DETAILED ANALYSIS OF HR 4772, THE PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT

This memorandum describes the provisions of H.R. 4772 and discusses the likely consequences and implications of this proposed legislation. The House Judiciary Committee reported the bill on July 12, 2006. There is no corresponding Senate bill.

DESCRIPTION OF H.R. 4772.

H.R. 4772 is in part a procedural bill designed to make it easier for developers to sue local governments over land use issues in federal court and to use the threat of litigation as leverage in negotiating with local governments. As stated by a representative of the National Association of Homebuilders, the chief lobby group promoting this legislation, the purpose of the bill is to "be a hammer to the head" of local officials. See National Journal's Congress Daily AM (May 14, 2000). This aspect of the bill represents a reprise of similar legislative proposals in the 105th Congress (H.R. 1534) and the 106th Congress (H.R. 2372), both of which failed to pass. In addition, the current bill includes several substantive sections that attempt to override the established interpretations of the Takings and Due Process Clauses to make it easier for developers to prevail in lawsuits against cities and towns. This aspect of the bill is reminiscent of the "takings" platform in the 104th Congress's Contract with America, which would have compelled the federal government to pay virtually every time it regulated. This legislative proposal failed as well.

Section 1 of the bill lays out the bill's title, "The Private Property Rights Implementation Act."

Section 2 of the bill would amend 28 U.S.C. § 1343, the federal court jurisdictional provision governing civil rights suits against local governments. New subsection (e) of section 1343 would prohibit a federal district court from "abstaining" in favor of a state court in any action involving "the uses of real property" so long as the plaintiff (1) has not alleged a violation of a State law, right, or privilege, and (2) no parallel proceeding is pending in State court at the time the action is filed in federal court arising out of the same facts. Subsection (f) would direct the federal courts to exercise jurisdiction, in any case involving "the uses of real property," regardless of whether the plaintiff has not pursued "judicial remedies provided by a State or territory of the United States." Subsection (g) would authorize federal courts, again in cases involving "uses of real property," to certify unsettled issues of State law for resolution by the State's highest court, provided resolution of the State law issue "is necessary to resolve the merits of the federal claim" and the issue "is patently unclear." These proposed amendments are essentially identical to provisions included in HR. 2372 in the 106th Congress.

Section 2 also would add a new subsection (f) to section 1342 providing that any claim under 42 U.S.C. § 1983 based on an alleged deprivation "of a property right or privilege" shall be "ripe" for adjudication when a municipality makes a "final decision" that "causes actual and concrete injury to the party seeking redress." A"final decision" for this purpose is defined as (1) a "definitive decision regarding the extent of permissible uses on the property that has allegedly been infringed or taken, without regard to any uses that may be permitted elsewhere," and (2) the submission and denial of one "meaningful application," and the pursuit of "one waiver and one appeal" where there is an administrative process for seeking such relief. A claimant would not be required to pursue a waiver or appeal if (1) a waiver or appeal is "unavailable," (2) the administrative process "can not provide the relief requested," or (3) pursuit of a waiver or appeal would be "futile."

While H.R. 2372, the 106th Congress's version of this bill, contained somewhat similar language on ripeness, proposed subsection (f) in the current bill includes new language – as well as several omissions – that make this proposal significantly more extreme than the earlier bill. First, the new language defines a "final" decision as a decision relating to permitted uses "on the property that has allegedly been infringed or taken, without regard to any uses that may be permitted elsewhere." This language apparently would allow a claimant, for the purpose of attempting to establish that a claim is ripe, to segment the property by focusing solely on the area affected by the restriction being challenged. This approach to ripeness conflicts with the "parcel as a whole" rule in takings analysis (discussed below). Second, the prior bill included a provision stating that if local law provides for review of an application by elected officials, the claimant must pursue review by such officials in order to ripen a claim; the current bill omits this language. Third, the prior bill stated that a "meaningful" development application would be defined in accordance with "applicable law," presumably meaning the state and/or local law in the particular jurisdiction; this language also has been omitted from the current version of the bill.

