

Senator Leahy

Mr. Chairman: I am pleased that S. 1028 is not being pursued today. We have yet to have a hearing on it this Congress – although I have certainly heard strong opposition to it from all parts of the United States.

These so-called takings bills have mutated so many times over the years it is hard to know where to start.

They began as part of the original set of bills introduced by Speaker Newt Gingrich and referred to by Mr. Gingrich as the Contract with America.

Over the years these so-called takings bills have been strongly attacked by mayors, State legislators, Governors, the Judicial Conference of the United States, city administrators, local governments, county executives, State

Attorneys General, Towns and Townships, conservationists, city and town planners, zoning board members and homeowners wanting to protect the value of their homes.

Local officials are very afraid of this bill and they have every reason to be afraid. The bill would jeopardize case law that provides towns with authority to regulate bars with explicit dancing, adult bookstores, hazardous waste facilities, and other nuisances.

The bill will make it harder for towns to protect the health and safety of children and is a fundamental intrusion upon their authority over local land use decisions.

There is now an increasing concern over unplanned, uncontrolled urban sprawl which can greatly reduce the value of homes and the quality of life. These so-called "takings" bills would open up suburban neighborhoods to uncontrolled sprawl, or urban blight, and take

away much of the value of homes in those areas.

I know that the National League of Cities and the U.S. Conference of Mayors is concerned that this effort would lead to significant increases in property taxes as towns risk being bankrupted over costly federal litigation which is encouraged under this bill.

Instead of trusting local mayors, councils, planning and zoning commissions to know what is best for their citizens, the bill short-circuits the local process and turns local land use disputes into federal cases.

The legislation scares local government officials who risk liability for trying to protect the value local homes. A few years ago the town of Hudson, Ohio, racked up huge legal fees to protect its citizens from just one of the lawsuits which would be encouraged by this bill.

The Judicial Conference of the United States

strongly opposes S. 1028 and proposes instead that if the Congress wants to provide for complete resolution of Fifth Amendment takings cases in one judicial forum, then that forum should be an Article III court, and that the present jurisdictional monetary ceiling of \$10,000 for such claims should be eliminated.

Next Congress, I would be willing to work with this Committee – perhaps we could even hold a hearing -- on that type of approach which would also protect homeowners, mayors, zoning board members and local government officials who would be put in harms' way under S. 1028.

I would like to insert into the record letters opposing S. 1028 from mayors, State legislators, the Judicial Conference of the United States, city administrators, Governors, local governments, county executives, State Attorneys General, the National Association of Towns and Townships, the Justice Department, and many others.

The Governor of Vermont noted in a letter to me that:

If passed, these bills would undermine state and local government authority over land use and regulatory decisions by allowing developers and property owners to take their grievances directly to federal court, circumventing legal remedies at the state and local level.

Such an "end run" around the processes established by our state laws runs counter to the foundations of federalism that this Congress purports to endorse. The bill preempts the traditional system for resolving local zoning, land use, and regulatory disputes; it creates a disincentive for developers to negotiate with localities in order to reach mutually agreeable solutions; and it puts federal judges in the position of micromanaging purely local affairs.

I believe that large-scale developers will use the expedited access to federal courts as a "club" to intimidate local officials who are charged with acting in the best interests of the community as a whole.

The framers of the Constitution never intended federal courts to be the first resort in resolving community disputes between local governments and private parties. In my view, these issues should be settled locally, as close to the affected community as possible.

He is absolutely correct – and I will include his letter in the record.