

THE LAWYERS'  
COMMITTEE FOR  
CULTURAL  
HERITAGE  
PRESERVATION

1785 Massachusetts Avenue, N.W.  
Washington, D.C. 20036-2117

March 22, 2015

Rep. Steve Chabot  
2371 Rayburn House Office Building  
Washington, D.C. 20515

Rep. Steve Cohen  
2404 Rayburn House Office Building  
Washington, D.C. 20515

Rep. Bob Goodlatte  
2309 Rayburn House Office Building  
Washington, D.C. 20515

Rep. John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, D.C. 20515

Re: H.R. 889: Foreign Cultural Exchange Jurisdictional Immunity Clarification Act

Dear Rep. Chabot, Rep. Cohen, Rep. Goodlatte, and Rep. Conyers:

We write to request that the Committee on the Judiciary, to which H.R. 889 was referred, hold public hearings in consideration of the United States Foreign Cultural Exchange Jurisdictional Immunity Clarification Act.<sup>1</sup> Consequently, we urge that you postpone H.R. 889 until all interested parties are offered the opportunity to participate or are otherwise consulted.

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<sup>1</sup> The Lawyers' Committee for Cultural Heritage Preservation (LCCHP) is a not-for-profit organization that fosters the stewardship of the objects, places, and traditions that define us as societies, nations, civilizations, and even human beings. We are lawyers, legal scholars, and law enforcement agents—as well as anthropologists, archaeologists, architects, art historians, students, and others—who champion preservation through the justice system. For more information on LCCHP, visit [www.culturalheritagelaw.org](http://www.culturalheritagelaw.org). For the full text of H.R. 889, see <https://www.congress.gov/bill/114th-congress/house-bill/889/text>.

The U.S. has long criminalized the receipt, possession, and transport of stolen property. More specifically, it has been national and state policy to prevent the movement and display of illicit art. Based on a careful balancing of interests, a narrow exception currently exists to prevent the judicial or administrative seizure of artwork imported for exhibition, but only in these limited circumstances:

- (1) there must be an agreement between “the foreign owner or custodian thereof and the United States or one or more cultural or educational institutions;”
- (2) the importation must be for a not-for-profit exhibition; and
- (3) “before the importation of such object the President or his designee has determined that such object is of cultural significance and that the temporary exhibition or display thereof within the United States is in the national interest, and a notice to that effect has been published in the Federal Register.”<sup>2</sup>

The Department of State, acting on authority delegated by the President, requires each applicant for immunity from seizure to certify that:

it has undertaken professional inquiry—including independent, multi-source research—into the provenance of the objects proposed for determination of cultural significance and national interest. The applicant certifies further that it does not know or have reason to know of any circumstances with respect to any of the objects that would indicate the potential for competing claims of ownership.<sup>3</sup>

Nonetheless, even objects subject to notorious claims have slipped through this process, and been exhibited at our most prestigious cultural and educational institutions.<sup>4</sup>

H.R. 889 goes beyond clarifying this current law, which again, prevents only seizure. Rather, the proposed law would dramatically divest *all* courts of jurisdiction to entertain *any* claim, suit, or proceeding concerning an object here on loan, whether it is stolen or not. In other words, the law has the power to preclude theft victims from bringing *any* legal action regarding *any* artwork granted immunity, not just to prevent its seizure.

Additionally, the proposed legislation does not impose a statutory obligation on the Department of State to consider whether a piece is subject to a valid claim before immunity is granted, let alone deny immunity if it is. The only exception is for Nazi-era looted items, and this exception itself is riddled with limitations. Other deserving claimants are left without recourse to recover their rightful property.

By allowing museums to knowingly exhibit stolen or looted artwork, H.R. 889 would upset the current balance, which allows claims but not seizure. This bill counters the U.S. commitment to

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<sup>2</sup> 22 U.S.C. § 2459(a).

<sup>3</sup> For the full text, see [www.state.gov/s/l/3196.htm](http://www.state.gov/s/l/3196.htm).

<sup>4</sup> For example, in 2003, the Department of State immunized 14 pieces by renowned Russian artist Kazimir Malewicz. Immunity was granted even though the Malewicz heirs produced a considerable amount of evidence that these works were subject to valid ownership claims. This process was documented in *Malewicz v. City of Amsterdam*, 362 F. Supp. 2d 298, 303 (D.D.C. 2005).

cultural preservation and its respect for individual property rights. It also sends a terrible message that our legal system is powerless to remedy a wrong, no matter how egregious, if the Department of State rightly or wrongly grants immunity.

We do support H.R. 889's *purpose* of encouraging art lending to the U.S. and cultural exchange—and your own efforts to advance such an important goal—but believe that the Senate should work to achieve this objective in a way that benefits both museums and deserving claimants. Congress has not been able to adequately consider these concerns because many interested parties are unaware of it and have not had the opportunity to make their voices heard. We therefore urge you to postpone this bill, pending open hearings.

Thank you for considering our input.

Sincerely,

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<sup>5</sup> The views stated in this letter represent those of LCCHP, and not the National Art Museum of Sport.

<sup>6</sup> The views stated in this letter represent those of LCCHP, and not Villanova University School of Law or Villanova University.

<sup>7</sup> The views stated in this letter represent those of LCCHP, and not Galluzzo & Amineddoleh LLP.