

July 3, 2006

Eminent domain: justice for all?



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Top Story

The U.S. Supreme Court's 2005 Kelo v. New London decision allowing eminent domain to be used for improving tax revenue sent shockwaves throughout the country — and sparked a furious backlash in numerous statehouses.

SNCJ Spotlight

The revolt of the states

A quiet revolution is occurring in America's statehouses on a crucial issue for homeowners. Reacting to a Supreme Court decision that expanded government power to take private property by eminent domain, more than a score of states have erected legal barriers restricting such condemnations. Other states are putting the question to the voters. Meanwhile, some cities have taken issue with the states and battled with them in the legislatures.

A Cannon Perspective



With Lou Cannon

The spark for the revolt of the states was lit by the Supreme Court on June 23, 2005, in *Kelo v. City of New London*, a decision that broadened the traditional understanding of “public use.” These words appear

in the Fifth Amendment to the Constitution, in what is known as the “takings clause,” which says, “nor shall private property be taken for public use, without just compensation.” Public use has ever since been commonly understood to mean projects with a direct public purpose, such as a highway, although the doctrine has been stretched at times to permit slum clearance. But in *Kelo*, written by Justice John Paul Stevens and decided by a 5-4 margin, the court gave local governments carte blanche to take private property for almost any purpose. New London, CONNECTICUT, had ambitious plans to develop ninety acres of waterfront and replace the pleasant if faded neighborhood of Fort Trumbull with a luxury hotel and conference center, offices, condominiums and a modern marina along the Thames River. No one pretended that Fort Trumbull was a slum or blighted; the city simply wanted more tax revenues.

The state endorsed this takeover. Then-Gov. John Rowland, who subsequently went to prison on unrelated graft charges, put \$73 million in the hands of the New London Development Corp., a private non-profit agency. Rowland, a Republican, wanted to keep the money out of the hands of the Democratic-controlled city council, which nonetheless approved the project and authorized condemnation procedures years before the Fort Trumbull homes were needed for the proposed development.

Susette Kelo, a nurse who dreamed of owning her own home, built and restored a pink Victorian cottage overlooking the Thames River where it runs into Long Island Sound. On Thanksgiving Day, 2000, she received notice from the New London Development Corp. that her home was being condemned. Kelo and six other property owners, including a woman who was born in her Fort Trumbull home and had lived there for 87 years, sued to block the condemnations. The plaintiffs won in a lower court, then lost on a 4-3 vote in the Connecticut Supreme Court. They appealed to the U.S. Supreme Court, where Stevens wrote his momentous opinion upholding the evictions.

Kelo provoked an unusually furious dissent from Justice Sandra Day O’Connor, then in the twilight of her constructive career on the court. As O’Connor saw it, the court’s majority had unfairly transferred property from owners of lesser means to owners with greater resources under the banner of

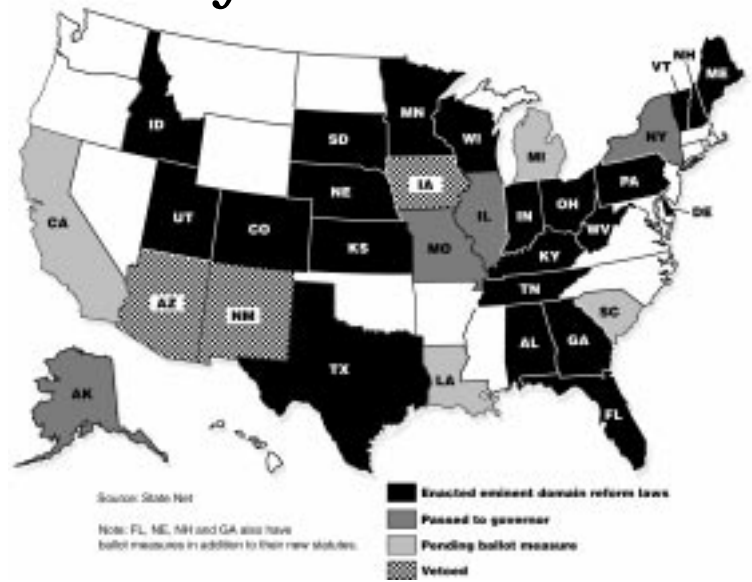
No one pretended that Fort Trumbull was a slum or blighted; the city simply wanted more tax revenues.

economic development. “The specter of condemnation hangs over all property,” she wrote. “Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.” Justice O’Connor and Justice Clarence Thomas, who wrote a separate dissent, said this “perverse result” was contrary to the intentions of the Founders.

