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1ST SESSION

S. 1256

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 in which no State law claim is alleged; to permit certification of unsettled State law questions that are essential to Federal claims arising under the Constitution; to allow for efficient adjudication of constitutional claims brought by injured parties in the United States district courts and the Court of Federal Claims; to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 1997

Mr. HATCH (for himself, Mr. REID, Mr. COVERDELL, Mr. THURMOND, Mr. GRAMM, and Mr. BURNS) introduced the following bill; which was read twice and 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 in which no State law claim is alleged; to permit certification of unsettled State law questions that are essential to Federal claims arising

under the Constitution; to allow for efficient adjudication of constitutional claims brought by injured parties in the United States district courts and the Court of Federal Claims; to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Citizens Access to Jus-
 5 tice Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) property rights have been abrogated by the
 9 application of laws, regulations, and other actions by
 10 all levels of government that adversely affect the
 11 value and the ability to make reasonable use of pri-
 12 vate property;

13 (2) certain provisions of sections 1346 and
 14 1402 and chapter 91 of title 28, United States Code
 15 (commonly known as the Tucker Act), that delineate
 16 the jurisdiction of courts hearing property rights
 17 claims, frustrate the ability of a property owner to
 18 obtain full relief for violation founded upon the fifth
 19 and fourteenth amendments of the United States
 20 Constitution;

1 (3) current law—

2 (A) has no sound basis for splitting juris-
3 diction between two courts in cases where con-
4 stitutionally protected property rights are at
5 stake;

6 (B) adds to the complexity and cost of
7 takings and litigation, adversely affecting tax-
8 payers and property owners;

9 (C) forces a property owner, who seeks
10 just compensation from the Federal Govern-
11 ment, to elect between equitable relief in the
12 district court and monetary relief (the value of
13 the property taken) in the United States Court
14 of Federal Claims;

15 (D) is used to urge dismissal in the district
16 court in complaints against the Federal Govern-
17 ment, on the ground that the plaintiff should
18 seek just compensation in the Court of Federal
19 Claims;

20 (E) is used to urge dismissal in the Court
21 of Federal Claims in complaints against the
22 Federal Government, on the ground that the
23 plaintiff should seek equitable relief in district
24 court; and

1 (F) forces a property owner to first pay to
2 litigate an action in a State court, before a
3 Federal judge can decide whether local govern-
4 ment has denied property rights safeguarded by
5 the United States Constitution;

6 (4) property owners cannot fully vindicate prop-
7 erty rights in one lawsuit and their claims may be
8 time barred in a subsequent action;

9 (5) property owners should be able to fully re-
10 cover for a taking of their private property in one
11 court;

12 (6) certain provisions of section 1346 and 1402
13 and chapter 91 of title 28, United States Code (com-
14 monly known as the Tucker Act) should be amend-
15 ed, giving both the district courts of the United
16 States and the Court of Federal Claims jurisdiction
17 to hear all claims relating to property rights in com-
18 plaints against the Federal Government;

19 (7) section 1500 of title 28, United States
20 Code, which denies the Court of Federal Claims ju-
21 risdiction to entertain a suit which is pending in an-
22 other court and made by the same plaintiff, should
23 be repealed;

24 (8) Federal and local authorities, through com-
25 plex, costly, repetitive and unconstitutional permit-

1 ting, variance, and licensing procedures, have denied
2 property owners their fifth and fourteenth amend-
3 ment rights under the United States Constitution to
4 the use, enjoyment, and disposition of, and exclusion
5 of others from, their property, and to safeguard
6 those rights, there is a need to determine what con-
7 stitutes a final decision of an agency in order to
8 allow claimants the ability to protect their property
9 rights in a court of law;

10 (9) a Federal judge should decide the merits of
11 cases where a property owner seeks redress solely for
12 infringements of rights safeguarded by the United
13 States Constitution, and where no claim of a viola-
14 tion of State law is alleged; and

15 (10) certain provisions of sections 1343, 1346,
16 and 1491 of title 28, United States Code, should be
17 amended to clarify when a claim for redress of con-
18 stitutionally protected property rights is sufficiently
19 ripe so a Federal judge may decide the merits of the
20 allegations.

