

SUNDRY MESSAGES FROM THE
PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

FEDERAL AGENCY COMPLIANCE
ACT

The committee resumed its sitting.

Mr. GEKAS. Madam Chairman, I yield such time as he might consume to the gentleman from Kentucky (Mr. BUNNING).

Mr. BUNNING. Madam Chairman, I thank the gentleman from Pennsylvania for yielding, and I thank him for the opportunity to comment on H.R. 1544, the Federal Agency Compliance Act.

Madam Chairman, I appreciate the committee's effort to prevent agencies from refusing to follow controlling precedents of the United States Courts of Appeal in the course of program administration. I fully agree that Federal agencies, including the Social Security Administration, must follow circuit court decisions. However, I do not support legislation that compromises the fair and impartial treatment of Social Security claimants.

This bill seeks to allow administrative law judges and other adjudicators the latitude to apply their own interpretation of circuit court decisions. As chairman of the Subcommittee on Social Security, I have grave concerns about the impact this legislation would have on Social Security disability decision-making and particularly on the Americans' public right to unbiased treatment.

Currently, when the U.S. Circuit Court of Appeals publishes a decision that conflicts with the Social Security Administration policy, Social Security can either, one, issue an acquiescent ruling to apply the case in that circuit or, two, change its policies to apply the case nationwide or seek Supreme Court review.

SSA's acquiescent ruling process is the means by which SSA provides all decision makers with directions on how to uniformly and fairly apply courts' decisions which conflicts with SSA's nationwide policy. SSA takes over 2 million new disability claims a year and processes over 600,000 disability appeals. SSA has over 20,000 decision makers. H.R. 1544 would authorize SSA, more than 20,000 adjudicators, to apply their own individual interpretation of a circuit court decision.

As we all know, court decisions are often subject to various interpretations. If all 20,000 SSA adjudicators were permitted to apply their own interpretations of court decisions, different standards would be applied to individuals with similar circumstances across this Nation.

I am not in favor of SSA adjudicators applying conflicting standards. Not

only does H.R. 1544 jeopardize the right of individuals seeking SSA benefit, the bill also undermines the statutory authority of the Commissioner of SSA to establish rules and policies. In order to insure that similarly situated individuals are treated in a consistent manner, SSA would have to devote additional resources to monitor its adjudication process.

Total SSA resources are limited. Any shift in resources to account for new work loads would likely have untold effects. Those untold effects could include delays in retirement claims, claims filed by widows or claims filed by severely disabled individuals waiting for their disability decisions. SSA's disability work load is of such staggering proportion that any proposal that would have even the slightest impact on processing time delays must be carefully examined and deliberated by Congress.

The American public should not have to tolerate additional delays in the process that already takes too long. The American public should not be subjected to inconsistent and possible biased decision-making. The public deserves better.

We are all aware of the challenges facing the Social Security Trust Fund. CBO has stated that they cannot predict the budgetary impact of H.R. 1544. I say we cannot move forward until we know how this legislation will impact the long term solvency of the Social Security Trust Funds.

Therefore, I urge my colleagues to vote no on H.R. 1544, and I thank the gentleman from Pennsylvania (Mr. GEKAS) for the time.

Mr. GEKAS. Madam Chairman, having reserved some time, I now yield myself such time as I may consume. The gentleman from Kentucky has brought up some issues that require a response.

First of all, the Social Security Administration has told us in different ways repeatedly that they are willing to acquiesce and that they have changed their procedures and are turning towards a policy of acquiescence rather than the nonacquiescence which we seek to cure by this legislation. But even if they did, if they took a complete turn around and now are acquiescing in full, that does not make our legislation obsolete because this would carry to all agencies across the board where all of them would be bound by the circuit court and other court decisions.

