

116TH CONGRESS
1ST SESSION

S. 909

To amend title 5, United States Code, with respect to the judicial review of agency interpretations of statutory and regulatory provisions.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2019

Mr. SASSE (for himself, Mr. GRASSLEY, Mr. LANKFORD, Mr. TILLIS, Mr. HAWLEY, Mr. CRAPO, Mr. CORNYN, Mr. LEE, Mr. ROUNDS, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, with respect to the judicial review of agency interpretations of statutory and regulatory provisions.

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 “Separation of Powers
5 Restoration Act”.

6 **SEC. 2. JUDICIAL REVIEW OF STATUTORY AND REGU-**
7 **LATORY INTERPRETATIONS.**

8 Section 706 of title 5, United States Code, is amend-
9 ed—

1 (1) by striking “To the extent necessary” and
2 inserting “(a) To the extent necessary”;

3 (2) in subsection (a), as so designated—

4 (A) by striking “decide all relevant ques-
5 tions of law, interpret constitutional and statu-
6 tory provisions, and”; and

7 (B) by inserting after “of the terms of an
8 agency action” the following: “and decide de
9 novo all relevant questions of law, including the
10 interpretation of constitutional and statutory
11 provisions, and rules made by agencies. If the
12 reviewing court determines that a statutory or
13 regulatory provision relevant to its decision con-
14 tains a gap or ambiguity, the court shall not in-
15 terpret that gap or ambiguity as an implicit del-
16 egation to the agency of legislative rule making
17 authority and shall not rely on the gap or ambi-
18 guity as a justification for interpreting agency
19 authority expansively or for deferring to the
20 agency’s interpretation on the question of law.
21 Notwithstanding any other provision of law,
22 this subsection shall apply in any action for ju-
23 dicial review of agency action authorized under
24 any provision of law. No law may exempt any
25 such civil action from the application of this

1 section except by specific reference to this sec-
2 tion”; and

3 (3) by striking “The reviewing court shall—”

4 and inserting the following:

5 “(b) The reviewing court shall—”.

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