

# Union Calendar No. 187

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1534

[Report No. 105-323]

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1997

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

OCTOBER 21, 1997

Additional sponsors: Mr. GOODE, Mr. ROYCE, Mr. SESSIONS, Mr. BRYANT, Mr. HILL, Mr. PICKETT, Mr. SENSENBRENNER, Mr. NEUMANN, Mr. BONILLA, Mr. COMBEST, Mr. HOLDEN, Mr. RIGGS, Mr. WELLER, Mr. MCINTOSH, Mr. ENGLISH of Pennsylvania, Mr. BARCIA, Mr. HERGER, Mr. CUNNINGHAM, Mr. MCINNIS, Mr. TURNER, Mr. CANADY of Florida, Mr. THORNBERRY, Mr. DOOLEY of California, Mr. FROST, Mr. HASTINGS of Washington, Mr. HANSEN, Mr. RILEY, Mr. BOB SCHAFFER of Colorado, Mr. PAXON, Mr. BRADY, Mr. COLLINS, Mr. TRAFICANT, Mr. BLILEY, Mr. JENKINS, Mr. BISHOP, Mr. BOEHNER, Mr. GOODLATTE, Mr. PASCRELL, Mr. LEWIS of California, Mr. SOLOMON, Mr. CONDIT, Mr. DREIER, Mr. FAZIO of California, Mr. HUTCHINSON, Mr. SHIMKUS, Mr. ENSIGN, Mr. CALVERT, Mr. DOOLITTLE, Mr. KOLBE, Mr. COX of California, Mr. MCCOLLUM, Mr. CANNON, Mr. HALL of Texas, Mrs. CHENOWETH, Mr. BUNNING, Mr. KIM, Mr. HILLIARD, Mr. HAYWORTH, Mrs. NORTHUP, Mr. DEAL of Georgia, Mr. CHRISTENSEN, Mr. PACKARD, Mr. PICKERING, Mr. GEKAS, Mr. MCHUGH, Mr. GILLMOR, Mr. HEFLEY,

