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REPORT
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ENSURING ACCESS TO JUSTICE FOR CLAIMS AGAINST THE UNITED STATES ACT

DECEMBER 8, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 5683]

[Including Committee Cost Estimate]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5683) to ensure appropriate judicial review of Federal Government actions by amending the prohibition on the exercise of jurisdiction by the United States Court of Federal Claims of certain claims pending in other courts, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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49–006

Purpose and Summary

The Ensuring Access to Justice for Claims Against the United States Act amends section 1500, title 28, United States Code, in order to eliminate jurisdictional obstacles and inefficiencies that prevent plaintiffs with claims against the United States from receiving redress for Federal Government actions that violate their constitutional, statutory, or contractual rights. Currently, 28 U.S.C. § 1500 prohibits the U.S. Court of Federal Claims (CFC) from exercising jurisdiction over any claim in which the plaintiff has pending in any other Federal court a lawsuit against the United States arising out of the same incident, even if the lawsuit in the CFC seeks different relief. When combined with other limits on the CFC's jurisdiction, this jurisdictional bar forces plaintiffs to pick and choose among potentially meritorious claims against the United States and leads to plaintiffs being denied relief for unlawful government actions. This jurisdictional bar, as Justice Sonia Sotomayor has explained, causes "plaintiffs whom Congress has forced to file parallel actions in the CFC and a district court to obtain complete relief [to] choose either to forgo relief in the district court or to file first in the district court and risk the expiration of the statute of limitations on their claims in the CFC."[1] H.R. 5683 efficiently fixes the jurisdictional problems created by 28 U.S.C. § 1500 in order to ensure that government employees, members of the armed forces, property owners, government contractors, Indian tribes, and others can receive the relief they are entitled to from actions taken by the Federal Government.

Background and Need for the Legislation

In many cases under current Federal law, plaintiffs with multiple claims against the United States government arising out of a single incident are required to file at least two separate actions to receive complete or even partial relief for their injuries: one in Federal district court and a second in the U.S. Court of Federal Claims (CFC). However, Federal law also prevents plaintiffs from having both a district court and the CFC consider both suits if they arise from substantially the same operative facts. These contradictory requirements of Federal law put plaintiffs into a jurisdictional Catch-22 when seeking redress against the Federal Government for infringements on their constitutional, statutory, or contractual rights.

H.R. 5683, the "Ensuring Access to Justice for Claims Against the United States Act," addresses this problem by amending section 1500 of title 28, United States Code, with respect to the jurisdiction over civil actions against the United States pending in, or on appeal from, the CFC. Currently, section 1500 prohibits the CFC from exercising jurisdiction over any claim in which the plaintiff has pending in any other Federal court a lawsuit against the United States arising out of the same incident, even if the lawsuit in the CFC seeks different relief. When combined with other limits on the CFC's jurisdiction, including the statute of limitations,[2] the

[1] *United States v. Tohono O'odham Nation,* 131 S. Ct. 1723, 1738 (2011) (Sotomayor, J., concurring).

[2] The statute of limitations for cases before the Court of Federal Claims (CFC) is 6 years. 28 U.S.C. § 2501 (2014). For cases in the CFC, the statute of limitations is a condition on the United States' waiver of sovereign immunity and therefore is a limit on the court's jurisdiction. *John R. Sand & Gravel Co. v. United States,* 552 U.S. 130, 133–34 (2008).

jurisdictional bar in section 1500 forces plaintiffs to pick and choose among potentially meritorious claims against the United States and leads to plaintiffs being denied relief for unlawful government actions. The jurisdictional bar, as Justice Sotomayor has observed, causes "plaintiffs whom Congress has forced to file parallel actions in the CFC and a district court to obtain complete relief [to] choose either to forgo relief in the district court or to file first in the district court and risk the expiration of the statute of limitations on their claims in the CFC."[3]

