DEFENDERS OF WILDLIFE

FACT SHEET: H.R. 4772, A "Hammer to the Head" to Local Communities

Federal "takings" legislation, reported out of the House Judiciary Committee in July 2006, would make it harder for local communities to fight crime and fires, regulate adult entertainment clubs, reduce pollution, and protect open space. H.R. 4772, introduced by Rep. Steve Chabot (R-OH), would make it easier for wealthy developers to sue local communities, holding them hostage to development proposals that maximize profits without regard for the health, safety, and welfare of the community.

The bill would take decision-making power away from local elected officials - the people that voters choose - and puts it in the hands of appointed federal judges. And, the legislation would escalate the costs taxpayers have to pay to local governments to defend against federal lawsuits. The increased costs of federal litigation will likely have a dramatic chilling effect on efforts to apply a wide range of laws meant to protect the public's health, safety, and quality of life.

H.R. 4772 would:

- Encourage lawsuits against local communities by wealthy land developers
- Take control over community values away from local elected officials and give it to federal judges and developers
- Discourage socially and environmentally valuable community protections by burdening taxpayers and local officials with the increased costs of defending local land use decisions in federal court
- Violate the Separation of Powers doctrine, and abuse the power given to Congress by the Constitution

An Invitation to Sue Local Communities Early and Often

Currently, federal law requires developers and communities to try to resolve their disputes at the local level before going to federal court. Traditionally, local officials are charged with weighing developers' property rights, economic interests, and the long term values of the community. H.R. 4772 would substitute this local collaborative process with an adversarial federal process that would encourage wealthy developers to bypass local communities and jump right into federal court if their first (and most profitable) proposal is rejected, regardless of its impact on the local community. The National League of Cities said that this bill's premise "represents a congressional license for legal extortion of local governments." The bill also ignores the fact that state courts have more experience than federal courts do in resolving the complex questions relating to zoning and land use.

Endangered wildlife habitat within development in California/U.S. Fish and Wildlife Service

Federal Rules That Would Trample Local Land Use Planning

Proponents of H.R. 4772 contend that property rights claims have been shut out of federal court. The reality is that the U.S. Supreme Court often requires Bill of Rights issues to be brought up in state courts first. This acknowledges the responsibility of state and local courts to interpret and enforce local, state, federal laws, and the Constitution, and also prevents the already over-burdened federal courts from being overrun by premature lawsuits.

It is up to local elected officials to protect their communities' values while allowing for economic growth and prosperity. This give-and-take process requires numerous negotiations among stakeholders to determine how a proposal can optimize profits while preserving the local quality of life. The process gives neighbors a chance to comment on the potential health, safety, and environmental impacts of adjacent new developments. Developments such as the placement of corporate hog farms, adult entertainment stores, and hazardous waste sites have implications for the whole community, not just the developer, and this process encourages developers to provide several proposals to help achieve the best outcome for all involved. By "federalizing" local land use disputes, H.R. 4772 would remove these incentives and impede the ability of communities to protect local values.

Unjust Rewards

H.R. 4772 would make it easier for developers to demand windfall payouts from taxpayers by changing the judiciary's "parcel as a whole" rule. If 5 lots of a proposed 1000 lot subdivision contained sensitive wetlands, the bill would force taxpayers to pay the developer the costs of not developing those 5 lots even though the developer could build on over 99% of the property. Neither the Constitution nor federal law has ever guaranteed land owners the right to build on every inch of property regardless of the impacts on the community.

A Major Burden on Small Towns (and Taxpayers)

The threat of federal litigation would have its greatest impact on smaller cities and towns, particularly rural communities seeking to preserve an agricultural way of life. The National Association of Counties, testifying against a prior rendition of H.R. 4772, stated that over 90 percent of cities and towns have a population of less than 10,000, and that "virtually without exception" these communities had no full time legal staff. The costs of responding to federal litigation that would result from H.R. 4772 would be devastating. Implementing the bill's notice requirements alone could cost taxpayers billions of dollars. If passed, this law could lead to major tax increases and cuts to local public services such as fire fighting, law enforcement, paramedic response, and environmental services. Jerry Howard, Chief Lobbyist for the National Association of Home Builders, admitted that a similar bill from the 106th Congress would have destroyed local and state governments' ability to fight wealthy development interests. "This bill will be a hammer to the head of these bureaucracies," he said (National Journal Congress Daily, Mar. 14, 2000).

Unfair, Unwise, and Unconstitutional

Significant portions of H.R. 4772 are likely to be found unconstitutional, and set up a battle between Congress and the U.S. Supreme Court. The bill violates the separation of powers, and seeks to change the law under both the Takings Clause and the Due Process Clause of the Constitution. Thus, while H.R. 4772 will undoubtedly result in a flood of new claims in federal courts, the intended results are unlikely to see the light of day since the judiciary would likely find many of its provisions to be unconstitutional.

For more information, Contact Paul Todd in Washington, DC, at (202) 682-9400, or Roman Czebiniak in Sacramento, CA, at (916) 313-5808.