So if the Social Security Administration itself says they are acquiescing, then opposition to this bill comes empty handed because all this does would be in effect codify what the Social Security Administration has asserted to us it is trying to do anyway. But in the meantime, while we pass this legislation, we are codifying their new system if they are acquiescing, while at the same time applying it to other agencies across the board where by we would know that the court opin-

ions would be respected and in which acquiescence would be a routine matter.

Another point which has to be made is that from the standpoint of the administrative judges, and the gentleman from New York (Mr. NADLER) first noted this very important aspect of what we are about here, the administrative law judges, in the first instance, are the first battleground. They, too, should have a cognizance that the precedents already set by the circuit court should apply to them as they deliberate on the adjudicative level within an agency on a particular matter.

So all of this helps the entire system of justice from the standpoint of the claimant, who makes the first claim would know that the chances of having to litigate and relitigate the claim that that individual is making for disability, for Social Security benefits, for Medicare, for land management questions, for labor questions, any kind of question that comes up before agencies would have the sweep of this law to help protect them against the cost. And the aggravation and the time involved in relitigation over and over again for a precedent that has already been set by the courts and should be adhered to in the first place, thereby saving all the time and energy and cost that would be involved in pursuing the case time and time again.

□ 1115

Madam Chairman, I reserve the balance of my time.

Mr. NADLER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I believe that, subject to the amendment I am going to offer in a few moments, as soon as the bill is open to amendments, that this is an excellent bill, a bill worthy of support, and, unfortunately, an unnecessary bill.

I say unfortunately because we should not have to do this. Agencies should not continue to deny benefits to people when the Circuit Court has said you are wrong in your interpretation of the law. That is not what Congress meant. Congress meant under these circumstances, whatever they may be, the person is entitled to Medicare or Social Security or disability or whatever the case may be.

But we know that, under administrations of both parties, this has happened. It has happened repeatedly, even recently; and we should protect people from the necessity and the taxpayers, too. Because when there is a relitigation of the same points, the taxpayers are paying the money on one side, the individual on the other; and this is wrong.

So I strongly support this bill; and I hope the majority, the distinguished chairman, will see his way clear to accepting the amendment so that we will have the votes to make sure that this bill is enacted into law.

Ms. JACKSON-LEE of Texas. Madam Chairman, I rise today in opposition to H.R. 1544, the Federal Agency Compliance Act. My primary point of contention with this bill, is that this legislation could potentially cause drastic harm to our federal agencies' ability to enforce and protect many of our essential labor, environmental and civil rights laws. The fact of the matter is that our federal agencies already have systematic procedures to determine which cases should be challenged in federal appellate court, and which should not. If we were to add another (unnecessary) set of criteria which restricts when our federal agencies can seek appellate review, ultimately, we will disadvantage these agencies' ability to protect some of our most fundamental civil rights.

Actually, many federal agencies rely upon the Department of Justice to be their "arm of litigation", because any desired appeal by a federal agency to an appellate court must be approved by the Solicitor General's office. Additionally, a court can hold these agencies to be financially responsible for their opposing parties' attorney's fees if their legal challenge is deemed to be "substantially unjustified". The fact remains that there is little incentive for federal agencies to bring frivolous challenges to standing circuit court precedents. Critics, however, respond to this evidence by saying, then why don't these federal agencies choose to comply with the various precedential decisions in the many federal judicial circuits?

Even though, I agree wholeheartedly, with the spirit of this concern, I can not in good conscience, agree with its substance. The Social Security Administration, widely considered to be the main target of this legislation, has already enacted a new regulation that in effect is a model of H.R. 1544, so why is it a necessity to potentially endanger our collective civil rights? Furthermore, what sense does it make to pass a law to restrict circuit court appeals by federal agencies, which then requires these same federal agencies to challenge potential exemptions to this new statutory rule in federal court? What is the added value? If an agency feels that it meets the standards for exemption and files an appeal in federal circuit court, a federal court, again, is the only available source of clarification and dispute resolution.

