

RUSH!

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HOW CONGRESS CAN ENHANCE PROPERTY OWNERS' ACCESS TO JUSTICE

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*"...nor shall private property be taken for public use without just compensation."
(Fifth Amendment, U.S. Constitution)*

The Constitution's protection of personal property rights is under increasing assault by all levels of government. Perhaps most egregious are the procedural hurdles that make it impossible for individuals to challenge the federal government's taking of personal property and to be compensated for such a taking. Congress, however, is about to consider legislation to make that process easier and fairer.

The Framers recognized that the right to own and manage one's property is essential to preventing the usurpation of other rights protected under the Constitution. Practically speaking, a government that can determine whether individuals remain financially secure or must surrender their property at its discretion also can control a wide range of other individual activities. The Framers considered this to be so important that they included the protection of property rights in the Third, Fourth, Fifth, and Sixth Amendments. As James Madison explained in *Federalist* 10, "[pure] democracies have ever been spectacles of turbulence and contention; have ever been incompatible with personal security or the rights of property." It was the desire to restrict such tyranny over individual freedom that motivated the Framers to include strong protections against the unchecked will of those in power—protections like the requirement for just compensation.

Currently, the federal judicial system divides jurisdiction over Fifth Amendment "takings" claims between the federal district court and the Court of Federal Claims. Federal law (28 U.S.C. Section 1331) provides that all questions under the Constitution and laws of the United States will be decided in federal district court. However, the Tucker Act of 1887 created a separate jurisdiction whereby the Court of Federal Claims was given responsibility for hearing claims brought by property owners against the United States for just compensation.

The result of this split jurisdiction is that a property owner with a claim for just compensation for the federal taking of property must be prepared to pursue his rights in two different courts because no single court has jurisdiction broad enough to allow it to invalidate the federal government's taking of property *and* grant monetary compensation. To the extent that a property owner desires to invalidate the government's action, the federal district court is the only court of action. On the other hand, if the property owner desires to be compensated for the amount of money lost due to the federal government's action, the Court of Federal Claims is the only court of action. If the owner wishes to invalidate the government's action *and* seek compensation at the same time, however, he must bring separate suits in both courts.

Time to Level the Playing Field. This shuffling of claimants between the district court and the Court of Federal Claims is known as the "Tucker Act Shuffle." As harmless as this may sound, it is one of the most lethal weapons in the Justice Department's defense arsenal--and perhaps the most unfair. More so than in any other setting, claimants are put at a unique disadvantage by this jurisdictional division. The procedure should be changed so that property owners can plead their case in just one court. The Court of Federal Claims' jurisdiction should be extended to include invalidating government action, and the district court's jurisdiction should be extended to include compensatory relief, in takings claims. This would enable a property owner to seek injunctive and compensatory relief in one court instead of having to bring separate suits in separate courts.

To restore justice to the process, the playing field must be leveled. Elimination of the Tucker Act Shuffle will reduce the time, expense, and burden that Americans experience when they try to use the court system to seek just compensation for the taking of their property by the federal government.

Relief from the Tucker Act Shuffle. On March 6, 1997, Representative Lamar Smith (R-TX) introduced H.R. 992, the Tucker Act Shuffle Relief Act of 1997, to expand the jurisdiction of both the district court and the Court of Federal Claims. H.R. 992 would permit private property owners to recover fully for a taking in one court by amending the Tucker Act to give both the district court and the Court of Federal Claims concurrent jurisdiction to hear all claims relating to property takings. The bill would enable a claimant to seek injunctive or compensatory relief in either the district court or the Court of Federal Claims. H.R. 992 would help end the confusion many property owners now face in deciding where to bring claims against the federal government for the taking of private property. The House Subcommittee on Immigration and Claims held a hearing on H.R. 992 on September 10, 1997.

On the Senate side, Senator Orrin Hatch (R-UT) introduced S. 781, the Omnibus Property Rights Act of 1997, on May 22, 1997. Among its many provisions, the bill would grant the district court and the Court of Federal Claims concurrent jurisdiction to hear takings claims. The Senate is poised to hold hearings on the Hatch bill.

What Congress Should Do. The right to own and use private property free from unreasonable or arbitrary government interference is fundamental to the American constitutional system and must be protected. In order to enhance property owners' access to the federal judicial system, Congress must ease the procedural hurdles by giving them the choice of pursuing their case either in district court or in the Court of Federal Claims, with both courts having jurisdiction over injunctive and compensatory relief. This will reduce time, money, and other burdens on claimants as well as on the judiciary system as a whole. It is a small first step in shifting the judicial momentum back toward the protection, rather than usurpation, of personal property rights.