21 **SEC. 3. PURPOSES.**

22 The purposes of this Act are to—

23 (1) establish a clear, uniform, and efficient ju-
24 dicial process whereby aggrieved property owners
25 can obtain vindication of property rights guaranteed

1 by the fifth and fourteenth amendments to the
2 United States Constitution and this Act;

3 (2) amend the Tucker Act, including the repeal
4 of section 1500 of title 28, United States Code;

5 (3) rectify the unduly onerous and expensive re-
6 quirement that a property owner, seeking redress
7 under section 1979 of the Revised Statutes of the
8 United States (42 U.S.C. 1983) for the infringement
9 of property rights protected by the fifth and four-
10 teenth amendments of the United States Constitu-
11 tion, is required to first litigate Federal constitu-
12 tional issues in a State court before obtaining access
13 to the Federal courts; and

14 (4) provide for uniformity in the application of
15 the ripeness doctrine in cases where constitutionally
16 protected property rights are allegedly infringed, by
17 providing that a final agency decision may be adju-
18 dicated by a Federal court on the merits after—

19 (A) the pertinent government body denies
20 a meaningful application to develop the land in
21 question; and

22 (B) the property owner seeks a waiver by
23 or brings an appeal to an administrative agency
24 from such denial.

1 **SEC. 4. DEFINITIONS.**

2 In this Act, the term—

3 (1) “agency action” means any action, inaction,
4 or decision taken by a Federal agency or other gov-
5 ernment agency that at the time of such action, in-
6 action, or decision adversely affects private property
7 rights;

8 (2) “district court”—

9 (A) means a district court of the United
10 States with appropriate jurisdiction; and

11 (B) includes the United States District
12 Court of Guam, the United States District
13 Court of the Virgin Islands, or the District
14 Court for the Northern Mariana Islands;

15 (3) “Federal agency” means a department,
16 agency, independent agency, or instrumentality of
17 the United States, including any military depart-
18 ment, Government corporation, Government-con-
19 trolled corporation, or other establishment in the ex-
20 ecutive branch of the United States Government;

21 (4) “owner” means the owner or possessor of
22 property or rights in property at the time the taking
23 occurs, including when—

24 (A) the statute, regulation, rule, order,
25 guideline, policy, or action is passed or promul-
26 gated; or

1 (B) the permit, license, authorization, or
2 governmental permission is denied or sus-
3 pended;

4 (5) “private property” or “property” means all
5 interests constituting property, as defined by Fed-
6 eral or State law, protected under the fifth and four-
7 teenth amendments to the United States Constitu-
8 tion; and

9 (6) “taking of private property”, “taking”, or
10 “take” means any action whereby restricting the
11 ownership, alienability, possession, or use of private
12 property is an object of that action and is taken so
13 as to require compensation under the fifth amend-
14 ment to the United States Constitution, including by
15 physical invasion, regulation, exaction, condition, or
16 other means.

17 **SEC. 5. PRIVATE PROPERTY ACTIONS.**

18 (a) IN GENERAL.—An owner may file a civil action
19 under this section to challenge the validity of any Federal
20 agency action that adversely affects the owner’s interest
21 in private property in a district court or the United States
22 Court of Federal Claims.

23 (b) CONCURRENT JURISDICTION.—Notwithstanding
24 any other provision of law and notwithstanding the issues
25 involved, the relief sought, or the amount in controversy,

1 the district court and the United States Court of Federal
2 Claims shall each have concurrent jurisdiction over both
3 claims for monetary relief and claims seeking invalidation
4 of any Act of Congress or any regulation of a Federal
5 agency affecting private property rights.

6 (c) ELECTION.—The plaintiff may elect to file an ac-
7 tion under this section in a district court or the United
8 States Court of Federal Claims.