Mr. COOKSEY, Mr. MCKEON, Mr. SALMON, Mr. ROGAN, Mr. SMITH of Oregon, Mr. UNDERWOOD, Mr. INGLIS of South Carolina, Mr. SKEEN, Mr. CHAMBLISS, Mr. WICKER, Mr. SCHIFF, Mr. EHRLICH, Mr. SHADEGG, Mr. GIBBONS, Mr. PARKER, Mr. FOLEY, Mr. BALLENGER, Mr. UPTON, Mr. WATKINS, Mr. SMITH of New Jersey, Mr. HUNTER, Mr. TAUZIN, Mr. HASTERT, Mr. JONES, Mr. CALLAHAN, Mr. KINGSTON, Mr. LOBIONDO, Mr. MARTINEZ, Mr. COOK, Mr. METCALF, Mr. ORTIZ, Mr. SPENCE, Mr. WAMP, Mr. REGULA, Ms. GRANGER, Mrs. ROUKEMA, Mr. THOMAS, Mr. SAXTON, Mr. KNOLLENBERG, Mr. DICKEY, Mr. COBLE, Mr. BONO, Mr. POMBO, Mr. MCCRERY, Mr. ROHRABACHER, Mr. SAM JOHNSON of Texas, Mr. BURTON of Indiana, Mr. BAKER, Mr. STUMP, Mrs. LINDA SMITH of Washington, Mr. LIVINGSTON, Mr. BARR of Georgia, Mr. SMITH of Texas, Mr. PETERSON of Minnesota, Mr. LATHAM, Mr. GRAHAM, Mr. RADANOVICH, Mrs. FOWLER, Mr. BROWN of California, Mr. WELDON of Pennsylvania, Mr. STENHOLM, Mr. CHABOT, Mr. WATTS of Oklahoma, Mr. EDWARDS, Mr. FRANKS of New Jersey, Mr. CRAPO, Ms. DANNER, Mr. DUNCAN, Mr. BAESLER, Mr. GUTKNECHT, Mr. TALENT, Ms. PRYCE of Ohio, Mr. CRAMER, Mr. BARRETT of Nebraska, Mr. SMITH of Michigan, Mr. YOUNG of Alaska, Mr. MILLER of Florida, Mr. NETHERCUTT, Mr. PAPPAS, Mr. ADERHOLT, Mrs. MYRICK, Ms. DUNN, Mr. SANDLIN, Mr. TIAHRT, Mr. BERRY, Mr. CAMP, Mr. EVERETT, Mr. STEARNS, Mr. BACHUS, Mr. GOODLING, Mr. SOUDER, Mr. HOEKSTRA, Mr. RYUN, Mr. WHITE, Mr. FALEOMAVAEGA, Mr. MCDADE, Mrs. CUBIN, Mr. HOBSON, Mr. NUSSLE, Mr. DICKS, Mr. ROGERS, Mr. BILIRAKIS, Mr. PITTS, Mr. PETRI, Mr. LAHOOD, Mr. HAMILTON, Mr. MICA, Mr. ARMEY, Mr. SCARBOROUGH, Mrs. TAUSCHER, Mr. BUYER, Mr. MANZULLO, Mr. DELAY, Mr. WELDON of Florida, Mr. NEY, Mr. JOHN, Mr. HORN, Mr. WOLF, Mr. DAN SCHAEFER of Colorado, Mr. LUCAS of Oklahoma, Mr. COBURN, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BILBRAY, Mr. YOUNG of Florida, Mr. WHITFIELD, Mr. ARCHER, Mr. MORAN of Kansas, Mr. LINDER, Mr. PAUL, Mr. BLUNT, Mr. NORWOOD, Mr. SKELTON, Mr. REDMOND, Mr. THOMPSON, Mr. HOYER, Mrs. EMERSON, Mr. DAVIS of Virginia, Mr. BOYD, Mr. GILMAN, Mr. PETERSON of Pennsylvania, Mr. SISISKY, Mr. GREEN, Mr. SUNUNU, Mr. OXLEY, Mr. KASICH, Mr. ISTOOK, Mr. LEWIS of Kentucky, Mr. LEACH, Mrs. JOHNSON of Connecticut, Mr. PORTER, Mr. LARGENT, Mr. OBERSTAR, Mr. CRANE, Mr. MURTHA, Mr. HOUGHTON, Mr. SANFORD, Mr. GORDON, Mr. SNOWBARGER, Mr. HILLEARY, Mr. DIAZ-BALART, Mr. SHAW, Mr. BLUMENAUER, Mr. DOYLE, Mr. TAYLOR of North Carolina, Mr. THUNE, Mr. SHUSTER, Mr. BURR of North Carolina, Mr. TAYLOR of Mississippi, Mr. KING, Mr. ROTHMAN, and Mr. HULSHOF

OCTOBER 21, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 6, 1997]

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## 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 government 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 Rights*  
5 *Implementation Act of 1997”.*

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

7 *Section 1343 of title 28, United States Code, is amend-*  
8 *ed by adding at the end the following:*

9 *“(c) Whenever a district court exercises jurisdiction*  
10 *under subsection (a) in an action in which the operative*  
11 *facts concern the uses of real property, it shall not abstain*

1 *from exercising or relinquish its jurisdiction to a State*  
2 *court in an action where no claim of a violation of a State*  
3 *law, right, or privilege is alleged, and where a parallel pro-*  
4 *ceeding in State court arising out of the same operative*  
5 *facts as the district court proceeding is not pending.*

6       “(d) *Where the district court has jurisdiction over an*  
7 *action under subsection (a) in which the operative facts con-*  
8 *cern the uses of real property and which cannot be decided*  
9 *without resolution of a significant but unsettled question*  
10 *of State law, the district court may certify the question of*  
11 *State law to the highest appellate court of that State. After*  
12 *the State appellate court resolves the question certified to*  
13 *it, the district court shall proceed with resolving the merits.*  
14 *The district court shall not certify a question of State law*  
15 *under this subsection unless the question of State law—*

16               “(1) *will significantly affect the merits of the in-*  
17 *jured party’s Federal claim; and*

18               “(2) *is so unclear and obviously susceptible to a*  
19 *limiting construction as to render premature a deci-*  
20 *sion on the merits of the constitutional or legal issue*  
21 *in the case.*

