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Guest Editor: AUSTIN J. JAFFE

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THE ECONOMICS OF URBAN PROPERTY RIGHTS

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CONTENTS

INTRODUCTION TO THE ECONOMICS OF URBAN PROPERTY RIGHTS

Austin Jaffe

Over the past quarter-century, research in law and economics has expanded in several directions. In recent years, new researchers from distinct backgrounds have independently and anxiously (and often, without specific direction) pursued the quest to expand our understanding of various legal rules and other institutions. These efforts lead to predictions about economic behavior and have resulted in numerous implications regarding likely economic consequences. In the area of urban property rights, despite the long tradition of economic analysis of urban problems and government policies, it is fair to say that only recently have the approaches of law and economics been applied to specific urban policy issues. Indeed, this set of papers represents some of the latest research efforts in several directions in the area of urban property rights.

In December 1984, earlier versions of several of these papers were presented at an invited joint session of the American Real Estate and Urban Economics Association and the Public Choice Society at the Allied Social Science Association meetings in Dallas, Texas. In addition to those papers presented at the meeting, several of the other individuals whose papers

also appear in this volume served as paper discussants in Dallas. This volume provides revised and updated versions of those papers previewed in Dallas. Collectively, these papers represent one of the most comprehensive sources of academic research in the new literature on urban property rights.

The topical areas covered in this volume are numerous. Traditional urban land use issues including zoning as police power, eminent domain takings, and the growth in landlord-tenant law generate new insights following the property rights paradigm. Legal rules such as the due-on-sale clause in mortgage contracts are evaluated analytically, perhaps, for the first time. The analysis of real estate brokers and the economics of brokerage activity takes on new meaning. Other topics include the analysis of transaction costs in housing markets and an assessment of congressional voting behavior for urban land use and related issues.

It is hoped that this collection will provide further impetus for additional research. It is fairly clear at this point that there remain several area which are ripe for research under the rubric of urban property rights. On behalf of the contributing authors, the editor wishes to thank Richard Zerbe, Series Editor of *Research in Law and Economics,* for his interest and support of this effort.

OVERVIEW OF THE PAPERS

As is representative of the literature, there are several types of law and economics papers which deal with urban property rights issues. Many of these types are represented in this volume. These include studies dealing with congressional voting behavior on land use issues, land use controls and regulations, the analysis of property rules, empirical testing of legal rules, and normative analyses of legal institutions. While there are methodological differences between the papers, all are tied to the central theme of the volume.

Jim Kau and Paul Rubin's paper provides a new method of analysis and empirical results of congressional voting behavior on proposed legislation affecting land use. Their method is sufficiently robust to reveal important insights about the role of ideology in understanding Congressional behavior and their constituencies, at least for the period studied. In addition, this paper provides a framework for future studies of other proposed legislation, especially in other political bodies such as state and local legislatures where much of the land use control doctrine has been formulated and implemented.

The notion of "consistency" in zoning legislation is the focus of the study by Nancy Wallace. This doctrine refers to the mandated requirement that

if a comprehensive zoning plan is implemented, legislative action requires that the plan be used as the official mechanism of land use control. Wallace's study examines the empirical effects of this doctrine. The results indicate that in King County in the State of Washington, despite the relatively weak nature of the statutory requirement regarding consistency between the comprehensive plan and the zoning ordinance, the legal rule does have a substantive effect on land prices. The primary beneficiaries turn out to be high-income residential, property owners.

In the next paper, Larry Blume and Dan Rubinfeld make an important contribution to the literature on takings. After a brief review of the classic and recent case law on establishing just compensation awards, the authors introduce risk theory and insurance principles to decide the amount of compensation. Their results introduce new rigor and economic analysis to this long-debated and conceptually-difficult issue. The authors conclude that their approach may help reduce the uncertainty which owners face regarding the prospects of becoming a condemnee and the likely attendant costs associated with the ultimate outcome.

David Dale-Johnson, Kim Dietrich and Terence Langtieg provide a rigorous examination of one of the most controversial covenants in residential housing markets in the early 1980s: the due-on-sale clause. Their study is illustrative of the type of work now underway in the area of real estate finance by examining the economic effects of covenants in legal documents. Following the case law began by a decision of the California Supreme Court in 1978, the paper discusses both the legal and economic issues of the virtues and drawbacks of this legal rule. The authors conclude that the prohibition of the enforceability of the due-on-sale clause would result in a movement away from the relatively more complete markets prior to the determination of the outcome of the issue by 1982. Predictably, this led to windfall gains and losses and a movement away from Pareto-superior outcomes for housing consumers as a whole.

