and Democrats will understand the merit, the value, and the worth of family farming in this country's future. I hope that we will decide to embark upon a farm policy that says to family farmers that when prices collapse and when you are ravaged by the worst crop disease of the century, we want to help you over those price valleys. We want you to be a part of this country's future.

We need a farm policy that tells family farmers that they matter from the standpoint of social and economic policy. Here we are in a country that produces the most wholesome quality food at the lowest percent of disposable income of anywhere in the world. Family farmers do matter in this country's future. I hope that will be the result of the debate we have here in the next month or two in the U.S. Senate.

Mr. President, I yield the floor.

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I ask unanimous consent that I be permitted to proceed for not to exceed 12 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 2292 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PROPERTY RIGHTS IMPLEMENTATION ACT OF 1998—MOTION TO PROCEED

Mr. HATCH. Mr. President, I move to proceed to the consideration of S. 2271, the Property Rights Implementation Act.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to debate the motion to proceed to S. 2271, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of the bill (S. 2271) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law, and for other purposes.

The Senate proceeded to consider the motion.

PRIVILEGE OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that Brian Day, one of my law clerks, have floor privileges during the pendency of the property rights debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, the people of Utah, and indeed, of all of our States, have felt the heavy hand of the government erode their right to hold and enjoy private property. I have authored and cosponsored many bills in the past that would protect private property from the jaws of the regulatory state.

Our opponents on the left and the radical, so-called environmental groups, however, have been successful so-far in derailing the consideration of more needed reform measures. But I believe we have the opportunity to pass a narrower yet meaningful piece of legislation. The substitute we are considering today, S. 2271, the ''Property Rights Implementation Act,'' narrows H.R. 1534, which passed the House of Representatives on October 23, 1997, by a 248 to 178 vote. After the House passed bill was referred to the Judiciary Committee, we met with local, environmental, and governmental groups in an effort to meet their concerns. The product of those meetings is the S. 2271 substitute.

Mr. President, I hope the Senate will allow us to proceed to consideration of this bill. How can we work to further improve this bill if your colleagues will not let us proceed to vote. This is a worthwhile bill that resolves many problems. I call on my colleagues to vote for cloture so that we may address those problems on the merits.

The purpose of S. 2271, is, at its root, primarily one of fostering fundamental fairness and simple justice for the many millions of Americans who possess or own property. Many citizens who attempt to protect their property rights guaranteed by the Fifth Amendment of the Constitution are barred from the doors of the federal courthouse.

In situations where other than Fifth Amendment property rights are sought to be enforced—such as First Amendment rights, for example—aggrieved parties generally file in a single federal forum without having to exhaust state and local procedures. This is not the case for property owners.

Often they must exhaust all state remedies with the result that they may have to wait for over a decade before their rights are allowed to be vindicated in federal court—if they get there at all. Moreover, the federal jurisdiction over property rights claims against federal agencies and Executive Branch Departments is in a muddle. In these types of cases, property owners face onerous procedural hurdles unique in federal litigation.

The Property Rights Implementation Act, if we are allowed to even consider it, primarily addresses the problem of providing property owners fair access to federal courts to vindicate their federal constitutional rights. The bill is thus merely procedural and does not create new substantive rights.

Consequently, the bill has two purposes. The first is to provide private property owners claiming a violation of the Fifth Amendment's taking clause some certainty as to when they may file the claim in federal court. This is accomplished by addressing the procedural hurdles of the ripeness and abstention doctrines which currently prevent them from having fair and equal access to federal court. S. 2271 defines when a final agency decision has occurred for purposes of meeting the ripeness requirement and prohibits a federal judge from abstaining from or relinquishing jurisdiction when the case does not allege any violation of a state law, right, or privilege. Thus, S. 2271 serves as a vehicle for overcoming federal judicial reluctance to review takings claims based on the ripeness and abstention doctrines.

The second purpose of the bill is to clarify the jurisdiction between the Court of Federal Claims in Washington, D.C., and the regional federal district courts over federal Fifth Amendment takings claims. The Tucker Act grants the Court of Federal Claims exclusive jurisdiction over takings claims seeking compensation. Thus, property owners seeking equitable relief must file in the appropriate federal district court.

This division between law and equity is archaic and results in burdensome delays as property owners who seek both types of relief are ''shuffled'' from one court to the other to determine which court is the proper forum for review. S. 2271 resolves this matter by simply giving both courts concurrent jurisdiction over takings claims, thus allowing both legal and equitable relief to be granted in a single forum. I will address this conundrum of the ''Tucker Act shuffle'' in more detail in a later speech.

I. HOW THE BILL WORKS

Let me briefly explain how the procedural aspects of the bill, designed to assure fairness, work. One of the hurdles property owners face when trying to have their Federal claim heard on the merits is the doctrine of abstention. Federal courts routinely abstain their jurisdiction and refer the case to state court, even if there is no State or local claim alleged. This is true only for property rights cases.

The bill would clarify that a Federal court shall not abstain its jurisdiction if only Federal claims are alleged. To protect State's rights, the bill allows an unsettled question of State law that arises in the course of the Federal claim to be certified in the highest appellate court of that State, under whatever certification procedures exist in that State. Federal courts would retain their jurisdiction, but the unsettled State law question would be answered in State, not Federal court. In

the few States where no certification procedures exist, property owners would be unable to benefit from that expedited procedure.

The second hurdle the bill would resolve is the problem of ''ripeness''. Current law requires a property owner to get a ''final decision'' from the land use agency to which he or she has applied before their Federal claim can be heard in Federal court. S. 2271 simply provides an objective definition of a ''final decision'' so that both parties in a land use dispute will know when ''enough is enough.'' The bill outlines the steps a property owner must take to resolve a dispute at the local level before a final decision by the agency in question has been reached.

The process clarified by the bill protects both States rights and the individual rights guaranteed by the Fifth Amendment. Before a land use decision is defined as ''final'': A property owner must make a meaningful application for a land use to the agency. If the application is denied, the property owner must make an appeal or seek a waiver of the denial. If rejected a second time, a final decision has been reached unless there is an elected local body with the authority to review land use appeals. In that case the property owner must submit another application and be denied a third time before a decision is defined as final.

The bill provides yet another layer of local decision making. In rejecting the property owners land use application, the agency may chose to provide a written explanation for the denial and explain the uses, density, and intensity of development that would be permitted on the property in question. If such an explanation is provided, the decision will not be considered final until the property owner resubmits a new application taking into account the conditions of the original denial. If the property owner is again rejected, and rejected on appeal, the decision is considered final.

In all instances, the property owner is exempted from making an appeal or seeking a waiver if no such appeal or waiver exists, or if doing so would be futile. The concept of ''futility'' is established in existing case law. The purpose of this exemption is to ensure that property owners are not trapped in a futile situation where time and money is wasted seeking such relief where the prospect is virtually nonexistent.

In short, the bill is very simple and protects the rights of localities by requiring that property owners comply with local procedures before they seek relief in Federal court.

II. THE NEED FOR LEGISLATION—THE RIPENESS PROBLEM

Mr. President, let me amplify why this legislation is desperately needed. The first part of the bill deals with the ripeness doctrine, a doctrine which has been misused in a manner that prevents property owners from vindicating what, after all, is a Federal right in Federal court.

Let me begin by reminding my colleagues that the Fifth Amendment to the United States Constitution protects individuals from having their private property ''taken'' by the Government without receiving just compensation. A complex body of law has developed from the Takings Clause of the Fifth Amendment and is used by Federal courts to determine whether a ''taking'' has occurred.

In conjunction with this complex body of takings law, an equally complex set of procedural doctrines has also developed for use by Federal courts to determine whether the core substantive issues involved in the takings claim are ready to be heard. These procedural doctrines are known as the doctrines of ''ripeness'' and, I might add, ''abstention.''

Under current case law, a takings claim must be ''ripe'' in order to be heard in Federal court. In a key decision entitled *Williamson County Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the Supreme Court attempted to clarify the principles of the ripeness doctrine.

The Court stated that a takings claimant must show: (1) that there has been issued a ''final decision regarding the application of the regulations to the property at issue'' from ''the government entity charged with implementing the regulations,'' and (2) that the claimant requested ''compensation through the procedures the State has provided for doing so.'' [Id. at 194.] A takings plaintiff must meet both requirements before the case will be considered ripe for federal adjudication; if either has not been met, then the claimant will be procedurally barred from bringing such a claim in Federal court.

Unfortunately, the lower court decisions which subsequently have attempted to apply the ripeness principles set forth in *Williamson County* have only served to create much confusion over when a claim becomes ripe. Property owners have been left with no clear understanding of how many proposals or applications must be submitted before their takings claim would be considered ripe.

For example, in *Southview Assocs.* v. *Bongartz*, 980 F.2d 84, 92 (2d Cir. 1992), cert. denied, 507 U.S. 987 (1993), the U.S. Court of Appeals for the Second Circuit decided a takings claim was not ripe because the landowner ''did not attempt to modify the location of the units or otherwise seek to revise its application.'' The court failed to decide how many reapplications would be necessary to reach the merits.

In *Schulze* v. *Milne*, 849 F.Supp. 708 (N.D. Cal. 1994), aff'd in part, rev'd in part on other grounds, 98 F.3d 1346 (9th Cir. 1996), property owners submitted a total of thirteen (13) revised plans over three years to renovate their home. Each time they submitted a plan ''in compliance with all applicable zoning laws,'' local officials nonetheless ''refused to approve the plan, and instead informed plaintiffs that there were additional requirements, not found in any zoning or other statutes, which plaintiffs had yet to meet.'' [Id., 849 F.Supp. at 709.] This is happening in many areas around the country.

These examples poignantly illustrate the current confusion concerning when a claim becomes ripe. The current state of disarray that Federal judges and private landowners alike find themselves in can be fixed by the establishment of a set of objective criteria so that all parties will be able to easily discern when a government land use decision is final. This bill will bring that confusion to an end by clearly defining when a Federal takings claim becomes ripe for adjudication and how many final decisions are required before the claim may proceed in Federal court.

Additionally, much confusion has existed over the second prong of *Williamson County:* namely, the requirement that a property owner must exhaust all compensation remedies available under State law. This prong acts to prevent Federal courts from reaching a final decision until the State court definitively rules that it will not entertain a compensation remedy.

This problem is exemplified in *Santa Fe Village Venture* v. *City of Albuquerque*, 914 F.Supp. 478 (D.N.M. 1995). There, the local city council established a building moratorium to preclude any development on lands near a national monument site. Plaintiff had an option to purchase land within areas subject to the moratorium, but never exercised that option because of the total land use restriction. Rather, plaintiff filed a lawsuit in Federal District Court seeking just compensation from the local government for its inability to develop the property.

The first suit was dismissed on ripeness grounds because the property owner never sought a compensation remedy in State court. In other words, exhausting State compensation procedures was necessary to make a Federal claim ripe for resolution. The property owner then filed a second action for inverse condemnation in State court. This case was also dismissed—this time for lack of standing. Plaintiff returned to Federal court raising only Federal claims but had its case dismissed again on ripeness grounds because the Federal claims were not raised in State court despite the State court's previous adjudications. These type of situations will be resolved by the bill by remedying the confusion of the State exhaustion requirement.

As you can see in these Federal land use cases from 1983 to 1988, the red part of this, 94.4 percent, is where judges failed to reach the merits of the case—in other words, had ripeness problems—and the 5.6 percent of cases were decided on the merits, where they found that they were ripe. As you can see, the owners of property are just not being treated fairly and this is a constitutional privilege provided for in the

fifth amendment of the Constitution, so this is wrong.

Let me just note, this is a recent study prepared by the law firm of Linowes and Blocher of Silver Spring, MD, and incorporated into the RECORD for this bill.

Over 80 percent of the takings cases originating in U.S. district courts between 1990 and 1997, as shown on this chart, were dismissed before the merits were ever reached due, again, to the ripeness doctrine.

The 81 percent in red is where judges failed to reach the merits of the case because of ripeness problems, and the green is decided on the merits. In those cases where they were decided, they averaged 7 years of total litigation. So you can imagine how the rights are not being protected.

Many of these dismissals were tantamount to the termination of the claim because the landowner lacked the adequate financial resources to form an appeal. For those landowners who could afford the high expenses of an appeal, the survey showed that more than half of the takings claims were still dismissed.

The red is where judges failed to reach the merits of the case, again, due to ripeness problems. The green is cases, between 1990 and 1997, decided on the merits, and they averaged 9.5 years of litigation.

Just think about that. For those landowners who could afford the high expenses of an appeal, the survey showed that more than half of the takings claims were still dismissed. Of those appellate cases that did not pass the ripeness test, 60 percent were remanded for more litigation on the merits. These results underscored the need for this legislation.

Further adding to the problem, a Federal court may also abstain from hearing a takings case under the judicially created doctrine of ''abstention.'' This doctrine allows Federal judges to exercise discretion in deciding whether or not to accept cases that are properly under the Federal court's, in this case, jurisdiction. Federal courts are reluctant naturally to adjudicate State political and judicial controversies, so a Federal court will usually abstain anytime that a claim presents a Federal question that would not need to be resolved if an underlying challenged State action of an unsettled State law issue were determined. This is underscored by the Supreme Court case of *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496 (1941). Federal courts also abstain from hearing cases which touch on sensitive State regulatory issues which are best left to the state courts. *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943), is an example of this situation.

Additionally, federal judges often use the abstention doctrines to refer takings cases back to state courts before reaching the merits of the Fifth Amendment claims. This bill remedies the current abuse of abstention by requiring that Federal courts adjudicate the merits of an aggrieved property owner's claims where those claims are solely based on federal law. On the contrary, if a property owner also raises claims involving state constitutional, statutory or common law claims pendent to the federal claims, then the property owner may not use this bill and the federal court may properly abstain in that type of situation.

I have to emphasize that control over land use lies and will remain in the hands of local entities. Private property owners must submit a land use proposal to the local agency for approval which, for many applicants, is the beginning of a negotiation process regarding the permitted land uses. This process, however, can take years for property owners who are left in regulatory limbo due to the local entities' failure to make a final decision as to what land use is permitted. Consequently, property owners are not able to use or develop their land and are effectively denied their fifth amendment rights.

While this result could be construed as a fifth amendment taking, I must point out that the applicant is, for all practical purposes, unable to file a claim in Federal court to enforce these constitutional guarantees because local land use authorities do not want to be sued in Federal court and can abuse the system by purposely withholding a final agency decision. To further frustrate the problem, the federal court decisions interpreting the Supreme Court's ''ripeness'' definition are conflicting and confusing, providing little guidance to property owners as to when a case is ''ripe'' for federal adjudication.

Moreover, Federal judges are often reluctant to get involved in land use issues. Instead, they usually dismiss takings cases back to state court based on the abstention doctrines or the lack of ripeness. Unfortunately, the overwhelming majority of property owners do not have the time and money necessary to pursue their case through the state court and then re-file it in Federal court. The extensive use of the abstention doctrines by the Federal courts to avoid land use cases, even ones involving only a Federal claim, has created a blockade denying aggrieved land owners access to the Federal court system.

This problem is exemplified by the situation presented in *Suitum* v. *Tahoe Regional Planning Agency*, 80 F.3d 359 (9th Cir. 1996), vacated and remanded, 117 S.Ct. 1659 (1997). Bernadine Suitum, a retiree, was barred from building on her land by a regional planning agency. For seven years, the Federal courts steadfastly refused to consider whether a taking of her property by the government had occurred until the U.S. Supreme Court ruled in an unanimous decision that she will have the right to argue her case in Federal court. This elderly woman's plight has resulted in years of expensive litigation just to have the opportunity to present the merits of her case to a Federal judge. Unfortunately, this situation is far from rare for many takings claimants.

Another procedural tool that has been used to construct a barrier to property owners seeking remedies in Federal court has been the use of the doctrines of res judicata and collateral estoppel by Federal judges. Res judicata, also known as claim preclusion, acts as a bar to further claims brought by a party on the same claim where a final judgment on the merits has already been reached. Claim preclusion prevents parties from relitigating claims that were already raised or could have been raised in an earlier lawsuit. Similarly, collateral estoppel, also known as issue preclusion, prevents a plaintiff from relitigating issues that were already decided by a state court.

Consequently, a Federal court could preclude a property owner from bringing an otherwise ripe claim in Federal court because a final determination had already been reached in a State court proceeding. That is, a strict adherence to the Williamson County prongs could prove tantamount to the nails in the coffin box of the property owner's ripe takings claim. Nevertheless, by removing the state exhaustion requirement from the ripeness landscape, this bill effectively solves all res judicata and collateral estoppel problems.

Interestingly, claimants alleging violations of other fundamental rights do not encounter these same procedural barriers when attempting to bring meritorious actions in Federal court. In those situations, ripeness, abstention, and res judicata are often inapplicable.

This places fifth amendment claimants in an inferior position to their first amendment counterparts. But, the Supreme Court has expressly stated that the fifth amendment is ''as much a part of the Bill of Rights as the first amendment or the fourth amendment.

Look what the Court said in Dolan v. City of Tigard:

> We see no reason why the takings clause of the fifth amendment, as much a part of the Bill of Rights as the first amendment or fourth amendment, should be relegated to the status of a poor relation . . .

The Court, I hope, means what it says.

In any event, I certainly concur. The rights of the fifth amendment should not be inferior to the rights of the first amendment or to any other fundamental guarantee contained in the Bill of Rights.

This bill seeks to address these procedural blockades and offer property owners more certainty as to the Federal adjudicatory process governing takings claims. More specifically, the bill accomplishes this by defining when a final agency decision takes place and prohibiting Federal judges from invoking the abstention doctrine to avoid cases that involve only fifth amendment takings claims.

In other words, this bill does not impugn or prevail upon any State rights. It only is triggered when we have fifth amendment constitutional rights invoked.

Additionally, S. 2271 maintains the traditional interpretations of the abstention doctrine which keep the federal courts free from being thrust into controversies surrounding state and local issues by limiting its scope only to actions involving federal claims. As the proposed language indicates, usage of this Act by a claimant is optional.

That is, the bill allows a claimant the opportunity to bring a claim in Federal court if she so chooses, but does not mandate such an avenue of jurisdiction. S. 2271 simply allows every citizen her right to bring a Federal takings claim into Federal court to be decided on the merits. It is important to note that if a claimant brings a takings claim that is joined to other State claims, a Federal court would be able to abstain: for example, a takings claim accompanied by a State constitutional claim, a claim of ultra vires conduct, or abuse of discretion would not be able to reach the merits in Federal court without a State court first deciding the merits of the State claims.

Let me refute the critics and assert that S. 2271 accomplishes its goals in a manner that will not crowd the Federal dockets. Under the provisions of this bill, a claimant is required to obtain as few as three and as many as five decisions by local entities before that claimant's claim will be ripe for review by a federal court. Thus, the claimant must spend adequate time pleading her case before the local authorities and must obtain the necessary denials from them; until she satisfies these prerequisites, her claim will be barred from the Federal courts.

Some have argued that the second prong of Williamson County mandates as a matter of constitutional law that property owners exhaust State compensation remedies before seeking federal court redress. This conclusion is buttressed by their claim that a taking does not occur on a State or local level until the State or locality has had the opportunity to afford compensation to the property owner.

I disagree with both these contentions. First, Williamson County was decided before the remedy for a Federal taking was clarified. It is, indeed, outdated. When Williamson County was decided in 1985, the Court viewed the remedy for takings to be invalidation of the offending statute or rule. In other words, compensation was not considered the remedy for a taking under the U.S. Constitution. That changed in 1987, with *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U.S. 304 (1987), where the Supreme Court finally held that the Federal remedy for a taking is compensation. Now that this Federal remedy has been clarified, there is no reason to compel a citizen to litigate State court remedies in State court first.

Second, and consequently, the second prong of Williamson County is now merely prudential in nature. This conclusion is buttressed by the Supreme Court's most recent takings and ripeness decision, where the Court described Williamson County's requirements as ''two independent prudential hurdles * * *.'' *Suitum* v. *Tahoe Regional Planning Agency*, the 1997 case I cited before, makes that case, 117 S. Ct. 1659, 1666 (1997). In other words, the requirement of exhaustion of State or local compensation procedures is a court-created barrier which Congress may alter. Simply put, initial State court litigation is not compelled by the Constitution.

Third, the Williamson County second prong is only dicta, and, therefore, not binding authority. The main issue in Williamson County concerned the first element of ripeness, that is, whether the land use agency rendered a ''final decision.'' The ensuing discussion on compensation ripeness was neither essential nor necessary to support the decision. Thus, it was mere dicta.

Fourth, the text of the Takings Clause does not require that property owners must exhaust State or local compensation procedures. The drafters and ratifiers of the fifth and fourteenth amendments to the Federal Constitution did not intend such a result: The text of the takings clause states: ''[N]or shall private property be taken for public use, without just compensation.'' Those are words right out of our beloved constitution.

Thus, the fifth amendment clearly creates a Federal remedy for a taking. There is no basis to believe that the drafters and ratifiers intended State court litigation as a prerequisite to vindicate that Federal remedy. State court litigation puts the cart before the horse: Compensation is simply a computation of the amount owed for a taking. It makes no sense to sue in State court first, until liability for the Federal taking has been determined.

