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 government'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

possible support for this bill that is introduced by my good friend, the gentleman from Texas (Mr. SMITH), and I sing his praises. This is a bill that I came here 20 years ago to see enacted into law and finally we are going to have that opportunity.

This legislation represents a very significant step forward in relieving the burdens facing Americans who own property and seek compensation for a taking by the Federal Government. We are all familiar with stories of private property owners whose land values have been disastrously affected by unbridled government regulation. Certainly up in the Adirondack Mountains, where I live, that is so.

Using wetlands restrictions or scenic easements, the government leaves landowners as custodians of their unused land and robs them of their livelihood in too many cases. To find relief from these takings, property land owners such as farmers, small businessmen and homeowners put their trust in the courts to sort out the mess that environmental regulation has made of their lives. But as we all know too well, going to court merely complicates their problems and costs money that they cannot actually afford.

Currently, private property owners have two options to litigate their takings cases. They can seek monetary relief in the U.S. Court of Federal Claims, very expensive; or injunctive relief in a Federal District Court, and that is very expensive, especially for a farmer that might have total income of only $10,000 or $12,000 a year. A property owner must choose between those two courts because of the Tucker Act. This act splits the jurisdiction of takings cases between the Claims and District Courts, requiring a landowner to shuffle back and forth to find relief.

On top of this restriction, section 1500 of the Tucker Act prohibits the Claims Court from even considering a suit that is pending in another court. In many cases, as these property owners find out, the government often claims that they have sued in the wrong court, bouncing the landowners between the two courts, again costing money that these people cannot afford.

For small property owners with limited financial means and time constraints, this shuffle makes it impossible for them to even hope to get some kind of relief. By failing to resolve this situation, we deny the constitutional rights of these property owners.

As my colleague from Texas has ably explained, this bill would put an end to some of this confusion. The bill gives both the District Courts and the Court of Federal Claims concurrent jurisdiction to hear all claims relating to property rights. And through this bill, our constituents can achieve complete relief of their takings cases in just one court and stop this endless game of judicial ping-pong.

To further resolve the difficulties caused by section 1500, this bill would repeal that section. This bill is an efficient and an effective solution to a difficult problem. Without some sort of relief, landowners throughout the country will continue to languish in court for years and years and years as they are shuffled back and forth between District to Claims Courts by government attorneys.

Mr. Chairman, private property takings cases have become the normal way of business for Federal Government agencies in all too many cases. Without the just compensation that the Fifth Amendment requires, private property rights are continually being violated by executive branch agencies that have run amuck throughout this country.

By abusing the Fifth Amendment and chipping away at these rights, we assault the very fabric of our society. H.R. 992 will begin to restore the Fifth Amendment and guarantee the private property rights of all American citizens. By supporting this bill, we can put an end to the Tucker Act shuffle and help private property owners resolve their litigation in a timely manner and, more than that, in a manner that they can afford.

Mr. Chairman, I would again sing the praises of the gentleman from Texas for bringing this legislation to the floor. Let us hope and pray it goes through the Senate and is signed into law. I urge support of the bill.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

I want to join with the gentleman from New York (Mr. SOLOMON) in paying a tribute to my colleague, the gentleman from Texas (Mr. SMITH), for bringing a bill to the floor designed to address a serious issue. The difference between that gentleman's part of this debate and my part of the debate is not in the issue of whether a problem exists. We both agree that citizens of our country should not be shuffled back and forth from one court to another. That is not an area of disagreement that we have. The area of disagreement is how we solve that shuffle and eliminate the necessity of having to shuffle back and forth.

Our position on this side is that the problem needs to be solved, deserves to be solved, but must be solved in a constitutional way. And our position is that the bill of the gentleman from Texas does not resolve this issue in a constitutional way, and I will elaborate on that some more later in this debate.

Second, our position is that the solution that is proposed under this bill, in addition to being an unconstitutional solution, is a solution that would encourage forum shopping, and that is something that we should not be encouraging as a Congress.

Third, the solution that has been offered under this bill, and I believe the gentleman from Texas is going to correct this by offering an amendment which we will support, but as the bill is currently structured, the solution that is currently proposed would eliminate some expedited review under the law and delay disposition of cases that now get expedited review and consideration, and we think that is a real problem.

The fourth problem that we have with this proposed solution is that, as the gentleman from Texas has asserted, we want to speed up the process of getting justice and decisions in these cases. We do not want to slow down the process. And we believe this solution will simply slow down the process. Because if there is a question on the resolution, about the constitutionality of it, nothing is going to happen in this area until at least one or more cases moves through the process and moves on up to the Supreme Court and the Supreme Court decides this issue, which is going to, for a period of time, put us all on hold in these cases. And we think that is not justified.

The final argument we will make, and I want to flesh all of these out later in the discussion, is that if we are looking for a solution to this problem, we ought to find one that the administration will support. The administration does not believe that the solution that is offered under this bill is a constitutional solution or a reasonable way to address what they agree is a problem, and they have indicated that the President will veto this bill.

So we can either have a bill which solves the problem or we can create an atmosphere that preserves the issue for continuing debate, and I thought our objective here was to solve the problem, not just preserve the issue.

Those are the five points that I want to try to develop this evening.

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

Mr. SMITH of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from New Mexico (Mr. SKEEN).