The Ensuring Access to Justice for Claims Against the United States Act efficiently fixes the "jurisdictional dance"[4] created by section 1500 in order to ensure that government employees, members of the armed forces, property owners, government contractors, Indian tribes, and others can receive the relief they are entitled to from actions taken by the Federal Government. It is fundamentally unfair to those whose rights have been violated by the Federal Government to allow the procedural obstacles created by section 1500 to stand. As Abraham Lincoln admonished in his first annual message to Congress, "[i]t is as much the duty of Government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals."[5]

BACKGROUND

A. The U.S. Court of Federal Claims

The CFC is the principal forum for litigating monetary claims against the United States. Since 1855, the CFC and its predecessor, the Court of Claims, have provided a fair forum to allow claimants to bring suit against the Federal Government for alleged violations of their rights.[6] As has been observed by its former Chief Judge Loren A. Smith, the CFC is the institutional scale that weighs the government's actions against the standard measure of the law and helps make concrete the spirit of the First Amendment's guarantee of the right "to petition the Government for redress of grievances."[7]

The CFC has nationwide jurisdiction, primarily pursuant to the Tucker Act, over monetary claims against the United States in excess of $10,000 that do not sound in tort and has concurrent jurisdiction with United States District Courts for non-tort claims $10,000 and below.[8] The court is based in Washington, D.C., and its judges hear cases around the country at locations that are most

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[3] *United States v. Tohono O'odham Nation,* 131 S. Ct. 1723, 1738 (2011) (Sotomayor, J., concurring).

[4] *Loveladies Harbor v. United States,* 27 F.3d 1545, 1549 (Fed. Cir. 1994).

[5] President Abraham Lincoln, First Annual Message to Congress (Dec. 3, 1861).

[6] The CFC was recreated in October 1982 by the Federal Courts Improvement Act pursuant to Article I of the Constitution. Federal Courts Improvement Act of 1982, Pub. L. No. 97–164 (1982). As part of the 1982 Act, the CFC retained all the original jurisdiction of the U.S. Court of Claims; the Court of Claims' appellate jurisdiction was shifted to the Court of Appeals for the Federal Circuit. From 1982 until 1992, the CFC was named the U.S. Claims Court.

[7] U.S. Court of Federal Claims Bar Association, *United States Court of Federal Claims: The People's Court* (2005).

[8] *See* 28 U.S.C. § 1491 (2014) ("The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort . . . [or] to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement.").

convenient to the parties and the witnesses. Cases the court adjudicates include patent cases, government contract disputes, Fifth Amendment takings claims, tax refund suits, military and civilian pay cases, vaccine injury petitions, and Indian claims. The Federal Government is always the defendant in cases before the CFC.

B. 28 U.S.C. § 1500

The lineage of 28 U.S.C. § 1500 runs back to the aftermath of the Civil War, when its original purpose was to preclude duplicative actions seeking compensation for seized property (primarily cotton) by parties who had given aid to Confederate soldiers.[9] As the Supreme Court has explained, section 1500 originated during a time

> when residents of the Confederacy who had involuntarily parted with property (usually cotton) during the war [were] su[ing] the United States for compensation in the Court of Claims. When these cotton claimants had difficulty meeting the statutory condition that they must have given no aid or comfort to participants in the rebellion they resorted to separate suits in other courts seeking compensation not from the Government as such but from Federal officials. . . . It was these duplicative lawsuits that induced Congress to prohibit anyone from filing or prosecuting in the Court of Claims "any claim . . . for or in respect to which he . . . shall have commenced and has pending" an action in any other court against an officer or agent of the United States. The statute has long outlived the cotton claimants. . . .[10]

As currently written, section 1500 deprives the CFC of jurisdiction over a claim that arises from substantially the same operative facts as a claim pending in another Federal court, regardless of relief sought. Section 1500 reads in full:

> The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.[11]

