

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 Federal 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, when all of these steps have been gone through, if the local government

makes a decision that results in the taking of property without compensation, there should be access to the Federal courts to vindicate the constitutional right which has been violated.

Now, under the bill for a case to be ripe for adjudication in Federal court, the Government must either actually reach a final decision on the application or else the locality or Federal Government must fail to act on the application within a reasonable time.

The constitutional basis for this legislation is found in Congress' well-established authority to regulate practice and procedure in the Federal courts. The ripeness requirements that the courts have imposed are not mandated by the Constitution. There will be some debate over that here today.

It is clear that there are some problems with the decisions of the Supreme Court with respect to ripeness. Otherwise, we would not be here on the floor with this bill in an effort to correct those problems.

The Supreme Court in recent cases has made clear, the Supreme Court has stated, that the requirements with respect to ripeness that are at issue here are prudential, what the Court calls prudential procedural requirements that are created by the Court and are not constitutional requirements. Unfortunately, what the courts have considered prudential requirements are, in fact, working a grave injustice and denying Americans who have suffered a constitutional deprivation meaningful access to Federal courts.

The bill before the House today represents an appropriate exercise of Congress' authority over procedure in Federal courts to ensure that property rights are no longer treated as second-class rights with no meaningful Federal forums for their vindication.

I urge the Members to vote in favor of H.R. 1218, to reject the weakening amendments that will be offered and to have the House move forward with this important legislation to protect constitutional rights.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me acknowledge from the outset that we often get results from State courts, local governments, Federal courts, from every source, that we do not especially agree with. That happens quite often. But every time we get a result that we do not agree with, we cannot go back and change the law, at least we should not go back and try to change the whole process to address that.

I want to direct my colleagues back to 1994 when my Republican colleagues came to the majority in this House and one of their primary platforms was that we believe in States' rights and we are going to dismantle the Federal

Government's bureaucracy and return rights to the States, devolve government back to the local level where it is close to the people. Ever since they came in on that platform, they have been retreating from that very principle of protecting States' rights and devolving government back into local control.

Now they have been doing it selectively, not uniformly; but I think the only principle that I can see running through every decision where they refuse to honor States' rights and local control is where their propertied constituents, their monied constituents, their corporate constituents, have a different interest and when that occurs they start to backtrack from this philosophical principle that they say they believe in.

Now, if one listens carefully, one would think that the Federal courts have no jurisdiction over these cases, property cases, and property takings cases.

Let me dissuade my colleagues of that notion: 28 United States Code section 1343, the section that is being amended by this proposed legislation, says, the district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person to redress the deprivation under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States, or by any act of Congress providing for equal rights of citizens, or of all citizens within the jurisdiction of the United States.

That means that Federal courts have jurisdiction in constitutional cases, and the gentleman from Florida (Mr. CANADY) is correct that this right is being asserted under the fifth amendment to the Constitution.

The fifth amendment to the Constitution says, no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

□ 1415

Life, liberty, or property all in the same line, in the same section, and the 14th amendment applies that to the States. So the Federal courts have jurisdiction already. This is not about whether the Federal courts have jurisdiction in property matters; they already have it.

The problem is that the courts, the Federal courts, have made a voluntary decision that we are not going to assert our jurisdiction in every single property case. Where a matter involves a local zoning ordinance, where a matter involves a municipal waste incinerator, where a matter involves granting a building permit to a liquor store or how close a factory can be to homes or a range of other local zoning and prop-

erty issues, the Federal courts have said hey, that is a local decision and we want the local administrative bodies and courts to deal with this before we get it into our purview.

Why do we want it? We want it because sometimes, these issues, quite often, most often, these issues also involve other State law and interests that the State courts and the local community can resolve better than the Federal courts. That is why my Republican colleagues came in in 1994 talking about returning local control to local communities and to the States. But the Federal courts have also said, we want these disputes to be ripe, and the record to be developed before the Federal courts will get involved.

Mr. Chairman, this bill runs completely counter to local control and local jurisdiction.

This bill would replace the common sense approach that the Federal courts have used which have empowered State and local officials with more resources and authority, as this Democratic administration and, I have thought, my Republican colleagues in the House supported. But the bill seeks to shift authority over these local matters from State and local officials to the Federal courts. It would do this by sharply limiting the discretion of Federal judges to abstain from deciding State law issues that have not been resolved previously by State courts and, secondly, the bill would deem a property rights challenge to State or local government action ripe for Federal court review, regardless of whether State and local officials have arrived at a final definitive position so that the Federal courts would be getting into the dispute before one even had any local disposition.

Finally, in addition to being a gross invasion of States' rights and local rights, this bill, for property matters, sets up a whole new hierarchy and says, we are going to elevate property rights above every other civil right that the law recognizes. In other civil rights areas, the Federal courts also defer to the local governments to make decisions. We do not assert jurisdiction in every Federal issue. Otherwise, every case that talked about due process would end up in the Federal court. That is not the way it works, because we have a Federal form of government and it is our obligation to respect the State and local governments' rights to make decisions that are inherently State and local government decisions or at least should be, in the initial instance.

Mr. Chairman, this bill is a bad idea, and we should reject it.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, may I inquire of the Chair concerning the amount of time remaining on both sides?

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 22 minutes remaining, and the gentleman from North Carolina (Mr. WATT) has 21 minutes remaining.

Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. GARY MILLER).

Mr. GARY MILLER of California. Mr. Chairman, the argument made by my distinguished colleague was eloquent. However, it has nothing to do with what is before us today. Great words were used. Decisions are results that we do not agree with, as if we are challenging what local government says. States' rights, local control, corporate constituents, as if we are up here just trying to benefit large corporations who own property. When a dispute is ripe, before it can go to Federal court, property rights challenges belong at the State and local level. We are going to elevate property rights above all other rights.

My distinguished colleague needs to realize that 90 percent of all of the development programs that are presented to government are not from large corporations, not the Irvine Company, Ted Turner, or Kaufman & Broad, they are from small property owners who have a few investors. The problem is, most of the lawsuits are not against municipalities by the property owners, the lawsuits are against municipalities by no-growth groups trying to overturn local decisions, and that is what we are trying to deal with.

A property owner goes before a city council, a board of supervisors, whatever the local agency might be, and they ask for a reasonable decision on their property rights and what they can do with their property, and they are given that by local government. In essence, they have said, you can move forward with your project because we have given it due consideration. Then a lawsuit is imposed against the city or municipality to stop that by a no-growth group. The city at that point says to the property owner, it is up to you to defend the lawsuit. And then they have to go to superior court to do that. A decision is rendered, and then it goes to the appellate court to make a decision. That decision is rendered, and then it has to go to Federal court. Understand that these people are not the large corporations defending this lawsuit, these are small property owners who are trying to benefit from that property.

Many of these individuals have received their property through inheritance, it has been in the family for years, or they buy a small piece of property with a few investors and they try to earn a profit on that property. What happens is, by the time they get through the approval process, it is likely they are going to be in a recession to begin with, but undoubtedly, by the

time they get through the legal process, they will be in a recession and, at that point, they will have already lost their investors.

What we are saying is, private property owners should have their day in court. They should not spend thousands and thousands of dollars going through a local process, only to have to go to court to be told by their attorney, understand, this is a process you are going to have to go to. If we win in superior court, it is going to be a challenge in the appellate court. When we win in the appellate court, we are going to go to Federal court.

Individual property owners, as a rule, do not have the money to go through this process. What we are doing is placing the burden on people who do not have the resources to defend themselves. Yet, my colleagues on the other side of the aisle will continually try to placate us with the comment that we need to provide housing for people of low income, when the system is designed to go against those people.

We are not saying that we want to overturn local control. We are not saying we want to overturn State control. We are saying that when local agencies have made a decision, whether it be a good decision or a bad decision, if the property owners feel they have been unfairly treated and their property rights have been taken from them, they should not have to spend years in State court, years in appellate court, only to be forced to go to Federal court.

If we look at the majority of the lawsuits, it is not from the property owner against the municipality or city, it is from some outside no-growth group against the city for the decision they made.

In California specifically, they are continually being sued for some sequel violation that might not be real at all, yet they are forced into court to prove that the lawsuit against them was not factually based. They are either then taken on a writ of mandamus in other States or in California, and they are saying you violated some zoning, some building or some procedural act on the level of the city and they are forced to go to court to defend it. That is ridiculous.

The gentleman's argument is offensive to small property owners that this is just rich corporations or the argument that it is going to take control away from local government. That is not where the lawsuits are occurring, and the gentleman needs to check that out. Friend to friend, the gentleman is wrong. The lawsuits are from outside agencies against cities, based on the decision they made entitling a property owner to use their property. We are saying, that should not be allowed. That is wrong. The assumption that all of these property owners are huge corporations, check it out. Ninety percent

are small people who have small pieces of property or farms and they want to use those farms.

Now, some people in the Midwest will say, well, we are watching people use their farms today for development, and that is true. The problem is every time a farm is developed, people moved in who opposed the other farmers from using their property.

Mr. WATT of North Carolina. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the manager of the bill for yielding me this time.

I rise in opposition to this measure because we have a proposal on the floor today in the Congress that is specifically directed at our local elected officials. As a prominent lobbyist has uttered, "This measure would be a hammer to the head of local zoning boards and community planning agencies." In doing that, we have had revealed to us the real effect of the bill, which will be to intimidate communities into approving ill-advised development plans out of fear that they will be hauled into Federal court if they do not. Because what we are doing is providing property developers and other corporations with special procedures created in H.R. 2372 that grant them expedited access to the Federal courts for property-taking claims exclusively.

Now, if that is what my colleagues want to do, that is fine. I object to it, but I think that it would be a terrible misuse of an important part of our Federal law which was originally created ironically to deal with civil rights claims. As a result of any kind of proposal like the one before us, again in the Congress; this was up before in I think 1997, we would, for example, allow a corporation which seeks an oversized commercial development and is dissatisfied with the initial land use decision by a small town, it could immediately threaten to bring suit in the Federal court against a town. The costs of litigating this issue in Federal court could overwhelm, if not bankrupt, thousands of small towns and counties around the country if that were to happen.

So what we would allow under the incredible premises of this bill, this case could proceed even if there were insufficient facts available for the Federal court to make a reasoned takings decision. If there were important unresolved State legal issues, it would not matter.

In essence, we are going to be telling the States that the Federal judiciary knows best when it comes to local land use decisions.

Please, let us not be a part of such a giveaway here today in the House of Representatives.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Alaska (Mr. YOUNG).

Mr. YOUNG of Alaska. Mr. Chairman, I rise today in support of H.R. 2372, the Private Property Rights Implementation Act. I must say I just listened to the previous speaker and I have read this bill and I cannot find where it says what he says it does in that bill. It is the most amazing thing I have ever heard.

□ 1430

Mr. Chairman, I am not a lawyer, thank God for that, but I do not read it that way. What I am hearing, as a Committee on Resources chairman, frankly, is to help protect the fifth amendment of the United States Constitution.

The taking of private property, unfortunately, all too often the various governmental bureaucrats involved in land use decisions use their regulatory authority to take private property, and then blame other levels of government for their actions. I think maybe this is what the gentleman was speaking about. The Federal bureaucrats, through their efforts, will take private property and then blame someone else.

As a result, I support H.R. 2372, because it will ensure that landowners, landowners, little landowners, yes, big landowners, but mostly little landowners, the largest percentage of takings by this government is from little landowners, will get a fair chance to have their cases heard in Federal court, no matter which government bureaucracy is involved.

Mr. Chairman, H.R. 2372 will also ensure that land dispute cases are heard expeditiously in order to resolve these disputes very promptly. As a result of the expeditious court proceedings, taxpayers', as well as the private property owners', legal costs will be reduced. These prompt court proceedings will give even the poorest of our citizens the ability to defend their land.

Finally, H.R. 2372 will level the playing field between private property owners and the government. Landowners who wish to protect their legal and civil rights will now be able to afford court proceedings, and the government will no longer be able to pressure landholders into taking their land.

I want to stress this, that right now the bureaucrats take their time, slow it down, use undue pressure, and finally get the land away from the private property owners. Let us ensure that the smallest and the poorest landowners can have the same rights as the biggest corporations and the environmental groups.

I urge support of H.R. 2372 and oppose any amendments to this legislation, because this is the Constitution. The basis of our society is private land, not government land. When we have private land, we have something to do with our government. When it is owned by the government, we have nothing to do with the government.

I urge Members to pass this legislation.

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. BOEHLERT), our Republican colleague.

Mr. BOEHLERT. Mr. Chairman, I rise in strong opposition to this bill. The detrimental effects of H.R. 2372 are likely to be felt by virtually every citizen in virtually every community in this country.

Anywhere that citizens are trying to control growth, to limit traffic, or to preserve open space or conserve drinking water, this bill will have an adverse effect. Anywhere that citizens are trying to preserve the character of their neighborhoods by restricting pornography or alcohol or certain types of industry, this bill will have an adverse effect. Anywhere that citizens band together to try to do anything that any developer might oppose, this bill will have an adverse effect.

That is because this bill disempowers citizens and their towns and cities and counties, and skews local zoning rules to give developers the upper hand. It removes the incentive to negotiate zoning disputes, replacing that incentive with the threat of Federal court review.

Why is such a fundamental change in policy necessary? Is it because development is routinely being blocked? I think a quick tour of any congressional district in this country will prove that that is not the case. Homebuilding and other developments are booming in a booming economy. This bill is a vintage case of overreaching by a successful group that is upset because it does not win 100 percent of the time.

Let us not take power away from citizens and localities. Let us not overturn the fundamental principles of Federalism. Let us not advance a bill that is opposed by municipalities and courts and religious groups and environmentalists and labor unions.

Let us oppose H.R. 2372, and ensure that each community in this country retains the right to control its own destiny.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. POMBO).

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, here we go again. If this bill passes, all local zoning gets thrown out the window. Everything goes to hell in a handbasket.

Well, I think it is time that maybe we talk a little bit about what the truth is. Why are we doing this? Currently they say that the developers, the local farmers, the small landowners, they have the ability to go to court if they want to challenge a local decision, and they do.

According to a recent survey, judges avoided addressing the merits of Federal takings claims in over 94 percent

of all takings cases litigated, 94 percent. So 94 percent of the people did not even get their claim heard because the judge, for one reason or another, decided not to judge on the merits of that case.

So we are not talking about 100 percent of the time, we are not talking about a developer not winning 100 percent of the time. What we are talking about is 94 percent of the time the small family farmer, the small developer, the mom and pop guy, got thrown out of court and did not have access to their day in court.

Another recent survey reveals that 83 percent of takings claims initially raised in the United States district courts from 1990 to 1998 never reached the merits, and when they did reach the merits, it took property owners an average of 9.6 years to have an appellate court reach its determination, 9.6 years before the court would give them a final decision.

How many small property owners, how many mom and pop development companies, how many small farmers and ranchers, can afford to pay attorneys for almost 10 years, hundreds of thousands of dollars? Mr. Chairman, hundreds of thousands of dollars.

What ends up happening, and this is why most of these cases are never settled in court, is because the property is not worth what the attorneys want to go to court with.

There is a certain poll-tested wisdom out here that says if you bring up open space and drinking water and all the environmental things we all love, that that is the key to this. If we throw in pornography and liquor licenses as well, we might pull over a few more people. But the truth of the matter is that what this bill tries to do is guarantee access for the small property owners, the individuals that are out there that cannot have access under the current rules.

There is absolutely nothing wrong with allowing them into Federal court on a civil rights case to test their fifth amendment rights, nor shall private property be taken for public use without just compensation.

What are they afraid of? Are they afraid they are going to tell them they cannot keep taking peoples' property? I think our Constitution guarantees that. The system does not allow them into court.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 1 minute, just to make a clarification.

Mr. Chairman, I would like to make sure that this study that keeps getting cited dealing with how many cases get delayed and disposed of, let us make sure that we understand that this study was done by the National Association of Home Builders, and what it really shows is that in many cases, the vast majority of the cases, in fact, 29 of the 33 cases that they surveyed, the

court dismissed the case because the claimant's lawyer refused to follow State procedures for seeking compensation before suing in the Federal court.

That is entirely consistent with the process that is in place at this point, because the objective is to get people to start at the local level and resolve these disputes at the local level before they are ripe to go into Federal court. So this is just a myth that has been created.

Mr. Chairman, I yield 3½ minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. I thank the gentleman for yielding me the time, Mr. Chairman.

I have spent my entire public service career dealing with issues that promote livable communities. I know from personal experience that, at times, local land use laws can be time-consuming, expensive, and uncertain. Many times the development community draws the blame for things like sprawl and congestion when in fact they are abiding by outmoded local planning and transportation notions. Too often the development process becomes too political and painful.

But it is absolutely false to suggest that somehow the blame for this is on the shoulders of local officials who are trying to protect the community. I am willing to work to improve the process. I cosponsored and voted for a nearly identical bill in the 105th Congress which I hoped would be the first step in trying to have a rational discussion about this, and have been working with the development interests and local government and the environmental community to reach common ground.

I supported the bill, even though I made it clear at the time that the bill in that form would not and should not pass, but I thought it would be a beginning of an important discussion.

But rather than use that as a springboard, what we have back here again today is the identical bill. I am disappointed that the legislation represents no modification, no conciliation, and is not a productive contribution to the reform effort. It faces a certain veto by the President if in fact it could be passed, which it will not.

Occasional development hardships cannot justify short-circuiting the land use process against other homeowners, neighborhood associations, environmental groups, and local governments.

In Oregon, we have an elaborate system of appeals dedicated to land use, heralded as one of the best in the Nation. Our Land Use Board of Appeals has been developed and refined over the years, and at the same time, the process has been supported by our voters three times in State-wide initiatives.

It is entirely possible that if this misguided legislation would be passed in its present form, it would entirely

circumvent our land use planning process.

The bill is further flawed because it is sending land use disputes to our already overtaxed Federal judiciary, with absolutely no guarantee that they can be resolved any faster. In fact, we have received indication from the Federal judiciary that they see this as a burden to their already strained system.

The only way this bill would produce a speedy resolution and reduce developer expenses is if small cities and counties stopped trying to enforce their land use laws. That is in fact what would happen, in many cases. This is counter to the rising tide around the country where people want more protection against unplanned growth, bad environmental decisions, and transportation problems.

Smart growth is not no growth. I am committed to working with the advocates of smart growth and livable communities and the development community to develop approaches that solve these problems. We can provide a balanced system of adjudication in land use disputes. The problem in some States like California is that they do not have a system. It is a series of patchworks that do not work.