Fifth, preclusion doctrines, as mentioned above, bar any Federal takings suit in Federal court if a plaintiff must sue in State court first. A property owner in this circumstance would never get to Federal court to vindicate the property owner's rights. It is doubtful that this was the intent of the drafters and ratifiers who promulgated and adopted Federal rights amendments and established the Federal forums to protect them. Yet being barred from the Federal courthouse is exactly what happened in *Dodd* v. *Hood River*, in 1998, 136 F.3d 1219 (9th Cir. 1998). That is a ninth circuit court case.

The minority views accompanying H.R. 1534, the bill voted out of the Judiciary Committee, completely misstates the Dodd case. Dodd stands for the reverse of what the minority views represent. The minority claims that, one, ''most federal appeals courts allow claimants to 'reserve' federal constitutional claims so that the federal courts may address those claims once the state court litigation has ended.'' This is not true. This can be seen from what happened in the various *Dodd* cases.

After being allowed to reserve their Federal takings claim in Dodd IV [(59 F. 3d at 862)], the Dodds were denied the right in Dodd V to raise it in Federal court under the ''issue preclusion'' doctrine of collateral estoppel. [See Dodd V, 136 F.3d at 1227 (9th Cir. 1998).]

The same thing happened to a takings claimant in *Wilkinson* v. *Pitkin County Bd. of County Comm'rs*, a tenth circuit case in 1998, where the court concluded that ''the Williamson ripeness requirement is insufficient to preclude application of res judicata and collateral estoppel principles in this case.'' Moreover, in a candid footnote, the court acknowledged:

> We do note our concern that Williamson's ripeness requirement may, in actuality, almost always result in preclusion of federal claims, regardless of whether a reservation is permitted. It is difficult to reconcile the ripeness requirement of Williamson with the laws of res judicata and collateral estoppel.

Contrary to the minority's misrepresentation of the law, Dodd and Wilkinson confirm that, without the referenced remedial legislation, citizens bringing fifth amendment takings claims in Federal court are in a Catch-22 situation. They must first go to state court, but when they do, they are barred from ever litigating their claim in Federal court. Meanwhile, municipal defendants in such cases are free to seek removal of the case from State to Federal court. This removal procedure was upheld recently by the Supreme Court in City of Chicago v. International College of Surgeons.

I must observe that other constitutional rights hinge on State or local issues, but do not require initial State litigation. Many provisions in the Bill of Rights also hinge on the resolution of issues concerning State or local law. There are no similar ripeness barriers requiring citizens to go to State court first to address the constitutionality of Government actions that infringe upon the speech, religion, or privacy rights protected in the Constitution.

Furthermore, the Supreme Court in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 437, n. 15 (1982), held that takings could occur regardless of whether the property has increased in value. In this case the Court found a taking where cable was laid pursuant to a New York statute, which undoubtedly increased the value of the building. The Supreme Court found a taking and remanded the compensation issue to the lower court.

I believe that this holding is contrary to the position of the bill's critics that takings analysis require, as a matter of law, that compensation be determined before a governmental action can be considered an unconstitutional taking. Under Loretto, a court could find that there has been a taking—a significant interference with property rights—yet

award no compensation. It is still considered an unconstitutional taking. Consequently, the compensation requirement of the Takings Clause is merely a remedy that may or may not be awarded in a state or federal court, depending on the fairness of the situation.

Buttressing this conclusion is the recent Supreme Court decision in *Phillips* v. *Washington Legal Foundation*, No. 96–1578 (June 15, 1998). In Phillips, the Court held that interest accruing from interest bearing lawyers trust accounts, that is, Interest On Lawyers Trust Accounts, or IOLTAs, as they call it, that that is property within the meaning of the fifth amendment. Although the Court left open whether the adequacy of compensation must be determined before a constitutional taking is considered to occur, [Phillips slip op. at 7, n.4], it is interesting to note that as a practical matter the Court first determined whether there was a property interest and, thereafter, remanded the case to determine whether there was a taking, and if so, the amount of just compensation to be paid for such taking.

The Court in effect applied a three-part test: (1) whether a property interest exists; (2) whether the property interest has been significantly interfered with; and (3) if a property interest has been taken, the determination of just compensation. The Committee believes that this approach belies the argument that a federal court cannot hear takings claims before a state determines compensation. Indeed, this was the position of the dissent, who argued that the issue of compensation is not separate and distinct from the issue of disposition and use of property. [Phillips, slip op. at 4 (Souter, J., dissenting).]

Furthermore, in *Eastern Enterprises* v. *Apfel*, No. 97–42 (U.S. June 25, 1998), decided on the next to last day of the 1997–1998 Supreme Court term, the Court faced the issue of whether the Coal Industry Retiree Health Benefit Act—called the ''Coal Act''—which established a mechanism to fund health care for retirees, could be applied retroactively to a company that no longer mined coal and had withdrawn from the Coal Act funding scheme pursuant to terms of a prior negotiated agreement.

Four Justices, Chief Justice Rehnquist and Justices O'Connor, Scalia, and Thomas, held that the application of the Coal Act violated the Takings Clause of the fifth amendment. [Eastern Enterprises, slip op. at 1–37 (Plurality opinion of O'Connor, Rehnquist, Scalia, and Thomas, J.J.)]. One Justice, Justice Kennedy, held in concurring opinion that retroactive application of the Act violated the Due Process Clause. [Eastern Enterprises, slip op. at 1–7 (Kennedy, J., concurring and dissenting in part)].

In reaching its conclusion, the plurality grappled with the ripeness issue of whether a litigant, such as the petitioner in this case, is barred from seeking equitable relief in federal district courts. The Tucker Act confers exclusive jurisdiction on the Court of Federal Claims to hear claims for compensation under the Takings Clause of the fifth amendment, and it was argued, much like critics of this bill, that a claim for equitable or other relief under the Takings Clause is hypothetical until compensation is first determined by a court. The Supreme Court noted that the Court of Appeals, the various courts of appeals, were divided on the issue and that the Supreme Court's precedents were seemingly contradictory. [Eastern Enterprises, slip op. at 19 (plurality opinion of O'Connor, J.)].

For instance, the Supreme Court in *First Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U.S. 304, 314 (1987), observed that ''the fifth amendment does not prohibit the taking of private property, but instead places a condition [just compensation] on the exercise of that power.'' Yet in *Duke Power Company* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 70 n. 15 (1978), the Supreme Court held that a district court may exercise jurisdiction over declaratory judgment actions pursuant to a Takings Clause claim, even when no attempt to seek compensatory relief has been made in the Court of Federal Claims.

Significantly, the Eastern Enterprises plurality noted that the Supreme Court had granted equitable relief without discussing the applicability of the Tucker Act, and, thus, decided the issue sub silento that an unconstitutional taking could occur without a determination of compensation. [Eastern Enterprises, slip op. at 19–20 (plurality opinion of O'Connor, J.), citing *Babbitt* v. *Youpee*, 519 U.S. 234, 243–245 (1997); *Concrete Pipe & Products of Cal.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 641–647 (1993); *Hodel* v. *Irving*, 481 U.S. 704, 716–718 (1987)].

Based on the foregoing, I believe that a federal court may decide takings issues before compensation is ascertained. Indeed, the Court of Appeals for the Second Circuit in *In re Chateaugay Corp.*, 53 F. 3d 478, 492 (2d Cir. 1995), characterized the contrary language in First Evangelical Lutheran Church, mentioned above, as obiter dicta.

Finally, I want to note that federal courts have more than adequate experience in the appraisal of value as the many takings and inverse condemnation claims heard by these courts demonstrate. Consequently, federal courts, as well as state courts, are appropriate forums to determine compensation. Indeed, this was the intent of the framers and ratifiers of the fifth and fourteenth Amendments.

In conclusion, let me point out that James Madison, in his celebrated Essay on Property, wrote that the very purpose of government is to protect private property.

Madison's own words in Essay on Property:

> Government is instituted to protect property of every sort . . . this being the end of government. That alone is a just government, which impartially secures to every man whatever is his own.

Let me also point out the admonition of John Adams, who, in his Defense of the Constitutions of Government, cautions that:

> The moment the idea is admitted into a society that property is not as sacred as the laws of God, and there is not force of law and public justice to protect it, anarchy and tyranny commence.

That is John Adams' Defense of the Constitutions of Government.

Mr. President, let us heed the advice and warnings of the wise Founders of this Republic. It is the duty of Congress to assure that the constitutional rights of all Americans are protected. This is especially true when, as here, the courts fail to do their job of safeguarding constitutional rights. In such a situation, Congress must step to the plate.

With passage of this bill, Congress will have hit a home run. The right to own and possess property will have been vindicated. Fairness to property owners will have been guaranteed by resolving the egregious delays and costs associated with the ripeness issue. Property owners will have been afforded fair access to the federal courts to vindicate their constitutional rights. Justice will no longer have been delayed nor denied.

I urge my colleagues to support this worthwhile measure.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, good to see a fellow Mainer. I was so intent and engrossed by the discussion of the senior Senator from Utah, I did not notice who was in the chair.

What is the parliamentary situation?

The PRESIDING OFFICER. The Senate is debating a motion to proceed to Senate bill 2271. The cloture vote will occur at 5:45 p.m. Time is divided equally between now and then.

Mr. LEAHY. How much time is due to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 100 minutes remaining.

Mr. LEAHY. I thank the Chair.

Madam President, I am amazed on this issue. I look at the schedule set by the distinguished Speaker of the House, and we have so very few legislative days remaining that now we have this as a top priority—a bill to strip zoning and land use decisions from small towns and cities and counties—instead of passing important funding bills.

I do know the law requires us to have a budget by April 15; it also requires us to file our taxes bill April 15—we demand every person in the country do that. But it seems that the majority of the Republican leadership did not find

it in their heart to obey their own law to pass the budget by that time.

I am not sure we have passed the budget. We passed one in the Senate; the House, months later, passed one; I don't believe it has been conferenced.

Anyway, these are things we cannot seem to find time to do, that the law requires us to do. The law requires us to file our income tax returns. The law requires the House and Senate to pass a budget by April 15. But the other body, at least, never got around to doing that.

We weren't able to find time to pass a tobacco bill, so there is not one that might be different from exactly what the tobacco companies want. We certainly haven't found time to pass legislation to increase patients' rights. We found it impossible to find time to pass legislation on campaign financing. But now we seem to be looking for the time to consider a bill that will take power away from State and local government. That power that we take from State and local government will go to the Federal courts.

This is the same U.S. Senate, Madam President, which has found it difficult to perform its constitutional duty to fill the scores of vacancies in the same Federal courts. On the one hand, we are saying we will not fill the vacancies; we will leave 75 to 100 vacancies in the Federal court. The U.S. Senate can't find time to confirm the people who are pending, like Sonia Sotomayor and others. But we have time to say we don't care what the States think in their courts. We don't care what counties and municipalities think in their courts. We will take their power away from them and dump them in the Federal court. Now, we are not going to have enough judges in the Federal court to handle the cases, because we will give the Federal courts a whole lot of jurisdiction they never asked for and don't want, in an unprecedented—unprecedented—exercise in antifederalism and unprecedented exercise of the Federal Government reaching into the States and stripping away their power and dumping into a Federal court. That is what we are spending our time on.

Maybe I made a mistake in reading some of the rhetoric that went with the Contract on America that my good friends on the other side of the aisle proposed which talked about giving power back to the States, back to the communities. They said: We have to get the Federal Government off your back. And yet now we have a piece of legislation which says: Whoops, we are going to take all your power away from you and give it to the Federal courts. Well, well, well.

This is a bill that would federalize local zoning decisions. This is a bill which goes against everything that the Republican Party has said they stood for, certainly everything that the people in my State, Republicans and Democrats, stand for, and that is giving power to local people. This goes against it. Why? Because its unabashed purpose is to give wealthy developers increased power to short-circuit communities' decisions, those decisions made through the public processes of local government.

Basically, what this is, it is a bill to instill the golden rule, saying, if you have got the gold, you are going to make the rules. That is basically what it is. If you have got plenty of money, don't worry about pesky little things like a State court or zoning court or the things a community has a stake in; ignore those, because you can make your decision from your corporate headquarters 2,000 miles away, and you could care less what the people of Bar Harbor, ME, or Burlington, VT, might think because you have got the money and you have got the bill.

S. 2271, the so-called Private Property Rights Implementation Act, will give developers greater access to Federal courts and less accountability to local governments than any other citizens have. In fact, this legislation elevates the rights of property owners above other constitutional rights, such as civil rights. It goes back almost to a time when we were forming this country where they said: If you have a lot of property, you should be the only ones with rights; you should have the votes; you should make the laws if you have a lot of property and a lot of money. And we said, no, no, no, no, we had a little matter of fighting the Revolution so that wouldn't happen. We call it democracy—not anarchy, not monarchy, but democracy.

I have received letters from Governors, State attorneys general, and county commissioners opposing this assault on local decisionmaking.

In fact, the National Association of Counties passed a resolution opposing this effort, stating that these types of decisions are best made at the local level with ample opportunity for all parties to seek nonjudicial solutions.

Then the National Conference of State Legislatures recently said, ''The only certain result would be an additional centralization of power in an unelected Federal judiciary at the expense of the States.''

The National League of Cities and the U.S. Conference of Mayors are also concerned that this effort would lead to significant property tax increases. Mayor Giuliani, Republican mayor of New York, is worried about the unfunded mandates in the bill. He said, ''It remains to be seen where the resources will come from to pay for these added burdens . . . on local governments that would have to defend themselves in these proceedings.''

The Justice Department advises us that this effort will interfere with local governments' ability to have a say in how close garbage dumps, liquor stores, adult bookstores and noisy industrial plants can be to schools, homes, and churches. What it says is, if your town doesn't want a porno shop next to your church or your school, the developer could say, ''We are going to put it there, and you don't even have a say in it anymore. We are going into Federal court.''

The National Association of Towns and Townships, representing 11,000 local governments and many tens of thousands of local elected officials—Republicans and Democrats alike—stresses that the bill ''would involve Federal courts in those disputes well before local governments and landowners have had the opportunity to fully consider the range of development alternatives . . . . Clearly, communities want to keep factories away from residential areas and adult stores away from schools.'' I hope so. I hope the U.S. Senate would not pass a bill to make it easier for porno shops to go next to grade schools or churches.

Mayor Giuliani calls these measures a fundamental intrusion upon his city's authority over local land use decisions, and he has written to me opposing this bill in the strongest terms. A recent Washington Post article described his efforts to eradicate strip clubs, X-rated video stores, and peep shows in the Times Square area. Make no mistake about it. If you vote for this bill, you are voting for a bill that would be a roadblock to those efforts.

The contradictions presented by this bill are startling. Instead of trusting local mayors, councils, planning and zoning commissioners, and Governors to know what is best for its citizens, this bill short-circuits the local process and it turns local land use disputes into Federal cases. I point out that the mayor of New York City is better equipped to handle the legal expenses this bill would impose than are countless small towns I could mention in Vermont or other States, including my own small town of Middlesex, VT. But even New York City—with many, many times the population and wealth of my State of Vermont—says the burden this bill would impose would be onerous.

Can you imagine—whether it is a town of 500, or 1,000, or 2,000—the little town of Strafford, VT, which I had the privilege to visit on the Fourth of July, has just a few hundred people. One of them was Senator Morrill, a former Senator—Senator Morrill of the 19th century, one of the longest serving Senators from Vermont—that was his homestead and his home—who came out of that little town having some sense of education and the need for education in small States and small towns, began the Land Grant Act. Look what we have benefited by that—every State in this Union. But that little town would be totally wiped out if somebody wanted to come in and destroy their whole character and say, ''You can't do anything to stop us.''

The mayors have told me the chilling effect the bill would have on their entire planning process by the specter of paying takings damages and attorney fees to developers, merely because a Federal judge sitting in a court somewhere distant disagrees with the wisdom of a particular use policy that

would result in a wholesale retreat for local zoning decisions.

As Mayor Larry Curtis of Ames, IA, testified before the Judiciary Committee, ''You only have to look at budgets of our small towns to see how S. 2271 would be tipping the scales of justice in favor of wealthy developers.''

The top four developers in the United States have annual revenues in excess of $1 billion per year. Just four developers represent over $1 billion a year in revenues. Most of our small towns generate less than $10 million a year, and some way less than $10 million a year, in tax revenues. Ninety-percent of cities and towns in America have less than 10,000 people. They couldn't hire a lawyer to fight a well-entrenched developer. Of course not.

In my State, with a median community of around 2,500 people—my own community of Middlesex, VT, has 1,500 people—you can see these towns need their revenues to pay for police officers, teachers, safer streets and schools, and not spend the time in Federal court fighting huge developers. How can we expect small towns to protect the rights of their residents against a $1 billion developer who can hire all the lawyers they want? I would rather be paying that money for teachers, or nurses, or police officers, and for the protection of our communities. But, unfortunately, the House of Representatives has already made the decision that we will take power away from the States, we will take power away from our communities, we will give that power to major developers, who may be, coincidentally, major contributors to political action committees. They will take the power away from our towns and our cities.

How that flies in the face of the rhetoric when they talk about giving power back to our communities. But it is now the responsibility of the Senate to step through with some common sense to safeguard the jurisdiction of the budgets of our towns from a barrage of lawsuits, from special interests, and allow them to focus on community needs.

By giving land speculators and developers this huge new club to wield in their dealings with local officials, this bill would also remove the public from what should be a democratic process to decide what goes on in our communities' backyards. In Vermont, we have been fighting our own backyard battles over the last year—battles against the towers on the hillsides of our Green Mountains. One of our primary tools to protect Vermont from being turned into some kind of a giant pincushion with 200-foot towers indiscriminately sprouting up on every mountain and valley, within the protections of our own State law, Act 250 has become basically the anti-pincushion law. It has resolved over 15,000 cases, and it has been done with local people and with our own sense of our State and our own people making the decision, not some out-of-State fat-cat corporation. And the resolutions of these cases have been instrumental in retaining the character and natural resources and the heritage of my native State of Vermont—the heritage that makes it unique.

S. 2271 would have allowed developers to drag each and every one of those 15,000 cases into Federal court instead of allowing the people of Vermont to make the decisions. It might have been people from a huge corporation in Houston, or California, or somewhere else, against the people of Vermont. As the former State's attorney in Vermont, I cannot imagine having to fight this many legal battles on an annual State budget of less than $10 million, which is for fighting all of the State's legal battles.

This legislation will allow developers to avoid local and State authority to drag local communities into Federal court, where they won't even have the resources and where they might as well give up and say:

Here are our choices. We could protect the people of our community, we could protect the people of our State, we could protect our heritage, we could do what the people of the State want us to do, but in even trying to do it, we face the risk of bankrupting the town or the State. So we want to protect your heritage. We want to protect the reasons you live here, but we can't bankrupt you, and we are just going to have to surrender.

Why have we lost all the power in our local communities? Why have we lost the power of our States to stand up for the interests of our people, and the power of our communities to stand up for the interests of their people? Because the people in Washington, DC, in the House and Senate, were more interested in the needs and whims of a few fat-cat developers. They sold away our rights and our interests. They sold away our heritage. They sold away what makes our communities what they are.

Now, Madam President, I have spoken many times on the floor of the Senate on how I feel about my own State of Vermont. I have heard the Presiding Officer speak of the pride in her own State of Maine, one of the most beautiful States in this country. Each of our States is different. I kind of like it that way. But when we go home as Senators, every one of us has to feel the tug of our State and the feel of being there.

When I left my farmhouse in Middlesex, VT, this morning, I drove down the dirt road. Mist was coming out of the fields, a deer had just run across one of the fields, and the sun was shining. The sun rose on Mt. Ellen. I drove down along the Winooski River heading to the airport. It was so beautiful. A farmer was out tilling the field. I saw a hawk flying over one of the fields. My wife pointed to a place she likes the most as we drove along. It is a little spot, a tiny pond alongside the road, in an area that has been kept open for agriculture and recreation. The people in the community decided not to develop it, even though it would be prime development land. She said, ''Let's see if it is there.'' And it was. There is almost always a great blue heron standing in there. We can almost count on it in the morning as we head to the airport and drive up French Hill and come over the top and see the Champlain Valley and Burlington, and our really nice lake, Lake Champlain is out there. And I thought: How beautiful this is.

There are parts of the State I remember from when I was a child, and that is part of it. My father used to tell me that most of the mountains were open land and fields throughout at different times of our history. Now most of them are forests. Some of the areas had been farmland and are now developed. But it was done carefully, in the way we wanted it to be done in Vermont. Our Act 250 was put through the legislature by a conservative Republican Governor, Dean Davis. But, like me, he was a native Vermonter who wanted to keep the best of our State.

Has it worked perfectly in every case? Probably not. I am sure we could look back where something might have been done slightly differently, but for the vast majority of cases it has worked so well, and Vermont is a better place to live and a more beautiful State as a result. But we made our choices.