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

Mr. SKEEN. Mr. Chairman, I thank the gentleman for yielding me this time and I rise in strong support of ending the Tucker shuffle.

I do so based on a simple and a powerful premise, the Fifth Amendment to the Constitution of the United States, which currently states that no person shall, quote, be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

I strongly contend that our Founding Fathers' intent was crystal clear and that the catalyst for much of the Declaration of Independence and the Constitution was based on a tyrannical government's overzealous abuse of power and constant infringements on individual freedom, including property ownership.

Unfortunately, the courts have found numerous ways to circumvent a constitutional right that is no less important than the right to free speech. They have done so under the guise of due process, which in actuality is being

used to retard the process and prevent citizens' constitutionally guaranteed right to seek compensation and relief from a Federal Government that increasingly seems to disregard the most important document in world history.

In essence, this legislation will facilitate a return of constitutional principle by allowing property owners who have been subjected to a taking the opportunity for real redress without fear of the court's ability to do the Tucker shuffle.

Remember, we all took oaths to uphold the Constitution, and I believe my vote for this legislation will uphold that oath. I can only hope that my colleagues, the Senate and the President, remember their oaths of office.

Mr. WATT of North Carolina. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. BOEHLERT).

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

Mr. BOEHLERT. Mr. Chairman, I rise in opposition to H.R. 992. While this bill appears to be an innocuous bill dealing with court jurisdiction, its actual effect would be to unsettle many areas of environmental law, and that concerns me.

Now, the gentleman from Texas (Mr. SMITH) will offer an amendment that will take care of one of the threats this bill poses to environmental law. His amendment will ensure that this bill does not override existing statutes. I appreciate his willingness to do that and I will support his amendment. But his amendment still leaves another problem with the bill, the enormous expansion of the jurisdiction of the Court of Federal Claims.

Now, that sounds like an arcane issue. Why should we care? The reason is that the Court of Federal Claims has no experience in handling these issues. It operates under different procedures than other courts that hear environmental cases and is not bound by all the precedents that bind those other courts. In other words, we will be sending environmental cases into a new, inexperienced, very different venue than we have dealt with for the last several decades. That creates unnecessary uncertainty not just for environmental advocates but for the regulated landowners and companies.

I should point out that the League of Conservation Voters strongly opposes the bill because environmental law cases simply do not belong in the Court of Claims. Moreover, the expansion may well prove to be unconstitutional.

□ 1800

The judicial conference of the United States, chaired by Chief Justice Rehnquist opposes the provisions of this bill because the bill, and I quote, ''represents a major expansion of the jurisdiction and remedial powers of the Court of Claims.'' Continuing the quote, ''These provisions may raise constitutional issues about the appropriate jurisdiction of an Article I court.'' That is, as my colleague, the gentleman from North Carolina (Mr. WATT), has indicated previously, it may have the unintended consequence, if the bill should pass, of actually delaying action rather than expediting action.

Why would we risk venturing into this uncertain territory? Frankly, the committee gives us no real reason at all. There is no evidence whatsoever that the so-called Tucker Shuffle is a real-world problem affecting real people. We are threatening environmental law for the sake of a theory.

I am, frankly, mystified as to why there is a determined effort to open the doors of the Federal Court of Claims. I do not hear any clamor for that. But I do hear genuine opposition to opening up the court for specific real-world reasons. Let us not unsettle environmental law for the sake of a symbolic bill that will help no one and is most certain to be vetoed. Let us defeat H.R. 992 and get back to the legislation that helps real people without threatening the legal safeguards that protect our air, our land, and our water. H.R. 992 does not spell relief. It spells trouble.

Mr. SMITH of Texas. Mr. Chairman, I yield myself as much time as I may consume to respond very briefly to a couple points that my friend, the gentleman from New York (Mr. BOEHLERT) made.

The first point is that he may have unintentionally misstated, because the Claims Court has plenty of experience handling these types of cases. In fact, it handles all the substantial monetary damage for these Fifth Amendment takings. The other is the gentleman said that he did not know that this is of concern to real people.

In my opening statement, I pointed out two horror cases that concerned very real people; and I would say just the opposite. I think the opposition to what I am trying to do is engendered by theory and idealism, not by concern for the real people who have real problems.

Mr. Chairman, I yield 3 minutes to the gentleman from Oregon (Mr. SMITH), chairman of the Committee on Agriculture.

Mr. SMITH of Oregon. I thank the gentleman for yielding.

Mr. Chairman, I rise today in strong support of H.R. 992, the so-called Tucker Act Shuffle Relief Act. I would like to thank my friend from Texas (Mr. SMITH), who has a great name, for his work on this issue affecting America's private property owners. The takings clause of the Fifth Amendment, as my colleagues have heard, allows the Federal Government to acquire private property as long as the Government provides ''just compensation,'' quote, end quote, to the owner.

But, as many of us know, the Federal Government sometimes does not abide by what we think our constitutional rights really are. In such cases, property owners now have two choices; they can sue for monetary relief, or they can sue for injunctive relief. Because the U.S. Court of Federal Claims lacks the authority to hear cases for injunctive relief and the Federal District Court lacks jurisdiction to hear claims for monetary relief, no one court can provide full relief to an aggrieved property opener.

Land owners filing suit today may, therefore, be shuffled between the courts, resulting in delays, increasing costs of litigation, of course. The Tucker Act Shuffle Relief Act would correct this process and provide full relief to property owners who have suffered by these problems of courts shuffling their concerns back and forth.