Mr. Chairman, I would suggest that we support State-wide frameworks that are less political, more predictable, less costly, that will achieve timely administrative process and judicial review without leading to a race to the courts to bully local governments into dropping their rights.

Rather than evolving the debate, this bill before us is having a polarizing effect. I urge a no vote. I urge my colleagues to work with us to actually solve the problem for more livable communities.

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

Mr. Chairman, I am disappointed that the gentleman from Oregon has changed his mind about the bill. I would point out there are some changes in the bill which are actually designed to encourage going through more at the local level. As the gentleman was saying, that is in the bill. He may not be aware of it.

Under the bill as it is now formulated, before going to Federal court, after an initial application is rejected by the local government, the landowners must appeal to the local planning commission, must make application for a waiver to the zoning board, and must also appeal to the local board of elected officials. That is quite a bit at the local level. I think it is appropriate that that be done before a lawsuit is instituted in Federal court.

But if, after going through that process at the local level, the landowner receives a decision which results in a taking of the landowner's land without

compensation, I believe that the landowner should be able to go to Federal court.

For Members who are wondering what this fight is all about, let me boil it down to the real crux of the matter, here. The issue is whether landowners should have to exhaust their State judicial remedies, would have to go through State court, before they go to Federal court. It is not a matter of whether they are going to go to court or not. It is a matter of whether, if they are in this situation, they are going to go to State court rather than Federal court.

□ 1445

Under the rules as they now are, they are forced to go to State court to pursue their Federal constitutional claims before they can ever have an opportunity to get into Federal court unless they end up being barred through one rule or another. That is what this is about.

It is important that the Members step back from all the rhetoric that is flying around this and understand that that is what is at issue. I do not believe that it should be controversial that individuals whose Federal constitutional rights have been vindicated should have their day in Federal court. If the Federal courts exist for anything, it should be to protect Federal constitutional rights.

Now, arguments have been made that, oh, well, we are elevating property rights above other constitutional rights by passing this bill. That is simply wrong. The truth is that other civil rights receive superior treatment under the rules as they are now structured in the system. We are trying to bring property rights up to something close to parity with the way other rights are treated.

Now, the truth is also the general rule for civil rights claims that are brought pursuant to the law that the Congress passed, section 1983, where citizens and individuals are allowed to challenge local government actions that infringe constitutional rights, the rule is you do not have to exhaust either your State administrative or judicial remedies. Now we are actually requiring that you go through administrative remedies. But we are saying you should not have to exhaust your State remedies. So we are still not bringing it up to parity with the way the other rights are treated.

I know this is being denied over and over again. But that is, those are the facts. That is what the law is.

The Supreme Court in the landmark case of *Monroe v. Pape* back in 1961 said, the Federal remedy under section 1983, which is the section that we are dealing with in this statute and under which civil rights actions are brought against local governments, is supplementary to the State remedy; and the

latter need not be first sought and refused before the Federal one is invoked.

They reiterated that in *Ellis v. Dyson* where they said exhaustion of State and judicial or administrative remedies was ruled not to be necessary, for we have long held that an action under section 1983 is free of that requirement.

Board of Regents, the State of New York *v. Tomanio*, in 1980, they said that this court has not interpreted section 1983 to require a litigant to pursue State judicial remedies prior to commencing an action under this section.

That is the rule with respect to civil rights claims in general, but they have different rules when it comes to property rights. I would suggest that that is what the Members of the House should focus on. That is also a problem that we are trying to address here.

Let me just point out that I think the talk about property rights and to treat them as though they are some kind of second class right is simply not fair. I would ask the Members of the House to consider what the Supreme Court said back in 1972 in a case called *Lynch v. Household Finance Corporation*. This is an opinion joined by Justices Brennan and Marshall. The Supreme Court said,

The dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a personal right. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.

I would submit to the Members of the House that, if we are serious about protecting these rights which are so fundamental to our way of life and our system of government, we will remove the barriers that have been created to prevent individuals whose property rights have been infringed from having access, meaning full access to their day in Federal court.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 30 seconds just to respond to the gentleman and thank him for his eloquent endorsement of the amendment that I will be offering. Because if he, in fact, believes that these are personal rights and that property rights should be on the exact same footing, our amendment would place them on the exact same footing with other civil rights.

I expect that the gentleman will be supporting my amendment and making his eloquent statement in support of it again. I appreciate the gentleman agreeing to do that.

Mr. Chairman, I yield 2 minutes to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Chairman, I thank the gentleman from North Carolina for yielding me this time.

Mr. Chairman, I rise in strong opposition to this bill. The bill's title is not accurate. Despite all the talk on the other side about small property owners, the bill should be called the fast track for developers act. This bill allows for any case involving a takings claim to be brought into Federal court, bypassing State and local processes.

As an attorney practicing law for 19 years, it was my experience that most small-land owners do not rush to get into Federal court, but many large developers do. It was also my experience that takings claims, constitutional claims, even though frivolous, even though extraordinarily weak, will be tacked on it a great many local land institutes. That is why it seems to me that the passage of this bill will allow developers to put excessive pressure on local zoning boards and councils.

I speak with some experience. I was a city councilor in Portland for 6 years and the mayor of the city. In Portland, we have appropriate and sound local zoning procedures and practices. In this House, we should help local governments plan for smart growth and not tie their hands by federalizing every local land dispute in which a property owner claims his property is being taken without compensation.

My Republican colleagues argue that local school boards know better than Washington, and I agree. But when it comes to land use, they say that Federal courts, not local zoning boards, are the best way to resolve local land disputes.

Mr. Chairman, this bill is opposed by every organization, almost every organization representing State, county, and municipal governments. It is opposed by State Attorneys General, State Chief Justices, and the U.S. Judicial Conference. This bill is a serious affront to the principle of federalism.

I urge a "no" vote on this so-called takings bill that diminishes local control and empowers large developers.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Chairman, I rise today to express my support for H.R. 2372, the Private Property Rights Implementation Act. The bill takes a new, more modest approach to the issue of property rights and has received widespread bipartisan support.

The legislation helps property owners by clearing some of the legal and procedural hurdles that make it both excessively time consuming and expensive to assert their claims. The bill proposes to do nothing except clarify the jurisdiction of Federal courts to hear and determine issues of Federal constitutional law.

H.R. 2372 is vastly different from previous property right bills. It does not

attempt to define for a court when a taking has occurred, nor does it change or weaken any environmental law.

There has been some controversy generated surrounding this bill. Most of the criticism of this legislation is based upon the assumption that the bill cuts local government out of the decisionmaking process when it comes to land use decisions. But nothing could be further from the truth.

The truth is that H.R. 2372 applies only to Federal claims based on the fifth and 14th amendments that are filed in Federal court. The bill creates no cause of action against local governments. H.R. 2372 is only a procedural bill clarifying the rules so a decision can be reached faster on the facts of the case instead of wasting taxpayer money on jurisdictional questions.

Local governments will have no new limits on their ability to zone or regulate land use. Local agencies will get at least two, maybe three chances to resolve a land use decision locally before their decision will be defined as final, once on the original application, once on appeal, and yet again on review by an elected body.

H.R. 2372 does not provide a ticket to Federal court. Individuals already have a right to go to Federal court. The bill simply provides an objective definition of when enough is enough, so that both parties in a land use dispute can participate in meaningful negotiations.

I believe H.R. 2372 represents a moderate approach that Members can and should support.

Mr. WATT of North Carolina. Mr. Chairman, I yield 3 additional minutes to the gentleman from New York (Mr. BOEHLERT).

Mr. BOEHLERT. Mr. Chairman, let me give my colleagues some real-life examples of what this is all about based upon some recent court decisions.

In *Recreational Developments of Phoenix, Incorporated v. The City of Phoenix*, the land owners brought several takings challenges to a municipal ordinance that prohibited live sex clubs. The Federal court dismissed the takings challenge on ripeness grounds because the land owners had not sought compensation in State court. If this bill had been in effect, the City would have been forced to endure lengthy Federal court taking litigation to defend this ordinance, prohibiting live sex clubs.

In *Maynard v. The City of Tupelo*, in Mississippi, the State court rejected a taking challenge to a city ordinance that bans possession of open containers of alcoholic beverages or their consumption between midnight and 7 a.m. in restaurants. If this bill had been in effect, the claimant could have forced Tupelo to endure lengthy, expensive Federal court litigation to reach the same result.

In *Guildford County Department of Emergency Services v. Seaboard Chemical Corporation*, the State court rejected a takings challenge by a chemical company to a permit denial for a hazardous waste facility for health and safety reasons. If this bill had been in effect, that company could have subjected the county to expensive and lengthy Federal court litigation.

In *Colorado Dog Fanciers v. The City of Denver*, the State court rejected a takings challenge to an ordinance that bans possession of pit bulls, but allowed existing owners to obtain licenses. If this bill had been in effect, the claimants could have been challenged, and this sensible public policy measure would have endured expensive, Federal court litigation.

Zoning matters are local in nature. We should not federalize them.

Mr. CANADY of Florida. Mr. Chairman, may I inquire concerning the amount of time remaining on both sides.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 3½ minutes remaining, and the gentleman from North Carolina (Mr. WATT) has 6½ minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 additional minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentleman from North Carolina yielding me this time.

Mr. Chairman, we had an assertion by the gentleman from Florida (Mr. CANADY) about the procedures that would be followed. The fact is, under the bill that has been proposed, there is an exemption. If the claimant feels that it would be futile to pursue this claim, there is an additional problem. They talk a lot about the small individual property owners, but the fact is the vast majority of jurisdictions in this country are small governments that cannot afford to be involved with this.

So my colleagues have taken a theoretical problem for a few problems of small owners action, and they have substituted a massive burden on the part of many small governments who simply are not going to be able to undertake a well-financed aggressive development interest that seeks to move the other direction. I think it just simply reverses that presumption.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLITTLE).

□ 1500

Mr. DOOLITTLE. Mr. Chairman, this is an important bill. I know the other side is trying to portray this as helping big developers, but the fact of the matter is, this bill is designed to help the little guy and anybody else, including a big developer, who seeks to assert the

constitutional right to receive just compensation for the taking of his or her property. That is just something that is guaranteed by the U.S. Constitution and the fifth amendment. And yet, because of a network of procedures developed over the years, the effect of those procedures has been to make this amendment somehow secondary to some of the others.

We all know the reality. I mean a government is fighting with taxpayer dollars; and they have, usually, a vast amount to draw upon. They already have attorneys on staff, and they have firms on contract to wage these battles with taxpayer dollars. When the little guy is seeking to defend his or her constitutional right, and it takes on the average of 9½ years to get through the Federal Court system, that is bad enough already, but then it takes a number of years to get into the Federal Court system.

This bill, amongst other things, simply allows people to at least enter the Federal Court system. If anything, the bill does not go far enough because we have still got that long, drawn-out time when you, an individual, is paying lawyers at \$300 or \$400 an hour to litigate their claims. It is very, very difficult to reach the relief that they need. This bill makes an important step in that direction. It simply seeks to place the fifth amendment on an equal level to the fourth amendment or the first amendment, where they are not required to go first through the whole State process before they can get into Federal Court.

Mr. Chairman, I strongly urge an "aye" vote on this legislation.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 2 minutes.

This is the third or fourth time that somebody has come to the floor and talked about it taking 9½ years to get through the process. So let me be clear on how this 9½ year figure was derived. It was also the result of a study done by the National Association of Home Builders.

The problem is that in arriving at the study, they used only 14 Federal appellate court cases over a 9-year period, the period from 1990 to 1998. And, of course, if we take those 14 cases, anything can happen in a small number of cases, but that does not mean that we have got a massive problem. The bulk of the cases were being resolved before local zoning and planning commissions without any litigation, but those cases were just disregarded. The study ignored hundreds of takings cases litigated in State court each year, which comprised the overwhelming bulk of takings lawsuits. In those cases the States were giving fair and adequate remedies to the people who were coming into the State courts, which is exactly the way the process is supposed to work.

So, ironically, we are in here talking about let us put everything in Federal

Court, when the 14 cases that they used to come up with this 9½ year figure are the ones that ended up in Federal Court. It was the State court and the local zoning boards that were making quick, efficient decisions. And now I guess my colleagues would have us bring everything into the courts so everything could take 9½ years because there is a massive backlog of cases in the Federal Court system.

Mr. Chairman, let me just make it clear that, again, the U.S. Constitution allows property takings cases to come in to the Federal Court. If there is a taking of property, that is a Federal right. The problem is, as in all other constitutional rights where property is deprived or liberty is deprived, or any other U.S. Constitutional case, if there is an opportunity to resolve the matter in the State courts, the Federal courts simply defer and say the State court should resolve it because of, interestingly enough, the very principle that the Republicans have told us over the years they stand for: government should be closer to the people and decisions should be made closer to the people. So we are going to defer, says the Federal Court, to local and State courts to make decisions that impact the rights of people, even if they involve Federal constitutional rights.

So this is not about whether an individual can get into Federal Court. It is about when someone can get into Federal Court. I would submit to my colleagues that over all of these years we have been saying to the State courts that we respect their ability to resolve cases that involve State and Federal law, and we should continue to honor that. To do otherwise would be absolutely contrary to every principle that my colleagues on the other side have said over this period of time that they have been in the majority that they stand for.

The only reason we are making it an exception here is because some developers, some moneyed interests, some propertied interests have been inconvenienced, and they happen to be constituents who normally support the other side. That is what this is really all about. There is no reason to do this based on any Federalism principle, and that is the principles we ought to be applying in this context.

Mr. Chairman, I would discourage my colleagues from turning that whole system upside down, as my colleagues who say they believe in States' rights would have us do.

Mr. Chairman, I yield back the balance of my time.

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

Mr. Chairman, I think it is unfortunate that today in this debate we are hearing attacks on the motivation of those who are supporting this legislation. This legislation has been introduced because there is a real problem

in the administration of justice, a problem that affects property owners, small and large, throughout this country, property owners whose property is taken by an action of government, and property owners who are denied meaningful access to the Federal Court. We are trying to correct that.

Now, my good friend, the gentleman from New York (Mr. BOEHLERT), went through a list of cases that were not litigated in Federal Court but were litigated in State court where the plaintiffs lost. It sounds like to me that those plaintiffs should have lost. And I would submit to the gentleman that they would have lost in Federal Court as well. So I do not know what that list of cases proves.

The Federal courts, in my experience, know how to dismiss cases. They know how to get rid of cases on summary judgment. They also know how, in certain circumstances, to award prevailing party attorneys' fees against the party who brings a frivolous claim. And that happens to developers and others who sue local governments when they do not have a basis for their claim. Those attorneys' fees are available and some courts will award them. So I think the Members need to keep that reality in mind.

And let us just step back from this and look at the fact that the truth is that, under the rules as they now exist, property rights claims are subjected to second-class treatment. That is the truth. We need to change it.

Mr. POMEROY. Mr. Chairman, I join the National Association of Counties, the U.S. Conference of Mayors, the Council of State Governments, and the National Association of Towns and Townships, and the National Conference of State Legislatures in opposing H.R. 2372. This legislation severely undercuts local decision making authority regarding land use matters and would burden small towns and cities across America with the huge burdens of higher legal fees to protect themselves from lawsuits in federal court.

H.R. 2372 supersedes local authority by removing to federal court local disputes concerning land use regulation. Under our federal system of government, land use matters have historically been the responsibility of State and local governments. Local communities, through locally-elected officials, work diligently to develop land use plans to best serve the needs of their citizens.

As a Representative of one of the most rural districts in the House—the entire state of North Dakota—I am also concerned about the financial impact of smaller cities and towns financially. Diane Shea, Associate Legislative Director of the National Association of Counties, in testimony before the House Judiciary Committee, discussed how the impact of this legislation would be especially severe on smaller cities and towns in the United States. Ms. Shea testified that 97 percent of the cities and towns in America have population under 10,000, and 52 percent have population less than 1,000. Similarly, out of 3,066 counties, 24 percent have population less than 10,000. She

stated, "Virtually without exception, counties, cities, and towns with populations under 10,000 have no full time legal staff. These small communities are forced to hire outside legal counsel each time they are sued, imposing large and unexpected burdens on small governmental budgets."

Proponents of H.R. 2372 believe this legislation is only "procedural" and will better allow landowners to deal with State and local governments when citizens' private property are subject to a regulatory taking. In my opinion, there are better ways to protect citizens private property rather than undermining the principal of local control over land use matters and placing massive legal costs on over-burdened local governments.

I urge my colleagues to follow the advice of Judge Frank Easterbrook of the 7th Circuit Court of Appeals who wrote in a 1994 opinion, "Federal courts are not boards of zoning appeals" and oppose H.R. 2372.

Mr. CALVERT. Mr. Chairman, I rise today in support of H.R. 2372, the Private Property Rights Implementation Act. As a Member representing California, as well as a member of the Western Caucus, I am acutely aware of the need for legislation to protect private property owners.

H.R. 2372 addresses unequal and unfair treatment of property right claims. It simply allows property owners, injured by Government action and excessive regulation, equitable and simplified access to the federal courts. Currently, 83 percent of Federal property claims are thrown out of the court before their merits can be debated. With a statistic like that, no one can argue that the current process is fair.

It also levels the playing field for small and middle class property owners. Unfairly, private citizens find their pocket books disproportionately strained by the cost of defending their fifth amendment property rights.

No matter what reason the Government has for restricting private property use, and there are some legitimate reasons, there is no excuse for denying landowners their day in court.

Mr. Chairman, I urge my colleagues to oppose all amendments which threaten to gut H.R. 2372, especially Mr. BOEHLERT's amendment. This amendment would eliminate the bill's provision which allows landowners to take their appeals to federal court.

This is not an issue about taking power away from the States and localities, it is about the rights of property owners to have their claims considered fairly and in a timely manner.

Mr. Chairman, I urge my colleagues to support H.R. 2372. To support the Fifth Amendment right of all American citizens.

Mr. SMITH of Texas. Mr. Chairman, I rise in support of H.R. 2372, the Private Property Rights Implementation Act. This legislation secures a basic right of all Americans: protection against government confiscation of homes, farms, and businesses.

One of our most basic rights is contained in the Constitution's Fifth Amendment. It is the right of all citizens to acquire, possess, and dispose of private property.

That constitutional right is now threatened by regulations imposed by government officials. The Government is able to confiscate

the property of workers, farmers, and families without providing fair compensation.

H.R. 2372 will change that.