Now some out-of-State, wealthy developer might say to us, ''But if you had only let us come in here, if you had knocked out that pond where that great blue heron is—who knows, maybe one in a hundred cars go by—we could have put a building there, and you would have had tax revenues from it. You may even have had some jobs.''

You know, they are probably right. It probably might have even increased the per-capita income of our State. But do you know what, Madam President? The people of Vermont said that the beauty of that area is more valuable to us. And shouldn't we make that decision?

Now, every year, we have some developer from out of State who will come in and look at these magnificent views—views that we have preserved, sometimes at great sacrifices, as Vermonters, we have preserved. They come in and say, ''Oh, if we can just develop here, we will make millions for you and we will make even more millions for us. Someday you are going to be gone anyway, so what difference does it make?'' We say, ''No; we kind of like it this way.''

I think of the home that I have in Vermont. My parents bought it 41 years ago this summer. They bought it as a summer place. We have turned it into a year-round home. There is a field on it. This field has one of the prettiest views in central Vermont. It looks at Camel's Hump and at Mt. Ellen, and it is gorgeous.

About 3 weeks after my father bought the whole place, with a couple hundred acres, back in the late fifties, a man called him up and said, ''I would like to buy that field. I understand there is about 8 or 10 acres there out of

the 200 that you bought.'' Dad said, ''That's right.'' He said, ''I will offer you for that field what you paid for the whole farm.'' My father said he wasn't interested. The man kept calling back every week, and the amount went up and up and up. He finally offered my father many, many times what he paid for the whole 200 acres for that 8 to 10 acres. And dad said, ''I won't sell.'' He said, I guess to impress my father—and my mother and father had a small printing business in Montpelier—he said, ''I will come up there in my private plane, and I will offer you enough money that you will sell.'' And dad said, ''I would hate to have you waste the time. I am not going to sell.'' He said, ''Well, why won't you?'' And my father made a comment that was actually prophetic because my wife and I do the same thing today. He said, ''Every so often we like walking up that field around sunset time and we like looking out there and seeing the Sun set.'' And he said to my dad, ''If that's all you want, sell it to me and you can come there and watch the Sun set anytime you want.'' My father said, ''No. It wouldn't be the same.''

Now, we take that attitude about many things in Vermont, Madam President. Somebody will say, ''Well, if we put up this huge tower or this bowl, it would improve your ability to get Baywatch'' or whatever else the 12 channels on which 12 different folks will tell you if you send contributions to them, they have a direct line to God and will get you a blessing, or a blessing bigger than money. And we say, ''No, we kind of like it the way it is.''

But we make that decision. And then an out-of-State telecommunications company can't come in and say, ''Oh, we are going to set you aside and we will go in there,'' because they are trying to do that under the Telecommunications Act now. Or somebody says, ''If we put this factory outlet right here, you know, if people come to see this great view here and they see the factory outlet, they will go down there.'' And we say, ''No, we kind of like the view the way it is.''

Just as years ago Vermont became the first State to ban billboards along its highways. Everybody said, ''Oh, my God. Your tourism will disappear; your businesses will disappear. You will become an economic wasteland.'' You know what happened. Tourism skyrocketed up because people kind of liked seeing the views and not seeing the billboards. But we made that decision. Under this law, the billboard company could come in and say, ''You can't make that decision because we are just going to come through and we are going to take over.''

Now, I know there are examples of citizens who want to develop their land and should have been allowed to develop it without pushing cases through the courts for years, but the U.S. Supreme Court has decided some recent cases in favor of landowners saying you have to make your decision. You can't tie it up forever. You do have to make your decision.

And that is fine. That is the way case law develops, and we make our decisions accordingly. But it does not justify rewriting Federal law to encourage developers to sue local governments for local zoning decisions. It does not justify a bill that will allow the filing of thousands of suits to prevent local governments from zoning out gas stations or incinerators or a 20-story building next to your house.

We need only to look at the list of actual takings claims that confront local governments to see what is wrong with this bill. In Tampa, FL, and Mobile, AL, officials were sued when they tried to restrict topless dancing bars. A chemical company challenged a Guilford County, NC, denial of a permit to operate a hazardous waste facility. The county said, ''We don't really want your hazardous waste facility.'' They took them to court. A landfill operator contested a county's health and safety ordinance prohibiting the construction of additional landfills, even though people worried about their water supply. An outdoor advertising company challenged a Durham, NC, ordinance that limited the number of billboards in order to preserve the character of the city. A gravel mine operation challenged a Hempstead, NY, ordinance prohibiting excavation within 2 feet of the groundwater table that supplied water for the town.

I know how I would feel if I was a parent living in that town and my children were drinking that water.

An essential part of land use policy is weighing one resident's concern over another to arrive at a decision in the community interest. We need to balance the rights of property owners with those of others in the same community.

Remember that all of us live downstream, downwind, or next door to property where pollution or unsuitable activities can harm our health or our safety or our property values.

This new challenge to local government is more dangerous than the legislation we defeated last Congress. Take a look at the groups opposing this legislation. These are the groups in opposition. Every major State and local government organization opposes this bill: National Governors' Association; National Association of Counties; National League of Cities; U.S. Conference of Mayors; National Association of Town and Townships; National Conference of State Legislatures; the Judicial Conference of the United States; religious organizations: United States Catholic Conference; National Council of Churches of Christ; Religious Action Center for Reform Judaism; Evangelicals for Social Action; the League of Women Voters; Alliance for Justice; Physicians for Social Responsibility; National Trust for Historic Preservation; National Wildlife Federation; League of Conservation Voters; the Sierra Club; the National Environmental Trust, and on and on and on and on.

Every major conservation group opposes this bill. Civil rights groups, religious groups, labor groups, public interest groups, preservation groups, all oppose this bill.

Let's not overlook the threat to our court system when we are looking at the threat to our State and local government. As I said earlier, S. 2271 could significantly boost the workload of our already overburdened Federal court system. By making a Federal case out of local zoning decisions, we are going to rush zoning decisions into the Federal court before the local public process has even had a chance to work out some kind of alternative the community might want. Instead of allowing our communities to try to work it out themselves, we say, whoops, it is out of your hands entirely; we are going to turn it over to a Federal judge.

And think of the cost of dramatically increasing the workload of Federal courts. It is going to cause a lot greater delay in existing Federal court workload, even if the Senate did do its duty and confirm those dozens and dozens and dozens and dozens of judges waiting confirmation. And, of course, that is why the Judicial Conference of the United States, the Conference of Chief Justices, and 38 State attorneys general all oppose this bill.

The contradictions presented by this bill, contradicting what the majority leadership of this Senate says they want, are amazing. The legislation turns the goal of increasing local jurisdiction and decisionmaking on its head. It seems to abandon the respect for local decisions that so many in this body espoused during the takings debate during the 104th Congress.

Statements were made just last year—is our memory so short as Senators that we forget that last year statements were made that legislation should only apply to the Federal Government and not impact State or local zoning laws? This legislation directly threatens local authority.

Another seemingly obvious contradiction this legislation offers is to the ''judicial activism'' rallying cry of some in the matter of judicial appointments—just a matter of how selective some of those same people can be about judicial activism unless, of course, we think they might act on behalf of our supporters.

Rebutting their own criticism of activist judges, this bill will encourage judges to intervene in problems that belong in legislatures or city councils.

So with all of these contradictions and with the overwhelming opposition to this dangerous legislation, why is Congress considering such sweeping changes to the balance of power between local officials and developers?

That is a question being asked of us across the country. The Manchester, NH, Union Leader, not considered the most liberal newspaper in America—in fact, usually considered the most conservative—posed that question to the

House when it took up the bill, when they said this bill is a ''conservative flip-flop,'' and they said ''let's not federalize local zoning disputes.''

They thought, and they said it is ''. . . a good guess that this bill will die quietly in the Senate, enabling House conservatives to tell their backers we 'gave it our best shot.' ''

Well, there they go again, because now we are wasting valuable floor time on a bill the President has pledged to veto. This legislative proposal is unwarranted. It is unwise. We have to do a lot better for our local towns and communities and for local homeowners.

I have a statement of administration policy and a letter. I ask unanimous consent to have those printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

S. 2271—PROPERTY RIGHTS IMPLEMENTATION ACT OF 1998

The Administration strongly opposes S. 2271 because it would shift authority over local land use issues away from local communities and State courts to Federal courts. The bill would subject local communities to the threat of premature, expensive Federal court litigation that would favor wealthy developers over neighboring property owners and the community at large. The President will veto S. 2271 or any similar legislation.

S. 2271 would harm neighboring property owners, weaken local public health and environmental protections, and diminish the quality of life by undermining local land use planning. Through radical changes to the existing legal doctrine of ripeness, the bill would give developers inappropriate leverage in their dealings with local officials by making it easier to sue local communities far earlier in the land use planning process. S. 2271 also purports to allow takings claimants to circumvent State courts altogether.

The bill would violate constitutional limits on congressional power if read, as its supporters intend, to allow for a ruling that an uncompensated taking has occurred even where the claimant fails to pursue available State compensation remedies. The bill also would prohibit Federal courts from ''abstaining'' or deferring to State courts on certain delicate issues of State law. It would lead to poorly informed decisions by allowing claimants to bring claims in Federal courts without an adequate factual record, the very claims that the courts themselves have said are unripe for resolution.

S. 2271 would empower the U.S. Court of Federal Claims to invalidate Federal statutes and rules and grant other injunctive relief in a broad category of cases. This grant of authority to a non-Article III court raises a host of serious constitutional and policy concerns.

The bill provides that, by including a property rights claim, any litigant against the United States could ensure that the entire case would be reviewed on appeal by the U.S. Court of Appeals for the Federal Circuit, an approach that would promote inappropriate forum-shopping. This would dramatically increase the legal influence of the Federal Circuit at the expense of other circuits, thereby disrupting settled interpretations of important areas of the law.

S. 2271 also could override the ''preclusive review'' provisions found in many Federal statutes, including major environmental laws. These provisions allow for the swift and orderly resolution of challenges to Federal actions. S. 2271 would deprive affected businesses and the public of the regulatory stability needed to plan their actions.

NATIONAL GOVERNORS' ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL LEAGUE OF CITIES, UNITED STATES CONFERENCE OF MAYORS,

July 10, 1998.

TO ALL SENATORS: On behalf of the nation's governors, state legislators, and local elected officials, we are writing to express our strong opposition to S. 2271, the ''Private Property Rights Implementation Act of 1998.'' We believe the proposed legislation, including the proposed technical amendments, would fundamentally interfere with and preempt the traditional and historic rights and responsibilities of state and local governments and would mandate significant new, unfunded costs for all state and local taxpayers.

State and local elected officials are as deeply committed to protecting private property rights as are members of Congress. A review of the most recent proposed revisions to the legislation makes clear that those changes do not address our fundamental problems with the bill. We continue to believe that S. 2271 goes far beyond its stated objectives.

If passed, the bill would undermine state and local government authority over land use and regulatory decisions by allowing developers and property owners to take their grievances directly to federal court, circumventing legal remedies at the state and local level. Such an ''end run'' around the processes established by our state laws runs counter to the foundations of federalism that this Congress purports to endorse. The bill preempts the traditional system for resolving local zoning, land use, and regulatory disputes; it creates a disincentive for developers to negotiate with localities in order to reach mutually agreeable solutions; and it puts federal judges in the position of micromanaging purely local affairs. We believe that large-scale developers will use the expedited access to federal courts under S. 2271 as a ''club'' to intimidate local officials who are charged with acting in the best interests of the community as a whole.

The framers of the Constitution never intended federal courts to be the first resort in resolving community disputes between local governments and private parties. In our view, these issues should be settled locally, as close to the affected community as possible. S. 2271 violates our cherished principles of federalism and state and local sovereignty. We urge you to oppose floor action on S. 2271.

Sincerely,

GOVERNOR GEORGE V. VOINOVICH,
Chairman, National Governors' Association.

SENATOR RICHARD FINAN,
President, Ohio Senate, President, National Conference of State Legislatures.

COMMISSIONER RANDY JOHNSON,
Hennepin County, Minnesota, President, National Association of Counties.

MAYOR DEEDEE CORRADINI,
Salt Lake City, Utah, President, U.S. Conference of Mayors.

COUNCIL MEMBER BRIAN O'NEILL,
City of Philadelphia, President, National League of Cities.

Mr. LEAHY. Madam President, I have some other items, but I see the very distinguished Senator from Louisiana on the floor, and I do not see others seeking recognition. I will yield to my colleague and friend from Louisiana, but before I do that, how much time remains?

The PRESIDING OFFICER. The Senator has 65 minutes remaining on his side.

Mr. LEAHY. I understand the Senator from Louisiana wanted time from Senator HATCH. If we could wait just one more moment for him to come back?

But while we are waiting for Senator HATCH to come back, let me just take a moment to offer what is really an example of the profits this bill will give to developers and the downfall it will be to homeowner rights.

One thing I heard from every mayor and local official about this bill is the fear of battles with large corporate developers with deep pockets. Instead of waging these battles, most mayors concede they will probably settle the cases and give in to the developers. It will be a field day for land speculators who buy land zoned for, let's say, farming and then sue in Federal court to have the land rezoned for commercial or residential purposes, because now they suddenly change their mind the day after buying it and say they no longer want to be farmers; they just want to make millions as developers.

One Senate staffer who works on this issue came across a timely example. He was visiting his boyhood hometown in Cortland County, NY, over the Fourth of July weekend. He told me about a pertinent situation.

A farm adjacent to about 25 homes on a small lake, Little York Lake, was recently sold for $2,000 per acre for a total of $65,000. A speculator bought the land which he wants to now sell for $30,000 per acre to make a quick profit of around $1 million. To do that, he has to evade local zoning and health requirements. The speculator knows the land, sold as farmland, is worth about $2,000 per acre. But if you sell it for residential or business development, it could be worth 15 times more. But, of course, it would greatly reduce the property values of neighboring homeowners living in the community. They would be hurt by it, but one speculator would benefit if he is able to change the rules.

The persons who sold the land to the speculator might have wished they had thought about just avoiding local land-use regulations. They could have made a whole lot of money if they did it themselves, but they didn't want to. They wanted to obey the rules.

This bill would allow the speculator to get into Federal court. It would certainly be futile for him to apply for

construction permits for business, since the land is not zoned for that use. So why bother to work with the local governing body? Why bother to find a solution that might be acceptable to everybody? Instead, under the bill he could just sue them for taking the hoped-for profits or have his attorney make them change their zoning requirements. Incidentally, the land is located on the aquifer that provides the water for the community.

Well, Madam President, I don't want to see this example replicated across the country. Fighting for the Department of Agriculture programs to help conserve our Nation's farmland, I don't want to say we passed S. 2271, which throws that out.

Madam President, I understand that Senator HATCH has said if I want to yield time to the Senator from Louisiana—how much time would my friend like?

Ms. LANDRIEU. I would like 15 minutes.

Mr. LEAHY. I yield 15 minutes of the time of the distinguished Senator from Utah to the distinguished Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Madam President, I have not often found myself at odds with my distinguished colleague from Vermont whom I have come to respect and admire a great deal in every aspect of his work. But I do rise in support of this bill, in opposition to the comments made by the distinguished Senator from Vermont.

I will, however, agree with him on one point, and that is we most certainly need to have our positions in our Federal courts filled in a timely manner. This is not the only issue in our country that needs attention. This is not the only issue where people, individuals and parties, are aggrieved and need their grievances remedied in a timely manner. So I do join him and thank him for his valiant efforts to try to get the nominations of many qualified individuals, nominated for our Federal bench, certified and voted on so that these matters can be handled in a more timely fashion.

But I am pleased to rise in support of S. 2271, to join my distinguished colleagues from Utah and Georgia. The reason I rise to support this bill is because this is about fairness. It is about access to justice for the rich and for the poor, for people who have a lot of property, for people who have little property. In fact, this is a bill for people who don't own any property yet, but one day hope or dream or have planned or have saved, or perhaps inherit some property, perhaps the first ever owned in generations in their family, from having their rights of ownership trampled on. It is what I think the Democratic Party is about. It is why I am a Democrat. It is about the fundamental principles that the Democratic Party of which I am so proud stands for, and which I have spent, as have many on our side, a great deal of our lives and our political careers—fighting for the principles of these cornerstones of fairness and justice.

I know my distinguished colleague pointed out corporate America. I am not sure exactly this is the picture he had in mind, because this is a picture, here, of Ann and Richard Reahard from Lee County, FL. I don't—perhaps he does, but I don't—see a corporate headquarters here in this picture or cell phones or limousines or Christian Dior suits. I just see two people who look like they love each other and have worked hard. They inherited 40 acres of land in Florida.

I will not go through all the heartache that is listed here, but the point is, this is not corporate America. These are two people from Florida who inherited some land, and because of the lack of clearness in this law, in this unconstitutional law, have literally lived a nightmare since 1984, even with the most reasonable suggestions made to this county about what to do to develop their property.

But the point is, this is not about the rich. This is, in fact, about the poor and the rich, and about people who have property and people who one day hope to. This bill is not just important because it promotes these worthy goals. It is important because it provides practical relief for the small landowners of Louisiana and across the country.

Opponents of this legislation assert that the bill will only help large developers and will put small localities at a disadvantage. To view S. 2271 that way is to actually put this situation on its head. Large land developers do not need our help to enforce their rights. They are the only plaintiffs that can actually afford to go all the way through the State court and then to Federal court, because under the current situation, you need to have plenty money, plenty time and plenty patience.

Even so, large developers are not likely to be the people bringing these cases. If you are a development corporation with a half dozen projects in a certain area, what sense does it make for you to aggravate the local authorities by challenging their decision in Federal court? None, because it makes no sense.

This bill is not about corporate America, large landowners, rich lawyers. Its much more likely scenario is a large developer will use its economic power and leverage to sail through the approval process, as complicated as it is, free from any trouble from local authorities, and they often do. The people who need this bill are private landowners, small business persons, small landowners who don't have a lot of money, who don't have economic clout, who can't hire a 100-person law firm to defend their rights in court and who don't have the resources that are at the disposal of some of our large developers.

If your greatest asset is your home—and that is the greatest asset of the vast majority of people in our country who own nothing else; if they own something, they own their home and their land—they simply don't have the resources necessary to defend their constitutional rights against a local, State or Federal agency determined to delay and wait out your court claim.

That is why I assert that this bill is about fairness. We change no substantive law under the fifth amendment. You have the same rights today as you will have when this bill passes. They will, however, be more clear. The change occurs with respect to the process by which you can enforce those rights. As it stands now, if I am a small property owner and I believe my land has been taken, I will be forced into a morass of administrative and legal procedures which studies show will take on the average of 9½ years.

Let me repeat that: 9½ years to be resolved; not 3 months, not 6 months, not 2 years. There are not too many people who can afford an attorney for several months, let alone for 9 years. If you are a multimillion-dollar development corporation, you can afford to wait, but if you are a family building a business for the first time or building your first family home, you will be financially ruined in that amount of time.

Which brings us to the second principle upheld by this legislation: access to justice. A 1997 study by Linowes and Blocher showed that even if you had spent the necessary time and money to go to local hearings and State court, in 81 percent of the cases brought to Federal court, the judges will still decline to hear the case on procedural grounds. In 81 percent of the cases they are being declined, not on the merits or the substance of their claim, but on procedural cases because the laws are so unclear in the jurisprudence, and that is what we are hoping to remedy today. Essentially, property owners have a constitutional right which they have no practical way of exercising.

Everyone, Madam President, is entitled to their day in court. I strongly support access to the courts for environmental concerns. I support municipalities who use the courts to enforce their zoning ordinances. But it would be hypocritical of me, I say to my colleagues, to turn my back on the other side of the argument and allow property owners to go without any remedy for their legitimate complaints.

Small property owners and large municipal governments, county governments and State governments—everyone—needs to have their day in court, and that is what this bill does, nothing more, nothing less.

The central principle which underlies this bill is that we do not have a two-tiered system of constitutional rights. Chief Justice Rehnquist stated that the fifth amendment should not be the forgotten stepchild of the Bill of Rights. However, that is precisely the situation we confront.

Under the fifth amendment, it states that private property shall not be taken for a public purpose without just compensation. To repeat: The fifth amendment says that private property shall not be taken for public use without a just compensation.

Nevertheless, we have inadvertently, I believe, constructed a system which precludes the vast majority of people from ever seeing the inside of a Federal court to defend their rights and to give meaning to these words. They are actually useless without proper procedures to allow someone to state their claim.

The free enjoyment of property is not only enshrined in the Constitution, it was one of the core motivations of our American Revolution. The difficulty is that while we have created a national right, the essence of land use and decisions are local, as they should be. For that reason, we have worked very hard to craft a bill which addresses the problems of property owners while maintaining the local decisionmaking structures.

This bill does not affect—although the opponents have said it from day one—it does not affect local zoning. It grants no new rights. It preserves the authority of zoning boards and city councils. Specifically, I point to page 16, lines 1 through 4 that establish clearly in this bill that no one is entitled, when this bill passes, to challenge the authority of a local government to set local zoning ordinances as enabled by their State constitution or State laws or the laws of their territory. I want to be very clear, because the opponents have argued that this upsets local zoning laws, and it does not.

