jumping through the administrative and judicial hurdles that currently exist in order to be allowed to use their property. It is relief that is long overdue, and which can be remedied through passage of this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I appreciate the support of the bill offered by the gentleman from Texas [Mr. FROST].

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE REFORM OF THE INTERNAL REVENUE SERVICE

(Mr. MCINNIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCINNIS. Mr. Speaker, I have this opportunity today to talk about the Internal Revenue Service. As we know, it is great gratitude that I express to the White House, and thank the President for changing his mind, thank him for coming on board with this Republican majority here, and frankly being helped by a lot of Democrats, to force reform in the Internal Revenue Service. This is a charge that has been led by the Republican Party. It is a charge that will be seen through by the Republican Party. Now it is a charge that is going to be supported by the White House.

Why do we need reform in the Internal Revenue Service? Because that is one of the few exceptions in the judiciary process in this country where you are assumed guilty and you have to prove yourself innocent. That is one of the agencies the gentleman from Texas, Mr. ARCHER, who should receive lots of merit and lots of commendation for his leadership on this, is going to change.

It is about time that the Internal Revenue Service, when they come to your house, you are assumed innocent until the IRS proves you guilty. There are some other very basic and fundamental reforms that we are going to put through on the Internal Revenue Service. This is a great day for the taxpayers of this country. Finally they are going to have accountability from the Federal Government that works for them.

THE PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT

(Mr. BOEHLERT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Speaker, I rise in strong support of the rule that was just considered. I want to thank the Committee on Rules, particularly the gentleman from New York, Chairman SOLOMON, for the very fair approach that has been taken on this bill. The rule will allow full and open debate on a policy dispute of great significance. Again, I offer my appreciation and my support.

What is the policy dispute that is at the center of H.R. 1534? It comes down to this: Do Members of this body want to interfere for the first time with the most basic sorts of local zoning decisions? I say we should not do that, that any problems that exist with local zoning procedures ought to be remedied by State law, not by the intrusion of Federal judges.

I am more than a little bit surprised to see some of my more conservative colleagues throwing overboard their professed belief in Federalism to allow Federal judges to intrude early on in these extremely local matters.

This is not just my view. I do not stand alone in the well of this House. The bill is opposed by the National Governors' Association, by 40 States Attorneys General, including Attorney General Lundgren of California, Attorney General Vacco of New York.

The list goes on and on. It is opposed by the Judicial Conference of America, chaired by Chief Justice Rehnquist of the Supreme Court of the United States; it is opposed by the National League of Cities; by the U.S. Conference of Mayors; by all the environmental groups who, incidentally, are going to double score this bill, because of the significance of what is being proposed. The list of opponents of H.R. 1534 goes on and on. I think it is very important for all of my colleagues to really give full focus to what is being proposed.

I am not sure how anyone could claim with a straight face that this bill is ''noncontroversial''; anything but. The manager's amendment represents a decided improvement in the bill, but it does not remedy the fatal flaw. The bill still would let Federal judges interfere with far more local zoning decisions. Think about that. Do we want everything kicked upstairs to the Federal Government, where all decisionmaking is made here? I think the answer to that is clearly no.

The SPEAKER pro tempore. The time of the gentleman from New York [Mr. BOEHLERT] has expired.

Mr. BOEHLERT. Mr. Speaker, I ask unanimous consent to proceed for 1 additional minute.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BOEHLERT. Mr. Speaker, my substitute, the Boehlert substitute, is the only way to correct that flaw, because it would eliminate the portion of the bill dealing with local zoning laws.

Let me reemphasize what we are talking about. We are talking about local decisions made in local communities on whether or not, for example, to deny a permit for building in an area, if when that permit were granted it would bring in unnecessary intrusion in terms of heavy traffic, where adequate infrastructure does not exist. It happens in our home towns every single day.

Do we want decisions made for us in our home towns by Washington, DC in every single zoning issue? I think the answer is clearly no, so we have to deal with it in a different way.

We would expedite Federal court access for property owners with a claim against a Federal agency. I think that is very appropriate. I urge support of the rule and support for the Boehlert substitute. I thank the Chair for being so indulgent.

PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 1997

The SPEAKER pro tempore. Pursuant to House Resolution 271 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for consideration of the bill, H.R. 1534.

☐ 1127

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1534) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the U.S. Constitution, have been deprived by final actions of Federal agencies, or other Government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when Government action is sufficiently final to ripen certain Federal claims arising under the Constitution, with Mr. SNOWBARGER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read for the first time.

Under the rule, the gentleman from North Carolina [Mr. COBLE] and the gentlewoman from California [Ms. LOFGREN] will each control 30 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 1534 is about Congress' duty to implement the 5th and 14th amendments to the Constitution. The U.S. Constitution protects individuals from having their private property ''taken'' by the Government without receiving just compensation.

To file a claim of a violation of that fundamental right, plaintiffs encounter several high obstacles which must be

negotiated or crossed prior to the Federal courts hearing the cases on their merits. Plaintiffs alleging violations of other fundamental rights oftentimes do not encounter the same hurdles before gaining access to the Federal courts.

Plaintiffs filing taking claims in Federal court are met with steep requirements prior to their case being considered to be ripe. A plaintiff must show both that there has been a final decision by the State or local governmental entity which has authority over land use, and that the plaintiff has requested compensation by exhausting all possible State remedies.

□ 1130

Ironically, it may be impossible to then get any Federal remedy because the case has been forced to be heard in the State court and a case cannot be tried twice in most instances. Deprivation of a Federal remedy goes against what our Founding Fathers saw as a uniquely Federal matter, it seems to me.

Lower courts attempting to interpret when a final decision has occurred have reached conflicting and confusing decisions which are not instructive to takings plaintiffs trying to determine when their cases are ripe. H.R. 1534 defines when a final decision has been reached in order to give takings plaintiffs some certainty in the law so that their fifth amendment rights may be properly reserved.

Takings plaintiffs also confront the barrier of the abstention doctrine when filing a claim in Federal court. This doctrine gives Federal judges the discretion to refuse to hear cases that are otherwise properly before the court. Judges often avoid land use issues based on the abstention doctrine, even when the case involves only a Federal fifth amendment claim.

H.R. 1534 remedies this by prohibiting district courts from abstaining from or relinquishing jurisdiction when the case alleges only a violation of Federal law. H.R. 1534 would not affect the traditional abstention doctrines, Younger, Pullman, and Burford, used by the Federal courts because it allows a Federal court to abstain from hearing any case that alleges a violation of a State law, right, or privilege.

H.R. 1534 does not remove State court jurisdiction, even over Federal claims. Plaintiffs with Federal takings claims will still be able to file in State courts. H.R. 1534, the bill before us, simply assures plaintiffs with a 5th or 14th amendment takings claim that a meaningful Federal option exists.

This bill has undergone many improvements already since its introduction. For example, amendments included at the subcommittee and full committee levels addressed the special concerns of opponents that the bill was too broad and that it would circumvent local elected officials. At the subcommittee markup, an amendment making it clear that H.R. 1534 applies only to cases involving real property was offered by the gentleman from California [Mr. GALLEGLY], the primary author of the bill, and approved.

At the full committee markup, the amendment of the gentlewoman from California [Ms. LOFGREN], who will be handling the bill for the minority, which required a land use applicant to seek review of a denied appeal, or waiver from a local elected body if that procedure is available, was approved. And I say to the gentlewoman from California, I think that was a sound proposal and I think improved the bill.

Mr. Chairman, the bill includes a manager's amendment which will further address concerns expressed to the committee by other Members. These provisions narrow the scope of terms that could be construed more broadly than intended. It will include a provision that ensures local agencies an opportunity to offer suggestions to an applicant that must be taken into account or consideration in resubmitting the application before the applicant may seek an administrative or judicial appeal and subsequent Federal court litigation.

