

The rule also allows the chairman of the Committee of the Whole to postpone votes during consideration of the bill, and to reduce the voting time to 5 minutes on a postponed question if the vote follows a 15-minute vote.

□ 1730

Finally, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, the purpose of H.R. 992 is to end the so-called Tucker Act Shuffle that can bounce private property owners between the U.S. district courts and the court of Federal claims when seeking redress against the government for the taking of their property.

The fifth amendment to the Constitution provides in part, and I quote, "nor shall private property be taken for public use without just compensation."

Based on the legal doctrine of sovereign immunity, the Federal Government can only be sued with its consent. In 1887, Congress passed the Tucker Act permitting money claims based on the U.S. Constitution to be brought in the court of claims. However, if a property owner would prefer not to receive compensation for the Federal Government's confiscation of property, but to challenge the government's right to confiscate the property, the owner should go to the U.S. district court.

If a property owner wishes to both challenge the appropriateness of a taking of property and pursue monetary damages arising from the taking, the owner must choose to pursue one claim before the other. Both claims, in other words, may not be pursued at the same time.

To make matters worse, the owner cannot go to the court of Federal claims until a final decision, including appeals, has been reached in the district court.

The court of Federal claims statute of limitations prevents the owner from bringing suit for more than 6 years after a claim first accrues. Thus, incredibly and through no fault of his own, under current law the property owner may be left with no legal remedy.

This problem and property rights in general are of special concern throughout the West, and in central Washington which I represent. Far too often landowners facing the prospect of long and costly litigation against the Federal Government feel they have no choice but to accept a settlement that they believe is unfair. This is wrong and it must stop; that is the goal of H.R. 992.

Mr. Speaker, the Tucker Act Shuffle Relief Act seeks to correct this injustice by granting the U.S. district courts and the court of Federal claims the power to determine all claims arising out of Federal agency actions alleged to constitute takings in violation of the fifth amendment. The property owner then would choose which court would hear his case.

Mr. Speaker, the Committee on Rules has reported an open rule in order to permit Members seeking to amend H.R. 992 the fullest possible opportunity to offer any germane amendment during floor consideration of the bill.

Accordingly, I urge my colleagues to pass not only the rule, but H.R. 992 as well.

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

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

House Resolution 382 is an open rule providing for the consideration of H.R. 992, the Tucker Act Shuffle Relief Act. The rule allows for the consideration of all germane amendments and accords priority recognition to those Members who have preprinted their amendments in the Congressional RECORD.

Mr. Speaker, it is especially important that H.R. 992 be considered under an open rule because it was a matter of some controversy during its consideration in the Committee on the Judiciary. It was reported on a vote of 17 to 13, and eight Democratic members signed dissenting views in the committee report.

H.R. 992 seeks to simplify the resolution of disputes between landowners whose property has been subject to a government taking and the Federal Government by allowing such suits to be heard in either the U.S. district court or the U.S. court of Federal claims.

Under current law, the 1887 Tucker Act, a landowner must go to the court of Federal claims in order to sue for financial award or to a U.S. district court to challenge the validity of the agency action that resulted in the taking. Opponents of this bill make the claim that this legislation simplifies and expedites the process for landowners who seek to challenge the takings of their property. However, the legislation is opposed by the United States Judicial Conference, as well as a wide array of environmental groups, because of the controversy.

I support the open rule.

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

Mr. HASTINGS of Washington. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BONILLA).

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

Mr. BONILLA. Mr. Speaker, I rise today in support of the rule and in support of the Tucker Act Shuffle Relief Act. It is a mouthful, and to some it might sound like some popular dance step that today's young people are doing. But, in fact, it is a very old dance step that is practiced by the court system all too often.

Private property owners are forced to choose between filing a takings claim in either the U.S. court of Federal claims or Federal district court. The Tucker Act splits jurisdiction between these two courts so no one court can provide full relief to a property owner.

Then what happens is, the courts wind up shuffling the property owners back and forth, bouncing them back and forth like ping pong balls between the two court systems, literally dancing around the problem and avoid ruling in the case.

This bill will stop the old song-and-dance routine by giving both courts jurisdiction over all claims relating to property rights. It would not change any current takings law. Property owners who feel they have had their property taken unfairly should be allowed to have their day in court and not spend years waiting while two courts argue over who should hear their case. I believe this will eliminate unnecessary delays and reduce court costs as well.

It is absurd for a landowner's problems to be tied up in court for sometimes up to 10 years or more, Mr. Speaker, waiting on the courts to figure out jurisdiction has forced landowners to watch their time and money waltz away. The time has come to give priority to citizens' constitutional rights over jurisdictional disputes between judges.

The right to private property is one of our most fundamental and sacred constitutional rights. That right should be respected by the Federal court system.

I encourage Members to vote for the rule and for the bill and for the right of every American to have their day in court. I would also like to commend my colleague and friend, the gentleman from Texas (Mr. SMITH) for taking a leadership role in this effort.

Mr. FROST. Mr. Speaker, I urge adoption of the rule, and I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I also urge adoption of the rule. I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

LIMITATION ON FURTHER AMENDMENTS AND DEBATE ON H.R. 992, TUCKER ACT SHUFFLE RELIEF ACT OF 1997, ON THURSDAY, MARCH 12, 1998

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that during consideration of H.R. 992 in the Committee of the Whole, pursuant to House Resolution 382, after the legislative day of today, no further debate or amendments to the committee amendment in the nature of a substitute shall be in order except as stated below.

On the legislative day of Thursday, March 12, the amendment by Representative WATT of North Carolina, if offered today, shall be further debatable for 20 minutes equally divided and controlled by Representative WATT and an opponent.

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

Mr. WATT of North Carolina. Mr. Speaker, reserving the right to object, I missed that.