In short, this is no overarching bill which will change land use laws. Rather, we will provide a chance for people who have real grievances to get their day in court in a timely manner.

This bill, in fact, Madam President, reminds me a great deal of the IRS reform bill, which this body just passed 98 to 2. When you put all the cards in the hands of an administrative agency, you ensure abuse. That is what is occurring in these land use cases today.

If you had read the horror stories that I have, you would feel the same outrage that compelled this Chamber to pass the IRS reform bill nearly unanimously.

From my own State, let me just share one of these stories. Dean and Rita Beard of Lafitte broke ground 2 years ago. They began building their dream home. They put all their savings into it and picked out a spot that had been pastureland for more than 100 years. The Beards hoped to turn this property over to their children and their grandchildren.

What ensued, however, was their worst nightmare, as the Army Corps of Engineers put their dream on hold by taking 10 acres of land for mitigation projects due to projects elsewhere. Now the nearly completed home of the Beards, which they were ready to enter, sits as a monument to the failure of our land use process.

The Beards' attorney advises them it may be 10 years before this issue is resolved. They may have a case, they may have a claim, they may have been harmed, but it will take them 10 years because of the complications of when the administrative decision is final is not clear.

In the meantime, they have invested their life savings into an unusable home and every extra penny has gone towards lawyers. I doubt after 9 years they will have, considering their situation, any money left.

That, Madam President, is what this bill is trying to address. It is not going to say how the courts should rule, it is just to say that this family, who built their dream home in hopes of turning it over to their children and grandchildren, can get their day in court more quickly after exhausting their local remedies.

This bill is important to the Beards, it is important to my State, it is important to the implementation of our Constitution. I hope my colleagues will take a close look—I know this vote is going to be very close today—I hope that they will take a close look at what is actually in this bill to see past the outlandish rhetoric thrown about by its opponents.

Should this bill pass, it will not be a panacea to all the problems and regulations faced by landowners and the difficulties faced by municipalities in zoning. However, it will be a negotiating tool that property owners do not now have. And it will take a small step in the right direction. It is a modest step.

The PRESIDING OFFICER. The Senator's time has expired.

Ms. LANDRIEU. May I please have additional time as I may require, another 2 minutes?

Mr. LEAHY. Certainly, from Senator HATCH's time.

Ms. LANDRIEU. Thank you. Another 5 minutes.

So I urge my colleagues to support cloture so that we can get to the merits of this legislation and debate it, to give it a full debate, because it most certainly is necessary.

In closing, let me just say a few words. My distinguished colleague from Vermont painted a most beautiful picture of the way Vermont looks. I hope to get to see it for myself someday. I sure have seen it in pictures, and I want to take my children there. Now, myself, I have spent many days on the shores of Lake Pontchartrain and flying over the marshes of Louisiana, seeing the beautiful sunsets, and have spent time on the west coast and on the east coast. And just this past weekend I was at a beautiful place in Maryland. I am well aware, as all of our colleagues are, how beautiful this land is and how grateful we should be to God for the land that He has given us.

But I do not think there is anything really, Madam President, that is more beautiful than the Constitution of the United States, and particularly the Bill of Rights. And I just want to remind our colleagues of the beautiful words of the amendments, the 10 amendments that make up the Bill of Rights, of which this is one that we speak today—the freedom of speech, the freedom of the press, the right of people to peacefully assemble, the right of people to petition their Government for redress of grievances, the right to life, liberty, and property, due process of law, nor shall private property be taken for public use without just compensation.

These are beautiful words. And it is our job to make sure that these words have meaning, that they are not just written on a piece of paper to be talked about or referred to in speeches, but that they actually work. And that is what this bill is—a modest attempt to clarify something that most certainly needs clarification.

Let me quote from the Washington Post editorial that my distinguished colleague from Vermont also referred to, an editorial opposing this bill. It takes exceptions with this bill. Actually, when I read this article, I thought it was a great example or outlined the three points of why this bill should be passed. And I would like to quote:

> Current takings law is murky [the Washington Post says], but its murkiness strikes a useful balance, allowing government to implement zoning, environmental and other rules that can restrict the use of private property while still permitting compensation where that property is physically invaded or grievously devalued. That balance [it says] should not be altered [because it is murky].

Madam President, I do not think our constitutional rights should be murky. I do not think people in America think that our constitutional rights should be murky—the right of free speech, the right of free press, the right to own your own property. And if it is taken from you, and totally eliminated of its value, you should be compensated. And everyone in America has their right for their day in court. I do not believe, Madam President, that our rights should be murky.

I urge my colleagues to vote for cloture later this afternoon.

Thank you, Madam President, and I yield the balance of my time.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I ask unanimous consent that the Sunday Washington Post editorial ''Takings Exception'' be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 12, 1998]

TAKINGS EXCEPTION

For all their professed commitment to federalism, congressional Republicans frequently seem eager to pass laws dumping quintessentially local matters into federal courts. The latest such effort is the Property Rights Implementation Act of 1998, which the Senate is now poised to consider. A version of this bill was already passed by the House of Representatives; it was a bad idea then, and it's no better now.

The principal component of the proposal would give property owners quicker access to federal courts in their disputes with local governments over contrasts on the use of private land. The takings clause of the Fifth Amendment forbids governments to take private property without providing just compensation, and battles over such local matters as zoning sometimes erupt into takings clause litigation. Traditionally, federal courts have not deemed takings claims ripe for review until avenues for negotiation with local officials are exhausted and plaintiffs have first sought compensation from state courts. The federal judiciary also has sought to avoid interpreting questions of state law in takings cases. The Senate bill would change the rules of takings litigation, allowing property holders into federal court earlier in the process of negotiations with local officials. It also would curtail the abstention authority of the federal courts. It would, in other words, make federal cases out of a whole class of property fights now treated as local matters.

The other prong of the legislation would give those claimants who are suing the federal government a wider choice of venues in which to do battle than they now enjoy. Currently, those who feel their property rights are being infringed can sue in federal district court seeking to have the federal agency stopped, or they can sue in the Court of Federal Claims for compensation for an alleged taking. The current proposal would give both courts jurisdiction over both types of claim. This is an invitation for abusive venue-shopping by plaintiffs, and the Justice Department has warned that it also poses constitutional problems.

The department has said it will recommend that President Clinton veto this bill, and he should certainly do so if it passes. Current takings law is murky, but its murkiness strikes a useful balance, allowing government to implement zoning, environmental and other rules that can restrict the use of private property while still permitting compensation where that property is physically invaded or grievously devalued. That balance should not be altered.

Mr. LEAHY. I yield such time as the distinguished senior Senator from Rhode Island might need.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Thank you very much, Madam President.

I want to thank the distinguished senior Senator from Vermont for permitting me to proceed.

Madam President, I oppose the motion to proceed to consider S. 2271, the so-called Property Rights Implementation Act of 1998. I urge my colleagues to vote against cloture. Quite simply, S. 2271 is a bad bill and we should not be spending any further time on this legislation, in my judgment.

The bill would put Federal courts in the position of second-guessing local land management decisions. It would make it significantly more difficult for State and local governments to implement zoning restrictions, preserve neighborhoods, or protect environmentally sensitive areas.

Madam President, this bill is opposed by virtually every national organization representing State and local governments—the National Governors' Association, the National Association of Counties, the National League of Cities, the Conference of Mayors, the National Conference of State Legislatures, amongst others.

The Nation's largest environmental groups are also strongly opposed to this legislation. I might say, Madam President, if anybody wonders whether this is an environmental vote, it is. And I know that many around here say that the environmentalists are not very fair in their scoring. Well, here they have given clear notice that this is an item that resonates deeply with them. They are strongly opposed to this legislation, the environmental groups.

The administration is strongly opposed. The Attorney General and the Secretary of the Interior and the Administrator of the EPA and the Chairwoman of the Council on Environmental Quality—all of them oppose this.

Madam President, I do not know whether these letters have been put in the RECORD previously, but I would just like to read, if I might—I wish the Senator from Utah were here, but perhaps he will be back. But I am going to just read, if I might, a couple of these letters.

This is from the National Governors' Association, the National Association of Counties, the National Conference of State Legislatures, the National League of Cities, the United States Conference of Mayors. This is dated July 10, 1998. This isn't some old letter we dragged out; this is dated July 10—3 days ago.

To all Senators: On behalf of the nation's governors, state legislators, and local elected officials, we are writing to express our strong opposition to S. 2271, the ''Private Property Rights Implementation Act of 1998.'' We believe the proposed legislation, including the proposed technical amendments, would fundamentally interfere with and preempt the traditional and historic rights and responsibilities of state and local governments and would mandate significant new unfunded costs for all state and local taxpayers.

State and local elected officials are as deeply committed to protecting private property rights as are members of Congress. A review of the most recent proposed revisions to the legislation—

Your legislation, I say to Senator HATCH. I thought you might be interested in what the Governors and others have to say about it. They say your most recent revisions:

. . . do not address our fundamental problems with the bill. We continue to believe that S. 2271 goes far beyond its stated objectives.

If passed, the bill would undermine state and local government authority over land use and regulatory decisions by allowing developers and property owners to take their grievances directly to federal court, circumventing legal remedies on the state and local level. Such an ''end run'' around the processes established by our state law runs counter to the foundations of federalism . . . The bill preempts the traditional systems for resolving local zoning, land use, and regulatory disputes; it creates a disincentive for developers to negotiate with localities in order to reach mutually agreeable solutions; and it puts federal judges . . .

Imagine this: the Federal Government, Federal judges, the very group we are so warned about frequently on this floor. And what is more, they are labeled frequently as activist Federal judges. Suddenly we are putting them in charge. I am shocked by this.

Mr. HATCH. Will the Senator yield?

Mr. CHAFEE. Let me finish and I will give you a chance.

I know the Senator from Utah is deeply concerned about these activist Federal judges. That is why I find it sort of out of character——

Mr. HATCH. If the Senator will yield, I will clarify.

Mr. CHAFEE. For him to want to turn these matters over from the locals to the activist Federal judges, to the courts. The framers of the Constitution never intended Federal courts to be the first resort in resolving community disputes between local governments and private parties.

This letter is signed by—well, who do we have here?—by the mayor of Salt Lake City.

Mr. HATCH. Will the Senator yield?

Mr. CHAFEE. Deedee Corradini, president of the U.S. Conference of Mayors.

Mr. HATCH. As a matter of personal privilege, since the Senator raises my mayor, if the Senator will yield for a question, is the Senator aware in S. 2271 we have solved all those problems? The original bill did not participate, in the eyes of some of the mayors, but S. 2271, is the Senator aware, affects only Federal claims being brought before Federal court; that State and local claims, claims based on State or local law, are not affected by S. 2271, which is fairly contrary to what the distinguished Senator has been saying here?

The fact that the constitutional claims can arise from the actions of local governments does not make them any less a Federal claim, any more than a violation of first amendment rights are Federal claims, whether it is a Federal or local official doing the violating.

Is the Senator aware of that?

Mr. CHAFEE. I believe it is my time, is it not, Madam President?

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Let me finish, if I might.

I have here a letter, dated July 10, as I was saying just before the Senator from Utah came in. This is not some musty letter I dragged out of the files from a couple of years ago. This was written 3 days ago.

In it, it says:

We believe the proposed legislation, including the proposed technical amendments [i.e. those you have been referring to] would fundamentally interfere with the preemptive traditional and historic rights.

And who signed it? Well, the Governor George Voinovich, chairman, National Governors' Association; Richard Finan, president, Ohio State Senate and president, National Conference of State Legislatures; Randy Johnson,

president, National Association of Counties; Councilmember Brian O'Neill of Philadelphia, president, National League of Cities; and then, of course the mayor of Salt Lake City. Here is her signature, Deedee Corradini.

I am sure she is a very able, intelligent, and fine lady, and an excellent administrator. So she directs this to all Senators. I am sure the Senator has received a copy.

Now, Madam President, let me just say this. In each of our cities and each of our States, we have a system for resolving zoning problems, for example. The way it works in my State—it might be entirely different in the State of the Presiding Officer or the State of the principal proponent of this legislation—if my property is zoned residential and I want to put a gas station next to my house and I think that would be a real winner, I could make a lot of money from that gas station—now it is true that 30 other houses on the plat might not like it, but I like it, so I go before, in our State, I go before the zoning board of review. I go before the zoning board. I would seek a variance. I presume I might well be turned down. Then I go to the zoning board of appeals. In other words, I take the second step.

Now, under this legislation, if I took that first step before the zoning board and was turned down and then I went to the zoning board of appeals, I wouldn't even have to wait for a decision. All I have to do is go before that, take that second step—in other words, one appeal—and then I can say, ''This is taking too long,'' and ''I want to go into the Federal court,'' and I can go into the Federal court. Then the Federal court, under this legislation, takes up the matter.

I just don't think that is what we want. So many times on the floor of this Senate we inveigh, all of us have, against one size fits all. Yet that is exactly what we are doing here. We are saying, no, no, no, we don't like your system that you have in Maine, in Bangor, the way they are handling these appeals. We will let that person go into that Federal court and there is no incentive to negotiate, to come up with a compromise. When it is done on a city level or town level, as it is in my State, having the zoning board say, can't you people work this out, a gas station, that sounds like a little much, but talk with your neighbors and see what they say. Perhaps in some other area you can work this out, but we want to negotiate.

That is not true when you get this thing in the Federal court. They then come down with a decision and they direct the zoning board—issue a permit for such and such. Is that really what we want?

I find this an astonishing proposal. I certainly hope that we are not going to get in this situation where powers that—200 years, these powers have resided in the local communities. Because somebody said, ''Oh, they take too long, we don't like those long delays, so we are going to make it so you can go into the Federal court.'' Well, apparently the people who live there don't think it is taking too long or they would change it. We are not helpless in our local communities, and wherever one is, whether it is each Greenwich, RI, or Ellsworth, ME, the people don't like the situation, they can change it. That is perfectly possible.

What the law is saying, we don't like the way you are doing things down there, you are taking too long, so we will have those activist Federal judges that we have heard Senators on the floor inveigh against so often—I certainly hope that this cloture will not be invoked on this matter.

I might say, this issue isn't whether private property owners should be protected or whether private property owners are entitled to just compensation if their property is taken for public use. The fifth amendment already provides for that. You can get into the Federal court under the present system. You don't need this legislation. You have to permit the case to ripen. That is what the courts have been saying. In other words, exhaust your remedies on the local level before you can go into the Federal courts.

I greatly hope, as I said before, that for the sake of the locals and those who believe that powers should be at the local level, that a system that has been in place for the past 200 years is not arbitrarily changed as is proposed by this legislation here. I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, I never cease to be shocked at some of the arguments made around here. A gas station in a 30-home residence area is going to rise to the dignity of what we are talking about here—give me a break. Houses of prostitution near places of worship—give me a break. Nobody is arguing about things like that. The State and local areas certainly have total control over those.

I am well aware this bill is opposed by the Department of Justice, many localities, some interstate governmental associations, and certain environmental groups. Almost knee-jerked in many respects. I believe their concerns that the bill would hinder local prerogatives and significantly increase the amount of Federal litigation are not only highly overstated but highly misunderstood by them. The bill is carefully drafted to ensure that aggrieved property owners must seek solutions on the local or State level before filing a Federal claim. It sets a limit on how many procedures localities may impose.

I don't consider just a few months reasonable procedure. The average case is taking 9½ years. If you are some poor little property owner, or even a developer, if you want to use some of the language that has been thrown around here and you have a just reason to bring up a takings claim because the State or local or Federal Government has taken your property, you have to have pretty deep pockets to be able to litigate for 9½ years. The reason you do is some of these localities are acting improperly and using the law to allow these cases to never ripen so that they can be heard.

I personally believe that the distinguished Senator from Rhode Island would change his mind if he just looked at the case and realized we are talking about true Federal issues here that should be in Federal court and should be there promptly, not after years of delay by local municipalities and/or other agencies, throwing up logjam after logjam to stop reasonable people from getting reasonable results under the circumstances. This bill will do that.

Now, when we originally wrote this bill, when it came from the House, it had provisions in there that caused some angst among people who are truly thoughtful in this area. So we, being truly thoughtful, made changes that aren't just technical, but changes that basically, I thought, solved every problem being raised on the floor today. It is extremely difficult. Let me just say that.

Moreover, I seriously doubt that there will be a rush of new litigation flooding Federal courts. This was the conclusion of none other than the Congressional Budget Office contained in the cost estimate section of the committee report accompanying H.R. 1534. Although CBO was unable to ascertain the increase in costs if large claims were allowed to proceed in Federal courts, it did note, after consulting legal experts, that ''only a small proportion [of State cases] would be tried in Federal Court as the result of this H.R. 1534. . . .''

It is extremely difficult to prove a takings claim, and this bill does not in any way redefine what constitutes a taking. These claims are also very expensive to bring. Like I say, the average, over the last 10 years, has been 9½ years to bring even the most simple claim to fruition or conclusion. That is not what the Founding Fathers thought when they did the fifth amendment allowing and putting in the takings provision. These claims are expensive to bring. Paradoxically, localities' defense of Federal actions may be lessened by the bill, because localities already must litigate property rights claims on Federal ripeness grounds, which take years to resolve. It costs localities more money than they should have to pay.

Let me restate this. By providing certainty on the ripeness issue, the bill may very well reduce litigation costs to localities. Substantive takings claims, unless they are likely to prevail on the merits, are simply too hard to prove and too expensive to bring in Federal court. And the issue of ripeness will have been removed by the bill from the already-crowded court dockets.

Madam President, it is interesting to note that once many State officials, localities, and State and trade organizations really examine the measure, they rapidly become supporters of the bill. Those supporting the bill or increased vigilance in the property rights arena include the Governors of Tennessee, Wisconsin, Virginia, New Mexico, North Dakota, and South Carolina. They also include the American Legislative Exchange Council, which represents over 3,000 State legislatures, and trade groups such as America's Community Bankers, the National Mortgage Association of America, the National Association of Home Builders, the National Association of Realtors, and the National Federation of Independent Businesses, the organ of small business in this country. They are sick and tired of small businesses being taken advantage of by some of these people in some of these local areas and State areas, and even the Federal areas, in taking their property without just compensation. Then they have to go 9½ years to vindicate their claims. By the time they get there, the property is not worth anything anyway, or the interest has been consumed by attorney's fees.

People who support this bill also include agricultural interests, such as the American Farm Bureau, the American Forest and Paper Association, the National Cattlemen's Beef Association, the National Grange Association, et cetera, et cetera.

Just as important, let me point out that 133 House sponsors of the House-passed bill—and that is a bill different from this one, and that bill is subject to some of these criticisms—we have reformed that. The 133 House sponsors of the House-passed bill were former State and local officeholders. They are not stupid. They feel just as deeply about State and local office concerns as anybody on this floor.

I find it rather amusing that the distinguished Senator from Rhode Island is so solicitous of State and local areas, having argued on the other side on almost every other issue that has come before the Senate. Let's stop and think about it. I don't believe that these 133 former State and local officeholders would have voted for the bill if it conflicted with local sovereignty. The fact is that it does not conflict with local sovereignty. The fact is that it gives plenty of reasons and plenty of avenues for the local and State and other municipalities to solve these problems.

We have bent over backwards trying to accommodate those expressing concern about the bill which passed out of the Senate Judiciary Committee. We met with city mayors, representatives of local governmental organizations, attorneys general, and religious groups, to name a few. Some of these have signed these recent letters. I am not sure they understand any of these issues, let alone how much we have made in changes to this bill.

We held group meetings and asked for suggestions and changes to the bill, which would alleviate opposition and concerns. I thank Senators ABRAHAM, ASHCROFT, DEWINE, SPECTER, THOMPSON, and respective staffs, for negotiating and drafting changes to the bill designed to meet the concerns of particularly certain localities. These changes alleviate municipalities' concerns that the bill would become a vehicle for frivolous and novel suits. They remove any incentive the bill may have for property owners to file specious suits against localities. They foster negotiations to resolve problems, and these changes recognize the right of the States and localities to abate nuisances without having to pay compensation.

First of all, we created a new section dealing with the award of attorney's fees. In this section, we amended section 1988(b) of title 28 of the U.S. Code, which allows a court to award litigation costs and attorney's fees to the prevailing party in civil rights actions. This change allows a district court to hold the party seeking redress liable for reasonable attorney's fees and costs if the takings claim is not substantially justified. This section was created to address the localities' concerns that they would have to defend expensive, frivolous cases in Federal Court, wasting taxpayers' money. This section eliminates those concerns.

I think that the mayor of Salt Lake might have had a different opinion—or other mayors that the distinguished Senator from Rhode Island has cited, or the other Governors that the distinguished Senator from Rhode Island has cited. I have reason to believe that they haven't seen this current substitute that we have here, or they would change, like so many others are changing.

The problem is that you get these old bills out—and, yes, there were problems with the old bills, but that is what the legislative process is designed to correct. That is what we are doing here.

Mr. LEAHY. Will the Senator yield for a question?

