

109TH CONGRESS
2^D SESSION

H. R. 4772

AN ACT

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.

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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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property
5 Rights Implementation Act of 2006”.

6 **SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CON-**
7 **CERNING REAL PROPERTY.**

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

10 “(c) Whenever a district court exercises jurisdiction
11 under subsection (a) in an action in which 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 if the party seeking redress does not allege a viola-
15 tion of a State law, right, or privilege, and no parallel pro-
16 ceeding is pending in State court, at the time the action
17 is filed in the district court, that arises out of the same
18 operative facts as the district court proceeding.

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

24 “(e) If the district court has jurisdiction over an ac-
25 tion under subsection (a) in which the operative facts con-

cern the uses of real property and which cannot be decided
without resolution of an unsettled question of State law,
the district court may certify the question of State law
to the highest appellate court of that State. After the
State appellate court resolves the question so certified, the
district court shall proceed with resolving the merits. The
district court shall not certify a question of State law
under this subsection unless the question of State law—

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

“(2) is patently unclear.

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

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

“(A) any person acting under color of any statute,
ordinance, regulation, custom, or usage, of any
State or territory of the United States, makes a de-

1 finitive decision regarding the extent of permissible
2 uses on the property that has been allegedly in-
3 fringed or taken, without regard to any uses that
4 may be permitted elsewhere; and

5 “(B) one meaningful application to use the
6 property has been submitted but denied, and the
7 party seeking redress has applied for but is denied
8 one waiver and one appeal, if the applicable statute,
9 ordinance, regulation, custom, or usage provides a
10 mechanism for waiver by or appeal to an administra-
11 tive 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 can not provide
15 the relief requested, or if pursuit of such a mechanism
16 would otherwise be futile.”.

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

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

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

1 “(2) For purposes of this subsection, a final decision
2 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 law of
12 the United States provides a mechanism for waiver
13 by or appeal to an administrative agency.

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

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

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

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

1 rendered by the United States, that causes actual and con-
2 crete injury to the party seeking redress. For purposes of
3 this paragraph, a final decision exists if—

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

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

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

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

23 Section 1979 of the Revised Statutes of the United
24 States (42 U.S.C. 1983) is amended by adding at the end
25 the following: “If the party injured seeks to redress the

1 deprivation of a property right or privilege under this sec-
2 tion that is secured by the Constitution by asserting a
3 claim that concerns—

4 “(1) an approval to develop real property that
5 is subject to conditions or exactions, then the person
6 acting under color of State law is liable if any such
7 condition or exaction, whether legislative or adju-
8 dicatory in nature, including but not limited to the
9 payment of a monetary fee or a dedication of real
10 property from the injured party, is unconstitutional;

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

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

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

4 **SEC. 6. CLARIFICATION FOR CERTAIN CONSTITUTIONAL**
5 **PROPERTY RIGHTS CLAIMS AGAINST THE**
6 **UNITED STATES.**

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

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

13 “(1) an approval from an executive agency to
14 permit or authorize uses of real property that is sub-
15 ject to conditions or exactions, then the United
16 States is liable if any such condition or exaction,
17 whether legislative or adjudicatory in nature, includ-
18 ing but not limited to the payment of a monetary fee
19 or a dedication of real property from the injured
20 party, is unconstitutional;

21 “(2) a subdivision of real property pursuant to
22 any statute, ordinance, regulation, custom, or usage
23 of any State or territory, or the District of Colum-
24 bia, then such a claim against an executive agency
25 shall be decided with reference to each subdivided

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

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

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

12 (b) COURT OF FEDERAL CLAIMS JURISDICTION.—
13 Section 1491 of title 28, United States Code, is amended
14 by adding at the end the following:

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

18 “(A) an approval from an executive agency to
19 permit or authorize uses of real property that is sub-
20 ject to conditions or exactions, then the United
21 States is liable if any such condition or exaction,
22 whether legislative or adjudicatory in nature, includ-
23 ing but not limited to the payment of a monetary fee
24 or a dedication of real property from the injured
25 party, is unconstitutional;

1 “(B) a subdivision of real property pursuant to
2 any statute, ordinance, regulation, custom, or usage
3 of any State or territory, or the District of Colum-
4 bia, then such a claim against an executive agency
5 shall be decided with reference to each subdivided
6 lot, regardless of ownership, if such a lot is taxed,
7 or is otherwise treated and recognized, as an indi-
8 vidual property unit by the State, or territory, or the
9 District of Columbia, as the case may be; or

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

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

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

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

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

2 (1) the term “Federal agency” means “agen-
3 cy”, as that term is defined in section 552(f) of title
4 5, United States Code; and

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

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

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

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

Passed the House of Representatives September 29,
2006.

Attest:

Clerk.