If this bill's intent is simply to prevent the re-litigation of certain claims that affect individual grievances against federal agencies such as Health and Human Services or the Social Security Administration it should do that, and only that. However, as is clear from these many impassioned polemics against this bill, H.R. 1544 ends up doing far more. At least, the supporters of this bill should be able to say that even though this proposed legislation may very well endanger some of our most sacred Constitutionally-protected rights, it is motivated by an overwhelmingly meritorious reason. Unfortunately, neither I, nor anyone else that has questions about the necessity of this bill, has been able to find evidence of a desperate need for this legislation.

I believe that my colleagues simply have failed to ask and answer a series of important questions in their haste to pass this bill. For example, what will the immediate effect of H.R. 1544 probably be? If a federal agency is going to acquiesce according to the letter of this bill, it must adopt differing policies for the many judicial circuits which have made rulings about a particular issue. Under these rules, it

is highly unlikely that a federal agency could ever have a singular, national regulatory policy again. In the bureaucratic maelstrom that is our federal government, is further complication of regulatory policies either prudent, or pragmatic? Ultimately, how is it different for an aggrieved party? If a circuit court rules unfavorably to one claimant's position, all similarly situated parties will be judged (in that particular judicial circuit) by that same standard. If we agree that aggrieved parties are too often unaware, if not financially unable, to pursue any further review of their claim in a court of law, how does this new statute help their plight?

And finally, the Supreme Court often has very good reasons for granting or not granting certiorari in matters involving controversial issues of law. Why enact a law that would require a multi-faceted standard for relief among the many judicial circuits, if we do not really know which is the appropriate standard of review? Often it takes several years for a rule of law to mature completely or even be overturned, so why should we force all claimants in a judicial district to experience the far too erratic "growing pains" of our federal judicial process.

For all of these reasons, I would implore my colleagues to vote against H.R. 1544, there must be a better way to solve this problem. A better way, a more efficient way than jeopardizing our most fundamental civil rights and liberties.

Mr. NADLER. Madam Chairman, I yield back the balance of my time.

Mr. GEKAS. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

The committee amendment in the nature of a substitute printed in the bill shall be considered by section as an original bill for the purpose of amendment, and pursuant to the rule each section is considered read.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he or she has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Mr. GEKAS. Madam Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The text of the committee amendment in the nature of a substitute is as follows:

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 NONACQUIESCENCE 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."

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA.

Mr. COX of California. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COX of California:

On page 5, line 16, strike the final period and insert "of section 707 or 708."

Mr. COX of California. Madam Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS), the chairman of the committee, for discussing with me my concerns about this bill and for his good work in bringing this bill to the floor.

Madam Chairman, the Federal Agency Compliance Act, H.R. 1544, is intended to do two things: first, to ensure that the executive branch obeys the law, a good purpose; second, to discourage the relitigation of settled questions and to avoid the needless expense for both the government and private parties of unnecessary and wasteful litigation.

As one who has worked long and hard on civil justice reform, I could not agree with the gentleman more about the importance of reducing needless, wasteful and expensive litigation, both for the benefit of the parties and for the taxpayers, who, in the case of government litigation, of course, are footing the bill.

The Federal Agency Compliance Act contains essentially two parts, one dealing with the relitigation of decisions of the courts within a judicial circuit and another dealing with the relitigation of questions that have been decided in one circuit but perhaps not in all others, or that have been decided in others but where multi-circuit litigation is undertaken to address the question anew.

In the inter-circuit, the multi-circuit part of the bill, there is the following sentence: "A decision on whether to initiate, defend or continue litigation is not subject to a review in the court by mandamus or otherwise on the grounds that the decision violates subsection A"

In other words, there will not be collateral litigation, a new cause of action created, by virtue of the alleged violation of section 708, the decision by the government whether to continue to defend or to initiate a lawsuit.

That is a very good part of this bill. It relies upon not only the good faith of

the executive branch in making decisions whether or not to litigate inter-circuit but also upon the notion that it is the responsibility not of private litigants but of the government to take care, and the President is head of the executive branch of government, to take care that the laws are faithfully executed. That is the executive branch's constitutional responsibility.

