

105TH CONGRESS
1ST SESSION

H. R. 1534

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1997

Mr. GALLERGLY introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when gov-

ernment action is sufficiently final to ripen certain Federal claims arising under the Constitution.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property
 5 Rights Implementation Act of 1997”.

6 **SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES.**

7 Section 1343 of title 28, United States Code, is
 8 amended by adding at the end the following:

9 “(c) Whenever a district court exercises jurisdiction
 10 under subsection (a), it shall not abstain from exercising
 11 or relinquish its jurisdiction to a State court in an action
 12 where no claim of a violation of a State law, right, or privi-
 13 lege is alleged.

14 “(d) Where the district court has jurisdiction over an
 15 action under subsection (a) that cannot be decided without
 16 resolution of a significant but unsettled question of State
 17 law, the district court may certify the question of State
 18 law to the highest appellate court of that State. After the
 19 State appellate court resolves the question certified to it,
 20 the district court shall proceed with resolving the merits.
 21 The district court shall not certify a question of State law
 22 under this subsection unless the question of State law—

23 “(1) will significantly affect the merits of the
 24 injured party’s Federal claim; and

1 “(2) is so unclear and obviously susceptible to
2 a limiting construction as to render premature a de-
3 cision on the merits of the constitutional or legal
4 issue in the case.

5 “(e)(1) Any claim or action brought under section
6 1979 of the Revised Statutes of the United States (42
7 U.S.C. 1983) to redress the deprivation of a property right
8 or privilege secured by the Constitution shall be ripe for
9 adjudication by the district courts upon a final decision
10 rendered by any person acting under color of any statute,
11 ordinance, regulation, custom, or usage, of any State or
12 territory of the United States, that causes actual and con-
13 crete injury to the party seeking redress.

14 “(2) For purposes of this subsection, a final decision
15 exists if—

16 “(A) any person acting under color of any stat-
17 ute, ordinance, regulation, custom, or usage, of any
18 State or territory of the United States, makes a de-
19 finitive decision regarding the extent of permissible
20 uses on the property that has been allegedly in-
21 fringed or taken, without regard to any uses that
22 may be permitted elsewhere; and

23 “(B) the applicable statute, ordinance, regula-
24 tion, custom, or usage provides for a right of appeal
25 or waiver from such decision, and the party seeking

1 redress has applied for, but has been denied, one
2 such appeal or waiver.

3 The party seeking redress shall not be required to apply
4 for an appeal or waiver described in subparagraph (B) if
5 the prospects of success are reasonably unlikely and inter-
6 vention by the district court is warranted to decide the
7 merits.

8 “(3) For purposes of this subsection, a final decision
9 shall not require the party seeking redress to exhaust judi-
10 cial remedies provided by any State or territory of the
11 United States.”.

12 **SEC. 3. UNITED STATES AS DEFENDANT.**

13 Section 1346 of title 28, United States Code, is
14 amended by adding at the end the following:

15 “(h)(1) Any claim brought under subsection (a) that
16 is founded upon a property right or privilege secured by
17 the Constitution, but was allegedly infringed or taken by
18 the United States, shall be ripe for adjudication upon a
19 final decision rendered by the United States, that causes
20 actual and concrete injury to the party seeking redress.

21 “(2) For purposes of this subsection, a final decision
22 exists if—

23 “(A) the United States makes a definitive deci-
24 sion regarding the extent of permissible uses on the
25 property that has been allegedly infringed or taken,

1 without regard to any uses that may be permitted
2 elsewhere; and

3 “(B) an applicable law of the United States
4 provides for a right of appeal or waiver from such
5 decision, and the party seeking redress has applied
6 for, but has been denied, one such appeal or waiver.
7 The party seeking redress shall not be required to apply
8 for an appeal or waiver described in subparagraph (B),
9 if the prospects of success are reasonably unlikely and
10 intervention by the district court or the United States
11 Court of Federal Claims is warranted to decide the mer-
12 its.”.

13 **SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.**

14 Section 1491(a) of title 28, United States Code, is
15 amended by adding at the end the following:

16 “(3) Any claim brought under this subsection found-
17 ed upon a property right or privilege secured by the Con-
18 stitution, but allegedly infringed or taken by the United
19 States, shall be ripe for adjudication upon a final decision
20 rendered by the United States, that causes actual and con-
21 crete injury to the party seeking redress. For purposes of
22 this paragraph, a final decision exists if—

23 “(A) the United States makes a definitive deci-
24 sion regarding the extent of permissible uses on the
25 property that has been allegedly infringed or taken,

1 without regard to any uses that may be permitted
2 elsewhere; and

3 “(B) an applicable law of the United States
4 provides for a right of appeal or waiver from such
5 final decision, and the party seeking redress has ap-
6 plied for, but has been denied, one such appeal or
7 waiver.

8 The party seeking redress shall not be required to apply
9 for an appeal or waiver described in subparagraph (B) if
10 the prospects of success are reasonably unlikely and inter-
11 vention by the United States Court of Federal Claims is
12 warranted to decide the merits.”.

13 **SEC. 5. EFFECTIVE DATE.**

14 The amendments made by this Act shall apply to ac-
15 tions commenced on or after the date of the enactment
16 of this Act.

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