Mr. Chairman, I reserve the balance of my time.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to H.R. 1534, the first takings proposal which specifically targets our State and local elected officials.

This legislation would mandate a series of rules granting expedited access to the Federal courts for property takings claims. In addition to providing developers with special procedural advantages, the bill could alter the substantive law of takings in favor of developers.

The net result would be legislation which does unbalance the playing field as between State and local governments and developers. Even worse, the bill elevates the rights of real property owners above all other categories of persons having constitutional claims against the Government, which would include civil rights victims and the like. We believe that this is being propounded in the absence of any quantitative evidence that justifies this massive intrusion into States rights.

Under H.R. 1534, for example, if a corporation, say Wal-Mart, seeks to establish a very large, some would say even oversized commercial development in a small town, and the town says no because of the massive development and Wal-Mart is dissatisfied, they would have the opportunity to immediately threaten to bring suit and to march down to Federal court, forcing the town to incur a large amount of legal expenses.

Mr. Chairman, in that situation, I will add I spent 14 years in local government having to deal with difficult issues of zoning and land use. It has to be a factor for local governments who are constantly facing financial shortfalls to know that if they decide in favor of neighbors, they may face humongous legal expenses. That has to be factored into the decision-making process.

That is why this bill really does tilt the playing field in favor of developers and away from neighbors and homeowners who enjoy the benefit of zoning protection that local governments do impose.

Mr. Chairman, let me pose this issue because it comes from my own experience. A number of years ago when I was on the board of supervisors we established regulations, because we could not outlaw the pornography businesses that were established in part of our jurisdiction. We, the board of supervisors, were ultimately sued.

Mr. Chairman, in that case, under this law, we would elevate the rights of the pornographers in that case to immediately go to Federal court to challenge the zoning regulations that the local government had imposed. I do not think such a result is intended by the authors or proponents of the bill, but it is an outcome that is predictable and will happen in towns and counties around the country.

Mr. Chairman, it is no wonder that H.R. 1534 has drawn such diverse and strenuous opposition. The Attorney General, the Secretary of the Interior, the Administrator of the EPA, and the Chair of the Council of Environmental Quality have recommended a veto and the President has given strong signs that he would veto this bill.

The National Governors' Association, the Conference of Mayors, the League of Cities have come out in strong opposition to the bill as of yesterday. A bipartisan group of 37 State attorneys general opposes the bill because in their words it invades the province of State and local governments. They are joined by a broad array of environmental groups as well as The New York Times and the Washington Post.

Mr. Chairman, I think we must make sure that we understand that the manager's amendment does not really fix the problems, the many problems in this legislation. Even after the third rewrite of this bill, it still allows developers to bypass local administrators in State courts and imposes significant new costs on local government. It would still impose on the Federal courts to decide cases based on inadequate records, and it still elevates the claim of real property developers above ordinary civil rights claimants.

In some respects the manager's amendment has made the bill even worse by creating a series of complex and vague new procedural requirements and by allowing developers to proceed to Federal court without even waiting for a final answer.

Mr. Chairman, I urge a ''no'' vote on H.R. 1534 so we can continue to allow democratically elected local officials to protect their citizens, to protect neighborhoods and to protect homeowners from unwise development through the prudent use of zoning.

I would like to note also that I do understand there are occasions when

overzealous zoning and regulation can, in fact, lead to takings. In those cases it is fair that justice be brought to the land developer. I do believe in the fifth amendment and its clause providing for due compensation in the case of such takings. However, this is the wrong remedy for those cases and I would urge my colleagues to join me in voting ''no.''

Mr. Chairman, I reserve the balance of my time.

Mr. COBLE. Mr. Chairman, I yield 7 minutes to the gentleman from Florida [Mr. CANADY], a member of the Committee on the Judiciary.

Mr. CANADY of Florida. Mr. Chairman, I rise today in strong support of H.R. 1534, the Private Property Rights Implementation Act. This bill has the simple purpose of streamlining the process by which property owners petition for compensation when their property has been taken by a unit of government.

Mr. Chairman, the fifth amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. The intent of this constitutional protection is being thwarted by the current state of confusion regarding when and where a takings claim may be filed. Property owners are subjected to an inefficient and unnecessary legal maze of appeals back and forth between local boards, State courts, and Federal courts.

To illustrate the hurdles which face property owners who seek to defend their property rights, I will cite today the efforts of a couple in Florida who challenged the rezoning of their land. Their 13-year odyssey, 13 years, Mr. Chairman, through numerous layers of bureaucracy is, I am afraid, typical, all too typical of the struggle endured by countless property owners every day in this country.

In 1984, Richard and Ann Reahard inherited 40 acres of land in Lee County, FL, an area not far from the district I represent in central Florida. The land was zoned for high density residential development. Two weeks later the county adopted a land use plan which restricted use of the Reahards' land to a single house. That is a single house on a 40-acre tract. With this rezoning, the county reduced the value of the parcel by 96 percent, yet the county had no plans to compensate the Reahards for their loss.

Among the many zoning petitions filed by the Reahards with local authorities were: An application for an administrative determination of error, a request for plan amendment, and an application for determination of minimum use. These appeals were made variously to the county planning and zoning commission, the county board of commissioners, and the county attorney's office with differing results.

In 1988, that is 4 years from when this odyssey started, the planning and zoning commission approved the building of up to six units per acre on 35 of the acres and the remaining acres to be set aside as a buffer. But the board of commissioners rejected that plan.

In 1989, the county attorney determined that the Reahards could build four homes, but the board of commissioners decided again only to allow one home on the 40-acre tract. The Reahards filed a complaint in Florida State court, but the attorneys in Lee County removed the case to Federal court.

In 1990, the Federal district court decided in favor of the Reahards. The court ruled that the Reahards had exhausted all the administrative remedies, that their claim was ripe for adjudication, and that a taking had occurred. The jury awarded the couple $700,000 for the lost use of their land and for their legal costs.

But, Mr. Chairman, this is not the end of the story. Between 1992 and 1994, Lee County twice appealed the case to the U.S. Court of Appeals for the 11th Circuit. The first time, the circuit court remanded the case to the district court to revisit the ripeness issue. The district court again found that the issue was ripe and the jury award was reinstated.

Lee County again appealed to the 11th Circuit. On the second appeal, the circuit court decided that the Reahards had not exhausted their State court remedies and that the district court should not have heard the case in the first place.

By 1997, the Reahards' case was back in State court. The Lee County Circuit Court ruled that a taking had occurred and the jury awarded the Reahards $600,000 plus $816,000 in interest dating back to 1984.

□ 1145

In addition, the jury awarded attorney's fees and other costs to the Reahards. Lee County has appealed the case to Florida's Twentieth Judicial Circuit Court of Appeals where it is now pending. If the appeals court upholds the lower court's ruling and jury award, Lee County will owe the Reahards close to $2 million. Was this 13-year-long costly legal battle really necessary?

A major issue in this case was whether a final decision had been reached by the local authorities and if the case was, therefore, ripe or ready for review by a Federal court. The bill we have before us today, H.R. 1534, clarifies this issue by defining what constitutes a final decision, yet it leaves intact several layers of review by local authorities.

Under H.R. 1534, a property owner with a takings claim will have received a final decision when, upon filing a meaningful application for property use, a definitive decision regarding the extent of the permissible uses of the property is made. That is, the final decision will occur when the property owner has received a final decision, upon the filing of a meaningful application for property use, a definitive decision regarding the extent of permissible uses of the property.