Mr. Chairman, I urge my colleagues to support this bill.

Mr. HYDE. Mr. Chairman, property rights are human rights just like any other civil right, and citizens whose federal property rights have been violated should have the same meaningful access to federal courts as those who suffer violations of other constitutional rights. The 14th Amendment provides that no person shall be deprived of life, liberty and property. Those are the big three. Property rights are not somehow inferior to other rights.

In *Lynch v. Household Finance Corporation*, 405 U.S. 538, 552 (1972), a woman's savings account was garnished under state law for alleged nonpayment of a loan, and she received no notice and no chance to be heard. She sued in federal court, but the court dismissed her suit, ruling that only personal rights merited a judicial hearing, not property rights. The Supreme Court disagreed. In an opinion joined by Justices Brennan and Marshall, the Supreme Court held that her due process rights were violated, and that "the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right \* \* \* In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other." *Id.* at 552.

I urge members to vote in favor of H.R. 2372.

Mr. UDALL of Colorado. Mr. Chairman, Colorado is one of the fastest-growing States in the union, and we have our share of contentious land-use disputes—in fact, sometimes it seems like we may have more than our share.

I believe that the Federal Government has a role in helping our communities to respond to the problems that come with that rapid growth. But I don't think the help that's needed is greater involvement of the Federal courts in more and more local land-use decisions.

So, I cannot support this bill.

I do not think the bill is needed. The vast majority of land-use disputes, including claims that local regulations or decisions amount to a "taking" of property, are resolved at the local or State level without significant delay. There is no need to short-circuit the decisionmaking process under local and State law. There is no need to bypass our State courts.

I also don't think the bill is sound policy. I am very concerned that it would severely tilt the field in favor of one interest, developers, and make it even harder for our communities to meet the challenges of growth and sprawl. It would saddle taxpayers of our towns, cities, and counties with the costs of expensive Federal litigation.

It's also not good for our Federal courts. According to the Judicial Conference of the United States—the body that speaks for our Federal judges—it "may adversely affect the administration of justice" and "contribute to existing backlogs in some judicial districts." That could be a serious problem in Colorado and other States where there are or will be judicial vacancies.

Finally, as a nonlawyer who takes very seriously the oath we all have taken to support the Constitution, I have listened carefully to the views of the many lawyers—including distinguished member of the Judiciary Committee—who have concluded that the bill is likely unconstitutional. Even if I thought the bill was otherwise desirable, that would make me hesitate. But, as I've said, the bill has other serious shortcomings—and the constitutional issues that have been raised mean that enacting this bill would inevitably lead to even more protracted and expensive litigation that would go all the way to the Supreme Court. However the Court might finally rule, that additional litigation is not something that I think is necessary or that Congress should encourage. So, again, I cannot vote for this bill.

I am submitting a letter from the mayor of the city of Boulder, CO, in opposition to H.R. 2372.

CITY OF BOULDER,  
CITY COUNCIL OFFICE,

Boulder, CO, September 7, 1999.

Re Opposition to takings legislation (H.R. 2372).

Hon. MARK UDALL,

House of Representatives, Cannon House Office Building, Washington, DC.

DEAR CONGRESSMAN UDALL: I am writing on behalf of the City of Boulder to strongly urge your opposition of a federal "takings" bill that is aimed at local governments. Rep. Charles Canady (R-FL) recently re-introduced this bill as H.R. 2372, the Private Property Rights Implementation Act of 1999. H.R. 2372 is virtually identical to takings legislation considered during the last Congress (H.R. 1534), which was sponsored by Rep. Elton Gallegly (R-CA).

Specifically, H.R. 2372 would allow developers to circumvent local zoning appeals mechanisms, bypass state courts, and sue towns, cities and counties for alleged takings directly in federal court. The bill's approach contradicts Supreme Court rulings that federal courts cannot decide if a local government has taken property without just compensation until claimants explore allowable alternative uses of the property and until they ask for and are denied just compensation in state court.

The Supreme Court's May 24, 1999, *City of Monterey v. Del Monte Dunes* decision makes it clear that H.R. 2372's attempt to allow takings claims against localities to bypass state courts is unconstitutional. The Court held that because the Fifth Amendment only bars takings without just compensation, there is "no constitutional injury" where state court compensation remedies are available. As the Court noted, these state court remedies are now available in every state. Thus, the nature of the constitutional right requires that a property owner utilize state judicial or other procedures for obtaining compensation before suing a locality in federal court.

Unfortunately, many Members of the last Congress co-sponsored the virtually identical H.R. 1534 without a full appreciation of either what it would do or the overwhelming opposition it would face from state and local governments, the courts and others. This was made obvious when 9 Republican and 4 Democratic co-sponsors voted against their own bill when the House approved H.R. 1534 on October 22, 1997. A 52-42 Senate cloture vote failed to receive the 60 votes necessary to end a bipartisan filibuster against consideration of the Senate companion bill, S. 2771.

In a July 10, 1998 letter to all Senators, the National Governors Association, National

Association of Counties, National Conference of State Legislatures, U.S. Conference of Mayors and National League of Cities opposed S. 2771 because it would give "large-scale developers . . . a 'club' to intimidate local officials who are charged with acting in the best interests of the community as a whole." Threats of premature, expensive federal court lawsuits would pressure local officials to approve projects that would harm the property, health, safety and environment of neighbors.

In the last Congress, this bill was strongly opposed by virtually every membership organization representing state and local government, including the International Municipal Lawyers Association, and National Association of Towns and Townships, as well as 41 State Attorneys General. Opposition included both the Conference of Chief Justices on behalf of the state courts, and the Judicial Conference of the United States, chaired by Chief Justice Rehnquist, on behalf of the federal courts. It would have faced a Presidential veto if passed in Congress. In addition, the legislation was opposed by a broad array of environmental groups, including the National Wildlife Federation, League of Conservation Voters, Alliance for Justice, Sierra Club, Center for Marine Conservation, Environmental Defense Fund, National Audubon Society, National Trust for Historic Preservation, Scenic America, Natural Resources Defense Council, and Wilderness Society.

H.R. 2372 literally would convert local zoning and other land use disputes into federal cases. The result would undermine basic protections for private property, health, safety and the environment. Congress has repeatedly rejected bills that would radically alter the constitutional standards or judicial procedures for determining when a government action results in a taking of private property that requires payment of just compensation. In order to protect everyone's private property and the environment, I urge you to oppose this and other takings bills.

The City of Boulder's experience with takings legislation designed to oust the planning board of its ability to conduct Boulder's major site review process on a 500-home development is ample demonstration of the folly of this bill. As it was, the case was dismissed, and the dismissal was affirmed by the Tenth Circuit. Under this bill, Boulder would have faced a takings case in the federal courts, before the Planning Board could even act on the development application.

Thank you for your consideration. If you have any questions, please have your staff contact Joseph de Raismes, City Attorney, at (303) 441-3020.

Sincerely,

WILLIAM R. TOOR,

Mayor.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2372

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Private Property Rights Implementation Act of 2000".

**SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES.**

Section 1343 of title 28, United States Code, is amended by adding at the end the following:

"(c) Whenever a district court exercises jurisdiction under subsection (a) in an action in which the operative facts concern the uses of real property, it shall not abstain from exercising or relinquish its jurisdiction to a State court in an action in which no claim of a violation of a State law, right, or privilege is alleged, if a parallel proceeding in State court arising out of the same operative facts as the district court proceeding is not pending.

"(d) If the district court has jurisdiction over an action under subsection (a) in which the operative facts concern the uses of real property and which cannot be decided without resolution of an unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question certified to it, the district court shall proceed with resolving the merits. The district court shall not certify a question of State law under this subsection unless the question of State law—

"(1) will significantly affect the merits of the injured party's Federal claim; and

"(2) is patently unclear.

"(e)(1) Any claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a property right or privilege secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, that causes actual and concrete injury to the party seeking redress.

"(2)(A) For purposes of this subsection, a final decision exists if—

"(i) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision, as described in clauses (ii) and (iii), regarding the extent of permissible uses on the property that has been allegedly infringed or taken;

"(ii)(I) one meaningful application, as defined by applicable law, to use the property has been submitted but has been disapproved without a written explanation as described in subclause (II), and the party seeking redress has applied for one appeal and one waiver which has been disapproved, in a case in which the applicable statute, ordinance, custom, or usage provides a mechanism for appeal to or waiver by an administrative agency; or

"(II) one meaningful application, as defined by applicable law, to use the property has been submitted but has been disapproved, and the disapproval explains in writing the use, density, or intensity of development of the property that would be approved, with any conditions therefor, and the party seeking redress has resubmitted another meaningful application taking into account the terms of the disapproval, except that—

"(aa) if no such reapplication is submitted, then a final decision shall not have been reached for purposes of this subsection, except as provided in subparagraph (B); and

"(bb) if the reapplication is disapproved, or if the reapplication is not required under subparagraph (B), then a final decision exists for purposes of this subsection if the party seeking redress has applied for one appeal and one waiver with respect to the disapproval, which has been disapproved, in a case in which the applicable statute, ordinance, custom, or usage provides a mechanism of appeal to or waiver by an administrative agency; and

"(iii) if the applicable statute or ordinance provides for review of the case by elected officials, the party seeking redress has applied for

but is denied such review, or is allowed such review and the meaningful application is disapproved.

“(B) The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (A) if no such appeal or waiver is available, if it cannot provide the relief requested, or if the application or reapplication would be futile.

“(3) For purposes of clauses (ii) and (iii) of paragraph (2), the failure to act within a reasonable time on any application, reapplication, appeal, waiver, or review of the case shall constitute a disapproval.

“(4) For purposes of this subsection, a case is ripe for adjudication even if the party seeking redress does not exhaust judicial remedies provided by any State or territory of the United States.

“(f) Nothing in subsection (c), (d), or (e) alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”.

### SEC. 3. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

“(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

“(2) For purposes of this subsection, a final decision exists if—

“(A) the United States makes a definitive decision, as defined in subparagraph (B), regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

“(B) one meaningful application, as defined by applicable law, to use the property has been submitted but has been disapproved, and the party seeking redress has applied for one appeal or waiver which has been disapproved, in a case in which the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if application or reapplication to use the property would be futile.

“(3) For purposes of paragraph (2), the United States’ failure to act within a reasonable time on any application, appeal, or waiver shall constitute a disapproval.

“(4) Nothing in this subsection alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”.

### SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

“(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

“(A) the United States makes a definitive decision, as described in subparagraph (B), regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

“(B) one meaningful application, as defined by applicable law, to use the property has been submitted but has been disapproved, and the party seeking redress has applied for one appeal

or waiver which has been disapproved, in a case in which the applicable law of the United States provides a mechanism for appeal or waiver.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if application or reapplication to use the property would be futile. For purposes of subparagraph (B), the United States’ failure to act within a reasonable time on any application, appeal, or waiver shall constitute a disapproval. Nothing in this paragraph alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”.

### SEC. 5. DUTY OF NOTICE TO OWNERS.

Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by the amendments made by this Act, the agency shall give notice to the owners of that property explaining their rights under such amendments and the procedures for obtaining any compensation that may be due to them under such amendments.

### SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall apply to actions commenced on or after the date of the enactment of this Act.

The CHAIRMAN. No amendment to that amendment is in order except those printed in House Report 106-525. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not subject to a demand for division of the question.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider amendment no. 1 printed in House Report 106-525.

#### AMENDMENT NO. 1 OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment that has been made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. WATT of North Carolina:

Page 3, beginning on line 8, strike “in an action in which the operative facts concern the uses of real property”.

Page 3, beginning on line 16, strike “in which the operative facts concern the uses of real property and”.

Page 4, line 4, strike “property”.

Page 4, beginning on line 16, strike “, regarding the extent of permissible uses on the property that has been allegedly infringed or taken”.

Page 4, line 20, strike “to use the property”.

Page 5, line 4, strike “to use the property”.

Page 5, beginning on line 6, strike “use, density, or intensity or development of the

property that would be approved, with any conditions therefor,” and insert instead “reasons for such disapproval”.

Page 6, line 19, strike “the”.

Page 6, line 20, strike “of takings of property”.

Page 7, beginning on line 1, strike “that” and all that follows through “States,” on line 4.

Page 7, beginning on line 10, strike “, regarding the extent of permissible uses on the property that has been allegedly infringed or taken”.

Page 7, line 14, strike “to use the property”.

Page 7, line 16, strike “or waiver”.

Page 8, line 4, strike “the”.

Page 8, line 5, strike “of takings of property”.

Page 8, beginning on line 10, strike “founded” and all that follows through “States,” on page 8, line 12.

Page 8, beginning on line 18, strike “, regarding the extent of permissible uses on the property that has been allegedly infringed or taken”.

Page 8, line 22, strike “to use the property”.

Page 8, line 24, strike “or waiver”.

Page 9, line 15, strike “limiting the use of private property”.

Page 9, line 17, strike “owners of that property” and insert instead “party affected by such action”.

The CHAIRMAN. Pursuant to House Resolution 441, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to make full disclosure straight up front. I have been very up front about the fact that I believe the underlying bill is a bad idea. But if the underlying bill is a good idea, and if we are going to adopt the underlying bill, the same rules that apply to real property cases should apply to other constitutional cases.

I am holding in my hand the statutory provision under which an individual gets into Federal Court: 28 USC, section 1343. It is one page. It is one page. It enables people who have Federal constitutional rights, whether they are property rights, whether they are privacy rights, whether they are first amendment rights, if they have a Federal constitutional right, this is the statute that allows them to get into Federal Court. And property rights are under the same statute that every other civil right is under.

I am holding in this hand the bill. One, two, three, four, five, six, seven, eight, nine pages of special privileges that would be applied only to real-property cases. One page for civil-rights cases, nine pages for real-property cases that are already covered by the one page. There is no reason to do this. And if we do it, the effect is to relegate all other civil-rights cases to a second-class status.

Now, if the gentleman from Florida (Mr. CANADY) is correct in what he

said, and I am quoting the same case that he quoted, it is Lynch vs. Household Finance, that says: "The dichotomy between personal liberties and property rights is a false one. Property does not have rights, people have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak out or the right to travel, is, in truth, a personal right." And if we are going to do this for property rights cases, then, my colleagues, we ought to give nine pages to every other personal right that we have under the Constitution.

Now, I do not think this is a good idea, and I am going to vote against this bill even if this amendment passes. I am going to be honest with my colleagues. I think this is a bad idea because we are invading the States rights, we are invading the province of local governments. And local government and State government has a lot better ability to do this stuff than we do at the Federal level. That is exactly what my Republican colleagues have been preaching to us for the last 6 years.

But if we are going to do it, if we are going to elevate real-property rights to some special status, I beg of my colleagues to put all other civil rights on the same basis. And that is all this amendment would do.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) is recognized for 10 minutes in opposition to the amendment.

□ 1515

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

Mr. Chairman, the gentleman from North Carolina (Mr. WATT) seems to be concerned about the length of this bill.

The truth of the matter is that the length of this bill is because we are imposing additional requirements on property owners that they must meet over and above the requirements that other civil rights claimants would have to meet under the general rule. That is why this bill is as long as it is because we have these provisions in here that require exhaustion of the various steps at the local level.

Mr. Chairman, if we wanted to bring property rights up to absolute parity with other civil rights claims, we could have a very short bill. That bill would simply say that a person with a takings claim need not exhaust State, administrative, or judicial remedies, period. That would bring them up to absolute parity.

We have not gone that far. That is why I have suggested, I think quite accurately, that this is a very balanced approach which shows substantial deference to the local procedures, indeed more deference than is shown in any other context.

Now, the gentleman from North Carolina (Mr. WATT) seems to ignore the cases that I have cited over and over again which state the rule that is applied across the board in civil rights cases brought under section 1983 that State, administrative, and judicial remedies need not be exhausted. That is the law. That is well established. That is well understood.

I have quoted the cases, and let me quote them again. I will just quote the Monroe case from 1961 where the court said "the Federal remedy section 1983 is supplementary to the State remedy and the latter need not be first sought and refused before the Federal one is invoked."

Now, that is the way the law is except when we come to claims involving takings of private property. All we are saying is we want to do something to eliminate some of that inequity. The truth is we have not eliminated inequity entirely because of the procedures that we did require at the local level. And I think that is appropriate.

Ironically, and I do not think this is what the gentleman intends with his amendment, but I believe that the amendment of the gentleman from North Carolina (Mr. WATT) could very well be construed to impose a requirement to exhaust certain administrative remedies on other civil rights claims when those requirements are not imposed under law currently.

Now, I do not think that is what the gentleman wants to do. I would be quite surprised if he wants to require the exhaustion of administrative remedies. I would be surprised if the gentleman wants to require the exhaustion of administrative remedies for all those other civil rights claims that are brought under section 1983. But I think, if I understand his amendment correctly, that would be the consequence of it.

I think the Members need to focus on the fact that this bill is designed to deal with the particular well-documented problem. We have heard the examples. We have heard the statistics. The amendment would expand the reach of the bill to areas where there is no problem.

The gentleman has not been able to show why we should expand the bill to cover these other areas that he purports to be concerned about. The truth is there is no reason to expand the bill and, in expanding the bill, simply bringing down the protections that are available for other civil rights.

Now, there may be an argument in favor of doing that. I do not think that is what the gentleman wants to do, but that would be the consequence. So I very well understand why, if the amendment of the gentleman was adopted, why he still would vote against the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, would the Chair please advise us how much time remains.

The CHAIRMAN. Both sides have 6 minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, first of all, I think all my colleagues should understand what we are talking about here. The gentleman from Florida (Mr. CANADY) says that this bill would impose certain limitations on other civil rights claims.

Fine. If it is good enough for the goose, it is good enough for the gander.

This whole thing of putting a property right here and a privacy right here, or the fifth amendment says that a State shall not deprive a person of life, liberty, or property. They are all in the same line. If we are going to treat one of them one way, then we ought to treat all of them the same way.

Now, there has been no willingness to do that on the part of the gentleman from Florida (Mr. CANADY) or on the part of my colleagues, many of them on the other side. They voted for something called the Prison Litigation Reform Act of 1995.

Let me read to my colleagues what the specific language says. And this bill passed. This is about deprivation of personal liberty. Remember, the fifth amendment says "life, liberty or property." But this is the limitation that my colleagues put on dealing with liberty.

It says, "no actions shall be brought with respect to prison conditions under section 1983 of this title," the same statutory provision that this bill amends, "or under any other Federal law by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are fully exhausted."