This jurisdictional bar created by section 1500 is problematic because although most claims for money damages against the United States must be filed in the CFC, other claims against the government, including tort claims and claims for equitable relief, must be brought in district court.[12] As a result, a plaintiff with multiple claims against the United States arising out of a single incident (e.g., a contract claim and a tort claim) must often file those claims in different Federal courts. If a plaintiff brings each claim in the proper court (the contract claim to the CFC and the tort claim to district court), section 1500 may require the CFC to dismiss the

[9] *Keene Corp. v. United States,* 508 U.S. 200, 206 (1993).
[10] *Id.* at 206 (internal citations omitted).
[11] 28 U.S.C. § 1500.
[12] *See, e.g.,* 28 U.S.C. § 1346(b)(1) (2014) (granting Federal district courts exclusive jurisdiction over tort claims against the United States).

contract claim. The statute may therefore force a plaintiff to choose which of its potentially meritorious claims to pursue: if the statute of limitations for claims in the CFC expires before the district court action has concluded, a plaintiff will be foreclosed from prosecuting meritorious claims that may only be brought in the CFC.

C. The Problem that 28 U.S.C. § 1500 Creates

While preventing duplicative litigation is as worthy a goal today as when section 1500 was first enacted in 1868, the provision no longer serves this purpose. As the former Chief Judge Loren Smith, has observed:

> Although, on its face, § 1500 may appear to prevent wasteful duplicative litigation, in practice it has had precisely the opposite effect. Elimination of this jurisdictional bar to suits related to cases in other courts will save much wasteful litigation over non-merits issues and will leave the court free to deal with potential duplication through discretionary means. The Court can stay duplicative litigation, if the matter is being addressed in another forum, or proceed with the case, if the matter appears to be stalled in the other forum.[13]

The American Bar Association's section on public contract law put it more bluntly: "Section 1500 is an antiquated statute . . . that has long since run its course. For decades now, this tattered remnant of the Civil War has served to create mischief for litigants and headaches for the courts."[14] Moreover, Administrative Conference of the United States (ACUS), a non-partisan, congressionally-mandated administrative law think thank, has concluded that section 1500 "is an undesirably blunt tool for reducing the duplicative burdens that may arise from simultaneous litigation. Federal courts have both the authority and the competence . . . to prevent double recoveries and ease the burdens of simultaneous litigation . . . without unfairly depriving plaintiffs of the opportunity to pursue all potentially meritorious claims against the United States."[15]

For decades both the CFC and the Court of Appeals for the Federal Circuit (the circuit court with appellate jurisdiction over the CFC) had interpreted section 1500 in a manner that allowed cases to be maintained in the CFC even if the plaintiff had an action arising out of the same operative facts pending in another Federal court as long as the two actions sought different relief.[16] In 2011, however, the Supreme Court in *United States v. Tohono O'odham Nation* struck down this interpretation of the statute concluding that "[t]wo suits are for or in respect to the same claim, precluding jurisdiction in the CFC, if they are based on substantially the same

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[13] *Court of Federal Claims Technical and Procedural Improvements Act: Hearing Before the Subcomm. on Courts and Admin. Practice of the S. Comm. on the Judiciary,* 102d Cong. 2–15 (1992) (statement of C.J. Loren A. Smith).

[14] American Bar Association, Section on Public Contract Law Report to the House of Delegates on ABA Resolution 300 at 1 ("ABA Report").

[15] Administrative Conference of the United States, Administrative Conference Recommendation 2012–6 at 5 (2012) ("Administrative Conference Recommendation").

[16] *See, e.g., Loveladies Harbor,* 27 F.3d at 1551 ("For the Court of Federal Claims to be precluded from hearing a claim under § 1500, the claim pending in another court must arise from the same operative facts, and must seek the same relief.").

operative facts, regardless of the relief sought in each suit."[17] As a result, as Justice Sotomayor noted in her concurrence with the Court's opinion, "[u]nder the Court's construction of § 1500, plaintiffs whom Congress has forced to file parallel actions in the CFC and a district court to obtain complete relief must now choose either to forgo relief in the district court or to file first in the district court and risk the expiration of the statute of limitations on their claims in the CFC."[18]