Is there no support for this kind of legislation? I am so frustrated with this system and with what is happening to private property rights around the country. As the gentleman knows, I am sure, the courts have been holding lately that if you have 50 percent aggrievement, you might have a standing in court. It costs roughly $250,000 to go to court for a takings issue. This eliminates the man or the woman whose property is taken by the Federal Government under that value, so they just merely give up.

All right, is that a private property right? Should we not be protecting every dollar of every private property owner's rights everywhere we go? Well, part of the frustration is the creation of this kind of legislation. It is essential that we do this to restore the confidence of America to its government again.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 30 seconds to respond to some of the gentleman's rhetorical questions.

I share the gentleman's objective. He should be aware that there is a solution, there is a constitutional solution that would eliminate the shuffle. We are not opposed to eliminating the shuffle. Our solution would be to give jurisdiction over the monetary relief and the legal issues to the U.S. District Court, which is an Article III court that has the constitutional authority to accept all of that jurisdiction. That will eliminate the shuffle completely.

So I hope the gentleman will support my amendment when it is offered, my amendment with the gentleman from New Jersey (Mr. ROTHMAN).

Mr. Chairman, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from North Carolina (Mr. WATT) for yielding, and I cannot disagree with him at all. We are clearly in support of protecting property rights and recognizing the constitutional privilege that governs property rights and the need to protect such rights.

But, with all due respect to my good friend from Texas, this bill may appropriately be named the Tucker Shuffle

Act because it seems to shuffle, in fact, people away from justice. I say that because this bill would be far better if we were to utilize the Article III courts and to support the Watt-Rothman amendment that will allow these particular challenges by property owners to be in the United States District Court.

Let me tell my colleagues what happens or share. The Court of Federal Claims does have the ability to roll, if you will, but most times we would see constituents in Texas and Iowa, Idaho, going all the way from those faraway locations all the way to Washington D.C. to get justice.

So what we are suggesting here is shuffle justice away from the local community, when in fact the United States District Courts placed in those local communities, which are, in fact, Article III courts, have the local flavor. They understand Mrs. Jones' concern about her property rights and the infringement on those property rights. She is amongst those judges appointed from that community, Federal judges though they may be, appointed from that community sensitive to the value of the relevance of the emotion, the importance of that property issue.

When we start shuffling constituents, mostly partitioners, small land owners, all the way to the big city here in Washington D.C., it is intimidation, it is a question whether there is any sensitivity and whether or not there is justice.

So I would simply say that we have a real way of dealing with this concern, and that is, in place of the Court of Federal Claims, which may have limited exposure and experience to environmental concerns, for example, you would have the United States District Courts in place in your communities that could fully take advantage of the needs of the particular constituents on very important issues like property rights. The property rights are protected by the Constitution and protected by the Fifth Amendment.

I do not know about my colleagues, but I have seen most of the constituents I represent feel far more comfortable to be able to go into courthouses in their community than to travel all the way to Washington, D.C. and subject themselves, their property, and the meager means that they may have in order to be subjected under the Federal Court of Claims.

I think we are going in the wrong direction. It is wrong headed. If we truly want to shuffle justice back to the people, then let them have their day in court in the United States District Courts in their neighborhoods and in their communities.

This is not a good bill unless amended by the Watt/Rothman bill amendment.

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

Mr. Chairman, I just want to clarify a point, and that is that this bill does not force anybody to go to Washington. In fact, it does just the opposite. It gives property owners the option of either going to a local Federal district court or going to Washington. The point is they should have the choice. That is why we need to support this bill.

Mr. Chairman, I yield 1 minute to my good friend, the gentlewoman from Texas (Ms. GRANGER).

Ms. GRANGER. Mr. Chairman, I rise in strong support of the Tucker Act Shuffle Relief Act. This important legislation will ensure equal justice under the law for America's property owners.

The Fifth Amendment to the United States Constitution is very clear. It says that private property will not be taken for public use without just compensation. This guarantees essential freedom and fairness.

The legislation offered by the gentleman from Texas (Mr. SMITH) will make sure that this guarantee of just compensation applies to all Americans. It says that each and every American, whether rich or poor, old or young, lawyer or layman will have their day in court to vindicate their rights. It gives each and every American access to justice.

Without this legislation, the right to protect constitutionally guaranteed Fifth Amendment rights is only as broad as your legal brief and as wide as your wallet.

Too many Americans have been unable to have their day in court because the courtroom door is barred with procedural hurdles and technical barriers. These Americans lack the legal fire power or financial wherewithal to surmount these barricades.

The Tucker Act Shuffle Relief Act removes those barriers to justice. It opens up the doors to relief for all of our people.

Support fairness, stand up for equal access to the courts, vote for the Constitution, support the Tucker Act Shuffle Relief Act.

Mr. SMITH of Texas. Mr. Chairman, I yield 3 minutes to my friend, the gentleman from Georgia (Mr. COLLINS).

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

Mr. Chairman, the foundation of our American republic is built upon the idea that citizens have the inherent right to life, liberty, and property. In fact, throughout the writings of our Founding Fathers, the right to property is viewed as fundamental to economic and political liberty.

In the Declaration of Independence, Jefferson cited as a central reason for seeking independence was the King imposing taxes without our consent, the illegal taking of citizens' personal property.

