Citizens' Alliance for Property Rights

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Press Release

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Contact: Rodney McFarland, President 206.335.2194

The Fate of Land Use Referenda Will Be Decided

Washington State Constitution - Article 2, Section 1(b) - Referendum. The second power reserved by the people is the referendum …

Department II of the Washington State Supreme Court voted unanimously on November 2, 2005, to retain for direct review the case 1000 FRIENDS OF WASHINGTON, KING COUNTY, and CENTER FOR ENVIRONMENTAL LAW AND POLICY v. RODNEY MCFARLAND. That is the case where King County Superior Court Judge Barbara Miner found that the three ordinances known as the King County Critical Areas Ordinance (CAO) could not be voted on by the affected citizens via referendum.

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The King County charter has a provision for referendum by the voters of unincorporated King County of any ordinance affecting only the unincorporated areas. Land use regulations are the bulk of the ordinances passed by the King County Council that affect only the unincorporated areas. The CAO, proposed by Ron Sims and passed in October of 2004 by the seven Democrats representing mostly incorporated areas of King County, seemed to be exactly the type of legislation that should be subject to approval by the unincorporated citizens forced to live by the new rules.

CAPR organized a signature drive and collected approximately three times as many signatures as required to place the CAO ordinances on a ballot. Two environmental organizations and King County Prosecutor Norm Maleng immediately sued to prevent those signatures from being turned in. They prevailed in King County Superior Court based primarily on the 1994 case Whatcom Co. v. Brisbane which held that regulations required by

the state Growth Management Act are not subject to local referendum or initiative. We asked for direct review on appeal by the Washington Supreme Court because we think that Brisbane was a bad decision that ignored previous precedents and should be revisited. Department II of the current Supreme Court, composed of Chief Justice Alexander and Justices Madsen, Bridge, Owens and J.M. Johnson agreed unanimously and the case will be heard sometime in the first quarter of 2006.

There is no question that if the state legislature passed laws identical to the CAO those laws would be subject to referendum. Brisbane seemed to set up a way to end run that right by saying that state law mandating generalized goals — the Growth Management Act in this case — would preclude referenda on the specific implementation of those goals at the local level. A finding for McFarland in this case will not prevent land use regulation as Ron Sims and other CAO proponents typically mischaracterize the issue. It will simply regain the voter's right to approve or veto specific implementations of such regulation.

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