Mr. HATCH. I am a little bit agitated right now, and I want to finish some of these thoughts.

Mr. LEAHY. Well, I don't want to add to the agitation of the distinguished Senator.

Mr. HATCH. I will just say that the distinguished Senator very seldom does.

Another amendment to the bill requires a party seeking redress for a taking of real property to give any potential defendant written notice 60 days prior to a commencement of action in district court. This was added to address the localities' concerns that they will have insufficient time to negotiate with parties seeking redress before a Federal action was filed. This delay, I might add, acts as an inducement to seek compromise.

In addition, we added a nuisance provision to the purpose section of the bill that confirms State power to prevent land uses that are nuisances. I suspect that a house of prostitution would be a nuisance alongside a church or some other place. Perhaps there are many in this body that might agree with me that it is a nuisance, period. Under existing law, States have authority to abate nuisances and zone for commercial or residential uses. The Supreme Court, in Lucas v. South Carolina Coastal Council, held that such State actions require no compensation to affected landowners.

This change in the bill thus makes clear that State prerogatives are not altered. The bill, in any event, changes no substantive law and merely allows property owners fair access to the Federal courts after having gone through a variety of procedures in the State courts. And reasonable procedures at that, but not after 9½ years of being jerked around by some of the State courts, and Federal courts, by the way, because the Federal courts have been jerking them around, too, refusing to hear some of these cases on the doctrine of rightness, and the other doctrines that I have mentioned.

All this belies the bizarre and false allegations, such as the one contained in the Minority Views of the H.R. 1534 Committee Report, that if the bill passes localities may not prohibit gas stations in residential areas unless compensation is paid.

Give me a break.

Finally, to narrow the scope of the ripeness provision, we limited the term ''property owner'' to include only ''owners of real property.'' This change greatly narrows the procedural effects of this bill because the provisions of the bill that expedite access to the federal courts now will only encompass real property and, thus, will not apply to suits involving personal or intellectual property.

So we have solved that problem, which was a legitimate question, although really we ought to be protecting all property since this is a fundamental right of the fifth amendment of the Constitution of the United States of America, one that is ignored most of the time in our country.

THE STATES RIGHTS ISSUE: WHY S. 2271 DOES NOT IMPACT STATES' RIGHTS

S. 2271 affects only federal claims being brought before federal court. State and local claims, claims based on state or local law, are not affected by S. 2271. The fact that constitutional claims can arise from the actions of local governments does not make them any less a federal claim, any more than a violation of First Amendment rights are federal claims whether it is a federal or local official doing the violating.

The Supreme Court has long held that the Eleventh Amendment makes state governments acting under state law immune from suits filed under U.S.C. section 1983. In other words, state governments are already immune from suits filed on constitutional

grounds by established Supreme court precedent, and S. 2271 does nothing to change that.

Local governments, however, are not immune from lawsuits claiming that constitutional rights have been violated. Again, it is the Supreme Court, not S. 2271, that has made local agencies subject to federal claims by individuals alleging their rights have been violated.

All S. 2271 does is ensure that when a suit is filed in federal court, the case can be heard on the merits, rather than spending time and money to determine whether the case is ''ripe.''

State and local agencies will have all the authority and power they currently have to make land use decisions—for zoning, environment, etc. S. 2271 does not change any substantive law. But, if local agencies violate Fifth Amendment rights when making land use decisions, S. 2271 helps a property owner get a more expedient hearing on the merits without the 10-year ripeness battle, which is one of the most futile experiences anyone can go through.

The property owner, under S. 2271, will still have to make at least one meaningful appeal to the agency in question before bringing a lawsuit. That means agencies have at least two cracks at making a balanced decision that protects the environment and public health while protecting the rights of private property owners. In the real world, property owners will likely try repeatedly, because the chances of getting a favorable ruling in court on the merits is extremely slim—and S. 2271 offers no help there.

The reason the bill refers to a property owner being rejected on ''one meaningful application'' and ''one appeal or waiver'' before a decision is considered final is to create some objective criteria so both the property owner and the land-use agency in question know when ''enough is enough.'' The language actually codifies a body of federal cases requiring that a property owner make ''one meaningful application'' to the relevant land-use decision making body to ripen a Constitutional claim. (e.g. Eastern Minerals Int'l Inc. versus United States; Kawaoka versus City of Arroyo Grande; Unity Ventures versus Lake County.) The point is that property owners should not be forced to negotiate away portions of his or her constitutional rights in a series of re-applications and appeals as a condition of gaining access to federal court with a Constitutional claim. The fact that different cities or states may have varying procedures or multiple steps for making a final determination on land use is not at issue in this bill. The bill does not define what a ''meaningful application'' is, because it recognizes that different states and cities handle land use applications differently—the bill tries to be respectful of those differences and allow state and local officials determine that question.

If there is a threshold question of state or local law that is essential to the merits of the federal claim, and it is patently unclear or confusing, the federal court can, under S. 2271, have that question certified in state court under whatever procedures the state has in effect for certifying questions for a federal court.

In other words, if a federal claim involves an important issue of state law, the state courts will have first crack at it under S. 2271. The only difference is that the property owner will not get turned away from federal court and forced to file the whole claim again in state court, and go through a 10-year delay process that literally is subverting the very constitutional provisions that we are sworn to uphold.

This bill is pretty well thought out, and, frankly, I ask unanimous consent that a whole raft of letters from various people who are in support of this bill ranging from these various groups and so forth be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
Washington, DC, June 19, 1998.

Hon. ORRIN G. HATCH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: The Associated General Contractors of America (AGC) supports H.R. 1534, the Private Property Rights Implementation Act. This legislation will provide access to justice for private property owners subject to takings by the federal government.

The legislation defines what is a final administrative decision by the federal government under the ''ripeness doctrine.'' For private property owners, the bill determines what the last administrative appeal is, triggering an owner filing for compensation when the government has taken or devalued property. Recent private property cases heard by the Supreme Court were merely decisions allowing private property owners to pursue a ''takings'' claim under the Constitution's 5th Amendment protections. Property owners have been prevented from going to court regarding a takings claim when a lower court rules the administrative appeals process has not been exhausted. In this legislation, Congress will prevent further costly, unnecessary litigation by providing access to courts, ensuring federal courts will hear takings cases.

AGC urges you to support this legislation. This will prevent lengthy administrative cases and allows private property owners immediate and appropriate redress of a takings claim.

Sincerely,

LOREN E. SWEATT,
Director, Congressional Relations Procurement and Environment.

AMERICAN FOREST AND PAPER ASSOCIATION,
Washington, DC, July 9, 1998.

Hon. ORRIN HATCH,
U.S. Senate, Russell Building, Washington, DC.

DEAR SENATOR HATCH: The Senate will have the opportunity as early as Monday, July 13, to cast a vote in support of private property owners by voting in favor of S. 2271, the ''Property Rights Implementation Act'' on the Senate floor. On behalf of the American Forest & Paper Association, and the 9 million woodlot owners in this country, we urge you to vote ''yes'' to invoke cloture and on final passage of this bill. A vote in support of S. 2271 will be considered a key vote on behalf of our membership.

S. 2271 is a moderate, balanced, bipartisan effort to ensure that private property owners have their day in court. The Fifth Amendment to the Constitution states that private property should not be taken by the government for public use unless the owner is paid just compensation. However, recent studies have shown that property owners attempting to protect their property rights in federal court are rejected on procedural grounds over 80% of the time without ever getting a hearing on the merits of their case. Those who do get their day in court are forced to spend an average of nearly 10 years in litigation and procedural hurdles.

S. 2271 is strictly a procedural bill—it does not define a ''taking'' or mandate compensation. The bill:

Helps property owners obtain federal court relief more quickly and more affordably to preserve their Constitutionally-protected property rights.

Does not change substantive law. Property owners still must have the facts and prove their case. The bill does not create any new cause of action for property owners to give federal courts more power and authority than they have already.

Does not destroy the current exercise of state authority to determine land use, but does require states to use their procedures in a fair and constitutional way.

Affects only Federal claims. Federal courts will still be able to send unresolved state claims back to state court for certification before the federal courts go forward.

Streamlines the federal court docket by simplifying the federal procedures for constitutional takings claims.

Thank you for your time and attention to this important legislation. We strongly urge you to support S. 2271 on the Senate floor.

Sincerely,

JOHN H. DRESSENDORFER,
Vice President.

Mr. HATCH. Madam President, I yield the floor and reserve the remainder of my time.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I listened with interest to my good friend, the distinguished senior Senator from Utah. He said that perhaps some of those who are opposed to this may not understand the bill. There is a reason for this. The bill we are discussing is S. 2271 which was introduced just last week. We never had a hearing on S. 2271. While we had a hearing on H.R. 1534 this bill is significantly different from S. 2271. S. 2271 was just printed late last week and many Members may not have had an opportunity to carefully review it.

This new bill just came bouncing in here. We haven't had one single hearing on this particular bill. My good friend from Utah talks of the care that went into it. This arrived full-blown, full-grown on the Senate floor—not one single Senate hearing on this bill. In fact, the bill on which we did hold a hearing, H.R. 1534, apparently bothered them enough that it was significantly changed. We haven't done a report on S. 2271. One was done on H.R. 1534 but not on S. 2271. Madam President, no

Senator can point to 30 seconds of Senate hearing on S. 2271. No Senator can point to a two-sentence report on this bill.

A lot of Senators probably did not even have a chance to look at S. 2271. Apparently, they thought H.R. 1534 should be changed. But this is a new bill that many of us feel is worse than its predecessor. But there have been no hearings on the changed text. There is no report on S. 2271, and under some new streamlined process the bill was just sent to the floor. We will vote on S. 2271, and then we will debate it later. It is like Alice in Wonderland. You have the sentencing first, and the trial later. This is not the way the U.S. Senate should act.

I think that is why the National Governors' Association, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and the National Conference of State Legislatures all stated their opposition to this new bill. Just 3 days ago, they said:

A review of the most recent proposed revisions to the legislation makes clear that those changes do not address our fundamental problems with the bill * * * The framers of the Constitution never intended federal courts to be the first resort in resolving community disputes between local governments and private parties. In our view, these issues should be settled locally, as close to the affected community as possible.

In fact, some would say H.R. 1534, the earlier bill, would be better than S. 2271. S. 2271 is more burdensome to local governments than earlier versions.

First, the revised bill goes even further in limiting Federal judges' ability to abstain from cases dealing with local land use decisions. Maybe they have to abstain because we don't fill the vacancies of Federal courts. But assuming there is a Federal court and a Federal judge who has been lucky enough to be confirmed by the U.S. Senate, they have a limited ability to abstain. In S. 2271 a Federal judge in many circumstances cannot abstain from or relinquish jurisdiction to a State court because the plaintiff ''brings a prior or concurrent proceeding before a State, territory, or local tribunal.''

This revision effectively turns the earlier version of this provision on its head. Rather than leaving room for abstention when a State law claim is asserted, the revised version specifically states that a district court shall not abstain when there is a State law claim.

I don't know when we have ever done anything like this. This is an unprecedented big-foot action on the part of the Federal Government of stepping in and telling local citizens and state courts, ''You don't count,'' as far as the U.S. Senate is concerned.

Rather than reducing interference with State court resolution of State and local law issues, the revised version of the bill actually would maximize Federal court interference with State courts.

Second, the revisions make the bill worse from a local government standpoint by eliminating the authority conferred on local governments in the bill as reported by committee to define a ''meaningful application.''

Instead, the revised bill would allow Federal courts to get into looking at local land use requirements and applications. Other changes in the bill are either harmful, cosmetic or without significant effect.

As a general matter, the bill would introduce new vague terminology which could lead to years of litigation over the meaning of this new language. And, of course, we are asked to enact S. 2271 without even a report. Enactment of the new legislation would make land use litigation process more time-consuming.

Look at the insertion of the phrase ''one meaningful application to use the property . . . within a reasonable time.'' This change ostensibly addresses the concern that H.R. 1534, as reported, suggests an applicant only had to initiate a local application or waiver proceeding, but not necessarily await the outcome of the proceeding before suing in Federal court.

The change to ''within a reasonable time'' simply confirms that in some circumstances a developer would be able to proceed to Federal court without first obtaining local decisions. Many States and local governments already have specific time limits for administrative decisions. That seems to throw it out of the window.

I have said over and over again that when property is taken, the landowner should be compensated. That is what our Constitution requires—it requires just compensation. That is what local, State and federal Governments are doing. Certainly, there has been no need for such sweeping legislation demonstrated.

I wish we had an opportunity to work with the chairman of the Senate Judiciary Committee to have a better bill. It is his prerogative not to have a hearing on this particular bill or to have a detailed report on it.

And we have instances where my friend from Utah says that this bill applies only to owners of property, but it defines owner as the owner or possessor of property or rights in property. That is more expansive than the normal meaning of the word owner. Somebody who steals property is a possessor of property. An adverse possessor of property is by definition in possession of the property. As I said, we have a case here where something is not broken, but we are about to fix it anyway.

Madam President, I withhold the balance of my time. I ask the Chair, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. The Senator has 39 minutes remaining.

Mr. LEAHY. I withhold that time.

Mr. HATCH. Mr. President, how much time does the Senator from Utah have?

The PRESIDING OFFICER. The Senator from Utah has 22 minutes 48 seconds.

Mr. HATCH. Let me just say this, that we have held hearings through the years on similar bills, and we have held hearings on the underlying bill. We made four changes, which I outlined in my last remarks. So the hearings were held and the changes were made to accommodate some of the concerns of those who have been critical of this bill. So this is not without hearings, and it is not without an understanding.

I yield 10 minutes to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Madam President, I thank you. I thank my colleague for yielding.

I would like to say that I think comments made today are living proof of the old adage that no good deed ever goes unpunished. The plain truth is that we have had numerous hearings on the issue of private property and takings. Our colleague from Utah has been a leader in this effort. We are considering this bill today because he has continually tried to accommodate people who oppose the underlying amendment that he has so effectively championed.

The issue before us today is not an issue of technicalities. It is not an issue of whether or not a certain number of mayors or Governors or locally elected officials think one thing or think another. The issue before us is, are we going to effectively enforce the Constitution of the United States?

What an incredible paradox it is that if we had similar legislation before the Senate to enforce our first amendment rights to freedom of religion, freedom of speech, freedom of the press, freedom of the right to assemble, and to address the Government about our grievances, we would have 100 Members of the Senate here demanding that the Senator's bill be adopted. If the Senator from Utah was simply trying to guarantee our freedom of speech and religion by setting out a clear course where ordinary people could have a day in court in determining whether their first amendment rights had been respected or abused, we would have 100 Members of the Senate supporting this bill.

The real issue before us is that there are many Members of the Senate, many Governors, many locally elected officials who do not support our fifth amendment rights. The fifth amendment to the Constitution says, ''Nor shall private property be taken for public use without just compensation.''

We all know, and it is the reason that this amendment is before us, that every day in America private property is being taken without just compensation. We all know in the name of endangered species, in the name of wetlands, in the name of numerous other public purposes, private property rights are being trampled on and people are finding their property taken or

dramatically reduced in value because of some public objective. The opposition to this amendment is not based on technicalities. The opposition to this amendment is not based on some letter signed by some local officials or some State legislators. The opposition to this amendment is based on the fact that there are many in the country and many in the Congress who would like the fifth amendment guarantees of protecting private property to be gone. These guarantees stood up very well until the Depression era when the Supreme Court basically started to rule against private property. The Supreme Court and the lower courts have now moved back toward recognizing and respecting the fifth amendment. But the problem is that a lot of ordinary people have trouble getting their day in court. They often find themselves shuffling between the district court and the Court of Claims trying to uphold their rights.

So what does the bill before us do? It sets out a very simple process whereby people who believe that their private property rights have been trampled on can go into Federal court and have their day in court and have a decision made. I believe that private property is at least as important as the right of freedom of religion and speech. Our Founding Fathers understood that if your property is not secure, your right to freedom of religion and your right to freedom of speech can be abridged. Our Founding Fathers understood that private property is not only a human right; it is the basic human right. It is a foundation right of the American Republic. And, more important, it has been a foundation right of every great civilization in history.

Will Durant, in talking about Rome and the rise of Rome says, ''Never was there a day when private property did not exist in Rome.'' The foundation of ancient Athens was private property, and the respect for private property. It cannot be a happy day in America when private property rights are trampled upon. Those who oppose the fifth amendment say, ''If you made the Government pay people when we took their property for these good purposes, then we wouldn't be able to take their property for these good purposes.'' They say, ''Surely it is worth it to protect the wetlands and endangered species and thousands of other objectives to be able to take people's property. And if we had to compensate them, we couldn't promote these public purposes.''

I would just conclude by making two points. No. 1, why should the property owner, and the property owner alone, be forced to bear the cost of promoting these public objectives? And, second, when the Founding Fathers wrote, ''Nor shall private property be taken for public use without just compensation,'' is it not clear that they were not just talking about taking your property to build a road across, they were talking about Government action that profoundly lowered the value of land in use or exchange?

So, this is not a debate about technicalities. It is not a debate about letters signed by local officials or State officials. It is a debate about the Constitution and about the fifth amendment. Those who believe in private property, those who support private property rights, will vote for this amendment. And those who do not support private property, those who believe that public purpose is more important than private property and that taking property without compensation to promote some public good—as they would define it—will vote ''no'' on this amendment.

Many will try to confuse the voter about what the issue is. The issue is the fifth amendment. The issue is whether or not we respect private property and private property rights in America. I respect private property and private property rights in America. That is why I am for the pending bill. I hope my colleagues will vote ''yes.''

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I have another matter pressing. I am going to leave the remainder of my time in the hands of the Senator from Washington. I know the Senator from Rhode Island and others still want to speak. There will be time. I believe I have close to 40 minutes left—30-some-odd minutes?

The PRESIDING OFFICER. The Senator has 36 minutes remaining.

Mr. LEAHY. I now yield to the Senator from Washington such time as she may need, and she would then reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Washington.

PRIVILEGE OF THE FLOOR

Mrs. MURRAY. I ask unanimous consent a fellow from my office, Micki Aronson, be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Madam President, I rise today in opposition to S. 2271, the bill before the Senate this evening. I do so knowing that I have the support of the vast majority of Washington State voters who, 3 years ago, soundly defeated a radical and dangerous referendum that is very similar to the bill that is before us today. In 1995, the people of Washington State overwhelmingly rejected a referendum that would have put developers and resource exploiters ahead of the rest of us. They defeated this proposal because they knew it really only amounted to one thing: a massive tax increase on regular people. Developers and their supporters would have us pay for the right to a high quality of life and strong communities, whereas today we enjoy these things as a result of basic zoning laws and environmental standards.

While the measure before us differs somewhat from Referendum 48, its underlying motive does not. Developers somehow believe that they are being denied their property rights by having to work through local and State land use laws. And, to be fair, there have been some isolated cases in which a maze of laws has thwarted reasonable environmentally sensitive projects. I personally will continue to urge local and State governments to streamline their processes to fix these occasional problems.

But, basically, the system works. It is simply not broken, and this bill is not necessary.

Mr. President, the most objectionable provision in this bill is that it allows developers to short-circuit local administrative, zoning, and other land use procedures. This promises to send increased litigation against already strapped local and State governments. This means more taxes, both to fund the court battles and, if local governments lose, to pay off developers to protect our quality of life. In addition, simply the threat of a Federal court may drive a town to acquiesce to a developer's demands, because they cannot afford to go to court and fight to protect their local land use decisions.

Frankly, I am surprised at the support this bill has gotten from those who traditionally would defer to local government making decisions on how best to use land and instead give that decision making authority to Federal courts. This seems like quite a reversal. Frankly, it seems particularly odd, given the Senate's backlog in filling Federal court vacancies.

While we have moved two of our Washington State candidates—Margaret McKeown and Ed Shea—both Senator GORTON and I are pushing very hard to get another circuit court nominee, Ron Gould, and a district court nominee, Bob Lasnik, heard and confirmed. Another district court judge is set to retire in the near future, creating another vacancy. I have to ask, Why is the Senate increasing Federal caseloads with this bill while simultaneously not filling empty seats?

That issue aside, this bill is not what this country needs. We do not need to undermine our Nation's laws that protect public health, safety, and the environment. There are usually very good reasons why development is prohibited in certain areas. It could be safety; the area could be prone to flooding or to landslides. It could be protection of water quality. It might be protection of threatened endangered species or ecosystems. And, in those cases where a local, State, or Federal entity does unreasonably and actually take a private person's property for a public good, we have a well-established legal system to provide compensation. And that system is working.

Let me close by reminding everyone that the Conference of Mayors, the National Association of Counties, and the National Conference of State Legislators oppose this legislation. In addition, every conservation group I am

aware of opposes this. This is simply not good public policy.

I am committed to keeping the Pacific Northwest beautiful. I am committed to ensuring my constituents have the power to enact reasonable zoning ordinances to protect their water and environmental resources. I do not believe their taxes should be used to pay off developers.

I pledge to my constituents to work to ensure that the reasons we are all so proud to call Washington home remain intact. This bill would limit our ability to protect the things we hold precious, and I will vigorously oppose it, and I urge my colleagues to do the same.

