

Democrats Take Constitutional Track to Oppose Amtrak Bill

By Kathryn A. Wolfe, CQ Staff

It is usually free-market Republicans who zealously defend what is commonly known as the “takings clause” in the Fifth Amendment, which says the government cannot take private property for public purposes without fair compensation.

But House Democrats are borrowing the constitutional provision to use it against a GOP proposal to privatize Amtrak.

[Nick J. Rahall II](#) of West Virginia, the top Democrat on the Transportation and Infrastructure Committee, says the Amtrak privatization bill drafted by Chairman [John L. Mica](#), R-Fla., is actually a double offense to the Constitution, ignoring both the takings clause and the “appointments clause” in Article II that empowers the president to appoint federal officials.

The takings clause has been a foundation of Republican criticism of what conservatives view as government power grabs and misuse of the power of eminent domain.

In 2007, the George W. Bush administration cited the takings clause in opposing a House-passed mining bill that would have required new royalty payments by existing mines. And during the last Congress, Republicans cited the takings clause to challenge the constitutionality of a provision of the new health care law ([PL 111-148](#), [PL 111-152](#)) penalizing individuals who do not carry health insurance.

Mica's legislation would strip Amtrak of its Northeast Corridor assets without compensation, while leaving the Amtrak holding the debt it still carries on some of them.

Although Amtrak is a government-owned corporation, Rahall argues that it is protected by the takings clause. "As a for-profit corporation, I believe Amtrak's standing is little different than that of any other for-profit corporation in America," he said.

"This bill, if it were ever to get through the Senate — and I don't think anyone entertains the illusion that it would — would be in court if any president ever signed it," said Del. [Eleanor Holmes Norton](#), D-D.C., a member of the Transportation panel.

Mica's draft bill would also create a Northeast Corridor Executive Committee empowered to, among other things, exercise eminent domain and make final project decisions. According to a Congressional Research Service memorandum, the members of that committee should be presidential appointees subject to Senate confirmation.

The powers the bill would give the committee "would be a strong indication to a reviewing court that the committee members are exercising significant authority pursuant to the laws of the United States, arguably rendering the proposed appointments scheme unconstitutional," CRS concluded.

"In drafting the proposal, we didn't encounter any issues with the constitutionality of the executive board provision, but we'll look into any valid concerns and reasonable suggestions — from members and other interested parties — for improving the draft legislation as the process moves forward," said Justin Harclerode, a Transportation panel spokesman.

A new House rule requires bill sponsors to submit statements citing the constitutional authority for what their legislation would do. Mica's draft bill, however, has not yet been introduced.