O’Connor’s dissent resonated with the media and the political community, where the majority ruling was widely denounced. Indeed, Justice Stevens at times has seemed uneasy with his own ruling; while insisting he had done what the Constitution required, he subsequently said he would have voted against such an expansive definition of public use had he been a legislator. And the majority opinion was hedged with an invitation to states to write their own restrictions on condemnation if they didn’t like what the court had done.

The states responded to the challenge to a degree rarely seen since pre-Civil War days, when the high court’s infamous Dred Scott decision affirming the rights of slave owners appalled many northern states. Eminent domain bills have been considered this year in 43 state legislatures, and 22 states have passed laws restricting condemnations since June 2005. Eight states have placed constitutional amendments on the ballot, including four – GEORGIA, NEW HAMPSHIRE, NEBRASKA and FLORIDA – that have also passed other eminent domain statutes either this year or last. Backers of the CALIFORNIA initiative that would bar seizure of property for

Bird’s eye view



Changing eminent domain

It has been a year since the U.S. Supreme Court’s landmark *Kelo v. New London* ruling that allowed governments to use eminent domain to take private property in order to foster private development and increase local tax revenue (see SNCJ Spotlight in this issue). While that decision sparked a firestorm of protest in numerous state legislatures, it also left the door open for states to consider changing their own laws to greater restrict eminent domain use. Since then, all but a handful of states have done just that, with 33 legislatures passing eminent domain measures. To date, 22 states have enacted those proposals, while governors in three states have vetoed new eminent domain restrictions. Four measures currently are awaiting gubernatorial action, while eight eminent domain propositions that would amend state constitutions go before voters this fall. (Four of those are in states where other eminent domain legislation has already been enacted).

private development qualified their measure last week with over a million signatures.

But the revolt against the *Kelo* decision has not gone as smoothly as these statistics suggest. Various city governments and big-city mayors such as New York City's Michael Bloomberg have welcomed the added authority handed to them by the Supreme Court and pushed back against legislative attempts to limit eminent domain. They have flexed their muscle in urban states, with the result that only three of the ten most populous states — FLORIDA, PENNSYLVANIA and ILLINOIS, where a bill enacted by the Legislature is unsigned at this writing — have restricted eminent domain. In CONNECTICUT, the Democratic-controlled Legislature rejected an attempt by the Republican minority to impose eminent domain restrictions that would have prevented a replication of the New London land grab. In ARIZONA, the city of Phoenix opposed an eminent domain bill passed by the Legislature. Governor Janet Napolitano sided with the city and vetoed the measure.

The effort to restore the traditional meaning of eminent domain has revealed other fault lines. Farmers and the legislators who represent them distrust the authority conferred on cities by *Kelo*; as a result, opposition to runaway eminent domain in rural areas has been broadly bi-partisan. Away from the countryside, the issue has become more ideological and partisan. Although some prominent Democrats, including Bill Clinton, oppose the expanded use of eminent domain, conservatives and Republicans are more likely than liberals and Democrats to see *Kelo* as a menace to constitutional liberties. The three governors who have vetoed eminent-domain reform bills — in ARIZONA, IOWA, and NEW MEXICO — are Democrats.

But the effort to rewrite *Kelo* has an underlying momentum that over time may override ideological or partisan considerations. While some of the rhetoric on the issue has been overblown — the New London councilors, for instance, were denounced as un-American — the notion that a government can destroy a functioning neighborhood and condemn homes just because they want increased tax revenue is troublesome. This practice is widespread. According to opponents of *Kelo*, state and local governments sought to seize more than 10,000 homes and other private property in the five-year period ending in 2002. More than 5,700 such actions have been initiated in the year since *Kelo* was decided.