The prohibition against that kind of wasteful, needless collateral litigation in this bill ought to apply not to just half of it but all of it.

So my amendment makes clear that the sentence that I just read, that decisions whether to litigate or continue litigation are not subject to review, not subject to additional collateral litigation, that will apply to both the inter- and intra-circuit parts of this legislation under my amendment.

As a consequence, I offer it for the consideration of the Members. I believe that, absent this provision, we would do two things that we ought not to do. Number one, we would unnecessarily and deeply intrude upon the constitutional prerogative of the executive branch to take care that the laws are faithfully executed; and, number two, we would be actually fomenting additional wasteful, expensive litigation.

It is the very purpose of this bill to do just the opposite. Reading from the purpose and summary of the bill: "Unnecessary litigation is a needless expense, for both the government and private parties."

I could not agree more. Hence, my amendment, and I urge my colleagues to consider it.

Madam Chairman, I should add, having just discussed this for the first time with the chairman and ranking member, I understand their reticence in accepting it, although they have been gracious in discussing the merits with me and understanding the purpose by which I offer it now.

Because there is similar legislation pending in the other body, because I expect that we have an opportunity to resolve this during conference, I will not be disheartened if my amendment is defeated today, but I do look forward to working with the chairman and the ranking member as well as our colleagues in the other body to see if we can improve the bill in this respect.

Mr. GEKAS. Madam Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Madam Chairman, I thank the gentleman for yielding.

Madam Chairman, I would respectfully request that the gentleman seek unanimous consent to withdraw the amendment, only on the basis that he has already asserted, namely, he has brought a good point to our attention. In fact, this point may have been raised subliminally during our testimony, and, therefore, it does require our attention.

But because it has come up at this juncture and we do not know the full

consequences of accepting the amendment or even debating it, I would ask the gentleman to ask unanimous consent to withdraw his amendment, with the promise of the chairman and others that we are going to duly consider it in the pathway of this legislation all the way to the end.

Mr. COX of California. Madam Chairman, reclaiming my time, I appreciate the gesture that the chairman has made; and, inasmuch as I have not been able to alert my colleagues to my concern about this, I myself just discussed this with lawyers in recent days and in our leadership meeting yesterday, Madam Chairman, I would accept the chairman's generous offer.

I will note that because I will just now, as the gentleman suggested, ask unanimous consent to withdraw the amendment, that because the underlying bill lacks this amendment, I will not be able to support it today.

Madam Chairman, I ask unanimous consent that my amendment be withdrawn.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT OFFERED BY MR. NADLER

Mr. NADLER. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NADLER: Page 5, insert after line 20 the following:

SEC. 4. APPLICATION.

The amendments made by section 2 shall apply only with respect to agency actions which involve a Federal health benefit programs, a Federal program under which cash is paid based on need or insurance benefits are paid, or the Internal Revenue Code of 1986 and the amendments made by section 3 shall apply on with respect to proceedings in courts which involve a Federal health benefit programs, a Federal program under which cash is paid based on need or insurance benefits are paid, or the Internal Revenue Code of 1986.

Page 3, line 4 and beginning in line 10, strike "Government" and insert "agency".

Page 4, beginning in line 7, strike "neither the United States nor any agency or officer thereof was," and insert "the agency was not".

Page 3, line 21, strike "of following" and insert "the following".

Page 5, line 20, strike "of following" and insert "the following".

Page 4, line 19, insert before the period the following: "unless the precedents in a majority of other United States courts of appeals supports the position of the agency".

Mr. NADLER (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. NADLER. Madam Chairman, I am offering this amendment today, which would narrow the scope of this bill, to those areas where the record of abuse is clear, to those areas which in fact are the areas that motivated the introduction of the development of this bill over these many years.

