

105TH CONGRESS
1ST SESSION

S. 1166

To prevent Federal agencies from pursuing policies of unjustifiable non-acquiescence in, and relitigation of, precedents established in the Federal judicial circuits.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 1997

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits.

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 “Federal Agency Com-
5 pliance Act”.

1 **SEC. 2. PROHIBITING INTRACIRCUIT AGENCY NON-**
 2 **ACQUIESCENCE IN APPELLATE PRECEDENT.**

3 (a) IN GENERAL.—Chapter 7 of title 5, United
 4 States Code, is amended by adding at the end the follow-
 5 ing:

6 **“§ 707. Adherence to court of appeals precedent**

7 “(a) Except as provided in subsection (b), an agency
 8 (as defined in section 701(b)(1) of this title) shall, in ad-
 9 ministering a statute, rule, regulation, program, or policy
 10 within a judicial circuit, adhere to the existing precedent
 11 respecting the interpretation and application of such stat-
 12 ute, rule, regulation, program, or policy, as established by
 13 the decisions of the United States court of appeals for that
 14 circuit.

15 “(b) An agency is not precluded under subsection (a)
 16 from taking a position, either in administration or litiga-
 17 tion, that is at variance with precedent established by a
 18 United States court of appeals if—

19 “(1) it is not certain whether the administra-
 20 tion of the statute, rule, regulation, program, or pol-
 21 icy will be subject to review by the court of appeals
 22 that established that precedent or a court of appeals
 23 for another circuit;

24 “(2) the Government did not seek further re-
 25 view of the case in which that precedent was first es-

1 tablished, in that court of appeals or the United
2 States Supreme Court, because—

3 “(A) neither the United States nor any
4 agency or officer thereof was a party to the
5 case; or

6 “(B) the decision establishing that prece-
7 dent was otherwise substantially favorable to
8 the Government; or

9 “(3) it is reasonable to question the continued
10 validity of that precedent in light of a subsequent
11 decision of that court of appeals or the United
12 States Supreme Court, a subsequent change in any
13 pertinent statute or regulation, or any other subse-
14 quent change in the public policy or circumstances
15 on which that precedent was based.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 7 of title 5, United States
18 Code, is amended by adding at the end of following new
19 item:

“707. Adherence to court of appeals precedent.”.

20 **SEC. 3. PREVENTING UNNECESSARY AGENCY RELITIGA-**
21 **TION IN MULTIPLE CIRCUITS.**

22 (a) IN GENERAL.—Chapter 7 of title 5, United
23 States Code, as amended by section 2(a), is amended by
24 adding at the end the following:

1 **“§ 708. Supervision of litigation; limiting unnecessary**
2 **relitigation of legal issues**

3 “(a) In supervising the conduct of litigation, the offi-
4 cers of any agency of the United States authorized to con-
5 duct litigation, including the Department of Justice acting
6 under sections 516 and 519 of title 28 shall ensure that
7 the initiation, defense, and continuation of proceedings in
8 the courts of the United States within, or subject to the
9 jurisdiction of, a particular judicial circuit avoids unneces-
10 sarily repetitive litigation on questions of law already con-
11 sistently resolved against the position of the United
12 States, or an agency or officer thereof, in precedents es-
13 tablished by the United States courts of appeals for 3 or
14 more other judicial circuits.

15 “(b) Decisions on whether to initiate, defend, or con-
16 tinue litigation for purposes of subsection (a) shall take
17 into account, among other relevant factors, the following:

18 “(1) The effect of intervening changes in perti-
19 nent law or the public policy or circumstances on
20 which the established precedents were based.

21 “(2) Subsequent decisions of the United States
22 Supreme Court or the courts of appeals that pre-
23 viously decided the relevant question of law.

24 “(3) The extent to which that question of law
25 was fully and adequately litigated in the cases in
26 which the precedents were established.

1 “(4) The need to conserve judicial and other
2 parties’ resources.

3 “(c) The Attorney General shall report annually to
4 the Committees on the Judiciary of the Senate and the
5 House of Representatives on the efforts of the Department
6 of Justice and other agencies to comply with subsection
7 (a).

8 “(d) A decision on whether to initiate, defend, or con-
9 tinue litigation is not subject to review in a court, by man-
10 damus or otherwise, on the grounds that the decision vio-
11 lates subsection (a).”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of chapter 7 of title 5, United States
14 Code, as amended by section 2(b), is amended by adding
15 at the end of following new item:

“708. Supervision of litigation; limiting unnecessary relitigation of legal issues.”.