Werner Hirsch's latest paper provides an analysis of the results of recent landlord-tenant laws, (which have generally been directed at accentuating the property rights' bundles of tenants), and indigent black tenants. This is a group whose welfare many observers would expect such laws to advance. The paper reviews the case law in several areas of the debate as well as housing regulations which deal with issues such as the legal concept of habitability. Empirical results are identified and cited which strongly suggest that indigent blacks are not helped (and are often hurt) by these ordinances and statutes. The implications ring an often heard resolve: the effects of these laws fall far short of meeting their intent. In many cases, there are severe and perverse results.

The remaining papers in the volume are devoted to the area of real estate brokerage. The first of these deals with the direct transactions costs

associated with housing transactions. Mike Goldberg and Peter Horwood provide a comprehensive study of housing transaction costs. They provide survey results taken from a detailed questionnaire for three major Canadian cities. There are several observations made from the results in areas such as the role of brokers, the nature of the real estate brokerage process, the costs of consumer search, and the level of satisfaction of housing consumers. This paper also provides a host of ideas for future research in the area of consumer research needs, real estate brokerage, and the regulation of brokerage activity.

Jack Corgel's paper deals with the interesting issue of boundary-setting between real estate brokers and attorneys. An economic analysis of the issue is contrasted with the legal resolution of such disputes. The results are not very surprising: the author finds that the legal institutions tend to produce anticompetitive effects. These effects are likely to be Pareto-inferior to other choices and when material, will result in substantial welfare losses.

The issue of which party to the transaction bears the brunt of the real estate broker's sales commission is the topic of James Frew and Don Jud's study. Using data from North Carolina, the authors employ a model which captures the impact of brokered sales on housing prices. In this case, they find that up to about half of the commission cost has been borne by purchasers through higher prices. These results also seem to conform the previous (although, more casual studies) and, at least to one editor's mind, common sense.

The final paper examines a series of legal and regulatory issues affecting the real estate brokerage industry. Susan Wachter provides an enlightening and broadening discussion of several topics affecting the market for brokerage services. Set in a neo-institutional framework, the paper examines issues such as uniform pricing of services, the development of discount brokerage agencies, the practice of service bundling, moral hazard problems, the nature and structure of listing agreements, and others. Several prescriptions are offered for reform and discussion. This paper, like several others in the volume, cultivates a fertile framework for future research.

THE POLITICAL ECONOMY OF URBAN LAND USE

James B. Kau and Paul H. Rubin

We use a simultaneous equations system with three equations representing the behavior of the relevant agents (Congressmen, constituents, and contributors) to examine determinants of voting by Congress on 11 land use bills in 1974, the peak of federal legislation in this area. This methodology has proven useful in other contexts for examining determinants of voting. We find that ideology is significant in explaining such voting and that constituent ideology (measured by presidential voting) is more often significant than the ideology of the Congressman (measured by ADA rating.) Unions favor increased regulation; business is less consistent and also less influential. Representatives from the Northeast favor increased regulation, but representatives from the "sunbelt" are not opposed; there is thus no evidence for the sunbelt-snowbelt conflict. Congressmen in general vote to transfer income to their constituents.

I. INTRODUCTION

Like many other aspects of the economy, the use of land in urban areas became increasingly regulated during the 1970s. Much of this regulation

occurred at the local or state level (see, e.g., Mills, 1979; Colwell and Kau, 1981). However, there were also laws regulating the use of land passed or considered at the federal level during this period, and there were also efforts made to have the federal government subsidize local regulation and planning. Moreover, the same political forces which were responsible for regulating land at the local level would have been operative at the federal level. Thus, if we can understand the nature of the pressures for and against federal regulation we will also better understand the basis for local and state regulation. In this paper, we examine voting by Congress on several bills in 1973–74 which would have affected land use. Siegan (1976) indicates that the high point of the federal effort came on June 11, 1974, when the House of Representatives refused to consider two land use bills. Thus, by considering bills voted on in 1973 and 1974, we are able to examine the major period of such federal legislation.