Then, arguing in support of the proposed Constitution, James Madison suggested that government is instituted no less for the protection of the property than of the persons or individuals.

Fortunately for all of us, these views prevailed in the Constitution, and the Fifth Amendment ensures that, in the United States, no one will be deprived of personal property without due process of law and just compensation.

Unfortunately, however, there is currently no single court in which a property owner can seek full relief for a Federal taking. The Tucker Act, which splits jurisdiction on property rights issues between Federal district courts and the Court of Federal Claims, allows the government to argue that property owners are suing in the wrong court. This results in bouncing citizens between two courts, often preventing or significantly delaying a final decision on the underlying issue of an illegal taking.

Today, each of us have the opportunity and the responsibility to protect the constitutional rights of our constituents. The legislation before us today will ensure that Federal agencies and courts cannot sidestep the Constitution through procedural games and delay tactics.

I urge my colleagues to support the Tucker Act Shuffle Relief Act.

Mr. SMITH of Texas. Mr. Chairman, I yield 2 minutes to a special friend, my colleague, the gentleman from Texas (Mr. SESSIONS).

Mr. SESSIONS. Mr. Chairman, I rise in favor of H.R. 992, the Tucker Act Shuffle Relief Act. This bill brings power back to its rightful place, the taxpayer or the property owner.

For too long, our constituents had been denied a quick and painless pursuit of their Fifth Amendment freedom. Our Constitution clearly recognizes that the right to own and manage one's property is essential to protect the other rights delineated in the Constitution.

We must ensure that property owners have the same access to Federal courts as any other individual who claims his constitutional rights had been violated. This bill simply streamlines the process to allow private property owners full recovery for a taking in one court. It does this by granting both Federal district courts and the Court of Federal Claims concurrent jurisdiction to hear all claims related to property rights.

This procedural fix will end the delays and increasing cost of litigation inherent in the Tucker Act as well as provide swift justice for property owners seeking to enforce their constitutional rights under the Fifth Amendment.

I want to thank my good friend, the gentleman from Texas (Mr. SMITH) for offering this very important piece of legislation. His tireless work on this issue will ensure that private property owners across America will receive the protection they deserve under our United States Constitution.

□ 1815

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me start by addressing the last two speakers, the gentleman from Georgia and the gentleman from Texas. First of all, I want to say once again and make it absolutely clear that the problem that this bill addresses, the shuffle back and forth between the U.S. court of claims and the U.S. district court, is one that should be done away with. No citizen should be required to go to two separate courts to deal with the same issue.

This bill gives a person whose property has been taken or who claims to have had their property taken or the value diminished in some way the right to take that claim either to the U.S. Federal court of claims or to take it to the U.S. district court. Those are two entirely different courts.

The U.S. district court, under the Constitution, is what is called an Article III court. An Article III court is one in which the judges are given, once they are appointed to the bench, lifetime tenure. The reason that they are given lifetime tenure is that we want them to be completely independent of the executive branch of the government, and we want them to be completely independent of the legislative branch of the government. We do not want politics or favoritism or any threat to intervene in their decisionmaking, so we give them lifetime tenure. That is an Article III judge.

The U.S. Federal court of claims, or the court of Federal claims, as it is now called, the judges are appointed for a 15-year term. They do not have the level of independence that an Article III judge has because their tenure is shorter. So you have Article III judges with lifetime tenure; you have Article I judges with a 15-year term.

Now, most folks, when I come to this body and take up for the Constitution, say, that MEL WATT just gets overly worried about the Constitution. So I want to put this in context.

In the drafting of the Declaration of Independence, the Founding Fathers complained that ''King George has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.'' It was for that reason that we wrote into our Constitution the provision for Article III judges. There is an historical basis. We were trying to remove those Article III judges from any influence that the executive branch of the government could exercise over them, and we did it by giving them lifetime tenure so that the executive branch or the legislative branch could not go over and interfere with those folks. They are supposed to be independent.

Now, when you then turn around and say, ''Okay, we're going to give an Article I judge the authority to declare a statute unconstitutional,'' you have stepped over the line. That is what this bill does. It says we are going to give the court of Federal claims judges the authority to declare acts of Congress unconstitutional. The Constitution will not allow that; plain and simple, it will not allow it.

I am not only expressing my opinion on this, I am expressing the administration's opinion on it. They have researched it and written us and said, we will not sign this bill for that reason, among others. I am expressing the opinion of 40 attorneys general whose letter I am holding in my hand, not only Democrats but conservative Republican attorneys general who expressed the exact same opinion.

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

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

Mr. SMITH of Texas. I just want to reassure the gentleman that in subcommittee we passed an amendment that took care of the concerns of the State attorneys general. They were concerned about the local issues and what impact it might have on that, and we took that out of the bill. So I hope that that concern is addressed.

Mr. WATT of North Carolina. I do not think that concern has been addressed at all. I assume the attorneys general are still concerned about the constitutional ramifications of this bill. I have not seen anything that eliminates that concern.

Let me tell my colleagues how strongly our Founding Fathers felt about this. Our Founding Fathers actually were of the opinion that even Article III judges could not overrule a statute that was passed by Congress. That is how far away they wanted to put them.

