

Calendar No. 654

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Holocaust Expropri-
3 ated Art Recovery Act of 2016”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) It is estimated that the Nazis confiscated or
7 otherwise misappropriated as many as 650,000
8 works of art throughout Europe as part of their gen-
9 ocidal campaign against the Jewish people and other
10 persecuted groups. This has been described as the
11 “greatest displacement of art in human history”.

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

18 (3) In 1998, the United States convened a con-
19 ference with 44 nations in Washington, DC, known
20 as the Washington Conference, which produced
21 Principles on Nazi-Confiscated Art. One of these
22 principles is that “steps should be taken expedi-
23 tiously to achieve a just and fair solution” to claims
24 involving such art that has not been restituted if the
25 owners or their heirs can be identified.

1 (4) The same year, Congress enacted the Holo-
2 caust Victims Redress Act (Public Law 105–158,
3 112 Stat. 15), which expressed the sense of Con-
4 gress that “all governments should undertake good
5 faith efforts to facilitate the return of private and
6 public property, such as works of art, to the rightful
7 owners in cases where assets were confiscated from
8 the claimant during the period of Nazi rule and
9 there is reasonable proof that the claimant is the
10 rightful owner.”.

11 (5) In 2009, the United States participated in
12 a Holocaust Era Assets Conference in Prague,
13 Czech Republic, with 45 other nations. At the con-
14 clusion of this conference, the participating nations
15 issued the Terezin Declaration, which reaffirmed the
16 1998 Washington Conference Principles on Nazi-
17 Confiscated Art and urged all participants “to en-
18 sure that their legal systems or alternative processes,
19 while taking into account the different legal tradi-
20 tions, facilitate just and fair solutions with regard to
21 Nazi-confiscated and looted art, and to make certain
22 that claims to recover such art are resolved expedi-
23 tiously and based on the facts and merits of the
24 claims and all the relevant documents submitted by
25 all parties.”. The Declaration also urged participants

1 to “consider all relevant issues when applying var-
 2 ious legal provisions that may impede the restitution
 3 of art and cultural property, in order to achieve just
 4 and fair solutions, as well as alternative dispute res-
 5 olution, where appropriate under law.”.

6 (6) Numerous victims of Nazi persecution and
 7 their heirs have taken legal action to recover Nazi-
 8 confiscated art. These lawsuits face significant pro-
 9 cedural obstacles partly due to State statutes of lim-
 10 itations, which typically bar claims within some lim-
 11 ited number of years from either the date of the loss
 12 or the date that the claim should have been discov-
 13 ered. In some cases, this means that the claims ex-
 14 pired before World War II even ended. (See, e.g.,
 15 *The Detroit Institute of Arts v. Ullin*, No. 06-
 16 10333, 2007 WL 1016996 (E.D. Mich. Mar. 31,
 17 2007).) The unique and horrific circumstances of
 18 World War II and the Holocaust make statutes of
 19 limitations and other time-based procedural defenses
 20 especially burdensome to the victims and their heirs.
 21 Those seeking recovery of Nazi-confiscated art must
 22 painstakingly piece together their cases from a frag-
 23 mentary historical record ravaged by persecution,
 24 war, and genocide. This costly process often cannot

1 be done within the time constraints imposed by ex-
2 isting law.

3 (7) Federal legislation is needed because the
4 only court that has considered the question held that
5 the Constitution prohibits States from making ex-
6 ceptions to their statutes of limitations to accommo-
7 date claims involving the recovery of Nazi-con-
8 fiscated art. In *Von Saher v. Norton Simon Museum*
9 *of Art*, 592 F.3d 954 (9th Cir. 2009), the United
10 States Court of Appeals for the Ninth Circuit invali-
11 dated a California law that extended the State stat-
12 ute of limitations for claims seeking recovery of Hol-
13 ocaust-era artwork. The Court held that the law was
14 an unconstitutional infringement of the Federal Gov-
15 ernment's exclusive authority over foreign affairs,
16 which includes the resolution of war-related disputes.
17 In light of this precedent, the enactment of a Fed-
18 eral law is the best way to ensure that claims to
19 Nazi-confiscated art are adjudicated on their merits.

20 **SEC. 3. PURPOSES.**

21 The purposes of this Act are the following:

22 (1) To ensure that laws governing claims to
23 Nazi-confiscated art further United States policy as
24 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 stolen or misappropriated by the Nazis are not barred by statutes of limitations and other similar legal doctrines but are resolved in a just and fair manner on the merits.

8 **SEC. 4. DEFINITIONS.**

9 In this Act—

10 (1) the term “actual discovery” does not include any constructive knowledge imputed by law;

12 (2) the term “artwork or other cultural property” includes any painting, sculpture, drawing, work of graphic art, print, multiples, book, manuscript, archive, or sacred or ceremonial object;

16 (3) the term “persecution during the Nazi era” means any persecution by the Nazis or their allies during the period from January 1, 1933, to December 31, 1945, that was based on race, ethnicity, or religion; and

21 (4) the term “unlawfully lost” includes any theft, seizure, forced sale, sale under duress, or any other loss of an artwork or cultural property that would not have occurred absent persecution during the Nazi era.