It is not uncommon under the Supreme Court's 2011 interpretation of section 1500 for the CFC to be deprived of jurisdiction over potentially meritorious claims against the United States that would otherwise be within its authority to adjudicate. Section 1500 "frequently compels plaintiffs with multiple claims to pursue only one claim and abandon the others."[19] "[S]ophisticated businesses and pro se parties alike have fallen into the § 1500 trap. The statute has affected Federal employees, property owners, businesses, local governments, and Indian tribes."[20] ACUS has identified the following examples of potentially meritorious claims against the United States that have been adversely affected by section 1500:

- A Federal employee who sued the government in district court under both the Equal Pay Act and Title VII of the Civil Rights Act of 1964. Her Equal Pay Act claim was transferred to the CFC and was dismissed under Section 1500.[21]
- Property owners who sued in the CFC, claiming the government had taken their property without just compensation. Their claim was dismissed because they had previously sued in district court on a tort theory.[22]
- A local government that was sued by the United States in district court over taxation of certain Federal office buildings filed a counterclaim against the United States for the taxes it believed it was owed. The counterclaims were transferred to the CFC and dismissed under Section 1500.[23]
- An Indian tribe that sued in the CFC for breach of trust. Its claims were dismissed because it sued on similar claims in district court on the same day.[24]

These "duplicative" cases are the result of the fact that plaintiffs with claims against the United States may have reasonable grounds for filing multiple lawsuits arising out of a single incident given the complex statutory scheme waiving sovereign immunity for such claims. In many cases, however, section 1500 forces plaintiffs to choose among valid claims and abandon some claims as the price of pursuing others. Alternatively, plaintiffs may be forced to wait several years for a claim to run its course in one court before filing another claim arising out of the same incident in the CFC, at the risk of ending up on the wrong side of the 6-year statute of

[17] 131 S. Ct. at 1731.
[18] *Id.* at 1738.
[19] *Res. Invs., Inc. v. United States,* 114 Fed. Cl. 639, 643 (2014).
[20] Emily S. Bremer and Jonathan R. Siegel, "Clearing the Path To Justice: The Need To Reform 28 U.S.C. § 1500," 65 *Ala. L. Rev.* 1, 31 (2013).
[21] *Griffin v. United States,* 590 F.3d 1291 (Fed. Cir. 2009).
[22] *Vaizburd v. United States,* 46 Fed. Cl. 309 (2000).
[23] *United States v. Cnty. of Cook,* 170 F.3d 1084 (Fed. Cir. 1999).
[24] *Passamaquoddy Tribe v. United States,* 82 Fed. Cl. 256 (2008).

limitations. For these reasons and others, section 1500 creates an unnecessary and highly problematic jurisdiction bar.

D. Support for this Legislation

There is broad support for repealing and replacing 28 U.S.C. § 1500, as is done by the Ensuring Access to Justice for Claims Against the United States Act. First, Congress itself has expressed from time to time its desire to fix the results created by section 1500.[25] Additionally, judges on both the CFC and the Federal Circuit Court of Appeals have voiced support for the repeal of section 1500. Indeed, judges have characterized section 1500 as: an "outdated and ill-conceived statute"; "unfair and unworkable"; "a badly drafted statute . . . [that] does not lend itself easily to a sensible construction"; "an anachronism"; "an awkward tool that has outlived its original purpose"; and a "trap for the unwary."[26] Moreover, the Administrative Conference of the United States, the American Bar Association, and the National Congress of American Indians, among others, have expressed strong support for addressing section 1500:

- **Administrative Conference of the United States:** "The Administrative Conference recommends that Congress repeal Section 1500. The Conference further recommends that Congress replace Section 1500 with a provision that permits plaintiffs to bring congressionally authorized suits arising from the same set of operative facts in the Court of Federal Claims and other Federal courts at the same time, but also contains a presumptive stay mechanism to mitigate any burden on the courts or parties from simultaneous litigation."[27]
- **American Bar Association:** "The American Bar Association urges Congress to repeal and replace 28 U.S.C. § 1500 in accordance with the recommendation of the Administrative Conference of the United States to eliminate unnecessary procedural obstacles to the fair and efficient review of claims against the United States in the U.S. Court of Federal Claims."[28]
- **National Congress of American Indians:** "The NCAI supports the reform or repeal of 28 U.S.C. § 1500 in a manner that would protect the ability of tribal plaintiffs to pursue claims involving substantially the same operative facts against the United States in both the Court of Federal Claims and in other Federal courts."[29]

DISCUSSION

In 1886, Representative John Randolph Tucker introduced legislation, which has come to be known as the Tucker Act, to revise

[25] *See* S. 1028, 106th Cong. § 6(a)(2)(A) (1999); H.R. 992, 105th Cong. § 3(a) (as passed by House, Mar. 12, 1998); S. 2271, 105th Cong. § 6(a)(2)(A) (1998); S. 1256, 105th Cong. § 8(a)(2)(A) (1997); S. 781, 105th Cong. § 205(d)(2)(A) (1997); S. 343, 104th Cong. § 5(b)(2) (1995); S. 605, 104th Cong. § 205(d)(2)(A) (1995); S. 371, 104th Cong. § 8(b)(1) (1995); H.R. 489, 104th Cong. § 6(c)(2)(A) (1995); S. 135, 104th Cong. § 6(c)(2)(A) (1995); S. 1355, 103d Cong. § 1(a) (1993); S. 2521, 102d Cong. § 10(c) (1992).

[26] *Low v. United States,* 90 Fed. Cl. 447, 455 (2009) (cataloging some of the criticisms of section 1500).

[27] Administrative Conference Recommendation.

[28] American Bar Association Resolution 300.

[29] Resolution #SAC–12–061 (2012).

the jurisdiction and procedures of the Court of Claims in order to "give the people of the United States what every civilized nation of the world has already done—the right to go into the courts to seek redress against the Government for their grievances."[30] This Committee reported that the Tucker Act was a "comprehensive measure by which claims against the United States may be heard and determined."[31]

However, despite the intended comprehensive nature of the Tucker Act, the complexity of the statutes that govern the jurisdiction of Federal courts to hear cases asserting claims against the United States have hindered the ability of plaintiffs to seek comprehensive redress for unlawful government actions. This complex jurisdictional scheme regularly causes plaintiffs problems when the Federal Government acts in a manner that raises questions regarding both of the validity of the action and, if valid, the economic consequences of the government's conduct. In general, questions regarding whether the government has power to exercise its authority must be brought in district court and questions regarding whether monetary compensation is due to a plaintiff because of the government's exercise of its authority must be brought in the CFC.

Furthermore, even among monetary claims against the United States, a single exercise of the government's authority could lead to different causes of action against the government that must be brought in different Federal courts. For example, actions against the United States under the Federal Tort Claims Act must be brought in Federal district court,[32] whereas contract actions against the government must be brought in the CFC.[33] And, actions to quiet title between private property owners and the United States must be filed in Federal district court,[34] while Fifth Amendment takings claims for just compensation relating to title disputes must be filed in the CFC.[35]

This jurisdictional scheme would be understandable—different Federal courts have different specialties and expertise—but for the fact that section 1500 precludes plaintiffs with multiple types of claims arising from the same incident from pursuing all of their claims against the United States. While the Tucker Act grants the CFC jurisdiction to hear a variety of monetary claims against the United States, section 1500 limits the court's jurisdiction by prohibiting the CFC from adjudicating "any claim for or in respect to which the plaintiff . . . has pending in any other court any suit or process against the United States." Thus, if a plaintiff's claims arise from a single incident and could be asserted in both Federal district court and the CFC, section 1500 requires the plaintiff to forgo its remedy in Federal district court to pursue its remedy in the CFC. If the plaintiff pursues both cases, it risks dismissal of the monetary claim filed in the CFC.