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The issue has belatedly attracted the interest of a White House that has been preoccupied with the Iraq War and immigration issues. On the anniversary of the *Kelo* decision, President George W. Bush issued an executive order prohibiting the federal government from seizing private property except for public projects such as roads or hospitals. Advocates of eminent-domain reform welcome Bush's order but have continued to focus their political efforts on the states. The effort to restore a stricter standard of eminent domain has a populist appeal likely to be demonstrated this year in FLORIDA, GEORGIA, LOUISIANA, SOUTH CAROLINA, MICHIGAN and NEW HAMPSHIRE, in which voters will decide proposed state constitutional amendments that narrowly define public use. If CALIFORNIA, often a national bellwether, follows suit, it would give enormous momentum to eminent-domain reform.

Meanwhile, the case that began it all plays out painfully in New London. CONNECTICUT Gov. M. Jodi Rell (R), more sympathetic than her predecessor and the city councilors to the homeowners, authorized additional funds to settle the cases. Five of the seven plaintiffs accepted settlements and moved, but Susette Kelo, who never wanted to be a celebrity, still lives in her pink cottage overlooking the Thames. She is surrounded by what a local writer has called a moonscape of bulldozed, fenced-off vacant lots and a few buildings, one of them the Italian Dramatic Club, which local politicians spared in deference to CONNECTICUT's politically influential Italian-Americans. The writer, Michael Logan, suggested that Kelo's pink cottage also be saved as a "tourist attraction for law students." But it is much more than that. Kelo and Pasquale Cristofaro, the other holdout homeowner in Fort Trumbull, have now been given final (and somewhat more generous) settlement offers that may leave them no choice except to give up their cherished homes. But the rebellion that began in Kelo's name is far from over.

— By LOU CANNON

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The Week in Session

States in Regular Session: DC, MA, NC, US

States in Skeleton Session: OH

States in Recess: CA, MI, NJ, NY, PA

Special Sessions in Recess: CA "a", CA "b", PA "a", VA "a"

States Projected to Adjourn: DE

States Adjourned in 2006: AK, AL, AZ, CT, CO, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MN, MO, MS, NE, NH, NM, OK, RI, SC, SD, TN, UT, VA, VT, WA, WI, WV, WY

States in Special Session Adjourned in 2006: AK "b", AR "a", AZ "a", KY "a", LA "a", MD "a", OK "

Letters indicate special/extraordinary sessions

Source: State Net, 06/30/06

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Budget & taxes

FISCAL FIREWORKS IN THE EAST: Rekindling the spirit of their revolutionary past, a trio of eastern states headed into the Independence Day holiday with a bang.

In MARYLAND, lawmakers approved a plan two weeks ago to provide 1.1 million customers of Baltimore Gas and Electric Co. some relief from an impending 72 percent rate increase. Gov. Robert Ehrlich (R) vetoed that measure on June 22, objecting to the fact that it didn't give BGE customers a choice on whether to participate in the proposed monthly payment plan. The Democrat-controlled General Assembly overrode the veto the following day, prompting Ehrlich to remark, "We'll see them in court. We'll see how this plays out in court."

In VIRGINIA, the GOP-led General Assembly passed a \$72 billion state budget on June 20 that failed to provide substantial funding for transportation, as requested by first-year Gov. Tim Kaine (D). The governor took his lumps on the issue, only vowing to continue pressing lawmakers to address the state's growing transportation needs. Then he proceeded to make 36 amendments to the budget, mainly providing additional funding for education and the environment. The General Assembly rejected most of those changes last Wednesday, then gave the budget final approval and went home. Kaine proceeded to ridicule lawmakers for their "lemming-like" votes — pointing out that some of the amendments they killed would have benefited their constituents — and promising further vetoes or funding allocations via executive order.

Meanwhile, tensions in NEW JERSEY between Gov. John Corzine (D) and his fellow Democrats in the Assembly over the governor's proposed 1 cent increase in the state sales tax got so bad last week that the legislators staged a six-hour sit-in at the statehouse. The protest came after Corzine, with the July 1 fiscal year end looming, threatened to veto any budget that did not include the sales-tax hike. The indignant Dems responded by demanding that the state treasurer appear before the Assembly Budget Committee "to explain the governor's budget and the scope of the governor's ultimatum" and vowing to remain there until he arrived. He never showed, which did little to improve the Democrats' mood, and as of Thursday a government shutdown looked imminent. At least that eventuality won't spoil Garden State residents' 4th of July celebrations; the Corzine administration said it will keep the state's parks campgrounds and beaches open until the 5th. (WBALCHANNEL [BALTIMORE], GAZETTE [GAITHERSBURG], VIRGINIAN-PILOT [NORFOLK], WASHINGTON POST, PHILADELPHIA INQUIRER, STAR-LEDGER [NEWARK])

"We'll see them in court. We'll see how this plays out in court."