Those areas are the areas of benefits and where the public actually deals with the government on a daily basis, the areas of health care, Medicare benefits, the areas of Social Security and disability benefits, the area of dealing with the Internal Revenue Service.

In those areas I think we clearly need a bill such as this to say to the agencies, to the Internal Revenue Service, to the Health Care Financing Administration, to the Social Security Administration, that you may not deny a benefit, you may not harass a taxpayer by insisting on the interpretation of the law denying the benefit or imposing the tax when the Court of Appeals has said you are wrong. You should not require the taxpayer or the person seeking Social Security or disability benefits to relitigate that on an individual basis.

That is what this bill is about. But I think it is a mistake to apply the bill more broadly in other areas, because there may be unforeseen effects, and it would really require more congressional study to determine the need and the implications.

For example, independent agencies such as the Securities and Exchange Commission play no role in government litigation and by virtue of their independence, this bill, without the amendment, might saddle them with rules without bringing important issues to the court's attention. The majority agrees there would be a mistake and has a manager's amendment to solve this problem, this particular problem. But we really do not know how many additional such issues there may be, and I think it would be a mistake to pass an overly broad bill where no compelling need has been demonstrated. The compelling need is with regard to benefits and with regard to the benefits that may be denied to people who need them and with regard to taxpayers dealing with the Internal Revenue Service.

That is certainly 95 percent of the problem. It is what brought this bill here. It is the subject matter of the hearings that we held to determine the need for this bill, and I say let us fix the problem at hand and do it right.

I will say one other thing on this amendment. Without this amendment, there will be very substantial opposition to this bill from the labor movement, opposition, I believe, not to be correct but, nonetheless, very substantial opposition, which will probably be more than sufficient opposition to prevent this bill from being enacted into law, especially given the fact that the administration has already told us they do not like the bill at all, with or without the amendment.

So we have the problem of getting this bill into law to deal with the problem that we know needs dealing with in the face of very substantial opposition that would be eliminated by this amendment.

Since this amendment would not eliminate any of the solutions to the

problems the bill was designed to deal with, I urge the majority, I urge my friend, the gentleman from Pennsylvania (Mr. GEKAS) to accept the amendment so we can enact the bill into law and deal with the problems it is intended to deal with.

That is the argument. Let us deal with the problems we know are out there and let us do it in a way that is realistic in terms of being able to enact the bill into law so we have an accomplishment and so that we help the people that have to deal with the IRS and help the people that need benefits from Medicare, Medicaid, Social Security and disability and solve the problems and not simply have a debate on the floor of the House but have a real bill that helps real people.

So I urge all Members to accept this amendment.

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Mr. GEKAS. Madam Chairman, I rise in opposition to the amendment.

Madam Chairman, when we undertook this measure from the start, most of us were convinced of the egregious problems that have existed for a long period of time under both Republican and Democrat administrations. What charged us into final action on this type of legislation was the action of the Judicial Conference.

The Judicial Conference, in recommending this proceeding to us, this process to us, made no distinction among agencies. It did not contemplate any other visitation of these benefits on this agency or that agency or that type of claimant or this type of claimant, but rather, noted a serious problem in the enforcement of our laws, and said, in effect, to us, "Please, enact legislation that would cause the administrative agencies to acquiesce in the precedents that the court system set." They even felt it was inadequate for themselves to rely on the sanctions that they are able to impose and still preferred that we enact legislation to do so.

But here is the key. Here is the key. The gentleman from Massachusetts (Mr. FRANK) and I, on a radio symposium, touched upon this matter. Not only do we feel that it should apply across the board to all agencies, but we maintain that the language in the bill allows anyone who is disaffected with a problem of nonacquiescence or acquiescence, like the labor people to which the gentleman from New York alluded, the language in our bill provides for loopholes, as it were, which we crafted purposely; to say that if some agency, like whatever labor is saying should be exempted, or the Securities and Exchange Commission, which others say has to be exempted, the loopholes that we apply are the exceptions to the mandatory adherence to court of appeals precedent.

