

114TH CONGRESS
2D SESSION

H. R. 6130

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2016

Received

AN ACT

To provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Holocaust Expropri-
3 ated Art Recovery Act of 2016”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) It is estimated that the Nazis confiscated or
7 otherwise misappropriated hundreds of thousands of
8 works of art and other property throughout Europe
9 as part of their genocidal campaign against the Jew-
10 ish people and other persecuted groups. This has
11 been described as the “greatest displacement of art
12 in human history”.

13 (2) Following World War II, the United States
14 and its allies attempted to return the stolen
15 artworks to their countries of origin. Despite these
16 efforts, many works of art were never reunited with
17 their owners. Some of the art has since been discov-
18 ered in the United States.

19 (3) In 1998, the United States convened a con-
20 ference with 43 other nations in Washington, DC,
21 known as the Washington Conference, which pro-
22 duced Principles on Nazi-Confiscated Art. One of
23 these principles is that “steps should be taken expe-
24 ditiously to achieve a just and fair solution” to
25 claims involving such art that has not been

1 restituted if the owners or their heirs can be identi-
2 fied.

3 (4) The same year, Congress enacted the Holo-
4 caust Victims Redress Act (Public Law 105–158,
5 112 Stat. 15), which expressed the sense of Con-
6 gress that “all governments should undertake good
7 faith efforts to facilitate the return of private and
8 public property, such as works of art, to the rightful
9 owners in cases where assets were confiscated from
10 the claimant during the period of Nazi rule and
11 there is reasonable proof that the claimant is the
12 rightful owner.”.

13 (5) In 2009, the United States participated in
14 a Holocaust Era Assets Conference in Prague,
15 Czech Republic, with 45 other nations. At the con-
16 clusion of this conference, the participating nations
17 issued the Terezin Declaration, which reaffirmed the
18 1998 Washington Conference Principles on Nazi-
19 Confiscated Art and urged all participants “to en-
20 sure that their legal systems or alternative processes,
21 while taking into account the different legal tradi-
22 tions, facilitate just and fair solutions with regard to
23 Nazi-confiscated and looted art, and to make certain
24 that claims to recover such art are resolved expedi-
25 tiously and based on the facts and merits of the

1 claims and all the relevant documents submitted by
2 all parties.”. The Declaration also urged participants
3 to “consider all relevant issues when applying var-
4 ious legal provisions that may impede the restitution
5 of art and cultural property, in order to achieve just
6 and fair solutions, as well as alternative dispute res-
7 olution, where appropriate under law.”.

8 (6) Victims of Nazi persecution and their heirs
9 have taken legal action in the United States to re-
10 cover Nazi-confiscated art. These lawsuits face sig-
11 nificant procedural obstacles partly due to State
12 statutes of limitations, which typically bar claims
13 within some limited number of years from either the
14 date of the loss or the date that the claim should
15 have been discovered. In some cases, this means that
16 the claims expired before World War II even ended.
17 (See, e.g., *Detroit Institute of Arts v. Ullin*, No. 06–
18 10333, 2007 WL 1016996 (E.D. Mich. Mar. 31,
19 2007).) The unique and horrific circumstances of
20 World War II and the Holocaust make statutes of
21 limitations especially burdensome to the victims and
22 their heirs. Those seeking recovery of Nazi-con-
23 fiscated art must painstakingly piece together their
24 cases from a fragmentary historical record ravaged
25 by persecution, war, and genocide. This costly proc-

1 ess often cannot be done within the time constraints
2 imposed by existing law.

3 (7) Federal legislation is needed because the
4 only court that has considered the question held that
5 the Constitution prohibits States from making ex-
6 ceptions to their statutes of limitations to accommo-
7 date claims involving the recovery of Nazi-con-
8 fiscated art. In *Von Saher v. Norton Simon Museum*
9 of Art, 592 F.3d 954 (9th Cir. 2009), the United
10 States Court of Appeals for the Ninth Circuit invali-
11 dated a California law that extended the State stat-
12 ute of limitations for claims seeking recovery of Hol-
13 ocaust-era artwork. The Court held that the law was
14 an unconstitutional infringement of the Federal Gov-
15 ernment’s exclusive authority over foreign affairs,
16 which includes the resolution of war-related disputes.
17 In light of this precedent, the enactment of a Fed-
18 eral law is necessary to ensure that claims to Nazi-
19 confiscated art are adjudicated in accordance with
20 United States policy as expressed in the Washington
21 Conference Principles on Nazi-Confiscated Art, the
22 Holocaust Victims Redress Act, and the Terezin
23 Declaration.

24 (8) While litigation may be used to resolve
25 claims to recover Nazi-confiscated art, it is the sense

1 of Congress that the private resolution of claims by
2 parties involved, on the merits and through the use
3 of alternative dispute resolution such as mediation
4 panels established for this purpose with the aid of
5 experts in provenance research and history, will yield
6 just and fair resolutions in a more efficient and pre-
7 dictable manner.

8 **SEC. 3. PURPOSES.**

9 The purposes of this Act are the following:

10 (1) To ensure that laws governing claims to
11 Nazi-confiscated art and other property further
12 United States policy as set forth in the Washington
13 Conference Principles on Nazi-Confiscated Art, the
14 Holocaust Victims Redress Act, and the Terezin
15 Declaration.