I reserve the remainder of our time.

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from South Carolina.

The PRESIDING OFFICER (Mr. ENZI). The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today in support of cloture on S.2271, the Property Rights Implementation Act. Put simply, this bill is a modest effort to help property owners get their day in court.

Currently, it is very difficult for many landowners to get into court. When a landowner wishes to develop property, he must seek approval from local land use authorities, who should quickly evaluate the request and make a decision. However, local bureaucracies may take years to make a decision or may require the landowner to make countless reapplications. There is nothing the landowner can do because the courts will wait on a final administrative determination before taking any action.

Under this bill, the courts eventually must act if the bureaucracy refuses to make a final decision. The fundamental role of local authorities in property development decisions does not change. A reasonable administrative determination of a claim is still required before the owner can go to court. In other words, the locality will still have the upper hand, but it will not hold all the cards.

After a negative administrative decision, the bill allows a landowner to choose to go to Federal court rather than state court, but only under certain limited circumstances. If a landowner brings any claims under state law, even if the state claims are secondary to the Federal claims, the case must proceed in state court. It is only if the landowner brings solely a Federal claim for a Constitutional taking that the landowner must be permitted to proceed in Federal court if he wishes. Moreover, once in Federal court, if an unsettled question of state law arises in the case, the question must be certified to the state court where possible.

Some opponents to this legislation have said that it will result in a great shift in public power to regulate land. They say that property owners will be put at a great advantage over state and local authorities who are charged with controlling development, causing property owners to win many more claims. This argument will not prove to be correct. It cannot because the bill does not change the standard for determining a property rights claim. The legislation does not provide property owners any more rights than they have today, even though the rights they now have are limited and uncertain under case law. It is very difficult for a property owner to show that property has been taken for purposes of the Fifth Amendment, and that will not change under this bill.

The legislation only makes it easier to get to Federal court for a takings claim. It simply gives landowners a fair opportunity to get a decision. It does not make it any easier for them to win.

A limited option of Federal court access should exist when someone is trying to adjudicate their property rights secured by the Constitution. When other Constitutional rights are violated, such as the right to free speech, the person can go immediately to Federal court for relief. Why should the right to just compensation for a taking be any different? Indeed, for free speech issues involving obscenity, the court must look to the standards in the local community, but the claimant can still go immediately to Federal court. As Chief Justice William Rehnquist has written for the Court, ''We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment and Fourth Amendment, should be relegated to the status of a poor relation.''

I agree with the Supreme Court. This bill would solve that major problem. Yet, it makes only modest changes in the current system. I hope my colleagues will support this small but important step for fairness in property rights.

Mr. LIEBERMAN. Mr. President, I rise to express my strong opposition to S. 2271.

On the face of this bill, it sounds like the proponents are seeking to make some ''procedural'' changes in federal court jurisdiction that do not go as far as last Congress' unsuccessful attempts to change the standards for granting compensation under the Fifth Amendment.

But no one should be mistaken. This bill would dramatically change the standards—known as abstention and ripeness—which guide the resolution of claims for ''just compensation'' against local communities in local zoning disputes. The impact of these so-called procedural changes would be very significant, making it far easier to seriously undermine local land-use decisions. As a New York Times editorial stated with respect to the related House bill: ''(The bill) is a dangerous piece of work that would threaten local zoning laws, reshape time-honored principles of federalism and make Federal judges the arbiters of land-use decisions everywhere. It would be a dream come true for developers but a nightmare for rational community planning.'' I believe that conclusion would apply with equal force to the bill before us.

That is why the bill is opposed by the National Governors Association, the League of Cities, the United States Conference of Mayors, the National Association of Counties, the Judicial Conference of the United States, 40 Attorneys General, major religious groups, the National Trust for Historic Preservation and a broad array of environmental and public interest groups.

For my State, this type of proposal is particularly contrary to what our citizens are seeking. There is no bigger issue right now in the State than the desire to preserve open space from development. Our Governor, John Rowland, has initiated a major program to preserve open space and the State Legislature has strongly supported these efforts. Connecticut is not unique: all over the country, states and localities are making preservation of open space a top priority.

This bill would seriously undermine these efforts by greatly expanding the volume of land-use litigation against local communities. Equally important, the heightened threat of litigation would significantly increase the leverage of developers over local communities in negotiations over land use issues. The existing authority of local governments to resolve local land use issues in their community would be undermined, and the ability of the public to participate in land-use decisions affecting their communities would be greatly diminished. In short, the end result of this legislation would be to undercut the ability of our nation's localities to protect zoning and land use regulations which average homeowners depend on to protect their investments.

In reviewing the Committee and Minority views on the bill considered by the Committee, I was particularly struck by a comment by Senator DEWINE during the markup. He stated: ''The bill would in effect, leave local land use planners with two bad options—acquiesce to developers by making lenient decisions, or do whatever they think necessary to protect the local community and then face multiple suits in Federal court without having much negotiating ability with property owners.'' Senator DEWINE is right and with respect to the bill before us, too.

What is striking about this bill is the direct attack it makes on the ability of local and state governments to determine what is best for their communities, despite the fact that there is no evidence that local governments are incompetent or routinely deal in bad faith with developers. Nor is there any record to support the proposition that state courts cannot deal fairly with local land use zoning disputes.

Mr. President, I cannot see any reason why this Senate should pass legislation that is a wholesale attack on the

ability of our localities and states to protect the values and fabric of the communities in which we live. I urge my colleagues to vote against the cloture motion.

Mr. GRAMS. Mr. President, I rise today in support of S. 2271—the Property Rights Implementation Act of 1998.

As a landowner, businessman, and Senator, I have long been concerned that the imposition of too many regulations adversely impact individuals and businesses. For too long, bureaucrats have exercised broad authority over local citizens and oftentimes trampled on their constitutional rights. It is time to bring even more comprehensive protections of property rights to the Senate floor for debate and a vote, and S. 2271 provides those missing or abused protections.

I am proud to say that I joined many of my colleagues last year in co-sponsoring S. 1204, Senator COVERDELL's Property Owners Access to Justice Act of 1997. That bipartisan legislation—very similar to that which we are debating today—simplified access to the federal courts for private property owners whose rights may have been deprived by government actions.

As we all know, the fifth amendment to the U.S. Constitution provides our nation's citizens with certain protections against the taking of their property. In cases where a taking is required, the Constitution ensures that the property owner is provided just compensation. Unfortunately, that is almost never the case and I doubt anyone in this chamber would claim the contrary. In the name of the ''public good,'' governments often either take property or deem it unusable for virtually any productive purposes. Too often, property owners are then left with a worthless piece of land for which there is no use or little resale value.

Property owners are then forced to navigate their way through a maze of bureaucratic red tape and unending local and state roadblocks in fighting any unjust action. They are forced to exhaust any and all state or local remedies prior to having their claim heard in federal court. Because most property owners do not have the resources or the time to fight a taxpayer-subsidized army of lawyers and hurdles, they merely give up—unafforded their constitutional rights.

I am aware that the National League of Cities, the U.S. Conference of Mayors, and a whole host of State Attorneys General are opposed to S. 2271—but why? Because S. 2271 may actually force them to consider the rights of property owners before taking action. If the property in question is truly needed for the public good, then they should use eminent domain and acquire the property rather than leaving the owner holding the bag.

It is important to remember several points regarding S. 2271. First, S. 2271 does not circumvent local governments. Property owners must attempt to work through local procedures and be denied at least twice prior to seeking federal court action. S. 2271 does not preempt local zoning. Any use of the land by the property owner must be consistent with local zoning requirements—if not, S. 2271 does not apply. Additionally, S. 2271 does not require compensation or remove the burden to proof from the property owner in proving harm or the justification for compensation.

Similar legislation—authorzied by Congressman GALLEGLY—was introduced in the House last year. It quickly gathered the support of 237 co-sponsors and passed the House last October by a vote of 248 to 178. Likewise, S. 1204 was introduced in the Senate last September with Senators LANDRIEU and DORGAN as cosponsors. Both bills received significant bi-partisan support upon introduction and throughout the legislative process.

Mr. President, it is time we provide property owners with certainty. It is time we provide property owners with avenues for action. And it is time we provide property owners with the rights guaranteed them under our Constitution. I urge my colleagues to vote in support of the cloture petition for S. 2271.

Mr. BURNS. Mr. President, I rise today to address the important issue of private property rights and to support the Property Rights Implementation Act of 1998, S. 2271.

Private property rights have been the cornerstone of our free society. The fifth amendment of our Constitution states, ''private property shall not be taken for public use without just compensation.'' Currently, too many Americans are being denied fair access to Federal courts in order to uphold their fifth amendment constitutional rights.

S. 2271 would expedite access to the federal courts for individuals hurt by a government ''taking'' of private property. At the same time, it protects states rights by ensuring that any question of state or local law that is unclear to the fundamental merits of a case is to be sent back to the state courts before a federal court can continue.

Mr. President, the right of the people to be represented and heard is the basis of our government.

S. 2271 gives us the opportunity to ensure that the people of our nation are not ignored. It allows an individual citizen to exercise their fifth amendment rights provided to them by our founding fathers without costing them thousands of dollars and without taking 8 or 10 years of court proceedings to maintain these rights. As we've all heard before, ''justice delayed is justice denied.''

S. 2271 only re-enforces the constitution and the intent of our founding Fathers who understood the value of private property from the standpoint of individual political freedoms and individual economic freedoms. Those who would argue in opposition are supporting more government control by not allowing an individual to care for their own property. I believe each individual land owner can and should be responsible for their property without breaking current environmental, federal, state, or local laws. This bill does not create special rights for property owners; it simply allows them the same access to federal courts as other plaintiffs claiming a violation of their constitutional rights.

Mr. President, for these reasons I stand in support of S. 2271 and hope that my colleagues on both sides of the aisle will do the same. I also want to thank Mr. LOTT and Mr. HATCH for bringing this important legislation to the floor.

Mr. COVERDELL. Mr. President, I rise today in support of the motion to proceed to consideration of S. 2271, the Property Rights Implementation Act of 1998. This bill, introduced by the senior Senator from Utah, incorporates provisions of the bipartisan bill I introduced last year along with the Senator from Louisiana, Senator LANDRIEU, on this same subject.

Our legislation, the Property Owners Access to Justice Act, was introduced to simplify access to the federal courts for private property owners. S. 2271 would accomplish the same objective. The Constitution requires that when the government takes private property for a public purpose, the property owner must receive just compensation. This ''takings clause'' guarantee is one of the strongest defenses we have against arbitrary government.

Yet in many cases property owners must navigate a time-consuming and expensive procedural maze to protect their rights. Federal courts do not consider a takings case ''ripe'' for their consideration until all state law issues have been resolved and all administrative remedies exhausted. For property owners this can mean years of court battles and tens of thousands of dollars in legal fees just to win the right to have a federal court hear the merits of their case. One study found less than 6% of takings claims filed between 1983 and 1988 were ever deemed ripe for federal court adjudication.

Small landowners, first-time home buyers, and family farmers simply cannot afford this process. They deserve to have their claims heard and their rights in their own property settled.

S. 2271 sets a clear standard for when a claimant has exhausted all administrative remedies by defining when a ''final decision'' has been reached for purposes of ripeness doctrine. It also allows property owners to choose whether to assert their Fifth Amendment rights in state or federal court.

The supporters of S. 2271 believe that property owners deserve the same access to justice as persons defending their rights to free speech, freedom of religion, due process, or any other freedom protected by the Constitution. If your rights under the First Amendment are infringed by the government,

you are not told to endure endless administrative hearings before seeking to uphold your rights in court. Fifth Amendment rights deserve the same degree of protection. Under the S. 2271, private property owners will no longer be turned away at the courthouse door.

Mr. President, it is important to note that S. 2271 is strictly procedural in nature. It does not change substantive law. It does not define a ''taking'' or establish a trigger for when compensation is due. It does not give property owners any special access to the federal courts. On the contrary, it allows property owners the same access to federal courts that other claimants currently have.

The property owner would still shoulder the burden of proving that he or she has been injured and deserves compensation. The bill gives property owners a choice of how and where to assert their property rights under the Constitution. If the property owner wants to pursue action against a local or state agency that has infringed on his or her rights, the property owner can sue in state or local court, as he would now. Or, if the property owner wants to reject that route and instead pursue a Fifth Amendment takings claim, the case can be heard in federal court.

We should note that the provisions of this bill only apply to Fifth Amendment constitutional claims. Issues relating to state law or local ordinances or regulations would be resolved in state court. This bill does not bring state law claims into federal court.

Opponents of this legislation have claim that it will abolish local control over zoning decisions or will federalize zoning law. Suggestions that this bill intrudes on the prerogatives of local governments are simply wrong.

Under the bill, a property owner must submit a land use application to the local entity with authority to make land use decisions. If an application is denied, the applicant will have to either reapply or file for an appeal. If the local land use authority explained the denial and how to change the application so that it would be approved, the applicant must reapply taking into account the suggestions in the new application. If the second application is denied, the applicant may go to the next step—the applicant must appeal or request a waiver of that land use decision to the administrative body with the power to review those decisions. If a local elected body exists in the locality which has the power to review appeal decisions or land use decisions, the applicant must seek review from that body. If that review is denied, then a final decision for purposes of ripeness has been reached and the applicant may then file a claim in federal court.

There are at least three and up to five opportunities for the local land use agencies and governments to make critical decisions regarding land use applications in their community before an applicant would be able to file a claim in federal court. Anyone who runs that gauntlet and still wants to file a federal claim may or may not prevail on the merits, but the claim will certainly not be frivolous.

S. 2271 applies to claims filed in federal court which involve only a federal Fifth Amendment taking claim. A federal court may still dismiss the case or send it back to state court if there is a pending state claim based on the same set of facts, the claim asserts state law claims, or the claim involves a state regulatory matter. But the fundamental purpose of this bill is to enable citizens to defend their federal constitutional rights in federal court. This in no way denigrates the lawful authority of local governments over land use, because all levels of government must obey the Constitution.

Mr. President, S. 2271 is a narrowly targeted but vitally important step toward restoring full protection of a fundamental constitutional right. I urge support for the motion to proceed.

Mr. FEINGOLD. Mr. President, I wanted to take a few moments to state my opposition to S. 2271, the Private Property Rights Implementation Act of 1998.

First, Mr. President, on behalf of my constituents, I want to indicate my strong concerns about the manner in which this bill has come to the Senate floor, and indicate why I opposed cloture on the motion to proceed to this bill. If necessary, I will return to the floor to discuss my concerns about this legislation in greater detail. The Senate Judiciary Committee, upon which I serve, reported H.R. 1534, the Citizen's Access to Justice Act of 1997, with amendments. I voted against reporting that measure.

In an effort to address concerns raised in Committee debate when the bill was reported, the Chairman and Senior Senator from Utah (Mr. HATCH) announced that he would work with Committee members to seek necessary improvements. The bill now before us embodies what the Chairman would have offered on the floor as a substitute amendment to H.R. 1534 as reported. Not only do I take exception to the result of this attempt to ''improve'' the bill but I am also alarmed at the speed with which this measure has been brought to the floor. The resulting bill number shuffle and procedural debate over whether or not the proponents would be offering a substitute amendment has left my constituents, on both sides of this issue, frustrated and confused.

This extremely technical and complicated matter is of critical importance to a wide variety of interests in my state who have followed this legislation since the early days of this Congress. Thus, I had hoped to act with greater concern for those constituents interested in the outcome of this measure as we sought to move it to the floor.

Procedurally, I am also concerned, Mr. President, that S. 2271 differs significantly from the legislation the Judiciary Committee reported. Members, for the first time, have heard about the substance of this bill through floor debate today. Given the potential impact of this legislation on both the federal government and local governments' financing and regulatory structures that we should have given members both a comprehensive written description of the changes contained in S. 2271 and additional opportunities to discuss this legislation with their constituents.

I voted against this measure in Committee and oppose the bill currently before the Senate for a number of reasons. First, this bill will result in a increase in litigation over local zoning matters in federal courts. As a result of the Listening Sessions I hold in every Wisconsin county every year I have worked with constituents on a number of regulatory red tape issues. It is clear that the last thing Wisconsinites want or need is a bill that ''takes'' scarce resources away from local governments by exposing state and local officials in our state to threat of federal liability in their attempts to control local land use and follow federal law.

As my colleagues have pointed out, this bill creates an opportunity for clever lawyers to profit at the expense of local ordinances to which we in the Judiciary Committee, and in this body, normally claim to defer. Certainly, this bill is not consistent with any claim of deference to state and local authority. It is an explicit transfer of power to the federal government.

This bill purports to lessen the impact upon the prerogatives of local governments, but it continues to allow broad exceptions to the very abbreviation of local land use processes which the bill itself mandates, a process which can be now be the subject of federal litigation.

As the Ranking Member of the Judiciary Committee (Mr. LEAHY) has explained that S. 2271 lowers two threshold barriers to bringing takings claims against federal and local governments in federal courts. It does so by legislating both the circumstances under which courts can abstain from hearing a case and dictating when a claim may be heard by a federal court —known as ''ripeness.''

In the case of takings lawsuits against the federal government, a case is ripe for adjudication when, as the bill defines it, a federal agency has made a ''final decision.'' A ''final decision'' exists when an either an application or an appeal to use the property has been submitted but not been approved ''within a reasonable time.'' Similar language is incorporated to specify when suits can be brought against local governments, and that section is somewhat more deferential to local governments. The bill is more deferential to local land use regulatory bodies, unlike when a claim is brought against a federal agency, by arguably making it more likely that an initial application will be filed.

Let me repeat that for colleagues, to make it clear. Under this legislation in certain circumstances an individual is able to sue the federal government for a taking without even submitting an application to a federal agency to determine whether the action they propose violates federal law. The bill says that the party seeking redress under this bill would not be required to submit an application or appeal if the district court holds that such actions would be futile. Futility is defined as the inability to seek or obtain approvals to use real property as defined under applicable land use or environmental law. I would point out that while futility is defined for actions in district courts, there is no definition of futility for the Court of Claims, though an individual making a claim against the federal government has the option under this legislation, which also concerns this Senator, to sue in either court. These provisions allow litigation not when a Constitutional right is deprived, that is when the government denies compensation for restricted use or condemnation of property, but rather when the use of the property itself has some conditions placed upon it.

I would like my colleagues to think for a moment about what kind of anti-regulatory and anti-compliance actions the futility exemption in this legislation would encourage. Such language suggests that if one knew or might know, as an experienced developer, that a particular type of wetland filling activity would not be likely to be permitted under the Clean Water Act, then one would be free to claim that requesting a permit for such an activity would be futile and sue the federal government.

Even if the government dismisses that case, as I am sure the bill's supporters argue it would, because there are no supporting facts and no application, under the language of this bill the court isn't allowed to abstain. Aren't we sending the wrong message, Mr. President? In Wisconsin, often my constituents are unaware when an action they have taken requires them to interact with a federal agency, and my office helps constituents in those circumstances. But this legislation explicitly provides that if know that an action is prohibited, you may sue to be compensated being denied the right to do it anyway. And for those who will argue that such suits won't happen, I'd reply by saying it's a genuine risk under this legislation. If an extreme suit against the government is successful, the federal government is obligated to pay the court costs of prevailing plaintiffs.

These same provisions apply to suits against local governments, though courts can abstain if an initial application isn't filed and there is some discretion given about whether prevailing plaintiffs would have to be awarded court costs. I also want to make clear that this bill applies to local land use decisions because I believe there may be some Senators who are under the impression that this bill applies only to actions taken by federal agencies.

However, this is not the case. S. 2271 contains additional provisions which limit local decision making, expanding upon similar provisions contained in the House-passed version of this legislation. For example it would require a land-use applicant to ''take into account'' any suggestions given by the land use agency which denied the application when reapplying before the applicant pursues federal litigation. This language is still unclear, and certainly local governments that will have their hands tied by this bill share this view.

Second, I remain concerned that this bill applies to all forms of property. Proponents claim that it only applies to real property. It may indirectly expand of the definition of private property. This will undoubtedly lead to creative lawsuits and increased costs for the taxpayers.

This bill allows vindication of ''all interests constituting property rights, as defined by Federal or State law, protected under the fifth and fourteenth amendments to the United States Constitution.'' I would remind my colleagues that ''all interests constituting property'' is a much broader category than real estate. Moreover, the bill creates the right of access to federal court for any actions taken by federal agencies as described in Section 6 that ''infringe or take'' the rights to ''use and enjoy real property.''

Starting down the road of extending litigation rights to all forms of property, and all uses of property may lead the federal government to protect interests we might otherwise not protect.

Take for example contractual rights to receive water from the federal government. At present, there is no federal right to ''receive'' water except as provided by a contract, even though a supply of water clearly is related to the ability to produce crops on one's real property. The Bureau of Reclamation delivers water in 17 Western states, pursuant to contracts, for primarily agricultural purposes. Each year, it allocates water based upon supplies available in reservoirs and other storage facilities. Most contracts generally anticipate that delivered quantities may vary on an annual basis.