LA RECEIVES REVENUE SURPRISE: Worries that LOUISIANA's tax base was washed away by last year's hurricanes appear to have been unwarranted. In fact, the Pelican State is on track to take in more tax dollars this year than it ever has before. As the fiscal year was coming to an end last week (June 30), officials were projecting that tax collections would reach a record \$9.2 billion, a far cry from the \$900 million revenue decline they'd previously predicted. The stunning turnaround was due in part to an upswing in gambling revenue, with casinos in neighboring MISSISSIPPI out of commission and thousands of recovery workers on hand, flush with cash. Higher gas and oil prices also played a part. But the main factor was a surge in the purchase of consumer goods, with hurricane victims making use of federal aid, insurance proceeds and savings to replace items they lost. Officials say the state will end the year with nearly \$500 million more in sales tax revenue than they expected. Even in New Orleans, sales tax collections were only 24 percent below last year's level. And that is a marked improvement over the last quarter of 2005, according to Reginald Zeno, the city's finance director. "It's a lot more robust than we imagined," he said. Still, state officials say that since they don't know how long the tax boom will continue, they intend to use the windfall to help cover one-time costs rather than for regular operating expenditures. (NEW YORK TIMES, CHICAGO SUN-TIMES)

BUDGETS IN BRIEF: Thirty IOWA business that invested in TouchPlay gambling machines filed a lawsuit last week seeking financial damages from the state for pulling the plug on the game prematurely. The suit did not specify the amount the plaintiffs were seeking, but it estimated the total cost to the industry at \$900 million (DES MOINES REGISTER, QUAD-CITY TIMES [DAVENPORT]). • About a third of NORTH CAROLINA's 100 counties are planning to raise property taxes next fiscal year to cover the rising costs of Medicaid and school construction. While that is actually fewer than the number of counties that raised taxes last fiscal year (45), officials say it is unusually high for an election year (ASSOCIATED PRESS, POST AND COURIER [CHARLESTON]). • The U.S. Supreme Court declined last week to hear a case involving OREGON's system for taxing trucks that haul goods within its borders. The American Trucking Association had argued that the system unconstitutionally discriminates against interstate truckers by allowing some local haulers to pay flat fees instead of the tax based on vehicle weight and mileage traveled that interstate carriers must pay (ASSOCIATED PRESS, STATESMAN JOURNAL [SALEM]).

— Compiled by KOREY CLARK

Politics & Leadership

HIGH COURT STRIKES DOWN VT CAMPAIGN LIMITS: VERMONT's bold attempt at limiting the influence of money on the political process has come to an end. Last week, the U.S. Supreme Court struck down the strict limits on campaign contributions and campaign spending enacted by the state in 1997.

VERMONT's campaign finance law was actually intended as a direct challenge to a Supreme Court decision from 1967 — *Buckley v. Valeo* — in which the justices sanctioned government's authority to limit political contributions in order to curb corruption, but simultaneously forbid restrictions on campaign spending as a violation of free speech.

Nearly 40 years later, the court's view on the subject, practically speaking, isn't all that different. In a 6-3 decision, with new appointees Chief Justice John G. Roberts Jr. and Justice Samuel A. Alito Jr. siding with the majority, the court maintained the view that any limits on spending by political candidates constitute a violation of the First Amendment's free speech protections.

The court also maintained the right of government to restrict political contributions, but declared that VERMONT's limits — just \$200 per two-year election cycle for House candidates, for example — were too low. At those levels, a volunteer who “offers a campaign the use of her house along with coffee and doughnuts for a few dozen neighbors to meet the candidate” could end up violating the law, Justice Stephen G. Breyer wrote in his opinion.

The opinions issued by some of the other justices — and the fact that there were six separate opinions in total — suggest that the court isn't entirely happy with the status quo on the issue of campaign finance, however. Justice Clarence Thomas wrote: “I continue to believe that *Buckley* provides insufficient protection to political speech, the core of the First Amendment.”