And we say, for instance, "An agency is not precluded under section A from taking a position, either in administration or litigation, that is at variance

with precedent established by United States court of appeals if," and then we cite three provisions which give that option to whoever the gentleman from New York (Mr. NADLER) is alluding to would feel threatened by a general law that asks for acquiescence in law.

Therefore, we have envisioned the moment that would come that some agency would feel that it would be threatened in the execution of its duties or the administration of its responsibilities by acquiescence with court decisions. And if it comes to that irony, that they are worried about acquiescing to court precedent, which is a wild thought, even in that circumstance we give them the option to opt out if they can demonstrate the rationale that is embodied in our own legislation, the one to which the gentleman from New York has acquiesced as necessary in the new processes that we want to see established among the agencies.

First, I would like to see all citizens be able to approach every single agency in the Nation, every single one, with equal justice available to all. That means no exceptions to acquiescence in the law. And in those egregious circumstances, which I cannot even envision, that acquiescence would be a terrible thing to follow the law, how terrible it would be to have to follow the law, in those cases the provisions in our bill which have envisioned that kind of circumstance allow an option out.

But we ought to start with general application of the recommendations of the Judicial Conference that all the agencies should adhere to the law, should obey the law, like every citizen must. And we start from there, and then back away only if, under our bill, those exceptions can be proved.

Mr. FRANK of Massachusetts. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise to disagree with the gentleman from Pennsylvania, but first, to praise him. This bill first came to my attention when I chaired the relevant subcommittee several Congresses ago, and I began to move on it. I want to pay tribute to the gentleman from Pennsylvania, because it is his determination, as chairman of the subcommittee, that got us to this point. I think there is need for legislation. He showed a great deal of diligence and brought it forward.

But I believe in the interests of getting legislation we ought to be adopting the amendment. I will acknowledge that when I brought the bill out it looked like this, when we had it in committee, and generated a lot of opposition. At the time the opposition was so strong, and that was why it did not get anywhere. I believe we will run into the same wall of resistance if we do not make some changes.

I originally got interested in this subject as the result of unfair decisions by which disabled people were denied disability benefits, in conflict with

court opinions. That was something that began under the Reagan administration, and I must acknowledge that it, sadly, continued under the Clinton administration. I felt conscience bound to continue to support this bill, because I had originally dealt with it when it was a Republican administration, and it seems to me the same rules ought to apply to a Democratic administration.

But I should also acknowledge that virtually all of the discussion and evidence I have seen on this bill, having been through hearings on it and been through debates, had to do with the denial of benefits, most particularly through the Social Security Administration, where it seemed to me the pattern had been the most egregious.

While the Social Security Administration has from time to time, and the various administrations, promised us they will stop doing this, I do not believe them. And since we do not have a Secretary General of the U.N. to go get them to sign an agreement, I think legislation is necessary.

So with regard to people who should be beneficiaries of subsistence dollars, yes, one cannot allow the nonacquiescence policy, because it does damage to individuals. But I must acknowledge that in all of the hearings I have been at, the discussion focused on benefits.

At the most recent full committee markup some other agencies finally awakened to this. Maybe they had not taken it seriously before. It is to the credit of the gentleman from Pennsylvania that his diligence brought the bill forward and made them focus on it.

The Securities and Exchange Commission and some other agencies expressed some problems with the bill. I agree, we have tried to deal with them. The gentleman from Pennsylvania has outlined some ways to do that, but I do not think we have done it fully yet.

I do believe very strongly that both in terms of the information that we have had about the bill and the impact, there is a difference between nonacquiescence when it denies beneficiaries who are desperately in need of the benefits they should get, and the questions involved the Securities and Exchange Commission, the National Labor Relations Board, where we are not talking about anything quite so desperate, and where there is a legitimate right to relitigate.

