

111TH CONGRESS
2D SESSION

H. R. 5624

To simplify and expedite access to the Federal courts for injured parties whose rights and privileges under 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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2010

Mrs. LUMMIS (for herself, Mr. BISHOP of Utah, Mr. BROUN of Georgia, Mr. ROHRABACHER, Mr. HELLER, Mr. SMITH of Nebraska, Mr. HERGER, Mr. DAVIS of Kentucky, Mr. POSEY, Mr. MARCHANT, Mr. BURTON of Indiana, Mr. CULBERSON, Mr. ROONEY, Mr. HALL of Texas, Mr. KLINE of Minnesota, Mr. FRANKS of Arizona, Mr. BILBRAY, Mr. SHADEGG, Mr. CHAFFETZ, Mr. FLAKE, Mr. CONAWAY, Mr. GALLEGLY, and Ms. FOXX) 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 under 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, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Property Owners Ac-
3 cess to Court Act of 2010”.

4 **SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CON-**
5 **CERNING REAL PROPERTY.**

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

8 “(c) Whenever a district court exercises jurisdiction
9 under subsection (a) in an action in which the operative
10 facts concern the uses of real property, it shall not abstain
11 from exercising or relinquish its jurisdiction to a State
12 court if the party seeking redress does not allege a viola-
13 tion of a State law, right, or privilege, and no parallel pro-
14 ceeding is pending in State court, at the time the action
15 is filed in the district court, that arises out of the same
16 operative facts as the district court proceeding.

17 “(d) In an action in which the operative facts concern
18 the uses of real property, the district court shall exercise
19 jurisdiction under subsection (a) even if the party seeking
20 redress does not pursue judicial remedies provided by a
21 State or territory of the United States.

22 “(e) If the district court has jurisdiction over an ac-
23 tion under subsection (a) in which the operative facts con-
24 cern the uses of real property and which cannot be decided
25 without resolution of an unsettled question of State law,
26 the district court may certify the question of State law

1 to the highest appellate court of that State. After the
2 State appellate court resolves the question so certified, the
3 district court shall proceed with resolving the merits. The
4 district court shall not certify a question of State law
5 under this subsection unless the question of State law—

6 “(1) is necessary to resolve the merits of the
7 Federal claim of the injured party; and

8 “(2) is patently unclear.

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

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

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

1 fringed or taken, without regard to any uses that
2 may be permitted elsewhere; and

3 “(B) one meaningful application to use the
4 property has been submitted but denied, and the
5 party seeking redress has applied for but is denied
6 one waiver and one appeal, if the applicable statute,
7 ordinance, regulation, custom, or usage provides a
8 mechanism for waiver by or appeal to an administra-
9 tive agency.

10 The party seeking redress shall not be required to apply
11 for a waiver or appeal described in subparagraph (B) if
12 such waiver or appeal is unavailable or cannot provide the
13 relief requested, or if pursuit of such a mechanism would
14 otherwise be futile.”.

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

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

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

24 “(2) For purposes of this subsection, a final decision
25 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
7 property has been submitted but denied, and the
8 party seeking redress has applied for but is denied
9 one waiver and one appeal, if the applicable law of
10 the United States provides a mechanism for waiver
11 by or appeal to an administrative agency.

12 The party seeking redress shall not be required to apply
13 for a waiver or appeal described in subparagraph (B) if
14 such waiver or appeal is unavailable or cannot provide the
15 relief requested, or if pursuit of such a mechanism would
16 otherwise be futile.”.

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

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

20 “(3) Any claim brought under this subsection found-
21 ed upon a property right or privilege secured by the Con-
22 stitution, but allegedly infringed or taken by the United
23 States, shall be ripe for adjudication upon a final decision
24 rendered by the United States, that causes actual and con-

1 crete injury to the party seeking redress. For purposes of
2 this paragraph, a final decision exists if—

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

8 “(B) one meaningful application to use the
9 property has been submitted but denied, and the
10 party seeking redress has applied for but is denied
11 one waiver and one appeal, if the applicable statute,
12 ordinance, regulation, custom, or usage provides a
13 mechanism for waiver by or appeal to an administra-
14 tive agency.

15 The party seeking redress shall not be required to apply
16 for a waiver or appeal described in subparagraph (B) if
17 such waiver or appeal is unavailable or can not provide
18 the relief requested, or if pursuit of such a mechanism
19 would otherwise be futile.”.

20 **SEC. 5. CLARIFICATION FOR CERTAIN CONSTITUTIONAL**
21 **PROPERTY RIGHTS CLAIMS.**

22 Section 1979 of the Revised Statutes of the United
23 States (42 U.S.C. 1983) is amended by adding at the end
24 the following: “If the party injured seeks to redress the
25 deprivation of a property right or privilege under this sec-

1 tion that is secured by the Constitution by asserting a
2 claim that concerns—

3 “(1) an approval to develop real property that
4 is subject to conditions or exactions, then the person
5 acting under color of State law is liable if any such
6 condition or exaction, whether legislative or adju-
7 dicatory in nature, including the payment of a mone-
8 tary fee or a dedication of real property from the in-
9 jured party, is unconstitutional;

10 “(2) a subdivision of real property pursuant to
11 any statute, ordinance, regulation, custom, or usage
12 of any State or territory, or the District of Colum-
13 bia, then such a claim shall be decided with ref-
14 erence to each subdivided lot, regardless of owner-
15 ship, if such a lot is taxed, or is otherwise treated
16 and recognized, as an individual property unit by the
17 State, territory, or the District of Columbia; or

18 “(3) alleged deprivation of substantive due
19 process, then the action of the person acting under
20 color of State law shall be judged as to whether it
21 is arbitrary, capricious, an abuse of discretion, or
22 otherwise not in accordance with law.