When local law provides for an appeal process by administrative agency, the applicant must receive one denied appeal to have a final decision. If the local authorities render an opinion on what the applicant was turned down for, the applicant must then reapply incorporating those comments.

In addition, where local law provides for review by local elected officials, the applicant must also receive a decision from those officials. A clarification of this issue with regard to ripeness will reduce legal costs for both property owners and local governments who will now, under this law, know when and where to file these cases.

The suggestion has been made that this is a partisan bill. This is not a partisan bill. This is a bipartisan bill. There are nearly 50 Democratic cosponsors. This is addressing a very real problem that affects property owners all across this country. I urge my colleagues to support the bill.

Just to conclude on the point, this is a very real issue that is affecting property owners all across the country. In most zoning cases, this sort of abuse does not occur. But it occurs all too often. And when it takes place, it imposes an unreasonable burden on the property owner. It can end up imposing significantly greater costs on the taxpayers who end up having to pay the interest costs that are incurred while these cases drag on, and drag on, and drag on.

I believe that the House has a responsibility to address this issue. This is being addressed in a bipartisan way.

The manager's amendment, as I understand it, has attempted to address the concerns that have been raised by various folks who have raised issues about the bill. I believe that the bill that is before the House strikes a balanced approach that takes into account the concerns of local governments, but also recognizes that the property owner has some rights that need to be protected and the property owner has to be able to get to court to do that.

I thank the gentleman for yielding me the time. I urge my colleagues to support the bill.

Ms. LOFGREN. Mr. Chairman, Mr. Butterworth, the attorney general of Florida, does oppose this bill. The prior speaker may not have been aware of that.

Mr. Chairman, I yield 4 minutes and 30 seconds to the gentlewoman from Texas [Ms. JACKSON-LEE], a member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentlewoman, a member of the Committee on the Judiciary and Representative from California, for yielding me the time.

This is an important issue. None of us, Mr. Chairman, would in any event be opposed to the fairness as it relates to the fifth amendment and the whole

question, if you will, of property rights. But let me rise to share my concerns concerning H.R. 1534, the Private Property Rights Implementation Act of 1997.

It is not a sheer case, as the previous speaker has indicated, of vindicating those property owners who want to pursue their goals of development. It is a question of sidestepping State and local governments, very compelling interests of zoning and protecting the rights and interests of their citizens who would be less empowered to fight intrusion and development that they may not want.

Let me also say how supportive I am of my friends in the building industry and the many good works that they have done dealing with building housing and my intent is to work with them through this process. However, I think this legislation would greatly narrow both the ripeness and abstention doctrines exercised in Federal courts with respect to claims made under the takings clause of the fifth amendment and in doing so increases the ability of Federal courts to accept jurisdiction over local land use matters.

This is a difficult proposition to propose. This says that the local elected officials, the people duly elected by the State's citizens and the city's citizens can be usurped. Proponents of this legislation argue that this bill is necessary to remedy the excessive barriers that property owners face in receiving their just compensation. They point out that under current law landowners trying to defend their property rights are frequently snarled up in courts for years. Sometimes this is burdensome. I am concerned, however, that the bill may not correct a solution.

H.R. 1534 will have a very serious and adverse impact on the ability of State and local governments to implement their zoning and land use laws. This bill attacks the primary powers of local and State officials in land use matters by effectively taking control of local land use away from State and local governments and, if Members will, putting a speeding train across the finish line into Federal courts.

H.R. 1534 threatens to severely diminish the negotiating posture of States and municipalities. As a former member of a city council, local government, we have on many occasions been able to dialog and compromise on some of these very ticklish issues. This would be hampered by allowing developers and polluters to threaten to bring them into Federal court on an expedited basis.

For example, under the bill, if a developer seeking an oversized commercial development is dissatisfied with the initial land use decision by a small town, it could immediately threaten to go to Federal court. The cost of litigating this issue would overwhelm many small towns, counties, and cities.

Under this bill, the case could even proceed if negotiations regarding the alternative developments were ongoing. This smacks right in the middle of disrupting local government and their ability to reason and to work with the developers and others in these very difficult issues.

Right now I am facing a situation where there is major pollution by a large corporation in my community and obviously they are in Federal court, and it puts the burden on these neighborhoods who are trying to fight against this pollution. This bill is likely to result in a significant increase in Federal judicial workload, a particular problem given the high number of vacant judgeships.

According to a recent Congressional Research Service report, there is a sound argument that H.R. 1534 will result in a significant increase in the caseload of the Federal courts particularly from takings litigation. I believe the Boehlert amendment will improve this legislation.

This amendment limits the effect of the bill to takings claims brought about against the Federal Government and would not impact the abstention or ripeness doctrines as they affect cases brought against State and local governments. In doing so, the Boehlert amendment answers some of the concerns of those Members who are concerned about the burdensome legal process. So I am supporting the Boehlert amendment.

Let me also acknowledge that this does not give the same kind of protection to those who are fighting civil rights violations. Therefore, I find this to be contradictory and hypocritical at best. Also, I wanted to note that in the Washington Post and the New York Times, both of these have labeled this legislation as undermining local government.

We find that the League of Cities, Conference of Mayors, and 40 State attorneys general are against this and this gives developers and property owners who have a wealth of money an imbalance against small towns and counties and cities who fight every day to protect their citizens. I think we can work out some of these problems. This is not the right legislation to go forward.

Mr. Chairman, I would offer to say that my colleagues should oppose this legislation. Let us go back to the drawing boards and really work out a solution.

Mr. Chairman, I rise today to share my concerns regarding H.R. 1534, the Private Property Rights Implementation Act of 1997. This legislation would greatly narrow both the ripeness and abstention doctrines exercised in Federal Courts with respect to claims made under the takings clause of the fifth amendment and in so doing increases the ability of Federal courts to accept jurisdiction over local land use matters.

Porponents of this legislation argue that H.R. 1534 is necessary to remedy the excessive barriers that property owners face in receiving their just compensation. They point out that, under current law, landowners trying to defend their property rights are frequently snarled up in court for years. I agree with my colleagues that such a delay is overly burdensome. I am concerned, however, that H.R. 1534 may not be the correct solution to this problem.

H.R. 1534 will have a very serious and adverse impact on the ability of State and local governments to implement their zoning and land use laws. This bill attacks the primacy of local and State officials in land use matters by effectively taking control over local land use away from State and local governments and putting that power into the hands of the Federal Government.

H.R. 1534 threatens to severely diminish the negotiating posture of States and municipalities, by allowing developers and polluters to threaten to bring them into Federal court on an expedited basis. For example, under the bill, if a developer seeking an oversized commercial development is dissatisfied with the initial land use decision by a small town, it could immediately threaten to bring suit against that town in Federal court. The costs of litigating this issue would overwhelm many small towns and counties. Under this bill, the case could proceed even if negotiations regarding alternative developments were ongoing, even if there was an insufficient record available for the Federal court to make a reasoned takings decisions, and even if there were important unresolved State legal issues.

H.R. 1534 is also likely to result in a significant increase in the Federal judicial workload, a particular problem given the high number of vacant judgeships. According to a recent Congressional Research Service report on the legislation, ''There is a sound argument that H.R. 1534 will result in a significant increase in the Federal courts, particularly from takings litigation.''

Another very important concern with H.R. 1534 is that it unfairly identifies one type of action for violation of Federal rights—property takings under the fifth amendment—for favored consideration in Federal courts, while ignoring all other types of procedures where abstention may apply. For example, abstention has been held appropriate in section 1983 actions involving the sixth amendment right to counsel, conditions of confinement at a juvenile facility, the denial of Medicare benefits, gender-based discrimination, and parallel State-court criminal proceedings. Are the rights of property developers more important then the life, liberty, and other civil rights of Americans including claims regarding personal property and intangible property? If not then why should the claims of land developers be given priority treatment in our Federal courts when Federal courts abstain from deciding other civil rights claims that are at least as valid and important?