The gentleman from Pennsylvania acknowledges this. He has from the beginning. Yes, we do not think that once a certain number of circuit courts have decided something, that is it forever. Even the Supreme Court of the United States has been known to reverse itself and within a fairly short period of time. The dilemma for us is how do you work out a method of protecting fairness for individuals without preventing legitimate relitigation. That is part of our process.

I believe that there is a compromise between this amendment and the bill that can deal with it. I do not think we

have time to work this out now. I would hope if this amendment were adopted we might be able to revisit this before the bill finally went to conference.

But I can say this, if the bill goes forward as is, I believe it will be vetoed. It might be vetoed in any case, because this President, as his Republican predecessors, does not like the idea of Congress mandating that their agencies follow the law. It is more of an executive-legislative dispute than it is a partisan one.

The point I would make to my friend, the gentleman from Pennsylvania, who I honor for his work on this, is this: if we pass it in this form and it is vetoed, we cannot override. If we accept the amendment of my friend, the gentleman from New York, and leave open the possibility of working out some other method of dealing with the agency questions of a broader sort of litigation, the SEC and NLRB, then we will reach a point where we can override a veto.

But if the only thing we can get would be what the amendment would be limited by my friend gentleman's amendment, it would be an enormous accomplishment. Because I would remind everybody again, the impetus for this bill came from actions of the Social Security Administration. We are dealing here with people who are disabled. They are least able to relitigate, least able to hire a lawyer to get the benefit of a court opinion.

Where we are talking about litigants in the NLRB situation or the SEC situation, even if they have to go to court, they are better able to do it.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. FRANK) has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 1 additional minute.)

Mr. FRANK of Massachusetts. So, Madam Chairman, there is an urgency to providing this protection for the recipients and benefits, which is not the same as for more sophisticated, better financed litigants who were dealing with public policy in the field of labor law, securities law, et cetera.

I would hope the amendment would be adopted. I would hope to work with the gentleman. I must say I was almost surprised the bill came up too soon. I think one of the issues was that we had some time to fill. I was hoping we could have worked a little bit more on some amendments.

Faced with this choice now, I think it would be important for us to adopt the amendment because, otherwise, we run the risk of a nonoverrideable veto that would deny the people whose plight led us to get into this years ago, the beneficiaries of disability programs and others who were being hurt. I do not want to put their right to get the benefit of this good legislation at risk, and that is why I hope the amendment is adopted.

Mr. CONYERS. Madam Chairman, I move to strike the requisite number of words.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Madam Chairman, I rise in support of the amendment. I am delighted to participate in this debate with my friend, the gentleman from Pennsylvania (Mr. GEKAS), who I think has worked in a very good spirit to try to deal with a set of problems that were ones that we all agreed with.

I think the problem here, though, is that we have gone too far, that we move now to cover every agency, department, bureau. I think that might lead to some results that we would regret, especially without the Nadler amendment.

I am prepared to say now that, if the Nadler amendment is supported, that I will support the bill. But I want to remind the gentleman from Pennsylvania (Mr. GEKAS), who is one of the more senior members of the Committee on the Judiciary, that there have been dangerous legal precedents that, had this bill been law without the Nadler amendment, and there was a determination by the United States Government and the Department of Justice to go forward on the *Dredd Scott* case, which denied African American slaves and former slaves constitutional rights, or the *Plessy versus Ferguson* case, which upheld separate but legal facilities in the United States, or the *Korematsu versus United States* case, which gave court approval to the Japanese American internment during World War II, the agencies or the departments that would have gone to the Department of Justice to challenge these legal precedents would have been barred under the gentleman's proposal.

My view is that the gentleman did not and does not intend to do that, but the fact of the matter is this would be the result. Because of that, without Nadler, we cannot support Gekas.

The Administration is opposed to it, and I think correctly so. The Department of Justice is opposed to it; I think rightly so. I recall that one of our colleagues, the gentlewoman from Texas (Ms. JACKSON-LEE), in the committee pointed out how civil rights litigation might be impacted negatively with this kind of bar that the gentleman suggests here.

