

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. MCHUGH) at 2 p.m.

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2372, the legislation to be considered by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PRIVATE PROPERTY RIGHTS
IMPLEMENTATION ACT OF 2000

The SPEAKER pro tempore. Pursuant to House Resolution 441 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2372.

□ 1401

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2372) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution, with Mr. LaTourette in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida (Mr. CANADY) and the gentleman from North Carolina (Mr. WATT) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. CANADY).

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Private Property Rights Implementation Act of 2000, which is now under consideration by the House, would provide property owners with meaningful access to justice when they seek to assert their Federal rights under the takings clause of the fifth amendment in Federal court.

The fifth amendment to the United States Constitution prohibits the Fed-

eral Government from taking private property for public use without just compensation. This takings clause, which was made applicable to the States through the fourteenth amendment, has been held to require the Government to provide just compensation not only when property is directly appropriated by the Government but also when governmental regulations deprive a property owner of all beneficial uses of the land.

Under current law, however, property owners whose property has been taken through government regulation may not proceed directly to Federal court to vindicate their rights. Instead, they must first clear two so-called prudential legal hurdles designed by the Supreme Court to help ensure that such claims are sufficiently ripe for adjudication.

First, property owners must demonstrate that the Government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue and, second, property owners must show that they sought compensation through the procedures the State has provided for doing so.

The application of these requirements by the lower Federal courts has wreaked havoc upon property owners whose takings claims are systematically prevented from being heard on the merits in Federal court. Under these requirements, many property owners are forced to endure years of lengthy, expensive, and unnecessarily duplicative litigation in State and Federal court in order to vindicate their constitutional rights.

In today's debate, we will hear accounts of the Kafkaesque legal maze that property owners are thrown into, and I would urge the Members of the House to pay close attention to the experiences that Americans are going through under these faulty legal rules that are now being applied by the courts.

Property owners whose Federal takings claims are dismissed on ripeness grounds by Federal courts also sometimes face a procedural pitfall that results from being forced to litigate first in State court: application of the doctrines of *res judicata* and collateral estoppel to bar Federal takings claims.

This procedural trap operates as follows: Federal court will dismiss a property owner's takings claim because the property owner has not first litigated the claim in State court; when the property owner returns to Federal court after litigating the State law claim in State court, the Federal court will hold that the Federal takings claim is barred because it could have been litigated in the State court proceedings.

The effect of the reasoning of these cases is that many property owners have no opportunity to have their Federal constitutional claims heard in

Federal court. No other constitutional rights are subjected to such tortuous procedural requirements before the merits of the plaintiffs' cases can be heard.

In addition to these procedural hurdles, Federal courts have also invoked various abstention doctrines in order to avoid deciding the merits of takings claims that are brought to Federal court.

The combined effect of all these procedural rules is that it is exceedingly difficult for property owners to vindicate their constitutional rights in Federal court. According to one commentator, Federal courts avoided the merits of over 94 percent of all takings cases litigated between 1983 and 1988. Another more recent study found that in 83 percent of the reported cases raised in Federal court between 1990 and 1998, that 83 percent of those were dismissed on ripeness or abstention grounds at the district court level.

H.R. 2372 was designed to address this systematic suppression of property rights claims by clarifying and simplifying the procedures which govern property rights claims in Federal court. In particular, H.R. 2372 clarifies, for purposes of the application of the ripeness doctrine, when a final decision has been made by the Government regarding the permissible uses of property.

H.R. 2372 also removes the requirement that property owners litigate their takings claims in State court first, and prevents Federal judges from abstaining in cases that involve only Federal takings claims.

Under the bill, before a landowner can go to Federal court, the landowner who has received a denial from a local government must pursue a wide range of available options at the local level. Now, this is a very important provision of the bill, and I urge all the Members of the House to pay close attention to this provision of the bill in particular.

The claim has been made that this bill short-circuits the zoning process; that somehow we run an end run around the zoning process; we eliminate any incentive for aggrieved property owners to negotiate with the local governments who are involved in the zoning. Those claims are simply untrue.

Under the bill, the landowner must pursue an appeal to the local planning commission, seek a waiver from the local zoning board and seek review by elected officials, if such redress is available, under the local procedures. Where the government disapproves an application and explains in writing the use, density and intensity of development that would be approved, the bill requires that the landowner submit a second application and be rejected a second time before going to Federal court.

So this bill shows substantial deference to the local zoning procedures, but the bill does recognize that at the end of the process at the local level,