Resolution 271, first, it be in order to consider the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] in the form I have placed at the desk, after the disposition of the amendment offered by the gentleman from Michigan [Mr. CONYERS], as though printed in part 2 of the House Report 105–335, which shall be debatable for 10 minutes, equally divided and controlled by the proponent and an opponent; and, second, the Chairman of the Committee of the Whole may, (a) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and, (b) reduce to 5 minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT.

OFFERED BY MR. TRAFICANT OF OHIO

Insert the following after section 4 and redesignate the succeeding section accordingly:

SEC. 5. DUTY OF NOTICE TO OWNERS.

Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by the amendments made by this Act, the agency shall give notice to the owners of that property explaining their rights under such amendments and the procedures for obtaining any compensation that may be due to them under such amendments.

Mr. COBLE (during the reading). Madam Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

Mr. BOEHLERT. Madam Speaker, reserving the right to object, I would like to ask a question of the Chair. I have no objection to the Traficant amendment, but I just want to make certain it is clarified when that will occur. Will that amendment come after the Boehlert substitute? If it does, I have no objection. If it does come before the Boehlert substitute, then we have a problem.

The SPEAKER pro tempore. The Chair understands the amendment would be made in order before the Boehlert substitute.

Mr. BOEHLERT. Madam Speaker, I object, I reserve the right to object.

Mr. TRAFICANT. Madam Speaker, will the gentleman yield?

Mr. BOEHLERT. I yield to the gentleman from Ohio.

Mr. TRAFICANT. Madam Speaker, if the gentleman's substitute is passed, then his substitute would pass, with or without. This was approved unanimously. It is the only measure that gives notice to people who do not have accountants and attorneys of some protections, and has been worked out by leadership on both sides. I believe that position would not be in the best interests of our taxpayers and property owners of our country.

Mr. BOEHLERT. Madam Speaker, maintaining my reservation of objection, as I have made clear, I have no objection to the gentleman's amendment, I am in support of that amendment. I do have some serious reservations about when it would appear.

Mr. COBLE. Madam Speaker, will the gentleman yield?

Mr. BOEHLERT. I yield to the gentleman from North Carolina.

Mr. COBLE. Madam Speaker, I want to ask a question of the gentleman from Ohio [Mr. TRAFICANT] in an effort to clear the cloud.

Would the gentleman from Ohio be willing for his amendment to follow that of the gentleman from New York [Mr. BOEHLERT] since it appears he will object if it does not?

Mr. TRAFICANT. Madam Speaker, if the gentleman will yield further, I do not, as long as if my amendment passes it would be in order to either of the actions taken here today that might pass, if it would be amendable to both.

Mr. BOEHLERT. Madam Speaker, reclaiming my time, maybe we can resolve this. I have had some conversations away from the microphone.

Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

Ms. LOFGREN. Madam Speaker, reserving the right to object, and I will not object. I just want to clarify that the minority supports the desire of the gentleman from Ohio [Mr. TRAFICANT] to debate this amendment. That does not necessarily mean we support the amendment itself, but the gentleman from Ohio's right to offer it, subsequent to the Boehlert amendment.

Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Without objection, the request is granted.

There was no objection.

GENERAL LEAVE

Mr. COBLE. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1534.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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 on the State of the Union for the further consideration of the bill, H.R. 1534.

☐ 1240

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 further 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. When the Committee of the Whole rose earlier today, the gentleman from North Carolina [Mr. COBLE] had 3 minutes remaining in debate, and the gentlewoman from California [Ms. LOFGREN] had 2 minutes remaining.

Ms. LOFGREN. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, what happened to the Federalists in the Congress? We were going to empower the States. This is the most extraordinary preemption of local and State laws in my 11 years in the Congress.

This is unbelievable. We heard horror stories from people from States that do not have a regular land use process. Those States should adopt a land use process. Those local jurisdictions should adopt a land use process, and it should be regular. It should have process of appeal and litigation through their States. But not the Federal Government.

Do we want the Federal Government wading into every single local land use dispute? Peep shows next to schools, liquor stores next to high schools? I think not.

I do not think the people on that side of the aisle really believe that. They are playing here to an audience of special interests, very well-funded special interests. This is horrible legislation for small town America. It is horrible legislation for our States and States' rights. Reject this legislation.

Ms. LOFGREN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I believe in the fifth amendment and the minority believes in the fifth amendment. I believe there ought to be compensation when there is a taking, and there ought to be due process. There is no dispute about that. But what we dispute is this remedy. We have heard a lot of discussion about widows who have been abused by the heavy-handed Government. But we need to get beyond that appealing image to what is really going on here.

Zoning protects neighborhoods, zoning protects homeowners, and what this bill does is allow developers rights that are much greater than those that would attach to neighborhoods and to homeowners.

These rights will attach, whether it is 20,000 housing units being built, or whether a town is trying to regulate the hours of operation of a topless bar or pornographic bookstore. That is what is so terribly flawed with this legislation.

Mr. Chairman, I urge my colleagues to oppose this and to search for a more rational response to this problem.

□ 1245

Mr. COBLE. Mr. Chairman, I yield the balance of my time to the gentleman from Kansas [Mr. RYUN].

The CHAIRMAN. The gentleman from Kansas [Mr. RYUN] is recognized for 3 minutes.

Mr. RYUN. Mr. Chairman, I rise in support of H.R. 1534. Mr. Chairman, one of the pillars of our democracy is the right of every individual to own private property. In 1792, James Madison said this, and I quote: ''That is not a just government nor is property secure under it where the property which a man has in his personal safety and personal liberty is violated by an arbitrary seizure of one class of citizens for the service of the rest.''

Because our Founding Fathers understood this very important principle, they included a guarantee in the Bill of Rights to protect private property owners from politicians and bureaucrats who believe that they know best how to use someone else's lands.

The fifth amendment to the Constitution assures the Government cannot take a person's private property without first providing the owner due process and just compensation. Unfortunately, the fears which motivated our Founding Fathers to include this property guarantee are being realized today.

For example, in the first 10 years after the enactment of the 1983 Rails to Trails Act, trails groups and State governments used that law to take the property from 62,000 landowners. Yet, not one of those aggrieved farmers and homeowners has received a single penny in compensation for their loss.

While courts have ruled that compensation must be paid to the property owners, endless bureaucratic redtape would first require a small Kansas farmer to retain a high-priced Washington lawyer to begin jumping over administrative hurdles. This lawyer would then need almost 10 years of expensive court time before securing a farmer's compensation for his strip of land that was taken to create a recreational trail for others to use.

All we have to do is do a little math, and if the value of a farmer's confiscated land is about $30,000 but a Washington lawyer would charge the farmer $100,000 to pursue the farmer's claim, there is no farmer who will be able to afford any compensation. That is why this private property rights bill, this one particularly, H.R. 1534, is so important. It is our duty as Members of this House, the peoples' House, the House of Representatives, to protect private property owners from arbitrary actions and guarantee their right to due process.

Mr. Chairman, I urge my colleagues to vote ''yes'' for property rights, to vote ''yes'' for due process, and to vote ''yes'' on H.R. 1534.

Mr. VENTO. Mr. Chairman, I rise in strong opposition to H.R. 1534, the Private Property Rights Implementation Act.

Mr. Chairman, last night I brought a germane amendment to the Rules Committee and asked that it be made in order. My amendment seeks to balance this bill with adequate protection for the 65 million Americans that own their own homes. It would have limited the application of H.R. 1534 to States that provide adequate protection for homeowners in this country. All I asked for was 30 minutes to make my case to the Members of this House. My request was denied.

This measure, H.R. 1534, is an end of the session effort to avert full debate on a very important issue, property rights, the rights of special interests not the property rights of homeowners, yet on the floor today the rule was again expanded to accommodate another unheard, unrequested amendment.

I don't know for the life of me why the leadership in this House of Representatives is not willing to spend 30 minutes on the concerns of homeowners. H.R. 1534 is not a purely procedural, noncontroversial bill, as supporters of this bill would have you believe, they are wrong. This bill sides with developers who have made their views clear and, of course, generously contribute to the campaigns of those who support them. This is a new judicial superhighway that places the decisions in Federal courts, out of the hands of local government and State courts.

Ironically, the underlying bill we are considering today does not protect the property of homeowners—the most important investment made by the American family—from adverse actions by State and local government and others. This bill protects developers that may have been unjustifiably or justifiably stymied by local and State courts that are carrying out their own laws and rules. Under H.R. 1534, Congress rearranges this authority and moves it away from local and State governments. It's ironic that a Congress emblematic of devolution initiatives over the past several years are suddenly moving to superimpose such a national policy. The Federal courts, with this new guideline, will be no doubt more friendly to the interests of developers than State and local courts. The handwriting is on the wall as to the expense and policy change that this bill gives developers to easier access, and assure more profitable treatment in the Federal courts.

The real motive I believe is apparent, to first remove local decisionmaking power from communities, States, and the respective courts. And in the future create a wholly new class of takings which will hamstring the United States both State and Federal with a new class of taxpayer payments whenever zoning and the limits of common interest for the common good guide the use of real property to stop pollution, to enhance—their community they would be forced to buy theoretical development rights—this turns the local decisionmaking on its head.

I have drafted an amendment which is very important and seeks to balance this newly proposed policy path. I must admit, Mr. Chairman, I have some interests to worry about, too. They are the property homeowners of St. Paul, of Minnesota, and the Nation—the families that work hard every day and believe in the importance of neighborhoods and communities and their only property is their family homes. My amendment would have sought to at least protect them and their homes. It would have prevented this bill from going into effect in States that have not passed laws that protect homeowners' property rights. These laws will have to provide families with adequate notice when adverse development is moving in to affect their property. The intent was to provide homeowners with guaranteed access to the courts when their property is devalued by harmful developments nearby. I'm not sure anybody would oppose such an amendment. It will significantly improve H.R. 1534 and insures protection of the rights of American families and homeowners. We all have homeowners in our districts, and they deserve this right a priori.

All I asked for, Mr. Speaker, was 30 minutes. Claims have been made we simply don't have time to consider all the amendments that are in order. What I want to know is why we are wasting floor time on legislation that is opposed not just by all the environmental groups. But, Mr. Chairman, this bill is opposed by the National League of Cities, the Conference of Mayors, 40 State attorneys general, and is headed for a certain veto by the President. With a list that long you have to wonder who supports this bill and why. The point is, however, that we are engaged in a futile exercise. If we have the time to consider this bill on the floor, we certainly have time to consider the property rights of homeowners in this country, but the advocates of this legislation obviously feared this germane amendments; that placed homeowners property rights on a par with developer's for who this measure will benefit.

This procedure for debate silences the voices of the 65 million Americans who own their own homes and are concerned about reckless activities that could cause their

most precious investment to lose its value. For these reasons, I urge my colleagues to resoundingly defeat this measure and maintain the protections accorded homeowners by State and local governments, they are far better served at the local level where they have a place at the table than being shut out by this redefined property rights effort in the Federal courts where they are for all practical purpose excluded.

Nr. NADLER. Mr. Chairman, I rise to strongly oppose this bill which would override local zoning procedures, undermine local governments, burden Federal courts, and weaken efforts to protect public health, welfare, and the environment. It is bad policy and ought to be soundly rejected.

The current judicial procedures, which may appear cumbersome, have in fact served to protect communities across the Nation from misguided property use which may have been detrimental to the society at large. This bill will allow those who seek to risk public health, safety, and welfare for private gain to go over the heads of local officials and appeal directly to Federal judges, some of whom may have less understanding and expertise in the issues and concerns of the local community.

