

105TH CONGRESS  
1ST SESSION

# H. R. 1252

To modify the procedures of the Federal courts in certain matters, and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1997

Mr. HYDE (for himself, Mr. COBLE, Mr. CANADY of Florida, Mr. BONO, Mr. BRYANT, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To modify the procedures of the Federal courts in certain  
matters, 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 “Judicial Reform Act  
5 of 1997”.

6 **SEC. 2. 3-JUDGE COURT FOR CERTAIN INJUNCTIONS.**

7 (a) REQUIREMENT OF 3-JUDGE COURT.—Any appli-  
8 cation for an interlocutory or permanent injunction re-  
9 straining the enforcement, operation, or execution of a  
10 State law adopted by referendum shall not be granted by

1 a United States district court or judge thereof upon the  
2 ground of the unconstitutionality of such State law unless  
3 the application for the injunction is heard and determined  
4 by a court of 3 judges in accordance with section 2284  
5 of title 28, United States Code. Any appeal of a deter-  
6 mination on such application shall be to the Supreme  
7 Court. In any case to which this section applies, the addi-  
8 tional judges who will serve on the 3-judge court shall be  
9 designated under section 2284(b)(1) of title 28, United  
10 States Code, as soon as practicable, and the court shall  
11 expedite the consideration of the application for an injunc-  
12 tion.

13 (b) DEFINITIONS.—As used in this section—

14 (1) the term “State” means each of the several  
15 States and the District of Columbia;

16 (2) the term “State law” means the constitu-  
17 tion of a State, or any statute, ordinance, rule, regu-  
18 lation, or other measure of a State that has the  
19 force of law, and any amendment thereto; and

20 (3) the term “referendum” means the submis-  
21 sion to popular vote of a measure passed upon or  
22 proposed by a legislative body or by popular initia-  
23 tive.

1 (c) EFFECTIVE DATE.—This section applies to any  
2 application for an injunction that is filed on or after the  
3 date of the enactment of this Act.

4 **SEC. 3. INTERLOCUTORY APPEALS OF COURT ORDERS RE-**  
5 **LATING TO CLASS ACTIONS.**

6 (a) INTERLOCUTORY APPEALS.—Section 1292(b) of  
7 title 28, United States Code, is amended—

8 (1) by inserting “(1)” after “(b)”; and

9 (2) by adding at the end the following:

10 “(2) A party to an action in which the district court  
11 has made a determination of whether the action may be  
12 maintained as a class action may make application for ap-  
13 peal of that determination to the court of appeals which  
14 would have jurisdiction of an appeal of that action. The  
15 court of appeals may, in its discretion, permit the appeal  
16 to be taken from such determination if the application is  
17 made within 10 days after the entry of the court’s deter-  
18 mination relating to the class action. Application for an  
19 appeal under this paragraph shall not stay proceedings in  
20 the district court unless the district judge or the court of  
21 appeals or a judge thereof shall so order.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 subsection (a) applies to any action commenced on or after  
24 the date of the enactment of this Act.

1 **SEC. 4. PROCEEDINGS ON COMPLAINTS AGAINST JUDICIAL**  
2 **CONDUCT.**

3 (a) REFERRAL OF PROCEEDINGS TO ANOTHER JUDI-  
4 CIAL CIRCUIT OR COURT.—Section 372(c) of title 28,  
5 United States Code, is amended—

6 (1) in paragraph (1)—

7 (A) by inserting “(A)” after “(c)(1)”; and

8 (B) by adding at the end the following: “In  
9 the case of a complaint so identified, the chief  
10 judge shall notify the clerk of the court of ap-  
11 peals of the complaint, together with a brief  
12 statement of the facts underlying the complaint.