16 (2) To ensure that claims to artwork and other
17 property stolen or misappropriated by the Nazis are
18 not unfairly barred by statutes of limitations but are
19 resolved in a just and fair manner.

20 **SEC. 4. DEFINITIONS.**

21 In this Act:

22 (1) **ACTUAL DISCOVERY.**—The term “actual
23 discovery” means knowledge.

24 (2) **ARTWORK OR OTHER PROPERTY.**—The
25 term “artwork or other property” means—

1 (A) pictures, paintings, and drawings;

2 (B) statuary art and sculpture;

3 (C) engravings, prints, lithographs, and
4 works of graphic art;

5 (D) applied art and original artistic assem-
6 blages and montages;

7 (E) books, archives, musical objects and
8 manuscripts (including musical manuscripts
9 and sheets), and sound, photographic, and cine-
10 matographic archives and mediums; and

11 (F) sacred and ceremonial objects and
12 Judaica.

13 (3) COVERED PERIOD.—The term “covered pe-
14 riod” means the period beginning on January 1,
15 1933, and ending on December 31, 1945.

16 (4) KNOWLEDGE.—The term “knowledge”
17 means having actual knowledge of a fact or cir-
18 cumstance or sufficient information with regard to a
19 relevant fact or circumstance to amount to actual
20 knowledge thereof.

21 (5) NAZI PERSECUTION.—The term “Nazi per-
22 secution” means any persecution of a specific group
23 of individuals based on Nazi ideology by the Govern-
24 ment of Germany, its allies or agents, members of

1 the Nazi Party, or their agents or associates, during
2 the covered period.

3 **SEC. 5. STATUTE OF LIMITATIONS.**

4 (a) IN GENERAL.—Notwithstanding any other provi-
5 sion of Federal or State law or any defense at law relating
6 to the passage of time, and except as otherwise provided
7 in this section, a civil claim or cause of action against a
8 defendant to recover any artwork or other property that
9 was lost during the covered period because of Nazi perse-
10 cution may be commenced not later than 6 years after the
11 actual discovery by the claimant or the agent of the claim-
12 ant of—

13 (1) the identity and location of the artwork or
14 other property; and

15 (2) a possessory interest of the claimant in the
16 artwork or other property.

17 (b) POSSIBLE MISIDENTIFICATION.—For purposes of
18 subsection (a)(1), in a case in which the artwork or other
19 property is one of a group of substantially similar multiple
20 artworks or other property, actual discovery of the identity
21 and location of the artwork or other property shall be
22 deemed to occur on the date on which there are facts suffi-
23 cient to form a substantial basis to believe that the art-
24 work or other property is the artwork or other property
25 that was lost.

1 (c) PREEXISTING CLAIMS.—Except as provided in
2 subsection (e), a civil claim or cause of action described
3 in subsection (a) shall be deemed to have been actually
4 discovered on the date of enactment of this Act if—

5 (1) before the date of enactment of this Act—

6 (A) a claimant had knowledge of the ele-
7 ments set forth in subsection (a); and

8 (B) the civil claim or cause of action was
9 barred by a Federal or State statute of limita-
10 tions; or

11 (2)(A) before the date of enactment of this Act,
12 a claimant had knowledge of the elements set forth
13 in subsection (a); and

14 (B) on the date of enactment of this Act, the
15 civil claim or cause of action was not barred by a
16 Federal or State statute of limitations.

17 (d) APPLICABILITY.—Subsection (a) shall apply to
18 any civil claim or cause of action that is—

19 (1) pending in any court on the date of enact-
20 ment of this Act, including any civil claim or cause
21 of action that is pending on appeal or for which the
22 time to file an appeal has not expired; or

23 (2) filed during the period beginning on the
24 date of enactment of this Act and ending on Decem-
25 ber 31, 2026.

1 (e) EXCEPTION.—Subsection (a) shall not apply to
2 any civil claim or cause of action barred on the day before
3 the date of enactment of this Act by a Federal or State
4 statute of limitations if—

5 (1) the claimant or a predecessor-in-interest of
6 the claimant had knowledge of the elements set forth
7 in subsection (a) on or after January 1, 1999; and
8 (2) not less than 6 years have passed from the
9 date such claimant or predecessor-in-interest ac-
10 quired such knowledge and during which time the
11 civil claim or cause of action was not barred by a
12 Federal or State statute of limitations.

13 (f) RULE OF CONSTRUCTION.—Nothing in this Act
14 shall be construed to create a civil claim or cause of action
15 under Federal or State law.

16 (g) SUNSET.—This Act shall cease to have effect on
17 January 1, 2027, except that this Act shall continue to
18 apply to any civil claim or cause of action described in
19 subsection (a) that is pending on January 1, 2027. Any
20 civil claim or cause of action commenced on or after that
21 date to recover artwork or other property described in this
22 Act shall be subject to any applicable Federal or State

1 statute of limitations or any other Federal or State de-
 2 fense at law relating to the passage of time.

Passed the House of Representatives December 7,
 2016.

Attest:

KAREN L. HAAS,
Clerk.