

Calendar No. 654

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-394

HOLOCAUST EXPROPRIATED ART RECOVERY ACT OF 2016

DECEMBER 6, 2016.—Ordered to be printed

Mr. GRASSLEY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 2763]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 2763) 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, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE HOLOCAUST EXPROPRIATED ART RECOVERY ACT OF 2016

From 1933, when Hitler and his National Socialist German Workers Party, the “Nazis,” took power in Germany, until 1945, when the Allied Forces vanquished the Third Reich, the Nazis stole hundreds of thousands of artworks from museums and private collections throughout Europe. This systematic looting of the artwork and other cultural property of Jews and other persecuted groups—one of the Nazis’ many crimes against humanity—has been de-

scribed as the “greatest displacement of art in human history.”¹ According to the American Alliance of Museums:

the Nazi regime orchestrated a system of theft, confiscation, coercive transfer, looting, pillage, and destruction of objects of art and other cultural property in Europe on a massive and unprecedented scale. Millions of such objects were unlawfully and often forcibly taken from their rightful owners, who included private citizens, victims of the Holocaust; public and private museums and galleries; and religious, educational, and other institutions.²

Since World War II ended, the United States has pursued policies to help restore artwork and other cultural property lost in the Holocaust to its rightful owners.³ The Holocaust Expropriated Art Recovery (HEAR) Act is the latest step in that pursuit.

The first step was the post-war effort of the United States and its allies to return property that was stolen or misappropriated by the Nazis and their allies. At the Potsdam Conference in 1945, President Truman approved a policy of “external restitution,” under which the United States would return the looted art to the countries of origin—not directly to the individual owners. Those countries would then be responsible for returning the art. But, despite these efforts, many pieces were never reunited with their owners.⁴

In the aftermath of the war, many families whose property was misappropriated by the Nazis or lost during the Holocaust simply lacked the information, resources, and sometimes wherewithal to locate and pursue litigation to obtain their property.⁵ Even for those with the resources, determining the provenance of Nazi-looted art proved to be extremely difficult since many changes of ownership went undocumented, and many of the transactions took place on the black market.⁶ Adding to the difficulty, the Soviet Union also engaged in plundering. Responsible for the looted property in the territories they controlled, the Soviets often refused to provide any provenance information.⁷ The trauma of the Holocaust

¹*Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 957 (9th Cir. 2010) (quoting Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America's Courts* 202 (NYU Press 2003)).

²American Alliance of Museums, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era>.

³This policy is not limited to the theft of art by the Nazis. For instance, the FREEDOM Support Act, signed into law by President George H.W. Bush on October 24, 1992, prohibits assistance to an independent state of the former Soviet Union that refuses to comply with a final court judgment that it is “withholding unlawfully books or other documents of religious or historical significance that are the property of United States persons.” FREEDOM Support Act, Pub. L. 102-511, 106 Stat. 3320 (1992). That legislation, which responded to a refusal by the Russian government to return the stolen library of the Lubavitcher Rebbe in *Agudas Chasidei Chabad v. Russian Federation*, expressed the clear policy of the United States that items of religious and cultural significance taken in violation of international law should be returned to their rightful owners.

⁴*Von Saher*, 592 F.3d at 957–58.

⁵*The Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 The Holocaust Expropriated Art Recovery Act Before the S. Comm. on the Judiciary, Subcomm. on the Constitution and Subcomm. on Oversight, Agency Action, Federal Rights and Federal Courts*, 114th Cong., Hr’g Tr. at 40 (2016) (statement of Agnes Peresztegi, President, Commission for Art Recovery); *id.* at 43–46 (statement of Simon Goodman).

⁶*Von Saher*, 592 F.3d at 958.

⁷*Review of the Repatriation of Holocaust Art Assets in the United States: Hearing Before the H. Comm. on Financial Services, Subcomm. on Domestic and International Monetary Policy, Trade, and Technology*, 109th Cong. 105–6 (2006) (statement of Stuart Eizenstat, Former Commissioner, Presidential Advisory Commission on Holocaust Assets in the U.S.).

also made it psychologically difficult for victims and their heirs to pursue lost property in the aftermath of the war.⁸

As the twentieth century came to a close, nations and civil society groups expressed a renewed interest in addressing the restitution of art lost in the Holocaust. The United States led these efforts. In 1998, over 50 years after the end of the war, the United States convened a conference with forty-three other nations to address the restitution of art lost in the Holocaust: the Washington Conference. The participating countries unanimously approved what are known as the Washington Conference Principles on Nazi-Confiscated Art, which, *inter alia*, declared that Holocaust victims and their heirs “should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted” and that “steps should be taken expeditiously to achieve a just and fair solution” to such claims.⁹