Finally, this section of the current bill differs from the corresponding section of the prior bill in one other important respect. The prior bill stated, "Nothing in [the proposed amendments to 28 U.S.C. § 1343] alters the substantive law of takings of property, including the burden of proof borne by plaintiffs." This language is omitted from the new bill, suggesting that the current bill may well be intended to alter substantive law. This is consistent with the fact that the language in the current bill can be read as intended to authorize courts to disregard the parcel as a whole rule, as discussed above. Also, as discussed below, sections 5 and 6 of this bill explicitly seek to alter the substantive standard for takings liability (as well as for due process liability).

Section 3 of the bill would amend 28 U.S.C. § 1346, which grants the federal district court jurisdiction over certain claims against the United States, and apply to the United States the same "finality ripeness" standard that section 2 of the bill would make applicable to municipalities. The language in this section also departs from the corresponding language in the prior bill by omitting the statement that the language is not intended to alter the substantive law of takings.

Section 4 of the bill would amend 28 U.S.C. § 1491(a), which deals with the jurisdiction of the Court of Federal Claims, the court that hears the lion's share of claims for monetary relief against the United States. This section, like section 3, would apply to the United States the same "finality ripeness" standard that section 2 of the bill would apply to municipalities.

Section 5 of the bill, entitled "Clarification for Certain Constitutional Property Rights Claims," would amend 42 U.S.C. § 1983 by adding language purporting to "clarify" (i.e. redefine) certain "property rights or privileges" protected by the Constitution. Section 6 of the bill contains an essentially identical provision, amending a federal district court jurisdictional provision (28 U.S.C. § 1346) and a Court of Federal Claims jurisdictional provision (28 U.S.C. 1491), to apply the same "clarifications" to the federal government.

These sections of the bill seek to enact three distinct "clarifications" of established constitutional doctrine. First, the bill would expand the range of actions subject to the exacting standards the Supreme Court has established for review of regulatory permit conditions requiring owners to accept physical occupations of their property. See Nollan v. California Coastal Commission, 483 U.S. 825 (1987) (establishing the "essential nexus" test for regulatory "exactions"); Dolan v. City of Tigard, 512 U.S. 374 (1994) (establishing the "rough proportionality" test for regulatory exactions). In Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 547 (2005), the Supreme Court's latest comprehensive discussion of regulatory takings doctrine, the Court explained that both of these cases involved "adjudicative land-use exactions" where the government sought to impose easements implicating the Court's per se takings rule for "physical takings" of private property. The language in H.R. 4772, though somewhat ambiguous, appears to go beyond the Court's precedent by attempting to apply the same unusually demanding standard to all permit conditions, "whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property." This language is not only inconsistent with the Supreme Court's definition of the scope of the Nollan/Dolan standard, but also would contradict the overwhelming majority of lower federal and state court decisions interpreting these precedents. See, e.g., Parking Ass'n of Georgia, Inc. v. City of Atlanta, 450 S.E.2d 200 (Ga. 1994) (legislation); Rogers Machinery v. Washington County, 45 P.3d 966 (Or. App. 2002) (fees). The basic rationale for the limited scope of the Nollan/Dolan standard is that legislative measures do not present the same risk of improper leveraging of government authority as ad hoc adjudicatory conditions, and government assessments of financial fees do not amount to per se takings, if they are subject to review under the Takings Clause at all. See generally Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) (discussing applicability of Takings Clause to monetary assessments). The upshot is that this section would greatly expand upon government liability under the Takings Clause, at the federal, state, and local levels.

Second, the bill attempts to accomplish a partial legislative override of the so-called "parcel as a whole" rule in takings litigation. The bill states that takings claims "shall be decided with reference to each subdivided lot, regardless of ownership, if such lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State, territory, or the District of Columbia." Regulations commonly restrict development of some portion of a property while allowing development of other portions. Under the well-established "property as

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a whole" rule, courts evaluating takings claims must consider the impact of the regulation on the owner's entire property. See Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002). Courts routinely apply this rule in situations where the property has been subdivided into separate tax lots or otherwise legally subdivided, on the ground that this type of property subdivision is irrelevant to the takings analysis. See, e.g., Broadwater Farms Joint Venture v. United States, 232 F.3d 908 (Fed. Cir. 2000); District Intown Properties Ltd. v. District of Columbia, 198 F.3d 874 (D.C. 1999). The bill would override this established application of the property as a whole rule. For example, if a developer owned property subdivided into 100 lots, 2 of which were classified as wetlands, the bill would force taxpayers to pay the developer notwithstanding his ability to build on 98% of the land. The Constitution and our historic traditions have never guaranteed the ability to build on every square inch of property. Thus, this modification of the property as a whole rule would represent a substantial change in takings doctrine.