The method of analysis which we use in this paper is one which has been useful in examining other aspects of regulation. (See, for a summary of our work, Kau and Rubin, 1981, and Kau, Keenan, and Rubin, 1982). We perform statistical analyses of roll call voting by Congress on bills which are of interest. There are three actors in our system: congressmen, who vote on the bills; constituents, who vote for congressmen; and contributors, who donate money to political campaigns. We examine the groups who are for or against a bill by considering the characteristics of the congressmen who vote on each bill. The vote of the congressman is affected both by the characteristics of his constituents and also by the nature of the contributors to his campaign. We use simultaneous equations techniques in the analysis since there are interactions between congressmen, contributors, and constituents. Thus, contributors are expected to give to congressmen who are likely to be swayed by donations but congressmen are also likely to change some votes in response to contributions. Similarly, constituents vote for congressmen who reflect the interests of the constituents but congressmen also vote in ways which reflect the interests of voters in their districts. One element in the system, the voting by the congressmen, is dichotomous (yes or no on each bill), so that the statistical technique that we use is simultaneous mixed logit analysis (see Schmidt and Strauss, 1975). We have shown elsewhere that the political process that we model would have an equilibrium, and we do not repeat that proof here.

In Section II we discuss the data and statistical methodology used and present the theoretical arguments for the inclusion of the variables. In Section III, we present the empirical results. The last section is a summary.

II. DATA

The agents in the system are the congressmen, who vote on bills; the constituents, who vote for the congressmen; and the contributors to political campaigns who give to congressmen with certain likely voting patterns and also who influence the voting of the congressmen.

A. The Bills

As our sample of bills, we have used 11 bills voted upon in 1973–74.[1] All of these bills would have had significant impacts on urban land use or on other aspects of urban areas. (The bills are described in more detail in the Appendix.) Bill number 4, Land Use Planning, has been identified by Siegan (1976) as a crucial vote on federal involvement in land use. All bills are normalized so that a vote for increased regulation is denoted by 1, and a vote against regulation is 0. Statistical techniques are greatly simplified by having the same number of votes on each bill. Therefore, we have assigned all congressmen a vote. If the congressman did not vote or indicate a position on a bill, he was assigned a position based on the majority of congressmen from his state; where this was impossible due to a tie, a random process was used to assign a vote. The bills are discussed in more detail in Section III, when we discuss the factors associated with voting on each bill.

B. Characteristics of Congressmen

Several characteristics of the congressmen are of interest.[2] First, seniority is considered. More senior congressmen tend to be on more powerful committees and to have more influence on these committees. Thus, we would expect these congressmen to obtain more votes from constituents than the simple analysis of voting behavior by the congressmen would indicate, and we also expect such congressmen to obtain more campaign contributions than otherwise. In some estimations, the party of the congressmen is also relevant. The electoral margin received by the congressmen, which is a result of the behavior of his constituents, is relevant, as is the amount of contributions, determined by the behavior of the contributions.

One hypothesis which has been important in all of our research is the influence of ideology on the voting of Congressmen. Schumpeter (1950) argues that ideological factors would be important in determining the nature of legislation passed; he argues that intellectuals are important in

determining ideology, and that with increasing incomes the ideology of such intellectuals should be expected to become more interventionist and also more influential. Stigler (1971) argues that legislation is the result of self-interest (primarily economic interest) and that ideology should not matter. In previous work, we have attempted to test for the influence of ideology, measured in various ways, and have consistently found that this variable is important. The ideological variable associated with the congressmen is the rating received by the individual congressman from the Americans for Democratic Action (ADA). This organization annually chooses a set of votes and gives each congressman a score based on the number of times the congressman voted as the ADA would desire. (Other pressure groups perform similar ratings; previous work has shown that the ratings given by various groups are highly correlated.) When ADA ratings have been used as the only measure of ideology, they have invariably been found significant. Here, we include this variable and also, as a measure of constituents' ideology, the percentage of voters in the district voting for President Nixon in the 1972 election, discussed below.

Another crucial variable is the amount of money received by the congressman, determined by the behavior of contributors. (We use this variable in some equations in disaggregated form, when we are interested in the determinants of voting by congressmen on particular bills. However, in determining the electoral margin of the congressmen, we are concerned with the total amount of contributions received.) An obvious prediction would be that congressmen with larger amounts to spend on campaigning would receive larger electoral margins. This has never turned out to be the case; that is, in previous work (and also here, as shown below) larger contributions received by a congressman are associated with *lower* electoral margins. Jacobson (1980) was the first to note this anomaly; we follow his explanation. He hypothesizes that incumbent congressmen are able to increase contributions from contributors almost without limit. Thus, the amount of money which a congressman receives is a function of the expected closeness of the election. That is, a congressman who faces a weak challenger is likely not to spend much on campaigning; a congressman in a close race will spend more money, but will not be able to fully compensate for the closeness of the election. In other work, we have included the amount of money spend by the losing candidate in the election, but have still found that the amount of money spent by the winner was negative in explaining the margin received. Here, we do not consider loser contributions. Ideally, a measure of the expected closeness of the election before campaigning would be included in the regressions; we have not been able to identify such a variable.

