

**National Association of Counties
National Conference of State Legislatures
National League of Cities
The United States Conference of Mayors
Community Rights Council
International Municipal Lawyers Association
National Association of Towns and Townships**

July 10, 2000

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

Dear Senator Hatch:

On July 5, 2000, each of our organizations participated in a meeting called by Larry Block of your staff to discuss S. 1028, the Citizens Access to Justice Act. As you know, state and local officials unanimously oppose "takings" legislation such as S. 1028, principally because it is aimed at preempting state and local land use authorities. Nonetheless, we attended the meeting because we believe it is in everyone's best interest to remain open-minded and consider the issues at hand thoughtfully and in good faith.

In that spirit, we would like you to know that there were a number of factual and constitutional issues raised at the July 5 meeting which we strongly believe merit consideration through Judiciary Committee hearings. We respectfully request that you conduct hearings on S. 1028 prior to scheduling any markup of the legislation.

With regard to factual issues, there was a wide-ranging discussion about the lack of empirical information that speaks to the issues your bill targets, i.e., the perceived or real problem that exists in the timing of local permit approvals and state court adjudication. The two studies pointed to by the supporters of the bill do not address these issues; those studies address only what happens once the property owner enters federal court.

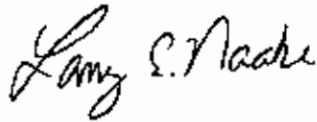
With regard to constitutional issues, the Supreme Court rendered an important decision, *City of Monterey v. Del Monte Dunes* (1999), since the Senate Judiciary Committee last heard testimony on this issue. *Del Monte Dunes* reaffirms that a takings claimant challenging state or local government action "suffer[s] no constitutional injury" unless a state court denies the claimant just compensation. By purporting to allow takings claimants to bypass state courts, S. 1028 improperly attempts to provide an immediate federal forum to claimants who have suffered no constitutional injury. As discussed at the meeting, we believe the *Del Monte Dunes* decision, as well as several other recent decisions construing Section Five of the Fourteenth Amendment, place in serious question the ultimate constitutionality of S. 1028. As a result, the bill threatens wasteful, lengthy litigation for all concerned by offering landowners the false hope of an immediate federal forum, only to have their cases sent back to state court once the bill is deemed unconstitutional.

Additionally, two Senators are new to the Judiciary Committee this Congress and have not yet had the benefit of Senate hearings on takings legislation. Other members likely would benefit as well given the deep divisions on the bill in committee during the 105th Congress.

We hope the Judiciary Committee will not schedule a markup of takings legislation until a good faith effort has been made to address these outstanding issues. Hearings on the legislation would be a first step in that direction, and we stand ready to work with you to that end.

Thank you for your attention and consideration.

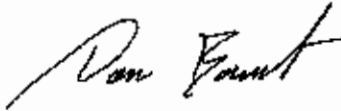
Sincerely,



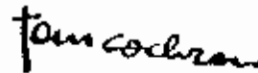
Larry E. Naake
Executive Director
National Association of Counties



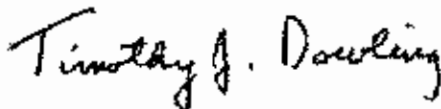
William T. Pound
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Timothy J. Dowling
Chief Counsel
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/s/

Henry W. Underhill, Jr.
Executive Director
International Municipal Lawyers Association



Tom Halicki
Executive Director
National Association of Towns and Townships

cc: Members of the Senate Judiciary Committee