We learned while considering this bill in committee that this bill is specifically designed to undermine legitimate efforts to protect pubic health and safety. During consideration of this bill in committee, I offered an amendment to ensure that in cases where public health and safety are involved, the plaintiff cannot circumvent State and local courts to get the Federal courts. And the bill's sponsor rejected it. It appears then that supporters of this bill would deliberately seek to undermine the health and safety of our Nation's communities. That is simply wrong, and more than that, it is shameful.

I also want to mention that it appears that this bill could be used to undermine rent regulation in cities like New York, because it may allow landlords to challenge rent regulation and public housing laws and rulings in expedited fashion in Federal court. Tenants may lack the financial resources, the legal know-how or standing to appear in Federal court to defend their rights. Some have argued that this bill could undermine tenants' rights and threaten to eliminate low- and moderate-income housing in some of our biggest cities.

I urge my colleagues to oppose this bill that would jeopardize pubic health, destroy the environment, and put citizens' lives in danger.

Mr. YOUNG of Alaska. Mr. Chairman, I rise in support of H.R. 1534, the Private Property Rights Implementation Act of 1997.

This bill would streamline the court procedures when a case is brought by a private property owner to protect their legal and civil rights as guaranteed in the fifth amendment of the U.S. Constitution. This is a bill that is sorely needed.

As chairman of the Committee on Resources, we have documented in our hearings the many cases where governments assert the right to set aside private lands for the protection of wildlife.

When a landowner wants to sell land and the Government pays for the land, that is legal and an acceptable manner for the Government to protect wildlife.

However, as is happening more frequently, the Government sometimes finds it inconvenient to find the funds to buy the land, so they designate it as habitat for an endangered species.

When that happens, landowners find that they cannot use their land. In the last 2 years, under extreme pressure from this Republican Congress, the Government is beginning a process to allow landowners to use land designated as habitat, but only at a very high cost to landowners.

When landowners cannot afford to go to court to protect their legal and civil rights, the Government can use pressure to take the land from the landowner.

We need to give landowners a more level playing field. We need to ensure that going to court is not so expensive that only the biggest and richest landowners can afford to protect their rights.

A case in point is the Headwaters Forest in California. For years the Government tried to use various forestry laws and the ESA to force the landowner off a portion of its land.

The landowner filed a takings suit in the court of claims and now the Government has come to the bargaining table and offering to pay for the property. This would not have happened if this landowner had not been a large, wealthy corporation with the resources to fight a long and an expensive court battle.

Now some environmentalists are arguing that this bill would increase the number of Federal lawsuits. Some environmentalists are now in the business of filing lawsuits. In the last 10 years, environmentalists have received over $10 million in payments from the Federal Treasury for filing endangered Species Act lawsuits. I believe many of these lawsuits are frivolous and an abuse of the courts, and their numbers are increasing dramatically. For environmentalists to argue against allowing average citizens to sue at the same time they are making a living off their lawsuits is hypocrisy of the highest order. I have a list of environmentalists who have received payments for lawsuits and would ask that it be entered into the RECORD with my testimony.

Let's ensure that the smallest and poorest landowner can have the same rights as the biggest corporation or the environmental groups. Let's pass H.R. 1534 and protect our constitutional rights.

ATTORNEY FEES AWARD BY ORGANIZATION

Name	Court No.	District	Amount
Alaska Wilderness Recreation and Tourism Assoc. v. Gary A. Morrison, et al. (Tongass Nat'l Forest)	94–033	Alaska	$853.20
Bay Institute of San Francisco v. Lujan—Delta Smelt	92–2132	California East	60,000.00
Bay Institute of San Francisco, et al. v. Babbitt—Delta Smelt	94–0265	California East	5,000.00
Biodiversity Legal Foundation v. Babbitt (Categroy 2 Species)	96–641	District of Columbia	10,000.00
Biodiversity Legal Foundation v. Babbitt	95–601	Colorado	1,000.00
Biodiversity Legal Foundation v. Babbitt	95–382	Colorado	8,000.00
Biodiversity Legal Foundation v. Babbitt	95–1815	Colorado	3,500.00
Biodiversity Legal Foundation v. Babbitt (Pending see above)—N. Am. Wolverine	95–816	Colorado	500.00
Biodiversity Legal Foundation, et al. v. Babbitt—Flatwoods Salamander	94–0920	District of Columbia	5,000.00
Biodiversity Legal Foundation, et al. v. Babbitt—Flatwoods Salamander	94–0920	District of Columbia	3,815.00
Biodiversity Legal Foundation, et al. v. Babbitt—Western Boreal Toad	94–1086	Colorado	1,408.19
Biodiversity Legal Foundation v. Babbitt—Selkirk Mountain Woodland Caribou	94–02441	District of Columbia	4,000.00
Biodiversity Legal Foundation v. Babbitt	95–2509	Colorado	3,435.61
California Trout, et al. v. Babbitt (Santa Ana Speckled Dace) (Pending see above)	95–3961	California North	40,000.00
California Native Plant Society v. Manuel Lujan, Jr. (Pending see above)—Plant listings	91–0038	California East	16,678.25
Canadian Lynx, Greater Ecosystem Alliance v. Lujan—Listing of Can. Lynx	92–1269	Washington West	2,000.00
Canadian Lynx, Greater Ecosystem Alliance v. Lujan—Listing of Can. Lynx	92–1269	Washington West	9,500.00
Citizens Cmte to Save Our Canyons, et al v. USFS, Bernie Weingardt, Dale Boswort (John Paul Area)	95–68	Utah	145.50
Clemmys Karmorata v. USFWS—Western Pond Turtle, Red Legged	93–6135	Oregon	2,522.30
CLR Timber Holdings, Inc. et al v. Bruce Babbitt, et al (Marbled Murrelet)	94–6403	Oregon	40,000.00
Colorado Wildlife Federation v. Turner—Razorback Sucker	92–884	Colorado	5,000.00
Colorado Wildlife Federation v. Turner—Razorback Sucker	92–884	Colorado	31,351.90
Colorado Environmental Coalition v. J. Turner—Razorback Sucker	91–1765	Colorado	5,168.40
Conservation Council for Hawaii, et al v. Manuel Lujan and John F. Turner	89–00953	Hawaii	44,635.25
Defenders of Wildlife v. Thomas—Strychnine	Strychnine	Minnesota	122,500.00
Desert Tortoise, et al. v. Lujan—Ward Valley—Tortoise	93–0114	California North	69,000.00
Dioxin/Organi-chlorine Center and Columbia River United v. Dana Rasmussen	91–1442	Washington West	61,500.00
Earth Island Institute, et al v. Manuel Lujan—5 Year Review	91–6015	Oregon	32,338.70
Edward Wilkinson Mudd Jr. v. William Reilly Admin., EPA—CWA/ESA consultation	91–1392	Alabama North	39,000.00
Energy and Resource Advocates, et al vs. Kenneth R. Quitoriano, et al and James D. Watkins (Energy Dept.)—(Purex Waste)	90–2479	California North	10,000.00
Environmental Defense Center v. Babbitt—Red Leggedfrog/salamander	94–0743	California Central	4,074.75
Environmental Defense Center v. Babbitt—Fairy Shrimp	94–0788	California Central	3,815.00
Environmental Defense Center v. Bruce Babbitt—Western Pond Turtle	93–1847	California Central	4,700.00
Environmental Defense Center v. Babbitt—Red Legged Frog	95–2867	California Central	44,511.53
Environmental Defense Center v. Lujan—Tidewater Goby	92–6082	California Central	7,500.00
Environmental Defense Center v. Babbitt—California Tiger Salamander	93–3379	California Central	4,300.00
Environmental Defense Center v. Bruce Babbitt—Southwestern Willow Flycatcher	93–1848	California Central	4,700.00
Environmental Defense Fund v. Lujan—Desert Tortoise	89–2034	District of Columbia	2,237.50
Florida Key Deer, et al v. Robert H. Morris—Fema/Flood Insurance	90–10037	Florida South	130,000.00
Friends of the Wild Swan, Inc., Alliance for the Wild Rockies, Inc., et al. v. Babbitt—Bull Trout Listing	94–0246	District of Columbia	4,500.00
Friends of Walker Creek Wetlands v. Dept. of the Interior—Nelson's Checker Mallow	92–1626	Oregon	12,000.00
Fund for Animals v. Manuel Lujan, et al. (Pending see above) ESA Listings	92–800	District of Columbia	67,500.00
Fund for Animals v. Manuel Lujan (Pending see above) (ESA Listings)	92–800	District of Columbia	24,500.00
Fund for Animals, Swan View Coalition, D.C. ''Jasper'' Carlton (Director, of Biodiversity Legal Foundation) v. Turner—Grizzly Bears	91–2201	District of Columbia	36,000.00
Greater Gila Biodiversity Project v. USFWS—Pygmy Owls	94–0288	Arizona	2,048.91

