

28 USC §1257 | STATE COURTS; CERTIORARI

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, ch. 646, 62 Stat. 929; Pub. L. 91–358, title I, §172(a)(1), July 29, 1970, 84 Stat. 590 ; Pub. L. 100–352, §3, June 27, 1988, 102 Stat. 662.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §344 (Mar. 3, 1911, ch. 231, §§236, 237, 36 Stat. 1156 ; Dec. 23, 1914, ch. 2, 38 Stat. 790 ; Sept. 6, 1916, ch. 448, §2, 39 Stat. 726 ; Feb. 17, 1922, ch. 54, 42 Stat. 366 ; Feb. 13, 1925, ch. 229, §1, 43 Stat. 937 ; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Provisions of section 344 of title 28, U.S.C., 1940 ed., relating to procedure for review of decisions of State courts are incorporated in section 2103 of this title. Other provisions of such section 344 of title 28, U.S.C., 1940 ed., are incorporated in section 2106 of this title.

The revised section applies in both civil and criminal cases. In *Twitchell v. Philadelphia*, 1868, 7 Wall. 321, 19 L.Ed. 223, it was expressly held that the provisions of section 25 of the Judiciary Act of 1789, 1 Stat. 85, on which title 28, U.S.C., 1940 ed., §344, is based, applied to criminal cases, and many other Supreme Court decisions impliedly involve the same holding inasmuch as the Court has taken jurisdiction of criminal cases on appeal from State courts. See, for example, *Herndon v. Georgia*, 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530 and *Ashcraft v. Tennessee*, 1944, 64 S.Ct. 921, 322 U.S. 143, 88 L.Ed. 1192.

Provision, in section 344(b) of title 28, U.S.C., 1940 ed., for review and determination on certiorari "with the same power and authority and with like effect as if brought up by appeal" was omitted as unnecessary. The scope of review under this section is unrestricted.

Words "and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied," in said section 344(b), were omitted as surplusage.

The last sentence in said section 344(b) relating to the right to relief under both subsections of said section 344, was omitted as unnecessary.

Changes were made in phraseology.



Editorial Notes

Amendments

1988-Pub. L. 100–352 struck out "appeal;" before "certiorari" in section catchline and amended text generally. Prior to amendment, text read as follows: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

"For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

1970-Pub. L. 91–358 provided that for the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

Effective Date of 1970 Amendment

Pub. L. 91–358, title I, §199(a), July 29, 1970, 84 Stat. 597 , provided that: "The effective date of this title (and the amendments made by this title) [enacting sections 1363, 1451, and 2113 of this title and amending this section, sections 292 and 1869 of this title, section 5102 of Title 5, Government Organization and Employees, and section 260a of Title 42, The Public Health and Welfare] shall be the first day of the seventh calendar month which begins after the date of the enactment of this Act [July 29, 1970]."

