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Property Rights: House Judiciary Committee Reports H.R. 2372

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On March 9, 2000, the House Committee on the Judiciary reported favorably H.R. 2372. The bill, titled "Private Property Rights Implementation Act of 2000," is aimed principally at lowering the threshold barriers of ripeness and abstention encountered when land owners file in federal court challenging local government actions as "takings."[1] Under the Fifth Amendment's Takings Clause (which applies to state and local, not only federal, actions), private property may not be "taken" for public use without just compensation.

It is well-settled that takings may be effected not only by government appropriation or physical invasion of private property, but by use restrictions as well. When use restriction (as, typically, by local zoning) has a sufficiently severe impact on a property's economic use, courts find that a "taking" has occurred, and that the regulating government must pay compensation.

Takings challenges to local government action may be brought in state or federal court. In federal court, the plaintiff must surmount a wider array of threshold issues than in state court before the taking issue can be reached. Some of these issues concern "ripeness." Ripeness doctrine requires that before a taking claim is heard by a federal court, the plaintiff must obtain a "final decision" from the land-use regulating body (including resubmission of scaled-down proposals in some cases, and pursuit of any possible variances), and that any avenues for obtaining compensation from the state courts be exhausted. Another threshold issue often encountered in takings cases against local government is abstention, a doctrine that may lead a federal court to decline exercising jurisdiction in deference to state forums for resolving the matter.

Studies show that a goodly portion of takings cases brought in federal court against local government land-use regulation are dismissed on ripeness or abstention grounds. H.R. 2372 aims to lower or eliminate these barriers, so that landowners have a *federal* forum for resolving takings claims on the merits, as well as a *state* one. H.R. 2372 is thus a "process" bill; it disavows any intent to change substantive takings law.

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[1] The bill applies to federal government actions as well, but this is not the bill's focus and has been universally disregarded in the congressional debate.

More specifically, H.R. 2372 targets federal district courts handling real-property-related claims under 42 U.S.C. section 1983 (a common vehicle for bringing takings actions). The bill instructs such courts not to abstain in an action lacking any claim of a state law violation, if a parallel state proceeding is not pending. As for ripeness, the bill sets out when state proceedings shall be deemed to result in a "final decision," at which point the federal judge must find the claim ripe. A final decision exists, the bill says, once "one meaningful application" (as defined in case law) has been disapproved, and, if available, "one appeal and one waiver" also. However, if the initial disapproval explains in writing the development on the property that would be approved, the landowner, to achieve ripeness, must submit another meaningful application "taking into account" that explanation, and have that resubmission be disapproved, followed by "one appeal and one waiver," if available, and their disapproval. Appeals and waivers need not be applied for if doing so would be "futile." The local government's failure to act on any of these applications "within a reasonable time" would constitute disapproval.

Also, H.R. 2372 would eliminate entirely the ripeness rule that before coming to federal court, the landowner must exhaust opportunities for state-court compensation.

While formally only a "process" bill, H.R. 2372 raises important issues. These are discussed at length in an earlier CRS report on a very similar bill in the 105th Congress (H.R. 1534).[2] Here, we briefly note some of the major ones.

1. *Federalism*. In some instances, the bill may result in federal courts involving themselves in local land use matters earlier than they would otherwise. Bill opponents say this contradicts congressional statements about respecting state and local rights, and slights the state courts. Bill supporters contend that the bill merely places the Takings Clause on an equal footing with other guarantees in the Bill of Rights.

2. *Effect on developer/local government negotiations.* Would H.R. 2372 give added weight to a developer's threat to bring a taking claim if the local government did not approve its desired development scenario? Would local governments, particularly small ones, find it more burdensome to litigate in federal court than state court?

3. *Federal judges.* Federal judges often express an aversion to getting involved in local land use matters, or note the already heavy workload of the federal courts.

4. *Adequacy of the record.* What would be the effect of requiring federal courts to decide takings claims on the merits in the absence of a detailed record?

5. *State-exhaustion prong of ripeness.* Is the state-exhaustion requirement constitutionally based? If so, Congress may not eliminate it by statute.

The amendments to H.R. 2372 adopted in subcommittee and committee (all offered by Rep. Canady) are of a minor or technical nature. All Democratic amendments were rejected. A Senate bill, S. 1028, contains provisions similar to H.R. 2372, plus another process-type approach restricted to takings claims against the United States. No action has been taken on S. 1028.

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[2] (name redacted), *"Property Rights" Bills Take a Process Approach: H.R. 992 and H.R. 1534* (CRS Report 97-877, updated June 24, 1998), at 11-29.