9 (d) WAIVER OF SOVEREIGN IMMUNITY.—This section
10 constitutes express waiver of the sovereign immunity of
11 the United States with respect to an action filed under
12 this section.

13 **SEC. 6. STANDING AND EXHAUSTION OF REMEDIES.**

14 (a) IN GENERAL.—Subject to subsection (b), any
15 person adversely affected by a Federal agency action shall
16 have standing to challenge and seek judicial review of that
17 action without first exhausting administrative remedies.

18 (b) ADJUDICATION.—

19 (1) IN GENERAL.—Any civil action filed under
20 section 5 shall be ripe for adjudication upon a final
21 decision rendered by the United States, that causes
22 actual and concrete injury to the party seeking re-
23 dress.

24 (2) FINAL DECISION.—

1 (A) IN GENERAL.—For purposes of this
2 subsection, a final decision exists if—

3 (i) the United States, acting under
4 Federal statute or regulation, makes a de-
5 finitive decision regarding the extent of
6 permissible land uses on the property that
7 has allegedly been infringed or taken, with-
8 out regard to any uses that may be per-
9 mitted elsewhere; and

10 (ii)(I) one meaningful application to
11 use the property has been submitted for a
12 final decision but is denied; and

13 (II) if the pertinent Federal statute or
14 regulation provides for a right of appeal to
15 or waiver by the pertinent Federal agency
16 from the final decision regarding such
17 property, the party seeking redress has
18 brought 1 appeal or sought 1 waiver from
19 such a final decision.

20 (B) APPEAL OR WAIVER.—For purposes of
21 subparagraph (A)(ii), the party seeking redress
22 shall not be required to apply for such an ap-
23 peal or waiver if—

24 (i) no such process is available;

(ii) it cannot provide the relief requested; or

(iii) the prospects for success are reasonably unlikely and intervention by the district court or the United States Court of Federal Claims under this section is warranted to decide the merits.

SEC. 7. APPEALS.

The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of any action filed under section 5, regardless of whether the jurisdiction of such action is based in whole or part under such section.

SEC. 8. JURISDICTION OF UNITED STATES COURT OF FEDERAL CLAIMS AND UNITED STATES DISTRICT COURTS.

(a) UNITED STATES COURT OF FEDERAL CLAIMS.—

(1) JURISDICTION.—Section 1491(a) of title 28, United States Code, is amended—

(A) in paragraph (1) by amending the first sentence to read as follows: “The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States for monetary relief founded either upon the Constitution or any Act of Congress or any regulation of an executive depart-

1 ment or upon any express or implied contract
2 with the United States, in cases not sounding
3 in tort, or for invalidation of any Act of Con-
4 gress or any regulation of an executive depart-
5 ment under section 5 of the Citizens Access to
6 Justice Act of 1997.”;

7 (B) in paragraph (2) by inserting before
8 the first sentence the following: “In any case
9 within its jurisdiction, the Court of Federal
10 Claims shall have the power to grant injunctive
11 and declaratory relief when appropriate.”; and

12 (C) by adding at the end the following new
13 paragraphs:

14 “(3) In cases otherwise within its jurisdiction,
15 the Court of Federal Claims shall also have supple-
16 mental jurisdiction, concurrent with the courts des-
17 ignated under section 1346(b), to render judgment
18 upon any related tort claim authorized under section
19 2674.

20 “(4) In proceedings within the jurisdiction of
21 the Court of Federal Claims which constitute judi-
22 cial review of agency action (rather than de novo
23 proceedings), the provisions of section 706 of title 5
24 shall apply.”.

1 (2) PENDING OF CLAIMS IN OTHER
2 COURTS.—

3 (A) IN GENERAL.—Section 1500 of title
4 28, United States Code is repealed.

5 (B) TECHNICAL AND CONFORMING AMEND-
6 MENT.—The table of sections for chapter 91 of
7 title 28, United States Code, is amended by
8 striking out the item relating to section 1500.