The same year, Congress enacted the Holocaust Victims Redress Act, which expressed the sense of Congress that “all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner.”¹⁰ Congress also enacted the U.S. Holocaust Assets Commission Act of 1998, which established the Presidential Advisory Commission on Holocaust Assets (PACHA) to conduct research on the fate of Holocaust-era property that came into the possession of the U.S. Government and to advise the President on policies to ensure the restitution of this property.¹¹

Following the Washington Conference, the Alliance of American Museums (AAM) adopted *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*. These non-binding standards were “intended to assist museums in addressing issues relating to objects that may have been unlawfully appropriated during the Nazi era (1933–1945) as a result of actions in furtherance of the Holocaust or that were taken by the Nazis or their collaborators.”¹² In order to facilitate the discovery and identification of misappropriated art, the Alliance, along with the Association of Art Museum Directors (AAMD) and the PACHA, agreed

that museums should strive to: (1) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, ‘covered objects’); (2) make currently available object and provenance (history of ownership) information on those objects acces-

⁸*The Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage: Hearing on S. 2763 The Holocaust Expropriated Art Recovery Act Before the S. Comm. on the Judiciary, Subcomm. on the Constitution and Subcomm. on Oversight, Agency Action, Federal Rights and Federal Courts*, 114th Cong., Hr’g Tr. at 25, 27 (2016) (statement of Helen Mirren).

⁹Washington Conference Principles on Nazi-Confiscated Art, Principles 7 & 8, Bureau of European & Eurasian Affairs (Dec. 3, 1998), <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.

¹⁰Pub. L. No. 105–158, 112 Stat. 15 § 202 (1998).

¹¹Pub. L. No. 105–186, 112 Stat. 611 (1998).

¹²American Alliance of Museums, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*.

sible; and (3) give priority to continuing provenance research as resources allow.¹³

The art museum community, in cooperation with the State Department, has established the Nazi-Era Provenance Internet Portal, which publishes provenance information on tens of thousands of Nazi-era works, to assist potential claimants. When a claim of ownership to a covered object is asserted, the standards provide that the claim “should be considered on its own merits.”¹⁴ Furthermore, “[w]hen appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims.”¹⁵ And the historical record reflects that many restitution claims made against museums result in amicable purchase or lending agreements, or voluntary restitutions.¹⁶

But if litigation results, the *Standards* state that “museums may elect to waive certain available defenses” in order to “achieve an equitable and appropriate resolution.”¹⁷ In his 2006 testimony before the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the House Committee on Financial Services, Stuart E. Eizenstat, former Deputy Secretary of the Treasury and former commissioner of the PACHA, testified that American museums choosing to litigate cases of art lost in the Holocaust should do so “on the merits, and not to rely upon technical defenses, like the statute of limitations.”¹⁸

In 2009, 48 nations, including the United States, participated in the Prague Holocaust Era Assets Conference to follow up on the work of the Washington Conference. Participants issued the Terezin Declaration, which urged the signatories

to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.¹⁹

Several years later, in 2013, the State Department’s Special Envoy for Holocaust Issues, Douglas Davidson, explained that the intent of the Terezin Declaration and the Washington Principles was “to coax the parties to a particular dispute to seek to determine the facts of the matter and to avoid if possible resorting to legal arguments grounded in procedural matters.”²⁰ “[W]e believe,”

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Simon J. Frankel & Ethan Forrest, Museums’ Initiation of Declaratory Judgment Actions and Assertion of Statutes of Limitations in Response to Nazi-Era Art Restitution Claims—A Defense, 23 DePaul J. Art, Tech. & Intell. Prop. L. 279 (2013).

¹⁷ American Alliance of Museums, *Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era*.

¹⁸ *Review of the Repatriation of Holocaust Art Assets in the United States: Hearing Before the H. Comm. on Financial Services, Subcomm. on Domestic and International Monetary Policy, Trade, and Technology*, 109th Cong. 116 (2006) (statement of Stuart Eizenstat, Former Commissioner, Presidential Advisory Commission on Holocaust Assets in the U.S.).

¹⁹ Prague Holocaust Era Assets Conference: Terezin Declaration, Bureau of European & Eurasian Affairs (June 30, 2009), <http://www.state.gov/p/eur/rls/or/126162.htm>.

