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HOUSE JOINT RESOLUTION NO. 772

Offered January 19, 2007

Proposing an amendment to Section 11 of Article I of the Constitution of Virginia, relating to takings of private property.

Patrons—Cline and Albo

Referred to Committee on Privileges and Elections

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

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 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.

The right to private property is a fundamental right possessed by the people, and private property may be taken only for public use and only after payment of just compensation to the owner from whom the private property is taken.

Private property may not be taken unless (i) the land taken is for the ownership, possession, occupation, and enjoyment by the public at large, or by public agencies, (ii) the land taken is used for the creation or functioning of a public utility or railroad company that possesses the power of eminent domain, or (iii) the land taken is blighted and the taking eliminates a direct threat to public health or safety caused by the property in its current condition by (a) removing a public nuisance, (b) removing a structure that is beyond repair or unfit for human habitation or use, or (c) acquiring abandoned property.

No other uses shall be deemed public uses justifying the taking of private property in Virginia, and an increase in tax base, tax revenues, employment, or general economic health and welfare shall not constitute public uses. Property shall not be taken for private commercial enterprise, for economic development, or for any other private use, except with consent of the owner from whom the property is taken. Except in takings to remove blight as stated above, property shall not be taken from one owner and transferred to another, whether the transfer is by sale, lease, or otherwise.

Any taking of private property must be necessary to achieve the alleged public use. The public interest must dominate the private gain, and any taking under the pretext of an alleged public use shall be impermissible when the actual purpose is to bestow a private benefit. Any taking for the purpose of conferring a benefit on a particular class of identifiable individuals or a private party is impermissible. Whenever an attempt is made to take property for a use alleged to be public, the question of whether the contemplated use is truly public shall be a judicial question and determined as such without regard to any legislative assertion that the use is public.

INTRODUCED

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