1 **SEC. 5. STATUTE OF LIMITATIONS.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of Federal law, any provision of State law, or any
4 defense at law or equity relating to the passage of time
5 (including the doctrine of laches), a civil claim or cause
6 of action against a defendant to recover any artwork or
7 other cultural property unlawfully lost because of persecu-
8 tion during the Nazi era or for damages for the taking
9 or detaining of any artwork or other cultural property un-
10 lawfully lost because of persecution during the Nazi era
11 may be commenced not later than 6 years after the actual
12 discovery by the claimant or the agent of the claimant of—

13 (1) the identity and location of the artwork or
14 cultural property; and

15 (2) information or facts sufficient to indicate
16 that the claimant has a claim for a possessory inter-
17 est in the artwork or cultural property that was un-
18 lawfully lost.

19 (b) POSSIBLE MISIDENTIFICATION.—For purposes of
20 subsection (a)(1), in a case in which there is a possibility
21 of misidentification of the artwork or cultural property,
22 the identification of the artwork or cultural property shall
23 occur on the date on which there are facts sufficient to
24 determine that the artwork or cultural property is likely
25 to be the artwork or cultural property that was unlawfully
26 lost.

1 ~~(c) APPLICABILITY.—~~

2 ~~(1) IN GENERAL.—~~Subsection (a) shall apply to
 3 any civil claim or cause of action ~~(including a civil~~
 4 claim or cause of action described in paragraph (2))
 5 that is—

6 ~~(A)~~ pending on the date of enactment of
 7 this Act; or

8 ~~(B)~~ filed during the period beginning on
 9 the date of enactment of this Act and ending on
 10 December 31, 2026.

11 ~~(2) INCLUSION OF PREVIOUSLY DISMISSED~~
 12 ~~CLAIMS.—~~A civil claim or cause of action described
 13 in this paragraph is a civil claim or cause of ac-
 14 tion—

15 ~~(A)~~ that was dismissed before the date of
 16 enactment of this Act based on the expiration
 17 of a Federal or State statute of limitations or
 18 any other defense at law or equity relating to
 19 the passage of time ~~(including the doctrine of~~
 20 laches); and

21 ~~(B)~~ in which final judgment has not been
 22 entered.

23 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 *Congress finds the following:*

3 *(1) It is estimated that the Nazis confiscated or*
4 *otherwise misappropriated hundreds of thousands of*
5 *works of art and other property throughout Europe as*
6 *part of their genocidal campaign against the Jewish*
7 *people and other persecuted groups. This has been de-*
8 *scribed as the “greatest displacement of art in human*
9 *history”.*

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

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

24 *(4) The same year, Congress enacted the Holo-*
25 *caust Victims Redress Act (Public Law 105–158; 112*
26 *Stat. 15), which expressed the sense of Congress that*

1 *“all governments should undertake good faith efforts*
2 *to facilitate the return of private and public property,*
3 *such as works of art, to the rightful owners in cases*
4 *where assets were confiscated from the claimant dur-*
5 *ing the period of Nazi rule and there is reasonable*
6 *proof that the claimant is the rightful owner.”*

7 *(5) In 2009, the United States participated in a*
8 *Holocaust Era Assets Conference in Prague, Czech*
9 *Republic, with 45 other nations. At the conclusion of*
10 *this conference, the participating nations issued the*
11 *Terezin Declaration, which reaffirmed the 1998 Wash-*
12 *ington Conference Principles on Nazi-Confiscated Art*
13 *and urged all participants “to ensure that their legal*
14 *systems or alternative processes, while taking into ac-*
15 *count the different legal traditions, facilitate just and*
16 *fair solutions with regard to Nazi-confiscated and*
17 *looted art, and to make certain that claims to recover*
18 *such art are resolved expeditiously and based on the*
19 *facts and merits of the claims and all the relevant*
20 *documents submitted by all parties.” The Declaration*
21 *also urged participants to “consider all relevant*
22 *issues when applying various legal provisions that*
23 *may impede the restitution of art and cultural prop-*
24 *erty, in order to achieve just and fair solutions, as*

1 *well as alternative dispute resolution, where appro-*
2 *priate under law.”*

3 *(6) Victims of Nazi persecution and their heirs*
4 *have taken legal action in the United States to recover*
5 *Nazi-confiscated art. These lawsuits face significant*
6 *procedural obstacles partly due to State statutes of*
7 *limitations, which typically bar claims within some*
8 *limited number of years from either the date of the*
9 *loss or the date that the claim should have been dis-*
10 *covered. In some cases, this means that the claims ex-*
11 *pired before World War II even ended. (See, e.g., De-*
12 *troit Institute of Arts v. Ullin, No. 06–10333, 2007*
13 *WL 1016996 (E.D. Mich. Mar. 31, 2007)). The*
14 *unique and horrific circumstances of World War II*
15 *and the Holocaust make statutes of limitations espe-*
16 *cially burdensome to the victims and their heirs.*
17 *Those seeking recovery of Nazi-confiscated art must*
18 *painstakingly piece together their cases from a frag-*
19 *mentary historical record ravaged by persecution,*
20 *war, and genocide. This costly process often cannot be*
21 *done within the time constraints imposed by existing*
22 *law.*