²⁰ Douglas Davidson, Remarks at Bureau of European & Eurasian Affairs Symposium on “Should Stolen Holocaust Art be Returned?” at the New York County Law Association, “Should Nazi-Looted Art Works Be Returned? The View from the State Department” (Mar. 25, 2013), <http://www.state.gov/p/eur/rls/rm/2013/mar/206719.htm>.

he went on to say, “that the best way to arrive at a just and fair resolution to a dispute over Nazi-confiscated art is for the parties to resolve it where appropriate, based on the facts of the claims.”²¹

Despite these representations and commitments, the United States has not fulfilled its promise to ensure that claims to art lost in the Holocaust are resolved on their merits. As the U.S. Court of Appeals for the Ninth Circuit observed, “[m]any obstacles face those who attempt to recover Holocaust-era art through lawsuits,” including “procedural hurdles such as statutes of limitations” that prevent the merits of claims from being adjudicated.²²

Each State has different rules governing the operation of their statutes of limitations, with varying periods and different triggering circumstances—e.g., the loss of the property or discovery of the identity and location of the stolen art, among other things. A victim’s knowledge may also be imputed to the victim’s heirs. As a practical matter, many statutes of limitations operate to bar modern claimants seeking restitution of art lost in the Holocaust.²³

Because of the unique and horrific circumstances of World War II and the Holocaust, State statutes of limitations can be an unfair impediment to the victims and their heirs, contrary to United States policy. Yet states have been unable to remedy this injustice because the regulation of war-related disputes is within the powers of the Federal Government.²⁴ In *Von Saher*, the U.S. Court of Appeals for the Ninth Circuit invalidated a California law that extended the State limitations period specifically for Nazi-confiscated-art claims.²⁵ The court held that the law was unconstitutional because it infringed on the Federal Government’s exclusive authority over foreign affairs, including its authority to resolve war-related claims.²⁶

A Federal limitations period, appropriately tailored to the unique circumstances of Holocaust-era claims, is therefore needed to guarantee that the United States fulfills the promises it has made to the world to “facilitate just and fair solutions with regard to Nazi-

²¹*Id.*

²²*Von Saher*, 592 F.3d at 958.

²³*See, e.g., Toledo Museum of Art v. Ullin*, 477 F. Supp. 2d 802, 806–07 (N.D. Ohio 2006) (explaining that the limitations period for a restitution or conversion claim in Ohio begins “when the claimant ‘discovers or, in the exercise of reasonable care, should have discovered the complained-of injury’”); *Museum of Fine Arts, Boston v. Seger-Thomschitz*, Civ. Action No. 08–10097–RWZ, 2009 WL 6506658, *7 (D. Mass. June 12, 2009) (same for Massachusetts). New York is an outlier in that its statute of limitations does not begin to run until a demand for the return of the allegedly stolen property is refused. *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 316–18 (1991) (“The rule in this State is that a cause of action for replevin against the good-faith purchaser of a stolen chattel accrues when the true owner makes demand for return of the chattel and the person in possession of the chattel refused to return it” (citation omitted)). In some cases, application of the statute of limitations may result in the expiration of claims before the Holocaust even ended. In *Detroit Institute of Arts v. Ullin*, for instance, the court held that the discovery rule did not apply and that Michigan’s three-year limitations period began to run in 1938—when the alleged unlawful taking occurred—and expired well before the conclusion of the war. *Detroit Institute of Arts v. Ullin*, No. 06–1033, 2007 WL 1016996, at *3 (E.D. Mich. Mar. 31, 2007).

²⁴*Cf., e.g., Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 421 (2003) (“Vindicating victims injured by acts and omissions of enemy corporations in wartime is thus within the traditional subject matter of foreign policy in which national, not state, interests are overriding, and which the National Government has addressed.”).

²⁵*Von Saher*, 592 F.3d at 957.

²⁶*Id.* at 965–68. In the wake of the *Von Saher* decision, the California legislature extended the State statute of limitations from three to six years for *all* stolen art claims, not just Holocaust-era claims. Because the statute, on its face, had nothing to do with the foreign affairs power and there was no “evidence in the record” that the State was attempting to carry out its own foreign policy with respect to the resolution of war-related claims, the Ninth Circuit upheld the law. *See Cassirer v. Thyssen-Bornemisza Collection Foundation*, 737 F.3d 613, 619 (9th Cir. 2013).

confiscated and looted art” and to “make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims.”²⁷ The HEAR Act thus serves two purposes: first, to ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration; and, second, to ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

The HEAR Act is not intended to displace other forms of dispute resolution for Holocaust-era claims. The legislation expresses the sense of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

On April 7, 2016, Senator Cornyn introduced S. 2763, the Holocaust Expropriated Art Recovery Act of 2016. Senators Cruz, Schumer and Blumenthal were original cosponsors. The bill was referred to the Committee on the Judiciary.

