

**AMERICAN RIVERS • CLEAN WATER ACTION • DEFENDERS OF WILDLIFE •
EARTHJUSTICE • FRIENDS OF THE EARTH • NATIONAL AUDUBON SOCIETY •
NATIONAL WILDLIFE FEDERATION • NATURAL RESOURCES DEFENSE
COUNCIL • SIERRA CLUB • THE WILDERNESS SOCIETY • U.S. PUBLIC
INTEREST RESEARCH GROUP**

June 22, 2006

**Protect Local Officials, Federalism, and the Environment:
Oppose H.R. 4772**

Dear Judiciary Committee Chair Sensenbrenner and Ranking Member Conyers:

We strongly urge you to oppose H.R. 4772, the *Private Property Rights Implementation Act of 2005*, a bill designed to weaken local land use, zoning, and environmental laws by encouraging costly and unwarranted “takings” litigation in federal court against local officials.

Environmental and a wide range of other groups strongly opposed prior versions of this legislation -- including H.R. 1534 in the 105th Congress and H.R. 2372 in the 106th Congress -- which failed to obtain congressional approval. The pending bill would be even more harmful than earlier versions.

Like those earlier bills, H.R. 4772 would fundamentally alter the procedures governing regulatory takings litigation. Those procedures are required by the U.S. Constitution and have been repeatedly reaffirmed by the U.S. Supreme Court, as recently as last year. The bill purports to alter these requirements by giving developers, corporate hog farms, adult bookstores, and other takings claimants the ability to bypass local land use procedures and state courts. Indeed, the National Association of Home Builders candidly referred to a prior version of the bill as a “hammer to the head” of local officials. Developers could use this hammer to side-step land use negotiations and avoid compliance with local laws that protect neighboring property owners and the community at large.

In addition, section 5 of the bill purports to dramatically change substantive takings law as articulated by the Supreme Court and other federal courts by redefining the constitutional rules that apply to permit conditions, subdivisions, and claims under the Due Process Clause. The existing rules, developed over many decades, allow courts to strike a fair balance between takings claimants, neighboring property owners, and the public. The proposed rules would tilt the playing field further in favor of corporate developers and other takings claimants, even in the many localities across the country where developers already have an advantage.

As a result, H.R. 4772 would allow big developers and other takings claimants to use the threat of premature federal court litigation as a club to coerce small communities to approve projects that would harm the public. By short-circuiting local land use procedures, H.R. 4772 also would curtail democratic participation in local land use decisions by the very people who could be harmed by those decisions.

The bill also raises serious constitutional issues. The provisions that purport to redefine constitutional violations ignore the fundamental principle established in *Marbury v. Madison* (1803) that it is the “emphatically the province and duty” of the federal courts to interpret the meaning of the Constitution. Moreover, under longstanding precedent, a landowner has no claim

against a state or local government under the Fifth Amendment until the claimant first seeks and is denied compensation in state court. Federal courts would continue to dismiss these claims, as well as claims that lack an adequate record where claimants use the bill to side-step local land use procedures. The bill will create more delay and confusion by offering the false hope of an immediate federal forum for those who have not suffered a federal constitutional injury.

This bill is a great threat to federalism, our local land use protections, neighboring property owners, and the environment. We strongly urge you to reject H.R. 4772.

Sincerely,

S. Elizabeth Birnbaum
Vice President for Government Affairs
American Rivers

Linda Lance
Vice President for Public Policy
The Wilderness Society

Paul Schwartz
National Policy Coordinator
Clean Water Action

Anna Aurilio
Legislative Director
U.S. Public Interest Research Group

Mary Beth Beetham
Director of Legislative Affairs
Defenders of Wildlife

Mary Hayden
Legislative Director
Earthjustice

Sarah Zdeb
Legislative Director
Friends of the Earth

Betsy Loyless
Senior Vice President for Public Policy
National Audubon Society

Adam Kolton
Sr. Director, Congressional and Federal
Affairs
National Wildlife Federation

Karen Wayland
Legislative Director
Natural Resources Defense Council

Debbie Sease
National Campaign Director
Sierra Club

cc: Members, House Judiciary Committee