Mr. SMITH of Texas. Mr. Speaker, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. SMITH of Texas. Mr. Speaker, I will be happy to respond to the gentleman's question.

Mr. WATT of North Carolina. Mr. Speaker, I just wanted to make sure what it was the gentleman just did.

Mr. SMITH of Texas. Mr. Speaker, if the gentleman will continue to yield, to summarize, what this says is that tomorrow we will still be able to have 20 minutes' debate on the amendment that the gentleman is expected to offer tonight. That 20 minutes will be divided equally between the gentleman and an opponent.

Mr. WATT of North Carolina. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. HASTINGS). Is there objection to the request of the gentleman from Texas?

There was no objection.

TUCKER ACT SHUFFLE RELIEF ACT OF 1997

The SPEAKER pro tempore. Pursuant to House Resolution 328 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for consideration of the bill, H.R. 992.

□ 1738

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 992) to end the Tucker Act shuffle, with Mr. EWING in the chair.

The Clerk read the title of the bill.

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

Under the rule, the gentleman from Texas (Mr. SMITH) and the gentleman from North Carolina (Mr. WATT), each will control 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

The issues we discuss today are those of equity and fairness. Every homeowner and every property owner across America deserves to have their day in court, and not just in court but in the right court. Many legislative initiatives are identified with an individual. We have Megan's Law, the Ryan White Act and the Ricky Ray bill.

Today we consider H.R. 992, the Tucker Act Shuffle Relief Act. Maybe we should call it the Narromore Act or the Presault Act or any of the other names of the property owners whose cases demonstrate the real need for this legislation.

W.O. and Eliza Narromore's property was flooded as a result of the govern-

ment's operation of the Painted Rock Dam in Arizona. They first filed suit in 1980 in an attempt to force the United States to stop flooding their land. In 1988, their case had gone to the appeals court, and then had been sent back to the lower court for retrial. At that trial, the United States moved for dismissal of the case, saying the Narromores' claim should have been for compensation to the court of Federal claims. The Federal circuit agreed with the government and transferred the case to the court of Federal claims in 1992, sending the Narromores back to square one again. Today, 17 years later, their case is still pending.

In 1981, Paul Presault sued the State of Vermont to reclaim a strip of land that had been used by the State to run a government-operated railroad through his front yard. In 1989, the Supreme Court sent Mr. Presault back to square one because of the Tucker Act. Sixteen years later, after again going all the way to the Supreme Court, Mr. Presault is back in the court of Federal claims awaiting yet another hearing.

These are just a couple of the horror stories that demand equity and fairness. Property owners across America should not be tossed back and forth by the courts when they are simply trying to assert their fifth amendment property rights.

H.R. 992 seeks to provide a solution to an unfair judicial maze that often prevents private property owners from having their day in court. An individual who seeks to contest a government taking or an infringement of his or her property rights currently must deal with unreasonable obstacles and costs in negotiating his or her way through the legal maze built by the Tucker Act.

Current law denies the court of Federal claims authority to hear a claim for injunctive relief and denies the U.S. district courts the authority to hear claims for monetary relief over \$10,000. Because of this split jurisdiction, no one court can provide complete relief to a property owner whose property has been taken. An owner can choose to seek only one kind of relief or must go to the expense of seeking relief from both courts. In addition, the Federal Government often claims that property owners have sued in the wrong court, bouncing private property owners back and forth yet once again between the two courts.

We may hear some argue that we should end the Tucker Act Shuffle by giving only U.S. district courts the ability to grant complete relief in takings cases. This is the wrong approach. We should not discard the valuable resource of the court of Federal claims's expertise or its large body of case law, compiled over time, by denying the court the ability to hear takings claims for both monetary and equitable relief.

Why not give property owners the option of going to the court that they think is best? Why should the government tell private property owners where to go?

This legislation provides no new cause of action. Instead, it merely creates an option to go either to the court of Federal claims or to the U.S. district courts for all the plaintiff's remedies concerning only fifth amendment private property takings cases.

We do not change the substantive law that defines a taking. We leave to it current law to determine whether there is in fact a legal claim.

There have been concerns voiced about giving an Article III court's power to an Article I court, that it would somehow be unconstitutional. The answer is, both courts are constitutional. Article III powers have been given to Article I courts many times without a detrimental result to the court system or to the Constitution; and H.R. 992 extends injunctive relief powers to the court of Federal claims only in private property takings litigation.

Furthermore, the bill directs that all appeals, whether from the U.S. district court or the court of Federal claims, will go to the same U.S. court of appeals for the Federal circuit which is in an Article III court.

I understand that some Members have concerns that H.R. 992 would override so-called preclusive review provisions of some environmental statutes. In order to reassure my colleagues that this bill will not modify any environmental statutes, I will be offering an amendment stating that H.R. 992 does not override any preclusive review provision in Federal law. This legislation simply allows private property owners to go to either court for a complete remedy of a takings claim.

H.R. 992 does not allow litigants to challenge agency action in several different courts. Should the plaintiff choose to proceed with their case under this act, once the plaintiff chooses one of the two courts, the case remains in that court only. Private property owners should be given the option and the opportunity to assert their constitutional rights in the court of their choice without being treated like a ping pong ball.

□ 1745

Every property owner in America has the right to obtain a timely resolution one way or the other of their takings claims. They deserve to have their day in court and in the right court, which is the court of their own choosing.

Among many organizations, the Chamber of Commerce, the realtors and the home builders support this legislation. I encourage my colleagues on both sides of the aisle to vote for this bill and support the right of every property owner in America to have their claim heard in either court.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. SOLOMON), chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Chairman, I thank the gentleman for yielding this time, and today I rise in the strongest