Justice John Paul Stevens also expressed a willingness to overturn *Buckley v. Valeo*, but for a very different reason. Addressing the precedent the case set concerning spending limits, he wrote that “a candidate need not flood the airways with ceaseless sound-bites of trivial information in order to provide voters with reasons to support her.”

“I continue to believe that *Buckley* provides insufficient protection to political speech, the core of the First Amendment.”



But Stevens view being a minority one, the VERMONT ruling is likely to have only a cooling effect on future efforts to limit spending on political campaigns. “This is a setback for reformers who were hoping to expand what the government could regulate,” said Jan W. Baran, a former counsel for the Republican National Committee. (ASSOCIATED PRESS, WASHINGTON POST, CHRISTIAN SCIENCE MONITOR, KANSAS CITY STAR)

HIGH COURT UPHOLDS TX

REMAP: The U.S. Supreme Court, last Wednesday, upheld virtually all of the 2003 TEXAS congressional redistricting plan that helped shift the state’s delegation from a 17-15 Democratic majority to 21-11 Republican one.

In a 5-4 vote, the court ruled that only one district — the 23rd in southwest TEXAS — violated the Voting Rights Act because it diluted the voting strength of some Hispanic voters, possibly necessitating an election there and in neighboring districts at some point in the future. That will be left for a federal court in TEXAS to determine.

As for the plaintiffs’ allegation that the mid-decade remap was an unconstitutional partisan power grab by the Republicans after they took control of the TEXAS statehouse in 2002, the court was unswayed, stating that “the fact of mid-decade redistricting alone is no sure indication of unlawful politically gerrymanders.” (The Republicans argued that the 2003 remap merely corrected previous Democratic gerrymandering and now more accurately reflects voting patterns in the state, where all statewide officeholders are Republican and where President Bush received 61 percent of the vote in 2004.)

The court ruled even more broadly that the U.S. Constitution does not preclude redistricting on a more frequent basis than once per decade. “With respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition,” the court said. While some experts say that part of the decision won’t necessarily lead to a rash of map-drawing across the nation, it does open the door for readjustment of the lines whenever political power shifts in a state. (HOUSTON CHRONICLE, ASSOCIATED PRESS, SAN ANTONIO EXPRESS-NEWS)

In the Hopper

State Net’s database tracks tens of thousands of bills in all 50 states at any given time. Here’s a snapshot of what’s in the legislative works:

Number of 2006 prefiles last week: 192

Number of 2006 Intros last week: 744

Number of bills enacted/adopted last week: 949

Number of 2006 prefiles to date: 20,626

Number of 2006 Intros to date: 95,674

Number of enacted/adopted overall in 2006: 26,936

— Compiled By JAMES ROSS
(Measures current as of 06/29/06
Source: State Net)



SD ABORTION BAN HEADED FOR BALLOT: SOUTH DAKOTA lawmakers' plan to challenge *Roe v. Wade* hit a snag last week, when Secretary of State Chris Nelson announced that opponents of the state's tough new abortion ban had submitted enough signatures to refer the law to a statewide vote in the Nov. 7 general election. The Coyote State Legislature passed the law outlawing all abortions except those necessary to save the life of the mother back in February, hoping to prompt a court challenge ultimately aimed at overturning the U.S. Supreme Court's 1973 decision legalizing abortion. But the roughly 38,000 petition signatures turned in on May 30 (16,728 were needed to qualify the measure for the ballot) means the legal battle will be postponed for at least a few months. The fall ballot will actually be fairly crowded, with at least nine measures up for consideration, but there is little question about which one of them will dominate the campaign season. (ASSOCIATED PRESS, GRAND FORKS HERALD)

Upcoming Elections
(06/29/06 - 07/20/06)

07/18/2006
 Georgia Primary Election#
 House (All)
 Senate (All)
 Constitutional Officers:
 Governor, Lieutenant Governor, Secretary of State, Attorney General,
 State School Superintendent, Insurance Commissioner, Agriculture Commissioner,
 Labor Commissioner
 US House (All)

