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## [H.R. 889, Foreign Cultural Exchange Jurisdictional Immunity Clarification Act](#)

### FLOOR SITUATION

On Tuesday, June 9, 2015, the House will consider [H.R. 889](#), the *Foreign Cultural Exchange Jurisdictional Immunity Clarification Act*, under suspension of the rules. The bill was introduced on February 11, 2015, by Rep. Steve Chabot (R-OH) and was ordered to be reported by the Judiciary Committee by voice vote on March 24, 2015.

### SUMMARY

H.R. 889 amends the *Foreign Sovereign Immunities Act*<sup>1</sup> in an effort to allow foreign artwork or other objects of cultural significance, such as historical artifacts, to be loaned for display in the United States without the foreign governments being subject to litigation in U.S. courts.

Specifically, the bill allows for an agency or instrumentality of a foreign government with an agreement to display artwork or other objects of cultural significance with Federal, state, or local governments, or cultural or educational institutions within the U.S., to be jurisdictionally immune from litigation regarding the work.

The bill does this by providing that the exhibition or display agreement will not be considered commercial activity, making it immune to litigation under the Foreign Sovereign Immunities Act.<sup>2</sup> The bill maintains that this immunity only applies when the President or his designee has determined that the work is of cultural significance and that the temporary exhibition or display is in the national interest.<sup>3</sup>

This exemption does not apply to works of art or cultural significance seized by the Nazis or their allies from January 30, 1933 to May 8, 1945.

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<sup>1</sup> See [28 U.S.C. 1605](#)

<sup>2</sup> See [28 U.S.C. 1605 \(a\)\(3\)](#)

<sup>3</sup> See [22 U.S.C. 2459\(a\)](#)

## BACKGROUND

In 1965, the Immunity From Seizure Act (IFSA) was enacted to allow foreign entities to lend artwork and other objects of cultural significance, such as historical artifacts, without fear that the loan would subject them to the jurisdiction of U.S. courts. IFSA created a mechanism by which the President, or the President's designee (currently the Department of State), may grant immunity to objects to be imported that are determined to be of "cultural significance and that the temporary exhibition or display thereof within the United States is in the national interest."<sup>4</sup>

In 1976, the Foreign Sovereign Immunities Act (FSIA) was enacted to codify a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities." It generally provided that foreign governments are immune from the jurisdiction of U.S. courts, unless a suit comes within one of the specific statutory exceptions to that rule, including a provision for commercial activity.<sup>5</sup>

Some court decisions have interpreted FSIA to hold that immunity under IFSA prohibits seizure but does not bar judicial proceedings against the property under immunity.<sup>6</sup> According to the Committee, this undermines the purposes of IFSA.<sup>7</sup> The Committee believes this situation discourages foreign governments from lending government-owned artwork and objects of cultural significance to U.S. museums and schools for temporary exhibit or display.<sup>8</sup>

A similar bill, [H.R. 4292](#), passed the House in the 113<sup>th</sup> Congress by a vote of [388 to 4](#). The Senate did not act on the House-passed bill.

## COST

The Congressional Budget Office [estimates](#) that that implementing H.R. 889 would have no significant effect on the federal budget. Enacting H.R. 889 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

## STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

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<sup>4</sup> See [House Report 113-435](#) at 3

<sup>5</sup> See [House Report 114-435](#) at 4-5, [28 U.S.C. 1605](#)

<sup>6</sup> See [Malewicz v. City of Amsterdam](#), 2005

<sup>7</sup> See [House Report 113-435](#) at 6 and 2

<sup>8</sup> See Press Release, "[House Judiciary Committee Approves Bill to Facilitate Art & Cultural Artifact Exchange](#)," March 24, 2015