Third, the bill provides that, in a case alleging a deprivation of substantive due process, the government action "shall be judged as to whether it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." In the so-called Lochner era, the Due Process Clause provided the constitutional basis for activist Supreme Court decisions striking down a wide variety of economic regulations. This bill language seeks to revive Lochner by promoting a revival of an expansive reading of the Due Process Clause. Since the 1930's, the courts have applied the Due Process Clause with considerable deference toward the elected branches. Reflecting this approach, Justice Samuel Alito, while sitting as a judge on the U.S. Court of Appeals for the Third Circuit, rejected a due process challenge to a municipal ordinance on the basis that a government action violates substantive due process only when it "shocks the conscience." United Artists Theatre Circuit v. Township of Warrington, 316 F. 3d 392, 399-400 (3rd Cir. 2003). The current bill would replace this relatively deferential, widely-accepted standard with a less deferential standard focusing on whether the government action "is arbitrary, capricious, [or] an abuse of discretion." In addition, the bill states that the government action shall be judged based on whether it is "otherwise not in accordance with law." This language would convert every legal dispute over the application of garden variety zoning regulations into a constitutional due process issue.

No similar substantive provisions were included in the earlier versions of this bill introduced in the 105th or 106th Congresses. Instead, these provisions appear to be drawn from the takings language of the Contract with America, proposed in the 104th Congress, which sought to establish an expansive new standard for government takings liability. In one important respect, the current bill is even more extreme and far-reaching than the Contract with America proposal. The Contract with America takings proposal would have imposed additional liabilities on the federal government, but did not attempt to impose a new takings standard on local governments. By contrast, the current bill does seek to impose its onerous new liability standards directly on local governments.

Section 7 of the bill, entitled "Duty of Notice to Landowners," would require every federal agency, whenever it takes any action "limiting the use of private property that may be affected by the amendments by this Act," to "give notice to the owners of that property explaining their rights

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under such amendments and the procedures for obtaining any compensation that may be due them under such amendments." The notice would have to be given 30 days after the agency action triggering this requirement.

Section 8 contains a severability clause and states that the act shall apply to all lawsuits commenced on or after the date of enactment.

CONSEQUENCES AND IMPLICATIONS IF H.R. 4772 WERE ENACTED.

H.R. 4772 raises a host of serious concerns. These concerns go far beyond the concerns raised by previous "procedural" takings bills because this bill is both procedural and substantive in nature. These concerns are discussed below.

1. Promotes Premature Suits by Developers Against Local Governments in Federal Court. Under Williamson County Regional Planning Com. v. Hamilton Bank, 473 U.S. 172 (1985), a claimant is barred from filing a takings claim in federal court if the State provides adequate procedures for awarding compensation when government action rises to the level of a taking. In addition, a taking claim is not "ripe" for adjudication under Williamson County if a claimant has pursued local administrative procedures to the point that "the permissible uses of the property are known to a reasonable degree of certainty." Palazzolo v. Rhode Island, 533 U.S. 606, 620 (2001). This requirement focuses on whether a developer has obtained a definitive answer about what uses of the property the community will and will not allow, so that a court can determine whether a taking has actually occurred. The bill seeks to alter both prongs of Williamson County. First, the bill would eliminate the State-exhaustion requirement, permitting developers to file takings claims in the first instance in federal court. The bill also would alter the Williamson County finality requirement. The bill would replace the existing finality-ripeness standard with a set of procedural hoops; once a developer has cleared these hoops, he can proceed with litigation, whether or not he has actually received a final answer from local officials defining what development is permitted. Thus, developers could proceed with litigation directly in federal court, rather than proceed in state court, and they could initiate the litigation at an earlier point in time than is permitted under current law. Because the changes in the "finality" standard would apply only in federal court, and not in State court, the bill would not only permit developers to sue in federal court but provide a strong incentive for them to do so.

