

Sanchez	Slaughter	Velazquez
Sanders	Smith (NJ)	Vento
Sanford	Smith, Adam	Visclosky
Sawyer	Snyder	Walsh
Saxton	Spratt	Waters
Scarborough	Stabenow	Watt (NC)
Schumer	Stokes	Waxman
Scott	Stupak	Weygand
Sensenbrenner	Sununu	Wise
Serrano	Thurman	Woolsey
Shaw	Tierney	Wynn
Sherman	Torres	Yates
Skaggs	Towns	

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Aderholt	Fowler	Oberstar
Allen	Franks (NJ)	Ortiz
Archer	Frost	Oxley
Army	Gallegly	Packard
Bachus	Gejdenson	Pallone
Baessler	Gekas	Pappas
Baker	Gibbons	Pascarell
Ballenger	Gillmor	Paul
Barcia	Gingrich	Paxon
Barr	Goode	Pease
Barrett (NE)	Goodlatte	Peterson (MN)
Bartlett	Goodling	Peterson (PA)
Barton	Gordon	Petri
Bateman	Graham	Pickering
Berry	Granger	Pickett
Bilbray	Green	Pitts
Bilirakis	Gutknecht	Pombo
Bishop	Hall (TX)	Pryce (OH)
Bliley	Hansen	Quinn
Blumenauer	Harman	Radanovich
Blunt	Hastert	Rahall
Boehner	Hastings (WA)	Redmond
Bonilla	Hayworth	Regula
Bono	Hefley	Riggs
Boswell	Herger	Riley
Boyd	Hill	Rogan
Brady	Hilleary	Rogers
Bryant	Hilliard	Rohrabacher
Bunning	Hinojosa	Ros-Lehtinen
Burr	Hobson	Rothman
Burton	Hoekstra	Royce
Buyer	Holden	Ryun
Callahan	Hooley	Salmon
Calvert	Hostettler	Sandlin
Camp	Houghton	Schaefer, Dan
Campbell	Hoyer	Schaffer, Bob
Canady	Hulshof	Sessions
Cannon	Hunter	Shadeeg
Chabot	Hutchinson	Shimkus
Chenoweth	Hyde	Shuster
Christensen	Inglis	Sisisky
Clement	Istook	Skeen
Clyburn	Jefferson	Skelton
Coble	Jenkins	Smith (MI)
Coburn	John	Smith (OR)
Collins	Johnson, Sam	Smith (TX)
Combest	Jones	Smith, Linda
Condit	Kasich	Snowbarger
Conyers	Kennelly	Solomon
Cook	Kim	Souder
Cooksey	King (NY)	Spence
Cox	Kingston	Stearns
Cramer	Knollenberg	Stenholm
Crane	Kolbe	Stump
Crapo	LaHood	Talent
Cunningham	Largent	Tanner
Danner	Latham	Tauscher
Davis (VA)	Lewis (CA)	Tauzin
Deal	Lewis (KY)	Taylor (MS)
DeLay	Linder	Taylor (NC)
Deutsch	Livingston	Thomas
Diaz-Balart	LoBiondo	Thompson
Dickey	Lucas	Thornberry
Dingell	Manzullo	Thune
Doggett	McCollum	Tiahrt
Dooley	McCrery	Trafficant
Doolittle	McDade	Turner
Dreier	McHugh	Upton
Duncan	McInnis	Wamp
Dunn	McIntyre	Watkins
Edwards	McKeon	Watts (OK)
Ehrlich	Metcalf	Weldon (FL)
Emerson	Mica	Weller
English	Moran (KS)	Wexler
Ensign	Myrick	White
Evans	Nethercutt	Whitfield
Everett	Neumann	Wicker
Fazio	Ney	Wolf
Flake	Northup	Young (AK)
Foley	Norwood	Young (FL)
Ford	Nussle	

NOT VOTING—14

Brown (CA)	Cubin	Jackson-Lee
Chambliss	Gonzalez	(TX)

Lantos	Parker	Stark
Martinez	Schiff	Strickland
McIntosh	Shays	Weldon (PA)

So the amendment in the nature of a substitute was not agreed to.

After some further time,

The SPEAKER pro tempore, Mr. HANSEN, assumed the Chair.

When Mr. ROGAN, Acting Chairman, pursuant to House Resolution 271, reported the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Rights Implementation Act of 1997".

SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES.

