



International Municipal
Lawyers Association

1110 Vermont Avenue, N.W., Suite 200
Washington, D.C. 20005

tel: 202.466.5424
fax: 202.785.0152
e-mail: info@imla.org
web: <http://www.imla.org>

BOARD OF DIRECTORS

RESIDENT
Gary E. Rebenstorf
City Attorney and Director of Law
Wichita, Kansas

FIRST VICE PRESIDENT
James L. Abshier
City Attorney
Doux City, Iowa

SECOND VICE PRESIDENT
Robert M. White
City Attorney
Albuquerque, New Mexico

THIRD VICE PRESIDENT
Susan C. Rocha
City Attorney
Merne, Texas

GENERAL COUNSEL &
EXECUTIVE DIRECTOR
Henry W. Underhill, Jr.
Washington, D.C.

MEASURER
Charles W. Thompson, Jr.
County Attorney of Montgomery County
Pikesville, Maryland

MEDIATE PAST PRESIDENT
Bruce A. Noble Q.C.
Solicitor
Derickton, New Brunswick
Canada

Joseph R. Bertoldo
Attorney
Scottsdale, Arizona

Michael P. Blondin
Attorney
Spect Heights, Illinois

Stephen P. Chinn
Attorney
Law, Kansas

B. Doegey
Attorney
Wigton, Texas

George L. Fernández
Attorney
Miami, Florida

Thomas J. Herrera
Attorney
San Francisco, California

Jefford R. Jerbic
Attorney
Reno, Nevada

Thomas W. Kely
City Attorney
Mersville, Illinois

John S. Kingsley
Corporation Counsel
Rochester, New York

Witt E. McCarley
Attorney
Charlotte, North Carolina

Johnita McNeil
Solicitor
Cincinnati, Ohio

John W. Moore
Attorney
Phoenix, Arizona

Paul Van Vleck
General Counsel
Mexico Municipal League
Santa Fe, New Mexico

August 9, 2006

The Honorable J. Dennis Hastert
United States House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
United States House of Representatives
Washington, DC 20515

Re: H.R. 4772, the "Private Property Rights Implementation Act of 2006"

Dear Speaker Hastert and Minority Leader Pelosi:

I am writing on behalf of the International Municipal Lawyers Association (IMLA) to express our strong opposition to H.R. 4772, the "Private Property Rights Implementation Act of 2006," which was ordered to be reported out of the House Committee on the Judiciary on July 12, 2006.

IMLA is a professional organization of city and county attorneys representing more than 1400 local governments. I am the current IMLA President, as well as Director of Law and City Attorney for Wichita, Kansas.

In the 105th and 106th Congresses, IMLA was one of the first of many local government groups to oppose legislation similar to H.R. 4772, and we remain adamantly opposed to these proposals. Like its predecessors, H.R. 4772 would undercut traditional local authority over land use disputes by allowing developers and other landowners to bypass important local procedures, sidestep state courts, and sue local communities in federal court far earlier in the land use planning process. The bill also would prohibit federal courts from deferring to state courts on many delicate issues of state and local law. The net effect would be an inappropriate and unnecessary shift of authority over local land use disputes away from local communities and state courts to federal courts. This is exactly the wrong way to go.

Local governments resolve the overwhelming majority of land use disputes without litigation. We prefer consensus over confrontation, compromise over conflict. However H.R. 4772 would encourage litigation over negotiation. By raising the threat of a federal court lawsuit far earlier in the land use process, the bill would put neighboring property owners and the community at large at a severe disadvantage.

Page 2

In addition, H.R. 4772 contains a new provision, section 5, which attempts to redefine the substantive standards for liability under the Takings and Due Process Clauses of the U.S. Constitution in a manner inconsistent with binding precedent. For example, Section 5 purports to redefine a deprivation of substantive due process to include any government action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Virtually every land-use dispute with a local government includes an allegation that the government's action was "not in accordance with law." If enacted, this bill could make a federal case out of every dispute over whether a planning commission, county board, or planning official misinterpreted a local ordinance or state statute. And because key provisions of the bill probably would be struck down as unconstitutional, the bill would create more confusion, disruption, and delay for all interested parties.

Local governments firmly believe that landowners should be treated fairly in the local land use process and receive just compensation when their property is taken under the Fifth Amendment. If local procedures need reform in any particular community, those reforms should take place at the local level, not through H.R. 4772's one-size-fit-all approach that would shift the balance of power toward developers in every community in the country.

Sincerely,

A handwritten signature in black ink that reads "Gary E. Rebenstorf". The signature is written in a cursive style with a large, stylized "G" and "R".

Gary E. Rebenstorf
IMLA President