Invalidation of Federal statutes is a very, very serious thing. Our Founding Fathers were so convinced of that that Article III judges who serve in the independent judicial branch of our government were not given that authority. It was not until the landmark case of Marbury v. Madison that even Article III judges were given the authority to invalidate a legislative enactment. Now we are going another step and giving that authority, under this bill, to judges who are appointed for 15 years. They do not have lifetime appointment. They are not independent.

Now you have got to wonder why that is happening. That brings me to my second point; that is, that this bill will encourage forum shopping. You should say, as an initial proposition, ''Well, it should not matter whether a judge is a court of Federal claims judge or a U.S. district court judge, the result ought to be the same.'' It should be. But it should not matter to my colleagues over here, either. That is why I am offering the amendment to make all of these claims come to the United States district court, an Article III court that has the constitutional authority to dispose of both the compensation issue and the constitutionality, the legal substantive issue.

But why do my colleagues want court of Federal claims judges to hear this? Let me tell Members my speculation about it. There are 14 judges on the court of Federal claims. Nine of the eleven active judges on the court of Federal claims were appointed by Presidents Reagan or Bush. Is that accidental, or are we looking to encourage people to go to a court that has a judge in it that was appointed by Republicans?

That ought not to be our objective here. If that is what we are trying to achieve, we ought to pack up and go home if we are willing to sacrifice constitutionality for partisanship. If that is the reason we are doing this, that is absolutely unforgivable.

Now, my colleague is going to offer an amendment that addresses the third concern I have. The bill, as it is now postured, would delay expedited consideration of a lot of these new takings laws, the environmental rules, so that under the bill as it is currently written, last fall when the Environmental Protection Agency issued new air quality and ozone standards, you could get an immediate decision with expedited review within 60 to 90 days; this bill as it is currently written would wipe out that expedited review. A number of other examples that I could give you, I will not go into that, because fortunately my colleague has seen the light on that issue and is going to offer an amendment to correct that problem. I am going to support that amendment.

I want to move on to the fourth point, my fourth concern about this bill. That is, this whole notion that we are trying to speed up the process and get people justice quickly. How long is it going to take for this new system, that I have already told you is unconstitutional, to work its way through the system and up to the Supreme Court, and the Supreme Court to hear arguments and come back down, and somebody to take it back up? We will be here 5 years from now trying to decide whether this is constitutional or not, and I just told you it was unconstitutional. It should not be what we are doing. Because there are going to be some real live litigants involved in that, and the cost to them of going all the way to the Supreme Court to have the court say that this is an unconstitutional statute should not have to be borne by individual citizens in this country.

If we value getting to an expedited result, as my colleague says, and with which I agree, we should correct this problem in a constitutional way. Put all of the jurisdiction in the United States district court. I do not know what impact that will have on the outcome of cases. That depends on individual cases.

I do not care what outcome it has on individual cases. What I do care about is that we do this in a way that is constitutional.

The final thing I care about is that we solve this problem, because fairness and equity, as my colleague from Texas has indicated, ought to always be the hallmark of our judicial system. The Narromores that he talked so much

about ought not to be subjected to the shuffle back and forth. The Joneses, the Smiths, no citizen ought to be subjected to that kind of shuffle.

□ 1830

But guess what? In an effort to maintain this as an issue, my colleagues are willing to pass a bill which the President has already indicated is going to be vetoed.

Let me reaffirm, I have the letter right here in my hand. It says, ''The administration is fully committed to the protection of private property, including the payment of just compensation under the Fifth Amendment when private property is taken for public use. The administration is also committed to streamlining and expediting Federal court litigation. However, H.R. 992 presents constitutional concerns, would waste valuable judicial resources, and would lead to significant instability in the law.''

And then it goes on to say, ''The Attorney General, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the Chair of the Council on Environmental Quality would recommend that the President veto H.R. 992, as reported by the House Committee on the Judiciary.''

Now, we can either pass a bill and get it vetoed and preserve the debate, or we can pass a bill that is constitutional and solve this problem. We have the choice right here in this body, and I hope that my colleagues here will exercise that choice in a responsible way. I tried to convince my colleague to do that, but he thinks for some reason, the Court of Federal Claims, there is something sacrosanct about it.

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

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume just to point out that in the statement that my colleague from North Carolina just read, it is abundantly clear that the President himself has not said he is going to veto it or has threatened to veto, it is just a few members of his administration that have recommended to veto, and as he knows, there is a great chasm between recommending and threatening, and I am not aware of any controlling authority that any member of the administration has to actually veto anything.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GREEN).

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

Mr. GREEN. Mr. Chairman, I would like to thank my colleague from Texas for allowing me to rise in support of H.R. 992. Right now, property owners who have suffered a ''taking'' must elect between suing for monetary relief in the U.S. Court of Federal Claims or injunctive relief from Federal district courts.

Currently, this split jurisdiction hurts property owners. The Tucker Act makes the property owner choose between the two courts. By doing so, an individual can never receive full relief from an uncompensated Fifth Amendment taking.

H.R. 992 would permit private property owners to fully recover from a taking in either court by amending the Tucker Act. H.R. 992 gives both the district courts and the Court of Federal Claims concurrent jurisdiction to hear all of the claims relating to a Fifth Amendment taking. In essence, we have stripped away the confusion, delays and the procedural issues that may make it difficult for a property owner to have their case heard.