ATTORNEY FEES AWARD BY ORGANIZATION—Continued

Name	Court No.	District	Amount
Greater Gila Biodiversity Project v. USFWA—Loach Minnow	93–1913	Arizona	11,000.00
Greater Yellowstone Coalition, et al. v. F. Dale Robertson (USFWS)—Grizzly bears	93–1495	District of Columbia	32,750.00
Greenpeace v. Baldridge	86–0129	Hawaii	88,794.01
Hawaiian Crow v. Manuel Lujan—Hawaiian crow	91–00191	Hawaii	195,000.00
Hughes River Watershed Conservancy, et al v. Dan Glickman, et al	1–94–113	West Virginia North	63,367.71
Idaho Department of Fish and Game v. NMFS—hydro transfer/salmon	93–1603	Oregon	8,405.06
Idaho Conservation League v. Manuel Lujan, et al.—Bruneau Hot Springs Snail	92–0260	Idaho	21,166.00
Idaho Conservation League v. Babbitt—White Sturgeon	94–0351	Idaho	5,000.00
Idaho Conservation League, et al. v. Lujan—Idaho Springsnail	92–0406	Idaho	8,000.00
Jeffrey Mausolf, William Kullberg, Arlys Strehlo; Minnesota United Snowmobilers Association v. Babbitt (Wolf/Eagle) (Pending see above)	95–1201	Minnesota	28,821.50
La Compania Ocho Inc., et al v. USFS, et al (Carson Nat'l Forest)	94–317	New Mexico	303,635.67
Marbled Murrelet et al v. Manuel Lujan (Pending see above)—Listing and critical habitat for marbled murrelet	91–522	Washington West	61,109.47
Mountain Lion Foundation v. Babbitt—Santa Ana Mountain Lion	94–1165	California East	6,500.00
National Audubon Society et al. v. Babbitt et al.—Guam species	93–1152	District of Columbia	22,500.00
National Audubon Society v. Lujan—Least Bell's vireo	92–209	California South	7,348.75
National Audubon Society v. Babbitt, et al.—Snowy Plover	94–0105	California South	7,540.61
National Wildlife Foundation, et al. v. Endangered Species Committee, et al	79–1851	District of Columbia	20,000.00
National Wildlife Federation, et al v. Robert Mosbacher (Commerce)	89–2089	District of Columbia	42,500.00
Native Plant Society of Oregon v. U.S. DOI—Oregon Plants	93–180	Oregon	13,046.19
Natural Resources Defense Council, et al. v. Bruce Babbitt—Desert Tortoise	93–0301	California North	262,096.76
Natural Resources Defense Council v. Donald Hodel (Kesterson)	85–1214	California East	57,000.00
Natural Resources Defense Council v. Donald Hodel (Kesterson)	85–1214	California East	518,000.00
Northern Spotted Owl, et al v. Donald Hodel, et al.—Spotted Owl Listing	88–573	Washington West	56,718.00
Northwest Forest Resource Council v. Dan Glickman (Emergency Salvage Timber Sale)(Pending see above)	95–6244	Oregon	298,144.36
Northwest Coalition for Alternatives to Pesticides v. Babbitt	94–6339	Oregon	10,500.00
Oregon Council of the Federation of Fly Fishers v. Brown (Cutthroat Trout)(Pending see above)	95–1969	Oregon	24,706.49
Oregon Trout Inc., et al v. USFS (Trout Creek Salvage Sale)	96–1460	Oregon	21,400.00
Oregon Natural Resources Council v. Babbitt—Western lily	94–666	Oregon	4,000.00
Oregon Natural Resources Council v. Department of Commerce	93–293	Oregon	16,200.00
Oregon Natural Resources Council v. Schmitten (Steelhead Trout)(Pending see above)	95–3117	California North	120,952.54
Pacific Rivers Council v. Thomas (Pending see above)—Salmon/Umatilla Forest	92–1322	Oregon	165,000.00
Resources Limited Inc., et al v. F. Dale Robertson, et al (Pending see above)—Flathead Forest/Grizzlies	89–41	Montana	47,000.00
			90,000.00
Restore: The North Woods v. Babbitt (Pending see above)—Atlantic salmon	95–37	New Hampshire	5,400.00
Save Our Springs Legal Defense Fund, Inc. v. Babbitt (Barton Springs Salamander) (Pending see above)	95–230	Texas West	72,500.00
Save our Ecosystems, et al. v. Federal Hwy Admin. (West Eugene Parkway)	96–6161	Oregon	2,560.80
Sierra Club and League for Coastal Protection v. John Marsh, et al	86–1942	California South	44,774.16
Sierra Club Legal Defense Fund v. Manuel Lujan	89–1140	District of Columbia	9,000.00
Sierra Club v. Lujan (Pending see above)—Edwards Aquifer** same case but Justice split the fee in four portions	91–069	Texas West	666,666.67
Sierra Club v. Lujan (Pending see above)—Edwards Aquifer	91–069	Texas West	666,666.67
Sierra Club v. Lujan (Pending see above)—Edwards Aquifer	91–069	Texas West	666,666.66
Sierra Club v. Lujan (Pending see above)—Edwards Aquifer	91–069	Texas West	1,550,000.00
Sierra Club, et al. v. Bruce Babbitt, et al.—10 species of plants and animals	93–1717	California South	11,368.76
Sierra Club, et al v. James A. Baker, et al—Turtles??	89–3005	District of Columbia	18,583.72
Sierra Club, et al v. Richard Lyng (Pending see above)—Southern Pine Beetle and Red Cockaded Woodpecker	85–69	Texas East	149,647.50
Sierra Club, et al. v. David Garber, et al	93–069	Montana	55,000.00
Silver Rice Rat, et al v. Manuel Lujan—Silver Rice Rat Listing	89–3409	District of Columbia	19,500.00
Southern Utah Wilderness Alliance v. Bruce Babbitt—Virgin River Club	93–2376	Colorado	8,500.00
Southern Utah Wilderness Alliance v. Morgenweck—Virgin Spinedace	94–717	Colorado	4,200.00
Southwest Center for Biological Diversity v. Babbitt (SW Willow Flycatcher)(Pending see above)	94–1969	Arizona	15,509.11
Southwest Center for Biological Diversity, et al. v. USFWS—Loach Minnow/spinedace	94–0739	Arizona	1,000.00
Southwest Center for Biological Diversity v. Babbitt (Pending see above)	94–2036	Arizona	40,000.00
Southwest Center for Biological Diversity v. Babbitt	94–1946	Arizona	1,971.01
Southwest Center for Biological Diversity, et al. v. USFWA—Jaguar listing	94–0696	Arizona	1,665.00
Southwest Center for Biological Diversity v. Babbitt—Arizona Willow	94–1034	Arizona	5,145.00
Southwest Center for Biological Diversity v. Babbitt (Laguna Mtn Skipper)	96–1170	California South	17,000.00
Dr. Robin Silver et al. v. Babbitt (Pending see above)	94–0337	Arizona	4,000.00
Dr. Robin Silver v. Thomas (USFWS) (Mexican Spotted Owl) (Pending see above)	94–1610	Arizona	231,393.75
Dr. Robin Silver, et al. v. Babbitt (Pending see above)—Mexican spotted owl	94–0337	Arizona	102,418.86
Steven Krichbaum (w/Virginias for Wilderness) & Michael Jones v. USFS, William Damon (GW Nat'l Forest)	96–0108	Virginia West	345.00
Swan View Coalition Inc v. USFS (Flathead Forest/Grizzlies)(Pending see above)	93–7	Montana	23,700.00

Mr. DOOLEY of California. Mr. Chairman, I rise today to express my support for H.R. 1534, the Private Property Implementation Act. I believe this bill takes a new, more modest approach to the issue of property rights and has received widespread bipartisan support. The legislation helps property owners by clearing some of the legal and procedural hurdles that make it both excessively time consuming and expensive to assert their claims. This bill proposes to do nothing except clarify the jurisdiction of Federal courts to hear and determine issues of Federal constitutional law.

H.R. 1534 is vastly different from previous property rights bills. It does not attempt to define for a court when a taking has occurred nor does it change or weaken any environmental law. The bill would have no budgetary impact because, unlike previous bills, it contains no compensation requirement or trigger. Simply put, the legislation amends Federal procedural laws governing the jurisdiction of the U.S. district courts. H.R. 1534 would provide more straightforward access to Federal courts for property owners seeking redress of their fifth amendment rights.

There has been a lot of controversy generated surrounding this bill. More of the criticism of this legislation is based upon the assumption that the bill cuts local governments out of the decisionmaking process when it comes to land use. Nothing could be further from the truth.

The truth is that H.R. 1534 applies only to Federal claims based on the 5th and 14th amendments that are filed in Federal court. The bill creates no new cause of action against local governments. H.R. 1534 is only a procedural bill, clarifying the rules so a decision can be reached faster on the facts of the case instead of wasting taxpayer money on jurisdictional questions.

Local governments will have no new limits on their ability to zone or regulate land use. Local agencies will get at least two, maybe three, chances to resolve a land use decision locally before their decision will be defined as ''final''—once on the original application, once on appeal, and yet again on review by an elected body.

H.R. 1534 doesn't provide a ticket to Federal court—individuals already have a right to go to Federal court. The bill simply provides an objective definition of when ''Enough is Enough,'' so that both parties in a land use dispute can participate in meaningful negotiations. I believe H.R. 1534 represents a moderate approach that Members can and should support. Let's not miss an opportunity to do something that will provide a direct benefit to our constituents.

Mr. NEUMANN. Mr. Chairman, I rise today in support of H.R. 1534—the Private Property Rights Implementation Act. I strongly believe land use decisions should be made at the local level to the greatest degree possible. In fact, this Congress has fought hard to move more Federal programs out of the hands of Washington bureaucrats and into the control of the folks back home. The folks in Wisconsin and other States are better suited to make decisions that affect local areas than bureaucrats in Washington. Nevertheless, there are limitations that exist on local governments to ensure they do not trample on the rights of individuals. Those limitations are embodied in the Constitution and the Bill of Rights.

H.R. 1534 allows a property owner, who feels his or her constitutional rights have been violated, a chance to seek protection in Federal court—the same chance that anyone else would have. H.R. 1534 simply puts fifth amendment protections on par with other constitutional rights.

Those who argue that H.R. 1534 would ''federalize local land use decisions,'' have long supported Federal land use controls to protect the environment. Where is the consistency? Support H.R. 1534 and support the right of all Americans to be treated equally under the Constitution—even property owners.

Mr. GOSS. Mr. Chairman, this is a tough subject, involving the need to balance protection of constitutionally guaranteed private property rights with other constitutional guarantees of public health, safety, and welfare as traditional, legitimate functions of Government.

While I agree this is a subject that needs our attention, and I commend Mr. GALLEGLY for his work in bringing the matter forward, I do have some concerns about the bill we are about to consider.

As a former mayor and county commissioner, I'm particularly interested in H.R. 1534. While the current system we have of layering government an division of authority isn't perfect, I believe it works well and ensures a balanced role for all three levels of government involved in these decisions. We ought to trust the local officials to work through the zoning issues. They're the ones on the frontlines—they deal with these questions every day and are in the best position to be directly responsive to the needs and concerns of the community. Of course, there are poster child examples of the extreme development abuses and cases of egregious takings without compensation.

If there are questions of State law that need to be resolved, we need State courts to decide those issues. If a legitimate takings claim exists, it is critical we ensure landowners their day in court.

We need to maintain for local officials a meaningful opportunity to work with the landowners and other constituents to craft a compromise. In my view, it is not appropriate to have the Federal Government deciding or pressuring local land use questions. In addition, some critics of this bill have argued that the Federal judiciary would be flooded with claims and simply could not handle the caseload that would result if this bill were enacted. For example, the Federal district court for the area of Florida that I represent is already short handed and has a backlog of cases that is measured in years, not just months. I think we need to ensure that any changes to the current system take these concerns into account.

In the end, Mr. Speaker, balancing the right of a landowner to develop his property within the bounds set by the health, safety, and welfare interests of the community is a difficult question—I, for one, do not believe there's any particular magic a Federal court has that can solve these problems and make them go away.

Mrs. TAUSCHER. Mr. Chairman, I am a cosponsor of H.R. 1534, the Private Property Rights Implementation Act of 1997 because I believe that relief needs to be provided to property owners who are seeking finality to their land use plans, and I have become convinced that reform is necessary.

Since cosponsoring the measure, I have heard from opponents, especially many of the local elected officials from the 10th Congressional District, whom I'm proud to represent. I have continued to meet with both advocates and opponents to discuss in depth many of the concerns raised and fully explore the various interpretations of the bill as amended. Earlier this week, I wrote to Chairman HYDE of the House Judiciary Committee with several of my questions and urged him to postpone floor consideration of the bill until these issues are sufficiently resolved. Unfortunately, this measure is before the full House for consideration today and I, despite my support for reform, cannot vote for a measure with such important and potentially far-reaching implications without the time needed to fully explore the ramifications of this amended bill.

As I stated, I want to see a more streamlined and fair process for property owners, and I wish that this body had taken the time necessary in developing a needed reform measure, without overburdening our cities and counties. It is my hope that we can continue to work on this issue in the future to develop a consensus bill that can be supported by a coalition of involved parties.

Mr. PORTER. Mr. Chairman, while I realize that it is too late to formally remove my name as a cosponsor of H.R. 1534, I want to indicate that I do not support this bill in its current form. My initial understanding of this legislation was that its central thrust was to facilitate the ability of aggrieved parties to have Federal question claims adjudicated by Federal judges. However, it is now clear that the bill would significantly alter the abstention doctrine and more importantly, would allege to alter the Supreme Court definition of ripeness. I am concerned that a legislative effort to alter such a constitutional doctrine may be unconstitutional. I support the effort of my colleague, Mr. GALLEGLY, to make reasonable changes to unfair impediments to the consideration of takings claims but, acknowledging the two concerns outlined above, I cannot support this legislation.

Mr. COBLE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill, as modified by the amendments printed in part 1 of House Report 105–335, shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered as read.

The text of the committee amendment in the nature of a substitute, as modified by the amendments printed in part 1 of House Report 105–335, is as follows:

H.R. 1534

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Rights Implementation Act of 1997''.

SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES.

Section 1343 of title 28, United States Code, is amended by adding at the end the following:

''(c) Whenever a district court exercises jurisdiction under subsection (a) in an action in which the operative facts concern the uses of real property, it shall not abstain from exercising or relinquish its jurisdiction to a State court in an action where no claim of a violation of a State law, right, or privilege is alleged, and where a parallel proceeding in State court arising out of the same operative facts as the district court proceeding is not pending.