During the drought of 1993, the Bureau of Reclamation reduced the quantities of water supplied to the Westlands Water District. It allocated a portion of the limited water available to protect fish in accordance with the requirements of the Endangered Species Act. When agricultural users received only 50 percent of their contract quantities, Westlands sued alleging that the liability limitations of the contract were invalid and that the agricultural users were guaranteed a fixed quantity of water at a fixed price. They contended that despite the liability limitations of the contract, the Bureau's water allocation decisions improperly deprived them of water and entitled them to compensation.

The Ninth Circuit Court of Appeals dismissed Westlands' claim, sustaining the federal government's contract defense. This legislation would create an expedited procedure for bringing takings claims, and specifically provides for causes of action when ''use'' is restricted, thus potentially compromising the federal governments' argument in the Westlands case that the government was in compliance with the contract. In response to questions I submitted about last Congress's takings legislation, which had similar definitions of ''use,'' then Counselor to the Secretary of the Interior Joseph Sax wrote explicitly about the Administration's concerns with the potential for property rights legislation to create a new category of federal water law:

> Where Congress has recently restructured federal reclamation projects to direct more economically and environmentally sensitive management, as it has done for example in California's Central Valley Project,. . .[a]ny steps the Department of Interior takes to implement these congressionally ratified improvements would doubtless result in demands for compensation by affected interests if these bills became law.

Other portions of the bill raise similar questions. For example, is it the intent of the language to suggest that any person taking an action that causes injury to a property right, but doesn't actually take the property, creates the right of access to federal courts? Even if that action is supported or mandated by a local or state ordinance or statute? How would one substantiate an action which damages the ''right to enjoy'' one's property? This is just another example of the kinds of problems this legislation poses. And what about the distinction the bill makes by including special reference to ''real property'' without defining that term?

Wisconsin communities are deeply afraid of the litigation costs and general erosion of the notion of community that will be implicit in the answers to these questions. Mr. President, I have heard almost unprecedented levels of opposition to this legislation from local governments all over my state, from large cities like Milwaukee and Madison to small communities like the Village of Park Ridge near Stevens Point and Cudahy, Wisconsin. Individuals of every political affiliation oppose this legislation, and editorials opposing similar bills have appeared all over my state.

To me, however, one of the best arguments against this legislation was sent to me by the former Mayor of New London, Wisconsin, Gregory Mathewson. After the H.R. 1534 passed the other body and was sent to the Senate Judiciary Committee former Mayor Mathewson wrote:

> Our fear with this legislation is that it tilts the current balance and increases the range of things a property owner has a right to do. Meaning that communities no longer have any clear authority to zone property or decide between conflicting interests on the basis of the best interests of the community as a whole.

We often have homeowners who do not wish to see apartments of any type built near them, owners of large houses who do not want small houses built near them, and we routinely have to tell people that the City exists for all persons not a few, and that the poor, the non-land owning and others shall be welcome.

We fear now that these decisions will involve us in continuous litigation in federal court, and all notions of community will be eroded as the questions and issues will be so generalized by the courts that local reasons, customs and planning will be irrelevant.

I ask you to see that a balance is maintained, the community ought to have rights balances against individual rights. In its current form, H.R. 1534 appears to eliminate this balance. Everybody seeks out places to live which offer a high quality of life. It must be clear that there is no quality of life if someone can do anything they want with their property or sue over any perceived impact on their property. In either case, the individual controls the community and this is the operational definition of anarchy.

Mr. President, Wisconsin communities respect property rights, and want to have well developed and well planned cities, towns, and villages. This legislation goes too far in seeking not just to clarify but to enhance the procedural rights of property owners to seek compensation under the fifth and fourteenth amendments to the Constitution. In doing it would have unintended consequences that might undo the unique character of towns across America and within my home state. It is for this reason, and the others I have described, that I oppose this legislation. I urge other Senators to join me in seeking its defeat.

Mr. KENNEDY. Mr. President, I oppose this legislation. Much of the bill is almost certainly unconstitutional, and all of it is unnecessary. States and municipalities already have adequate ways to decide questions of property rights.

The goal of this misguided legislation is not to protect the constitutional rights of property owners, but to create new rights for wealthy developers. It would alter the balance of power in their favor, and force local governments across the nation to accept a wide range of activities that harm communities.

This legislation is a Pandora's Box of problems for local communities and the federal judiciary. It will force municipalities into federal court early in the land-use process. It will force federal judges to accept cases involving sensitive land-use issues that should be handled at the local or state level. It will add a new burden to federal courts, at a time when they are already overburdened. It will substantially—and unconstitutionally—broaden the jurisdiction of the Court of Federal Claims.

The bill is the latest attempt by the Republican Congress to tip the balance against neighborhoods and towns and in favor of developers. It isn't unreasonable to ask property owners to consider the health, safety, and zoning needs of the local community. State and local planning and zoning boards, and health and safety commissions, exist to protect local needs, and balance them with the interests of property owners.

Each person's property rights are bounded by his neighbor's interests and limited by the public interest. It is not against the law for the government to ''take'' private property for public use. It is only against the law to take it without compensation. Local involvement is necessary to this process. Only at the local level can the proper determination of value be made and the necessary negotiations take place. Once decisions are made at the local level and state courts have a opportunity to reach a decision, property owners have the right to appeal to federal courts if they are dissatisfied with the local decision. There is nothing wrong with the current law that this legislation will fix.

By forcing federal courts into earlier stages of these local decisions, it will give landowners an unfair ''big stick''—the threat of federal litigation.

And that threat is real. Currently, a federal judge may refuse to hear a case if it is not yet ''ripe'' for adjudication in a federal forum, or involves issues better dealt with in state courts. This bill will allow big developers to force local planning issues out of local administrative and judicial forums, where they belong, and into federal courtrooms, where they don't belong.

The bill also undermines the principles enunciated by the Supreme Court in the Williamson case, which held that remedies should be pursued at the state level before being sought in federal court. As the Court noted, ''Rejection of exceedingly grandiose development plans does not logically imply that less ambitious plans will receive similarly unfavorable reviews.'' In other words, a city can deny a permit to build a factory on a piece of land, but might well allow residential development.

Most disputes about property are resolved by this back-and-forth process between local officials, neighbors and developers. Through this process, the community shapes the kind of growth it wants and can support. By allowing a developer to bring a city into federal court after filing one proposal, this bill will promote litigation at the expense of negotiated solution. Because municipalities are often small and federal lawsuits are costly, localities will be coerced into abandoning sensible land-use plans because they can't afford a lawsuit. This bill will certainly interfere with necessary local efforts to protect the quality of their communities, including the water, air, and open space, and health and safety, too.

Most communities across the country are small. Very few have legal staff. Yet these are the communities that will have to defend their regulations and zoning decisions in federal court if they don't surrender to big developers' demands. Some of the cases that this bill would affect could easily pose serious threats to the health and safety and well-being of our communities.

Finally, there are serious constitutional questions about the bill's proposed expansion of the jurisdiction of the Court of Federal Claims. That court is an Article I court, not an Article III court. It has no authority over Congressional or agency actions. It was created to hear monetary claims against the federal government. Expanding its scope will cause it to cross over into the realm of Article III courts.

The Judicial Conference of the United States opposes granting the Court of Federal Claims the power of injunctive and declaratory relief, and the authority to invalidate Acts of Congress or agency regulations. The power to invalidate Acts of Congress and federal regulations has historically been part of an independent judiciary. The Court of Federal Claims does not have the tenure and salary protections of an Article III court that ensure judicial independence. So this bill is likely to be held unconstitutional under standard doctrines of separations of powers.

Judicial efficiency in the already over-burdened federal court system will also suffer, as more federal lawsuits are filed against zoning boards, land-use bodies and regulatory agencies. The cases this legislation will unleash will burden the federal courts at a time when there are over 70 judicial vacancies. The irony is obvious—our Republican colleagues won't confirm more judges, but they're more than willing to add to the current excessive workload.

These complex issues of local land use are currently being resolved at the appropriate level. Congress should reject this heavy-handed scheme to curry favor with developers at the expense of homeowners and neighborhoods across America.

Mr. GRASSLEY. Mr. President, I rise in support of the property rights legislation we are currently considering. The question we have to answer today is simple. Do we want to give to homeowners and farmers the same rights to go to Federal court when their constitutional rights are infringed that we already give to flag burners and neo-Nazis who preach hate. For my Part, I think that hardworking farmers and homeowners ought to have at least as many constitutional rights as Nazis and flag burners.

For the benefit of my colleagues, I'd like to point out how this bill would change current law to correct the outrageous preference that activist Federal judges have given to flag burning over property rights. The current bill modifies the abstention doctrine, which provides that Federal courts will decline to hear certain court cases if there is on-going litigation in State court or before a State administrative agency.

Now, on its face, the abstention doctrine sounds good. I believe that Federal courts should decline to hear lawsuits when State governments or State courts are in the process of considering the same issues. This prevents the duplication of efforts and respects States' rights.

The property rights bill we're considering today would create an exception to the abstention doctrine for people who want to protect their constitutional right to own and control their property.

The thing to remember, however, is that the Federal courts have already created exceptions to the abstention doctrine. Let's look at some of the cases where the Federal courts have decided not to abstain. In other words, let's look at some cases where Federal courts went ahead and heard a court case even though a State government was in the middle of considering the same case.

In the case of Collins versus Smith, a Federal court decided not to abstain when a town in Illinois decided against issuing a parade permit to the American Nazi Party which wanted to march in a Jewish neighborhood. The Nazi Party couldn't afford to pay a fee which the town required, and so the Nazi Party was not given a permit to have this march. The Nazi Party challenged this decision as a violation of their constitutional rights and the town was considering whether to waive the fee or not to waive the fee. But the Nazis got tired of waiting and went to Federal court. And the court decided that it would hear the case even though there was a pending State proceeding.

So, the Nazi Party gets to protect their rights in Federal courts—no questions asked and without having to wait for State proceedings to conclude. But property owners don't have that ability. They can't just run into Federal court.

Mr. President, I think that's just plain wrong. I believe that hardworking Americans who own homes and hardworking farmers trying to work their land ought to have at least as many constitutional rights as the Nazi Party. If we pass this bill, we'll stop this unfairness.

Nazis aren't the only ones who get treated better than property owners. Flag burners have it pretty good as well. In Sutherland versus DeWulf, the city of Rock Island, Illinois tried to prosecute someone who had burned an American flag. So the flag burners went straight into Federal court to sue the city government. Even though there were on-going State proceedings, the Federal court decided to hear the case and specifically rules that it would not abstain until after the State proceedings were finished.

Again, this is unfair. It doesn't make sense to say that homeowners and farmers have to wait to have their day in court but flag burners can get their day in court any time they want. I think that property owners ought to have at least as many constitutional rights as flag burners.

So, Mr. President, we have a chance today to correct this absurd preference for flag burners and Nazis. Why should they get a special key to unlock the courthouse doors, while homeowners and farmers have to wait outside the courthouse for years until some Federal judge decides it's okay to file a property rights case. For once, let's use some common sense and pass this bill.

In the last Congress, the Judiciary Committee considered a comprehensive property rights bill. That was a good bill, and the Senate should have passed it. But there was strong opposition from intellectual elitists of the far left who have no regard for the concept of protecting private property rights. Those who spoke against the last property rights bill said it was too broad.

So, this Congress, we have a more narrowly focused bill. But even this more narrow bill isn't acceptable to the opponents of property rights.

Given what I've just pointed out about the preferential treatment that flag burners and Nazis get in terms of access to the Federal courts, I think that just shows how extreme and out-of-touch the other side is on this issue. I yield the floor.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I yield 3 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. HATCH. Will the Senator yield for 1 second? Mr. President, I ask unanimous consent that after the Senator's remarks, I reserve the remainder of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I congratulate Chairman HATCH for bringing the Senate this important reform measure to safeguard Americans' property rights.

The concept of property is at the root of civilization as we know it. The right of the individual to acquire, possess and use property is one of the natural rights that does not depend on government for its existence; on the contrary, governments were formed in part to protect that right. Our Founders also saw the right to private property as the key to spurring individuals initiative and productivity that would ensure national prosperity and security. For that reason, the concept of property and the importance of its protection permeates the Constitution—there are references to it throughout the document, in addition to the fifth amendment's prohibition against the taking of private property for the public good, without just compensation.

Unfortunately, however, all these rights aren't worth the paper they are printed on, unless they can be enforced. That principle applies even to the Constitution. Our Founding Fathers may have thought the fifth amendment would shield the people of this country from government taking their property without just compensation. But for all too many Americans the shield has no substance, the promise of protection is hollow, the Constitution's guarantee is an empty one—all because they cannot enforce it against government encroachment.

This is not an isolated problem for a few wealthy Americans. In communities across the nation it is ruining family businesses, devaluing property of all kinds, preventing people from building homes and sometimes even from cleaning up pollution or hazards. In short, it is depriving citizens of all incomes from every state of one of the most prized basic human liberties.

There are many aspects of the erosion of private property rights protection and many ways to attack the problem. Chairman HATCH and I and others have tried in the past to enact a comprehensive solution. Unfortunately, that effort ran headlong into another political agenda, and for that reason, we have put it aside for the near term. Meanwhile, however, it makes sense to push ahead on a more limited—but still important—part of the solution.

The bill before us today, the Property Rights Implementation Act of 1998, focuses on the judicial side of the equation. Currently, people trying to vindicate their constitutionally guaranteed property rights face a procedural catch-22. They are forced to jump endless hurdles on the way to court, and then are bounced from court to court to obtain relief. At every step, the system is biased to the benefit of government and against the citizen. The costs are often staggering.

If it were this difficult to enforce any other constitutional guarantee, we would have seen reform long ago. Even members of the judicial branch have acknowledged that clarification is seriously needed in this area.

This bill would simplify the path to court and clarify the jurisdiction of the courts. It doesn't grant any new rights but only attempts to clean up the procedural quagmire that presently frustrates access to the courts. This is a precise and limited reform that would make a big difference to the citizens who are forced to litigate in order to protect their property rights.

I know that local governments have been concerned that this legislation may interfere with their areas of jurisdiction. However, this bill does nothing to reduce the power of local governments to make decisions with regard to property. Furthermore, this legislation actually exempts localities from paying attorneys' fees if they lose a takings claim. If the case involves a critical question of state or local law that is unclear, that question will be sent back to a state court for decision before the federal case can continue. In short, the bill does nothing to take away power from state and local government, while it strengthens the protection of individual citizens' rights.

Mr. President, the House has already passed similar legislation by an overwhelming vote. S. 2271 is an important reform, and I urge all Senators to support its passage. Let's most this bill to conference and then on to the President for enactment.

In conclusion, Mr. President, I am pleased to stand with the chairman of the Judiciary Committee today in support of S. 2271, the Property Rights Implementation Act of 1998.

We can talk about constitutional rights, and we should; we can talk about the very basic foundation of our economy, and we must. All of us are in favor of the environment, but some like to put the rights of the collective over the right of the individual.

What we are trying to do here today is sort a little bit of that out, because, yes, people buy property for a variety of reasons. They buy it to hold as you would put money in a bank, hoping that some day in the future you might be able to use it as an investment purpose to retire. It reminds me of a lady I met from Texas not long ago. She and her husband had done so. They had bought a small piece of property a long ways out of Dallas 30 years ago, hoping that some day it might be of value.

All of a sudden, the suburbs of Dallas reached the property. Her husband is dead, and this is her retirement. The Federal Government, in cooperation with the municipal government, said that property can now not be developed for a multitude of reasons. This lady only can go to court to redeem her values, but in this instance, she has no money.

While this particular legislation would not address that example, it would go a long ways toward honoring our constitutional rights and, most assuredly, would have allowed this individual her day in court. That is one example.

In my State of Idaho, where there are people who have held property for generations and like to continue to hold them for a variety of reasons—ranching or farming because it is their livelihood—only to have the Federal Government step in and determine that certain uses may not go on on that land or certain practices—or the land itself may be habitat for a particular species of plant, animal or bird, the value of that property is diminished because of the flexibility that the individual has to manage and operate that property, not for investment purposes, but as an income property. Yet, in those instances, and in most instances, the opportunity to recoup those kinds of losses are denied.

There are a good many other examples, Mr. President, and my time is limited this afternoon. I stand in strong support of this legislation and hope that my colleagues will join with me in gaining cloture for the purpose of debating this issue.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I yield 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, there has been considerable discussion this afternoon about compensation and takings and so forth, but what this really is all about is, are we going to permit the local authorities to have the powers that they have had in the past to deal with local zoning matters and matters similarly associated therewith.

What the proponents of this legislation are saying is that we don't want that, we don't want to have a situation whereby you must exhaust your local remedies. Even though that is recognized to apply in the fourth amendment where we are dealing with unlawful searches and seizures, for example—and there the courts have said you have to exhaust your local remedies—here is what they are also saying in connection with these so-called property rights under the fifth amendment.

For some peculiar reason that I haven't quite been able to fathom here, those people who have long been stalwarts of the local authority and the powers of the locals—local elected officials, for example—are suddenly saying, ''No, no, no, you don't know how to do this; we're a lot smarter than you are; we're Federal officials, we live inside the beltway, this is where we make our decisions and we're going to tell you how to run these matters on your local level.''

Even though the Supreme Court recognizes that, yes, there can be no taking of private property without just compensation, they are saying that, first, you must exhaust your local remedies, you must let this what they call ''ripen.'' We have gotten adjusted to that. For over 200 years, this is the way this system has worked. But, ''No, no,'' say the proponents of this legislation, ''that's not fast enough. Your local officials really don't know how to do this. What they are doing is they are holding up matters too long.''

It is true that you, the local voters, for example, from your town or your city, your county, wherever it might be, you are tolerant of this, you are satisfied with the way the system works.

But we are in Washington, DC. And we say, ''No, we don't like that. We're going to change it for you. And, yes, your mayors can come to us and your Governors can come to us and your local legislators. We're going to dismiss you. We don't care what you want, we're going to tell you how to do this. We're pretty smart here in the U.S. Government, and we're going to straighten this thing out. No, we don't have to bother having any hearings. We'll tinker with this and change it all around and bring it to the floor. That's all right.''

As the senior Senator from Vermont has pointed out, there has not been 30 seconds of hearings on this bill we have before us, but they say that is all right because we are all very, very smart around here and we know what is best. And so we are saying to the president of the U.S. Conference of Mayors, the president of the National Association of Counties, the president of the National League of Cities, and the vice chairman of the National Conference of State Legislatures, and so forth, this is the way we are going to do it.

We are going to say, ''You don't have to exhaust your remedies.'' All you have to do in my State—I am not familiar how it works in every State; I know how it works in my State—if you want to make a dramatic change in zoning where you live, you want to put a multifamily structure up in a single family development, you say, ''I'm going to go to the zoning board.'' And you ask permission for this. And if the zoning board says no, then you file with the zoning board of review. And that is all you have to do. You do not have to do anything else.

You do not have to go through that. And you do not have to take the steps and go to the State district court. Bang, you can go into Federal court. And there some federally appointed judge is going to tell you just how to straighten this thing out. He is going to tell you what to do, not your local officials, not your elected members of the zoning board or the zoning board of review. Not your mayor—he has nothing to do with this. It is going to be a federally appointed judge. And we have heard all —I do not know how many times on this floor we have heard about the dangers of activist Federal judges. And so we are going to have an activist Federal judge tell us what to do in East Greenwich, RI, or wherever it might be.

Mr. President, I do not think that is right. I can see why they avoided having a hearing on this final bill, because it would have been trash. And it came out on practically a straight party-line vote. It indicates the lack of support for this legislation.

Mr. President, I want to make one more point. When we have these things come up, a zoning request on the local level, there is great effort made to compromise it, to negotiate it in some fashion. ''All right. You want to fill in a wetland? No, you can't fill in that wetland. There's a place where you can work out a situation, restore a wetland just right up the road. And this is the way we will work it out.''

That is what local officials do. They know they are living there. They are dealing with their neighbors and people they know. They are not some Federal judge from some distant place who comes into town riding the circuit every now and then and says, ''This is the way it's going to be.'' But the problem is, you do not have that negotiation, that attempt to compromise, that attempt to work these matters out.

I also might say, this has a very, very chilling effect on the local officials, because if the local officials are in a situation where they know they can be jerked into the Federal court—they make a decision on whether it is the preservation of a wetland or the preservation of the zoning, the one-acre zoning, whatever it might be—they are going to be very leery of making a decision against the wishes of the home builders, for example.

Why are the home builders so enthusiastic about this legislation? Are they trying to preserve the environment or preserve some open space or do what is best for the community? Well, it is totally understandable. They are looking after their own interests. That is what they want. So, Mr. President, they are going to be going right into the Federal court. They have plenty of money.

If I come from a relatively small town, and my little town is jerked into the Federal court—and we have a city solicitor—the town solicitor, who isn't paid much, if he is going to start going to Federal court and have to answer to every request for a change in the zoning, it is going to be a big bill that he is going to submit to this town.

