

**NATIONAL LEAGUE OF CITIES
U.S. CONFERENCE OF MAYORS
NATIONAL ASSOCIATION OF COUNTIES
NATIONAL CONFERENCE OF STATE LEGISLATURES
COUNCIL OF STATE GOVERNMENTS
INTERNATIONAL CITY MANAGEMENT ASSOCIATION**

June 8, 2006

The Honorable Steve Chabot, Chair
Subcommittee on the Constitution
House Judiciary Committee
362 Ford House Office Building
Washington, D.C. 20515

The Honorable Jerrold Nadler, Ranking Member
Subcommittee on the Constitution
House Judiciary Committee
B-336 Rayburn House Office Building
Washington, D.C. 20515

Dear Subcommittee Chair Chabot and Ranking Member Nadler:

On behalf of the nation's state and local elected officials, 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.

Our organizations opposed similar legislation during the 105th and 106th Congresses. 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. Unlike earlier bills, H.R. 4772 seeks to make far-reaching substantive changes in the law, including 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 advantage in their negotiations with local communities 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 with established procedures to balance the protection of private property rights with the protection of public health and safety. 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, for its supporters, this bill is a hammer against local government that would give developers the unfair advantage of immediate federal court litigation.

Enactment of H.R. 4772 would also impose a major new, unfunded financial burden on state and local governments, both in terms of added litigation expenses and potential damages awards. By both expanding the scope of municipal liability and creating many new questions about the extent of local government liability, the bill would significantly interfere with local officials' ability to serve their communities.

Finally, the bill raises very serious constitutional questions. The Supreme Court has repeatedly stated that a takings claimant suffers no constitutional injury unless a state court has denied a

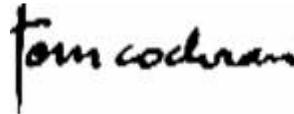
claim for just compensation. By purporting to allow takings claimants to bypass state courts, the bill improperly seeks to provide a forum for litigants who have suffered no federal constitutional injury. Claimants who sought to take advantage of this bill would likely have their claims rejected on the 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.

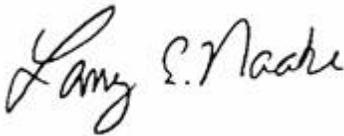
Sincerely,



Donald J. Borut, Executive Director
National League of Cities



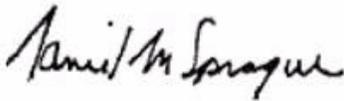
Thomas Cochran, Executive Director
United States Conference of Mayors



Larry E. Naake, Executive Director
National Association of Counties



William Pound, Executive Director
National Conference of State Legislatures



Daniel M. Sprague, Executive Director
Council of State Governments



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International City Management Association