In light of these problems with H.R. 1534, I urge my colleagues to join me in supporting the Boehlert amendment in the nature of a substitute. The amendment limits the effect of the bill to takings claims brought against the Federal Government, and would not impact the abstention or ripeness doctrines as they affect cases brought against State and local governments. In so doing, the Boehlert amendment answers the concerns of those Members who are concerned about the burdensome legal process that many landowners have encountered and yet have long advocated the importance of State and local government authority.

Mr. COBLE. Mr. Chairman, I yield 3 minutes to the gentleman from Arkansas [Mr. HUTCHINSON].

Mr. HUTCHINSON. Mr. Chairman, I want to thank my friend from North Carolina for his work on this legislation.

Let me assure everyone that this legislation received a full hearing in Committee on the Judiciary. The concerns that have been expressed have been adequately addressed in the legislation and I rise in strong support of the Private Property Implementation Act. I believe it is important. There are two fundamental principles that are at issue and are at stake in this legislation.

First of all, there is the constitutional principle that the Government cannot take your property without just compensation. This was learned when we studied the Constitution at an early age. It has been preserved in our history and it is one of the most important constitutional principles that we have. The second principle that is at issue in this legislation is that constitutional rights are to be protected in Federal court.

As an attorney in private practice for almost 20 years, I brought into Federal court due process claims, first amendment claims involving freedom of speech, freedom of association, freedom of religion. In Federal court they deal with constitutional claims regarding unlawful seizure. The Federal courts, though, have set up a particular burden for anyone who is asserting the constitutional principle that property should not be taken without just compensation. That is the abstention doctrine, that the Federal courts have to refrain from that, they refer it back to State court.

It creates a tremendous burden on the homeowner, the property owner who desires to protect their rights. So the constitutional principle of private property rights has been diminished and I believe put below other constitutional rights because of this doctrine and the hesitancy of Federal courts to consider this type of case.

The purpose of this legislation is to restore the protections to the property owner. In Arkansas, I assure my colleagues, this is an important constitutional right that must be protected. This legislation maintains an appropriate balance, protecting the rights of the city and the municipality in their zoning laws, but yet at the same time looking out at the protection of the homeowner. Under the bill the landowner must go through the usual appeal process, but when court action is necessary, then they are assured of access to the Federal courts.

The objection that has been raised today is the Federal courts are too busy. It will result in a crowded docket. I believe that the Federal court should never be too busy to hear constitutional cases, to hear constitutional claims, claims that involve constitutional rights, whether it be freedom of speech, whether it be freedom of association, or whether it be the protection against unlawful taking of private property.

For that reason, I support the legislation. It preserves important constitutional principles. It preserves a balance between the desire to zone property, but the desire to give homeowners the property protection from unlawful taking. For that reason I support this legislation.

Ms. LOFGREN. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, this is an extraordinary day. My Republican colleagues are trying to federalize a whole bunch of State activities and State procedures and to impose Federal law both on the subject of rights and on the subject of procedure upon local units of government, a remarkable activity in view of all the talk I have heard on this side about devolution.

Here are the questions that are potentially to be brought into the Federal court. Whether a community is going to permit a house of ill-repute, a place for nude dancing or adult book stores to be established in a particular area, whether there will be glue factories, slaughterhouses, nuclear waste dumps or hazardous waste dumps or, indeed, ordinary municipal dumps established at a particular place.

These are hardly rights that should be litigated in a Federal court. This includes whether bars, crack houses, opium dens and places where narcotics, illegal drugs and illegal activities of all sorts are conducted. The question of whether activities which constitute a clear public nuisance, as interpreted by the States and the local units of government, will be permitted in a particular area, and if the person or the entrepreneur who wishes to engage in these kinds of activity feels he is not going to get fair treatment in a State court or in the State-administered procedure, he rushes to Federal court where the Federal judiciary has then got to take up the important question, for example, of whether nude dancing should be permitted near a church or whether a bar may be located within 100 yards of a school or whether some other kind of action, long known and long viewed as being noxious and obnoxious to the public interest and to the concerns of the people in the area will be permitted.

□ 1200

And it will be done in Federal Court, not the State court, not in the court where people are closest to the people in the community.

Now, the Constitution protects the rights of all, the property rights and other rights. There is a long history of how these rights are protected in State and Federal court, and there is an intelligent and a sensible way in which these questions have been and can be reviewed.

The procedure and the jurisprudence is clear. The courts have defined this process for years, and the process is defined to protect the property owner, to permit him to use his property in an intelligent and beneficial manner. It is, however, also arranged so that the rights of honest citizens who might live in the neighborhood will receive protection.

Now, let us vision this. An individual wishes to create a deep injection well into the subsoil. The citizens object. The question under this legislation is federalized. Citizens cannot go through the normal procedure. And the result is that the Federal courts all of a sudden have a question of great local concern without any real awareness or any real sentiment of closeness to the people who are involved.

Is that a good result? Is that the result we want? And is that a result which we want at a time my Republican colleagues are telling us how important it is that these matters should be decided at the local level? I think this is insane.

The question of whether or not the local governments are proceeding correctly now under the laws and the Constitution is settled, clear, understood and sound jurisprudence. They decide the question on the basis of appropriate proceedings where all parties are afforded an opportunity to be heard, then the matter can be elevated and is subject to suitable and appropriate judicial review. And the people in the process, if they deal with it incorrectly, either in the administrative process or in the courts, the courts then are subject to having the matter reviewed in Federal court. This is sensible, intelligent protection of the rights of all.

But remember that we are addressing questions which involve a difficult balancing of the rights of the property owner and the rights of the citizen. What my colleagues are saying to the citizens, if we adopt this legislation, is that the question of whether a nuclear waste dump or a slaughterhouse or a glue factory or a rendering plant or a nuclear waste dump or a house of ill repute is now a matter of Federal concern; that a bar or a place where illegal activities are a public nuisance, or a place where nude dancing is permitted is a question that is an essential Federal right that goes immediately to the Federal courts for consideration by the Federal judiciary.

I think this is the worst and most intolerable kind of invasion of the rights of communities, the rights of States and the rights of ordinary citizens that this body could construct.

Mr. COBLE. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. GALLEGLY], the principal author of the legislation before us.

(Mr. GALLEGLY asked and was given permission to revise and extend his remarks.)

Mr. GALLEGLY. Mr. Chairman, government bodies may have legitimate reasons for restricting the use of private property, for local zoning, environmental protection and other purposes. Most government agencies use these powers very responsibly. However, sometimes they do not. And when a government body infringes on an individual's rights as guaranteed under the Constitution, that person should have their day in court to defend those rights.

That is what this bill is all about, giving property owners their day in court, not on choosing sides in takings.

I think the need for this bill is also demonstrated by the broad support we have received here in the House. H.R. 1534 to date has 239 bipartisan cosponsors. Of these, 44 Members happen to be Democrats.

The bill specifically states that nothing in H.R. 1534 would change the legal arguments or whether a landowner deserves to be compensated for the loss of economic value of their land. Judges would use the same current standards to evaluate the merits of these cases. However, people would not have to wait for years and years to get those merits considered.

The bill applies only in cases in which a Federal claim has been made, not to State cases. The language of the bill makes certain that the Federal courts may continue to abstain their jurisdiction if there is a case pending in a State court arising out of the same operative facts. This provision ensures that H.R. 1534 absolutely does not affect in any way proceedings in the State courts.