23 *(7) Federal legislation is needed because the only*
24 *court that has considered the question held that the*
25 *Constitution prohibits States from making exceptions*

1 to their statutes of limitations to accommodate claims
2 involving the recovery of Nazi-confiscated art. In *Von*
3 *Saher v. Norton Simon Museum of Art*, 592 F.3d 954
4 (9th Cir. 2009), the United States Court of Appeals
5 for the Ninth Circuit invalidated a California law
6 that extended the State statute of limitations for
7 claims seeking recovery of Holocaust-era artwork. The
8 Court held that the law was an unconstitutional in-
9 fringement of the Federal Government's exclusive au-
10 thority over foreign affairs, which includes the resolu-
11 tion of war-related disputes. In light of this precedent,
12 the enactment of a Federal law is necessary to ensure
13 that claims to Nazi-confiscated art are adjudicated in
14 accordance with United States policy as expressed in
15 the Washington Conference Principles on Nazi-Con-
16 fiscated Art, the Holocaust Victims Redress Act, and
17 the Terezin Declaration.

18 (8) While litigation may be used to resolve
19 claims to recover Nazi-confiscated art, it is the sense
20 of Congress that the private resolution of claims by
21 parties involved, on the merits and through the use of
22 alternative dispute resolution such as mediation pan-
23 els established for this purpose with the aid of experts
24 in provenance research and history, will yield just

1 *and fair resolutions in a more efficient and predict-*
 2 *able manner.*

3 **SEC. 3. PURPOSES.**

4 *The purposes of this Act are the following:*

5 (1) *To ensure that laws governing claims to*
 6 *Nazi-confiscated art and other property further*
 7 *United States policy as set forth in the Washington*
 8 *Conference Principles on Nazi-Confiscated Art, the*
 9 *Holocaust Victims Redress Act, and the Terezin Dec-*
 10 *laration.*

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

15 **SEC. 4. DEFINITIONS.**

16 *In this Act:*

17 (1) *ACTUAL DISCOVERY.*—*The term “actual dis-*
 18 *covery” means knowledge.*

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

21 (A) *pictures, paintings, and drawings;*

22 (B) *statuary art and sculpture;*

23 (C) *engravings, prints, lithographs, and*
 24 *works of graphic art;*

1 (D) applied art and original artistic assem-
2 blages and montages;

3 (E) books, archives, musical objects and
4 manuscripts (including musical manuscripts
5 and sheets), and sound, photographic, and cine-
6 matographic archives and mediums; and

7 (F) sacred and ceremonial objects and
8 Judaica.

9 (3) COVERED PERIOD.—The term “covered pe-
10 riod” means the period beginning on January 1,
11 1933 and ending on December 31, 1945.

12 (4) KNOWLEDGE.—The term “knowledge” means
13 having actual knowledge of a fact or circumstance or
14 sufficient information with regard to a relevant fact
15 or circumstance to amount to actual knowledge there-
16 of.

17 (5) NAZI PERSECUTION.—The term “Nazi perse-
18 cution” means any persecution of a specific group of
19 individuals based on Nazi ideology by the Govern-
20 ment of Germany, its allies or agents, members of the
21 Nazi Party, or their agents or associates, during the
22 covered period.

23 **SEC. 5. STATUTE OF LIMITATIONS.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of Federal or State law or any defense at law relating

1 *to the passage of time, and except as otherwise provided*
 2 *in this section, a civil claim or cause of action against a*
 3 *defendant to recover any artwork or other property that was*
 4 *lost during the covered period because of Nazi persecution*
 5 *may be commenced not later than 6 years after the actual*
 6 *discovery by the claimant or the agent of the claimant of—*

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

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

11 (b) *POSSIBLE MISIDENTIFICATION.—For purposes of*
 12 *subsection (a)(1), in a case in which the artwork or other*
 13 *property is one of a group of substantially similar multiple*
 14 *artworks or other property, actual discovery of the identity*
 15 *and location of the artwork or other property shall be*
 16 *deemed to occur on the date on which there are facts suffi-*
 17 *cient to form a substantial basis to believe that the artwork*
 18 *or other property is the artwork or other property that was*
 19 *lost.*

20 (c) *PREEXISTING CLAIMS.—Except as provided in sub-*
 21 *section (e), a civil claim or cause of action described in*
 22 *subsection (a) shall be deemed to have been actually discov-*
 23 *ered on the date of enactment of this Act if—*

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

1 (A) a claimant had knowledge of the ele-
2 ments set forth in subsection (a); and

3 (B) the civil claim or cause of action was
4 barred by a Federal or State statute of limita-
5 tions; or

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

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

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

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

18 (2) filed during the period beginning on the date
19 of enactment of this Act and ending on December 31,
20 2026.

21 (e) *EXCEPTION.*—Subsection (a) shall not apply to
22 any civil claim or cause of action barred on the day before
23 the date of enactment of this Act by a Federal or State stat-
24 ute of limitations if—

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

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

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

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

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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.

SEPTEMBER 29, 2016

Reported with an amendment