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105TH CONGRESS
2D SESSION

H. R. 1544

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1998
Received; read twice and referred to the Committee on the Judiciary

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Agency Compliance Act''.

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

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

''§ 707. Adherence to court of appeals precedent

''(a) Except as provided in subsection (b), an agency (as defined in section 701(b)(1) of this title) shall, in administering a statute, rule, regulation, program, or policy within a judicial circuit, adhere to the existing precedent respecting the interpretation and application of such statute, rule, regulation, program, or policy, as established by the decisions of the United States court of appeals for that circuit. All officers and employees of an agency, including administrative law judges, shall adhere to such precedent.

''(b) An agency is not precluded under subsection (a) from taking a position, either in administration or litigation, that is at variance with precedent established by a United States court of appeals if—

''(1) it is not certain whether the administration of the statute, rule, regulation, program, or policy will be subject to review by the court of appeals

that established that precedent or a court of appeals for another circuit;

"(2) the Government did not seek further review of the case in which that precedent was first established, in that court of appeals or the United States Supreme Court, because neither the United States nor any agency or officer thereof was a party to the case or because the decision establishing that precedent was otherwise substantially favorable to the Government; or

"(3) it is reasonable to question the continued validity of that precedent in light of a subsequent decision of that court of appeals or the United States Supreme Court, a subsequent change in any pertinent statute or regulation, or any other subsequent change in the public policy or circumstances on which that precedent was based.".

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

"707. Adherence to court of appeals precedent.".

SEC. 3. PREVENTING UNNECESSARY AGENCY RELITIGATION IN MULTIPLE CIRCUITS.

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

"§ 708. Supervision of litigation; limiting unnecessary relitigation of legal issues

''(a) In supervising the conduct of litigation, the officers of any agency of the United States authorized to conduct litigation, including the Department of Justice acting under sections 516 and 519 of title 28, United States Code, shall ensure that the initiation, defense, and continuation of proceedings in the courts of the United States within, or subject to the jurisdiction of, a particular judicial circuit avoids unnecessarily repetitive litigation on questions of law already consistently resolved against the position of the United States, or an agency or officer thereof, in precedents established by the United States courts of appeals for 3 or more other judicial circuits.

''(b) Decisions on whether to initiate, defend, or continue litigation for purposes of subsection (a) shall take into account, among other relevant factors, the following:

''(1) The effect of intervening changes in pertinent law or the public policy or circumstances on which the established precedents were based.

"(2) Subsequent decisions of the United States Supreme Court or the courts of appeals that previously decided the relevant question of law.

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

"(4) The need to conserve judicial and other parties' resources.

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

"(d) A decision on whether to initiate, defend, or continue litigation is not subject to review in a court, by mandamus or otherwise, on the grounds that the decision violates subsection (a).".

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

"708. Supervision of litigation; limiting unnecessary relitigation of legal issues.".

Passed the House of Representatives February 25, 1998.

Attest: ROBIN H. CARLE,

Clerk.