H.R. 992 also addresses the issues revolving around section 1500 of the Tucker Act. Section 1500 denies the Federal Court of Claims jurisdiction to entertain a suit pending in another court brought by the same plaintiff. This makes the filing of the Fifth Amendment takings case more complex and costly.

The Tucker Shuffle Relief Act clarifies the law to state that either the district court or the Federal claims court can have jurisdiction, ending this ambiguity in the law, and that is why, Mr. Chairman, I support H.R. 992 and urge its passage.

Mr. SMITH of Texas. Mr. Chairman, I would say to my colleague from North Carolina that I do not have any other speakers, but I intend to close.

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

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume to respond to the gentleman from Texas (Mr. GREEN). We solved the problem in a constitutional way by the Watt-Rothman amendment. I hope the gentleman will support my amendment. I hope the House will support my amendment and we can solve this shuffle in a constitutional way. That is all we are trying to do. I hope my colleagues will join us and help us do it.

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

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

A previous speaker mentioned that the Justice Department had some concern that this bill would encourage forum shopping. However, I want to point out that this is the same Justice Department in 1995 that admitted that under current law, ''The government presumably would have the right to transfer the cases and consolidate them in one forum.''

Also, all appeals in ''takings'' cases will be heard by the Court of Appeals for the Federal circuit, so a court precedent in takings cases will remain uniform regardless of what trial court a citizen initially chooses. The citizen will not be able to avoid unfavorable precedent by going to one court or the other.

Another point is that today a citizen has a choice of three courts to go to in a tax case. If the citizen does not pay the tax owed, he or she can go to a tax court. If the citizen pays the tax, the citizen can choose to go to the district court nearest to where they reside, or they can go to the Court of Federal Claims. As Chief Justice Lawrence Smith has stated, ''All 3 courts have developed their own particular abilities, and this system has provided, in the view of really all the tax bar, even the IRS and the Justice Department, a better system for the United States.''

We should provide U.S. citizens the same flexibility in takings cases that they now enjoy in tax disputes. We should allow them to choose a U.S. district court or the Court of Federal Claims, depending on their needs. Just as detrimental forum shopping has not developed in tax cases, it will not develop in takings cases either.

Mr. Chairman, the gentleman from North Carolina (Mr. WATT) mentioned a while ago his constitutional concerns and I want to lay them to rest. The Constitution clearly allows Congress to provide the Court of Federal Claims with the power providing equitable and declaratory relief in takings cases.

First, each Federal court, whether an Article I court or an Article III court, has the inherent authority and duty to disregard unconstitutional statutes and regulations. So in IBM Corporation v. U.S., the Federal circuit recently affirmed a ruling by the Court of Federal Claims declaring the Federal tax statute to be unconstitutional.

Second, the Court of Federal Claims already can provide the declaratory and equitable relief in various areas which now encompass about 40 percent of its docket.

Third, recent Supreme Court cases of Northern Pipeline Construction Company v. Marathon Pipeline Company and Commodity Futures Trading Commission v. Shore both signal Congress's ability to give the Court of Federal Claims the power to grant total relief in takings cases.

Mr. Chairman, in closing, let me reiterate that this legislation is based on equity and fairness. Every homeowner and every property owner across America deserves to have their day in court and in the right court and the court of their choosing. Property owners in America should not be shuffled back and forth between courts by the Federal Government when they are simply trying to assert their Fifth Amendment property rights.

H.R. 992 provides a solution to the unreasonable obstacles and costs property owners face today because of the Tucker Act. This bill would simplify the process for private property owners by giving them an option to go either to the Court of Federal Claims or the U.S. district courts for remedies concerning only Fifth Amendment private property takings cases. We do not change the substantive law that defines a taking; we leave it to current law to determine whether there is a legal claim.

My amendment on preclusive review assures that this bill will not modify environmental statutes, so the main objection of the League of Conservation Voters and a few of my colleagues has been addressed.

H.R. 992 simplifies the ability of every property owner in America to obtain a timely resolution one way or the other of their takings claim. If one supports giving private property owners their day in court, if one believes property owners, not big government, should choose the court that hears their case, if one believes that property owners do not deserve to be treated like a ping-pong ball by the Federal Government, if one believes in fairness and equity, then I encourage my colleagues on both sides of the aisle to vote for this simple, straightforward, common sense bill and support the right of every property owner across America to have their day in court.

Mr. Chairman, the Chamber of Commerce, the Realtors, and the Home Builders hope my colleagues will vote for this bill, too, and oppose the Watt amendment tomorrow.

Mr. CONYERS. Mr. Chairman, I rise today to urge you to oppose H.R. 992, the so-called "Tucker Act Shuffle Relief Act of 1997."

While I support the protection of private property rights and the payment of just compensation under the Fifth Amendment, I must oppose H.R. 992 because it is unconstitutional, overrides valuable ''preclusive review'' provisions in Federal statutes, and will lead to duplicative litigation and forum shopping. The bill is strongly opposed by the administration and is likely to be vetoed.

H.R. 992 is unconstitutional because it blurs the important distinction between Article III and Article I judges by allowing Article I, Court of Federal Claims judges to invalidate Federal regulations. Only Article III courts have the power of judicial review and the power to enjoin agency actions. The Supreme Court has clearly ruled that Congress cannot grant an Article I court the remedial powers of an Article III court.