Now, that would not be so bad if we were just talking about prison conditions. But we are not talking about somebody getting out of jail. We are talking about things like the free exercise of religion and unusual physical violence by corrections officers or other inmates in these prison facilities, or access to legal resources or access to medical care.

My colleagues would have a prisoner who was being starved to death and deprived of medical care exhaust every State and local administrative remedy even though they have got a constitutional claim. But if one of their friends gets deprived of some real property, then they want to set up a whole new system. That is what this is about.

Mr. Chairman, I reserve the balance of my time.

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

Mr. Chairman, the gentleman from North Carolina (Mr. WATT) has raised the Prison Litigation Reform Act, and

I think that it is appropriate that he do that.

The truth is that what we are doing in this bill is similar to what was done in the Prison Litigation Reform Act, because there we do require inmates to go through administrative procedures. There are very safeguards to make certain that those procedures are adequate to protect the inmates. But in this bill we are also requiring that the property owner go through administrative procedures.

As I have detailed more than once today, after the initial denial, the property owner has to pursue an appeal to the planning commission. After that they have got to go to the zoning board for a variance. They have got to then appeal to the local board of elected officials. In some circumstances they will have to file an application again. They will have to file an application a second time and go through the process. So we are requiring substantial effort in the local process by the landowner.

So I think that, in some ways, what we are doing here is quite comparable with what was done in the Prison Litigation Reform Act where there was a serious pattern of abuse and frivolous lawsuits which moved the Congress to pass that on a bipartisan basis and move President Clinton to sign it into law. So that had significant bipartisan support.

What we are trying to do here today I think is also addressing a serious problem in the failure to give access to the Federal courts to individuals who are entitled to have access to the Federal courts to vindicate their constitutional rights.

My colleagues will notice that in the Prison Litigation Reform Act there is no requirement that State judicial remedies be exhausted. That is not in there. I do not think it should be in there.

What this bill is about at its core is helping ensure that State judicial remedies not be required to be exhausted before a property right litigant can get into Federal court.

So I appreciate the gentleman from North Carolina (Mr. WATT) bringing that bill up. And I just point out again, however, that the general rule when it comes to civil rights claims is that they need not exhaust either their judicial or their administrative remedies.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, what is the time configuration, please?

The CHAIRMAN. Both sides now have 3 minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I would like to ask the gentleman from

Florida (Mr. CANADY) how long it takes to just simply file the permit that he is talking about, these steps that have to be taken? How hard is that in terms of just filing an appeal or a permit? How much time is involved with that? How hard is it?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. BLUMENAUER. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, what is required is that there be a meaningful application and that these steps be gone through as they are permitted under the local process.

Mr. BLUMENAUER. Mr. Chairman, reclaiming my time, in a typical jurisdiction in his community, how much does it take to file a meaningful application?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will continue to yield, it will vary from jurisdiction to jurisdiction and case to case depending upon the size of the development, the complexities of the issues involved. I think that it is important to understand that there are variations.

Mr. BLUMENAUER. Mr. Chairman, the gentleman from Florida (Mr. CANADY) could not answer the question. Just simply filing a meaningful appeal does not require in most cases huge amounts of time, huge amounts of money. It is simply an administrative action and does not require going through having any sort of ripening process at all. It is simply pushing paper.

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

Mr. Chairman, the point is the local government has to act on it. It is not ripe for adjudication until a decision is made or until they just sit on it for an unreasonable period of time. That is the way the bill is structured.

It is clear in the bill there has got to be a decision whether there has got to be unreasonable delay where they are just putting the application or the appeal aside and not considering it.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am not going to belabor this. I mean, it is quite obvious, if we read the United States Constitution, the fifth amendment says that the Government shall not deprive a person of life, liberty or property without due process of law. They are all on the same basis.

The statute that we operate under now puts them on the same basis. What this bill is all about is putting property rights and property disputes on a different basis than other constitutional rights.

Now, whether we like criminal defendants or not, they should not have a

second-class status procedurally. Whether we like people who have been deprived of or about to be deprived of their life or liberty or have been deprived of their life or liberty should not be the determining factor of what process we use. And that is really what this is all about.

The proponents of this bill would like to selectively take some rights and elevate them above all other constitutional rights and give them a special privilege. And it should not go unnoticed to my colleagues that the rights that they want to elevate are the ones not having to do with personal liberties but those having to do with property.

This bill is about supporting the property interest in our country. And I do not have any problem with that. Believe me, I have nothing against people who have property. But their interests should not be elevated above the rights of other constitutional rights.

Mr. Chairman, I yield the balance of the time to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, as I previously stated, I think this legislation is ill-advised because it assumes that the Federal judiciary knows better than State and local officials and judges when it comes to issues of local land use. I disagree.

Nevertheless, if we are going to give property owners the ability to "jump the line" into Federal court, it seems only fair that we should extend this same right to other section 1983 plaintiffs.

As a result, the Watt-Conyers amendment would allow all section 1983 plaintiffs bringing actions for constitutional violations to utilize the bill's provisions concerning ripeness and abstention—not just big corporations bringing actions.

As currently drafted, H.R. 2372 permits developers and polluters with taking claims against the government under section 1983 to avoid most State legal procedures, but ordinary citizens whose civil rights have been violated would be placed in a relative position of inferiority.

This turns the very purpose of section 1983 actions completely on its head. Section 1983 was adopted as part of the Civil Rights Act of 1871 in the wake of the Reconstruction amendments to the Constitution. Known as the "Ku Klux Klan Act," it was specifically designed to halt a wave of lynchings of African-Americans that had occurred under guise of state and local law.

The bill elevates real property rights over the very civil rights section 1983 was enacted to protect—civil rights such as the right to counsel, protected under the sixth amendment, the right to be free of "cruel and unusual punishment" under the eighth amendment, and the right to exercise one's parental rights. In cases involving these constitutional rights—and many others—Federal courts have abstained from deciding the constitutional claims brought under section 1983 and have sent these cases back to State court for adjudication.

To those Members who say this does not occur, I would like to quote the nonpartisan

Congressional Research Service which stated that “[a]bstention is indeed invoked by federal courts to dismiss or stay non-real-property-related section 1983 claims.” CRS then goes on to cite a number of cases to support that point. Why will the majority refuse to acknowledge that Federal courts invoke the abstention doctrine against all section 1983 claims—not just those that involve takings of property?

The Watt-Conyers amendment would create an equal playing field for all claims brought under section 1983 and grant all of these plaintiffs expedited access to the Federal courts.

I urge the House to support this commonsense amendment.

□ 1530

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

Mr. Chairman, I want to encourage the Members of the House to reject the amendment that is offered by my colleague on the Committee on the Judiciary, the gentleman from North Carolina (Mr. WATT).

The amendment seeks to expand the scope of this bill in a way that is totally unjustified. The gentleman keeps reasserting that we are trying to elevate property rights above other rights, but that is just not so. That is just not so. This is one of those debates where there is a disconnect from reality.

I know the gentleman makes all his arguments in good faith but I just have to say that this is not accurate to claim that the bill would have that impact.

We are simply trying to treat property rights a little more fairly than they are treated under the current system, where the Federal courthouse door is shut and property owners are denied an opportunity to get into Federal court to vindicate their Federal constitutional rights when their property has been taken.

Remember, we are talking about extreme cases where there is a taking, because the local government makes a decision that deprives the landowner of any economically beneficial use of the property. That is the small category of cases that we are talking about.

In those cases, I submit that people should be able to get into Federal court to vindicate their Federal constitutional rights. I do not see why that is controversial. The gentleman’s amendment would have the impact, which I know he does not intend, of bringing other rights down from the status they now enjoy and requiring that there be some exhaustion of administrative remedies in cases where there is no requirement of exhaustion of administrative remedies, under the cases that I have cited time and time again.

So I encourage the Members of the House to reject this unnecessary, unproductive, harmful amendment and move forward with focusing on the

work that needs to be done through this legislation, which is ensuring that all Americans who have suffered the deprivation of a right through the taking of their property have meaningful access to the Federal courts.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 170, noes 251, not voting 13, as follows:

[Roll No. 52]

AYES—170

Abercrombie	Green (TX)	Oberstar
Ackerman	Gutierrez	Obey
Allen	Hastings (FL)	Olver
Andrews	Hill (IN)	Ortiz
Baird	Hilliard	Owens
Baldacci	Hinchev	Pallone
Baldwin	Hoefel	Pastor
Barcia	Holden	Payne
Barrett (WI)	Holt	Pelosi
Becerra	Hooley	Pomeroy
Berkley	Insee	Price (NC)
Berman	Jackson (IL)	Rahall
Bishop	Jackson-Lee	Rangel
Blagojevich	(TX)	Reyes
Blumenauer	Jefferson	Rivers
Bonior	Johnson, E. B.	Rodriguez
Borski	Jones (OH)	Roemer
Boucher	Kanjorski	Rothman
Brady (PA)	Kaptur	Roybal-Allard
Brown (FL)	Kennedy	Sabo
Brown (OH)	Kildee	Sanchez
Capps	Killpatrick	Sanders
Capuano	Kind (WI)	Sandlin
Carson	Kleczka	Sawyer
Clay	Kucinich	Schakowsky
Clayton	LaFalce	Scott
Clement	Lampson	Serrano
Clyburn	Lantos	Sherman
Conyers	Larson	Shows
Costello	Lee	Sisisky
Coyne	Lewis (GA)	Slaughter
Crowley	Lofgren	Smith (WA)
Cummings	Lowe	Snyder
Davis (IL)	Luther	Spratt
DeFazio	Maloney (CT)	Stabenow
DeGette	Maloney (NY)	Stupak
Delahunt	Markey	Tauscher
DeLauro	Matsui	Thompson (MS)
Deutsch	McCarthy (MO)	Thurman
Dicks	McCarthy (NY)	Tierney
Dingell	McDermott	Towns
Dixon	McGovern	Traficant
Doggett	McIntyre	Udall (CO)
Dooley	McNulty	Udall (NM)
Edwards	Meehan	Velázquez
Engel	Meek (FL)	Vento
Eshoo	Meeks (NY)	Visclosky
Etheridge	Menendez	Waters
Evans	Millender-	Watt (NC)
Farr	McDonald	Waxman
Fattah	Miller, George	Weiner
Filner	Mink	Wexler
Forbes	Moakley	Weygand
Ford	Moore	Wise
Frank (MA)	Moran (VA)	Woolsey
Frost	Nadler	Wynn
Gephardt	Napolitano	
Gonzalez	Neal	

NOES—251

Aderholt	Bachus	Barrett (NE)
Archer	Baker	Bartlett
Armey	Ballenger	Barton
Baca	Barr	Bas

Bateman	Greenwood	Phelps
Bentsen	Gutknecht	Pickering
Bereuter	Hall (OH)	Pickett
Berry	Hall (TX)	Pitts
Bilbray	Hansen	Pombo
Bilirakis	Hastings (WA)	Porter
Bliley	Hayes	Portman
Boehlert	Hayworth	Pryce (OH)
Boehner	Hefley	Quinn
Bonilla	Herger	Radanovich
Bono	Hill (MT)	Ramstad
Boswell	Hilleary	Regula
Boyd	Hobson	Reynolds
Brady (TX)	Hoekstra	Riley
Bryant	Horn	Rogan
Burr	Hostettler	Rogers
Burton	Houghton	Rohrabacher
Buyer	Hoyer	Ros-Lehtinen
Callahan	Huhsch	Roukema
Calvert	Hunter	Royce
Camp	Hutchinson	Ryan (WI)
Campbell	Isakson	Ryun (KS)
Canady	Istook	Salmon
Cannon	Jenkins	Sanford
Cardin	John	Saxton
Castle	Johnson (CT)	Scarborough
Chabot	Johnson, Sam	Schaffer
Chambliss	Jones (NC)	Sensenbrenner
Chenoweth-Hage	Kasich	Sessions
Coble	Kelly	Shadegg
Coburn	King (NY)	Shaw
Collins	Kingston	Shays
Combest	Knollenberg	Sherwood
Condit	Kolbe	Shimkus
Cooksey	Kuykendall	Shuster
Cox	LaHood	Simpson
Cramer	Largent	Skeen
Cubin	Latham	Skelton
Cunningham	LaTourrette	Smith (MI)
Danner	Lazio	Smith (NJ)
Davis (FL)	Leach	Smith (TX)
Davis (VA)	Levin	Souder
Deal	Lewis (CA)	Spence
DeLay	Lewis (KY)	Stearns
DeMint	Linder	Stenholm
Diaz-Balart	Lipinski	Strickland
Dickey	LoBiondo	Stump
Doolittle	Lucas (KY)	Sununu
Doyle	Lucas (OK)	Sweeney
Dreier	Manzullo	Talent
Duncan	Martinez	Tancredo
Dunn	Mascara	Tanner
Ehlers	McCrery	Tauzin
Ehrlich	McHugh	Taylor (MS)
Emerson	McInnis	Taylor (NC)
English	McIntosh	Terry
Everett	McKeon	Thomas
Ewing	Metcalf	Thompson (CA)
Fletcher	Mica	Thornberry
Foley	Miller (FL)	Thune
Fossella	Miller, Gary	Tiahrt
Fowler	Minge	Toomey
Franks (NJ)	Mollohan	Turner
Frelinghuysen	Moran (KS)	Upton
Gallely	Morella	Vitter
Ganske	Murtha	Walden
Gejdenson	Nethercutt	Walsh
Gekas	Ney	Wamp
Gibbons	Northup	Watkins
Gilchrist	Norwood	Watts (OK)
Gillmor	Nussle	Weldon (FL)
Gilman	Ose	Weldon (PA)
Goode	Oxley	Weller
Goodlatte	Packard	Wicker
Goodling	Pascrell	Wilson
Gordon	Paul	Wolf
Goss	Pease	Wu
Graham	Peterson (MN)	Young (AK)
Granger	Peterson (PA)	Young (FL)
Green (WI)	Petri	

NOT VOTING—13

Biggert	Hyde	Rush
Blunt	Klink	Stark
Cook	McCollum	Whitfield
Crane	McKinney	
Hinojosa	Myrick	

□ 1455

Messrs. BARRETT of Nebraska, BERRY, REGULA, and SHUSTER changed their vote from “aye” to “no.”

Messrs. HOEFFEL, ROEMER, RODRIGUEZ, SHOWS, and FORBES changed their vote from "no" to "aye." So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 106-525.

AMENDMENT NO. 2 OFFERED BY MR. TRAFICANT  
Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. TRAFICANT:

In section 5, after "the agency shall" insert ", not later than 14 days after the agency takes that action,".

The CHAIRMAN. Pursuant to House Resolution 441, the gentleman from Ohio (Mr. TRAFICANT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Ohio (Mr. TRAFICANT).

Mr. TRAFICANT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to first start out by commenting on the fine job that you are doing on this bill.

When this bill first came forward, I offered an amendment several years ago that the little guys do not have attorneys and accountants, and there may be an action that causes them to lose value in their property, but they would not even know about it. So the original Traficant amendment said, the government had to notify them when they have taken an action which may cause a devaluation of their property.

Having said that, this is a perfecting amendment. So the little guy, he does not have accountants and attorneys that might notify that this action taken by the government could hurt him, so the Traficant language says look, the government has to notify him. He may be hurt by this action.

□ 1600

But what this amendment does, it now sets a timetable. It says the Federal government shall notify that property owner within 14 days. It is very simple: Let that little guy know this action that was taken may hurt him, and, within 14 days, tell him about it and where he can go for information and compensation, if necessary.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, I thank the gentleman for yielding to me.

I am pleased to rise in support of the gentleman's amendment. I thank the gentleman for taking the initiative and offering the amendment. I encourage all the Members of the House to accept it.

Mr. TRAFICANT. Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from North Carolina (Mr. WATT) is recognized for 5 minutes in opposition to the amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I reluctantly have to oppose the gentleman's amendment. This bill is into micromanagement enough. We are micromanaging local governments, we are micromanaging State courts, and now we have gotten into micromanaging the time period within which the Federal government must do things.

I have no opposition to the Federal government having to notify a property owner after an adverse decision. That requirement I would presume is in the law now. But when we start imposing time limits such as this 14-day time limit, I think we are into micromanagement.

While I will not ask for a recorded vote on this, I cannot support it and would oppose it.

Mr. Chairman, I yield back the balance of my time.

Mr. TRAFICANT. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, I believe that is a reasonable argument, but remember that most of the corporations, most of the people that have money, they are notified immediately. Their lawyers and accountants say, hey, this could hurt.

That little guy does not have that option. That little guy needs that helping hand. I think it should be a 14-day requirement, and if in conference it is problematic, make it 30 days. But Mr. Chairman, we have some small business loan applicants waiting until they reach social security to make the decision. I want the people in my district to get a reasonable, timely notice.

The gentleman makes a good point and I respect it. If that 14 days is confining, they have my permission to make it 30 days, but I want a reasonable period of time for my little guy to be notified.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Would the gentleman entertain a friendly amendment to stretch the 14 days out to 30? That would actually be a lot more reasonable.

#### PARLIAMENTARY INQUIRY

Mr. TRAFICANT. Parliamentary inquiry, Mr. Chairman. Would that be valid within the rules?

The CHAIRMAN. The gentleman may ask unanimous consent to modify his amendment.

#### MODIFICATION TO AMENDMENT NO. 2 OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I ask unanimous consent that my amendment be modified to, instead of a 14-day notification date, have a 30-day period.

The CHAIRMAN. The Clerk will report the amendment, as modified.

The Clerk read as follows:

Amendment No. 2, as modified, offered by Mr. TRAFICANT: In section 5, after "the agency shall" insert ", not later than 30 days after the agency takes that action,".

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from Ohio (Mr. TRAFICANT).

The amendment, as modified, was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 106-525.

#### AMENDMENT NO. 3 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BOEHLERT

Mr. BOEHLERT. Mr. Chairman, I offer an amendment in the nature of a substitute made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 3 in the nature of a substitute offered by Mr. BOEHLERT:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Rights Implementation Act of 2000".

#### SEC. 2. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

"(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

"(2) For purposes of this subsection, a final decision exists if—

"(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

"(B) one meaningful application, as defined by the relevant department or agency, to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one appeal or waiver, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available or if such an appeal or waiver would be futile."

**SEC. 3. JURISDICTION OF COURT OF FEDERAL CLAIMS.**

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

“(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

“(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

“(B) one meaningful application, as defined by the relevant department or agency, to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one appeal or waiver, where the applicable law of the United States provides a mechanism for appeal or waiver.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available or if such an appeal or waiver would be futile.”.

**SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall apply to actions commenced on or after the 120th day after the date of the enactment of this Act.

The CHAIRMAN. Pursuant to House Resolution 441, the gentleman from New York (Mr. BOEHLERT) and a Member opposed each will control 30 minutes.

Mr. CANADY of Florida. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) will be recognized for 30 minutes in opposition to the amendment.

Mr. BOEHLERT. Mr. Chairman, I ask unanimous consent that the gentleman from Massachusetts (Mr. DELAHUNT) be allocated 15 minutes of the total time allocated to me.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. BOEHLERT).

Mr. BOEHLERT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am offering this amendment in the nature of a substitute with the gentleman from Massachusetts (Mr. DELAHUNT) in an effort to remove the most glaring fault, one might almost say “sin”, in this bill: its interference in local zoning processes.

Here is what the substitute would do. It would strike Section 2 of the bill, the section that deals with local zoning matters, and it would preserve Sections 3 and 4 of the bill, which deal with land disputes involving the Federal government. It would preserve those sections in the forms in which they came to the floor in 1997. Our sub-

stitute is identical to the one I offered at that time.

I have been hearing a few different arguments against the substitute, all of which are disingenuous. Let me deal with just one of them for now.

We are told that the substitute is unnecessary because Section 2 is simply an innocent attempt to ensure that local zoning cases move forward, a small and technical change that would be employed only in rare circumstances. That is what we are told.

I am afraid that the supporters of this bill are inviting us to enter an Alice-in-Wonderland world where words can mean anything they want them to mean. The actual fact is that Section 2 would fundamentally alter the balance of power in zoning cases. The top lobbyist for the National Association of Home Builders admitted as much when he told Congress Daily that the purpose of this bill is to put a hammer to the head of State and local officials. That is exactly what the bill would do.

The supporters of the bill have tried to obscure that fact. They have tried to sheathe the hammer, because they know the public would oppose any such pressure tactics. We know that from their own words.

For example, the National Association of Realtors signed a letter supporting H.R. 2372, but here is what they said in a separate press release that arrived in our office the very same day. The realtors said that a survey found that 95 percent, 95 percent of the public believed that “neighbors and local governments, not States or the Federal government, should make decisions concerning growth and related issues,” and I agree with that.

But Section 2 of H.R. 2372 goes exactly in the opposite direction. It takes the unprecedented step of dictating local zoning procedures from Washington, short-circuiting those local processes in the bargain. It removes any incentive for developers to negotiate, taking growth issues out of the control of neighbors and local governments and handing them over to Federal judges who, exercising judicial restraint, do not want them.

The supporters of H.R. 2372 claimed these new rules will save time and money, but that, once again, gives away their hand. These new rules will save localities time and money only if they capitulate to the developers. If localities choose to fight to protect their citizens, then H.R. 2372 will make zoning cases even more prolonged and costly because Federal court litigation will be more time-consuming and costly than going to State courts.

That is why the groups that understand zoning so vociferously opposed H.R. 2372. That includes the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the National Conference of State Legislatures, and the Association of Attorneys General.

The Boehlert-Delahunt amendment would eliminate the problem these groups have with the bill because it would leave local zoning intact. In short, the argument raised against the amendment simply cannot hold up, even under the most superficial scrutiny.

I urge all who oppose this bill to vote for the Boehlert-Delahunt amendment because it strikes the most problematic portion of the bill. I also urge those who have qualms about H.R. 2372 but still might intend to vote for final passage to also support the Boehlert-Delahunt amendment, because it will allay their concerns.

The Boehlert-Delahunt amendment simply ensures that this bill will improve Federal procedures, not wreck local ones. The amendment is supported by the League of Conservation Voters and the National League of Cities, and I urge its adoption.

Mr. Chairman, I reserve the balance of my time.

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

Mr. Chairman, I do rise in opposition to the substitute amendment offered by my friend, the gentleman from New York.

The substitute that the gentleman has offered would gut the bill. The change that the gentleman would make in the bill goes right to the heart of the bill and removes the provisions of the bill that are designed to deal with the real problem that was the motivation for introducing this bill.

He leaves in place some provisions of the bill that help clarify procedures at the Federal level, and I think those things, it is good to do that. But the real problem that the bill is trying to address has to do with abuse in the rules of the Federal court system which prevent landowners whose property has been taken at the local level from having meaningful access to the Federal courts.

The gentleman's amendment, as he has stated, would remove all the provisions that affect local land use decisions. We have to remember, the local land use decisions that would be affected by the bill are those local land use decisions that result in takings without compensation.

We have heard a lot about how this bill is going to affect every local zoning decision in the country. Members of the House, I hope Members can pierce through the rhetoric and understand that that is simply not true. There is no constitutional deprivation unless there is a taking in violation of the Constitution.

The court, the Supreme Court, has established a standard for such regulatory takings. What they have said, which is formulated I think most clearly and succinctly in the Lucas decision, which came down back in 1992, is that

there is a regulatory taking when the local land use decision deprives the landowner of any economically beneficial use of his land.

So basically what we are talking about are decisions where they tell the landowner, you cannot do anything with your land that will be economically beneficial. I would suggest to the Members that is an extreme category of case.

There are some people who do not think that there should be constitutional protection against such governmental action. I think many of the people who are opposing this bill are people who simply do not agree with providing protection against that sort of extreme, overreaching land use decision. That is why they want to make it as difficult as they can for people to have a remedy for a violation of that right.

But the court has found that such a right exists. I think they are right. In those cases, all we are saying in this bill is that people should be able to have their day in Federal court. Why that is controversial or why that is something we should pause for one minute about here, I do not understand.

Make no mistake about it, if Members vote for this substitute, they are voting to destroy this bill. What is left will be a shell of what this bill was. So this is not a matter of just splitting the difference and voting for the substitute and then voting for the bill as a compromise. This would not amount to a compromise, it would amount to the destruction of the bill.

When we look at the substance of the objections to the bill that the sponsors of the substitute have raised, it seems to boil down to the claim that the bill would unfairly short-circuit the local zoning process.

I have explained why it only deals with a narrow category of cases, but consider what the bill says about the local zoning process and what the bill requires that property owners do before a case is ripe for adjudication in the Federal courts.

We do not tell a landowner, once you are rejected, you run right off to Federal court. That is what happens whenever people suffer any other kind of civil rights deprivation at the local level. Under Section 1983, they can go straight to Federal court without exhausting their State or administrative judicial remedies. But here in this bill we are saying, you are going to have to go through the administrative process. You are going to have to go through options that are available to you at the local level.

We say, you will have to appeal to the planning commission after you are denied. You have to then make an application for a waiver to the local zoning board. You have to seek review by the local elected governing board. But

then at the end of that process after, you have gone through those steps, and in some cases you have to file a second application, after you have gone through all that, we are simply saying you should not have to go to State court to litigate the case there, but should be able to go to Federal court to have your Federal, and remember, it is a Federal constitutional right we are talking about here, should be able to go to Federal court to have a decision made regarding your Federal constitutional right.

□ 1615

One of the great ironies that has struck me in the course of the discussion over this issue is this, if a claim involving a taking is filed in State court, and the local government prefers for that case to be heard in Federal court, the local government has the right to have that case removed from State court to Federal court, and they do it.

That is a tactic that local governments will use to slow down the process, because once the case is going to State court, they will jump in and say let us move it to another forum. They have got the right to do that as a local government when the landowner does not have the right in the first place to go to Federal court.

Now, one would think that is so bizarre, that somebody might be making it up. If my colleagues have questions about that, I refer them to the case that was decided by the Supreme Court in 1997, the City of Chicago v. International College of Surgeons case.

That case says exactly what I have just explained, that a local government which has been sued in State court where a claim is raised, a Federal claim is raised of a Federal taking, has the right to go to the Federal district court and have that case removed from the State court to the Federal court.

Now, explain to me how it is fair that the local government can decide that the matter is going to be litigated in Federal court when the aggrieved property owner does not have the right to go to Federal court in the first place.

I suggest to my colleagues that is an absurd rule in the law of this land. It is a rule that this Congress should change by passing this bill. We will not change it if we adopt the amendment that is offered by the gentleman from New York (Mr. BOEHLERT).

As my colleagues consider this substitute amendment, let me urge them to consider a fundamental principle, which I have stated earlier in this debate, which I will state again, I will probably repeat before the debate is over, and that is people whose Federal constitutional rights are violated should have meaningful access to the Federal courts for the vindication of their Federal constitutional rights. If the Federal courts exist for any reason,

it should be to protect Federal constitutional rights. Why that is controversial remains a mystery to me, and it will always remain a mystery to me.

I tell my colleagues I think it is because the local governments, and I used to represent local governments, and I respect them, and most of them make reasonable decisions in the vast majority of cases, but, occasionally, they will step over the proper bound and will violate someone's constitutional rights.

They have got a good deal under the existing system, because they can go to Federal court. They can take a case to Federal court if it is to their advantage, and they can keep it out of Federal court if it is to their advantage.

I think we should have a level playing field. It ought to be a two-way street. There is no reason there should be that kind of asymmetry in the system.

So I suggest that this amendment that is being offered be rejected and that we move forward to the passage of the bill so that we can correct the very real problem that exists in the administration of justice in this country.

Mr. Chairman, I reserve the balance of my time.

Mr. DELAHUNT. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I thank the gentleman from Massachusetts for yielding me this time.

Mr. Chairman, I think I have spent more time than anybody in this Chamber working with people around the country, in Florida, in Georgia, in the Northwest who are concerned about the livability of their community. That is my focus.

The notion that somehow that we are going to deal on these extreme takings cases, and that is what we need to focus on, misses the point entirely about the impact that this legislation would have.

The things that people care about in communities around the country are the impacts on small communities and a whole host of areas that are in a gray area, where it is not cut and dry.

I personally believe that, oftentimes, the decision making process is too uneven, is too political. That is why, State after State after State, is starting now to establish comprehensive land use planning processes from Tennessee, Oregon, Wisconsin. Georgia is now looking in metropolitan Atlanta because of the nightmare they have with sprawl and unplanned growth.

This legislation would undercut those efforts whenever people feel that they can have an opportunity to circumvent it. They do not have to perfect appeals.

The gentleman keeps talking about how they have to go through the process again and file applications. That is

simply pushing paper. That is an application fee. It does not require an extensive effort.

If the gentleman reads the bill, he finds out there is a further exemption where, if people feel that the application or the reapplication or waiver would be futile, that they do not have to go through that process at all. That is absolutely the wrong approach to take.

The gentleman from New York (Mr. BOEHLERT), the author of this amendment, has pioneered a bipartisan effort to reach Superfund compromise. If we would have that same sort of spirit to deal with those few problems where there are legitimate issues about streamlining the process, come together, I think we could improve the process without going to the extremes of turning it around.

This turns it around. It places small and medium-sized jurisdictions at the mercy of people who will file these expensive appeals. It is going to back up the courts if they use it. It is not going to be any faster. It will, in fact, wear down. Remember the vast majority of jurisdictions in this country have fewer than a couple of thousand constituents.

I, in the past, have enjoyed working with the home builders trying to refine these efforts. They are doing a great job now I think of negotiating with the administration on Brownfield legislation.

We ought to take that approach, solve a problem rather than opening a floodgate, undercutting State and local efforts, and doing something that has no chance of being passed through this body and signed by the President, and is only going to inflame the opposition that people have to local efforts that do not support planned thoughtful growth.

Mr. BOEHLERT. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from Maryland (Mr. GILCHREST).

Mr. GILCHREST. Mr. Chairman, I thank the gentleman from New York for yielding me this time.

Mr. Chairman, I want to compliment the gentleman from Florida (Mr. CANADY) on his attempt in the legislation to hold onto one of the foundations of this country, and that is the hallmark of private property rights.

But I want to make another suggestion on another hallmark of America and our freedom, and that is respect for one's neighbor, respect for the air one's neighbor breathes, the water he drinks, the dust around his property, the noise, the traffic, the odor, et cetera, et cetera, et cetera; that what one does on one's property does not adversely affect the quality of life for one's neighbor to use his property.

Now, there was also another fundamental in our democratic process which is embedded in the Constitution; and that is, if one's property is taken

away for the public good, one is to be compensated at fair market value.

But now listen to this, what else is there in one's constitutional right in America? It is this. When one's property is regulated to prevent harm to one's neighbor from that dust or that odor or that inability to have a water management plant or storm water management plant or whatever, should one be compensated? The basic answer through our court system, through our legislation is no.

Let me give my colleagues two quick examples in my district. There was a 54-acre plot of land purchased for the purpose of bringing in out-of-State trash to be put on this land and then called a rubble fill. The local zoning board said, no, you cannot do it. It was appealed to the zoning appeals board. They said, no, you cannot do it. It was then taken to the State court; and the State court said, no, it will adversely affect your community for a number of reasons: Truck traffic, noise, dust, you name it.

The premise in this, and there was another example that I could use, almost the exact same thing with a sludge storage facility, to bring in out-of-State sludge to be stored on a 300-acre farm that only needed sludge, if they were going to use it, every third or fourth year. They were going to store thousands of tons of sludge. The zoning appeals board said no. The State court said no. They took it to Federal court.

If they could jump from the zoning appeals board to the Federal court, would the judge, in this case the judge lives in the community because it is a circuit court judge, would he have an understanding of the need for the neighbors in his community? I would say the answer is no. I say to my colleagues, support the Boehlert-Delahunt substitute.

Mr. CANADY of Florida. Mr. Chairman, may I inquire of the Chair concerning the amount of time remaining.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 21½ minutes remaining. The gentleman from New York (Mr. BOEHLERT) has 7½ minutes remaining. The gentleman from Massachusetts (Mr. DELAHUNT) has 12 minutes remaining.

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

Mr. Chairman, the gentleman from Maryland (Mr. GILCHREST) raised some interesting points, but I do not think they have anything to do with this bill because he was talking about land uses, where a local government makes a decision and they are not going to be approved. Those did not involve takings of the property.

We are talking about situations under this bill where there is a constitutional violation, a taking. If one has some doubt about it, look in the

bill on page 4. The operative language is, any claim or action brought under section 42 U.S.C. 1983 to redress the deprivation of a property right or privilege secured by the Constitution.

That only comes up when the local government decides that they are going to impose a restriction that deprives the landowner of any beneficial economic use of the land.

Now, that is what we are dealing with here. I tell my colleagues I believe in local control. But I do not think that the neighbors in a community have the right to use the government to take someone else's property for the benefit of the community without paying for it. That is all we are saying here.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I will say the rubble fill operator stood to make literally millions of dollars on the property, but it would have damage.

Mr. CANADY of Florida. Mr. Chairman, the important thing to understand, some people in the land use context do assert that they should have the right to the highest and best economic use of their property, but they do not, and they should not. Zoning has never permitted that. The Supreme Court does not provide for that. That is not the law of the land. It should not be the law of the land.

So what the gentleman from Maryland is talking about has nothing to do with the legal realities of what we are dealing with here. What we are talking about are those extreme cases where the government overreaches and denies all economically beneficial use of the land basically where they tell people they are going to turn their private property into a public preserve. That is not right.

Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Florida for yielding me this time.

Mr. Chairman, let me be, perhaps, very clear about what this bill is not about so we do not get confused as we almost just did. It is not about zoning laws. Zoning laws under Federal court decisions are not takings. The reason they are not takings is all land owners benefit mutually from zoning laws. The government is not taking away one's value there. It is enhancing the general value of all properties zoned one way or another in that zoning condition.

We are not talking about nuisance laws. Nuisance laws are being held by the courts not to be takings.

We are talking about the kind of laws in which the general public benefits from, but a single landowner or class of landowners has to sacrifice his property for.

Dolan v. The City of Tigard is the best case on record. In that case, the City of Tigard, a local authority, tried to tell a landowner that we will only give you a building permit, which he was entitled to, if you give us some of your land for a green space and a running back.

Now, the court, after 10 years of litigation, finally held to that local authority, the Supreme Court rule did not have the right to take that man's and that woman's property in the course of giving them or not giving them a building permit without paying them just compensation. That was a taking.

This bill is all about making sure that wherever Federal civil rights violations of property takings occur, be they by Federal authorities or State authorities, that one has the right at least to go to Federal court and get one's Federal civil rights on property adjudicated.

I want to make that point again. The court in Dolan v. The City of Tigard made it very clear that the fifth amendment protection against government at any level taking your one's rights without paying one, that fifth amendment right is a civil right.

The court said it is no different, no distant relative to any other civil rights in the Bill of Rights, whether they be the right of free speech or the right of assembly or the right of religion.

The court in that decision said, in effect, that the right of Mr. Dolan and his wife to be protected against their own local government was not a local decision to be decided in State court. It was involving a civil right guaranteed under the Bill of Rights of our Constitution.

□ 1630

And the Supreme Court of our land finally settled it.

Now, why did it take 10 years? Because they had to go through this entire appeal process for all the court system. All the gentleman from Florida (Mr. CANADY) is doing is saying where this federally guaranteed right ought to be protected for the citizens of this land, they at least ought to have the Federal courts to go to to protect them. That is all this bill does.

When the right to go to Federal Court is taken away because it happens to be a State authority that took the property, or because it happens to be a local or county or parish authority that took that property, when that right is taken away to go to Federal Court, the landowner is condemned to 10 years of litigation.

There was another case in Texas that took 10 years, and it finally ended up in the court of claims and the government lost because they had taken the full value of a property owner's rights in a lot in a subdivision that they had de-

clared a wetland. In that case the court begged Congress to do something about this. Nobody in our country ought to have to wait 10 years to go to court to get an answer as to whether or not the government took their property.

This bill is all about process. It is not about defining takings, it is not about saying when a taking occurs, it is not about saying what conditions under which a taking occurs are going to apply in the law of the land. It is simply about process. And if we deny people process to get their federally guaranteed civil rights adjudicated, we are denying them their rights. If it takes 10 years to get some court to finally tell a landowner that the government ought to pay the full value, not the value that is left over after the landowner has been regulated to death, then something is wrong in America.

This amendment ought to be defeated. This bill ought to be passed.

Mr. DELAHUNT. Mr. Chairman, I yield 2 minutes to the gentleman from Maine (Mr. BALDACCI).

Mr. BALDACCI. Mr. Chairman, I thank the gentleman from Massachusetts (Mr. DELAHUNT) for yielding me this time, and I rise in favor of this amendment.

