

106TH CONGRESS  
1ST SESSION

# H. R. 2372

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

JUNE 29, 1999

Mr. CANADY of Florida (for himself, Mr. FROST, Mr. DOOLEY of California, Mr. GOODE, Mr. BISHOP, Mr. DIAZ-BALART, Mr. WALSH, Mr. BARCIA, and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on the Judiciary

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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  
 5 Rights Implementation Act of 1999”.

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) in an action in which the operative  
 11 facts concern the uses of real property, it shall not abstain  
 12 from exercising or relinquish its jurisdiction to a State  
 13 court in an action in which no claim of a violation of a  
 14 State law, right, or privilege is alleged, if a parallel pro-  
 15 ceeding in State court arising out of the same operative  
 16 facts as the district court proceeding is not pending.

17       “(d) If the district court has jurisdiction over an ac-  
 18 tion under subsection (a) in which the operative facts con-  
 19 cern the uses of real property and which cannot be decided  
 20 without resolution of an unsettled question of State law,  
 21 the district court may certify the question of State law  
 22 to the highest appellate court of that State. After the  
 23 State appellate court resolves the question certified to it,

1 the district court shall proceed with resolving the merits.

2 The district court shall not certify a question of State law

3 under this subsection unless the question of State law—

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

6 “(2) is patently unclear.

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

16 “(2)(A) For purposes of this subsection, a final deci-  
17 sion exists if—

18 “(i) any person acting under color of any stat-  
19 ute, ordinance, regulation, custom, or usage, of any  
20 State or territory of the United States, makes a de-  
21 finitive decision regarding the extent of permissible  
22 uses on the property that has been allegedly in-  
23 fringed or taken;

24 “(ii)(I) one meaningful application, as defined  
25 by the locality concerned within that State or terri-

1 tory, to use the property has been submitted but has  
2 not been approved, and the party seeking redress  
3 has applied for one appeal or waiver which has not  
4 been approved, in a case in which the applicable  
5 statute, ordinance, custom, or usage provides a  
6 mechanism for appeal to or waiver by an administra-  
7 tive agency; or

8 “(II) one meaningful application, as defined by  
9 the locality concerned within that State or territory,  
10 to use the property has been submitted but has not  
11 been approved, the disapproval explains in writing  
12 the use, density, or intensity of development of the  
13 property that would be approved, with any condi-  
14 tions therefor, and the party seeking redress has re-  
15 submitted another meaningful application taking  
16 into account the terms of the disapproval, except  
17 that—

18 “(aa) if no such reapplication is submitted,  
19 then a final decision shall not have been  
20 reached for purposes of this subsection, except  
21 as provided in subparagraph (B); and

22 “(bb) if the reapplication is not approved,  
23 or if the reapplication is not required under  
24 subparagraph (B), then a final decision exists  
25 for purposes of this subsection if the party

1           seeking redress has applied for one appeal or  
2           waiver with respect to the disapproval, which  
3           has not been approved, in a case in which the  
4           applicable statute, ordinance, custom, or usage  
5           provides a mechanism of appeal or waiver by  
6           an administrative agency; and

7           “(iii) in a case involving the uses of real prop-  
8           erty, if the applicable statute or ordinance provides  
9           for review of the case by elected officials, the party  
10          seeking redress has applied for but is denied such  
11          review.

12          “(B) The party seeking redress shall not be required  
13          to apply for an appeal or waiver described in subparagraph  
14          (A) if no such appeal or waiver is available, if it cannot  
15          provide the relief requested, or if the application or re-  
16          application would be futile.

17          “(3) For purposes of this subsection, a final decision  
18          shall not require the party seeking redress to exhaust judi-  
19          cial remedies provided by any State or territory of the  
20          United States.

21          “(f) Nothing in subsection (c), (d), or (e) alters the  
22          substantive law of takings of property, including the bur-  
23          den of proof borne by the plaintiff.”.

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

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

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

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

12 “(A) the United States makes a definitive deci-  
13 sion regarding the extent of permissible uses on the  
14 property that has been allegedly infringed or taken;  
15 and

16 “(B) one meaningful application to use the  
17 property has been submitted but has not been ap-  
18 proved, and the party seeking redress has applied  
19 for one appeal or waiver which has not been ap-  
20 proved, in a case in which the applicable law of the  
21 United States provides a mechanism for appeal to or  
22 waiver by an administrative agency.

23 The party seeking redress shall not be required to apply  
24 for an appeal or waiver described in subparagraph (B) if  
25 no such appeal or waiver is available, if it cannot provide

1 the relief requested, or if application or reapplication to  
2 use the property would be futile.

3 “(3) Nothing in this subsection alters the substantive  
4 law of takings of property, including the burden of proof  
5 borne by the plaintiff.”.

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

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

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

16 “(A) the United States makes a definitive deci-  
17 sion regarding the extent of permissible uses on the  
18 property that has been allegedly infringed or taken;  
19 and

20 “(B) one meaningful application to use the  
21 property has been submitted but has not been ap-  
22 proved, and the party seeking redress has applied  
23 for one appeal or waiver which has not been ap-  
24 proved, in a case in which the applicable law of the

1 United States provides a mechanism for appeal or  
2 waiver.

3 The party seeking redress shall not be required to apply  
4 for an appeal or waiver described in subparagraph (B) if  
5 no such appeal or waiver is available, if it cannot provide  
6 the relief requested, or if application or reapplication to  
7 use the property would be futile. Nothing in this para-  
8 graph alters the substantive law of takings of property,  
9 including the burden of proof borne by the plaintiff.”.

10 **SEC. 5. DUTY OF NOTICE TO OWNERS.**

11 Whenever a Federal agency takes an agency action  
12 limiting the use of private property that may be affected  
13 by the amendments made by this Act, the agency shall  
14 give notice to the owners of that property explaining their  
15 rights under such amendments and the procedures for ob-  
16 taining any compensation that may be due to them under  
17 such amendments.

18 **SEC. 6. EFFECTIVE DATE.**

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

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