Second, H.R. 992 overrides the ''preclusive review'' provisions that are an integral part of many Federal statutes. Preclusive review provisions ensure prompt and definitive resolution of legal challenges to agency decisions by providing that challenges to the validity of a particular statute must be brought in a particular court within 60 to 90 days. Businesses and investors rely on ''preclusive review'' provisions in order to make long-term business and investment decisions with certainty.

The bill would override these ''preclusive review'' provisions and allow challenges to be brought in a variety of different Federal courts at any time. A number of major Federal statutes would be affected, including the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Consumer Product Safety Act, and the Occupational Safety and Health Act. This result would be harmful to the public and the regulated community.

Finally, H.R. 992 will lead to duplicative litigation and forum shopping. By repealing 28 U.S.C. 1500, H.R. 992 eliminates provisions in current law that prevent duplicative litigation when a similar claim has been filed or is pending in another court. This will lead to a rash of wasteful litigation and forum shopping which would unnecessarily expend limited judicial resources.

I urge a "no" vote on H.R. 992.

The CHAIRMAN pro tempore (Mr. LAHOOD). All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment, and is considered read.

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

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 ''Tucker Act Shuffle Relief Act of 1997''.

SEC. 2. TUCKER ACT SHUFFLE RELIEF.

(a) IN GENERAL.—

(1) GRANT OF CONCURRENT JURISDICTION.—Except as provided in paragraph (3), the United States district courts and the United States Court of Federal Claims shall each have original jurisdiction to hear and determine all claims (whether for monetary or other relief) arising out of agency action alleged—

(A) to constitute a taking in violation of the fifth article of amendment to the Constitution of the United States; or

(B) not to constitute such a taking only because the action was not in accordance with lawful authority.

(2) ELECTION BY PLAINTIFF.—The plaintiff, by commencing an action under this section, elects which court shall hear and determine those claims as to that plaintiff.

(3) PARTIES INVOLUNTARILY JOINED.—No third party may be involuntarily joined to a case, within the jurisdiction of the Court of Federal Claims by reason of this section, if that party would be entitled to a determination of the claim with respect to which that party is joined by a court established by or under article III of the Constitution of the United States.

(b) EQUITABLE AND DECLARATORY REMEDIES.—With respect to any claim within its jurisdiction by reason of this section, the Court of Federal Claims shall have the power to grant equitable and declaratory relief when appropriate.

(c) APPEALS.—Any appeal from any action commenced under this section shall be to the United States Court of Appeals for the Federal Circuit.

(d) DEFINITIONS.—As used in this Act, the term—

(1) ''agency'' means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government; and

(2) ''agency action'' means any action or decision taken by an agency.

(e) CONFORMING AMENDMENT TO TITLE 28, UNITED STATES CODE, RELATING TO JURISDICTION OVER TORT CLAIMS.—Section 1346(b) of title 28, United States Code, is amended by inserting ''and the Tucker Act Shuffle Relief Act of 1997'' after ''chapter 171 of this title''.

SEC. 3. REPEAL OF LIMITATION ON FEDERAL CLAIMS COURT JURISDICTION BECAUSE OF PENDENCY OF CLAIMS IN OTHER COURTS.

(a) IN GENERAL.—Section 1500 of title 28, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1500.

Amend the title so as to read: ''A bill to end the Tucker Act shuffle, and for other purposes.''.

The CHAIRMAN. During consideration of the bill for amendment, the Chairman may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. SMITH OF TEXAS

Mr. SMITH of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Texas:

Page 3, after line 12, insert the following:

(4) PRECLUSIVE REVIEW.—The grant of jurisdiction made by this subsection does not extend to matters over which other Federal law has granted exclusive jurisdiction to one or more United States courts of appeals or district courts.

Mr. SMITH of Texas. Mr. Chairman, my colleague, the gentleman from North Carolina (Mr. WATT), has raised a concern that this bill might change the preclusive review provisions that are contained in some Federal environmental statutes. Such provisions specify that the review of the particular statutes must be handled by specified Federal courts.

The preclusive review issue is not one about substantive law, only about which Federal courts get to adjudicate a dispute regarding a particular statute. In any event, I want to reassure my colleagues that the Tucker Act Shuffle Relief Act will not modify any Federal environmental laws, so I am offering this amendment to make sure that the bill does not override preclusive review provisions.

My amendment simply states that the grant of jurisdiction made by the Tucker Act Shuffle Relief Act does not extend to matters over which other Federal law has granted exclusive jurisdiction to one or more United States courts of appeals or district courts. This shows the preclusive provisions will not be touched by this bill.

While the concern raised about preclusive review is unfounded, in my opinion, I do want to make a good faith effort to address it, so I encourage Members to support this amendment.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would inquire of my friend from Texas whether he is intending to amend, is asking unanimous consent to amend his amendment? I thought we had talked about that.

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

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

Mr. SMITH of Texas. Mr. Chairman, the amendment that I am offering now has language that has been added that the gentleman from North Carolina and I talked about earlier today, and I want to reassure him that that language has been inserted.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for answering that question.

Mr. Chairman, this certainly improves the gentleman's bill, this amendment. I support his amendment fully. It does not go all the way to address the constitutional issue, unfortunately, but it addresses the issue of expedited review of cases, and that needed to be addressed, and I am glad he is doing it. I encourage my colleagues to support the amendment.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. SMITH).

The amendment was agreed to.

The CHAIRMAN pro tempore. Are there further amendments?

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA.