9 (b) DISTRICT COURT JURISDICTION.—Section
10 1346(a) of title 28, United States Code, is amended by
11 adding after paragraph (2) the following:

12 “(3) Any civil action filed under section 5 of the
13 Citizens Access to Justice Act of 1997.”.

14 (c) DISTRICT COURT CIVIL RIGHTS JURISDICTION;
15 ABSTENTION.—Section 1343 of title 28, United States
16 Code, is amended—

17 (1) by redesignating subsection (b) as sub-
18 section (e); and

19 (2) by inserting after subsection (a) the follow-
20 ing new subsections:

21 “(b)(1) Any claim or action brought under section
22 1979 of the Revised Statutes (42 U.S.C. 1983) to redress
23 the deprivation of a property right or privilege secured by
24 the Constitution shall be ripe for adjudication by the dis-
25 trict courts upon a final decision by any person acting

1 under color of any statute, ordinance, regulation, custom,
2 or usage of any State or territory of the United States,
3 that causes actual and concrete injury to the party seeking
4 redress.

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

7 “(i) any person acting under color of any stat-
8 ute, ordinance, regulation, custom, or usage, of any
9 State or territory of the United States, makes a de-
10 finitive decision regarding the extent of permissible
11 uses on the property that has been allegedly in-
12 fringed or taken, without regard to any uses that
13 may be permitted elsewhere; and

14 “(ii)(I) one meaningful application to use the
15 property has been submitted but is denied; and

16 “(II) if the applicable statute, ordinance, regu-
17 lation, custom, or usage provides for a right of ap-
18 peal to or waiver by an administrative agency from
19 the final decision regarding the property, the party
20 seeking redress has brought 1 appeal or sought 1
21 waiver from such a final decision.

22 “(B) For purposes of subparagraph (A)(ii), the party
23 seeking redress shall not be required to apply for such an
24 appeal or waiver if—

25 “(i) no such process is available;

1 “(ii) it cannot provide the relief requested; or

2 “(iii) the prospects of success are reasonably
3 unlikely and intervention by the United States Dis-
4 trict Court is warranted to decide the merits.

5 “(C) For purposes of this subsection, a ‘final deci-
6 sion’ for a ripe claim under section 1979 of the Revised
7 Statutes (42 U.S.C. 1983) shall not require the party
8 seeking redress to exhaust judicial remedies provided by
9 any State or Territory.

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

18 “(d) Where the district court has jurisdiction over an
19 action under subsection (a), where the operative facts con-
20 cern the uses of real property, that cannot be decided
21 without resolution of a significant but unsettled question
22 of State law, the district court may certify the question
23 of State law to the highest appellate court of that State.
24 After the State appellate court resolves the question cer-
25 tified to it, the district court shall proceed with resolving

1 the merits. The district court shall not certify a question
2 of State law under this subsection unless the question of
3 State law—

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

6 “(2) is so unclear and obviously susceptible to
7 a limiting construction as to render premature a de-
8 cision on the merits of the constitutional or legal
9 issue in the case.”.

10 **SEC. 9. STATUTE OF LIMITATIONS.**

11 The statute of limitations for any action filed under
12 section 5 shall be 6 years from the date of the taking of
13 private property.

14 **SEC. 10. ATTORNEY’S FEES AND COSTS.**

15 The court, in issuing any final order in any action
16 filed under section 5, shall award costs of litigation (in-
17 cluding reasonable attorney and expert witness fees) to
18 any prevailing plaintiff.

19 **SEC. 11. RULES OF CONSTRUCTION.**

20 Nothing in this Act shall be construed to interfere
21 with the authority of any State to create additional prop-
22 erty rights.

1 **SEC. 12. EFFECTIVE DATE.**

2 This Act shall take effect on the date of enactment
3 of this Act and shall apply to any agency action that oc-
4 curs on or after such date.

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