23 For purposes of the preceding sentence, ‘State law’ in-
24 cludes any law of the District of Columbia or of any terri-
25 tory of the United States.”.

1 **SEC. 6. CLARIFICATION FOR CERTAIN CONSTITUTIONAL**
2 **PROPERTY RIGHTS CLAIMS AGAINST THE**
3 **UNITED STATES.**

4 (a) DISTRICT COURT JURISDICTION.—Section 1346
5 of title 28, United States Code, is amended by adding at
6 the end the following:

7 “(i) If a claim brought under subsection (a) is found-
8 ed upon a property right or privilege secured by the Con-
9 stitution that concerns—

10 “(1) an approval from an executive agency to
11 permit or authorize uses of real property that is sub-
12 ject to conditions or exactions, then the United
13 States is liable if any such condition or exaction,
14 whether legislative or adjudicatory in nature, includ-
15 ing the payment of a monetary fee or a dedication
16 of real property from the injured party, is unconsti-
17 tutional;

18 “(2) a subdivision of real property pursuant to
19 any statute, ordinance, regulation, custom, or usage
20 of any State or territory, or the District of Colum-
21 bia, then such a claim against an executive agency
22 shall be decided with reference to each subdivided
23 lot, regardless of ownership, if such a lot is taxed,
24 or is otherwise treated and recognized, as an indi-
25 vidual property unit by the State or territory, or the
26 District of Columbia, as the case may be; or

1 “(3) an alleged deprivation of substantive due
2 process, then the United States shall be judged as
3 to whether its action is arbitrary, capricious, an
4 abuse of discretion, or otherwise not in accordance
5 with law.

6 In this subsection, the term ‘executive agency’ has the
7 meaning given that term in section 105 of title 5.”.

8 (b) COURT OF FEDERAL CLAIMS JURISDICTION.—
9 Section 1491(a) of title 28, United States Code, is amend-
10 ed by adding at the end the following:

11 “(4) If a claim brought under subsection (a) is found-
12 ed upon a property right or privilege secured by the Con-
13 stitution that concerns—

14 “(A) an approval from an executive agency to
15 permit or authorize uses of real property that is sub-
16 ject to conditions or exactions, then the United
17 States is liable if any such condition or exaction,
18 whether legislative or adjudicatory in nature, includ-
19 ing the payment of a monetary fee or a dedication
20 of real property from the injured party, is unconsti-
21 tutional;

22 “(B) a subdivision of real property pursuant to
23 any statute, ordinance, regulation, custom, or usage
24 of any State or territory, or the District of Colum-
25 bia, then such a claim against an executive agency

1 shall be decided with reference to each subdivided
2 lot, regardless of ownership, if such a lot is taxed,
3 or is otherwise treated and recognized, as an indi-
4 vidual property unit by the State, or territory, or the
5 District of Columbia, as the case may be; or

6 “(C) an alleged deprivation of substantive due
7 process, then the United States shall be judged as
8 to whether its action is arbitrary, capricious, an
9 abuse of discretion, or otherwise not in accordance
10 with law.

11 In this paragraph, the term ‘executive agency’ has the
12 meaning given that term in section 105 of title 5.”.

13 **SEC. 7. DUTY OF NOTICE TO OWNERS.**

14 (a) IN GENERAL.—Whenever a Federal agency takes
15 an agency action limiting the use of private property that
16 may be affected by the amendments made by this Act, the
17 agency shall, not later than 30 days after the agency takes
18 that action, give notice to the owners of that property ex-
19 plaining their rights under such amendments and the pro-
20 cedures for obtaining any compensation that may be due
21 them under such amendments.

22 (b) DEFINITIONS.—For purposes of subsection (a)—

23 (1) the term “Federal agency” means “agen-
24 cy”, as that term is defined in section 552(f) of title
25 5, United States Code; and

1 (2) the term “agency action” has the meaning
2 given that term in section 551 of title 5, United
3 States Code.

4 **SEC. 8. SEVERABILITY AND EFFECTIVE DATE.**

5 (a) SEVERABILITY.—If any provision of this Act or
6 the amendments made by this Act or the application there-
7 of to any person or circumstance is held invalid, the re-
8 mainder of this Act, the amendments made by this Act,
9 or the application thereof to other persons not similarly
10 situated or to other circumstances shall not be affected
11 by such invalidation.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this Act shall apply to actions commenced on or after the
14 date of the enactment of this Act.

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