Mr. President, I certainly hope that this so-called Property Rights Implementation Act of 1998, which is going to come before us in a half an hour on a question of cloture—I certainly hope that everybody will vote against cloture.

I thank the distinguished Senator from Washington for letting me speak.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I suggest the absence of a quorum and I ask unanimous consent that it be divided equally between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. I ask unanimous consent that I be allowed to speak for up to 4 minutes on behalf of the bill.

The PRESIDING OFFICER. Is the Senator using time from either side or is this an additional request?

Mrs. HUTCHISON. It is an additional request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Thank you, Mr. President. I want to thank the Senator from Washington for allowing me to use some time because I think there are a couple of other Senators who will be speaking on her side very shortly.

Mr. President, I commend Senator HATCH for his commitment to ensuring protection of private property rights as required by our Constitution and for trying to do everything we can to assure the private property provision of our Constitution is adhered to. People seem to overlook the fifth amendment sometimes, which says that:

> No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

In spite of this unequivocal protection of private property in the Bill of Rights, the Federal Government has often adopted laws that violate these important rights. One law, for example, which has been implemented to the detriment of private property rights in Texas is the Endangered Species Act. In the Texas Panhandle, the Endangered Species Act has been used to protect a bait fish called the Arkansas River shiner. To protect the fish in Texas, even though it thrives in New Mexico, the water supply for cities such as Amarillo and agriculture in the area are put in jeopardy. In Travis County, families who purchased residentially zoned lots in good faith to build their homes are being penalized. In addition to the cost of their lots, they are forced to pay $1,500 as an added fee to protect habitat for the golden-cheeked warbler, in an area where 20,000 acres already are set aside for that purpose.

There are many other examples like this that demonstrate how laws can be used to actually violate constitutional rights. For this reason, I support property rights protections. We tried in the 103d Congress and in the 104th Congress, to guarantee compensation to landowners whose private property was devalued due to government regulations. Unfortunately, we were unsuccessful in adopting these reforms. Today, we are trying a new approach. Senator HATCH has put forward a new approach that adjusts our legal process to assure that constitutional rights are secured for the private property owners of our country.

Now, what Senator HATCH is doing is really mostly technical in nature. It is giving people the right to have their cases heard. I don't think Americans should have to spend all of their money just seeking to challenge the violation of rights that are guaranteed to them under the Constitution. I don't think that is due process. So I commend this bill because I do think it will take one step in the right direction toward protecting private property rights and helping private property owners at least have their cases adjudicated in court.

The bill does not speak to the real issue which is how we can accommodate environmental laws in a way that also protects the rights of private property owners. I hope this Congress will address the basic issue soon.

In the meantime, this bill at least will take us a step toward allowing people due process to protect their private property rights. I think it is time that the American people who own property have the ability to fully protect their rights guaranteed by the Constitution. I hope that we will all support this bill.

I thank the Senator from Washington. I yield the floor.

The PRESIDING OFFICER. If neither side yields time, it will be deducted equally from each.

Mr. LEAHY. Mr. President, if I might, the other side was last to speak. If they have not called a quorum call, my understanding is the time is still on their time.

The PRESIDING OFFICER. The Senator is not correct. Under the precedent, if neither side yields time, the time is deducted equally.

Mr. LEAHY. Mr. President, parliamentary inquiry. There may have been another unanimous consent request when I was off the floor.

If somebody had sought recognition and yielded time for that person to speak, they do not call the quorum call, and nobody else seeks recognition subsequent to their speaking, does the time continue to run against whoever had been yielded time?

The PRESIDING OFFICER. Precedent is that the time is deducted from both sides equally.

Mr. LEAHY. So if somebody sought recognition on their time and just stands there silently, while they are standing there silently, the time is running equally?

The PRESIDING OFFICER. If they are yielded for a set amount of time, that time will be deducted from their side. Once they yield the floor and they sit down, the time is no longer charged to them, it is charged to both sides equally.

Mr. LEAHY. How much time remains to the Senator from Utah and the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Utah has 4½ minutes, and the Senator from Vermont has 21½ minutes.

Mr. LEAHY. And the vote is set for quarter of?

The PRESIDING OFFICER. Yes.

Mr. LEAHY. I yield myself 5 minutes.

We continue to hear what an improvement we have in the new bill, S. 2271, as compared to H.R. 1534. Maybe it is, but maybe it isn't an improved bill. I don't believe it is an improved bill but it is a different bill.

Frankly, we have before the Senate a different piece of legislation in which there has not been 38 seconds of hearings. We have before the Senate a bill which, unlike other major legislation, does not have a specific report before the Senate. We have a bill that is brought down in time for the Monday afternoon bed check vote, without a report, without a hearing.

Mr. President, we are asked to pass a piece of legislation that would dramatically encroach on the rights of the municipalities, counties, and States in our country. It would be a massive shift of power from the local people and communities to the Federal courts.

I think one of the reasons it is being rushed through is that the big developers who want it don't want the public to look at this very long. But those

who have looked at it are opposed to it. That includes the National Governors' Association, the National Association of Counties. Others who oppose it include the National League of Cities, the U.S. Conference of Mayors, the National Association of Towns and Townships, the National Conference of State Legislatures. The bill that was reported, H.R. 1534, was also opposed by those groups and the International Municipal Lawyers Association, 38 State attorneys general, and the American Planning Association.

Among those opposed to having that unprecedented shift of power to the Federal courts are the Judicial Conference of the U.S. Conference of Chief Justices and the Administrative Office of the U.S. Courts.

Among those religious organizations opposed to that bill are the United States Catholic Conference, the National Council of Churches of Christ, Religious Action Center for Reform Judaism, and the Evangelicals for Social Action.

Among the public interest groups that are opposed to it are the League of Women Voters, the Alliance for Justice, the Physicians for Social Responsibility, the National Trust for Historic Preservation, and the U.S. Public Interest Research Group.

Among the conservation groups against it are the National Wildlife Federation and the League of Conservation Voters. Those who oppose it include the Sierra Club, the National Environmental Trust, the Environmental Working Group, the Center for Marine Conservation, the Environmental Defense Fund, the National Audubon Society, the Great Lakes United, the Earth Justice Legal Defense Fund, Izaak Walton League of America, the Scenic America, and the Wilderness Society, Natural Resources Defense Council, the Rails to Trails Conservancy, and the National Parks and Conservation Association, Friends of the Earth, Defenders of Wildlife, Appalachian Mountain Club, and the American Oceans Campaign.

Among those who are opposed to it are the American Federation of State, County, and Municipal Employees and the United Steelworkers of America.

For the same reason that this Vermonter is opposed to the new bill, S. 2271, the Vermont League of Cities and Counties, is also opposed. They just wrote to me on the new bill saying:

Dear Senator LEAHY: I am writing you to express our strong support for your actions in opposing S. 2271. * * *

Local governments are working very hard in Vermont to exercise appropriate authority over land uses in their communities. We are joined in this in very real fashion by the Vermont legislature which this past session adopted legislation clarifying our ability to regulate wireless telecommunication facilities under zoning.

What would a volunteer part-time planning commission or zoning board of authority do if a national wireless telecommunications company came into town, not only with its platoon of attorneys and engineers but also with the ability to say, ''you take a wrong step and you're in federal court?''

Continuing from their letter:

The chilling effect of that combination would be immense. It is already hard to find people willing to serve on local boards and commissions. With the threats proposed in the Takings legislation, many good public servants at the local level would simply give up.

That is from the Vermont League of Cities and Towns.

In an earlier letter, they asked me ''At what cost to the communities?'' This is a question being answered at the local level by local zoning boards of Charlotte, Hardwick, Cabot, and other towns throughout the State. I think we ought to pay some attention to it. In the Sunday Burlington Free Press, the homebuilders themselves made this statement regarding urban sprawl:

Urban growth is not really Congress' purview. . . . I think most Members of Congress recognize that planning ought to take place at a local or State level.

Then I ask, why are they pushing this bill? They want the Federal Government to take authority away from our States. Do the homebuilders need this for a win?

I said earlier that we Vermonters may differ in the way our State and communities should be handled as compared to how they would be handled by some large-scale, wealthy developer. That is our choice to make. I spoke of some of the most beautiful spots in our State that my wife and I love driving by. Each one has enormous developmental value, but we Vermonters have decided not to develop it. Now, we Vermonters pay the price for that. We get less tax revenue. We make less from our land; I know I do from my own land.

I have 220 acres on my tree farm. We could earn a lot more if Vermont suddenly zoned everything for commercial use. But I don't want to do that. I like the quality of life in Vermont. I like not having to lock my door. I like being able to walk through my fields and see a deer, or to ski down one of the logging trails on my property, as I have in the wintertime, and to see an owl floating on the thermals ahead of me by the moonlight. I liked being awakened about 3 o'clock this morning by the screech of a bear near my home. Frankly, I like that better than the screech of brakes in a congested urban intersection.

They also told us we would lose a great deal in Vermont when we did away with billboards. But a couple out-of-State billboard companies didn't do so well. The scenic vistas of Vermont were opened up and the tourism increased.

Mr. President, we ought to stop taking things out of the hands of small communities and counties in our States. We ought to let the people of West Virginia make their decisions and the people of Vermont make their decision and not say: We are going to yank this out of your hands and put it in Federal court.

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

Mr. HATCH. Mr. President, I yield 2 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I would like to congratulate Chairman HATCH for his outstanding work on this very important issue that deals with a constitutional right that is as fundamental as our right to free speech. The Constitution says that the Government cannot take somebody's property without paying just compensation for it. Let me repeat that. Property cannot be taken without it being paid for.

Too often in America today, we have government agencies that would like to take control of someone's property, but they don't want to pay for it. So these agencies take property through the use of regulations and laws. Sometimes their actions are legitimate. For example, zoning regulations are often perfectly legitimate rules that we have to have if we are going to live together. But there often reaches a point in which the actions of a municipality, or a county, or a State, or a Federal Government—which is primarily what we are dealing with here—can, in fact, take the beneficial use of that property without offering any compensation for it. That is wrong; it should not happen.

This bill is a modest, very reasonable step. Senator HATCH has compromised and worked with those who have different views, and he has crafted a bill that is logical, reasonable, realistic, and that will protect our Constitutional property rights while not doing anything that would deny our ability to protect our environment. To me, it is clearly wrong to say that passage of this legislation would in any way restrict the environmental rights in this country. So I join in support of it. I think it is outstanding legislation. It simply provides a mechanism to protect our cherished fifth amendment constitutional rights.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be deducted equally.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is remaining?

The PRESIDING OFFICER. You have 11 minutes 20 seconds.

Mr. LEAHY. How much time is remaining for the Senator from Utah?

The PRESIDING OFFICER. One minute thirty-six seconds. The vote will take place at 5:49, which under the unanimous consent agreement was moved from 5:45 to 5:49.

Mr. LEAHY. The vote is at what time?

The PRESIDING OFFICER. 5:49.

Mr. LEAHY. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we can probably sit here on the floor and

think of some horror stories where a town made a mistake in holding something up. We could point somewhere to some local court where another mistake might have been made, or to a few prosecutors out of the thousands of our local prosecutors where one bad judgment call was made.

But we don't have the arrogance in this body to say we will take over all our local courts, all our local communities, all our local prosecutors, and turn them over to the Feds because mistakes won't be made. Because I can tell you right now that for every mistake made at the local level I could point to a bigger one made at the Federal level. I think that is why the Judicial Conference says don't quickly toss these matters into the Federal courts. The Federal courts can't keep up with the cases that are there today, especially when the Senate won't vote to confirm judges for the vacancies already existing.

Let's not do this. And let us say that the U.S. Senate, of all places, will protect the current state process and rights of local communities and local counties and States to make their own decisions.

Why do we want to say to our small towns that they can not decide to protect a particular area? Why do we say they should not be able to stop a building from being built next to a particular scenic spot? If they are willing to forego tax revenue by doing that, and they are willing to pay the price themselves—why do we want to say that some big developer from out of State could come in with a platoon of lawyers and endless pockets and say, ''Oh, the heck with you. We know better. We can make a quick buck on that, and we will take you to Federal court if you do not let us do it''?

Before the Congress bulldozes local and state jurisdiction, we need to ask ourselves what urgent problem is being solved by this bill that could not be solved some other way? What is so urgent that we have to step in right now and wipe out the local land use process of our towns, our cities, our counties or our States? What is such a pressing need besides the current concerns of a couple of well-financed PACs? What is the urgent concern in this country that we have to suddenly rewrite the rule books and say from the Federal Government, ''you people at the local government level don't know what you are doing, and we are going to step in and take it over''?

Mr. President, I reserve the remainder of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time do I have?

The PRESIDING OFFICER. One minute thirty seconds.

Mr. HATCH. Mr. President, let me use part of that.

Let me say what the five truths of the bill are.

This bill does not affect State or localities or local rights, and it only applies to real property.

No. 2, it does nothing to stop localities from zoning or passing or enforcing environmental measures.

No. 3, it does not increase Federal litigation against localities, because the bill does not create new law. And takings cases are expensive to bring. The Congressional Budget Office agrees with that.

No. 4, what the bill does is it grants property owners their day in court, which is denied in many cases by local court procedures or by local procedures, which at times are like the Minotaur's Labyrinth.

No. 5, currently property owners must litigate on average 9½ years before they can get a Federal court to reach a decision on the merits. No other constitutional right is treated that way.

In fact, in *Dolan* v. *City of Tigard*, the Supreme Court said, ''We see no reason why the takings clause of the fifth amendment, as much of a part of the Bill of Rights as the first amendment, or fourth amendment should be delegated to the status of a poor relation.''

We are trying to stop that. This bill will do it.

We have had hearings on it time after time over the years. We have added on this substitute four additional matters, mainly to help people who have raised concerns.

I hope our colleagues will support us on this motion to proceed.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, the fact is we have never had a hearing on this particular bill, S. 2271, not in the U.S. Senate. The fact is we do not have a report on this bill. S. 2271 was rushed to us and stuck on the calendar. It was just introduced last week. And without one second of hearings on this bill, without one word of a report, we Senators are asked to push forward and vote on it.

I am concerned that this bill radically changes a system which resolves thousands of land use decisions each week in thousands of American communities and cities. The zoning system in this country is working well. It is helping mayors, like Mayor Giuliani in New York, clean up their communities. Yet, as Mayor Giuliani said, the efforts he has made to clean up crime and clean up porno shops and clean up a lot of other problems in New York City, could be swept aside by this legislation.

I could show you stacks of letters from local citizens in Vermont, in Pennsylvania, in North Carolina, and in many other States who are up in arms about a provision of the 1996 Telecommunications Act that overrides local and State decisions involving cellular transmission towers. That provision, and this bill, were the subject of a recent article in Governing Magazine that was aptly titled, ''The National Zoning Nanny.''

Do we really want to federalize these local decisions by booting them into Federal court?

This bill is unwise, it is unsound, and it is unwarranted. We ought to be standing up here and defending our mayors, Governors, and our attorneys general, our towns and cities, and others in our States who understand the unintended consequences of this bill. We ought to stand up and say the people of Wyoming, Vermont, Utah, West Virginia, Rhode Island, North Carolina, Missouri, Alabama, North Carolina, South Carolina, South Dakota, North Dakota, Indiana, and Washington State, as the distinguished Senator from Washington State, Mrs. MURRAY said, know best how to make their decisions. And these people do not need the U.S. Senate to suddenly give them some new unfunded mandate and to make them liable for lawyers fees. We ought to respect the ability of the States to make decisions about how they run their communities, to make a decision of what is going to be built next to their schools or their churches or what kind of digging will go on next to the aquifers in their towns. All of these things could be quickly put before federal courts if we were to pass this bill.

Mr. President, in one minute, we are going to be voting. I hope we will vote not to proceed with this bill. We have never had a hearing on it. We never had a report on it. This issue is not ripe.

Mr. President, I yield any time I may have.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, the hour of the vote having arrived, the clerk will report the cloture motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to the private property rights legislation:

Trent Lott, Orrin Hatch, Jon Kyl, Chuck Hagel, Tim Hutchinson, Rod Grams, Pat Roberts, Pete Domenici, Dan Coats, Michael B. Enzi, Larry E. Craig, Craig Thomas, John Ashcroft, Frank Murkowski, Don Nickles, and Dirk Kempthorne.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call under the rule has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 2271, the Property Rights Implementation Act, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from New York (Mr. D'AMATO) and the Senator from Tennessee (Mr. FRIST) are necessarily absent.

Mr. FORD. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Louisiana (Mr. BREAUX), the Senator from Ohio (Mr. GLENN), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

The yeas and nays resulted—yeas 52, nays 42, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—52

Abraham	Ford	McConnell
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Reid
Bond	Grassley	Roberts
Brownback	Hagel	Santorum
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Conrad	Inhofe	Specter
Coverdell	Kempthorne	Stevens
Craig	Kyl	Thomas
DeWine	Landrieu	Thompson
Domenici	Lott	Thurmond
Dorgan	Lugar	Warner
Enzi	Mack	
Faircloth	McCain	

NAYS—42

Akaka	Feinstein	Levin
Baucus	Graham	Lieberman
Bingaman	Gregg	Mikulski
Boxer	Harkin	Moseley-Braun
Bryan	Hollings	Moynihan
Bumpers	Inouye	Murray
Byrd	Jeffords	Reed
Chafee	Johnson	Robb
Cleland	Kennedy	Rockefeller
Collins	Kerrey	Roth
Daschle	Kerry	Sarbanes
Dodd	Kohl	Snowe
Durbin	Lautenberg	Wellstone
Feingold	Leahy	Wyden

NOT VOTING—6

Biden	D'Amato	Glenn
Breaux	Frist	Torricelli

The PRESIDING OFFICER. On the vote, the yeas are 52, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LEAHY. I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now turn to consideration of S. 2159, the agriculture appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, is there a possibility where there might be a few minutes just to conduct some morning business comments that are unrelated before we move to it? I do not think——

Mr. LOTT. Mr. President, responding to the Senator from Connecticut, we do plan to ask for a time for morning business. Senator GRASSLEY is here waiting to speak in morning business, and I am sure that the Senator from Connecticut would go, and others might want to, but we have one procedure we want to go through and then go to morning business.

Mr. DODD. I thank the Majority Leader.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2159) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for fiscal year ending September 30, 1999, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Daschle amendment No. 2729, to reform and structure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, and to redress the adverse health effects of tobacco use.

AMENDMENT NO. 2729

Mr. LOTT. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. I raise a point of order that the pending amendment violates section 302(f) of the Budget Act.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

MOTION TO WAIVE BUDGET ACT

Mr. DASCHLE. I move to waive the Budget Act for the amendment.

Mr. LOTT. Mr. President, I ask unanimous consent that at 9:30 a.m. on Tuesday, July 14, the Senate resume debate on the pending motion to waive the Budget Act, with the time until 10 a.m. equally divided in the usual form. I further ask unanimous consent that at the conclusion of the debate time the Senate proceed to a vote on the motion to waive.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, I know Senator DODD had asked for time. I am wondering if I could ask unanimous consent that——

The PRESIDING OFFICER. The Senator will suspend. I would like to get order in the Chamber. The Senate will please come to order.

Mr. DASCHLE. It is not my desire to object. I was just thinking perhaps it might be in order that Senators DODD, KENNEDY, and GRASSLEY be recognized immediately following this colloquy for purposes of recognition under morning business.

Mr. LOTT. Mr. President, if the Senator will yield in his reservation to object, and if there is not objection and we get the yeas and nays on that, it would be my intention at that point to ask consent that we now have a period for the transaction of morning business right now.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, first of all, the Senator still had a reservation on my previous request.

Mr. DASCHLE. My only concern was that there be an accommodation for all those Senators who wish to be recognized, including Senator MURRAY.

Mr. LOTT. Are you asking that we get some sort of lineup as to how that might be?

Mr. DASCHLE. That might be appropriate. I do not know if there are other Senators on the leader's side of the aisle.

Mr. COCHRAN. Can we get the yeas and nays on the motion to waive and then approve this?

Mr. DASCHLE. Assuming we get some sort of an accommodation, I have no objection.

Mr. COCHRAN. I ask for the yeas and nays on the motion to waive the Budget Act.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. Mr. President, I thank Senator DASCHLE for his cooperation on that.

MORNING BUSINESS

Mr. LOTT. I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each, with the exception of Senator GRASSLEY—how much time do you desire?

Mr. GRASSLEY. That is plenty for me.

Mr. LOTT. And that Senator DODD be recognized following Senator GRASSLEY. Anybody else on this side seeking morning business time?

Mr. GRASSLEY. Since you asked me, 10 minutes.

Mr. LOTT. All right. We have 10 minutes first going to Senator GRASSLEY, then Senator DODD, and then Senator KENNEDY in that order, and then other Senators who may want to speak in morning business. That is the way I would make the request.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. I am not sure the request has been clarified—Senator GRASSLEY, Senator DODD, Senator KENNEDY, and Senator MURRAY. That order would be appropriate.

Mr. LOTT. Right.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

(The remarks of Mr. GRASSLEY are printed earlier in today's RECORD during consideration of the motion to proceed to S. 2271.)