Circumstances involving other Federal rights or legislation are given a fair chance to be heard in the Federal courts. For example, Federal environmental laws are readily enforced in the Federal courts. First amendment claims against local governments have no trouble getting a hearing in the Federal courts. Only property rights are routinely dismissed or delayed because of abstention or ripeness.

Let me give my colleagues one example that illustrates this problem extremely well. Earlier this year the Supreme Court ruled on a case brought by Mrs. Bernadine Suitum. Mrs. Suitum was basically denied 99 percent use of her property, which is in Lake Tahoe, CA. She was told she could not build her retirement home or anything else on her lot.

For 8 years, Mrs. Suitum sought to have her request for compensation heard in the Federal courts. However, year after year the Federal judges ruled that her case was not ripe. Only now, after the Supreme Court ruled unanimously in her favor, are the merits of her case being heard.

It never should have taken that long. If Mrs. Suitum could not get the merits of her case heard for 8 years, what chance do other property owners have? Few people have the time or money to fight all the way to the Supreme Court to defend their constitutional rights. So this bill is about equal access to justice for the ordinary landowners and property owners of America.

Mr. Chairman, it is often said that justice delayed is justice denied. I urge my colleagues to support H.R. 1534 to simplify the process our constituents must navigate to defend their personal property rights and their constitutional rights.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. HALL].

(Mr. HALL of Texas asked and was given permission to revise and extend his remarks.)

Mr. HALL of Texas. Mr. Chairman, I rise in support of the private property owners and in support of H.R. 1534.

Mr. Chairman, the fifth amendment to the Constitution guarantees certain private property rights and protections that have been subject to various interpretations by the courts over the years, often at great expense and a great waste of time to private property owners.

For many years the Congress has attempted to secure the rights of private property owners and to clarify the intent of the fifth amendment. In the 104th Congress the House passed legislation that would have curtailed judicial interpretation of the takings clause in the amendment and would have established a formula for the Federal Government to compensate private property owners from Federal agencies limited use of their property. Unfortunately, the Senate did not act on the bill, and private property disputes were left to the discretion of the courts.

However, today we will try again to provide some long-sought relief for private property owners through a bill, H.R. 1534, that would expedite disputes between private property owners and Federal agencies in Federal court. Under current law, property owners often spend years in court—at the local, State and Federal level—in an attempt to prove their case. This bill will give property owners the right to have their case heard in Federal court in a more timely manner, and it clarifies other provisions that will facilitate legal action. The bill does not usurp the authority of State and local governments—but it does help speed up the resolution of State issues.

Mr. Chairman, we have an opportunity to help eliminate the impediments that the courts have placed on the protections offered under the fifth amendment. This legislation will help restore the rights of property owners to due process of law and a timely determination of just compensation for property that has been seized for public use. This is not an issue of States' rights—States will still have authority over State issues. This is a constitutional issue, and I ask my colleagues to join me today in support of H.R. 1534 to help guarantee these constitutionally protected private property rights.

Ms. LOFGREN. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. WATT], a member of the committee.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentlewoman for yielding me this time.

I rise in opposition to this bill, and I wish to talk for a minute or two about what this bill is not about, because there is a lot of misinformation out there.

This is not about whether people will be compensated for the taking of their property. People always have been, will continue to be compensated for a taking of property, and that is a right under the Federal Constitution. But this is not about whether the Federal courts only can decide that. State courts have and do and should continue to decide Federal constitutional issues based on who has jurisdiction over those issues and where the lawsuit is filed.

For the Republicans to say to us that somehow we should direct the Federal courts to do this seems to me completely inconsistent with everything that they have said that they stand for. First of all, they have told us that they believe in the devolution of power back to the State and local level. This bill is absolutely counter to that proposition.

Second of all, they have told us that they believe in disputes being resolved at the level of conflict closest to the people. This is absolutely contrary to that proposition.

Third, they say they want these things resolved quickly. Well, we have a backlog in the Federal courts unlike any State in this Union, because the Senate will not let the Federal judges be appointed, and so we are getting further and further and further behind. So to put these cases in Federal Court is going to prolong the process, not shorten the process.

This is a bad idea. State courts can and should resolve these disputes. Federal courts can and should resolve these disputes. The current law allows that to happen right now and we ought to leave it alone.

Mr. COBLE. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon [Mr. BLUMENAUER].

Mr. BLUMENAUER. Mr. Chairman, I thank the gentleman for yielding me this time.

I am here in Congress because I am absolutely committed to communities being able to achieve livable futures. I was present at the inception of Oregon's landmark land use planning laws, and I spent the last 18 years of my life in local government implementing some of the best and most far-reaching environmental protections in America and, as such, I would like to offer some observations about today's legislation.

First, I am happy that so many of my Republican and business friends acknowledge that there is a legitimate Federal role in local and State land use planning. This is an important milestone for Congress. But I do fear that a number of people are avoiding the true circumstance that occurs in development in many parts of our country.

In the absence of comprehensive land use plans developed by local government with the help of their citizens and business interests, we have a patchwork system that too often employs as a central part legal maneuvering and political pressure. I believe

from the bottom of my heart this is the wrong way to go.

Just because communities have not yet decided to have a comprehensive plan in place does not mean that people can do anything they technically or legally want with their property. Instead, there is an elaborate political legal tangle in most communities. This is an exceedingly inefficient and often unfair way to resolve the important public policy decisions attendant to development.

There needs to be a way to provide incentives to State and local governments to carefully codify their planning objectives in terms of zoning and development requirements, along with cost and fee structures that require development to pay its own way. A combination of sound land use planning and appropriate user fee structures makes good development possible.

I do not fear a wholesale legal assault on behalf of the development community. My experience is that State and local government have at least as many legal resources and opportunities as the private sector. In fact, over the years, I have seen local government better able to defend itself in this fashion than the private sector. We in local government pay our attorneys by the year rather than by the hour.

I look forward to working with the development interests, local governments, and the environmental community as this bill works its way through the legislative process. I do see it as a step forward in the discussion of how we are going to direct and manage growth without undo legal and political wrangling.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume, and note that the Attorney General of Oregon does oppose the bill.

Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. BOEHLERT].

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, I rise in strong opposition to this bill. In doing so, I do not stand alone. I am reflecting not only my own position but that of the National Governors' Association, most State Attorneys General, 40 at last count, the Judicial Conference of the United States, chaired by Chief Justice Rehnquist, the National League of Cities, the U.S. Conference of Mayors, and every single environmental group who view this issue as of such magnitude that they are going to double score it.

It is an unusual coalition and they have come together on this for good reason. The reason is simple: This bill violates the most basic principles of federalism. That is just as true of the manager's amendment as it is of the original text. That is not, as some say, a narrow procedural fix. Far from it. Would all these groups be arrayed against powerful developers if the bill was a narrow procedural bill? I doubt it.

The bill would fundamentally alter the balance between localities and the Federal Government, between developers and neighborhoods, between the legislative and the judicial branches. The bill would overturn a 7-to-1 Supreme Court decision, a decision in which all the conservative justices of the time, Burger, Rehnquist, O'Connor, concurred.

Make no mistake about it, H.R. 1534 represents a fundamental shift in American law and will rob communities of the opportunity to determine their own destinies.

□ 1215

Forget about legal doctrine for a minute. Let us look at the practical impact of the bill. It basically removes any incentive for a developer to negotiate with a community because the developer will always be able to threaten to take the community immediately into Federal court. That will change the look of every single community in this country. Think about it.

Now, supporters of the bill sometimes say, ''We're just making sure that the fifth amendment claims can get to Federal court.'' We think fifth amendment cases should get to Federal court, but the Federal court cannot determine if the fifth amendment has been violated until they know exactly what a zoning board would allow, exactly how much a local action reduced property values and exactly what compensation was offered. Bringing Federal courts in prematurely, as this bill does, simply allows Federal judges to substitute their judgment for the locality's before all the facts are in.

