S. 909

To amend title 5, United States Code, with respect to the judicial review of agency interpretations of statutory and regulatory provisions.

IN THE SENATE OF THE UNITED STATES
MARCH 27, 2019
Mr. Sasse (for himself, Mr. Grassley, Mr. Lankford, Mr. Tillis, Mr. Hawley, Mr. Crapo, Mr. Cornyn, Mr. Lee, Mr. Rounds, and Mr. Inhofe) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL
To amend title 5, United States Code, with respect to the judicial review of agency interpretations of statutory and regulatory provisions.

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 “Separation of Powers
5 Restoration Act”.
6 SEC. 2. JUDICIAL REVIEW OF STATUTORY AND REGU-
7 LATORY INTERPRETATIONS.
8 Section 706 of title 5, United States Code, is amend-
9 ed—
(1) by striking “To the extent necessary” and inserting “(a) To the extent necessary”; 

(2) in subsection (a), as so designated—

(A) by striking “decide all relevant questions of law, interpret constitutional and statutory provisions, and”; and

(B) by inserting after “of the terms of an agency action” the following: “and decide de novo all relevant questions of law, including the interpretation of constitutional and statutory provisions, and rules made by agencies. If the reviewing court determines that a statutory or regulatory provision relevant to its decision contains a gap or ambiguity, the court shall not interpret that gap or ambiguity as an implicit delegation to the agency of legislative rule making authority and shall not rely on the gap or ambiguity as a justification for interpreting agency authority expansively or for deferring to the agency’s interpretation on the question of law. Notwithstanding any other provision of law, this subsection shall apply in any action for judicial review of agency action authorized under any provision of law. No law may exempt any such civil action from the application of this
section except by specific reference to this section”; and

(3) by striking “The reviewing court shall—” and inserting the following:

“(b) The reviewing court shall—”.

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