Although the original purpose of section 1500 was to protect the United States against lawsuits that could lead to double recoveries,

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[30] 18 Cong. Rec. 2680 (1887) (remarks of Rep. Bayne); *see id.,* at 622 (remarks of Rep. Tucker); *id.,* at 2679 (colloquy between Reps. Tucker and Townshend); *id.,* at 2680 (remarks of Rep. Holman).

[31] H.R. Rep. No. 1077, 49th Cong., 1st Sess., 1 (1886).

[32] *See* 28 U.S.C. § 1346(b)(1) (2014).

[33] *See* 28 U.S.C. § 1491(a)(1) (2014).

[34] *See* 28 U.S.C. § 2409a (2014).

[35] *See* 28 U.S.C. § 1491(a)(1) (2014).

modern preclusion principles protect against this result. A plaintiff can no longer file suit against the United States in the CFC and individual government officials acting in their official capacities in district court and recover in both cases: "Today, it is well established that a government and its officers, at least in their official capacities, are in privity for purposes of res judicata. Thus, a judgment in a suit against a Federal officer in his official capacity will bind the United States government and vice versa."[36]

Simply put, section 1500 is no longer needed and leaving this unnecessary statute in place regularly leads to injustices for plaintiffs with claims against the United States:

> To dismiss claims under § 1500 when it no longer serves its purpose is unjust. A basic principle of modern civil procedure is that plaintiffs are permitted to pursue all the claims that they may have against a single defendant and are not required to "elect" among claims. This rule should be as valid against the United States as against any other defendant. By depriving plaintiffs of potentially meritorious claims on the ground that they have filed related claims elsewhere, § 1500 works an injustice. . . . [I]t is unfair to punish a plaintiff for bringing suit against the United States in two different courts when the plaintiff is simply doing what is required by Congress's jurisdictional scheme.[37]

The unfair and wasteful results created by section 1500 deny plaintiffs access to justice for wrongs committed by the United States government. Those who have been subject to unlawful actions by the Federal Government should be permitted to pursue all their claims against the United States without being forced for technical, non-meritorious reasons to have to choose among which of their potentially meritorious claims to pursue. As the Federal Circuit has observed, "[b]ecause this nation relies in significant degree on litigation to control the excesses to which Government may from time to time be prone, it would not be sound policy to force plaintiffs to forego monetary claims in order to challenge the validity of Government action, or to preclude challenges to the validity of Government action in order to protect a Constitutional claim for compensation."[38] In short, section 1500 interferes with the sound and efficient administration of justice and creates a jurisdictional dance for unwary plaintiffs.

The Ensuring Access to Justice for Claims Against the United States Act eliminates these wasteful obstacles to justice and inefficient court procedures. The Act repeals and replaces section 1500 with a procedure that avoids the burdens that could be created by forcing the United States to litigate, at the same time, two cases arising out of the same incident while simultaneously protecting plaintiffs' ability to seek complete relief when actions of the Federal Government violate their legal rights.

The Act accomplishes this by striking the jurisdictional bar from section 1500 and replacing it with a presumptive stay provision. Under the presumptive stay provision, a plaintiff could file and

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[36] Bremer & Siegel, *supra* note 20, at 19.
[37] *Id.* at 20.
[38] *Loveladies Harbor,* 27 F.3d at 1555–56.

maintain actions arising out of a single incident in both the CFC and the district court at the same time, but the action that was filed second would be stayed until the first-filed action is no longer pending. The stay could be lifted by the agreement of the parties or upon a finding by a judge that the stay is not in the interest of justice. This presumptive stay provision provides judges with flexibility to manage potentially duplicative litigation against the United States in a manner that is consistent with modern judicial practice.