These changes, if they went into effect, would have a number of adverse consequences for municipal governments and land use programs generally. Forcing cities and towns to litigate land use cases in federal court rather than State court would impose significant financial burdens on local governments, especially the thousands of smaller communities that lack permanent legal staffs. In addition, the changes to finality ripeness standards would allow developers to sue earlier and more often, again imposing additional litigation costs on local governments. These changes would also represent a significant federal intrusion into land use matters traditionally reserved for local governments. It is questionable whether federal courts are well suited to take on this added responsibility; as the Supreme Court recently declared,. "state courts undoubtedly have more experience than federal courts do in resolving the complex factual, technical, and legal questions related to zoning and land-use regulations." San Remo Hotel v. City and County of San

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Francisco, 125 S.Ct. 2491, 2507 (2005).

Whether these potential impacts would actually occur would depend on whether the act would actually be effective in accomplishing its objectives. In fact, the Supreme Court's description of constitutional takings analysis indicates that Congress probably lacks the power to legislate away the state-exhaustion requirement. The Court has described the requirement to pursue state compensation procedures as a pre-condition for asserting a valid taking claim. This description rests on the understanding that the Takings Clause does not prohibit takings, but rather places conditions on the exercise of this power, including a requirement to pay compensation. If the State or one of its subdivisions may provide compensation for an alleged taking, an owner cannot assert a valid federal takings claim. As the Court explained in Williamson County, "If a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied compensation." 473 U.S. at 195 n. 13. The Court has reaffirmed this aspect of Williamson County numerous times. See, e g., Preseault v. ICC, 494 U.S. 1, 11 (1990); City of Monterey v. Del Monte Dunes Ltd., 526 U.S. 687, 710 (1999).[1] Given that the Supreme Court has described the state-exhaustion requirement as being inherent in the Takings Clause, Congress appears to lack the authority to enact a statute that attempts to do away with the state-exhaustion requirement. The bottom line is that enactment of this proposal would probably amount to a null act because the courts would have to ignore it.

For similar reasons, the effort in H.R. 4772 to modify the finality ripeness requirement would likely also be ineffective. Just as a clear indication of whether the State will pay compensation allegedly owed is necessary to ripen a federal taking claim, so too is a definitive statement about exactly how far the regulation goes. The Supreme Court has repeatedly stated that a taking claim "cannot be evaluated until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question." Williamson County, 473 U.S. at 191. See also McDonald, Sommer and Frates v. County of Yolo, 477 U.S. 340, 350 (1986) ("No answer [to the takings question] is possible until

[1] Supporters of this type of legislation have argued in the past that the Court's decision in Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725 (1997), supports Congress's authority to jettison the state-exhaustion requirement. In that case, which actually dealt with the finality prong of Williamson County, the Court described both prongs of Williamson County as "prudential hurdles" 520 U.S. at 734 & nn. 7, 8. Since the Suitum case did not involve any issue related to the judicial-exhaustion requirement, this statement was dictum. Moreover, the Court also went on to say the opposite later in the opinion – that the exhaustion requirement "stems from the Fifth Amendment's proviso that only takings without 'just compensation' infringe on that amendment." Id. at 734. Thus, Suitum hardly provides authoritative support for the idea that the Court views the state-exhaustion requirement as prudential. To the contrary, the latest Supreme Court case to squarely address the state-exhaustion requirement reiterates Williamson County's "requirement that aggrieved property owners must seek 'compensation through the procedures the State has provided for doing so.'" San Remo Hotel, L.P. v. City and County of San Francisco, 125 S.Ct. 2491, 2506 (2005), quoting Williamson County, 473 U.S. at 194.

a court knows what use, if any, may be made of the affected property."). The courts might adopt one of two responses to the effort in H.R. 4772 to modify the finality ripeness rule. They might decide that H.R. 4772 impermissibly attempts to dictate the manner in which the courts must resolve cases within their jurisdiction. Alternatively, they might decide that they must reject takings claims where they lack a sufficiently definitive regulatory answer to resolve the takings issue. See Testimony of Daniel L. Siegel, California Supervising Deputy Attorney General, in Opposition to H.R. 4772 (June 6, 2006). In either event, H.R. 4772 would fail in its goal of making ripe claims that lack the constitutionally mandated indicia of finality.

