



FLORIDA LEAGUE OF CITIES, INC.

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June 14, 2006

The Honorable Debbie Wasserman-Schultz
U.S House of Representatives
118 Cannon House Office Building
Washington, DC 20515

Dear Representative Wasserman-Schultz:

On behalf of the Florida League of Cities, we write to express our strong opposition to H.R. 4772, the *Private Property Rights Implementation Act of 2005*, pending before the House Judiciary's Subcommittee on the Constitution.

The proposed bill would produce even more dramatic changes in the law than earlier versions of this legislation, including H.R. 1534 in the 105th Congress and H.R. 2372 in the 106th Congress, neither of which was enacted into law. Like those earlier bills, H.R. 4772 would fundamentally alter the procedures governing regulatory takings litigation established by the Supreme Court's Williamson County decision. In addition, however, H.R. 4772 seeks to make important substantive changes in the law, by attempting to redefine the types of regulatory "exactions" subject to heightened scrutiny under the Takings Clause, override the so-called parcel-as-whole rule in certain takings cases, and prescribe a specific standard for the evaluation of claims under the Due Process Clause.

The procedural provisions of the bill would grant developers greater leverage in their negotiations with cities and lead to greater federal court intrusion into land use decisions traditionally assigned to state and local governments. State and local elected officials are committed to the just defense of private property rights and have established procedures to balance the protection of private property rights and the protection of public health and safety and environmental protection. The proposed bill would alter the current balance by allowing developers to short circuit local administrative procedures designed to resolve land use issues without resort to the courts, and by allowing developers to file takings claims in federal court, bypassing the state courts and other state procedures for awarding compensation in appropriate cases. Indeed, supporters have candidly described the bill as a 'hammer to the head' of local officials, a hammer that would undermine land use programs by giving developers the unfair threat of immediate federal court litigation.

The new substantive provisions in this version of this legislative proposal would subject local governments to financial liability in circumstances when no valid claim would lie under the Constitution. The bill would impose a major new, unfunded financial burden on local governments, both in terms of added litigation expenses and potential damages awards.

President **Julio Robaina**, Council President, Hialeah

First Vice President **Rene Flowers**, Councilwoman, St. Petersburg ♦ *Second Vice President* **Frank Ortis**, Mayor, Pembroke Pines

Executive Director **Michael Sittig** ♦ *General Counsel* **Harry Morrison, Jr.**

By both expanding the scope of municipal liability and creating many new questions about the scope of local government liability, the bill would also significantly interfere with local officials' ability to serve their communities.

Finally, the bill raises very serious constitutional questions. The U.S. Supreme Court has repeatedly stated that a takings claimant suffers no constitutional injury unless a state court has denied a claim for just compensation. By purporting to allow takings claimants to bypass state courts, the bill improperly seeks to provide a forum for litigants who have suffered no federal constitutional injury. Claimants who sought to take advantage of this bill would likely have their claims rejected on the ground that the courts have no authority to consider such claims. In addition, the provisions of the bill seeking to prescribe specific standards of liability under the Takings and Due Process Clauses likely represent unconstitutional efforts to define how provisions of the Constitution should be interpreted, which is the province of the courts.

We urge you to reject H.R. 4772. Should you have questions or require additional information, please contact Allison Payne at the League at (850) 222-9684 or email apayne@flcities.com. Thank you for your consideration.

In the fight for Home Rule,

A handwritten signature in black ink, appearing to read "Michael Sittig". The signature is fluid and cursive, with a long vertical stroke extending downwards from the end.

Michael Sittig
Executive Director

President **Julio Robaina**, Council President, Hialeah

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