Again, do not take my word for it. Here is what the Judicial Conference of the United States says: ''The bill would alter deeply ingrained federalism principles by prematurely involving the Federal courts in property regulatory matters that have historically been processed at the State and local levels.''

Here is what the National Governors' Association wrote in a letter signed by Governor Voinovich of Ohio: ''The result will be substantially more Federal involvement in decisionmaking on purely local issues.'' Listen to the experts who do not have a financial interest in the outcome of this bill. This bill says we do not trust local governments. This bill says devolution; that is, sending authority from the Federal Government to the State and local governments, is a cockamamie idea. This bill says all wisdom is vested in Federal courts, not in State and local courts. I urge opposition to H.R. 1534 unless the sensible Boehlert amendment is passed.

Mr. COBLE. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

(Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Chairman, I thank the gentleman for yielding me this time. There is some controversy on this bill. I was able to pass an amendment when it was offered on the floor 2 years ago. People may argue about limiting, causing damage to private property and wanting to compensate them for it. I believe when the Federal Government takes an action which limits the use of or damages the property of a citizen, the Federal agency should in fact be responsible for ensuring they be made whole. No action do them.

I support the bill, but I do not believe this bill in its current form really is in the total best interests of all of the people we represent. Not all of our constituents have accountants and attorneys. If this bill becomes law, those big corporations and all those people have all those legal eagles and they are going to advise them exactly what to do and what is available to them and how to go about it, but the average citizen may not even know there is an action taken which may have in the future caused them to lose money.

My amendment says that when a Federal agency takes an action that causes an American to have their property use restricted or to lose value, that the agency shall give notice to the owners of that property explaining their rights under the law and then, second of all, the procedures that they can use for obtaining any compensation if they are eligible for it.

Now, if this is not fairness, I want someone to tell me what fairness is. This language was accepted overwhelmingly on the House floor during the debate 2 years ago. It ensured that every private citizen and property owner would be afforded the same types of procedural rights and protections as do those people that can afford to hire attorneys and accountants. I would like to ask the Congress that, in the wisdom of the Congress, under unanimous-consent order to allow this amendment to be offered on the floor for an up or down vote. That, I ask. I hope that that opportunity would be made available. It makes the bill better. From what I understand, the sponsor of the bill is in support of that language and I see no opposition.

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. FARR].

Mr. FARR of California. Mr. Chairman, I thank the gentlewoman for yielding me this time. I rise in opposition to this bill. I want to speak specifically to some of those cosponsors, because I got close to cosponsoring this bill until I read it. Frankly what this bill is is a fast track for developers. It is a fast track that allows them to bypass the local zoning process.

Look at this. This bill is opposed by the National League of Cities, by the National Mayors, and by the National Governors' Association. Why? It is because this bill allows that usurpation or that bypassing of the local process. What does that do? First, it is going to cost local governments a lot more money to have to defend these cases.

Remember, this case is driven by the property owner and the property owner in this case is sponsored by the Homebuilders Association. This is not the little lady in tennis shoes who we often talk about that may have conditions placed on the development of her house and therefore you have got a takings issue. What the sponsor did not tell you is that in California, the State he represents, there is in the State constitution a protection of takings issues. There is a protection in the national Constitution.

So there is nothing here that is broken. The only thing that is broken is the fact that people do not like zoning conditions, use permits, and conditions placed upon those use permits on their property.

As the gentleman from Michigan [Mr. DINGELL] indicated, you could do all kinds of things. You could complain that if you were a liquor store owner that you wanted to put your liquor store next to a high school because that local zoning may prohibit that. You could complain because you would not be allowed to put your waste dump in a residential neighborhood. Those are all issues that would generate takings issues.

I think that this body ought to wake up and listen to a former Speaker who said all politics is local. In this case, leave those politics local. Oppose this legislation, join the National League of Cities, the U.S. Conference of Mayors, the National Conference of State Legislatures, and the Judicial Conference of the United States and the President, who will veto this bill if enacted the way it comes to the floor. I oppose H.R. 1534.

Mr. COBLE. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I rise in support of this bill. I want to bring to Members' attention a single case in Louisiana, 20 years old now, a Corps of Engineers levee project. The corps denied the project in 1976. The landowners overturned it. It went to court over and over again. Eventually the EPA exercised veto authority in 1985, denying the landowners' rights. When the landowners finally filed suit following that veto exercise in 1985, which they contested in court additionally, the court ruled that the 6-year statute of limitation had passed and they no longer had a right to file a claim for takings.

Now, get this. They were in court for all these years, from 1976 to 1985. When they finally lose their case in 1985, EPA vetoes the project and therefore their land is taken from them, all viable use has been taken away. The court then rules that the 6-year statute of limitation is over and they should have filed years ago for the taking when they did not know a taking had yet occurred. They eventually had that decision overturned.

It is 20 years and these property owners have not yet received relief. This bill is vital. It will end litigation, consolidate it and protect procedural rights of property owners in America.

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentleman from Maine [Mr. ALLEN].

Mr. ALLEN. Mr. Chairman, I appreciate the gentlewoman yielding me this time. Mr. Chairman, I served as a city counselor in Portland for 6 years and as mayor of the city of Portland. I was also an attorney. So I have a perspective, I think, on this issue that I want to share with other Members.

First of all, in cities like mine, we have perfectly appropriate and sound local zoning practices. I would argue that most communities, a great many communities in this area, do very well. Second, I would say this. Although if you look around the country there is a variation between how quickly you can move through State court and how quickly you can move through Federal court, at least in my State it is more time consuming, more expensive to go to Federal court, more complicated.

I would just say to Members of this House, we have heard over and over again the urging of Members of this House to push more responsibility back to the State and local governments. We have also heard concerns about the Federal courts. What are we doing with this bill? We are pushing local land use disputes into the Federal courts so they can be dealt with there.

That is why the National Governors' Association, the National League of Cities and the U.S. Conference of Mayors are all in opposition to this bill. This bill, as they say, would give parties to a local property dispute immediate access to Federal courts before State and local processes have a chance to work. I do not think that yields better government for us here in the Congress or for our taxpayers back home.

The distinguished gentleman from California, the sponsor of this bill, said it would provide equal access to justice for ordinary landowners. I dispute that. I agree with the gentleman from California [Mr. FARR], who said this bill is fast track for developers. We should not pass this bill. The Founding Fathers never intended the Federal courts as the first resort in resolving community disputes among private property owners.

Mr. Chairman, I include for the RECORD the letter dated October 21, 1997 from those three groups, the National League of Cities, the National Governors Association, and the U.S. Conference of Mayors.

The text of the letter is as follows:

NATIONAL GOVERNORS' ASSOCIATION,
NATIONAL LEAGUE OF CITIES, U.S.
CONFERENCE OF MAYORS,
October 21, 1997.

DEAR MEMBER OF CONGRESS: We are writing to express our strong opposition to H.R. 1534, the so-called Private Property Rights Implementation Act of 1997. We assure you that state and local elected officials are deeply committed to the protection of private property rights. However, by preempting the traditional system for resolving community zoning and land use disputes, this bill would undermine authorities that are appropriately the province of state and local governments and create a new unfunded mandate on state and local taxpayers. We urge you to vote against H.R. 1534.

This bill would give parties to a local property dispute immediate access to federal courts before state and local processes have had a chance to work. The result will be substantially more federal involvement in decision making on purely local issues. This represents a significant infringement on state and local sovereignty and interferes with our ability to balance the rights of certain property owners against the greater community good or against the rights of other property owners in the same community. It also represents a significant new cost shift to state and local governments as we are forced to resolve disputes in the federal judiciary instead of through established state and local procedures.