These adverse consequences are particularly troubling because proponents of the legislation have never explained how it would solve any real-world problems. In the past, bill supporters have cited statistics showing that many takings cases filed in federal court are dismissed. But all or most of these cases involved claimants who, under the Supreme Court's precedents, had no viable Fifth Amendment claims because they failed to seek compensation in State court. Thus it is hardly remarkable that these cases were generally dismissed. Proponents also have cited examples of judicial delay in federal court in deciding takings cases. Given that takings claimants are not supposed to be filing their cases in federal court at all, it is not surprising that takings claimants seeking to litigate their cases in federal court enter a time-consuming procedural morass. Moreover, this bill would probably increase judicial delays by providing a false hope to takings claimants that they can obtain relief in federal court without first seeking compensation in State court. As discussed, Supreme Court precedent will likely require the dismissal of these takings, regardless of whether Congress enacts this legislation.

2. Restricts Federal Court Authority to Defer to State Courts. The bill also would sharply restrict federal courts' ability to defer to state courts, again encouraging federal court intrusion into local land use matters. The Supreme Court has ruled that federal courts may "abstain" from proceeding with a case in favor of the State courts when the case involves complex State issues that the State courts are in better position to resolve. The bill would create a special exception from normal abstention rules for cases involving "uses of real property," completely prohibiting federal courts from abstaining in land use cases. The proponents of this legislation have never explained why abstention should be disfavored in the land use context or why land use claimants have a superior claim, compared to other kinds of claimants, to limited federal judicial resources. Indeed, if anything, the policies underlying abstention doctrine apply with particular force in the land use context. As discussed, the Supreme Court recently said that State courts possess local knowledge and special expertise that make them better suited to resolve land use cases than federal courts.

In addition, the bill undermines the ability of federal courts to defer to state courts by limiting their ability, in cases arising from disputes over "uses of real property," to "certify" unresolved issues of state law for resolution by the State's highest courts. The Supreme Court has encouraged federal courts to certify potentially dispositive, unsettled questions of State law for resolution by the States' highest courts. See generally Wright, Miller & Cooper, Federal Practice & Procedure § 4248 (1988 & Supp.). The bill would establish special, highly restrictive standards for use of the certification process in the land use context, permitting certification of a State law issue only when resolution of the issue "is necessary to resolve the merits of the federal

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claim" and the proper answer to the issue "is patently unclear." This provision would reinforce the bill's overall goal of directing land use cases into federal court, again raising the question of why federal courts should place a higher priority on hearing land uses cases than other types of cases.

3. Promotes Premature Suits Against Federal Government. The bill would apply the same finality ripeness standard in suits against the federal government as the bill would apply in suits in federal court against local government. This proposal obviously does not raise the same federalism concerns as would application of the same proposal to local governments. But it does raise the concern that it would lead to premature short-circuiting of administrative review procedures by judicial proceedings. In addition, as with the attempt to modify the finality requirement as applied to local governments, there is a serious question whether this attempt to change the ripeness standard would be successful in accomplishing its purpose.

4. Grants Developers Special, Expanded Legal Rights. The bill would grant special rights to developers to sue local governments for money damages by, in effect, overriding established Supreme Court interpretations of the Takings and Due Process Clauses. The potential magnitude of state and local government (as well as federal government) exposure under these new standards is difficult to predict. But it could well reach into the billions of dollars. Equally important, the threat of litigation under these expansive "clarifications" of constitutional standards would give developers additional leverage in negotiations with local government; the upshot is that local governments would likely be forced to avoid effective, even-handed enforcement of zoning and other land use laws.

This potential impact assumes, again, that the act would actually be effective in accomplishing its objectives. However, in City of Boerne v. Flores, 521 U.S. 507 (1997), the Court ruled that Congress lacks the constitutional authority to dictate to the courts how particular provisions of the Constitution should be interpreted. H.R. 4772 impermissibly attempts to change the tests for determining whether a government action constitutes a taking or violates substantive due process by mandating how cases "shall be decided" or how they "shall be judged" under these provisions of the Bill of Rights. Thus, sections 5 and 6 of the current bill would probably be judged unenforceable under Boerne.

