communities and transportation (Amendment 4: Increase in Severance Tax on Natural Resources to Certain Parishes). North Dakota’s measure, also defeated, would have created a new permanent trust fund from oil tax revenues but did not offer details about how the money would be spent (Constitutional Measure 1: Oil Tax Trust Fund).

V. Renewable Energy

Three statewide measures dealt with energy alternatives and global warming. Missouri’s energy initiative, requiring investor-owned electric utilities to generate 2% of their retail sales from renewable energy sources by 2011 and 15% by 2021, was backed by a solid coalition and easily approved (Proposition C: Renewable Energy).

Two complex energy initiatives in California were defeated (Proposition 7: Renewable Energy Generation and Proposition 10: Alternative Fuel Vehicles and Renewable Energy and Bonds). One would have required utilities to generate one-half of their electric power from solar and clean energy sources by 2025, while the second would have used bond funds to incentivize the purchase of alternative-fuel vehicles and fund research, training, and education programs. Both were opposed by local conservation and environmental groups, scientists, and others who argued that the measures could exacerbate, rather than ease, the energy crisis and raise consumer prices.

VI. Gaming

At a time of looming deficits, six state ballot measures proposed new and increased revenues from casinos and lotteries. The gloom undoubtedly influenced Maryland voters’ approval of a constitutional amendment that promised to direct \$300 million per year to education (Question 2: Video Lottery Terminals Authorization and Limitations). Referred by the state legislature, the proposal was supported by the governor, county officials, and teachers.

Three of the other five measures, all initiatives, were approved: Missouri increased its casino tax to raise \$150 million for schools and cities (Proposition A: Casinos and Gambling); Arkansas created a state lottery to raise \$100 million for scholarships (Proposed Amendment 3: Authorizing the General Assembly to Establish, Operate, and Regulate State Lotteries to Fund Scholarships and Grants for Arkansas Citizens Enrolled in Certified Two-Year and Four-Year Colleges and Universities), and Colorado authorized several cities and counties to expand their casino operations, with voter consent, and share higher gaming revenues with community colleges (Amendment 50: Limited Gaming in Central City, Black Hawk, and Cripple Creek). Maine and Ohio voters,

however, rejected proposals to authorize the first private casinos in these states (Question 2: An Act to Allow a Casino in Oxford County, and Issue 6: A Constitutional Amendment to Authorize a Casino Near Wilmington in Southwest Ohio and Distribute to All Ohio Counties a Tax on the Casinos).

VII. Property Tax Exemptions and Voter Turnout Rules

Florida voters authorized property tax exemptions to encourage installation of renewable energy devices (Amendment 3: Changes and Improvements Not Affecting the Assessed Value of Residential Real Property); conservation easements (Amendment 4: Property Tax Exemption of Perpetually Conserved Land); and working waterfronts (Amendment 6: Assessment of Working Waterfront Property Based Upon Current Use). Georgia voters said “yes” to use assessments for large private forests in exchange for 15-year commitments (Amendment 1: To Encourage the Preservation of Georgia’s Forests Through a Conservation Use Property Tax Reduction Program).

Voters in Arizona and Oregon considered proposals dealing with voter turnout and property tax and money decisions at the ballot box. An Arizona initiative to require money measures to be approved by a majority of all registered voters, not just those voting, to become law did not pass (Proposition 105: Requiring Any Mandatory Tax or Spending Measure Be Enacted by a Majority of Qualified Electors). In Oregon, voters approved a constitutional amendment to eliminate the requirement that at least 50% of qualified voters must participate in an election to validate a property tax decision (Measure 56: Provides That May and November Property Tax Elections Are Decided by a Majority of Voters Voting).

VIII. Other Tax Reductions and Limits

Initiatives in four states—Arizona, Massachusetts, North Dakota, and Oregon—proposed to reduce or limit state tax collections. Only one, the Arizona measure, was approved (Proposition 100: Prohibition of Any New Property or Transfer Tax). Voters defeated initiatives to eliminate the income tax in Massachusetts (Question 1: Statewide Personal Income Tax); to cut corporate and individual income and estate taxes in North Dakota (Statutory Measure 2: Initiated Statutory Measure Relating to Individual and Corporate Income Tax); and to make federal income tax payments fully deductible when calculating Oregon state taxes (Measure 59: Unlimited Deduction for Federal Income Taxes on Individual Taxpayers’ Oregon Income Tax Returns). Georgia voters did approve a constitutional amendment that authorizes local officials to use revenues collected for education on development projects (Amendment 2: To Authorize Local School Districts to Use Tax Funds for Community Redevelopment Purposes).

IX. Initiative and Referendum Reform

As ballot measure activity grows, many legislatures are considering proposals to curtail alleged abuses, require more transparency, and address other issues. These modifications respond, to some extent, to criticisms that have arisen in planning-related ballot controversies. Ohio voters approved a constitutional measure that requires earlier submission of petitions, giving officials more time to certify signatures (Issue 1: To Provide for Earlier Filing Deadlines for Statewide Ballot Issues). Colorado rejected and Wyoming voters approved measures that could make it more difficult for citizens to place measures on ballots (Colorado Referendum O: Citizen-Initiated State Laws and Wyoming Amendment B: Citizen-Initiated State Laws).

X. Conclusion

Virtually ignored for decades, ballot measures are now an accepted part of state elections and increasingly involve referendums on the interrelated issues of planning, community development, and public finance. Despite the intensity of the presidential campaign, this trend continued on November 4, 2008.

While anxiety over the economy was much on voters’ minds, they continued to support substantial bond investments, along with a major sales tax increase, for land conservation, transportation, and water quality infrastructure. Voters examined measures selectively, rejecting most tax limits, supporting outcomes that gave them more control over local tax levels, and signaling the need for consensus-building on the science, economics, and politics of complex renewable energy proposals.

The willingness of taxpayers to support carefully vetted public investments in community development is evident also in local measures tracked by such groups as the Trust for Public Land and the Center for Transportation Excellence, which report record approval rates of land conservation and transit measures. Leveraging federal money is often a powerful motivating factor in influencing voters to provide critical matching funds.

In 2008, it appears that measures were more likely to have been placed on the ballot to capitalize on higher voter participation in a hard-fought presidential race than the other way around. In other years, it was not uncommon for strategists to post “crypto-initiatives” aimed at attracting voters with specific political and philosophic profiles to the polls so they would also vote for another issue or candidate. The impact of increased voter registration on ballot outcome deserves more study.

The November crop of statewide ballot measures raised planning, community development, and finance issues that were largely off the radar screen before November 4, but present rich insights for the new Administration as it shapes federal leadership for critical development, energy, conservation, and fiscal decisions that will necessarily look to citizens, state and local governments, and private leaders throughout the country for ideas, authorities, energy, and collaborative dollars.