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

"(c) Whenever a district court exercises jurisdiction under subsection (a) in an action in which the operative facts concern the uses of real property, it shall not abstain from exercising or relinquish its jurisdiction to a State court in an action where no claim of a violation of a State law, right, or privilege is alleged, and where a parallel proceeding in State court arising out of the same operative facts as the district court proceeding is not pending.

"(d) Where the district court has jurisdiction over an action under subsection (a) in which the operative facts concern 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 certified to it, 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) will significantly affect the merits of the injured party's Federal claim; and

"(2) is patently unclear.

"(e)(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, that causes actual and concrete injury to the party seeking redress.

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

"(i) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken;

"(ii)(I) one meaningful application, as defined by the locality concerned within that State or territory, to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable statute, ordinance, custom, or usage provides a mechanism for appeal to or waiver by an administrative agency; or

"(II) one meaningful application, as defined by the locality concerned within that State or territory, to use the property has been submitted but has not been approved, and the disapproval explains in writing the use, density, or intensity of development of the property that would be approved, with any conditions therefor, and the party seeking redress has resubmitted another meaningful application taking into account the terms of the disapproval, except that—

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

"(bb) if the reapplication is not approved, or if the reapplication is not required under subparagraph (B), then a final decision exists for purposes of this subsection if the party seeking redress has applied for one appeal or waiver with respect to the disapproval, which has not been approved, where the applicable statute, ordinance, custom, or usage provides a mechanism of appeal or waiver by an administrative agency; and

"(iii) in a case involving the uses of real property, where the applicable statute or ordinance provides for review of the case by elected officials, the party seeking redress has applied for but is denied such review.

"(B) The party seeking redress shall not be required to apply for an appeal or waiver described in paragraph (1)(B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if the application or reapplication would be futile.

"(3) For purposes of this subsection, a final decision shall not require the party seeking redress to exhaust judicial remedies provided by any State or territory of the United States.

"(f) Nothing in subsection (c), (d), or (e) alters the substantive law of takings of property, including the burden of proof borne by the plaintiff."

SEC. 3. UNITED STATES AS DEFENDANT.

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

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

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

"(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

"(B) one meaningful application to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if application or reapplication to use the property would be futile.

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

SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.

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

“(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

“(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

“(B) one meaningful application to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable law of the United States provides a mechanism for appeal or waiver.

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

SEC. 5. DUTY OF NOTICE TO OWNERS.

Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by the amendments made by this Act, the agency shall give notice to the owners of that property explaining their rights under such amendments and the procedures for obtaining any compensation that may be due to them under such amendments.

SEC. 6. EFFECTIVE DATE.

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

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

Ms. LOFGREN moved to recommit the bill to the Committee on the Judiciary.

By unanimous consent, the previous question was ordered on the motion to recommit.

The question being put, viva voce, Will the House recommit said bill?

The SPEAKER pro tempore, Mr. HANSEN, announced that the nays had it.

So the motion to recommit was not agreed to.

The question being put, viva voce, Will the House pass said bill?

The SPEAKER pro tempore, Mr. HANSEN, announced that the yeas had it.

Mr. CONYERS demanded a recorded vote on passage of said bill, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the { Yeas 248 affirmative } Nays 178

¶118.12 [Roll No. 519] AYES—248

- Aderholt Ballenger Berry
Archer Barcia Bilirakis
Armey Barr Bishop
Bachus Barrett (NE) Bliley
Baesler Bartlett Blumenauer
Baker Barton Blunt
Baldacci Bateman Boehner

