

106TH CONGRESS  
1ST SESSION

# H. R. 1924

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 HOUSE OF REPRESENTATIVES

MAY 25, 1999

Mr. GEKAS introduced the following bill; which was 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. SHORT TITLE.**

4 This Act may be cited as the “Federal Agency Com-  
5 pliance Act”.

1 **SEC. 2. PROHIBITING AGENCY NON-ACQUIESCENCE IN AP-**  
2 **PELLATE PRECEDENT.**

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

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

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

17 “(b) An agency is not precluded under subsection (a)  
18 from taking a position, either in an administrative pro-  
19 ceeding or in litigation, that is at variance with precedent  
20 established by a United States court of appeals if—

21 “(1) it is not certain whether the administra-  
22 tion of the statute, rule, regulation, program, or pol-  
23 icy will be subject to review exclusively by the court  
24 of appeals that established that precedent or a court  
25 of appeals for another circuit;

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

5           “(A) neither the United States nor any  
6 agency or officer thereof was a party to the  
7 case; or

8           “(B) the decision establishing that prece-  
9 dent 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 for chapter 7 of title 5, United States Code, is amended  
20 by adding at the end the following new item:

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

21 **SEC. 3. AVOIDING UNNECESSARILY REPETITIVE LITIGA-**  
22 **TION.**

23           (a) IN GENERAL.—Chapter 7 of title 5, United  
24 States Code, is amended by adding at the end the fol-  
25 lowing:

1 **“§ 708. Avoiding unnecessarily repetitive litigation**

2        “In supervising the conduct of civil litigation, the offi-  
3 cers of any agency of the United States authorized to con-  
4 duct litigation, including the Department of Justice acting  
5 under sections 516 and 519 of title 28, United States  
6 Code, should seek to ensure that the initiation, defense,  
7 and continuation of proceedings in the courts of the  
8 United States, within, or subject to the jurisdiction of, a  
9 particular judicial circuit, avoids unnecessarily repetitive  
10 litigation on questions of law already consistently resolved  
11 against the United States in 3 or more circuits.”

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

“708. Avoiding unnecessarily repetitive litigation.”.

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