In our view, the Founding Fathers never intended the federal courts as the first resort in resolving community disputes among private property owners. Rather, these problems should be settled as close to the affected community as possible. By removing local disputes from the state and local to the federal level, H.R. 1534 violates this principle and undermines basic concepts of federalism.

For these reasons we urge you to oppose H.R. 1534.

Sincerely,

GOV. GEORGE V. VOINOVICH,
Chairman, National Governors' Association.
MARK SCHWARTZ,
Councilmember, Oklahoma City, President, National League of Cities.
MAYOR PAUL HELMKE,
City of Fort Wayne, President, U.S. Conference of Mayors.

Mr. COBLE. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. PRYCE].

Ms. PRYCE of Ohio. Mr. Chairman, I rise in strong support of this bill. Today we have an opportunity to open the courthouse doors to America's private property owners who are clamoring outside, hoping to gain entrance merely to exercise their constitutional rights.

At one time in our Nation's history the property rights of individuals were sacred. In our Constitution the Founding Fathers provided that that no person shall be denied of life, liberty, or property without due process, nor shall private property be taken for public use without just compensation.

But increasingly local, State, and Federal Governments have overlooked the Constitution and placed more and more restrictions on land use in a manner that ignores rather than protects the interests of those who own the land. In these situations, it is only right that landowners have a fair opportunity to challenge the decisions of governmental bodies in court. But instead their access to justice is routinely denied. In fact, only 20 percent of takings cases successfully weave their way through the procedural obstacles that await them in a journey that takes an average of 9½ years to navigate.

Mr. Chairman, this bill sends a message to Federal courts that they can no longer willingly ignore takings cases. In effect, the bill will give private property owners their day in court and finally put the decision within their view.

Ms. LOFGREN. Mr. Chairman, noting that the attorney general of Ohio is opposed to the bill, I yield 1½ minutes to the gentleman from Colorado [Mr. SKAGGS].

Mr. SKAGGS. Mr. Chairman, I thank the gentlewoman for yielding me this time. I wonder if we might send the Sergeant at Arms out around the House buildings to search for conservatives. We seem to have lost our conservative grounding in this Congress, after all of the protests that we have heard over the last, almost 3 years, about the importance of returning power to the States, about mistrust of Federal judicial activism and on and on and on. Here we have this piece of legislation that will run exactly counter to the presumed doctrine of the majority party, inviting judicial activism by the Federal courts, interposing Federal intervention as the first resort rather than the last.

□ 1230

I am absolutely bewildered by this. I wonder whether the subtitle of this legislation ought to make some reference to the fact that Lewis Carol has been installed as honorary chairperson of the Committee on the Judiciary. This bill certainly represents Congress through the looking glass, in which all notions of what had been true and upright have been turned on their heads. And we are now presented with this proposal from the majority that really makes a mockery of what we thought they stood for, and what really most of us stand for, in terms of local control, the determination of local matters of land use by the authorities that are most competent to deal with the issue.

Mr. Chairman, after carefully reviewing H.R. 1534 as reported by the Judiciary Committee, I've come to the conclusion that it is not a good bill, and that we should not pass it.

It's true that this bill takes a different approach than did the so-called private property or takings legislation considered in the last Congress. This bill, at least in form, is a procedural measure, not one to revise the basic substantive law in this area. But that's about the best that can be said for it. Just because it's procedural doesn't mean that it's not a far-reaching bill. In fact, it's a radical measure.

It's radical in the way it would nationalize decisions about matters that directly affect our constituents—decisions about every neighborhood and every community.

It's radical in the way it would take those decisions out of the hands of legislators and even State judges and entrust them to Federal judges—even though some of our colleagues who are supporting it have been outspoken about their fervent desire to reduce, not enlarge, the role of the Federal Government.

And it's radical in the way it would promote Federal litigation, rather than encouraging local resolution of these local issues in ways that emphasize accommodation and that don't involve the considerable expense—including legal fees and other costs—of going into Federal court.

It's because it is such a radical measure that it's opposed by the attorney generals of 37 States. As they've written to Chairman HYDE, the bill invades the province of State and local governments and * * * literally compels Federal judges to intrude into State and local matters.

The bill is also opposed by many other groups, including the National League of Cities and the U.S. Conference of Mayors. I have received letters in opposition from the mayor of the city of Boulder, CO, and every member of the Denver City Council. Under general leave, I will include those letters at the end of my statement; for the moment, I'll just share two of the points they make.

In her letter, Mayor Durgin says:

> The city of Boulder works very hard to balance the controls it must place on private property owners, creating win-win situations. . . . In only the most unusual circumstances is it necessary for the court system to deal with property rights disputes in Boulder. . . . By interjecting the federal court system into even the most superficial takings claims, House Bill 1534 reduces the incentive for private property owners to participate in negotiated land use solutions. . . . Further, the enhanced threat of federal legal action raises the stakes for local government as it seeks to protect the general public welfare. . . . This is a grave threat to the delicate balance of public and private interests which the state and federal court system has struck in the land use arena.

The letter from the Denver Council members also puts it well. As it says, ''our political and legal system has been set up to resolve such disputes at the lowest possible level through local processes, appropriate local administrative procedures, and appeal to State courts. These traditional methods of dispute resolution are near and dear to Coloradans as this is a State with a particularly powerful tradition of local control and home rule on land use matters. The bills currently before the House and Senate to radically expand Federal jurisdiction over land use matters would be utterly contrary to this tradition in Colorado and would also contradict the recent trend in Congress to devolve power to State and local government.''

For another perspective, last week I asked Judge John L. Kane, one of the senior judges of the U.S. District Court in Colorado, to take a look at this bill and tell me how it would affect him and his colleagues.

His response made some very telling points about the language of the bill, parts of which he described as ''the sort of statutory language that gives judges fits and subjects them to accusations of 'judicial activism' when they try to determine what, if anything such language means.''

For example, he asked, ''what is 'one meaningful application'? Is it one that complies with the rules and regulations of the agency to which it is addressed? Is it one that is grammatically sensible? or decipherable? Or filed on time? Who determines whether the prospects for success are 'reasonably unlikely'? What does reasonably unlikely mean? Courts do not intervene. What is meant by 'intervention by the U.S. Court of Federal Claims is warranted to decide the merits''? Who decides what is warranted and by whom? What is meant by 'merits'? These and other terms appear throughout the proposed legislation and no definitions of procedures are presented.''

''I think,'' he said, ''the proposed legislation needs to go back to the drawing boards.''

As to how the bill might work in practice, should it actually become law, Judge Kane said that even if Congress were ready to destroy time-honored concepts of federalism, separation of powers, and finality of judgments, by passing this bill, it would not achieve its goal for what he called ''very pragmatic reasons.'' Here's what he told me:

''First, there aren't enough Federal judges and magistrates in the country to handle the anticipated caseload for the zoning cases alone that would come into Federal court, even if they did nothing else. In addition, the present wording of H.R. 1534 would encompass State forfeiture cases, condemnation cases, and nuisance cases.'' * * *

''Second, these anticipated cases would have to take their turn in waiting to be heard: Congress has already decided that criminal cases must receive priority. Given the so-called war on drugs, there are some Federal courts where scarcely any civil cases are tried. Other civil cases including civil rights, employment, and diversity jurisdictional claims must also wait their turn.''

In summary, about the effectiveness of the bill, this senior, experienced Federal judge said, ''The result which has a safe degree of predictability is more, not less, judicial gridlock.''

I think we should pay careful attention to the very serious objections to this bill raised by the attorneys general of so many States and territories.