''(d) Where the district court has jurisdiction over an action under subsection (a) in which the operative facts concern the uses of real property and which cannot be decided without resolution of an unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question certified to it, the district court shall proceed with resolving the merits. The district court shall not certify a question of State law under this subsection unless the question of State law—

''(1) will significantly affect the merits of the injured party's Federal claim; and

''(2) is patently unclear and obviously susceptible to a limiting construction as to render premature a decision on the merits of the constitutional or legal issue in the case.

''(e)(1) Army claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a property right or privilege secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State of territory of the United States, that causes actual and concrete injury to the party seeking redress.

''(2)(A) For purposes of this subsection, a final decision exists if—

''(i) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken

''(ii)(I) one meaningful application, as defined by the locality concerned within that State or territory, to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable statute, ordinance, custom, or usage provides a mechanism for appeal to or waiver by an administrative agency; or

''(II) one meaningful application, as defined by the locality concerned within that State or territory, to use the property has been submitted but has not been approved, and the disapproval explains in writing the use, density, or intensity of development of the property that would be approved, with any conditions therefor, and the party seeking redress has resubmitted another meaningful application taking into account the terms of the disapproval, except that—

''(aa) if no such reapplication is submitted, then a final decision shall not have been reached for purposes of this subsection, except as provided in subparagraph (B); and

''(bb) if the reapplication is not approved, or if the reapplication is not required under subparagraph (B), then a final decision exists for purposes of this subsection if the party seeking redress has applied for one appeal or waiver with respect to the disapproval, which has not been approved, where the applicable statute, ordinance, custom, or usage provides a mechanism of appeal or waiver by an administrative agency; and

''(iii) in a case involving the use of real property, where the applicable statute or ordinance provides for review of the case by elected officials, the party seeking redress has applied for but is denied such review.

''(B) The party seeking redress shall not be required to apply for an appeal or waiver described in paragraph (1)(B) if no such appeal or waiver, is available, if it cannot provide the relief requested, or if the application or reapplication would be futile.

(3) For purposes of this subsection, a final decision shall not require the party seeking redress to exhaust judicial remedies provided by any State or territory of the United States.

''(f) Nothing in subsections (c), (d), or (e) alters the substantive law of taking of property, including the burden of proof borne by the plaintiff.''.

SEC. 3. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

''(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but

was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

''(2) For purposes of this subsection, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

''(B) one meaningful application to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if application or reapplication to use the property would be futile.

''(3) Nothing in this subsection alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.''

SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

''(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

''(B) one meaningful application to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable law of the United States provides a mechanism for appeal to or waiver.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if application or reapplication to use the property would be futile. Nothing in this paragraph alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.''.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to actions commenced on or after the date of the enactment of this Act.

The CHAIRMAN. No amendment to the committee amendment in the nature of a substitute is in order except a further amendment in the nature of a substitute offered by the gentleman from Michigan [Mr. CONYERS], or his designee. That amendment shall be considered as read, shall be debatable for 30 minutes, equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment.

If that further amendment is rejected or not offered, no other amendment is in order except, No, 1, the Traficant amendment made in order by the House today; and, No. 2, the amendment printed in part 2 of the report, which may be offered only by the Member designated in the report, shall be considered as read, shall be debatable for 30 minutes, equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment.

Pursuant to the order of the House of today, the Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on the Traficant amendment made in order today by the order of the House, and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows that recorded vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in that series of questions shall not be less than 15 minutes.

The Conyers amendment not being offered, for what purpose does the gentleman from Ohio rise?

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT:

Insert the following after section 4 and redesignate the succeeding section accordingly:

SEC. 5. DUTY OF NOTICE TO OWNERS.

Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by the amendments made by this Act, the agency shall give notice to the owners of that property explaining their rights under such amendments and the procedures for obtaining any compensation that may be due to them under such amendments.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. Pursuant to the order of the House today, the gentleman from Ohio [Mr. TRAFICANT] and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Ohio [Mr. TRAFICANT].

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

Mr. Chairman, I support, in principle, the fact that when a Federal agency takes an action that limits the use of private property or causes the damage in property values that compensation is in order, and proper procedures affecting those goals shall be implemented.

In essence, I support H.R. 1534. I want to commend the sponsor, the gentleman from California, Mr. GALLEGLY, and the gentleman from North Carolina, Chairman COBLE, for this measure. I have supported it in the past. I support it today.

My measure was added as an amendment the last time this legislation was offered on the floor, and unanimously accepted. Here is what it says: When a Federal agency takes an action that limits the use of or causes property damage, the agency shall give notice to that prisoner explaining the rights they have and where they go for compensation, if they qualify.

Let me say this: The average private property owner does not have accountants and attorneys that monitor legislation. This is the right thing to do.

Mr. COBLE. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I say to the chairman and to the gentleman from Ohio [Mr. TRAFICANT] and to the body, Mr. Chairman, that I have reviewed the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] and I am supportive thereof.

Mr. GALLEGLY. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the distinguished sponsor of the legislation that I support, the gentleman from California.

Mr. GALLEGLY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I join with my colleague, the chairman of the subcommittee, after having reviewed the amendment, and stand in strong support of the amendment offered by the gentleman from Ohio [Mr. TRAFICANT]. I think it adds to the bill.

Mr. TRAFICANT. Mr. Chairman, I appreciate that, and I reserve the balance of my time.

The CHAIRMAN. Is the gentlewoman from California [Ms. LOFGREN] opposed to the amendment?

Ms. LOFGREN. Yes, I am, Mr. Chairman.

The CHAIRMAN. The gentlewoman from California [Ms. LOFGREN] is recognized for 5 minutes.

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

Mr. Chairman, I recognize the motivation of the author of the amendment, and I think the motivation is entirely honorable and one that I concur with. I do, however, have grave reservations about the actual language of the amendment and the implications and unintended consequences that might occur. This is a very broad duty that is being imposed by the amendment on the Federal Government. Let me just give an example of why I think it is problematic.

In the Clean Water Act we, the National Government, make some very stringent findings about what may and may not be discharged into a stream. For example, discharging arsenic into a river is something that we have tried to control and avoid. Under this amendment, control of the discharge of arsenic into a stream would or could qualify as a taking, because if you are

in a business that uses arsenic in manufacturing, and you are constrained from using arsenic and discharging it, you have, in fact, been impaired in the full utilization of your property. It could be a taking under the act. There would be a duty to provide notice to the business under the amendment.

I think that would be a very difficult thing for the Federal Government to do. I would also like to make an additional point, which is that there is no burden under the amendment to notify other private property owners who are disadvantaged by the failure to proceed with the Government regulation.

In the example I have previously outlined, for those downstream from the polluter, if there is arsenic in the water, their right to use the water for home consumption is going to be impaired. There is no duty under the amendment to notify the downstream users that the pollution is going to continue to be coming at them. I think that is a problem.

I do not plan to ask for a recorded vote on this amendment, but I would think that narrowly drafting this amendment to cover land regulation activities that are directly aimed at use of property might go a long way toward perfecting this amendment and reaching what the author hopes to do.

But in its current form, I think it is a massive new obligation for the Federal Government. It will be impossible, actually, to accomplish. Therefore, it will lead to litigation and further costs and expenses that none of us can afford, and all of us would like to avoid. These are all unintended consequences but nevertheless, severe ones. Therefore, I would urge opposition to this well-intentioned amendment.

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

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

I could understand the grave reservations that the gentlewoman from California has, but she cited as an example the discharge of arsenic into a stream. If the Federal Government or one of its agents or agencies has discharged such a pollutant into our stream, the Traficant amendment says that any private property owner affected by it would not only be eligible under the bill, but they would be notified by the Traficant amendment that it has occurred.

Mr. Chairman, the Traficant amendment is very clear. It says if a Federal agency, a Federal agency takes an action. If a Federal agency is responsible for discharging arsenic, the Traficant amendment says they shall notify all of the people. That is why it is so drafted, so everyone downstream in fact would have to be notified; would they not? There would have to be a notice, and if there was damage that was created from that, they would be eligible for compensation, and what are their procedures where they can go for such compensation.

That is why it was unanimously accepted. This is the language that ensures that an average private property owner has some basic notification, more than anything else. That is the trouble around here. We pass laws at times that the legal eagles understand, identify, distill, and digest, and then come back and lobby to amend them, but the average American may not even know there is a protection that exists, or they are even eligible for compensation for an action that was taken wrongly; maybe not intended to be wrongful action, but it certainly was, such as arsenic in the river.

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

Ms. LOFGREN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I would note that the amendment says, whenever a Federal agency takes an agency action limiting the use of private property.

In the example I used earlier, if the Environmental Protection Agency limits a business from discharging arsenic into the creek, they have impacted and limited the use of that private property, if the arsenic is important to the manufacturing process.

Therefore, the polluter, the arsenic deliverer to the stream, would, under this amendment, be required to be notified of the limitation on the use of his or her property. And arguably also be entitled to compensation for the limitation of the use of their property.

We will not, however, under the amendment be required to notify downstream users that the upstream user and deliverer of arsenic to the stream is not going to be constrained from so polluting because of the implication of this amendment, that essentially will stay action because of access to court.

I understand that the gentleman from Ohio [Mr. TRAFICANT] wants the average American to have notice. I do, too. But as a lawyer and prior professor of law, we also need to look at the plain language that we adopt. This will lead to unintended consequences certainly that the gentleman from Ohio [Mr. TRAFICANT] very clearly from his prior comments does not intend, nor do I. That is the problem with the amendment.

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

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

Mr. Chairman, if there is any language that needs to simplify this, that expresses the legislative intent in debate here today, I will not oppose it in conference. But the legislative intent and history is clear. Anybody downstream that would be subject to arsenic from the gentlewoman's debate here today would be eligible for notification and for compensation.

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That is the purpose. If there is language in here that is so nebulous that the gentlewoman from California [Ms. LOFGREN] feels that it may in fact negate that intention, then certainly, my request is to make those small minor adjustments to effect that legislative intent.

But, Mr. Chairman, let me say this: When an average citizen's property is being limited or, in fact, the value is being diminished therein, they should get notice that such action is being taken and where they go for proper procedures. And if this amendment does not do that, then I do say to the drafters of the bill for those additional substantive language to be placed in there to, in fact, express that concern.

With that, I would hope that the gentlewoman would take that in good faith and help to construct that language.

The CHAIRMAN pro tempore (Mr. FOLEY). The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BOEHLERT

Mr. BOEHLERT. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. BOEHLERT:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Rights Implementation Act of 1997''.

SEC. 2. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

''(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

''(2) For purposes of this subsection, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

''(B) one meaningful application, as defined by the relevant department or agency, to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one appeal or waiver, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available or if such an appeal or waiver would be futile.''.

SEC. 3. JURISDICTION OF COURT OF FEDERAL CLAIMS.

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

''(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a

final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

''(B) one meaningful application, as defined by the relevant department or agency, to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one appeal or waiver, where the applicable law of the United States provides a mechanism for appeal or waiver.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available or if such an appeal or waiver would be futile.''.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to actions commenced on or after the 120th day after the date of the enactment of this Act.

The CHAIRMAN pro tempore. Pursuant to House Resolution 271, the gentleman from New York [Mr. BOEHLERT] and the gentleman from North Carolina [Mr. COBLE] will each control 15 minutes.

The Chair recognizes the gentleman from New York [Mr. BOEHLERT].

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

Mr. Chairman, I rise in support of my substitute. Here is what the substitute would do. It would allow those who sue the Federal Government over property rights to get to Federal court more rapidly. It does that in language that is virtually identical to sections 3 and 4 of the manager's amendment.

Mr. Chairman, here is what the substitute would not do. It would not interfere in any way with local government. It does that by eliminating section 2 of the manager's amendment. That is the section that allows Federal judges to intrude on local decisionmaking.

As Federal officials, we ought to limit ourselves to effecting Federal decisions. That is what my substitute does.