B. Characteristics of Constituents

We include a large number of variables measuring the characteristics of the constituents of the congressman.[3] Most of our variables are measured at the district level, which is preferable; some variables are not available at the district level, and are measured at the state level. As may be seen in the empirical section, not all variables are included in all estimations. The variables measured at the district level are: central city residents; suburban residents; Nixon vote in the district; average education; HUD, HEW, defense, and federal spending in the district (federal spending is total spending unless some disaggregation is included in the regression); blacks; mean income; percent high and low income residents; farmers; average age in the district; and various regional variables. Data measured at the state level are: union members; members of consumers union; auto and air employment in the state; and coal and oil production in the state.

The Nixon vote is included in the regressions as a measure of the ideology of constituents, as ADA ratings are a measure of the ideology of the congressman. In previous work, we have sometimes used one of these variables and sometimes the other; when only one was used, it has invariably been found significant. We have sometimes used both ADA ratings and the presidential vote, and have always found at least one of these variables significant. Generally, the presidential vote is more often significant than the ADA rating, indicating that the ideology of constituents is more important than the ideology of the congressman himself.

During the period under consideration, migration was occurring from the Northeast to the Southeast and Southwest (from the "Snowbelt" to the "Sunbelt," in popular parlance). Many of these bills would have had impacts on such migration. Thus, where appropriate, we have included variables measuring various regions in the regressions. These variables were entered as dummies for the relevant regions for each vote.

C. Contributions

Common Cause (1974) has reported the contributions received from various interest groups for each congressman in 1972, the relevant year for this analysis. We have used this data, aggregated in several categories. In examining the voting behavior of the congressmen, we have used these categories in order to determine which types of contributors favor each vote. In examining the electoral margin of the congressman, we have used total contributions received, as discussed above.

The major categories into which contributions are aggregated are: business contributions; union contributions; agricultural contributions; contri-

butions from educational groups; and contributions from environmental groups. However, for some votes, disaggregations were also used. Thus, we have sometimes separated out real estate, banks and savings and loans, coal, gas, reilroad, construction, and transportation contributions from business contributions. When this is done, then the variable called "business contributions" is the total business contributions less the named contribution. (For example, in Vote 1, the vote on school busing, we have separated out real estate and banks and savings and loan Contributions; the variable labeled "business contributions" in this equation is then total business contributions less these two categories.) We have performed a similar analysis with union contributions; we have total union contributions and also contributions from transportation, United Auto Workers, Teamsters, and building and construction unions. Again, where a disaggregation is used, then the variable labeled "union contributions" is the total received from unions less whichever union contributions are separated out.

There are some weaknesses in this data. Business contributions are contributions received from business directly. Some individual business persons would have contributed to campaigns but their contributions would have been listed by *Common Cause* as individual contributions, so that our measure of business contributions is incomplete. Similarly, unions contribute both in money and also in kind (campaigning by union members). Our measure includes only money contributions. More recent data (Federal Election Commission, 1979) is more complete, but since the major votes of interest occurred in 1973–74, we were unable to use the more recent data in this paper.

D. Interaction Terms

In some of the estimations, various aggregations and interactions have been used. First, we have defined a "vote index" (VI) which is a measure of the percentage of times a congressman voted as a "liberal" (i.e., voted for relatively more regulation). Recall that we have normalized all votes, so that a vote for more regulation has been labeled 1 and a vote against regulation a 0. Thus, a congressman who received a vote index of 1 would have voted in all 11 cases for more regulation, and a congressman who voted in all cases for less regulation would have received a 0.

In the equation determining the electoral margin received by the congressman, we hypothesize that the determining factor is the way in which the congressman voted with respect to the way in which his constituents would have wanted him to vote. Therefore, it is necessary to form interaction terms relating both the voting of the congressman and also the various characteristics of the constituents. For several of the constituent characteristics, therefore, we have formed such interaction terms. In each