13 “(B) Complaints filed under subparagraph (A) in one  
14 judicial circuit shall be referred to another judicial circuit  
15 for proceedings under this subsection, in accordance with  
16 a system established by rule by the Judicial Conference,  
17 which prescribes the circuits to which the complaints will  
18 be referred. The Judicial Conference shall establish and  
19 submit to the Congress the system described in the preced-  
20 ing sentence not later than 180 days after the date of the  
21 enactment of this subparagraph.”;

22 (2) in paragraph (2)—

23 (A) by amending the first sentence to read  
24 as follows: “Upon receipt of a complaint filed or  
25 notice of a complaint identified under para-  
26 graph (1) of this subsection, the clerk shall

1 promptly transmit such complaint or (in the  
2 case of a complaint identified under paragraph  
3 (1)) the statement of facts underlying the com-  
4 plaint to the chief judge of the circuit assigned  
5 to conduct proceedings on the complaint in ac-  
6 cordance with the system established under  
7 paragraph (1)(B) (hereafter in this subsection  
8 referred to as the ‘chief judge’).”; and

9 (B) in the second sentence by inserting “or  
10 statement of facts underlying the complaint (as  
11 the case may be)” after “copy of the com-  
12 plaint”;

13 (3) in paragraph (4)(A) by inserting “(to which  
14 the complaint or statement of facts underlying the  
15 complaint is referred)” after “the circuit”;

16 (4) in paragraph (5)—

17 (A) in the first sentence by inserting “to  
18 which the complaint or statement of facts un-  
19 derlying the complaint is referred” after “the  
20 circuit”; and

21 (B) in the second sentence by striking “the  
22 circuit” and inserting “that circuit”;

23 (5) in the first sentence of paragraph (15) by  
24 inserting before the period at the end the following:

1 “in which the complaint was filed or identified under  
2 paragraph (1)”; and

3 (6) by amending paragraph (18) to read as fol-  
4 lows:

5 “(18) The Judicial Conference shall prescribe rules,  
6 consistent with the preceding provisions of this sub-  
7 section—

8 “(A) establishing procedures for the filing of  
9 complaints with respect to the conduct of any judge  
10 of the United States Court of Federal Claims, the  
11 Court of International Trade, or the Court of Ap-  
12 peals for the Federal Circuit, and for the investiga-  
13 tion and resolution of such complaints; and

14 “(B) establishing a system for referring com-  
15 plaints filed with respect to the conduct of a judge  
16 of any such court to any of the first eleven judicial  
17 circuits or to another court for investigation and res-  
18 olution.

19 The Judicial Conference shall establish and submit to the  
20 Congress the system described in subparagraph (B) not  
21 later than 180 days after the date of the enactment of  
22 the Judicial Disciplinary Proceedings Act of 1996.”.

23 (b) DISCLOSURE OF INFORMATION.—Section  
24 372(c)(14) of title 28, United States Code, is amended—

1 (1) in subparagraph (B) by striking “or” after  
2 the semicolon;

3 (2) in subparagraph (C) by striking the period  
4 at the end and inserting “; or”; and

5 (3) by adding after subparagraph (C) the fol-  
6 lowing:

7 “(D) such disclosure is made to another agency  
8 or instrumentality of any governmental jurisdiction  
9 within or under the control the United States for a  
10 civil or criminal law enforcement activity authorized  
11 by law.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 subsection (a) apply to complaints filed on or after the  
14 180th day after the date of the enactment of this Act.

15 **SEC. 5. LIMITATION ON COURT-IMPOSED TAXES.**

16 (a) LIMITATION.—

17 (1) IN GENERAL.—Chapter 85 of title 28, Unit-  
18 ed States Code, is amended by adding at the end the  
19 following new section:

20 **“§ 1369. Limitation on Federal court remedies**

21 “(a) LIMITATION ON COURT-IMPOSED TAXES.—(1)  
22 No district court may enter any order or approve any set-  
23 tlement that requires any State, or political subdivision of  
24 a State, to impose, increase, levy, or assess any tax for  
25 the purpose of enforcing any Federal or State common

1 law, statutory, or constitutional right or law, unless the  
2 court finds by clear and convincing evidence, that—

3 “(A)(i) there are no other means available to  
4 remedy the deprivation of rights or laws; and