Mr. Chairman, I urge support for the Boehlert amendment. It is the moderate approach to property rights. It grants relief without trampling on Federalism. It helps property owners without preventing local communities from deciding their own future. I urge its adoption.

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

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

Mr. Chairman, I rise in opposition to the Boehlert amendment in the nature of a substitute to H.R. 1534. Very frankly, Mr. Chairman, the amendment will effectively gut the bill.

The fifth amendment to the Constitution prohibits the government from taking private property without just compensation. This prohibition is applicable to local governments through the 14th amendment. H.R. 1534 addresses the procedural difficulties encountered by property owners alleging the local or Federal Government has taken their property.

Currently, property owners claiming a fifth amendment taking by local governments do not have a realistic option to file in Federal court. Under current case law, a takings plaintiff must meet both the ripeness standard, meaning have a final decision regarding the permissible uses on the property and exhaust all State remedies and overcome the well-documented abuse of the abstention doctrine which Federal judges use to avoid takings cases. Federal judges routinely abstain from takings cases even when the claim alleges only a Federal fifth amendment claim based on action by a local government.

H.R. 1534 addresses this problem by prohibiting Federal judges from abstaining when the claim involves only a Federal fifth amendment claim, even when the taking was done by local governments.

Mr. Chairman, the Boehlert amendment strikes the provisions of the bill which are applicable to local governments, leaving in the provisions which apply to the United States as a defendant. Mr. Chairman, this would exempt the vast majority of private property owners from the relief and assistance that H.R. 1534 provides.

If the United States is a defendant, a takings claimant will have very little trouble getting into Federal court. However, claimants alleging a Federal fifth amendment taking by local government will continue to operate without any certainty as to when their case is ripe for Federal adjudication and continue to be routinely dismissed by Federal judges avoiding takings cases.

Mr. Chairman, during the past couple of weeks, our staff and the staff of the gentleman from California [Mr. GALLEGLY], the sponsor of the bill, have worked tirelessly with the staff of the gentleman from New York [Mr. BOEHLERT] to come to an agreement on several issues, and I think the gentleman from New York will admit to that.

On October 15, 1997, the staff of the gentleman from New York handed a list of amendments that needed to be made in order to gain the gentleman's support for the bill. The manager's amendment incorporated each one of these items, either precisely as requested or in spirit. It is not an exaggeration to say that we bent over backward to accommodate the gentleman's concerns about H.R. 1534. The Boehlert amendment does not reflect the concerns raised in those meetings, but a complete gutting of the bill.

Mr. Chairman, I urge my colleagues to vote ''no'' on the Boehlert amendment in the nature of a substitute for H.R. 1534.

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

Mr. BOEHLERT. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, it has been alleged that the manager's amendment accommodates all of our objections to the bill. This simply is not so. The fundamental flaw in this bill is not addressed in the manager's amendment. It does now say that if a zoning board offers alternatives, a developer must appeal one more time. That is good. But the bill still removes all incentives to negotiate because a developer can go to Federal court rather than follow the zoning board's instructions. Moreover, the bill still explicitly takes State courts out of the process.

Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise in strong support of the Boehlert amendment and, contrarily, I do not believe that this guts the bill; it enhances it.

Mr. Chairman, there is clear evidence that we do need something to ensure that the property owners are afforded their day in court. Several Law Review articles agree that the current takings ripeness barriers are unreasonable and that the obstacles confronting property owners are often insurmountable.

However, I fear, in fact I am convinced, that this bill, H.R. 1534, swings the pendulum too far in the other direction. I commend to my colleagues a quote from a recent letter sent by the National Governors' Association, the National League of Cities, and the Conference of Mayors. And I quote, ''This represents,'' meaning the bill, ''a significant infringement on State and local sovereignty.'' Mr. Chairman, I do not know why Republicans want to do that. But 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.''

Mr. Chairman, it is for this reason, all these reasons, of course, that I urge support of the Boehlert amendment.

Mr. Chairman, I would say to my colleagues, by the way, I have always lived under the rule that all politics is local and there is nothing more local than private property and zoning questions. Let us make sure that we are not shifting the balance from our local communities to the Federal Government. I urge my colleagues to support the Boehlert amendment.

Mr. COBLE. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. CALVERT].

Mr. CALVERT. Mr. Chairman, I rise today in support of H.R. 1534, the Private Property Rights Implementation Act. As a Member representing California, as well as a member of the Western Caucus, I am acutely aware of the need for legislation to protect priority property owners, especially those who have fallen victim to the current administration's ongoing war with the West.

H.R. 1534 is fair legislation. It simply allows property owners injured by Government action equitable access to the Federal courts. Currently, 80 percent of Federal property claims are thrown out of the court before their merits can be debated. With a statistic like that no one can argue that the current process is fair.

No matter what reason the Government has for restricting private property use, and there are many legitimate reasons, there is no excuse for denying landowners their day in court.

Mr. Chairman, I urge my colleagues to oppose all weakening amendments to H.R. 1534, especially the Boehlert amendment. This amendment would eliminate the bill provisions allowing landowners to take their appeals to Federal court. Instead, the amendment states it would help landowners get to court ''more quickly.'' But what does that mean, more quickly?

It currently takes an average of 9½ years for the process to be resolved. ''More quickly'' could mean 8 or maybe 7 years, but it does not make that timeframe any more acceptable. This is not an issue about taking power away from the States and localities, as the Boehlert amendment would lead my colleagues to believe. H.R. 1534 is about the rights of property owners to have their claims considered fairly and in a timely manner.

Mr. Chairman, I urge my colleagues to oppose the Boehlert amendment and support H.R. 1534.

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

Mr. Chairman, I would like to point out to the gentleman from California [Mr. CALVERT] that his State attorney general, Attorney General Lungren, a good Republican, is opposed to this bill.

Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Chairman, I would like to address my colleagues with this concept: how many Members on this House floor are in favor of judicial activism where the unelected will determine land use and local zoning ordinances in their community? Who is in favor of that? If Members are in favor of judicial activism and if they are in favor of the unelected judicial judges determining local zoning in their area, then they will vote against the Boehlert amendment.

If, however, Members are in favor of expedited process to the Federal courts whenever a Federal action impedes or regulates private property, then they will vote for the Boehlert substitute.

The Boehlert amendment in the nature of a substitute expedites the process to Federal courts whenever a Federal action regulates Federal property. What the bill does without the Boehlert amendment is make Federal action control local land use and local zoning. That is the unintended consequences. The bill would send to Federal courts cases to decide local zoning and local land use.

Now, Mr. Chairman, the small community might be able to afford State courts, but there is no way they are going to be able to afford Federal courts. We all believe in the fifth amendment. We strongly believe that if property rights are taken away for the public good, constitutionally landowners should be compensated and they will be compensated.

However, if the local zoning board, the planning commission, decides in their management of their community that someone's property is going to cause public harm, that is a different story.

Mr. Chairman, I urge an ''aye'' vote on the Boehlert substitute.

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

Mr. Chairman, I want to say to the gentleman from New York [Mr. BOEHLERT], my good friend, I did not mean to mislead, when he said that the manager's amendment did not address all of his problems, what I said was that it addressed them either precisely or exactly or in spirit. And I think that is probably an accurate statement, although the gentleman's amendment did go a little farther than during the discussion.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, the spirit is one thing, but reality is something altogether different. There still is a fundamental flaw, as the gentleman from North Carolina would acknowledge.

Mr. COBLE. Mr. Chairman, reclaiming my time, we will talk about that another day.

Mr. Chairman, I yield 2½ minutes to the gentleman from Michigan [Mr. BARCIA].

Mr. BARCIA. Mr. Chairman, I rise in opposition to the Boehlert amendment and in strong support of the passage of H.R. 1534.

Mr. Chairman, I want to thank the gentleman from North Carolina [Mr. COBLE] and the gentleman from California [Mr. GALLEGLY] and the other cosponsors for their leadership on this very vital issue that is so important to so many of our constituents across the country.

Mr. Chairman, many of us here today were elected so that we could make the Federal Government smaller and give more power to State and local governments, and I am proud that we are making progress in that regard. But all of us were elected and are sworn to protect and defend the Constitution. We should never waiver from that protection.

Mr. Chairman, as we continue to move toward a larger role for State and local government, the protection and defense of the Constitution must remain in the forefront of our minds, and perhaps no element of the Constitution is more important than the Bill of Rights.

□ 1315

House Resolution 1534 goes far toward ensuring that as local governments rightfully play larger roles, the rights of the citizenry do not fall prey to overzealous regulation. This bill does not infringe on the rights of States or localities to regulate land use. It merely ensures that the citizen will receive final decisions on those legitimate principles of governance in an expeditious manner.

Even now, before the goal of devolution is fully achieved, takings claims brought under the fifth amendment are lengthy and time consuming. They are treated, as Justice Brennen of the U.S. Supreme Court said, like stepchildren to the Bill of Rights. The bipartisan authors of House Resolution 1534 have recognized that this current situation, already a problem, needs to be addressed before the laudable goal of devolution exacerbates the situation. As Robert F. Kennedy once said, back in 1964, justice delayed is democracy denied.

Some elements of State and local government oppose this bill because House Resolution 1534 will, as the U.S. Conference on Mayors writes, lead to increased liability for municipalities. What more blatant admission is there than that this bill is needed? If the municipalities are engaging in activities for which the courts would find them liable, they should cease or pay in a timely manner without forcing the citizens into costly administrative procedures. The Constitution requires no less. House Resolution 1534 ensures that that will happen.

Mr. BOEHLERT. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. DELAHUNT].

Mr. DELAHUNT. Mr. Chairman, I rise in support of the Boehlert amendment. I am particularly pleased to hear so many Members on the other side speak to the issues of States rights, devolution. It was the authors of the Contract With America that said they wanted to return power to the people through State and local governments. Yet the bill, H.R. 1534, that is before this Congress would take local land disputes that have always been decided by State and local authorities and turn them over to the Federal courts. Whatever happened to devolution and State rights?

It also was the authors of the Contract With America that said they wanted to limit judicial activism. Yet the bill sweeps away the abstention doctrine which in effect restrains judicial judges. It also eviscerates the ripeness doctrine which prevents premature Federal involvement in such cases. It invites the Federal courts to strike down the actions of zoning boards and city councils across the land.

Mr. Chairman, let us give federalism, devolution, and States rights another

chance and let us support the Boehlert amendment.

Mr. COBLE. Mr. Chairman, may I inquire of the Chair the time remaining on both sides.

The CHAIRMAN pro tempore (Mr. FOLEY). The gentleman from North Carolina [Mr. COBLE] has 7 minutes remaining, and the gentleman from New York [Mr. BOEHLERT] has 7½ minutes remaining.

Mr. COBLE. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. TRAFICANT].

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

Mr. TRAFICANT. Mr. Chairman, this bill does not give property owners any new authority to sue the cities in Federal court. They have it. I believe that the Boehlert substitute would gut this bill and would treat property owners differently. That is my concern.

Let me say this, the great Vince Lombardi was loved by everybody, but when they asked Mr. Willie Davis why they loved him, here is what he said, because he treats us all alike, like dogs at times, but all alike.

I think that the gentleman's substitute would put and inflect some differences in the way property owners would be treated.

Local officials still govern this. The process would be expedited under this bill. I think the bill is, in essence, good.

I would like to see the gentleman work in conference for some of the ideas in his substitute which are good.

Mr. BOEHLERT. Mr. Chairman, I would like to point out to my distinguished colleague from Ohio that this simply says that Federal courts deal with Federal issues. Local courts, State courts deal with local and State issues. Washington is not the source of all wisdom.

Mr. Chairman, I yield 2 minutes to the gentleman from Delaware [Mr. CASTLE], former Governor.