The Committee’s Subcommittees on the Constitution and Oversight, Agency Action, Federal Rights and Federal Courts held a hearing on S. 2763 entitled “S. 2763, the Holocaust Expropriated Art Recovery Act—Reuniting Victims with Their Lost Heritage” on June 7, 2016. Testimony was received from Ambassador Ronald S. Lauder, Chairman of the Council of the World Jewish Restitution Organization; Dame Helen Mirren; Ms. Monica Dugot, International Director of Restitution at Christie’s, Inc.; Ms. Agnes Peresztegi, President of the Commission for Art Recovery; and Mr. Simon Goodman. Additional material was submitted by Laura L. Lott, President and CEO of American Alliance Museums; Brian J. Ferriso, President, Association of Art Museum Directors; Richard T. Foltin, Director of National and Legislative Affairs, AJC Global Jewish Advocacy; Carla Shapreau, Senior Fellow, Institute of European Studies, University of California, Berkeley; Karen Silberman, Executive Director, Federal Bar Association; Robert Singer, Chief Executive Officer, World Jewish Congress; and Gideon Taylor, Chair of Operations, World Jewish Restitution Organization.

The Committee considered S. 2763 on September 15, 2016. Senator Cornyn offered an amendment in the nature of a substitute, which was adopted by voice vote. The amendment adds a sense of Congress favoring the resolution of disputed art claims without litigation and using alternative dispute resolution mechanisms involving experts in art research. It specifies the kinds of artwork covered by the operative language of the bill, discussed *infra*. The amendment broadens the knowledge standard that triggers the running of the limitations period established in Section 5(a). It

²⁷ Prague Holocaust Era Assets Conference: Terezin Declaration, Bureau of European & Eurasian Affairs (June 30, 2009), <http://www.state.gov/p/eur/rls/or/126162.htm>.

clarifies that members of any group persecuted by the Nazis may avail itself of the benefits of S. 2763. The amendment removes the reference precluding the availability of equitable defenses and the doctrine of laches. It further enables claims previously barred to be brought within the period established by the bill. The amendment creates an exception that bars claims known on or after January 1, 1999 and for which the claimant (or the claimant's predecessor in interest) could have brought a claim, because the claim was not time barred under the then-applicable statute of limitations, but failed to do. Finally, the amendment clarifies that the bill sunsets in ten years.

The amendment was accepted by voice vote without objection.

The Committee then voted to report the Holocaust Expropriated Art Recovery Act, with the amendment in the nature of a substitute, favorably to the Senate by voice vote.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

This section provides that the legislation may be cited as the "Holocaust Expropriated Art Recovery Act of 2016."

Section 2. Findings

This section makes findings about the historical basis of and the need for the legislation.

Congress finds that the Nazis, as part of the Holocaust, carried on a massive campaign to expropriate art and other cultural property from Jews and other persecuted groups, which one historian dubbed the "greatest displacement of art in human history."

It finds that, while the United States and its allies attempted to return the art and other cultural property to its rightful owners after World War II, some was not returned. Some of the art and other cultural property expropriated by the Nazis has since been discovered in the United States.

Congress finds that, in 1998, the United States and forty-three other nations convened in Washington, D.C. for the "Washington Conference," which produced principles on Nazi-Confiscated Art. One of the principles stated that "steps should be taken expeditiously to achieve a just and fair solution" to claims involving art or other cultural property lost by the victims of the Holocaust.

It finds that, also in 1998, Congress enacted the Holocaust Victims Redress Act (Public Law 105-158, 112 Stat. 15), which expressed the sense of Congress that "all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner."

Congress finds that, in 2009, the United States participated in a Holocaust Era Assets Conference in Prague, Czech Republic, with forty-five other nations, Serbia, and the Holy See. At the conclusion of this conference, almost all of the participating nations (including the United States) issued the Terezin Declaration, which reaffirmed the 1998 Washington Conference Principles and urged all participants "to ensure that their legal systems or alternative proc-

esses, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.” The Declaration also urged participants to “consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.”