While the substantive provisions in this bill obviously draw inspiration from the Contract with America takings proposal, the current bill is actually more extreme than the Contract with America takings bill. As radical as the Contract with America takings bill was, it was at least confined to the federal government, and did not seek to impose a new takings standard directly on local governments. H.R. 4772 takes a different tack by seeking to impose a new national takings standard directly local governments.

Finally, H.R. 4772 arguably attempts to turn 42 U.S.C. § 1983 on its head. One of the crucial post-Civil war enactments, section 1983 was designed to provide former slaves with a tool to help vindicate their newly acquired civil rights in federal court. By contrast, notwithstanding the fact that slaves' status as "property" was one of the primary causes of their subjugation, the current bill would elevate rights in property above all other types of civil rights.

5. Imposes a ridiculously burdensome and highly misleading notice requirement on federal agencies. The bill would impose an enormously expansive, ridiculously burdensome notice requirement. This notice requirement was added to a predecessor version of takings legislation through a floor amendment offered by former Representative James A. Traficant, Jr. See Congressional Record H 8946 (October 22, 1997). This section would require that any federal agency provide notice any time it takes any action "limiting the use" of any private property "that may be affected" by this legislation The phrase "may be affected' is obviously open-ended and could be interpreted to include essentially every parcel of real property in the United States. The bill's reference to federal agency actions limiting the use of property is equally open-ended; read literally, it could encompass everything from Army Corps of Engineers wetlands permitting decisions to decisions by the Federal Reserve regarding the federal discount rate. To provide notice to every owner of any property potentially affected by federal agency action would be enormously burdensome This notice also has the potential to be highly misleading because including information in every such notice regarding citizens' "rights' under this legislation and "the procedures for obtaining any compensation that may be due" would generate enormous public expectations for payments. But even under the expansive standards of this bill, presumably only a fraction of the universe of property owners in the United States entitled to receive notice under this bill would have a viable claim under this legislation.

6. Represents a misguided effort to exploit public concerns about Kelo. Finally, it should be recognized that this effort to revive the failed takings agenda from prior Congresses represents a misguided effort to exploit public concerns generated by the decision in Kelo v. City of New London. 125 S.Ct. 2655 (2005). As discussed, in the 105th and 106th Congresses, the House of Representatives passed bills very similar to H.R. 4772, H.R. 1534 (in the 105th Congress) and H.R.. 2372 (in the 106th Congress), but both bills failed in the Senate. Following the 106th Congress, the National Association of Homebuilders basically abandoned this legislative effort.

The public controversy generated by Kelo has now apparently persuaded NAHB that the time is right to revive this failed legislative agenda, perhaps on the theory that concern about Kelo might translate into increased support for this bill, or in the hope that this bill might be attached to some legislation adopted in response to Kelo. This legislative strategy can fairly be characterized as a cynical ploy because it is questionable whether the real estate lobby actually supports federal eminent domain legislation. For example, the National Association of Realtors has explicitly opposed federal legislation on the subject, arguing that the issue should be left to the states. See Statement of The National Association of Realtors to United States House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, September 22, 2005, RE: The Supreme Court's Kelo Decision and Potential Congressional Responses ("Realtors believe it is preferable that states be given the chance to devise their individual solutions appropriate to conditions in the respective states rather than have the federal government impose a 'one-size-fits-all' solution from above."). NAHB has been, at most, a lukewarm supporter of eminent domain legislation in Congress. Yet NAHB apparently has concluded that it may be able to exploit the Kelo issue to advance this bill.

This legislative strategy is misguided because H.R. 4772 has nothing to do with Kelo, and

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would actually promote policies opposed by many concerned about potential abuse of the eminent domain power. The Kelo issue involves the power of government to seize private property by eminent domain, in order to transfer it to some new private owner. H.R. 4772 in no way limits, alters or affects the power of eminent domain. Rather the purpose of H.R. 4772 is to make it easier for developers to sue cities and towns over zoning and other similar regulations, to give them the option to prosecute lawsuits in federal rather than state court, and to increase the likelihood that developers will actually succeed with their suits. This legislation is a direct threat to America's homeowners because it would undermine the zoning rules and other protections that protect homeowners, their investments in their homes, and their communities. Thus, this legislation, far from addressing the public concerns generated by Kelo, would actually undermine legal protections for America's homeowners.

August 16, 2006

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