

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1544

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1998

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Agency Com-  
3 pliance Act”.

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

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

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

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

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

23 “(1) it is not certain whether the administra-  
24 tion of the statute, rule, regulation, program, or pol-  
25 icy will be subject to review by the court of appeals

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

3 “(2) the Government did not seek further re-  
4 view of the case in which that precedent was first es-  
5 tablished, in that court of appeals or the United  
6 States Supreme Court, because neither the United  
7 States nor any agency or officer thereof was a party  
8 to the case or because the decision establishing that  
9 precedent was otherwise substantially favorable to  
10 the Government; or

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

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

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

1 **SEC. 3. PREVENTING UNNECESSARY AGENCY RELITIGA-**  
2 **TION IN MULTIPLE CIRCUITS.**

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

6 **“§ 708. Supervision of litigation; limiting unnecessary**  
7 **relitigation of legal issues**

8 “(a) In supervising the conduct of litigation, the offi-  
9 cers of any agency of the United States authorized to con-  
10 duct litigation, including the Department of Justice acting  
11 under sections 516 and 519 of title 28, United States  
12 Code, shall ensure that the initiation, defense, and con-  
13 tinuation of proceedings in the courts of the United States  
14 within, or subject to the jurisdiction of, a particular judi-  
15 cial circuit avoids unnecessarily repetitive litigation on  
16 questions of law already consistently resolved against the  
17 position of the United States, or an agency or officer  
18 thereof, in precedents established by the United States  
19 courts of appeals for 3 or more other judicial circuits.

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

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

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

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

7           “(4) The need to conserve judicial and other  
8           parties’ resources.

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

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

18          (b) CLERICAL AMENDMENT.—The table of sections  
19          at the beginning of chapter 7 of title 5, United States  
20          Code, as amended by section 2(b), is amended by adding  
21          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.*