Congress finds that victims of Nazi persecution and their heirs have taken legal action in the United States to recover art and other cultural property lost in the Holocaust. While most such claims are settled amicably, lawsuits that proceed may face procedural obstacles due to State statutes of limitations. The unique and horrific circumstances of World War II and the Holocaust make time-based defenses especially burdensome to the victims and their heirs. Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

Congress finds that Federal legislation is needed because the only court that has considered the question held that the U.S. Constitution prohibits States from making exceptions to their statutes of limitations to accommodate claims involving the recovery of Nazi-confiscated art.²⁸ In light of this precedent, the enactment of a Federal law is necessary to ensure that claims to Nazi-confiscated art are adjudicated in accordance with United States policy as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

Finally, Congress expresses its sense that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner than litigation.

Section 3. Purposes of the Act

This section establishes the purposes of the legislation: (i) first, to ensure that laws in the United States governing claims to art and cultural property confiscated by the Nazis further United States policy, as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act and the Terezin Declaration; and (ii) second, to ensure that such claims are not unfairly barred by statutes of limitations and are resolved in a just and fair manner.

Section 4. Definitions

Subsection (1) defines “actual discovery” to mean knowledge, which in subsection (4) is defined as having actual knowledge of a fact or circumstance or sufficient information with regard to a rel-

²⁸ See *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954 (9th Cir. 2009).

evant fact or circumstance to amount to actual knowledge thereof. For purposes of the limitations period established in Section 5(a), this is intended to require more than access to the information with regard to relevant facts and circumstances. The party must have the knowledge itself or have sufficient information to constitute actual knowledge.

Subsection (2) defines with specificity what “artwork and other property” sought by plaintiffs are subject to the legislation. The definition extends to include not only fine art, but applied art, written texts, musical art and Judaica.

Subsection (3) defines a “covered period,” within which losses are covered by the legislation. That period is defined as the period beginning on January 1, 1933 and ending on December 31, 1945. This period covers the rise of the Nazis to power in Germany and concludes following the Allied victory in World War II.

Subsection (5) defines the Nazi persecution that may cause the loss of art or other cultural property caused by the bill. It applies to “any persecution of a specific group of individuals based on Nazi ideology by the Government of Germany, its allies or agents, members of the Nazi Party, or their agents and associates, during the “covered period.” The Nazis persecuted many groups, and that persecution was executed by the Nazi Party, the government of Germany at the time, governments allied with Germany, private agents and others. This definition is intended to be broad, to facilitate the restitution of art and other cultural property lost during the covered period.

Section 5. Statute of limitations

Subsection (a) is the focus of the legislation, a uniform, national, limitations period for covered claims to recover artwork and other cultural property. It applies to claims in Federal or State court and applies notwithstanding any other provision of Federal or State law, or any defense at law relating to the passage of time. Subsection (a) states that “a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution” can be brought within six years after the actual discovery by the claimant or their agent of two pieces of information:

- (1) the identity and location of the artwork or other cultural property; and
- (2) a possessory interest of the claimant in the artwork or other cultural property.

The purpose of this section is to open courts to claimants to bring covered claims and have them resolved on the merits, consistent with the Terezin Declaration. While defenses at law related to the passage of time are not merely procedural, the special circumstances created by Nazi persecution necessitate an opportunity for their temporary waiver. The legislation provides that claims may be brought within six years of actual knowledge by the claimant or the claimant’s agent of the identity and location of the artwork, as well as the claimant’s possessory interest.

Subsection (b). Possible misidentification

Subsection (b) addresses the situation where works of art are produced in multiples, such as a print of which several virtually-

identical copies are made. It states that, for cases in which the “artwork or other cultural property is one of a group of substantially similar multiple artworks or other cultural property,” “actual discovery” is deemed to occur when there are facts sufficient to form a basis to believe the work discovered is the work that was lost. Thus, if a claimant sees an identical print to one that was expropriated by the Nazis from the claimant or the claimant’s predecessor in interest, the six years period will only start to run when the claimant has sufficient knowledge that the particular version of the artworks is the one that was taken.