I think we should listen closely to the many local elected officials who oppose this bill.

And I think we should pay attention to Judge Kane's analysis, and heed his advice. We should not pass this bill—instead, we should send it back to the drawing board.

CITY OF BOULDER
LESLIE L. DURGIN, MAYOR,
October 7, 1997.

Hon. DAVID E. SKAGGS,
Longworth House Office Building, Washington, DC.

Re: House Bill 1534: The Private Property Rights Implementation Act.

DEAR REPRESENTATIVE SKAGGS: I am writing to you on behalf of the Boulder City Council to request that you vote against House Bill 1534, the Private Property Rights Implementation Act, and any similar takings initiatives.

The City of Boulder is extremely sensitive to the impacts that local government actions can have on the rights of neighbors and the rights of property owners to use their land in a manner which suits their needs. The City of Boulder works very hard to balance the controls it must place on private property owners, creating win-win solutions. Often, striking the proper balance between the rights of individual property owners and the interest of the public at large entails thoughtful negotiations between community representatives and private landowners. Boulder's present vested rights and land preservation agreement with IBM is an outstanding example. In only the most unusual circumstances is it necessary for the court system to deal with property rights disputes in Boulder.

Takings legislation, such as House Bill 1534, threatens to undermine the current relationship between private land owners and local governments. By interjecting the federal court system into even the most superficial takings claims, House Bill 1534 reduces

the incentive for private property owners to participate in negotiated land use solutions. This includes the opportunity to address takings claims through local administrative procedures. Further, the enhanced threat of federal legal action raises the stakes for local government as it seeks to protect the general public welfare against the private actions of individual landowners. This is a grave threat to the delicate balance of public and private interests which the state and federal court system has stuck in the land use arena.

Finally, the City of Boulder notes that the federal government has given a great deal of attention in recent years to the notion of federalism. This is the principle that the federal government should only interject its authority in matters which are of a peculiar interest to national concerns. Clearly, the individual disputes between local governments and private landowners rarely have national implications, and the federal courts are properly loathe to become local planning boards of appeal. The Hamilton Bank precedent that House Bill 1534 seeks to overturn stands for that very proposition. Local administrative procedures and state court actions are sufficient to rectify most improper limitations on private property rights. It is at these levels that takings claims should first be adjudicated, with the federal courts serving to hear appeals of cases which are mishandled in the local and state processes. To permit landowners to skirt state and local remedies in favor of the federal court system runs completely contrary to federalist principles.

For the above reasons, the City of Boulder asks you to vote against House Bill 1534 and to oppose any similar takings legislation.

Sincerely,

LESLIE L. DURGIN,
Mayor.

CITY COUNCIL,
CITY AND COUNTY OF DENVER,
October 14, 1977.

Re: S. 1204 ''Property Owners Access to Justice Act of 1997''; H.R. 1534 ''Private Property Rights Implementation Act of 1997''.

DEAR MEMBERS OF THE COLORADO CONGRESSIONAL DELEGATION, As members of the Denver City Council, we are urging your opposition to S. 1204 and H.R. 1534, bills which stand for the extraordinary proposition that federal courts should be much more involved in local land use decisions.

As you know, debates over land use, growth management, and property rights are raging all over Colorado at the moment. Municipal officials are doing their best to balance the rights of developers and the desires of current residents to preserve existing communities and our treasured quality of life, even as growth proceeds at a break neck pace in many jurisdictions. Often our officials find themselves squeezed between two equally sincere factions, both of whom argue for protection of their property values and rights, and both whom may threaten to sue if their rights are not vindicated.

As you are also undoubtedly aware, our political and legal system has been set up to resolve such disputes at the lowest possible level through local processes, appropriate local administrative procedures, and appeal to state courts. These traditional methods of dispute resolution are near and dear to Coloradans as this is a state with a particularly powerful tradition of local control and home rule on land use matters.

The bills currently before the House and the Senate to radically expand Federal jurisdiction over land use matters would be utterly contrary to this tradition in Colorado, and would also contradict the recent trend in Congress to devolve power to state and local governments.

Before granting plaintiffs and their attorneys easier and earlier opportunities to haul Colorado local governments (and by implication their taxpayers) into Federal courts, please ask yourself one simple question: Where is the empirical evidence to show that local political institutions and state courts have been insufficient to protect the rights of property owners in Colorado?

Thank you for your attention to our concerns. Please let us know if you would like to discuss the matter with us.

Cathy Reynolds, Council President; Dennis Gallagher, Council District 1; Joyce Foster, Council District 4; Bill Himmelmann, Council District 7; Edward Thomas, Council District 10; Ted Hackworth, Council District 2; Polly Flobeck, Council District 5; Hiawatha Davis, Jr., Council District 8; Happy Haynes, Council District 11; Ramona Martinez, Council District 3; Susan Casey, Council District 6; Debbie Ortega, Council District 9; Susan Barnes-Gelt, Council At-Large.

Mr. COBLE. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. SMITH], a member of the Committee on the Judiciary.

(Mr. SMITH of Texas asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Chairman, first of all, I thank the chairman of the subcommittee for yielding me time.

Mr. Chairman, I rise in support of H.R. 1534, the Private Property Rights Implementation Act of 1997. This legislation is necessary to protect a basic civil right for all Americans: Protection against governmental confiscation of homes, farms, and businesses.

Today, the fundamental liberties of all of our citizens are threatened by a regulatory regime imposed by Government officials. The Government is able to confiscate the property of workers, farmers, and families without providing compensation.

Adding insult to injury, is a landowner's inability to have their day in court. Not only is the Government taking the private landowner's property, but is using a legal maze to prevent landowners from presenting and receiving a fair hearing on the merits of their case. Without H.R. 1534, property owners will continue to find themselves trapped in a legal nightmare from which they are unable to escape.

Mr. Chairman, I urge my colleagues to support this bill.

Ms. LOFGREN. Mr. Chairman, noting that the Attorney General of Texas opposes the bill, I yield 2 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, I would like to express to my colleagues that may be observing this debate that this really is what the gentleman from Colorado referred to as a world turned upside down. This legislation is absolutely outrageous. The unintended consequences are limitless.

I would perfectly agree, especially with the gentleman from Louisiana [Mr. TAUZIN] that if someone's property rights are hindered by a Federal action, that individual should have an expedited process to get to Federal court. But this bill goes way beyond that. This legislation deals with local zoning laws that have nothing to do with Federal action, and they have a major impact on State land use that has nothing to do with Federal action. So what we are doing here is completely taking out of the hands of your local planning commission, their right to decide zoning and land use and what is best needed for their community.

Mr. Chairman, we all want expedited Federal process when a Federal action impedes private property, but this takes the right of a local planning board in a community to have their say about how land is supposed to be used.

Land use, is it to be controlled by the Federal Government, or is it to be controlled by the State? If you think land use is a State issue and a local zoning issue, then you must vote against this legislation.

The idea that if your property is taken away for the public good, you should be compensated, that is absolutely, 100 percent for sure. But if the local government wants to regulate your property and regulate land to prevent public harm on other property, they should have a right to do that.

Mr. COBLE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Ms. PRYCE of Ohio) having assumed the chair, Mr. SNOWBARGER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1534), to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the U.S. Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when Government action is sufficiently final to ripen certain Federal claims arising under the Constitution, had come to no resolution thereon.

MAKING IN ORDER ADDITIONAL AMENDMENT AND PERMISSION TO POSTPONE VOTES DURING FURTHER CONSIDERATION OF H.R. 1534, PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 1997

Mr. COBLE. Madam Speaker, I ask unanimous consent that during further consideration of H.R. 1534 in the Committee of the Whole, pursuant to House