I rise in defense of the people of the 2nd District of Maine, and especially the loggers, the farmers, and the fishermen of Washington County. Unemployment there recently nudged above 10 percent. The traditional uses of land, the jobs they depend upon, and the families that need those paychecks are under fire. I have to take a stand on their behalf.

This amendment gets at the issue at heart, to be able to have a response to Federal action that is being taken in terms of listing. It gives the people of Washington County and the people of eastern Maine an opportunity for their day in court. They cannot afford to have expensive attorneys on retainers for long periods of time. This amendment allows them to have that process, to be expedited, to be able to be heard. It gets at exactly the issue before us: Federal action, Federal Court, expedited review.

Mr. Chairman, my constituents feel besieged by a Federal proposal to list as endangered Atlantic salmon in the rivers of the region. A listing would strain the economy which is based on natural resources. Moreover, the listing threat is unwarranted on the merits. It lacks sound science, and it fails to recognize strong state and local conservation efforts.

I have heard from people whose livelihoods depend on the land and water—from the working forests and blueberry barrens inland to the salmon pens along the coast. They are crying out for help, for a way to protect the natural environment while at the same time preserving jobs and a way of life.

I have heard them. I agree that the proposed listing is wrong and will unfairly hurt my constituents. Therefore, I have to use any tool at my disposal to send a message that this process is wrong.

I have focused on the provisions of H.R. 2372 that provide that any property right infringed by a Federal action would be ripe for adjudication upon a final decision by the Federal Government. This change would ensure that the people of downeast Maine would not be stuck in limbo by endless appeals but rather would have a straightforward process to seek redress.

The legislation being considered today is not perfect, and I will support attempts by my colleagues to make it better. I believe Mr. BOEHLERT'S amendment most succinctly addresses both my concerns and those of my constituents. He narrows the focus of the bill to the federal issues, and I will support him.

However, at the end of the day, I will support final passage of this legislation whatever its form. I believe this bill takes an important step in protecting the rights of my constituents.

Mr. BOEHLERT. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa (Mr. GANSKE).

Mr. GANSKE. Mr. Chairman, I will vote against this bill if the Boehlert amendment fails.

How many times have my fellow Republicans stood on this floor and argued the benefits of local control? It seems to me that I have heard my fellow Republican colleagues argued forcefully for States' rights and local control when it concerns welfare reform, school vouchers, flexibility for crime prevention funding, and all sorts of things. Yet here we are today debating a bill that would take crucial power away from State and local governments, overwhelm the Federal judicial system with local land-use cases and possibly endanger public safety.

My fellow House conservatives, who are the champions of State power, would, in this bill, federalize countless quintessentially local cases. And for the life of me I cannot understand how the industries that support this bill think that this would benefit them.

First, they may very well find that they do not get speedier resolution of these disputes in Federal Court because the Federal courts are already clogged with drug cases. If my colleagues think the wait in Federal court is long now, just wait until local land-use cases are in Federal courts primarily.

I just met with the Federal judges in my State, in my district. They stressed how they are swamped with current jurisdiction. They do not want new jurisdiction. I urge every Member to meet with their own Federal judges.

Second, we just had a big debate in the Senate about how liberal some Federal jurisdictions are. Last year, I received a letter from an attorney in Iowa who works in the property rights area for home builders, who said there is no evidence that developers' claims would receive any more favorable hearing in Federal courts than in local jurisdictions.

This is borne out by the statement of Judge Frank Easterbrook of the 7th Circuit Court of appeals who said,

“Federal courts are not boards of zoning appeals. This message, oft repeated, has not penetrated the consciousness of property owners who believe that Federal judges are more hospitable to their claims than are State judges. Why they should believe this, we haven’t a clue.” This seems to me like a pretty clear message that the Federal courts may not be all that sympathetic to developers.

And here is something else for my conservative colleagues to ponder. If this bill becomes law, it sets a precedent. What if in future years a liberal Congress decides that there will be no development of property outside of those areas already developed as determined by Federal law? Do we really want Federal Government primarily involved from the get-go in local land-use decisions? I certainly do not think so.

The base bill would encourage the belief that Federal courts ought to run local government. I urge my fellow conservatives to vote for the Boehlert amendment and vote against the base bill if it does not pass.

Mr. CANADY of Florida. Mr. Chairman, I yield 4 minutes to the gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, let me get this straight, my colleagues. The author of this amendment says that the underlying proposal, the underlying bill here, reminds him of Alice in Wonderland. Well, maybe he is familiar with a version of Alice in Wonderland from upstate New York; but it sure is not the version of Alice in Wonderland that we are familiar with down in Georgia. As a matter of fact, his amendment is as much like the looking glass in Alice in Wonderland as the looking glass was.

Let us look at what the gentleman who is proposing this gutting amendment is really saying. This is his amendment. It says: “Strike all after the enacting clause.” Strike it. Wipe it out. All of its guarantees, all of its process, all of its substance. Strike it out. And then let us replace it with something that he calls the Private Property Rights Implementation Act of 2000. He very generously steals the title of the gentleman from Florida (Mr. CANADY), but that is the last similarity between these two pieces of paper.

He is saying that the only property rights that individuals will have for a reasonable, expedited, fair appeal to Federal Court, to assert a Federal guaranteed right, is if the Federal Government is coming in and taking property, as if it does not matter, in this Alice in Wonderland world of his, that some other government authority is coming in and snatching the property away. That is okay in his Alice in Wonderland world. Only can an individual assert their right in a reasonably, fair, and expedited manner so that it makes

sense if it is the Federal Government coming in.

That is wrong. That is as if the gentleman were saying let us implement rights regarding the first amendment or the fourth amendment, and then we look and see what the gentleman from New York is saying, and he is saying an individual can go into Federal court only if it is the Federal Government taking away the right to free speech, or the right to free assembly, or the right to due process, or the right to equal protection, or the right to counsel, or the right to confront witnesses.

It makes no more sense to apply that limited, unreasonable, and unfair standard to property rights than it would to apply the standard embodied in this amendment, this gutting amendment, to private property rights.

The proposal that we are debating today, the underlying bill offered by the gentleman from Florida, the distinguished chairman of the Subcommittee on the Constitution, and which has been already passed by this body by a very large majority, stands for fundamental equal protection, due process, fairness, and expedited review of a Federal right in Federal Court. The amendment proposed by the gentleman from New York, that he erroneously characterizes as legitimate and fair implementation of rights, guts our constitution.

I would urge all of my colleagues to sift through the rhetoric, the cloud, the sky-is-falling rhetoric, defeat this amendment which guts the bill, and stand on this floor and use their voting cards to say that if an individual’s property is taken, that they have a right to assert that in the form of their choosing, not the form chosen by the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I yield myself 30 seconds.

The language in the substitute only guts the bill if the goal is to undermine local government. The language in the substitute is identical to the way sections 3 and 4 were presented to this House less than 3 years ago, language that was written, as they themselves admit, by the National Association of Home Builders. It is hard to understand why they would claim their own language was meaningless.

And as for striking all after the enacting clause, that is what all substitutes do under all circumstances.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

I am pleased to join with the gentleman from New York in offering this amendment in the nature of a substitute. Specifically, the substitute would eliminate those portions of the bill that confer upon large developers, and let us be candid, that is what we are really talking about here, large developers, the right to go directly to Federal Court to resolve purely local

land disputes that have always, always, been handled at the State and local level.

Land use is, as the gentleman from Iowa said, quintessentially a local issue, a local matter; and it has been under local and State control since the beginning of the Republic. I think I heard a quote from one of the previous speakers that quoted a particular conservative Federal judge saying Federal courts are not boards of zoning appeals. Let us not denigrate them.

The bill before us would allow developers to bypass local zoning boards, local health departments, and local courts in their efforts to win at all cost. It would do so by sweeping aside long-established judicial and constitutional principles that require Federal courts to give State and local authorities the opportunity to decide such local matters for themselves.

The question was raised, why is this so controversial, because it enforces a right? It is controversial because it sweeps away two fundamental principles of our American jurisprudence: the abstention doctrine and the issue of rightness. That is why it is controversial. Because it absolutely impacts everything that we have embraced to this point in time since the beginning of the Republic as far as our jurisprudence is concerned.

The bill would inevitably result in lower environmental health and safety standards as local authorities seek to avoid exposure to costly lawsuits. By federalizing literally thousands of these cases, the bill would encourage developers to sue rather than negotiate with local officials and neighboring landowners. The resulting litigation would impose huge costs on local governments that, candidly, they cannot afford.

Let us remember, Mr. Chairman, that 97 percent of the cities and towns in America have populations under 10,000; 52 percent have populations under 1,000. Virtually without exception these small communities are forced to hire outside expensive legal counsel each time they are sued, imposing large and unanticipated costs on municipal budgets. Even then these communities are no match for corporate giants and large developers.

If the bill is allowed to go through without this amendment, we will be giving enormous leverage to developers and denying ordinary citizens and their elected representatives effective access to the courts.

□ 1645

That is what this underlying bill would do. And that is why it is opposed by a variety of groups that have already been enumerated: the National League of cities, they are concerned about the local State/Federal relationship and that is why they oppose it; the National Association of Towns and

Townships; the National Association of Counties; the National Conference of State Legislatures; the U.S. Conference of Mayors, all of whom are concerned about the core principle at stake here, which is the principle of federalism; the Conference of State Chief Justices; the Judicial Conference representing the Federal judiciary, because they are aware of fact that they cannot handle an increased backlog that this proposal, this underlying bill, would clearly generate.

The AFL-CIO is opposed to this bill because, in committee, the majority would have denied an exemption to the bill which would have allowed cases involving public health and public safety being exempted; and that is the reason that organized labor is opposed to this bill.

Apart from its effects on local communities, the bill, as I indicated, would overwhelm Federal courts that are already staggering under the burden of their existing caseloads.

Now, one might suppose that such a proposal as this was generated by those who favor a larger role in the Federal Government, but that is not the case. The authors of the bill are the very individuals whom The Washington Post referred to yesterday morning as "self-proclaimed champions of State power."

One might suppose that this proposal was generated by those who advocate a larger role for the Federal judiciary. But again, that is not the case. The proponents and authors of the bill are the very individuals who regularly come to the well of this House and rail against judicial activism by unelected Federal judges.

Only last Congress, they were on the floor attempting to pass a measure that was called the Judicial Reform Act, which would have prohibited Federal judges from ordering a State or local government to obey environmental protection, civil rights, or other laws if doing so would cost them any money.

The gentleman from New York will remember that measure because it was an amendment which we offered together that brought about its much deserved defeat.

What that bill attempted to do was to strip the Federal courts of jurisdiction or violations of Federal law that were indisputably within their proper sphere of authority.

What this bill attempts to do is to transfer to those very courts jurisdiction over violations of State and local laws that have never been within the scope of their authority. Well, so much for federalism. So much for local control.

So, Mr. Chairman, if my colleagues are concerned about unfunded mandates because it would impose additional costs upon local governments, vote for this substitute. If they are concerned about limited government

and local control, vote for the substitute. If my colleagues are concerned about judicial intervention by unelected judges, vote for the substitute.

So, for all these reasons, I urge my colleagues to support the substitute and oppose this reckless and irresponsible bill.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, may I inquire of the Chair concerning the amount of time remaining?

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 12 minutes remaining. The gentleman from New York (Mr. BOEHLERT) has 4 minutes remaining. The gentleman from Massachusetts (Mr. DELAHUNT) has 3½ minutes remaining.

Mr. CANADY of Florida. Mr. Chairman, I yield 3½ minutes to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Chairman, I rise to express my strong opposition to the Boehlert amendment and urge my colleagues to oppose any efforts to delete provisions which provide access to the Federal courts for property owners pursuing takings claims against local governments.

Currently, property owners do not have the option of directly pursuing a fifth amendment claim in Federal court. They must exhaust all possible State and local administrative remedies first, which is an expensive and time consuming process that may leave owners in administrative limbo for years. On average, it takes 8 to 10 years for property owners to get a hearing on facts of their cases. That is just not right.

I am a strong advocate of the traditional and historic rights and responsibilities of State and local governments. I support the position that decisions affecting local communities are best made at the local level. However, individual private property owners seem to have no recourse in land-use disputes currently. Federal involvement is outlined in H.R. 2372 and constitutionally is needed to protect their rights.

I want to make sure individual property owners are heard regardless of whether there disagreement is with local, State or Federal governments. The Boehlert amendment would gut significant protections when the taking was made by State and local governments.

The base bill should be left intact to remedy this situation by defining issue when a government's agency decision is final so that owners do not encounter an infinite cycle of appeals. The bill does not change the way local, State, or Federal agencies resolve disputes with property owners.

H.R. 2372 is not targeted at local government, nor does it take away control of local zoning decisions from local of-

ficials. If anything, it is targeted at Federal courts for wasting time and money by delaying consideration of these very important cases.

By simply providing clearer language for Federal courts on when a final agency action has taken place, the courts have no reason not to hear the case on its merits.

Furthermore, H.R. 2372 does not permit Federal courts to get involved in the land use decision-making process, nor does it change the way agencies resolve disputes. Property owners can get into Federal court only after local government has reached a final decision. A final decision is reached only after the property owner makes a series of applications and appeals through the local planning and zoning process.

The legislation requires a property owner to pursue only Federal constitutional issues in Federal court, a function our Federal court system has always performed.

H.R. 2372 does not give the Federal judiciary any more or less power than it currently has. The Federal contract now has and always has had the responsibility to review the constitutionality of actions taken by all levels of government.

Property owners do not want centralized authority over land-use decisions. Indeed, that is more often the position of those opposed to property rights legislation. H.R. 2372 neither defines for a court when an unconstitutional taking has occurred, nor does it weaken any environmental statute.

While I have a great deal of respect for the advocates of the substitute, the Boehlert amendment is far more sweeping and has a far greater effect than acknowledged by its sponsors.

This amendment would not only render the bill useless but also set back property rights protections for the current already challenged status. This amendment protects the rights of the bureaucracy over the rights of the individual. This reform is simply about fairness.

For the sake of property owners, I hope H.R. 2372 will become law. I urge my colleagues to oppose the Boehlert amendment, pass H.R. 2372 ensuring meaningful access to Federal courts for Americans whose Federal constitutional rights may have been violated.

Mr. BOEHLERT. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Delaware (Mr. CASTLE), the former governor of Delaware.

Mr. CASTLE. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I do support the Boehlert-Delahunt amendment to this. I support it in its own right. I support it if it guts the bill. I support it under any conditions because I oppose the bill quite simply.

I find this amazing. Maybe the Democrats want to watch the NCAA for a

couple of minutes while I talk, because I think I am aiming this mostly at Republicans until I heard the gentleman from Texas (Mr. STENHOLM). And that is that we are essentially mainstreaming this whole issue of land usage if there is any indication of a taking whatsoever to the Federal courts.

Now, we are the party that has complained about lawyers. We are the party that has complained about courts. We are the party that has complained about Federal courts.

I do not know what it is like in every other State in the United States of America, but in the State of Delaware, and I think this is probably true of almost all of our States, we have a lot of processes for handling local land-use issues. And there is a good reason for that.

These are the people who know what to do with it. It is why they are so opposed to this legislation. They have handled it before. The elected officials there, the appointed officials there have hearings. They have expertise, they have knowledge, they have technical ability to be able to handle the matters which come before them with respect to large land-use planning, zoning decisions, and dealing with land in general.

Our constituents, our neighbors have a right to be heard. Are they going to be heard by the Federal court judges who could care less about this issue, who do not want anything to do with this issue, who probably do not have a background in this issue, or do they want to be heard by people like us, their fellow elected officials and the other local people who are there? The answer is simple. They would prefer to have it done at the local level.

What we have in place now at the local level with appeals to the State courts and then to the Federal court if indeed some of these violations take place is exactly what it should be.

Let me just say this: Just the mere threat of going to the Federal court at some point by a large developer or by a large landowner is probably going to be enough in many cases to upset the apple cart altogether, and that too would be wrong.

So it is for all these reasons that all this opposition exists. I hope all of us will listen to that. Vote for the Boehlert-Delahunt amendment and do not vote for this legislation.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Chairman, I would correct the gentleman that we are the party that is against liberal lawyers. We are the party against the socialists that want to take our property. We are against the people that deny our rights to fight for our private property.

I would tell the gentleman from Iowa (Mr. GANSKE) that he has got people in

Iowa, he is a doctor, maybe he works out of a little brick house, but he wants to give his farmers the right to take it to a Federal Government if some rat at a local government overrides their rights. That is all we are asking for is to take it to the Federal level.

I would say to the gentleman who offered the amendment, they got milk, they got religion, the California Desert Plan, the California Central Valley Water Project. All of these were Federal intervention, not local control. We had eight farmhouses that burned to the ground because they could not disk around their property. We wanted local control.

This gives the private property owner the right and the ability to take it to the Federal Government when local overrides their civil rights.

I oppose this amendment and support the bill strongly. This is California. Look at what is controlled.

Mr. DELAHUNT. Mr. Chairman, I yield 30 seconds to the gentleman from North Carolina (Mr. WATT), the ranking member of the Subcommittee on the Constitution.

Mr. WATT of North Carolina. Mr. Chairman, I rise in hardy support of the Boehlert-Delahunt substitute. This may be the most direct vote we have taken in this Congress on State rights and local rights and this whole issue.

What this amendment does is it strikes out all of the references to local decisions and makes this about Federal decisions. Those are the decisions that ought to be in Federal court. The people who support States' rights ought to be thinking about it in that way.

Mr. DELAHUNT. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I want to commend my colleagues on both sides of the aisle for this substitute, particularly the gentleman from New York (Mr. BOEHLERT) and the gentleman from Massachusetts (Mr. DELAHUNT).

H.R. 2372 would radically unbalance the playing field between local governments and large landowners. It allows big developers to threaten local governments with expensive litigation in federal court if the localities do not approve their plans.

For example, a large developer may apply for a permit to build 800 homes on a parcel of land. A zoning official may deny that request, and a zoning board may as well. Under the bill, if that zoning board is elected, the matter is then ripe for Federal district court. The costs of litigating this issue in Federal court would overwhelm—if not bankrupt—many small towns and counties.

Ninety-seven percent of the cities and towns in America have populations under 10,000. Virtually without exception, these towns have no full time legal staff. As a result, these small communities are forced to hire outside legal

counsel each time they are sued—imposing large and unexpected burdens on small governmental budgets.

The bottom line is that these localities can't afford a Federal court battle, so under H.R. 2372, they would be pressured into approving plans that are not in the interests of the entire community.

