

**EARTHJUSTICE LEGAL DEFENSE FUND • ENVIRONMENTAL DEFENSE •
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WILDLIFE FEDERATION • NATURAL RESOURCES DEFENSE COUNCIL •
U.S. PUBLIC INTEREST RESEARCH GROUP**

September 20, 2000

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Leahy:

On behalf of our millions of members nationwide, we strongly urge you to oppose H.R. 2372, the "Private Property Rights Implementation Act of 2000," which is scheduled for markup by the Senate Judiciary Committee on September 21, 2000. We also oppose any effort to substitute Chairman Hatch's version of this bill, S. 1028, because it suffers from the same defects as the House bill. These damaging bills would seriously weaken the ability of federal, state, and local governments to implement environmental and land use protections. They also represent an unprecedented and unconstitutional interference by the federal government into traditionally state and local matters, which is opposed by both the federal and state judiciaries.

Moreover, as manifest by the ever-increasing sprawl swallowing our rural areas and overtaking communities across the country, the current process for challenging local zoning regulations and environmental protection is clearly not hindering commercial and residential development. Indeed, new development in this country is occurring at a rate of 365 acres per *hour* according to recent U.S. Department of Agriculture data.

Both H.R. 2372 and S. 1028 would create new opportunities for developers and other private landowners to bring "takings" claims; that is, claims seeking compensation for simply following community standards by not polluting or not building on protected land. The bills would allow these entities to circumvent local zoning procedures and sue towns, cities, and counties directly in federal court, to force local governments to give in to developers' demands or be threatened with expensive federal court proceedings. H.R. 2372 and S. 1028 are a blatant attempt by developers and polluters to use federal law to limit local government authority over land uses and hinder environmental protection and zoning ordinances.

We oppose H.R. 2372 and S. 1028 because, among other things, they would:

- Undermine local control over land uses by allowing developers to challenge local regulations directly in federal court. Developers will use the threat and cost of defending such litigation as a club to compel financially-strapped cities and counties to approve projects that could harm neighbors and communities. Both the environment and the property values of ordinary homeowners will suffer from mislocated development such as hog farms, hazardous waste sites, and sprawl.

- **Fail to achieve quicker resolution of takings claims.** This bill will likely result in lengthy procedural litigation while federal courts try to determine whether they should hear these takings claims under the current legal standards. Recent Supreme Court holdings are clear that the Constitution requires premature federal takings claims against localities to be dismissed or transferred to state court.
- **Burden small cities and towns unnecessarily.** This bill would have a disproportionate impact on the 18,775 cities and towns, comprising nearly 50% of all U.S. cities and towns, that have less than 1,000 residents and average annual revenues of \$186,664, according to the U.S. Census Bureau data (1992). The threat of unjustified federal lawsuits against these small towns in particular could have a chilling effect on their local zoning, health and safety, and environmental decisions.

In sum, H.R. 2372 and S. 1028 would strip local governments of the ability to protect their citizens from harmful development, encourage litigation, and increase costs for taxpayers. The ability of local governments to balance the interests of both developers and neighboring property owners, as well as to protect the environment, would be seriously compromised by this bill.

Americans know that zoning and environmental regulations make a positive difference in their quality of life. A vote against H.R. 2372 and S.1028 is a vote for local governments to retain their legitimate constitutional tools against sprawl and environmental degradation.

Sincerely,

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cc: **Members of the Senate Committee on the Judiciary**