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

This is a very interesting bill. It is very conflicted in terms of the usual beliefs that we have here. We basically have private property rights versus local decisionmaking. The Republican Party which sides with local decisionmaking does not in this particular case.

I can understand the argument for private property rights, but then to give it to the Federal judiciary, which is not exactly an entity that is supported readily by Republicans, strikes me as being highly unusual. I do not know how they are really qualified to handle these kinds of decisions on a regular, simple appeal at an early process. And that is what this is all about.

Could we argue that eventually the appeal could go up to Federal court? It is very unlikely. Now, it is very likely that the Federal court is going to spend about half of its time handling these local property appeals. They are totally ill equipped to do this. It just is not going to work.

Do we want to expand the Federal judiciary to do this? We should note that the National Governors Association, as has been stated, 39 State attorneys general, the Judicial Conference of the United States have all come out against this bill. They have serious problems with it and they rightfully should.

This amendment is a pretty simple amendment. I support the amendment. Sections 3 and 4 basically are being changed here. It eliminates the direct appeal to the Federal courts on local property decisions, which really, in my judgment, absolutely should be done. But if one exhausts everything, they could still do it. If one is dealing with a Federal agency, they could still do it. So it still leaves the essence of the bill.

Yes, I understand the concern. I have a lot of respect for the sponsor of the legislation because I believe there are some private property concerns that need to be addressed out there. But this unfortunately is not the right answer. The bill goes too far. Now that we have had a chance to really study that, I think we need to understand it.

The best thing we can do today is to pass the Boehlert amendment, a good amendment which adjusts the bill and makes it correct, and then go on and pass the rest of the legislation at that point. I would urge everybody to look at this carefully. These are significant issues and the burden that we are shifting over to the Federal courts is something we should not do. I encourage support of the Boehlert amendment.

Mr. COBLE. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. STENHOLM].

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

Mr. STENHOLM. Mr. Chairman, I rise in strong support of H.R. 1534 and in stronger opposition to the Boehlert amendment. The bill, the base bill is an equitable solution aimed at balancing the rights of private property owners with increased environmental, economic, and land use concerns. The fifth amendment states that private property shall not be taken for public use without just compensation. The legislation before us today is a bipartisan and moderate approach that guarantees the protection of the fifth amendment. The Boehlert amendment guts the heart of H.R. 1534 by removing equal access to Federal courts for property owners.

The base bill is a targeted limited bill that does not define when a taking has occurred. Consequently, the proper trigger point for compensation does not need to be debated. The Boehlert amendment creates a dangerous precedent by forcing Federal courts to deal differently with property rights cases depending on who the defendant is. The base bill does not give Federal courts new authority on questions that should be answered in State courts, rather, it provides an expedited way to resolve State issues.

Furthermore, this bill does not amend environmental law or regulation which was a point of contention in previous debate. Simply put, this legislation would provide for quicker and more straightforward access to Federal courts. The Boehlert amendment micromanages the Federal courts.

I would like to commend the gentleman from California [Mr. GALLEGLY] and other supporters of H.R. 1534 for their efforts to find a new way of reconciling the difficult issues addressed here. This legislation is balanced and fair. I urge my colleagues to support the base bill and oppose strenuously the Boehlert amendment which guts the base bill.

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

Mr. COBLE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. GALLEGLY], a member of the Committee on the Judiciary and primary sponsor of the bill.

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

Mr. GALLEGLY. Mr. Chairman, I stand in strong opposition to this amendment. I would just like to respond to the gentleman from Massachusetts [Mr. DELAHUNT] and his comments. I am also very pleased to see the number of Democrats we have in strong opposition to the Boehlert amendment.

As a former mayor, I could not agree more with those who have argued for local control and decisionmaking. What we are trying to do is to provide some certainty to a process that can otherwise be very open-ended. What the bill now says is that the property owner must take a meaningful application, then if the locality chooses to deny that application, they should explain why in writing. If they do not approve that application, they should explain what type of development they would accept.

Mr. Chairman, I ask my colleagues to strongly oppose this amendment. It guts the bill. I hope the Members will join me in helping to preserve the reforms that are intended in this legislation.

I rise in opposition to the amendment by the gentleman from New York. Although the gentleman has made a number of positive suggestions about the bill recently, the amendment he is offering today is quite severe.

The amendment on the floor today will gut an extremely important part of H.R. 1534.

It is very important that we do not lose sight of the central point of this bill: Federal Constitutional property rights do not empower Federal judges to make land use decisions. H.R. 1534 would not empower Federal judges to decide whether a certain piece of land should be used for a grocery store or for a hair salon. Local governments will continue to have their traditional powers to make and enforce zoning regulations.

Some of the people who are screaming the loudest about local control of all land-use decisions have also been big supporters of having

Federal environmental laws micromanage how land is used. Federal endangered species protections certainly interfere with how land is used. No locality can regulate land use in a way that does not comply with Federal wetlands protections. There are probably many other environmental laws, enforceable in Federal court, that directly impact local governments or lands use decisions.

H.R. 1534 provides ample opportunity for the local process to work so that appropriate zoning and land use regulation can proceed.

What we are trying to do is provide some certainty to a process that can be otherwise very open-ended. What the bill now says, is that the property owner must make a meaningful application. Then, if the locality chooses to deny that application they should explain why, in writing. If they will not approve the application, they should explain what type of development they would accept.

Taking into account this information, the landowner must reapply. If that application is not approved, then he or she must appeal the decision or seek a waiver.

As a former mayor, I could not agree more with those who have argued for local control and decision-making. I might also note that many of the cosponsors of H.R. 1534 bring to this debate extensive knowledge of State and local government—133 of the members supporting the bill previously served as mayors, city council members, or State legislators. They bring to this debate a very practical understanding of what is at stake, and they support this legislation.

The question before us today is whether Americans should have reasonable access to the Federal courts to enforce Federal rights. I hope the Members of the House will support H.R. 1534 to provide legal protections that are fair and effective.

Mr. COBLE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. POMBO].

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

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

Basically what we have here is the age-old debate, the debate of whether or not we have power to the government or power to the people. We get down to this basic debate many times over different issues, especially over private property issues. Whether the argument is to protect the power that the government controls over its citizens at the Federal level, the State level, or the local level, that is a debate that we continually hear from this particular side on this issue. They want to maintain that power over the citizenry.

On the other side of this issue what we have is people who are arguing in favor of the private property owner, of the individual citizen, of the individual that we all represent. I think that that is one of the important distinctions in this debate.

The importance of this underlying legislation is an attempt to give private property owners their so-called day in court. That is the effort that is being made. I admit that this bill does not go as far as I would like it to. I admit that the underlying legislation is a moderate attempt to achieve a very worthwhile goal. The Boehlert amendment guts even a moderate attempt to try to achieve that.

Mr. BOEHLERT. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, for those who say that my substitute guts the bill, I would point out that my substitute retains section 3 and 4 of the manager's amendment. Are the sponsors saying that those sections of the bill are meaningless? I do not think so.

To the previous speaker who says there is a choice, do we have power to the Government or power to the people? I say the choice is, do we have all power vested in Washington, DC, in the Federal Government, or do we leave to State and local governments power that they so jealously guard that they want to preserve, the power to make the decisions at the local level about local zoning issues?

Should the Federal Government determine whether or not we will have a pornographic parlor on some corner in some small hamlet in some State in America? I do not think so. I think the local communities can deal very effectively with that issue.

I would point out that the National Governors Association has spoken eloquently to this bill. Let me read an excerpt from their letter which has been addressed to all of our colleagues here:

> We are writing to express our strong opposition, strong opposition, to H.R. 1534, the so-called Private Property Rights Implementation Act of 1997.

Continuing, the Governors letter says,

> the result will be substantially more Federal involvement in decisionmaking on purely local issues.

□ 1330

> 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.

Now, that is an excerpt of a letter from the National Governors' Association signed by Gov. George Voinovich, chairman of the National Governors' Association, Mark Schwartz, councilmember, Oklahoma City, president, National League of Cities, and Mayor Paul Helmke, city of Fort Wayne, president, U.S. Conference of Mayors.

As a matter of fact, my bill is the sensible approach to this issue because the basic bill, H.R. 1534, is not just opposed by me, not just opposed by a couple of Representatives of this great institution, it is opposed by the National Governors' Association, most State attorneys general, 40 at last count, including Dan Lungren, the attorney general of the State of California, including the attorney general of the State of New York, including the attorney general of the State of Texas, including the attorney general of the State of Connecticut, of Delaware, of Florida, of Georgia, of Hawaii, of Idaho, of Indiana, of Iowa, of Louisiana, of Maine, of Maryland, of Massachusetts, of Michigan, of Minnesota, of Mississippi, of Missouri, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, the attorney general of the Virgin Islands, the attorney general of Guam, the attorney general of the State of Washington, the attorney general of the State of Wisconsin.

The list goes on and on. Not only the attorneys general but the Judicial Conference of the United States, chaired by the Chief Justice of the Supreme Court of the United States, a very conservative Republican, Chief Justice Rehnquist. It is opposed by the National League of Cities, the U.S. Conference of Mayors, and every single environmental group in America.

Why do they oppose it? Because it simply does not make sense. The Republicans, my colleagues, my friends, are saying they favor devolution. They want to send more authority back to State and local governments, and I think that makes a lot of sense. This bill does just the opposite.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. BOEHLERT. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I want to rise in support of the gentleman's amendment and in opposition to the underlying bill.

I think the gentleman has done good work in terms of this. This helps the bill. It does not completely fix it, but I think it does respect the issue of restraint, in terms of the Federal Court, which is something that I think others have spoken to.

So I thank the gentleman, commend him for his work, and support his amendment.

Mr. BOEHLERT. Mr. Chairman, reclaiming my time, I point out what the Judicial Conference of the United States says, and keep in mind we are talking about a basic issue decided by the Supreme Court that this bill proposes to overturn. That issue was decided 7 to 1 by the Supreme Court, with all the conservative justices voting in favor of Williamson County versus The Bank of Hamilton. Williamson County in Tennessee.

The Judicial Conference of the United States says the judicial conference expresses concern with the Private Property Rights Implementation Act of 1997. 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 level.

Finally, let me point out to my colleagues that it has been said repeatedly that my concerns have been mainly accommodated, some directly, some in spirit. Well, in spirit, that leaves a lot for interpretation.

The basic fact of the matter is, there is a fatal flaw in this bill. It does now say that if a zoning board offers an alternative, a developer must appeal one more time. But the bill removes all incentives for negotiations.

I urge support of the Boehlert substitute and opposition to the basic bill unless it is properly amended.

Mr. COBLE. Mr. Chairman, I yield the balance of my time to the gentleman from California [Mr. CAMPBELL].

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

Mr. CAMPBELL. Mr. Chairman, the States are the issue in this debate, and so the Boehlert amendment, the amendment of my good friend, will destroy the purpose of this bill. The debate is over States. Not Federal Government encroachment, but State government encroachment.

That is why we are here. It is because when individual plaintiffs with objections under the fifth amendment to the Constitution complain that State governments have interfered with their rights, they are kept from getting an adjudication in Federal court in anything like an expedited or appropriate time frame. So if we remove from the bill all those provisions that deal with the States and local government, which is what the Boehlert amendment does, we do not have a bill worth discussing.

We are not here because of Federal Government takings, we are here because of allegations against State governments and local governments. So, really, voting for the Boehlert amendment is voting against the bill. Do not make any mistake about it, that is what it is.

I do not think we should vote against the bill, and here is why. Think what the Federal courts are supposed to do in the protection of constitutional rights. We do not tell Federal court plaintiffs to go somewhere else and wait their time when they are complaining of voting rights, when they are complaining of discrimination, of poll tax, illiteracy tax, being told they cannot have a right to the ballot. We do not say go take it to the board of election commissioners.