Subsection (c). Preexisting claims

Because much information about art lost to the Nazis surfaced only decades after the fact and because of the historical, psychological and other barriers that prevented claims from having been brought, subsection (c) gives an opportunity to claimants to resuscitate claims that may have been barred in the past. It states that claims are deemed to have been “actually discovered” on the date of enactment if, before that date, the claimant had knowledge of the identity and location of the property and the possessory interest but the claim was barred by an applicable statute of limitations. Subsection (2) makes clear that claims that were not barred under preexisting law on the date of enactment can also be brought within the limitations period established under Section 5. Claims that were dismissed pursuant to, or litigated to, a final judgment from which no appeal lies on the date of enactment are unaffected by this provision.

Subsection (d). Applicability

Subsection (d) establishes that Section 5 applies to claims pending on the date of enactment but that it ceases to apply to claims commenced after December 31, 2026.

Subsection (e). Exception

While the Holocaust Expropriated Art Recovery Act is animated by clear United States policy to facilitate the return of artwork and other cultural property lost in the Holocaust, Congress also recognizes the importance of quieting title in property generally and the importance that claimants assert their rights in a timely fashion. Because the events surrounding and including the Washington Conference occurred decades after the Holocaust and led to the publication of information about artwork and other cultural property that may have been expropriated by the Nazis, subsection (e) bars the application of the subsection (a) national limitations period in instances in which claimants acquired the requisite knowledge but failed to bring claims within a defined period. Subsection (e) states that claims do not benefit from the HEAR Act limitations period if the claimant had the relevant actual knowledge on or after January 1, 1999, not less than six years have passed from the date the claimant (or the claimant’s predecessor in interest) had such knowledge, during any portion of that time the claim was timely and, nonetheless, the claimant failed to bring it. Nothing, however, bars the claimant from asserting claims that remain timely under applicable State law.

The six year period in subsection 5(e) reflects that in subsection 5(a), but it is not intended to extend shorter limitations periods that came and went prior to the enactment of the HEAR Act. For instance, if the relevant conditions are met and the claim arose after 1999; the applicable limitations period was three years; and three years elapsed before the HEAR Act was enacted, the claim would fall under the 5(e) exception. The claimant must have had, however, an opportunity to bring a claim that was not time-barred during that six year period.

Subsection (f). Rule of construction

This subsection clarifies that nothing in the legislation should be construed to create a cause of action, under Federal or State law.

Subsection (g). Sunset

This subsection states that the limitations period established by the legislation comes into effect on January 1, 2017, and ends on January 1, 2027. After the ten-year window created by the legislation, claims that could have been brought under it are governed by applicable preexisting Federal or State law.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S, 2763, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

NOVEMBER 21, 2016.

Hon. CHUCK GRASSLEY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2763, the Holocaust Expropriated Art Recovery Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

S. 2763—Holocaust Expropriated Art Recovery Act of 2016

S. 2763 would create a new statute of limitations for filing civil claims in state or federal courts to recover artwork and other items misappropriated or stolen by the German government, or its allies or agents, between 1933 and 1945 in connection with the persecution of a specific group of individuals based on Nazi ideology. Under the bill, individuals could file such claims for up to six years after they discover the location of such items or, if discovery occurred prior to enactment of this bill, six years after enactment of S. 2763. This statute of limitations would remain in effect until January 1, 2027, at which point new claims to recover such artwork would be subject to any other applicable statutes of limitations.

Based on information provided by the Administrative Office of the United States Courts, CBO estimates that implementing S.

2763 would have no significant effect on the federal budget in any year.

Enacting the bill could increase the number of civil cases filed in federal courts and increase the collection of civil filing fees, which are recorded in the budget as revenues. A portion of those revenues would be spent without further appropriation. CBO estimates that any additional fees collected would not exceed \$500,000 in any year because of the small number of anticipated additional case filings under the bill. Furthermore, because such amounts would be partially offset by a corresponding increase in direct spending, CBO estimates that enacting the bill would have a negligible net effect on future deficits. Because enacting S. 2763 could affect revenues and associated direct spending, pay-as-you-go procedures apply.

CBO estimates that enacting the legislation would not increase net-direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2763 would preempt state laws governing the passage of time for certain civil claims. The preemption would be a mandate as defined by the Unfunded Mandates Reform Act (UMRA) and may result in a higher number of civil claims in state courts. However, because of the small number of claimants for such civil cases, CBO estimates that the cost of the mandate would be well below the threshold established in UMRA (\$77 million in 2016, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Rachel Austin (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 2763.

VI. CONCLUSION

The Holocaust Expropriated Art Recovery Act, S. 2673, addresses the need 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 or lost during the Holocaust.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law made by S. 2673, as ordered reported.