

114TH CONGRESS
2D SESSION

S. 2763

To provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2016

Mr. CORNYN (for himself, Mr. CRUZ, Mr. SCHUMER, Mr. BLUMENTHAL, Mr. ROUNDS, Mr. HATCH, Mr. FRANKEN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. TILLIS, Ms. KLOBUCHAR, Mr. BOOKER, Mr. GRASSLEY, Mr. LEAHY, and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 29, 2016

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Holocaust Expropriated Art Recovery Act of 2016”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) It is estimated that the Nazis confiscated or otherwise misappropriated hundreds of thousands of works of art and other property throughout Europe as part of their genocidal campaign against the Jewish people and other persecuted groups. This has been described as the “greatest displacement of art in human history”.

(2) Following World War II, the United States and its allies attempted to return the stolen artworks to their countries of origin. Despite these efforts, many works of art were never reunited with their owners. Some of the art has since been discovered in the United States.

(3) In 1998, the United States convened a conference with 43 other nations in Washington, DC, known as the Washington Conference, which produced Principles on Nazi-Confiscated Art. One of these principles is that “steps should be taken expeditiously to achieve a just and fair solution” to claims involving such art that has not been restituted if the owners or their heirs can be identified.

(4) The same year, Congress enacted the Holocaust Victims Redress Act ([Public Law 105–158](#); 112 Stat. 15), which expressed the sense of Congress that “all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner.”

(5) In 2009, the United States participated in a Holocaust Era Assets Conference in Prague, Czech Republic, with 45 other nations. At the conclusion of this conference, the participating nations issued the Terezin Declaration, which reaffirmed the 1998 Washington Conference Principles on Nazi-Confiscated Art and urged all participants “to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.” The Declaration also urged participants to “consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.”

*(6) Victims of Nazi persecution and their heirs have taken legal action in the United States to recover Nazi-confiscated art. These lawsuits face significant procedural obstacles partly due to State statutes of limitations, which typically bar claims within some limited number of years from either the date of the loss or the date that the claim should have been discovered. In some cases, this means that the claims expired before World War II even ended. (See, e.g., *Detroit Institute of Arts v. Ullin*, No. 06–10333, 2007 WL 1016996 (E.D. Mich. Mar. 31, 2007)). The unique and horrific circumstances of World War II and the*

Holocaust make statutes of limitations especially burdensome to the victims and their heirs. Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

*(7) Federal legislation is needed because the only court that has considered the question held that the Constitution prohibits States from making exceptions to their statutes of limitations to accommodate claims involving the recovery of Nazi-confiscated art. In *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954 (9th Cir. 2009), the United States Court of Appeals for the Ninth Circuit invalidated a California law that extended the State statute of limitations for claims seeking recovery of Holocaust-era artwork. The Court held that the law was an unconstitutional infringement of the Federal Government’s exclusive authority over foreign affairs, which includes the resolution of war-related disputes. In light of this precedent, the enactment of a Federal law is necessary to ensure that claims to Nazi-confiscated art are adjudicated in accordance with United States policy as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.*

(8) While litigation may be used to resolve claims to recover Nazi-confiscated art, it is the sense of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

SEC. 3. PURPOSES.

The purposes of this Act are the following:

(1) To ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

(2) To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

SEC. 4. DEFINITIONS.

In this Act:

(1) ACTUAL DISCOVERY.—The term “actual discovery” means knowledge.

(2) ARTWORK OR OTHER PROPERTY.—The term “artwork or other property” means—

(A) pictures, paintings, and drawings;

- (B) statuary art and sculpture;*
- (C) engravings, prints, lithographs, and works of graphic art;*
- (D) applied art and original artistic assemblages and montages;*
- (E) books, archives, musical objects and manuscripts (including musical manuscripts and sheets), and sound, photographic, and cinematographic archives and mediums; and*
- (F) sacred and ceremonial objects and Judaica.*

(3) COVERED PERIOD.—The term “covered period” means the period beginning on January 1, 1933 and ending on December 31, 1945.

(4) KNOWLEDGE.—The term “knowledge” means having actual knowledge of a fact or circumstance or sufficient information with regard to a relevant fact or circumstance to amount to actual knowledge thereof.

(5) NAZI PERSECUTION.—The term “Nazi persecution” means any persecution of a specific group of individuals based on Nazi ideology by the Government of Germany, its allies or agents, members of the Nazi Party, or their agents or associates, during the covered period.

SEC. 5. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law or any defense at law relating to the passage of time, and except as otherwise provided in this section, a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—

(1) the identity and location of the artwork or other property; and

(2) a possessory interest of the claimant in the artwork or other property.

(b) POSSIBLE MISIDENTIFICATION.—For purposes of subsection (a)(1), in a case in which the artwork or other property is one of a group of substantially similar multiple artworks or other property, actual discovery of the identity and location of the artwork or other property shall be deemed to occur on the date on which there are facts sufficient to form a substantial basis to believe that the artwork or other property is the artwork or other property that was lost.

(c) PREEXISTING CLAIMS.—Except as provided in subsection (e), a civil claim or cause of action described in subsection (a) shall be deemed to have been actually discovered on the date of enactment of this Act if—

(1) before the date of enactment of this Act—

(A) a claimant had knowledge of the elements set forth in subsection (a); and

(B) the civil claim or cause of action was barred by a Federal or State statute of limitations; or

(2) (A) before the date of enactment of this Act, a claimant had knowledge of the elements set forth in subsection (a); and

(B) on the date of enactment of this Act, the civil claim or cause of action was not barred by a Federal or State statute of limitations.

(d) APPLICABILITY.—Subsection (a) shall apply to any civil claim or cause of action that is—

(1) pending in any court on the date of enactment of this Act, including any civil claim or cause of action that is pending on appeal or for which the time to file an appeal has not expired; or

(2) filed during the period beginning on the date of enactment of this Act and ending on December 31, 2026.

(e) EXCEPTION.—Subsection (a) shall not apply to any civil claim or cause of action barred on the day before the date of enactment of this Act by a Federal or State statute of limitations if—

(1) the claimant or a predecessor-in-interest of the claimant had knowledge of the elements set forth in subsection (a) on or after January 1, 1999; and

(2) not less than 6 years have passed from the date such claimant or predecessor-in-interest acquired such knowledge and during which time the civil claim or cause of action was not barred by a Federal or State statute of limitations.

(f) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to create a civil claim or cause of action under Federal or State law.

(g) SUNSET.—This Act shall cease to have effect on January 1, 2027, except that this Act shall continue to apply to any civil claim or cause of action described in subsection (a) that is pending on January 1, 2027. Any civil claim or cause of action commenced on or after that date to recover artwork or other property described in this Act shall be subject to any applicable Federal or State statute of limitations or any other Federal or State defense at law relating to the passage of time.