

# ABA Government Law News

## State and Local

### A 60-Second Update on What's Happening

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**Analysis of Rapanos Wetlands Decision Available:** The recent Supreme Court decision on the Clean Water Act featured 4 votes protecting only wetlands with surface connections to waterways, 4 votes protecting wetlands with a functional nexus to waterways, and 1 vote taking a middle ground (so to speak) to be sieved out on remand. An analysis of the decision by Section Vice-Chair Ben Griffith with the assistance of our Environmental Committee Chair Jack Minan is posted on our website. Click here to access their analysis.

<http://www.abanet.org/statelocal/home.html>

**Grand Jury Presentments & Open Meeting Laws:** The Georgia Supreme Court has held that a county attorney's meeting with county commissioners in closed session to discuss grand jury presentments questioning the legality of board payments for vacation and overtime violated the state's open meetings law. The court found grand jury presentments did not come within the statute's exception for "potential litigation." *Decatur County v. Bainbridge Post Searchlight, Inc.*, 2006 WL 1843131 (Ga. 2006). <http://www.gasupreme.us/pdf/s06a0332.pdf>

**Property Rights Initiatives Spread Across the West:** This November we will see if Oregon's Measure 37 requiring waiver or compensation for most development controls that diminish property value has legs. A Washington ballot measure requires waiver or compensation for zoning measures imposed after 1995.

[http://seattletimes.nwsource.com/html/politics/2003110080\\_proprights07m.html](http://seattletimes.nwsource.com/html/politics/2003110080_proprights07m.html) Idaho's version: [http://www.mtexpress.com/index2.php?issue\\_date=07-12-2006&ID=2005111247](http://www.mtexpress.com/index2.php?issue_date=07-12-2006&ID=2005111247) There may well be others. The California measure hides within an anti-Kelo "Protect Our Homes" initiative as it would not only protect homes from seizures for economic development but also require compensation for regulations that cause substantial loss of value to property. Click <http://www.90yes.com/language/> for the initiative's language.

**Whistleblower Act Triggered by Cancellation of Job Opening:** A former Coast Guard employee, who claims he was discharged for whistleblowing, interviewed for a similar job with another federal agency. The job opening was withdrawn after the interview. Overturning federal Merit Systems Protection Board precedent, the Fed. Circuit Court of Appeals in *Ruggieri v. Merit Systems Protection Bd.*, broadly interpreted the federal whistleblower statute and held that cancellation of a job vacancy states a claim as a "failure to take a personnel action" under the Act. The Court found that to hold otherwise would offer too easy a way to punish a whistleblower. <http://www.fedcir.gov/opinions/05-3311.pdf>

**CDCs, the Other Side of Kelo:** The National Congress for Community Economic Development (NCCED) census on CDCs (Community Development Corporations) records "significant increases in the number of homes and apartments produced, commercial and industrial space developed, and jobs created by community development organizations." [www.ncced.org](http://www.ncced.org)

**It's a Small World After All:** New urbanists, take note: Joel Kotkin, author of *The City: A Global History*, asserts in Newsweek International that people elsewhere want privacy and space too, as people in Europe, Canada, Japan and Australia move out of urban centers. He says that solving the problems of sprawl is the better approach.

<http://www.msnbc.msn.com/id/13529578/site/newsweek/> Thanks to Planitzen for the story.  
<http://www.planetzen.com/node/20363>

**Click and Clack:** Like Tom and Ray's puzzler, Government Law News will be on vacation in August.

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