The bill also undermines the ability of locally elected officials to protect public health and safety, safeguard the environment, and support the property values of all the residents of the community. Because a large developer can threaten a local community with Federal court litigation, local officials may be forced into the position of either having to approve their projects or face daunting legal expenses. Developers would have less incentive to resolve their disputes with neighbors or negotiate for a reasonable out-of-court settlement. The costs of defending unjustified federal takings litigation would threaten local community fire, police, and environmental protection services.

The substitute offered by Representatives BOEHLERT and DELAHUNT would remedy this glaring problem with the bill. By limiting the bill's scope to Federal takings, only, the substitute protects the independent decision-making of local officials. We want our local communities to make their decisions of the merits—not based on whether they can afford to fight a lawsuit in Federal court.

It is ironic, indeed, that the majority purports to respect "States' rights" yet supports legislation that would undermine local decision-making and authority in an area traditionally left to local control.

The substitute also eliminates H.R. 2372's onerous and over-burdensome requirement that a Federal agency give notice to the owners of private property whenever an agency's action may "affect" the use of that property. The Department of Justice has stated that this mandate could apply to countless Federal programs and regulatory actions that prohibit illegal activity or control potentially harmful conduct.

For example, a Federal prohibition on flying an unsafe airplane "limits" the use of the plane. Emission controls for a hazardous waste incinerator "limit" the use of the incinerator, and so on. It is also unclear how property owners could be identified—let alone notified—in cases where Federal action affects large numbers of people. The Federal Government would need to keep a "Big Brother" data base of property owners—just to comply with this portion of H.R. 2372. The substitute wisely eliminates this unwieldy requirement.

I urge my colleagues to vote "yes" on the Boehlert-Delahunt substitute.

Mr. BOEHLERT. Mr. Chairman, I yield 15 seconds to the gentleman from Iowa (Mr. GANSKE) to respond to the comments of the gentleman from California (Mr. CUNNINGHAM).

Mr. GANSKE. Mr. Chairman, I would respond to my colleague from California by noting that, if somebody wants to put a huge hog lot operation in some place in some county in Iowa, those local inhabitants want to be able to take this issue to State court first.

The CHAIRMAN. The gentleman from Florida (Mr. CANADY) has 7½ minutes remaining.

□ 1700

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, I rise in opposition to this Boehlert amendment. I have the greatest respect for both of the sponsors of this amendment; but as my friend from Texas said, I believe this effectively guts the underlying bill. Indeed, I think that is its intent.

The fifth amendment of the Constitution prohibits the Government from taking private property without just compensation. This prohibition is applicable to local governments, of course, as all of us know through the 14th amendment.

I think that many of us are in agreement that a problem exists in the way that takings cases are adjudicated.

Let me say that for the most part I have opposed the efforts on the other side of the aisle to gut environmental protections. I support substantively those provisions in local, State and Federal law. However, it now takes on average 10 years for the average takings case to be heard. Because of this delay, an unbelievable 80 percent of the cases are never heard on their merits.

Robert Kennedy was quoted, and others have been as well, that justice delayed is justice denied.

I believe that with takings cases, it is clear that justice is being delayed and denied. Therefore, I suggest to my colleagues this is not about States' rights or Federal rights. This is not about liberals or conservatives. This is about whether in the United States of America when an individual feels aggrieved by their government at whatever level that government happens to be, that they have an opportunity for relief and redress; that they can appeal in a timely fashion to have the government's actions adjudged by an independent judiciary.

Now, because this is a constitutional right, it seems to me right and proper that they have access in a timely way to their Federal judiciary. Therefore, although I am in disagreement with most of my friends on this issue, which I perceive to be a process issue, an issue of not denying interminably the ability of Americans to seek redress in the courts, not a substantive issue as to the underlying environmental protections, which I support; but I very strongly support this bill on the process grounds that government ought not to, by constant and interminable delay, deny to any citizen, no matter how poor or how rich, the right to have their rights adjudicated in the courts of this land.

Therefore, I rise in opposition to my friend's amendment and in strong support of the underlying bill, and I thank the gentleman from Florida (Mr. CANADY) for yielding the time.

Mr. BOEHLERT. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I just would like to reiterate that it is a myth that it takes 10 years to resolve takings disputes. The National Association of Home Builders manufactured this total misleading fact by using only 14 Federal appellate cases over a 9-year period. So that is absolutely wrong, as also is that 83 percent figure. That involved only 33 cases, 29 of which were dismissed by the Court because the claimants' lawyer refused to follow State procedures for seeking compensation before going to the Federal court. That is the myth. This is a reality.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. POMBO).

Mr. POMBO. Mr. Chairman, I thank the gentleman from Florida (Mr. CANADY) for yielding me this time.

Mr. Chairman, it is not a myth. It is a reality. What this bill is all about is protecting the constitutionally guaranteed rights of the individual and that is what we are trying to do.

I was trying to follow along with this debate, and I ran across a letter that was sent out by a large fund-raising organization that masquerades as an environmental group known as the Sierra Club.

One of the things that they point out in their letter is that a recent poll determined, so now that they have everybody's attention, that it would allow industry and developers to bypass local public health and land protections. It goes on to talk about waste dumps, incinerators, urban sprawl. It sounds very much like the argument for this amendment and against the bill.

The truth of the matter is, there is nothing in this bill that in any way takes over local land-use control. That is just a scare tactic that they are trying to throw up that has nothing to do with this bill. What this bill is about is protecting the individuals' constitutionally guaranteed private property rights, and that is what scares the hell out of the proponents of this amendment.

Mr. BOEHLERT. Mr. Chairman, would the gentleman from Massachusetts (Mr. DELAHUNT) yield the time he has remaining to me?

Mr. DELAHUNT. Mr. Chairman, I yield the remaining time to the gentleman from New York (Mr. BOEHLERT).

The CHAIRMAN. The gentleman from New York (Mr. BOEHLERT) now controls 4 minutes.

Mr. BOEHLERT. Mr. Chairman, the gentleman from New York yields 1½ minutes to the distinguished gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, sometimes local zoning decisions reduce the value of property and sometimes local zoning decisions increase the value of

property. Sometimes it is perceived as a takings. Sometimes it is perceived as a givings. Property owners take certain risks.

I agree with editorial criticism that points out this bill undermines the ability of literally every single community in the United States to control its own development at a time when traffic congestion, sprawl, open space, the availability and quality of drinking water, and other land-use issues are taking on increased visibility and importance.

I believe in local control of education. I believe in local control of zoning. That is why I support the Boehlert amendment, because it narrows this bad bill.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. BOYD).

Mr. BOYD. Mr. Chairman, I thank my friend, the gentleman from Florida (Mr. CANADY), for yielding me this time.

Mr. Chairman, I stand in opposition to the Boehlert substitute to H.R. 2372. The substitute strips the bill of its primary purpose, that is, ensuring that property owners can have their fair day in court.

Today, property owners seeking just compensation for their takings claims face endless rounds of expensive, administrative, and judicial appeals. Certainly, local land-use decisions should be handled at the local level; but when those decisions infringe upon federally-constitutionally guaranteed rights, or when agencies leave land-use claims in regulatory limbo, property owners should be able to expeditiously defend their rights in Federal court.

H.R. 2372 does not give Federal courts new authority over questions that should be handled in State courts. It simply provides a procedural method to ensure a decision is reached on the facts of the case without spending 10 years in litigation to get there.

The Boehlert substitute on the other hand would codify the status quo. Even worse, the substitute establishes a dangerous precedent of requiring Federal courts to handle the same constitutional claim differently depending upon who the defendant is.

I hope my colleagues will defeat the Boehlert substitute and pass a bill that opens the courthouse door to property owners seeking protection of their fifth amendment rights.

The CHAIRMAN. The Chair would advise that the gentleman from New York (Mr. BOEHLERT) has 3 minutes remaining, and the gentleman from Florida (Mr. CANADY) has 1½ minutes and the right to close.

Mr. BOEHLERT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the supporters of this bill keep claiming that the bill is different this year, but those differences

are more apparent than real and some of them change the bill for the worse. None of the language about appeals at the local level means anything, because the threat of Federal courts will still loom behind them. The appeal process will not encourage a developer to negotiate, as current rules do, because the developer will know that he can just bide his time and then threaten to take the municipality to Federal court.

Under the bill, the developer can simply submit the exact same proposal three times, remain intransigent, evade all the existing local and State forums, and threaten to go to Federal court.

I urge my colleagues not to be fooled by the procedural scaffolding that has been added to hide the real intent and impact of this bill.

There is a fundamental principle guiding our actions, and that fundamental principle is simply this: local zoning matters should be the purview of local government. That is why so many organizations oppose H.R. 2372 and stand with me; religious groups, United States Catholic Conference, the National Council of Churches of Christ, Evangelicals for Social Action, Religious Action Center of Reformed Judaism; environmental groups, including the League of Conservation Voters, which is the amalgam of all the environmental organizations. Incidentally, on fund-raising the Sierra Club is pickers compared to the National Association of Home Builders. State and local governments, the National Conference of State Legislatures, the National League of Cities, the National Association of Counties. It goes on and on. The Judicial Conference of the United States, chaired by Chief Justice William Rehnquist; the Conference of State Chief Justices; the American Federation of State, County and Municipal Employees; AFL-CIO; religious organizations, court organizations, labor organizations, environmental groups, State and local governments, because they share an abiding faith in the fundamental principle that local zoning matters should be the purview of local governments. People who are living in the neighborhood, people whose daily lives are impacted by these decisions, not some distant people far off, removed in the Nation's capital but people right in the neighborhood.

The fact of the matter is, if this bill passes, intimidation will be the rule of the day and town after town, municipality after municipality will capitulate because they cannot face the prospect of lengthy, costly litigation in some far, distant court. They want to decide for themselves at the local level, and we want to help them preserve this sacred fundamental principle.

I urge my colleagues to support the Boehlert-Delahunt amendment and to oppose the final bill if that Boehlert-

Delahunt amendment does not get the necessary majority vote.

Mr. CANADY of Florida. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I urge the Members of the House to reject this amendment which would gut the bill. Let me point out, again, that this bill is not about local zoning decisions that reduce the value of property. This is about local zoning decisions that destroy the value of property; local zoning decisions that tell the owner of the property that that owner is deprived of any viable, beneficial economic use of the land.

This bill is about giving access to the Federal courts of this land to Americans whose property has been taken by regulatory action in violation of the Constitution of the United States.

The glory of this country is that we have a constitution. The glory of this country is that we protect the rights of the people of this country. We have a 14th amendment.

In the days after the Civil War, that 14th amendment was enacted to ensure that we had uniform protection for certain basic rights across the land that did not exist before the 14th amendment was passed. That is what we are talking about here today, giving reality to the promise of the 14th amendment, ensuring that all Americans will have access to the Federal courts to protect their Federal constitutional rights. That should not be controversial. That is not trumping any right that should not be trumped.

The Constitution should be honored here. We should recognize that the Constitution requires that we give meaningful access to the courts; and if we wish to see that constitutional rights are respected, as they should be, we will reject the amendment offered by the gentleman from New York (Mr. BOEHLERT) and move forward to the passage of this bill which will open up the courthouse doors to those who have suffered a deprivation of their constitutional rights.

Mrs. BIGGERT. Mr. Chairman, I rise today in support of the Boehlert amendment, and in opposition to H.R. 2372.

I am a strong supporter of private property rights, but I believe local land-use decisions are exactly that—local. In disputes regarding local zoning rules, the Federal court should not be the court of first resort, but rather the court of last resort.

Local zoning boards and planning commissions are rightfully responsible for regulating local land use, and have been for centuries. They balance the interests of property owners with community values, local circumstances, and the interests of neighboring property owners.

As a former local plan commission chairman, I know that negotiation is key to finding just the right balance. But this bill eliminates any incentive for negotiation at the local level, tipping the scale against budget-strapped localities.

It also removes accountability. Local zoning boards and planning commissions are accountable to locally elected officials and, ultimately, local residents.

Can a Federal judge make the same claim? I don't believe so.

Federal land use decisions that involve the taking of private property appropriately fall under the purview of the Federal Government and the Federal courts. In disputes regarding the Federal taking of private property, the Federal court should be the court of first resort. The Boehlert amendment recognizes this principle, and preserves bill language giving property owners expedited access to federal courts.

In its current form, this bill usurps state and local authority, and threatens our system of federalism. The Boehlert amendment corrects this situation and strengthens private property rights, and I would urge my colleagues to support it.

Mr. CANADY of Florida. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from New York (Mr. BOEHLERT).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOEHLERT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 234, not voting 21, as follows:

[Roll No. 53]

AYES—179

Abercrombie	Dingell	LaFalce
Ackerman	Dixon	Lantos
Allen	Doggett	Larson
Andrews	Ehlers	Lazio
Baird	Engel	Leach
Baldacci	Eshoo	Lee
Baldwin	Evans	Levin
Barrett (WI)	Farr	Lipinski
Bass	Fattah	Lofgren
Bateman	Filner	Lowe
Bereuter	Forbes	Luther
Bilbray	Ford	Maloney (CT)
Blagojevich	Frank (MA)	Maloney (NY)
Blumenauer	Frelinghuysen	Markey
Boehlert	Ganske	Matsui
Bonior	Gedden	McCarthy (MO)
Borski	Gephardt	McDermott
Boucher	Gilchrest	McGovern
Brady (PA)	Gilman	McKinney
Brown (FL)	Goss	McNulty
Brown (OH)	Greenwood	Meehan
Capps	Gutierrez	Meek (FL)
Capuano	Hall (OH)	Meeks (NY)
Cardin	Hinchey	Menendez
Carson	Hoeffel	Metcalfe
Castle	Holt	Millender-
Clay	Horn	McDonald
Clayton	Inslee	Miller (FL)
Clyburn	Jackson (IL)	Miller, George
Conyers	Jackson-Lee	Minge
Cooksey	(TX)	Mink
Costello	Johnson (CT)	Moakley
Coyne	Johnson, E.B.	Mollohan
Cummings	Jones (OH)	Moore
Davis (FL)	Kanjorski	Moran (VA)
Davis (IL)	Kaptur	Morella
DeFazio	Kelly	Nadler
DeGette	Kennedy	Napolitano
Delahunt	Kildee	Neal
DeLauro	Kilpatrick	Oberstar
Deutsch	Kleczka	Obey
Dicks	Kucinich	Oliver

Owens	Sanders	Udall (NM)
Pallone	Sawyer	Upton
Pastor	Saxton	Velázquez
Payne	Schakowsky	Visclosky
Pelosi	Serrano	Walsh
Pomeroy	Shaw	Waters
Porter	Shays	Watt (NC)
Portman	Sherman	Waxman
Price (NC)	Slaughter	Weiner
Ramstad	Smith (NJ)	Weldon (PA)
Rangel	Smith (WA)	Wexler
Regula	Snyder	Weygand
Reyes	Stabenow	Wise
Rivers	Strickland	Wolf
Rodriguez	Stupak	Woolsey
Roemer	Thurman	Wynn
Roukema	Tierney	Young (FL)
Roybal-Allard	Towns	
Sabo	Udall (CO)	

## NOES—234

Aderholt	Gekas	Norwood
Baca	Gibbons	Nussle
Bachus	Gillmor	Ortiz
Baker	Gonzalez	Ose
Ballenger	Goode	Oxley
Barcia	Goodlatte	Packard
Barr	Goodling	Pascarell
Barrett (NE)	Gordon	Paul
Bartlett	Graham	Pease
Barton	Granger	Peterson (MN)
Becerra	Green (TX)	Peterson (PA)
Bentsen	Green (WI)	Petri
Berkley	Gutknecht	Phelps
Berry	Hall (TX)	Pickering
Bilirakis	Hansen	Pickett
Bishop	Hastings (WA)	Pitts
Bliley	Hayes	Pombo
Blunt	Hayworth	Pryce (OH)
Boehner	Hefley	Quinn
Bonilla	Herger	Radanovich
Bono	Hill (IN)	Rahall
Boswell	Hill (MT)	Reynolds
Boyd	Hilleary	Riley
Brady (TX)	Hilliard	Rogan
Bryant	Hobson	Rogers
Burr	Hoekstra	Rohrabacher
Burton	Holden	Ros-Lehtinen
Buyer	Hooley	Rothman
Callahan	Hostettler	Royce
Calvert	Houghton	Ryan (WI)
Camp	Hoyer	Ryun (KS)
Campbell	Hulshof	Salmon
Canady	Hunter	Sanchez
Cannon	Hutchinson	Sandlin
Chabot	Isakson	Sanford
Chambliss	Istook	Scarborough
Clement	Jefferson	Schaffer
Coble	Jenkins	Scott
Coburn	John	Sensenbrenner
Collins	Johnson, Sam	Sessions
Combest	Jones (NC)	Shadegg
Condit	Kind (WI)	Sherwood
Cox	King (NY)	Shimkus
Cramer	Kingston	Shows
Crowley	Knollenberg	Shuster
Cubin	Kolbe	Simpson
Cunningham	Kuykendall	Sisisky
Danner	LaHood	Skeen
Davis (VA)	Lampson	Smith (MI)
Deal	Largent	Smith (TX)
DeLay	Latham	Souder
DeMint	LaTourette	Spence
Diaz-Balart	Lewis (CA)	Spratt
Dickey	Lewis (KY)	Stearns
Dooley	Linder	Stenholm
Doolittle	LoBiondo	Stump
Doyle	Lucas (KY)	Sununu
Dreier	Lucas (OK)	Sweeney
Duncan	Manzullo	Talent
Dunn	Martinez	Tancredo
Edwards	Mascara	Tanner
Ehrlich	McCarthy (NY)	Tauscher
Emerson	McCrery	Tauzin
English	McHugh	Taylor (MS)
Etheridge	McInnis	Taylor (NC)
Everett	McIntosh	Terry
Ewing	McIntyre	Thomas
Fletcher	McKeon	Thompson (CA)
Foley	Mica	Thompson (MS)
Fossella	Moran (KS)	Thornberry
Fowler	Murtha	Thune
Franks (NJ)	Nethercutt	Tiahrt
Frost	Ney	Toomey
Gallegly	Northup	Traficant

Turner	Watkins	Wicker
Vitter	Watts (OK)	Wilson
Walden	Weldon (FL)	Wu
Wamp	Weller	Young (AK)

## NOT VOTING—21

Archer	Hastings (FL)	Miller, Gary
Armey	Hinojosa	Myrick
Berman	Hyde	Rush
Biggart	Kasich	Skelton
Chenoweth-Hage	Klink	Stark
Cook	Lewis (GA)	Vento
Crane	McCollum	Whitfield

□ 1740

Messrs. LEWIS of California, ORTIZ, SPRATT, BACHUS, DICKEY, CANON, HILLIARD, and BECERRA changed their vote from "aye" to "no."

