

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. CORNYN (for himself, Mr. CRUZ,
Mr. SCHUMER, and Mr. BLUMENTHAL)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) It is estimated that the Nazis confiscated or
9 otherwise misappropriated hundreds of thousands of
10 works of art and other property throughout Europe
11 as part of their genocidal campaign against the Jew-

1 ish people and other persecuted groups. This has
2 been described as the “greatest displacement of art
3 in human history”.

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

10 (3) In 1998, the United States convened a con-
11 ference with 43 other nations in Washington, D.C.,
12 known as the Washington Conference, which pro-
13 duced Principles on Nazi-Confiscated Art. One of
14 these principles is that “steps should be taken expe-
15 ditiously to achieve a just and fair solution” to
16 claims involving such art that has not been
17 restituted if the owners or their heirs can be identi-
18 fied.

19 (4) The same year, Congress enacted the Holo-
20 caust Victims Redress Act (Public Law 105–158,
21 112 Stat. 15), which expressed the sense of Con-
22 gress that “all governments should undertake good
23 faith efforts to facilitate the return of private and
24 public property, such as works of art, to the rightful
25 owners in cases where assets were confiscated from

1 the claimant during the period of Nazi rule and
2 there is reasonable proof that the claimant is the
3 rightful owner.”

4 (5) In 2009, the United States participated in
5 a Holocaust Era Assets Conference in Prague,
6 Czech Republic, with 45 other nations. At the con-
7 clusion of this conference, the participating nations
8 issued the Terezin Declaration, which reaffirmed the
9 1998 Washington Conference Principles on Nazi-
10 Confiscated Art and urged all participants “to en-
11 sure that their legal systems or alternative processes,
12 while taking into account the different legal tradi-
13 tions, facilitate just and fair solutions with regard to
14 Nazi-confiscated and looted art, and to make certain
15 that claims to recover such art are resolved expedi-
16 tiously and based on the facts and merits of the
17 claims and all the relevant documents submitted by
18 all parties.” The Declaration also urged participants
19 to “consider all relevant issues when applying var-
20 ious legal provisions that may impede the restitution
21 of art and cultural property, in order to achieve just
22 and fair solutions, as well as alternative dispute res-
23 olution, where appropriate under law.”

24 (6) Victims of Nazi persecution and their heirs
25 have taken legal action in the United States to re-

1 cover Nazi-confiscated art. These lawsuits face sig-
2 nificant procedural obstacles partly due to State
3 statutes of limitations, which typically bar claims
4 within some limited number of years from either the
5 date of the loss or the date that the claim should
6 have been discovered. In some cases, this means that
7 the claims expired before World War II even ended.
8 (See, e.g., *Detroit Institute of Arts v. Ullin*, No. 06–
9 10333, 2007 WL 1016996 (E.D. Mich. Mar. 31,
10 2007)). The unique and horrific circumstances of
11 World War II and the Holocaust make statutes of
12 limitations especially burdensome to the victims and
13 their heirs. Those seeking recovery of Nazi-con-
14 fiscated art must painstakingly piece together their
15 cases from a fragmentary historical record ravaged
16 by persecution, war, and genocide. This costly proc-
17 ess often cannot be done within the time constraints
18 imposed by existing law.

19 (7) Federal legislation is needed because the
20 only court that has considered the question held that
21 the Constitution prohibits States from making ex-
22 ceptions to their statutes of limitations to accommo-
23 date claims involving the recovery of Nazi-con-
24 fiscated art. In *Von Saher v. Norton Simon Museum*
25 of Art, 592 F.3d 954 (9th Cir. 2009), the United

1 States Court of Appeals for the Ninth Circuit invali-
2 dated a California law that extended the State stat-
3 ute of limitations for claims seeking recovery of Hol-
4 ocaust-era artwork. The Court held that the law was
5 an unconstitutional infringement of the Federal Gov-
6 ernment's exclusive authority over foreign affairs,
7 which includes the resolution of war-related disputes.
8 In light of this precedent, the enactment of a Fed-
9 eral law is necessary to ensure that claims to Nazi-
10 confiscated art are adjudicated in accordance with
11 United States policy as expressed in the Washington
12 Conference Principles on Nazi-Confiscated Art, the
13 Holocaust Victims Redress Act, and the Terezin
14 Declaration.

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

24 **SEC. 3. PURPOSES.**

25 The purposes of this Act are the following:

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

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

11 **SEC. 4. DEFINITIONS.**

12 In this Act:

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

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

17 (A) pictures, paintings, and drawings;

18 (B) statuary art and sculpture;

19 (C) engravings, prints, lithographs, and
20 works of graphic art;

21 (D) applied art and original artistic assem-
22 blages and montages;

23 (E) books, archives, musical objects and
24 manuscripts (including musical manuscripts

1 and sheets), and sound, photographic, and cine-
2 matographic archives and mediums; and

3 (F) sacred and ceremonial objects and
4 Judaica.

5 (3) COVERED PERIOD.—The term “covered pe-
6 riod” means the period beginning on January 1,
7 1933 and ending on December 31, 1945.

8 (4) KNOWLEDGE.—The term “knowledge”
9 means having actual knowledge of a fact or cir-
10 cumstance or sufficient information with regard to a
11 relevant fact or circumstance to amount to actual
12 knowledge thereof.

13 (5) NAZI PERSECUTION.—The term “Nazi per-
14 secution” means any persecution of a specific group
15 of individuals based on Nazi ideology by the Govern-
16 ment of Germany, its allies or agents, members of
17 the Nazi Party, or their agents or associates, during
18 the covered period.

19 **SEC. 5. STATUTE OF LIMITATIONS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of Federal or State law or any defense at law relating
22 to the passage of time, and except as otherwise provided
23 in this section, a civil claim or cause of action against a
24 defendant to recover any artwork or other property that
25 was lost during the covered period because of Nazi perse-

1 cution may be commenced not later than 6 years after the
2 actual discovery by the claimant or the agent of the claim-
3 ant of—

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

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

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

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

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

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

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

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

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

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

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

16 (2) filed during the period beginning on the
17 date of enactment of this Act and ending on Decem-
18 ber 31, 2026.

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

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

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

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

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