Seven years ago, Oregon's voters enacted Measure 37, a ballot initiative that essentially threatened to end all land use controls in the state. Measure 37 stipulated that *any* land use control that reduces someone's property values must be compensated by the state, an extraordinary principle that threw the state's land use system into chaos. Three years later, realizing what they had done, the voters enacted Measure 49 by an even wider margin, which substantially cut back Measure 37's scope, although it still provides important remedies for those seeking to build on residentially-zoned land.

So of course many of those who had filed compensation claims under the old Measure 37 filed suit, arguing that Measure 49 *itself* constituted a taking. The argument was that Measure 37 gave them vested rights; Measure 49 took them away; thus, Measure 49 was a Taking.

Just yesterday, a Ninth Circuit panel rejected this argument in *Bowers v. Whitman*, holding quite properly that none of the Measure 37 rights had vested if the owners had not received a final decision from the state's land use control board. The decision was authored by N. Randy Smith, a 2007 George W. Bush appointee, and joined by Marsha Berzon (a Clinton appointee) and David Ebel (a 1988 Reagan appointee on senior status visiting from the 10th Circuit).

How Oregon, which before 2004 had one of the most progressive and effective statewide land use systems in the country, will adopt to the Measure 37 and 49 mess remains to be seen. If we're lucky, we might even find that the enhanced property protections left in Measure 49 will mesh well with the state's system. But at least we don't have to deal with the complete craziness of Measure 37 anymore. Unless the Supremes are even more plutocratic than even I suspected.