AT THE POLLS: SOUTH CAROLINA Rep. Ken Clark (R) was swept out of office in a GOP primary runoff election in District 96 last Tuesday. Clark, who was targeted by groups angered by his opposition to tuition tax credits for public school students, was defeated by pharmacist Kit Spires, who also finished first in the original primary election on June 13. (STATE [COLUMBIA]) • A pair of Republican House members and a senator appear to have lost their seats in primaries held last Tuesday in **UTAH**. Three-term Rep. Jim Ferrin (R) was defeated by GOP challenger Stephen Sandstrom in District 58. Rep. Peggy Wallace (R) narrowly lost to insurance agency owner Jim Bird in District 42. (The 24-vote margin of victory entitles Wallace to a free recount.) And in District 18, Sen. David Thomas (R) was defeated by Ogden Police Chief Jon Greiner. Not all of the GOP primaries went the challengers' way, however. In District 19, for instance, Rep. Sheryl Allen (R) trounced her opponent, Mark Jacobs, by 28 percentage points (64 percent to 36 percent) (DESERET MORNING NEWS [SALT LAKE CITY], SALT LAKE TRIBUNE).

POLITICS IN BRIEF: Last week, after the **COLORADO** Supreme Court refused to reverse its June 12 ruling barring a proposed November initiative aimed at restricting illegal immigrants' access to state services, backers of the measure agreed to a compromise. Under the terms of the deal, Defend **COLORADO** Now

would drop its initiative effort in exchange for legislation discouraging Centennial State businesses from hiring illegal immigrants and requiring government agencies to verify the immigration status of applicants for certain taxpayer-funded benefits. Gov. Bill Owens (R) has called for a special session July 6 to consider those and other immigration-related proposals (DENVER POST, ROCKY MOUNTAIN NEWS [DENVER]). • A study released last Tuesday indicates that few states and counties have implemented measures to improve the security of electronic-voting systems. The study, conducted by the Task Force on Voting System Security convened by NEW YORK University's Brennan Center for Justice, states that election officials are failing to carry out even simple procedures, such as performing routine audits of the paper printouts provided by some machines (ARIZONA DAILY STAR). • SOUTH DAKOTA's Supreme Court has agreed to consider whether an initiative seeking the repeal of video gambling in the Coyote State can be placed on the fall ballot. SOUTH DAKOTA Secretary of State Chris Nelson disqualified the measure in May after the state's attorney general, Larry Long, issued a legal opinion stating that, according to a 1995 state Supreme Court ruling, initiatives cannot be used to repeal existing laws (ASSOCIATED PRESS, RAPID CITY JOURNAL). • A county judge in NEW JERSEY ordered the consolidation of about 200 small voting districts into larger ones, in accordance with state law mandating that districts have between 250 and 750 voters. The judge conscientiously stipulated that the mergers not be carried out until after the November general election, in order to avoid potentially "significant voter confusion" (STAR-LEDGER [NEWARK]).

— Compiled by KOREY CLARK

Governors

SCHWARZENEGGER CALLS FOR MORE PRISONS: A sharp rebuke from a federal court monitor prompted CALIFORNIA Gov. Arnold Schwarzenegger (R) to call for a special legislative session on the state's troubled corrections system. The federal monitor accused Schwarzenegger of retreating from prison reforms he had promised after taking office in 2003 and of allowing the state prison guards' union to have a "disturbing" level of clout over prison policy and management.

Noting that federal authorities could seize control of the prison system if changes are not made, Schwarzenegger outlined a plan he claimed would relieve overcrowding in the nation's largest prison system and would help more convicts stay out of jail once released. That plan includes using more than \$1 billion in

bonds to finance the construction of two new prisons and moving 4,500 low-risk female prisoners into private correctional facilities.

While virtually everyone agrees the state's prison system is extremely overcrowded — at least 16,000 inmates are regularly sleeping in gyms, hallways and even outside at one prison — critics pounced on Schwarzenegger's desire to use bonds to pay for new facilities. The governor has voiced his support for AB 2902, sponsored by Assembly Speaker Fabian Nuñez (D), which would allow the state to use lease revenue bonds, which do not require voter approval. Those bonds also carry a higher interest rate than those which need voter approval.

