

105TH CONGRESS  
1ST SESSION

# S. 1204

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.

---

## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 1997

Mr. COVERDELL (for himself, Ms. LANDRIEU, Mrs. HUTCHISON, Mr. CRAIG, Mr. MACK, Mr. BROWNBACK, Mr. KYL, Mr. BURNS, Mr. HATCH, Mr. ENZI, Mr. GRAMM, Mr. THURMOND, Mr. DORGAN, and Mr. REID) 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 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 “Property Owners Ac-  
 5 cess to Justice Act of 1997”.

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), it shall not abstain from exercising  
 11 or relinquish its jurisdiction to a State court in an action  
 12 where no claim of a violation of a State law, right, or privi-  
 13 lege is alleged.

14        “(d) Where the district court has jurisdiction over an  
 15 action under subsection (a) that cannot be decided without  
 16 resolution of a significant but unsettled question of State  
 17 law, the district court may certify the question of State  
 18 law to the highest appellate court of that State. After the  
 19 State appellate court resolves the question certified to it,  
 20 the district court shall proceed with resolving the merits.  
 21 The district court shall not certify a question of State law  
 22 under this subsection unless the question of State law—

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

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

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) For purposes of this subsection, a final decision  
17          exists if—

18                 “(A) 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, without regard to any uses that  
24                 may be permitted elsewhere; and

1           “(B) the applicable statute, ordinance, regula-  
2           tion, custom, or usage provides for a right of appeal  
3           or waiver from such decision, and the party seeking  
4           redress has applied for, but has been denied, one  
5           such appeal or waiver.

6           The party seeking redress shall not be required to apply  
7           for an appeal or waiver described in subparagraph (B) if  
8           the prospects of success are reasonably unlikely and inter-  
9           vention by the district court is warranted to decide the  
10          merits.

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

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, that 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) an applicable law of the United States  
7           provides for a right of appeal or waiver from such  
8           decision, and the party seeking redress has applied  
9           for, but has been denied, one such appeal or waiver.

10          The party seeking redress shall not be required to apply  
11          for an appeal or waiver described in subparagraph (B),  
12          if the prospects of success are reasonably unlikely and  
13          intervention by the district court or the United States  
14          Court of Federal Claims is warranted to decide the  
15          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 found-  
20          ed upon a property right or privilege secured by the Con-  
21          stitution, but allegedly infringed or taken by the United  
22          States, shall be ripe for adjudication upon a final decision  
23          rendered by the United States, that causes actual and con-  
24          crete injury to the party seeking redress. For purposes of  
25          this paragraph, 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) an applicable law of the United States  
7           provides for a right of appeal or waiver from such  
8           final decision, and the party seeking redress has ap-  
9           plied for, but has been denied, one such appeal or  
10          waiver.

11       The party seeking redress shall not be required to apply  
12       for an appeal or waiver described in subparagraph (B) if  
13       the prospects of success are reasonably unlikely and inter-  
14       vention by the United States Court of Federal Claims is  
15       warranted to decide the merits.”.

16       **SEC. 5. EFFECTIVE DATE.**

17       The amendments made by this Act shall apply to  
18       actions commenced on or after the date of the enactment  
19       of this Act.

○