5 “(ii) the proposed imposition, increase, levying,  
6 or assessment is narrowly tailored to remedy the  
7 specific deprivation at issue;

8 “(B) the tax will not contribute to or exacer-  
9 bate the deprivation intended to be remedied;

10 “(C) the proposed tax will not result in a loss  
11 of revenue for the political subdivision in which it is  
12 assessed, levied, or collected;

13 “(D) the proposed tax will not result in the loss  
14 or depreciation of property values of the taxpayers  
15 who are affected;

16 “(E) the proposed tax will not conflict with the  
17 applicable laws with respect to the maximum rate of  
18 taxation as determined by the appropriate State or  
19 political subdivision thereof; and

20 “(F) plans submitted to the court by State and  
21 local authorities will not effectively redress the depri-  
22 vations at issue.

23 “(2) A finding under paragraph (1) shall be subject  
24 to immediate interlocutory de novo review.

1 “(3)(A) Notwithstanding any law or rule of proce-  
2 dure, any aggrieved corporation, or unincorporated asso-  
3 ciation or other person residing or present in the political  
4 subdivision in which a tax is imposed in accordance with  
5 paragraph (1) or other entity located within that political  
6 subdivision shall have the right to intervene in any pro-  
7 ceeding concerning the imposition of the tax.

8 “(B) A person or entity that intervenes pursuant to  
9 subparagraph (A) shall have the right to—

10 “(i) present evidence and appear before the  
11 court to present oral and written testimony; and

12 “(ii) appeal any finding required to be made by  
13 this section, or any other related action taken to im-  
14 pose, increase, levy, or assess the tax that is the sub-  
15 ject of the intervention.

16 “(b) TERMINATION OF ORDERS.—Notwithstanding  
17 any law or rule of procedure, any order of a district court  
18 requiring the imposition, increase, levy, or assessment of  
19 a tax imposed pursuant to subsection (a)(1) shall auto-  
20 matically terminate or expire on the date that is—

21 “(1) 1 year after the date of the imposition of  
22 the tax; or

23 “(2) an earlier date, if the court determines  
24 that the deprivation of rights that is addressed by  
25 the order has been cured to the extent practicable.

1       “(c) PREEMPTION.—This section shall not be con-  
2       strued to preempt any law of a State or political subdivi-  
3       sion thereof that imposes limitations on, or otherwise re-  
4       stricts the imposition of, a tax, levy, or assessment that  
5       is imposed in response to a court order referred to in sub-  
6       section (b).

7       “(d) ADDITIONAL RESTRICTIONS ON COURT AC-  
8       TION.—(1) Except as provided in subparagraph (B), noth-  
9       ing in this section may be construed to allow a Federal  
10      court to, for the purpose of funding the administration  
11      of an order referred to in subsection (b), use funds ac-  
12      quired by a State or political subdivision thereof from a  
13      tax imposed by the State or political subdivision thereof.

14      “(2) Paragraph (1) does not apply to any tax, levy,  
15      or assessment that may, in accordance with applicable  
16      State or local law, be used to fund the actions of a State  
17      or political subdivision thereof in meeting the require-  
18      ments of an order referred to in subsection (b).

19      “(e) NOTICE TO STATES.—The court shall provide  
20      written notice to a State or political subdivision thereof  
21      subject to an order referred to in subsection (b) with re-  
22      spect to any finding required to be made by the court  
23      under subsection (a). Such notice shall be provided before  
24      the beginning of the next fiscal year of that State or politi-  
25      cal subdivision occurring after the order is issued.

1       “(f) SPECIAL RULES.—For purposes of this sec-  
2 tion—

3               “(1) the District of Columbia shall be consid-  
4 ered to be a State; and

5               “(2) any Act of Congress applicable exclusively  
6 to the District of Columbia shall be considered to be  
7 a statute of the District of Columbia.”.

8       (b) CONFORMING AMENDMENT.—The table of con-  
9 tents for chapter 85 of title 28, United States Code, is  
10 amended by adding after the item relating to section 1368  
11 the following new item:

“1369. Limitation on Federal court remedies.”.