H.R. 5683 removes unnecessary procedural obstacles that Congress has placed in the way of the ability of plaintiffs to receive redress from actions taken by the Federal Government that infringe upon their constitutional, statutory, or contractual rights. This legislation will clear the path to justice for a wide variety of claimants with many different kinds of claims. In so doing, H.R. 5683 helps the United States fulfill its duty "to render prompt justice against itself in favor of its citizens."[39]

Hearings

The Committee on the Judiciary held no hearings on H.R. 5683.

Committee Consideration

On November 13, 2014, the Committee met in open session and ordered the bill H.R. 5683 favorably reported, without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5683.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Committee Cost Estimate

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, an estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 was not submitted to the Committee before the filing of the report.

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[39] President Lincoln, *supra* note 5.

Duplication of Federal Programs

No provision of H.R. 5683 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 5683 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5683, will amend 28 U.S.C. § 1500 in order to ensure that claimants with multiple claims against the United States are able to seek complete legal relief for their injuries.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5683 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title.

Section 1 sets forth the short title of the legislation as the "Ensuring Access to Justice for Claims Against the United States Act."

Section 2. Jurisdiction of the United States Court of Federal Claims.

Subsection (a) replaces the current text of 28 U.S.C. § 1500 with a presumptive stay provision. The presumptive stay provision provides that if a plaintiff has a civil action pending in, or on appeal from, the Court of Federal Claims, and that plaintiff also has pending in any other Federal court a civil action that includes a claim against the United States (or an agency or officer of the United States) arising from substantially the same set of operative facts as the suit in the CFC, the court presiding over the action that was filed later shall stay the action until the action that was filed first is no longer pending. Subsection (a) further provides that the stay may be lifted upon agreement of the parties or upon a determination by the court that the stay is not in the interest of justice. Finally, the subsection establishes that if the cases covered by section 1500 are filed on the same day, the case filed in the CFC shall be treated as the first filed case.

Subsection (b) provides that the changes made to 28 U.S.C. § 1500 shall apply to all cases currently pending in the Federal

courts, whether filed before, on, or after the date of enactment. The Act's presumptive stay provision, however, does not apply in a case in which the action filed later (as determined in accordance with the legislation) is pending on the date of enactment in a Court of Appeals of the United States or the Supreme Court of the United States, or in a case in which judgment has been entered as of such date of enactment but for which the time to file an appeal has not expired.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

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PART IV—JURISDICTION AND VENUE

* * * * * * *

CHAPTER 91—UNITED STATES COURT OF FEDERAL CLAIMS

Sec.
1491. Claims against United States generally; actions involving Tennessee Valley Authority.

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[1500. Pendency of claims in other courts.]
1500. Presumption of stay.

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[§ 1500. Pendency of claims in other courts

[The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.]

§ 1500. Presumption of stay

(a) DEFINITIONS.—In this section—

(1) the term "court" means any of the courts described in section 610; and

(2) the term "Court of Federal Claims" means the United States Court of Federal Claims.

(b) PRESUMPTION OF STAY.—Except as provided in subsection (d), if a civil action is pending in, or on appeal from, the Court of Federal Claims, and the plaintiff or assignee of the plaintiff also

has pending in any other court a civil action that includes a claim against the United States or an agency or officer of the United States arising from substantially the same set of operative facts, the court presiding over the action that was filed later shall stay the action, in whole or in part, until the action that was filed first is no longer pending.

(c) DETERMINING FIRST-FILED ACTION.—

(1) APPEALS.—For purposes of subsection (b), the date of filing for a civil action that is pending on appeal from the Court of Federal Claims is the date on which the action was filed in the Court of Federal Claims.

(2) ACTIONS OR APPEALS FILED ON SAME DAY.—For purposes of subsection (b), if the actions described in subsection (b) were filed on the same day, without regard to the time of day, the action that is pending in, or on appeal from, the Court of Federal Claims shall be treated as having been filed first.

(d) EXCEPTIONS.—The requirement to stay an action under subsection (b) shall not apply if—

(1) the parties in each of the actions that include a claim based on substantially the same set of operative facts otherwise agree; or

(2) the required stay is not, or ceases to be, in the interests of justice.

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