Mr. BILBRAY changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. LATOURETTE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration 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, pursuant to House Resolution 441, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. Yes, I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit the bill H.R. 2372 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Add at the end the following:

## SEC. . LIMITATIONS ON APPLICATION.

This Act and the amendments made by this Act do not apply with respect to claims against a municipality, county, or similar unit of local government arising out of an action in that municipality, county, or unit—

(1) to protect the public from prostitution or illegal drugs;

(2) to control adult book stores and the distribution of pornography;

(3) to protect against illegal ground water contamination, the operation of an illegal waste dump, or similar environmental degradation; or

(4) that is a voter initiative or referendum to control development that threatens to overburden community resources.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes on his motion to recommit.

Mr. CONYERS. Mr. Speaker, my motion to recommit would narrow the bill so that it does not interfere with the actions by local governments of certain specific actions; namely, four:

One, this bill should not interfere with the actions by local governments to protect the public from prostitution and illegal drugs.

Two, we should not interfere with actions by local governments to control adult bookstores and the distribution of pornography.

□ 1745

Three, we should not interfere with the actions of local governments to protect against illegal groundwater contamination or the operation of an illegal waste dump.

Nor, four, should we interfere with local governments that try to prevent actions that arise from a voter initiative or a referendum to limit out of control development. We want to prevent local governments from being precluded from actions that arise from a

voter initiative or referendum to limit out of control development.

Now, which Member among us wants to make it more difficult for local governments to take action to limit illegal drug use or prostitution? The people this bill protects are not just innocent landowners, they are also purveyors of pornography and common criminals who are misusing their property.

So I believe that, in these cases, local communities should be able to enact reasonable land use policies that protect their citizens. For example, this motion to recommit would help the City of Minneapolis, which successfully fought a court battle with the owners of a sauna in which numerous prostitution arrests had occurred. The sauna owners challenged the City's order to shut it as a taking of property. The City was able to defend itself in State court; but under this bill, this would have become a Federal court fight, far more expensive for the City to defend if they could have afforded it.

The same thing happened similarly in Miami where the City closed a motel with a history of repeated illegal drug activity and prostitution. The owner of the motel challenged the City's action under a taking. But the Florida State court denied their claim. But under this measure, H.R. 2372, the City would have been forced to defend the case before a Federal judge having far less of an understanding of the needs of local citizens.

So join me and others and many organizations that support these views. Vote yes on a common sense motion to recommit this bill, and bring it out as one that would be far more acceptable to far more local governments.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Does the gentleman from Florida (Mr. CANADY) rise in opposition to the motion to recommit?

Mr. CANADY of Florida. I do, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Florida (Mr. CANADY) is recognized for 5 minutes.

Mr. CANADY of Florida. Mr. Speaker, I rise to urge the Members of the House to reject this motion to recommit. Like most of the arguments that have been made against this bill, this motion to recommit has nothing to do with the substance or purpose of the bill.

I just ask the Members to look at what we have before us. There is a provision here that deals with protecting the public from prostitution or illegal drugs. There is nothing in the bill before the House that would in any way interfere with the ability of any local government to protect the public from prostitution or illegal drugs. That is obvious.

This is an effort to divert attention from the real issue which is now before

the House as we move toward passage of this bill, and that issue is whether American citizens and others in this country who have their property taken by the action of government should have meaningful access to the Federal courts.

Protecting the public from prostitution or illegal drugs is not a taking. As a matter of fact, if one uses property for such illegal purposes, it is subject to forfeiture and confiscation by the government. Those laws are constitutional and valid. Nothing in this bill has anything to do with that.

The same thing could be said about the provision controlling adult book stores and distribution of pornography. The interesting thing about that is, on that point, controlling an adult book store and distribution property does not constitute a taking of property.

But I will tell my colleagues, under the rules that now exist in the Federal system, if someone feels that they have been restricted in such a business and their First Amendment rights have been violated, they go straight to Federal court. That happens under the existing law. But this bill has nothing to do with that at all.

On with the other provisions here. There is nothing in this bill that undermines the ability of local government to protect against illegal groundwater contamination, illegal dumping, and so on, because actions that government takes in that regard do not constitute takings of property.

So I would ask that the Members of the House focus on the purpose of this bill, understand that this is just an effort to divert the House from understanding the purpose of the bill, and let us move forward to reject this motion to recommit and pass the bill and establish our support for the principle, which should be uncontroversial in this country, that those people whose Federal constitutional rights have been violated have a right to have their day in Federal court.

The SPEAKER pro tempore. All time has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 155, noes 254, not voting 25, as follows:

[Roll No. 54]

AYES—155

Abercrombie	Gonzalez	Nadler
Ackerman	Gutierrez	Napolitano
Allen	Hill (IN)	Neal
Andrews	Hilliard	Oberstar
Baird	Hinchey	Obey
Baldacci	Hoeffel	Olver
Baldwin	Holt	Owens
Barcia	Hooley	Pallone
Barrett (WI)	Inslee	Pascarell
Becerra	Jackson (IL)	Pastor
Bentsen	Jackson-Lee	Pelosi
Blagojevich	(TX)	Peterson (MN)
Blumenauer	Jefferson	Phelps
Bonior	Johnson, E. B.	Pomeroy
Borski	Jones (OH)	Price (NC)
Boucher	Kanjorski	Rahall
Brady (PA)	Kaptur	Rangel
Brown (FL)	Kennedy	Reyes
Brown (OH)	Kildee	Rivers
Capps	Kilpatrick	Rodriguez
Capuano	Kind (WI)	Roybal-Allard
Cardin	Kleczka	Sabo
Carson	Kucinich	Sanders
Clay	Lantos	Sawyer
Clayton	Larson	Schakowsky
Clyburn	Lee	Scott
Conyers	Levin	Serrano
Costello	Lipinski	Sherman
Coyne	Lofgren	Slaughter
Crowley	Lowey	Smith (WA)
Cummings	Luther	Spratt
Davis (IL)	Maloney (CT)	Stabenow
DeFazio	Maloney (NY)	Strickland
DeGette	Markey	Stupak
Delahunt	Matsui	Tauscher
DeLauro	McCarthy (MO)	Thompson (CA)
Deutsch	McCarthy (NY)	Thompson (MS)
Dicks	McDermott	Thurman
Dingell	McGovern	Tierney
Dixon	McKinney	Towns
Doggett	McNulty	Udall (CO)
Edwards	Meehan	Udall (NM)
Engel	Meek (FL)	Velázquez
Eshoo	Meeks (NY)	Viscosky
Etheridge	Menendez	Waters
Evans	Millender-	Watt (NC)
Farr	McDonald	Waxman
Fattah	Miller, George	Weiner
Filner	Minge	Wexler
Forbes	Mink	Wise
Ford	Moakley	Woolsey
Gejdenson	Mollohan	
Gephardt	Moore	

NOES—254

Aderholt	Castle	Fowler
Armey	Chabot	Frank (MA)
Baca	Chambliss	Franks (NJ)
Bachus	Clement	Frelinghuysen
Baker	Coble	Frost
Ballenger	Coburn	Gallegly
Barr	Collins	Ganske
Barrett (NE)	Combest	Gekas
Bartlett	Condit	Gibbons
Barton	Cooksey	Gilchrist
Bass	Cox	Gillmor
Bateman	Cramer	Gillman
Bereuter	Cubin	Goode
Berkley	Cunningham	Goodlatte
Berry	Danner	Goodling
Bilbray	Davis (FL)	Gordon
Bilirakis	Davis (VA)	Goss
Bishop	Deal	Graham
Bliley	DeLay	Granger
Blunt	DeMint	Green (TX)
Boehlert	Diaz-Balart	Green (WI)
Boehner	Dickey	Gutknecht
Bonilla	Dooley	Hall (OH)
Bono	Doolittle	Hall (TX)
Boswell	Doyle	Hansen
Boyd	Dreier	Hastings (WA)
Brady (TX)	Duncan	Hayes
Bryant	Dunn	Hayworth
Burr	Ehlers	Hefley
Burton	Ehrlich	Herger
Buyer	Emerson	Hill (MT)
Callahan	English	Hilleary
Calvert	Everett	Hobson
Camp	Ewing	Hoekstra
Campbell	Fletcher	Holden
Canady	Foley	Horn
Cannon	Fossella	Hostettler

Houghton	Northup	Shows	Bliley	Hansen	Pickett	Hinchey	Meek (FL)	Sabo
Hoyer	Norwood	Shuster	Blunt	Hastings (WA)	Pombo	Hoeffel	Menendez	Sanchez
Hulshof	Nussle	Simpson	Boehner	Hayes	Pryce (OH)	Holt	Metcalf	Sanders
Hunter	Ortiz	Sisisky	Bonilla	Hayworth	Radanovich	Hoolley	Millender-	Sawyer
Hutchinson	Ose	Skeen	Bono	Hefley	Reynolds	Horn	McDonald	Saxton
Isakson	Oxley	Smith (MI)	Boswell	Herger	Riley	Inslee	Miller, George	Schakowsky
Istook	Packard	Smith (NJ)	Boyd	Hill (IN)	Roemer	Jackson (IL)	Minge	Serrano
Jenkins	Paul	Smith (TX)	Brady (TX)	Hill (MT)	Rogan	Jackson-Lee	Mink	Sherman
John	Pease	Snyder	Bryant	Hilleary	Rogers	(TX)	Moakley	Slaughter
Johnson (CT)	Peterson (PA)	Souder	Hilliard	Hilliard	Rohrabacher	Johnson (CT)	Mollohan	Smith (NJ)
Johnson, Sam	Petri	Spence	Burton	Hobson	Ros-Lehtinen	Jones (OH)	Moore	Smith (WA)
Jones (NC)	Pickering	Stearns	Buyer	Hoekstra	Rothman	Kanjorski	Moran (VA)	Snyder
Kelly	Pickett	Stenholm	Callahan	Holden	Royce	Kaptur	Morella	Spratt
King (NY)	Pitts	Stump	Calvert	Hostettler	Ryan (WI)	Kelly	Nadler	Stabenow
Kingston	Pombo	Sununu	Camp	Houghton	Ryun (KS)	Kennedy	Napolitano	Strickland
Knollenberg	Porter	Sweeney	Campbell	Hoyer	Salmon	Kildee	Neal	Stupak
Kolbe	Portman	Talent	Canady	Hulshof	Sandlin	Kilpatrick	Oberstar	Stupac
Kuykendall	Pryce (OH)	Tancredo	Cannon	Hunter	Sanford	Kind (WI)	Obey	Tauscher
LaHood	Quinn	Tanner	Chabot	Hutchinson	Scarborough	Kleczka	Olver	Thompson (CA)
Lampson	Radanovich	Tauzin	Chambliss	Isakson	Schaffer	Kucinich	Owens	Thurman
Largent	Ramstad	Taylor (MS)	Clement	Jefferson	Scott	LaFalce	Pallone	Tierney
Latham	Regula	Taylor (NC)	Coble	Jenkins	Senzenbrenner	Lantos	Pascarell	Towns
LaTourette	Reynolds	Terry	Coburn	John	Sessions	Larson	Pastor	Udall (CO)
Lazio	Riley	Thomas	Collins	Johnson, E. B.	Shadegg	Lazio	Pelosi	Udall (NM)
Leach	Roemer	Thornberry	Combest	Johnson, Sam	Shaw	Leach	Peterson (MN)	Velázquez
Lewis (CA)	Rogan	Thune	Condit	Jones (NC)	Sherwood	Lee	Pitts	Visclosky
Lewis (KY)	Rogers	Tiahrt	Cramer	King (NY)	Shimkus	Levin	Pomeroy	Walsh
Linder	Rohrabacher	Toomey	Cubin	Kingston	Shows	Lofgren	Porter	Watt (NC)
LoBiondo	Ros-Lehtinen	Trafficant	Cunningham	Knollenberg	Shuster	Lowey	Portman	Waxman
Lucas (KY)	Rothman	Turner	Danner	Kolbe	Simpson	Luther	Price (NC)	Weiner
Lucas (OK)	Roukema	Upton	Davis (VA)	Kuykendall	Sisisky	Maloney (CT)	Quinn	Weldon (PA)
Manzullo	Royce	Vitter	Deal	LaHood	Skeen	Markey	Rahall	Wexler
Martinez	Ryan (WI)	Walden	DeLay	Lampson	Smith (MI)	Matsui	Ramstad	Wise
Mascara	Ryun (KS)	Walsh	DeMint	Largent	Smith (TX)	McCarthy (MO)	Rangel	Wolf
McCrery	Salmon	Wamp	Diaz-Balart	Latham	Souder	McCarthy (NY)	Regula	Woolsey
McHugh	Sanchez	Watkins	Dickey	LaTourette	Spence	McDermott	Reyes	Wu
McInnis	Sandlin	Watts (OK)	Dooley	Lewis (CA)	Stearns	McGovern	Rivers	Wynn
McIntosh	Sanford	Weldon (FL)	Doolittle	Lewis (KY)	Stenholm	McKinney	Rodriguez	
McIntyre	Saxton	Weldon (PA)	Dreier	Linder	Stump	McNulty	Roukema	
McKeon	Scarborough	Weller	Duncan	LoBiondo	Sununu	Meehan	Roybal-Allard	
Metcalf	Schaffer	Weygand	Dunn	Lucas (KY)	Sweeney			
Mica	Sensenbrenner	Wicker	Edwards	Lucas (OK)	Talent			
Miller (FL)	Sessions	Wilson	Ehrlich	Maloney (NY)	Tancredo	Archer	Hinojosa	Myrick
Moran (KS)	Shadegg	Wolf	Emerson	Manzullo	Tanner	Berman	Hyde	Paul
Morella	Shaw	Wu	English	Martinez	Tauzin	Biggert	Istook	Payne
Murtha	Shays	Young (AK)	Etheridge	Mascara	Taylor (MS)	Chenoweth-Hage	Kasich	Rush
Nethercutt	Sherwood	Young (FL)	Everett	McCrery	Taylor (NC)	Cook	Klink	Skelton
Ney	Shimkus		Ewing	McHugh	Terry	Cox	Lewis (GA)	Stark
			Fletcher	McInnis	Thomas	Crane	Lipinski	Vento
			Foley	McIntyre	Thompson (MS)	Greenwood	McCollum	Whitfield
			Ford	McKeon	Thornberry	Hastings (FL)	Miller, Gary	
			Fossella	Meeks (NY)	Thune			
			Fowler	Mica	Tiahrt			
			Franks (NJ)	Miller (FL)	Toomey			
			Frost	Moran (KS)	Trafficant			
			Galleghy	Murtha	Turner			
			Gekas	Nethercutt	Upton			
			Gibbons	Ney	Vitter			
			Gillmor	Northup	Walden			
			Goode	Norwood	Wamp			
			Goodlatte	Nussle	Watkins			
			Goodling	Ortiz	Watts (OK)			
			Gordon	Ose	Weldon (FL)			
			Graham	Oxley	Weller			
			Granger	Packard	Weygand			
			Green (TX)	Pease	Wicker			
			Green (WI)	Peterson (PA)	Wilson			
			Gutknecht	Petri	Young (AK)			
			Hall (OH)	Phelps	Young (FL)			
			Hall (TX)	Pickering				

## NOT VOTING—25

Archer	Hyde	Payne
Berman	Kasich	Rush
Biggert	Klink	Skelton
Chenoweth-Hage	LaFalce	Stark
Cook	Lewis (GA)	Vento
Crane	McCollum	Whitfield
Greenwood	Miller, Gary	Wynn
Hastings (FL)	Moran (VA)	
Hinojosa	Myrick	

## □ 1809

Mr. GANSKE and Mr. SHAYS changed their vote from "aye" to "no."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 226, nays 182, not voting 26, as follows:

[Roll No. 55]

## YEAS—226

Aderholt	Ballenger	Bateman
Armey	Barr	Berkley
Baca	Barrett (NE)	Berry
Baker	Bartlett	Billirakis
Baldacci	Barton	Bishop

Abercrombie	Brown (OH)	Dicks
Ackerman	Capps	Dingell
Allen	Capuano	Dixon
Andrews	Cardin	Doggett
Bachus	Carson	Ehlers
Baird	Castle	Engel
Baldwin	Clay	Eshoo
Barcia	Clayton	Evans
Barrett (WI)	Clyburn	Farr
Bass	Conyers	Fattah
Becerra	Cooksey	Filner
Bentsen	Costello	Forbes
Bereuter	Coyne	Frank (MA)
Bilbray	Crowley	Frelinghuysen
Blagojevich	Cummings	Ganske
Blumenauer	Davis (FL)	Gejdenson
Boehler	Davis (IL)	Gephardt
Bonior	DeFazio	Gilchrest
Borski	DeGette	Gilman
Boucher	Delahunt	Gonzalez
Brady (PA)	DeLauro	Goss
Brown (FL)	Deutsch	Gutierrez

## NAYS—182

## NOT VOTING—26

Archer	Hinojosa	Myrick
Berman	Hyde	Paul
Biggert	Istook	Payne
Chenoweth-Hage	Kasich	Rush
Cook	Klink	Skelton
Cox	Lewis (GA)	Stark
Crane	Lipinski	Vento
Greenwood	McCollum	Whitfield
Hastings (FL)	Miller, Gary	

## □ 1816

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. HYDE. Mr. Speaker, on rollcall No. 55, had I been present, I would have voted "yea."

Mr. COX. Mr. Speaker, on rollcall No. 55, had I been present, I would have voted "yea."

## PERSONAL EXPLANATION

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on the Boehlert amendment to H.R. 2372. However, had I been present, I would have voted "yea."

Also, I was unable to cast a vote on the motion to recommit H.R. 2372, Private Property Rights Implementation Act of 2000. However, had I been present, I would have voted "yea."

Also, I was unable to cast a vote on final passage of H.R. 2372, the Private Property Rights Implementation Act of 2000. However, had I been present, I would have voted "nay."

## PRIVILEGED REPORT IN THE MATTER OF PROCEEDINGS AGAINST DR. MILES JONES

Mr. BLILEY, from the Committee on Commerce, submitted a privileged report (Rept. No. 106-527) in the matter of