

106TH CONGRESS  
1ST SESSION

# S. 932

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 30, 1999

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

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## A BILL

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

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. PROHIBITING INTRACIRCUIT AGENCY NON-**  
4 **ACQUIESCENCE IN APPELLATE PRECEDENT.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Federal Bureaucracy Accountability Act of 1999”.

7 (b) IN GENERAL.—Chapter 7 of title 5, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

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

2 “(a) Except as provided in subsection (b), an agency  
3 (as defined in section 701(b)(1) of this title) shall in civil  
4 cases, in administering a statute, rule, regulation, pro-  
5 gram, or policy within a judicial circuit, adhere to the ex-  
6 isting precedent respecting the interpretation and applica-  
7 tion of such statute, rule, regulation, program, or policy,  
8 as established by the decisions of the United States court  
9 of appeals for that circuit. All officers and employees of  
10 an agency, including administrative law judges, shall ad-  
11 here to such precedent.

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

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

21 “(2) the Government did not seek further re-  
22 view of the case in which that precedent was first es-  
23 tablished, in that court of appeals or the United  
24 States Supreme Court, because—

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

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

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

14          (c) CLERICAL AMENDMENT.—The table of sections  
15          for chapter 7 of title 5, United States Code, is amended  
16          by adding at the end the following new item:

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

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