Several polls have previously shown that Golden State voters are not inclined to support prison bonds, leading Sen. Gloria Romero (D), one of the governor's harshest critics on prison issues, to call the possibility of using that kind of bond "an end-run around the voters." The special session is running concurrent with the Legislature's regular session. (LOS ANGELES TIMES)

HELMET VETO COSTS GRANHOLM ENDORSEMENT: MICHIGAN Gov. Jennifer Granholm (D) vetoed a bill last week that would have allowed Wolverine State motorcycle riders to go sans helmet. Less than an hour later, an advocacy group dedicated to helmetless riding announced it was lending its support to Granholm's gubernatorial re-election challenger, Republican Dick

Devos. Jim Rhoades, legislative director of American Bikers Aiming Toward Education (ABATE), said his organization would send out 60,000 voter guides to its members in hopes of swaying the vote away from Granholm. "A lot of people who supported her previously, especially union people, won't be behind her now," he said. Not everyone sees it that way, however. "If you're one of those people with a libertarian philosophy who believe you should be able to do whatever you want without any regulation, then

"If you're one of those people with a libertarian philosophy who believe you should be able to do whatever you want without any regulation, then you probably weren't going to vote for her anyway."

you probably weren't going to vote for her anyway," said William Rustem, president of Public Sector Consultants based in Lansing. Granholm said she vetoed the measure because its insurance requirement of only \$10,000 in personal injury protection was "woefully inadequate." (DETROIT FREE PRESS)

STATES OF EMERGENCY: Besieged by wildfires, droughts and raging floods, governors in several states declared emergencies last week. Less than a week after ARIZONA Gov. Janet Napolitano (D) declared a state of emergency

over wildfires raging near Sedona, NEVADA Gov. Kenny Guinn (R) declared an emergency in the Silver State as fire fighters battled dozens of lightning-sparked blazes that by week's end had burned more than 100,000 acres. Meanwhile, torrential rains created numerous flood-related emergencies throughout the Northeast, with emergencies declared by governors or city officials in OHIO, VIRGINIA, NEW JERSEY, NEW YORK, MARYLAND and PENNSYLVANIA. NORTH DAKOTA Gov. John Hoeven (R) faced just the opposite problem, as a prolonged lack of rain forced him to declare an agriculture drought emergency in the Flickertail State (HOUSTON CHRONICLE, LOS ANGELES TIMES, NEVADA APPEAL [CARSON CITY], WASHINGTON POST, STAR-LEDGER [NEWARK], BISMARCK TRIBUNE)

In case you missed it:

Immigration has become a flashpoint issue for the entire nation. States that border Mexico — TEXAS, CALIFORNIA, ARIZONA, and NEW MEXICO — have taken sometime vastly different approaches to dealing with this situation. One of the more controversial has been TEXAS Gov. Rick Perry's decision to spend \$5 million to place cameras along his state's border, with video images they capture being streamed in real time onto a Web site that is open to the public. On June 19, the State Net Capitol Journal examined the ongoing debate over Perry's plan.

In case you missed it, the article can be found on our Web site at http://statenet.com/capitol_journal/06-12-2006.

PERDUE WANTS END TO WATER WAR: GEORGIA Gov. Sonny Perdue (R) sent a letter appealing to fellow Republican governors Jeb Bush of FLORIDA and Bob Riley of ALABAMA to personally meet with him in an attempt to resolve a 16-year-old battle over water. The appeal came days after GEORGIA filed suit to stop the federal government from sending so much water to FLORIDA, which quickly filed a countersuit. ALABAMA is participating in the discussions to protect its interest in the lower half of the Chattahoochee River, which it shares with GEORGIA. Neither Bush nor Riley immediately responded to Perdue's request. (ATLANTA JOURNAL-CONSTITUTION)

PAWLENTY PITCHES FREE COLLEGE: MINNESOTA Gov. Tim Pawlenty (R) proposed a plan last week that would allow almost all Gopher State high school students in the top fourth of their graduating class to get free tuition at any state college or university. The plan, which would take affect as early as 2007, would give high achieving students two years free at the University of Minnesota or Minnesota State Colleges and Universities system, and up to four years if they major in science, technology, engineering or math. The proposal, which he estimates would cost as much as \$112 million every two years, will go before lawmakers in the fall, but critics chose not to wait to attack the proposal. DFL state party chair Brian Melendez called it a political ploy aimed at bolstering Pawlenty's chances in his fall re-election bid, saying "First he causes unprecedented tuition hikes...now he offers those kids already performing well the oppor-

tunity to continue their education for free while leaving everyone else behind.” Conservatives didn’t feel much better about it, as noted by David Strom, president of the Minnesota Taxpayers League, who called the proposal “a big fat entitlement program” that was a poor fit with Pawlenty’s image of fiscal conservatism. Pawlenty denied the timing of the proposed plan has anything to do with his re-election campaign. (MINNEAPOLIS STAR-TRIBUNE)