When there is a restrictive zoning, keeping someone out of an area because of their race, we do not say, well, take it to 20 different appeals to the zoning commissioners of the particular State, county, or locality.

And we deal with school desegregation. The day the Governor stands in the school and says someone may not come in there because of their race, that day the plaintiff goes into Federal court.

Why is the fifth amendment less? Why are plaintiffs under the fifth amendment to our Constitution not entitled to that same access to the Federal courts that are available to those who plead under the other provisions that I have cited?

The managers of the bill have accepted my amendment. I conclude by quoting it. ''Nothing in this bill alters the substantive law of takings of property, including the burden of proof borne by plaintiff.'' Vote for the bill, oppose the Boehlert amendment.

The CHAIRMAN pro tempore (Mr. ROGAN). The question is on the amendment in the nature of a substitute offered by the gentleman from New York [Mr. BOEHLERT].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOEHLERT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 242, not voting 14, as follows:

[Roll No. 518]

AYES—178

Abercrombie	Hastings (FL)	Obey
Ackerman	Hefner	Olver
Andrews	Hinchey	Owens
Baldacci	Horn	Pastor
Barrett (WI)	Jackson (IL)	Payne
Bass	Johnson (CT)	Pelosi
Becerra	Johnson (WI)	Pomeroy
Bentsen	Johnson, E. B.	Porter
Bereuter	Kanjorski	Portman
Berman	Kaptur	Poshard
Blagojevich	Kelly	Price (NC)
Boehlert	Kennedy (MA)	Ramstad
Bonior	Kennedy (RI)	Rangel
Borski	Kildee	Reyes
Boucher	Kilpatrick	Rivers
Brown (FL)	Kind (WI)	Rodriguez
Brown (OH)	Kleczka	Roemer
Capps	Klink	Roukema
Cardin	Klug	Roybal-Allard
Carson	Kucinich	Rush
Castle	LaFalce	Sabo
Clay	Lampson	Sanchez
Clayton	LaTourette	Sanders
Costello	Lazio	Sanford
Coyne	Leach	Sawyer
Cummings	Levin	Saxton
Davis (FL)	Lewis (GA)	Scarborough
Davis (IL)	Lipinski	Schumer
DeFazio	Lofgren	Scott
DeGette	Lowey	Sensenbrenner
Delahunt	Luther	Serrano
DeLauro	Maloney (CT)	Shaw
Dellums	Maloney (NY)	Sherman
Dicks	Manton	Skaggs
Dixon	Markey	Slaughter
Doyle	Mascara	Smith (NJ)
Ehlers	Matsui	Smith, Adam
Engel	McCarthy (MO)	Snyder
Eshoo	McCarthy (NY)	Spratt
Etheridge	McDermott	Stabenow
Ewing	McGovern	Stokes
Farr	McHale	Stupak
Fattah	McKinney	Sununu
Fawell	McNulty	Thurman
Filner	Meehan	Tierney
Foglietta	Meek	Torres
Forbes	Menendez	Towns
Fox	Millender-McDonald	Velazquez
Frank (MA)	Miller (CA)	Vento
Frelinghuysen	Miller (FL)	Visclosky
Furse	Minge	Walsh
Ganske	Mink	Waters
Gephardt	Moakley	Watt (NC)
Gilchrest	Mollohan	Waxman
Gilman	Moran (VA)	Weygand
Goss	Morella	Wise
Greenwood	Murtha	Woolsey
Gutierrez	Nadler	Wynn
Hall (OH)	Neal	Yates
Hamilton		

NOES—242

Aderholt	Baesler	Barrett (NE)
Allen	Baker	Bartlett
Archer	Ballenger	Barton
Armey	Barcia	Bateman
Bachus	Barr	Berry
Bilbray	Goodlatte	Pappas
Bilirakis	Goodling	Pascrell
Bishop	Gordon	Paul
Bliley	Graham	Paxon
Blumenauer	Granger	Pease
Blunt	Green	Peterson (MN)
Boehner	Gutknecht	Peterson (PA)
Bonilla	Hall (TX)	Petri
Bono	Hansen	Pickering
Boswell	Harman	Pickett
Boyd	Hastert	Pitts
Brady	Hastings (WA)	Pombo
Bryant	Hayworth	Pryce (OH)
Bunning	Hefley	Quinn
Burr	Herger	Radanovich
Burton	Hill	Rahall
Buyer	Hilleary	Redmond
Callahan	Hilliard	Regula
Calvert	Hinojosa	Riggs
Camp	Hobson	Riley
Campbell	Hoekstra	Rogan
Canady	Holden	Rogers
Cannon	Hooley	Rohrabacher
Chabot	Hostettler	Ros-Lehtinen
Chenoweth	Houghton	Rothman
Christensen	Hoyer	Royce
Clement	Hulshof	Ryun
Clyburn	Hunter	Salmon
Coble	Hutchinson	Sandlin
Coburn	Hyde	Schaefer, Dan
Collins	Inglis	Schaffer, Bob
Combest	Istook	Sessions
Condit	Jefferson	Shadegg
Conyers	Jenkins	Shimkus
Cook	John	Shuster
Cooksey	Johnson, Sam	Sisisky
Cox	Jones	Skeen
Cramer	Kasich	Skelton
Crane	Kennelly	Smith (MI)
Crapo	Kim	Smith (OR)
Cunningham	King (NY)	Smith (TX)
Danner	Kingston	Smith, Linda
Davis (VA)	Knollenberg	Snowbarger
Deal	Kolbe	Solomon
DeLay	LaHood	Souder
Deutsch	Largent	Spence
Diaz-Balart	Latham	Stearns
Dickey	Lewis (CA)	Stenholm
Dingell	Lewis (KY)	Stump
Doggett	Linder	Talent
Dooley	Livingston	Tanner
Doolittle	LoBiondo	Tauscher
Dreier	Lucas	Tauzin
Duncan	Manzullo	Taylor (MS)
Dunn	McCollum	Taylor (NC)
Edwards	McCrery	Thomas
Ehrlich	McDade	Thompson
Emerson	McHugh	Thornberry
English	McInnis	Thune
Ensign	McIntyre	Tiahrt
Evans	McKeon	Traficant
Everett	Metcalf	Turner
Fazio	Mica	Upton
Flake	Moran (KS)	Wamp
Foley	Myrick	Watkins
Ford	Nethercutt	Watts (OK)
Fowler	Neumann	Weldon (FL)
Franks (NJ)	Ney	Weller
Frost	Northup	Wexler
Gallegly	Norwood	White
Gejdenson	Nussle	Whitfield
Gekas	Oberstar	Wicker
Gibbons	Ortiz	Wolf
Gillmor	Oxley	Young (AK)
Gingrich	Packard	Young (FL)
Goode	Pallone	

NOT VOTING—14

Brown (CA)	Jackson-Lee (TX)	Parker
Chambliss	Lantos	Schiff
Cubin	Martinez	Shays
Gonzalez	McIntosh	Stark
		Strickland
		Weldon (PA)

□ 1358

Messrs. HINOJOSA, HOEKSTRA, GUTKNECHT, CLYBURN and PEASE changed their vote from ''aye'' to ''no.''

Mrs. McCARTHY of New York, Mr. MOAKLEY and Mr. GANSKE changed their vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. WELDON of Pennsylvania. Mr. Chairman, on rollcall No. 518, I was unavoidably detained. Had I been present, I would have voted "yes."

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, on rollcall 518, the Boehlert amendment to H.R. 1534, I had a malfunctioning beeper and was in meetings where there was no detection that the vote was going on and so I missed that vote. Had I been present, I would have voted "yes."

□ 1400

PREFERENTIAL MOTION OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Chairman, I offer a preferential motion.

The CHAIRMAN pro tempore [Mr. ROGAN]. The Clerk will report the motion.

The Clerk read as follows:

Mr. FRANK of Massachusetts moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

Mr. FRANK of Massachusetts. Mr. Chairman, I read today that Roger Ebert, I guess it was today, has an article in which he says there should be a new category of Nobel Prize for Movies.

Well, I am going to add one. We should immediately ask that they institute a Nobel Prize for Inconsistency, because you would win it. There would be a problem: Under the rules, you could not accept the money, but maybe we can put it to the deficit. Because I do not think in recorded parliamentary history there has ever been a greater gap between people's professed principles and what they have voted for than there is in this bill.

The last speaker for the bill, against the amendment offered by the gentleman from New York [Mr. BOEHLERT], said it is about States. He was absolutely right. The premise of most of this bill is that States cannot be trusted to deal fairly with property rights; not State local officials, not State zoning boards, and, God forbid, State courts. Because what you are about to vote for is a bill that says let us tell every unelected life-tenured Federal judge in the country that they have not been sufficiently activist.

This bill says to all those guys sitting on the bench, what are you doing, sitting back and letting controversies be decided by State officials? How dare you leave things to the electorial process? What are we paying you for? How come you have life tenure? Intervene. Do not let these State zoning boards work out their will. Do not let State courts decide these issues.

In fact, it even says to them there is a State issue? You Federal judges, decide it. What do we pay you for? You have got life tenure.

Never in history have people denounced activism so much and promoted it even more.

The bill says this. And do we respect property rights? Yes. But what you are saying by this bill is we cannot trust State government. It is not a question about property rights, it is a question about whether State governments can be trusted, and it says we are not getting enough nonelected, life-tenured Federal judges intervening in the local process.

Somebody has a zoning fight in his or her State, and we say, all right, we will give the zoning board one shot. They get one appeal. Stay away from the State courts, go right into Federal Court. We do not want the Governor, the mayor, mucking around in here. What do all these elected officials know?

It also says, by the way, we do not decide enough judicially in America. It says that courts are sitting back and waiting for the political process. Let us intervene earlier.

There is a Federal doctrine known as ''ripeness'' which says the courts should not rush in; the courts should defer. Do you know what this bill says? Enough of that stuff. Earn your money. Do not wait for these disputes to be worked out, do not wait until the local officials debate it more and get factual information. Decide it. What do you have life tenure for? Ignore those local people. Do not pay attention to the State judges.

Let us be very clear: This bill says we need the Federal judges to be a lot more active than they have been. They should stop waiting for these things to be ripe. They should stop deferring to State courts to decide issues. They should stop letting local officials work these things out. We will solve it.

You passed a bill that restricted the right of habeas corpus in Federal court so we will not have habeas corpus. What we will have now is ''habeas propertius.'' What you will do, if your life is at stake, why not take three more State appeals? But you did not like the zoning, where is the Federal judge? You can get right into it.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, is the gentleman aware of any city or State organizations that support the Gallegly bill, himself a former mayor?

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I do not know. I would have to say to my friend apparently there are some cities somewhere where people, having voted for the mayor, city council and to establish a zoning board, found they cannot trust them, and want the Federal courts.

There may be some municipality somewhere that wants unelected Federal judges to ride to the rescue from the zoning boards. Maybe we should be playing the William Tell Overture, because here come the Federal judges riding to the rescue, protecting you from these local officials.

Mr. Chairman, let me say in closing, I can understand people saying the Federal courts ought to do more, and if you think that you cannot trust the local people, okay. But, please, can I ask my colleagues on the other side, could you wait a week before you get up and denounce judicial activism? Can you wait a week before you pretend to be for States' rights? I do not think we can ban inconsistency, but let us have a waiting period.

Mr. GALLEGLY. Mr. Chairman will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. GALLEGLY. Mr. Chairman, I thank my good friend from Massachusetts for yielding.

I would like to respond to the gentleman from Michigan [Mr. CONYERS], my good friend and neighbor, every mayor I have talked to in my district has signed a letter supporting it, cities over 100,000 people. I have not had one say no.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I think there have been cases where mayors do not like what the Governors do. I do not doubt that. But if there is any respect left in this body for consistency, this bill will be voted down.

