

105TH CONGRESS
2D SESSION

S. 2641

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 20 (legislative day, OCTOBER 2), 1998

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 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-AC-**
4 **QUIESCENCE IN APPELLATE PRECEDENT.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Federal Agency Compliance Act”.

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

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.”.

○