- Bonilla Harman Peterson (PA)
Bono Hastert Petri
Boswell Hastings (WA) Pickering
Boyd Hayworth Pickett
Brady Hefley Pitts
Bryant Herger Pombo
Bunning Hill Pryce (OH)
Burr Hilleary Quinn
Burton Hilliard Radanovich
Buyer Hinojosa Redmond
Callahan Hobson Regula
Calvert Hoekstra Riggs
Camp Holden Riley
Campbell Hostettler Roemer
Canady Houghton Rogan
Cannon Hoyer Rogers
Chabot Hulshof Rohrabacher
Chenoweth Hunter Roth-Lehtinen
Christensen Hutchinson Ros-Thman
Clement Hyde Royce
Coble Inglis Ryan
Coburn Istook Salmon
Collins Jefferson Sanchez
Combest Jenkins Sandlin
Condit John Scarborough
Cook Johnson, Sam Schaefer, Dan
Cooksey Jones Schaffer, Bob
Cox Kasich Scott
Cramer Kim Sensenbrenner
Crane King (NY) Sessions
Crapo Kingston Shadegg
Cunningham Knollenberg Shaw
Danner Kolbe Shimkus
Davis (VA) LaHood Shuster
Deal Largent Sisisky
DeLay Latham Skeen
Deutsch LaTourrette Skelton
Diaz-Balart Leach Smith (MI)
Dickey Lewis (CA) Smith (OR)
Dooley Lewis (KY) Smith (TX)
Doolittle Linder Smith, Linda
Doyle Livingston Snowbarger
Dreier LoBiondo Solomon
Duncan Lucas Souder
Dunn Manzullo Spence
Edwards Martinez Stearns
Ehrlich Mascara Stenholm
Emerson McCollum Stump
English McCreery Sununu
Ensign McDade Talent
Etheridge McHugh Tanner
Everett McNmis Tauzin
Fazio McIntyre Taylor (MS)
Foley McKeon Taylor (NC)
Ford Metcalf Thomas
Fowler Mica Thompson
Fox Miller (FL) Thornberry
Franks (NJ) Moran (KS) Thune
Frost Murtha Tiahrt
Gallegly Myrick Traficant
Gekas Nethercutt Turner
Gibbons Neumann Upton
Gillmor Ney Wamp
Gingrich Northup Watkins
Goode Norwood Watts (OK)
Goodlatte Nussle Weldon (FL)
Goodling Ortiz Weldon (PA)
Gordon Oxley Weller
Graham Packard Weygand
Granger Pappas White
Green Parker Whitfield
Gutknecht Pascrell Wicker
Hall (OH) Paul Wolf
Hall (TX) Paxon Young (AK)
Hamilton Pease Young (FL)
Hansen Peterson (MN)

NOES—178

- Abercrombie Castle
Ackerman Clay
Allen Clayton
Andrews Clyburn
Barrett (WI) Conyers
Bass Costello
Becerra Coyne
Bentsen Cummings
Bereuter Davis (FL)
Berman Davis (IL)
Blibray DeFazio
Blagojevich DeGette
Boehlert Delahunt
Bonior DeLauro
Borski Dellums
Boucher Dicks
Brown (CA) Dingell
Brown (FL) Dixon
Brown (OH) Doggett
Capps Ehlers
Carter Engel
Carson Eshoo
Evans
Ewing
Farr
Fattah
Fawell
Filner
Flake
Foglietta
Forbes
Frank (MA)
Frelinghuysen
Furse
Ganske
Gedden
Gephardt
Gilchrest
Gilman
Goss
Greenwood
Gutierrez
Hastings (FL)
Hefner

- Hinchey
Hooley
Horn
Jackson (IL)
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Klecza
Neal
Oberstar
Obey
Kucinich
LaFalce
Lampson
Lazio
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McKinney
McNulty
Meehan
Meeke
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Morella
Nadler
Neal
Pastor
Payne
Pelosi
Pomeroy
Porter
Portman
Poshard
Price (NC)
Rahall
Ramstad
Rangel
Reyes
Rivers
Rodriguez
Roukema
Roybal-Allard

NOT VOTING—8

- Chambliss Jackson-Lee McIntosh
Cubin (TX) Schiff
Gonzalez Lantos Strickland

So the bill was passed.

A motion to reconsider the vote whereby said bill was passed was, by unanimous consent, laid on the table.

Ordered, That the Clerk request the concurrence of the Senate in said bill.

¶118.13 CLERK TO CORRECT ENGROSSMENT

On motion of Mr. COBLE, by unanimous consent,

Ordered, That in the engrossment of the foregoing bill the Clerk be authorized to correct section numbers, cross references, and punctuation, and to make such technical, conforming, and other changes as may be necessary to reflect the actions of the House in amending the bill.

¶118.14 PROVIDING FOR THE CONSIDERATION OF H.R. 2646

Ms. PRYCE, by direction of the Committee on Rules, reported (Rept. No. 105-336) the resolution (H. Res. 274) providing for the consideration of the bill (H.R. 2646) to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

When said resolution and report were referred to the House Calendar and ordered printed.

¶118.15 PROVIDING FOR THE CONSIDERATION OF H.R. 2247

Ms. PRYCE, by direction of the Committee on Rules, called up the following resolution (H. Res. 270):

Resolved, That at any time after the adoption of this resolution the Speaker may, pur-