22       “(e)(1) *Any claim or action brought under section*  
23 *1979 of the Revised Statutes of the United States (42 U.S.C.*  
24 *1983) to redress the deprivation of a property right or*  
25 *privilege secured by the Constitution shall be ripe for adju-*

1 *dication by the district courts upon a final decision ren-*  
2 *dered by any person acting under color of any statute, ordi-*  
3 *nance, regulation, custom, or usage, of any State or terri-*  
4 *tory of the United States, that causes actual and concrete*  
5 *injury to the party seeking redress.*

6       “(2) *For purposes of this subsection, a final decision*  
7 *exists if—*

8               “(A) *any person acting under color of any stat-*  
9 *ute, ordinance, regulation, custom, or usage, of any*  
10 *State or territory of the United States, makes a defin-*  
11 *itive decision regarding the extent of permissible uses*  
12 *on the property that has been allegedly infringed or*  
13 *taken, without regard to any uses that may be per-*  
14 *mitted elsewhere;*

15               “(B) *one meaningful application to use the prop-*  
16 *erty has been submitted but denied, and the party*  
17 *seeking redress has applied for but is denied one ap-*  
18 *peal or waiver, where the applicable statute, ordi-*  
19 *nance, custom, or usage provides a mechanism for ap-*  
20 *peal to or waiver by an administrative agency; and*

21               “(C) *in a case involving the uses of real prop-*  
22 *erty, where the applicable statute or ordinance pro-*  
23 *vides for review of the case by elected officials, the*  
24 *party seeking redress has applied for but is denied*  
25 *such review.*

1 *The party seeking redress shall not be required to apply*  
2 *for an appeal or waiver described in subparagraph (B) if*  
3 *no such appeal or waiver is available, if it cannot provide*  
4 *the relief requested, or if the prospects of success are reason-*  
5 *ably unlikely and intervention by the district court is war-*  
6 *ranted to decide the merits.*

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

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

12       *Section 1346 of title 28, United States Code, is amend-*  
13 *ed by adding at the end the following:*

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

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

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

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

3               “(B) *one meaningful application to use the prop-*  
4       *erty has been submitted but denied, and the party*  
5       *seeking redress has applied for but is denied one ap-*  
6       *peal or waiver, where the applicable law of the United*  
7       *States provides a mechanism for appeal to or waiver*  
8       *by an administrative agency.*

9       *The party seeking redress shall not be required to apply*  
10       *for an appeal or waiver described in subparagraph (B) if*  
11       *no such appeal or waiver is available, if it cannot provide*  
12       *the relief requested, or if the prospects of success are reason-*  
13       *ably unlikely and intervention by the district court or the*  
14       *United States Court of Federal Claims is warranted to de-*  
15       *cide the merits.”.*

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

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

19               “(3) *Any claim brought under this subsection founded*  
20       *upon a property right or privilege secured by the Constitu-*  
21       *tion, but allegedly infringed or taken by the United States,*  
22       *shall be ripe for adjudication upon a final decision rendered*  
23       *by the United States, that causes actual and concrete injury*  
24       *to the party seeking redress. For purposes of this paragraph,*  
25       *a final decision exists if—*

1           “(A) the United States makes a definitive deci-  
2           sion regarding the extent of permissible uses on the  
3           property that has been allegedly infringed or taken,  
4           without regard to any uses that may be permitted  
5           elsewhere; and

6           “(B) one meaningful application to use the prop-  
7           erty has been submitted but denied, and the party  
8           seeking redress has applied for but is denied one ap-  
9           peal or waiver, where the applicable law of the United  
10          States provides a mechanism for appeal or waiver.

11          *The party seeking redress shall not be required to apply*  
12          *for an appeal or waiver described in subparagraph (B) if*  
13          *no such appeal or waiver is available, if it cannot provide*  
14          *the relief requested, or if the prospects of success are reason-*  
15          *ably unlikely and intervention by the United States Court*  
16          *of Federal Claims is warranted to decide the merits.”.*

17          **SEC. 5. EFFECTIVE DATE.**

18          *The amendments made by this Act shall apply to ac-*  
19          *tions commenced on or after the date of the enactment of*  
20          *this Act.*





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