

Background: Lawrence J. Block's Troubling Record on Takings:

The U.S. Court of Federal Claims decides nearly all "takings" claims against the United States. According to the Constitution's Takings Clause, if a court determines that a road or dam has taken private property for public use, just compensation must be paid to the corporate or individual property owners. In very rare instances, courts have found that a government regulation will also be considered a "taking" because it has essentially eliminated the value and use of an entire parcel of private property.

Mr. Block's record and his answers to the Senate Judiciary Committee Questionnaire for Judicial Nominees suggest, however, that he would apply an extreme approach to takings law that would conflict with unanimous Supreme Court rulings if appointed to the U.S. Court of Federal Claims. An ultra-conservative interpretation of the Takings Clause could be extremely damaging, redefining property rights at the expense of neighboring property, public health, and the environment. Federal Claims Court rulings could require that taxpayers fund prohibitively expensive windfall payments to property owners who obey pollution-control and other laws. The cost of these payments would chill enforcement and implementation of a wide array of laws that protect the American people.

- Mr. Block was the Senate Judiciary Committee Senior Counsel to then-Chairman Orrin Hatch (R-UT) from 1995 to 2001. In this role, he promoted legislation to redefine "takings" in a manner that would threaten a wide range of safety, health, environmental, civil rights, and other protections.
- Mr. Block has never recognized that the tests for obtaining payments in these bills contradict the Constitutional standards set forth in unanimous Supreme Court rulings. For example, a 1996 letter that he drafted states that one of the bills "codifies and clarifies recent Supreme Court standards as to what constitutes a 'taking.'" In fact, as Senators Biden, Kennedy, Leahy, Simon, Kohl, Feinstein, and Feingold explained at the time, the bill "quite radically departs from over a century of constitutional thinking in this area, and poses a direct threat to the property, health, and safety interests of most Americans." S. Rep. No. 104-239, at 54.
- In his responses to the nominee questionnaire, Mr. Block indicated that his positions had not changed from those promoted in the bills; he states that he was "responsible for . . . property rights legislation codifying compensation and ripeness standards."
- Mr. Block's legislation would have required that corporations and developers receive unlimited windfall payments to comply with laws that do not take property according to every member of the Supreme Court. These payments would make it too expensive to maintain a wide range of protective laws, including FDA bans on dangerous drugs, EPA pollution-control laws, and Interior Department limits on coal mining.