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. WATT of North Carolina:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tucker Act Shuffle Relief Act of 1998''.

SEC. 2. TUCKER ACT SHUFFLE RELIEF.

(a) IN GENERAL.—

(1) GRANT OF JURISDICTION TO UNITED STATES DISTRICT COURTS.—The United States district courts shall have original jurisdiction to hear and determine all claims, notwithstanding the dollar amount, arising out of an agency action alleged to constitute a taking without just compensation under the fifth article of amendment to the Constitution of the United States.

(2) ELECTION BY PLAINTIFF.—The plaintiff may elect to file separate actions relating to such claims in the United States district court and the Court of Federal Claims, or may consolidate all such claims in the United States district court.

(3) PRECLUSIVE OR EXCLUSIVE REVIEW.—Nothing in this section shall be construed to affect any provision of a Federal statute which gives preclusive or exclusive jurisdiction of a specific cause of action to the United States court of appeals or to specific United States district courts.

(4) APPEALS.—Any appeal to a ruling by the United States district court shall be heard in accordance with section 1291 of title 28, United States Code.

(b) DEFINITIONS.—As used in this Act, the term—

(1) ''agency'' means a department, agency, independent agency, or instrumentality of the United States, including any military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the United States Government; and

(2) ''agency action'' means any action or decision taken by an agency.

SEC. 3. CLARIFICATION OF LIMITATION ON FEDERAL CLAIMS COURT JURISDICTION BECAUSE OF PENDING CLAIMS IN OTHER COURTS.

Section 1500 of title 28, United States Code, is amended by inserting '', arising from the same operative facts and seeking the same relief,'' after ''any suit or process''.

Amend the title so as to read: ''A bill to end the Tucker Act shuffle, and for other purposes.''.

Mr. WATT of North Carolina. Mr. Chairman, this amendment, now that the chairman of our subcommittee has made his amendment, the primary purpose would be to remove the discretion for a litigant to go to the Court of Federal Claims or to the U.S. district court, which I think is an unconstitutional discretion, and still give to a litigant the right to take their claim to the U.S. district court, an Article III court, and have their claim determined in its entirety.

□ 1845

They could litigate the constitutionality of the taking; they can litigate the amount of compensation they are due as a result of the taking. All of that can be addressed in the United States District Court.

In our opinion, to give a litigant the option of going to the U.S. Court of Claims, the Federal Court of Claims, is an unconstitutional act, because those judges are not Article III judges. I have already summarized that. I will not belabor that point anymore.

I do have a severe concern that the reason that this option is being offered under the bill is for political purposes. I misstated in my earlier statement, all of the 14 active judges of the Court of Federal Claims and 9 of the 11 active judges on the Court of Appeals from that court are either Reagan or Bush appointees. I think that is really what is giving this option for people to go to the Court of Federal Claims is all about.

We ought not to worry about political objective, we ought to be worrying about getting a bill that solves the problem in a constitutional way. I hope that my colleagues will support my amendment.

Mr. Chairman, Assistant Attorney General Eleanor Acheson stated precisely why, in her recent testimony before the Subcommittee on Immigration and Claims, we should oppose this amendment.

She said,

The Court of Federal Claims has developed expertise in resolving and streamlining takings litigation, and in the other complex cases within its specialized docket.

She also stated that,

Takings claims may involve extensive discovery and trial on significant issues with which a Federal District Court has little experience.

We should not discard the valuable resource of the Court of Federal Claims' expertise or its large body of case law, which has been compiled over many years. Property owners across America have the right to be heard in either the Claims Court or the Federal District Court.

Why not give property owners the option of bringing a takings claim in a U.S. District Court or the Court of Federal Claims? If the owner wants to pursue his or her claim in a court close to home, the individual can choose a Federal District Court. If the owner wants to utilize the expertise of a specialized court, the owner can choose the Court of Federal Claims. We should make it as easy as possible for property owners to have their claims heard.

My colleague is concerned that Congress cannot constitutionally give the Claims Court the authority to grant injunctive relief, but the Court of Federal Claims already has the power to grant injunctive relief in various areas, totaling about 40 percent of its docket, as I noted a minute ago.

Further, the Supreme Court has provided us with a test to judge whether Congress can give the Court of Federal Claims the power of injunctive relief in different circumstances. If we apply these tests found in the cases of Northern Pipeline and Commodity Futures, the result is very clear. Congress can grant the Claims Court the powers of injunctive relief in Fifth Amendment takings cases.

There are some, and I certainly do not put my friend, the gentleman from North Carolina (Mr. WATT) in this category, but there are some who say they are for property rights. What they mean is that they are for property rights in the abstract, for property rights theoretically, for property rights idealistically, but when it comes to helping real people with real problems, somehow they can never be found.

This bill is a fair, straightforward, commonsense way to give every property owner across America their right to choose the court that they think is best for their claim, either the Claims Court or the Federal District Court.

This amendment would destroy that option for every property owner in America. The underlying bill is supported by such organizations as the National Association of Realtors, the National Association of Home Builders, and the U.S. Chamber of Commerce. These groups also oppose the weakening amendments, such as this one. So I hope tomorrow, when we ultimately vote on this amendment, there will be strong bipartisan opposition to it.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. EWING) having assumed the chair, Mr. SUNUNU, 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. 992) to end the Tucker Act shuffle, had come to no resolution thereon.