Mr. COBLE. Mr. Chairman, I rise in opposition to the motion.

Mr. Chairman, we believe in Federal protection in Federal courts for Federal fundamental rights. States protect State and Federal rights, but our Founding Fathers put this right in the Federal Constitution for attention by the Federal Government with a Federal remedy. So I do not see any inconsistency there.

Previously, Mr. Chairman, I said the Boehlert amendment would gut the Gallegly bill. I now say to my friend, the gentleman from Massachusetts [Mr. FRANK], that his motion to strike the enacting clause will emasculate the bill. It does great damage to the bill.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from Illinois.

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

Mr. HYDE. Mr. Chairman, under the bill with the manager's amendment, you do not get immediate access to the Federal court. You have to apply to the local land use agency. You get a ruling, you reapply, taking the conditions of the denial into account. Then you must appeal the application, or as much as necessary, to reach a body of elected local officials, if available.

If all of the above are denied, you have concurrent jurisdiction. You may go the State route or you may go the Federal route.

Now, I hasten to point out what we are vindicating here is a constitutional right, and the Federal courts exist to vindicate constitutional rights. The fifth amendment discusses the taking and the rights of property owners; the seventh commandment talks about thou shalt not steal.

The real problem is delay. Data indicates nine years it takes to wend your way through the maze of local jurisdiction. The Federal judges are local people. These cases are not too tough for them to decide. Concurrent jurisdiction is given, and there are many civil rights cases that get expedited treatment under the statute.

Why is not the right to have your property treated properly and legally a civil right? It is a human right. I simply say the Federal courts are not some exotic bizarre branch of justice only taking a few cases. Those judges can handle these cases. They are not tough. They handle a lot tougher cases.

But give the property owner some relief before 9 years have elapsed. Justice is what the court systems are all about, and concurrent jurisdiction gives the property owner an opportunity to get his Federal right, his constitutional right, vindicated in a Federal court.

I do not think there is anything improper with that.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I seriously appreciate having the chairman of the Committee on the Judiciary give this testimony to the important role of Federal district judges. We have heard too little of that. While I disagree with him on the specific bill, I am glad to have him reaffirm the importance of the local resident Federal district judges having a major role in defending constitutional rights.

Mr. HYDE. Mr. Chairman, if the gentleman will yield further, then the gentleman agrees with me and ought to withdraw his motion.

Mr. FRANK of Massachusetts. Mr. Chairman, I will withdraw my motion.

Mr. HYDE. God bless you.

Mr. FRANK of Massachusetts. I will ask unanimous consent to withdraw my motion, but the gentleman will lose his debate time. Does the gentleman want me to do it now, or wait?

Mr. HYDE. Mr. Chairman, you know, it is very unfair debating BARNEY FRANK, because he can get 20 minutes into 3 minutes. Never forget, this is a Federal constitutional right we are seeking to vindicate, and if the Federal courts do not want to hear these cases, this is a shame.

□ 1415

That is denying justice. Justice delayed 9 years is not justice, and we ought to seek a remedy. This bill provides a remedy, and I urge its support.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I ask unanimous consent to withdraw the motion.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as modified, as amended.

The committee amendment in the nature of a substitute, as modified, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore [Mr. HANSEN] having assumed the chair, Mr. ROGAN, Chairman pro tempore 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, pursuant to House Resolution 271, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. LOFGREN. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. LOFGREN moves to recommit the bill to the Committee on the Judiciary.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 248, noes 178, not voting 8, as follows:

[Roll No. 519]

AYES—248

Aderholt	Gillmor	Pappas
Archer	Gingrich	Parker
Armey	Goode	Pascrell
Bachus	Goodlatte	Paul
Baesler	Goodling	Paxon
Baker	Gordon	Pease
Baldacci	Graham	Peterson (MN)
Ballenger	Granger	Peterson (PA)
Barcia	Green	Petri
Barr	Gutknecht	Pickering
Barrett (NE)	Hall (OH)	Pickett
Bartlett	Hall (TX)	Pitts
Barton	Hamilton	Pombo
Bateman	Hansen	Pryce (OH)
Berry	Harman	Quinn
Bilirakis	Hastert	Radanovich
Bishop	Hastings (WA)	Redmond
Bliley	Hayworth	Regula
Blumenauer	Hefley	Riggs
Blunt	Herger	Riley
Boehner	Hill	Roemer
Bonilla	Hilleary	Rogan
Bono	Hilliard	Rogers
Boswell	Hinojosa	Rohrabacher
Boyd	Hobson	Ros-Lehtinen
Brady	Hoekstra	Rothman
Bryant	Holden	Royce
Bunning	Hostettler	Ryun
Burr	Houghton	Salmon
Burton	Hoyer	Sanchez
Buyer	Hulshof	Sandlin
Callahan	Hunter	Scarborough
Calvert	Hutchinson	Schaefer, Dan
Camp	Hyde	Schaffer, Bob
Campbell	Inglis	Scott
Canady	Istook	Sensenbrenner
Cannon	Jefferson	Sessions
Chabot	Jenkins	Shadegg
Chenoweth	John	Shaw
Christensen	Johnson, Sam	Shimkus
Clement	Jones	Shuster
Coble	Kasich	Sisisky
Coburn	Kim	Skeen
Collins	King (NY)	Skelton
Combest	Kingston	Smith (MI)
Condit	Knollenberg	Smith (OR)
Cook	Kolbe	Smith (TX)
Cooksey	LaHood	Smith, Linda
Cox	Largent	Snowbarger
Cramer	Latham	Solomon
Crane	LaTourette	Souder
Crapo	Leach	Spence
Cunningham	Lewis (CA)	Stearns
Danner	Lewis (KY)	Stenholm
Davis (VA)	Linder	Stump
Deal	Livingston	Sununu
DeLay	LoBiondo	Talent
Deutsch	Lucas	Tanner
Diaz-Balart	Manzullo	Tauzin
Dickey	Martinez	Taylor (MS)
Dooley	Mascara	Taylor (NC)
Doolittle	McCollum	Thomas
Doyle	McCrery	Thompson
Dreier	McDade	Thornberry
Duncan	McHugh	Thune
Dunn	McInnis	Tiahrt
Edwards	McIntyre	Traficant
Ehrlich	McKeon	Turner
Emerson	Metcalf	Upton
English	Mica	Wamp
Ensign	Miller (FL)	Watkins
Etheridge	Moran (KS)	Watts (OK)
Everett	Murtha	Weldon (FL)
Fazio	Myrick	Weldon (PA)
Foley	Nethercutt	Weller
Ford	Neumann	Weygand
Fowler	Ney	White
Fox	Northup	Whitfield
Franks (NJ)	Norwood	Wicker
Frost	Nussle	Wolf
Gallegly	Ortiz	Young (AK)
Gekas	Oxley	Young (FL)
Gibbons	Packard	

NOES—178

Abercrombie	Gilman	Neal
Ackerman	Goss	Oberstar
Allen	Greenwood	Obey
Andrews	Gutierrez	Olver
Barrett (WI)	Hastings (FL)	Owens
Bass	Hefner	Pallone
Becerra	Hinchey	Pastor
Bentsen	Hooley	Payne
Bereuter	Horn	Pelosi
Berman	Jackson (IL)	Pomeroy
Bilbray	Johnson (CT)	Porter
Blagojevich	Johnson (WI)	Portman
Boehlert	Johnson, E. B.	Poshard
Bonior	Kanjorski	Price (NC)
Borski	Kaptur	Rahall
Boucher	Kelly	Ramstad
Brown (CA)	Kennedy (MA)	Rangel
Brown (FL)	Kennedy (RI)	Reyes
Brown (OH)	Kennelly	Rivers
Capps	Kildee	Rodriguez
Cardin	Kilpatrick	Roukema
Carson	Kind (WI)	Roybal-Allard
Castle	Kleczka	Rush
Clay	Klink	Sabo
Clayton	Klug	Sanders
Clyburn	Kucinich	Sanford
Conyers	LaFalce	Sawyer
Costello	Lampson	Saxton
Coyne	Lazio	Schumer
Cummings	Levin	Serrano
Davis (FL)	Lewis (GA)	Shays
Davis (IL)	Lipinski	Sherman
DeFazio	Lofgren	Skaggs
DeGette	Lowey	Slaughter
Delahunt	Luther	Smith (NJ)
DeLauro	Maloney (CT)	Smith, Adam
Dellums	Maloney (NY)	Snyder
Dicks	Manton	Spratt
Dingell	Markey	Stabenow
Dixon	Matsui	Stark
Doggett	McCarthy (MO)	Stokes
Ehlers	McCarthy (NY)	Stupak
Engel	McDermott	Tauscher
Eshoo	McGovern	Thurman
Evans	McHale	Tierney
Ewing	McKinney	Torres
Farr	McNulty	Towns
Fattah	Meehan	Velazquez
Fawell	Meek	Vento
Filner	Menendez	Visclosky
Flake	Millender-McDonald	Walsh
Foglietta	Miller (CA)	Waters
Forbes	Minge	Watt (NC)
Frank (MA)	Mink	Waxman
Frelinghuysen	Moakley	Wexler
Furse	Mollohan	Wise
Ganske	Moran (VA)	Woolsey
Gejdenson	Morella	Wynn
Gephardt	Nadler	Yates
Gilchrest		

NOT VOTING—8

Chambliss	Jackson-Lee (TX)	McIntosh
Cubin	Lantos	Schiff
Gonzalez		Strickland

□ 1437

Mr. FLAKE changed his vote from ''aye'' to ''no.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, on rollcall vote 519, final passage of H.R. 1534, I had a malfunctioning House beeper and was not able to get to the vote. Had I been present, I would have voted ''no.''

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 1534, PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 1997

Mr. COBLE. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 1534, the Clerk be authorized to correct section numbers, punctuation, and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill, H.R. 1534.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

PERSONAL EXPLANATION

Mr. SHAYS. Mr. Speaker, on rollcall vote No. 518, the Boehlert substitute, I was, believe it or not, in the Capitol chapel and missed my first vote since I became a Member of this body in 1987. Unfortunately, the battery in my pager was dead, and I was unaware that there was a vote. I know, ''My dog ate it.'' Had I been present, I would have voted ''aye.''

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2646, EDUCATION SAVINGS ACT FOR PUBLIC AND PRIVATE SCHOOLS

Ms. PRYCE of Ohio, from the Committee on Rules, submitted a privileged report (Rept. No. 105–336) on the resolution (H. Res. 274) providing for consideration of the bill (H.R. 2646) to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes, which was referred to the House Calendar and ordered to be printed.

AMTRAK REFORM AND PRIVATIZATION ACT OF 1997

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 270 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 270

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2247) to reform the statutes relating to Amtrak, to authorize appropriations for Amtrak, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution and an amendment in the nature of a substitute by Representative Oberstar of Minnesota. The amendment by Representative Oberstar may be offered only after the disposition of the amendments printed in the report of the Committee on Rules, shall be considered as read, shall be debatable for thirty minutes equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment. The amendments printed in the report may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment except as specified in the report, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be fifteen minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore [Mr. FOLEY]. The gentlewoman from Ohio [Ms. PRYCE] is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 270 is a modified closed rule providing for consideration of H.R. 2247, the Amtrak Reform and Privatization Act of 1997.

Mr. Speaker, the rule provides for 1 hour of general debate, equally divided, and makes in order the Committee on Transportation and Infrastructure's amendment in the nature of a substitute.

Further, the rule makes in order two amendments printed in the report of the Committee on Rules as well as the Democratic substitute.

To expedite floor proceedings, the Chairman of the Committee of the Whole may be allowed to postpone votes during the consideration of H.R. 2247 and to reduce votes to 5 minutes, provided they follow a 15-minute vote.

Finally, the rule also provides the minority with the customary motion