GOVERNORS IN BRIEF: ILLINOIS Gov. Rod Blagojevich (D) said last week that he now has no intention of selling or leasing the 274-mile **ILLINOIS** Tollway to private investors. The governor had earlier this year expressed an interest in transferring some of the state’s toll roads to private investors, but says now he “has no interest” in such a deal (CHICAGO TRIBUNE). • **MARYLAND** Gov. Robert Ehrlich Jr. (R) appointed an openly gay judge to sit on the Baltimore District Court. Ehrlich’s appointment came a little more than a week after he fired an appointee to the Washington Metropolitan Area Transit Authority for asserting on a cable talk show that homosexuals lived a life of “sexual deviancy” (BALTIMORE SUN). • **PENNSYLVANIA** Gov. Ed Rendell (D) criticized the Keystone State Legislature for considering a constitutional amendment banning gay marriage, calling such deliberations “a waste of time.” Rendell said the legislation essentially duplicates Pennsylvania’s Defense of Marriage Act, which voters already approved a decade ago (PITTSBURGH POST-GAZETTE). • An attorney for the **ALASKA** Legislature said last week that Gov. Frank Murkowski (R) does not need lawmakers’ approval to ratify a proposed contract to build a North Slope natural gas pipeline. Legislative attorney Theresa Bannister said requiring the approval of an executive branch contract by the Legislature appears to be an intrusion into executive branch powers, noting that “contracts to implement and execute the laws of the state are normally considered to fall within the province of the executive branch.” Murkowski did not say whether he would go around the Legislature in his negotiations with ConocoPhillips, Exxon Mobil and BP, saying only that he had not yet reviewed the legal opinion (JUNEAU EMPIRE).

— *Compiled by RICH EHISEN*

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Once around the statehouse lightly

D **ON'T MESS WITH FLUTTERNUTTERS:** That, at least, is the message that exploded out of the MASSACHUSETTS Legislature last week. According to the *New York Times*, a state senator's effort to restrict the number of Flutternutters served in Bay State schools has run afoul of Flutternutter devotees — some of whom are members of the Legislature itself. In fact, the entire affair precipitated a marshmallow war that has been dubbed “Fluff-gate.” What are Flutternutters? A Marshmallow Fluff and peanut butter sandwich, of course, which has become the cuisine of choice among MASSACHUSETTS school children. Sen. Jarrett Barrios, whose own son apparently is among the semi-addicted, sought to reduce the number of times that Flutternutters may be served in a given week, but his amendment to a school nutrition bill ignited a conflict that lasted more than a week. Such was the power of Flutternutters that Barrios was forced to withdraw his amendment.

ON STATE TIME, YET: It's bad enough when a person spends his or her time gawking at child pornography over the Internet. It's doubly bad when that time is financed by taxpayers. But as the Associated Press reports, officials in INDIANA last week had to place restrictions on some 27,000 state computers after a “handful” of Hoosier employees were fired for viewing porn sites while at work. State personnel officials wouldn't give a specific number of employees who had been terminated. The new computer protocol blocks not only those offending sites but those dedicated to terrorism and hate as well.

DICK DALEY'S GHOST: Once upon a time, decades ago, the late Richard Daley, mayor of Chicago, defended the fact that his son's firm had been given a lucrative insurance contract for Cook County, arguing something to the effect that “if a man can't care for his own family, what good is he?” Now, Gov. Rod Blagojevich has extended Daley's maxim beyond the immediate family to include the families of political allies. According to the *Chicago Sun-Times*, the governor's office may have intervened in the hiring of the son-in-law of U.S. Rep. Jerry Costello. The in-law landed a politics-free, civil service job as a state pilot even though he was not properly licensed at the time he applied. A Blagojevich spokes-