12       (c) STATUTORY CONSTRUCTION.—Nothing contained  
13 in this section or the amendments made by this section  
14 shall be construed to, beyond the scope of applicable law,  
15 make legal, validate, or approve the use of a judicial tax,  
16 levy, or assessment by a United States district court.

17       (d) EFFECTIVE DATE.—This section and the amend-  
18 ments made by this section apply with respect to any ac-  
19 tion or other proceeding in any Federal court that is com-  
20 menced on or after the date of the enactment of this Act.

21 **SEC. 6. REASSIGNMENT OF CASE AS OF RIGHT.**

22       (a) IN GENERAL.—Chapter 21 of title 28, United  
23 States Code, is amended by adding at the end the follow-  
24 ing:

1 **“§ 464. Reassignment of cases upon motion by a party**

2       “(a) UPON MOTION.—(1) If all parties on one side  
3 of a civil case to be tried in a United States district court  
4 bring a motion to reassign the case, the case shall be reas-  
5 signed to another appropriate judicial officer. Each side  
6 shall be entitled to one reassignment without cause as a  
7 matter of right.

8       “(2) If any question arises as to which parties should  
9 be grouped together as a side for purposes of this section,  
10 the chief judge of the court of appeals for the circuit in  
11 which the case is to be tried, or another judge of the court  
12 of appeals designated by the chief judge, shall determine  
13 that question.

14       “(b) REQUIREMENTS FOR BRINGING MOTION.—(1)  
15 Subject to paragraph (2), a motion to reassign under this  
16 section shall not be entertained unless it is brought, not  
17 later than 20 days after notice of the original assignment  
18 of the case, to the judicial officer to whom the case is as-  
19 signed for the purpose of hearing or deciding any matter.  
20 Such motion shall be granted if—

21               “(A) it is presented before trial or hearing be-  
22 gins and before the judicial officer to whom it is pre-  
23 sented has ruled on any substantial issue in the  
24 case, or

25               “(B) it is presented by consent of the parties on  
26 all sides.

1 “(2) Notwithstanding paragraph (1)—

2 “(A) a party joined in a civil action after the  
3 initial filing may, with the concurrence of the other  
4 parties on the same side, bring a motion under this  
5 section within 20 days after the service of the com-  
6 plaint on that party;

7 “(B) a party served with a supplemental or  
8 amended complaint or a third-party complaint in a  
9 civil action may, with the concurrence of the other  
10 parties on the same side, bring a motion under this  
11 section within 20 days after service on that party of  
12 the supplemental, amended, or third-party com-  
13 plaint; and

14 “(C) rulings in a case by the judicial officer on  
15 any substantial issue before a party who has not  
16 been found in default enters an appearance in the  
17 case shall not be grounds for denying an otherwise  
18 timely and appropriate motion brought by that party  
19 under this section.

20 “(3) No motion under this section may be brought  
21 by the party or parties on a side in a case if any party  
22 or parties on that side have previously brought a motion  
23 to reassign under this section in that case.

24 “(c) COSTS OF TRAVEL TO NEW LOCATION.—If a  
25 motion to reassign brought under this section requires a

1 change in location for purposes of appearing before a  
2 newly assigned judicial officer, the party or parties bring-  
3 ing the motion shall pay the reasonable costs incurred by  
4 the parties on different sides of the case in travelling to  
5 the new location for all matters associated with the case  
6 requiring an appearance at the new location.

7 “(d) DEFINITION.—As used in this section, the term  
8 ‘appropriate judicial officer’ means—

9 “(1) a United States magistrate judge in a case  
10 referred to such a magistrate judge; and

11 “(2) a United States district court judge in any  
12 other case before a United States district court.”.

13 (b) CLERICAL AMENDMENT.—The table of contents  
14 for chapter 21 of title 28, United States Code, is amended  
15 by adding at the end the following new item:

“464. Reassignment of cases upon motion by a party.”.