How would a legislative initiative of this kind limit the ability of Federal entities to address the encroachment of the judicial branch on civil liberties? The Department of Justice, in its Civil Rights Division, the Department of Health and Human Services, those would be her primary focus in this objection to the language in the gentleman's bill and the thrust of it.

The limitation of these agencies' ability to appeal seemingly unjust court decisions to the Supreme Court, in addition to their ability to create novel and ingenious ways of protecting the rights of citizens, is literally sacred.

□ 1145

That should be regulated only with the greatest amount of reluctance and the highest level of scrutiny.

And so we must do all we can to ensure the efficient and effective government, but not at the expense of civil liberties and civil rights.

Now, one of our colleagues that sponsored the version of this language I do not think is motivated as the author of the bill is on the House side, because the gentleman from Colorado, Senator BEN NIGHTHORSE CAMPBELL, made it perfectly clear one of his reasons for introducing this bill.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. CONYERS) has expired.

(By unanimous consent, Mr. CONYERS was allowed to proceed for 3 additional minutes.)

Mr. CONYERS. Madam Chairman, the author of the legislation on the other side in the other body telegraphed his intention of limiting the ability of the Bureau of Land Management to protect lands from grazing damage.

When that bureau recently proposed reform regulations on grazing permits, they were challenged by ranchers. After exhausting administrative remedies, the ranchers went to court. And after costly and lengthy litigation, the appellate court ruled in favor of the ranchers. However, with the non-acquiescence policy, the Bureau of Land Management could have refused to abide by this ruling each and every time the issue arises.

So I urge, for these reasons, that the Nadler amendment to this bill be accepted.

Ms. JACKSON-LEE of Texas. Madam Chairman, I rise today in support of the Frank-Nadler Amendment to H.R. 1544, the Federal Agency Compliance Act. My primary point of contention with the original H.R. 1544 bill, as I have expressed previously, is that it could potentially cause drastic harm to our federal agencies' ability to enforce and protect many of our essential labor, environmental and civil rights laws. However, the Frank-Nadler Amendment is a breath of fresh air to a legislative initiative that I once thought hopeless. This amendment would tailor H.R. 1544 in such a way that it would benefit those who need certain federal agencies to recognize the precedential justice that is handed down by our federal circuit courts, yet not harm the most fundamental civil rights of those who are completely disconnected from this entire process.

Since the initial authorship of this bill, I have been an advocate of limiting the scope of H.R. 1544 to only those agencies whose non-acquiescence has a detrimental effect on the claims of aggrieved parties, and finally we have a proposed amendment that seems to do that. Many people have tried to urge me that my concerns were unfounded, but the bottom line is why should we take so dangerous of a chance with something as important as our Constitutionally-granted rights? I can not think of a compelling reason why.

I know that this proposed threat to our collective civil rights was completely accidental. I

am confident that no one who is a supporter of H.R. 1544 wants to intentionally cripple the pursuit of justice in this country. No one would maliciously try to impede the protection of the discouraged, mistreated and abused that is so much a part of the responsibilities of the civil rights divisions of our many federal agencies. The initial purpose of H.R. 1544, to my knowledge, was to force the government bureaucracy to recognize the rights of those who are being unjustly treated in particular claims, because of the unwillingness of certain federal agencies to acquiesce to standing circuit court precedents across the country.

Obviously, this bill was created to protect those who are often unable to protect themselves, but how are we helping these people if we diminish the ability of other parts of our government to defend their rights to fair labor, a clean and safe environment, and a series of their most fundamental Constitutional rights. The answer is clear, we must amend H.R. 1544. For these reasons, I would ask my colleagues to please support the Frank-Nadler Amendment to H.R. 1544, and in turn, protect the sacred civil rights and liberties of the American people.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 172, noes 238, not voting 20, as follows:

[Roll No. 19]

AYES—172

Abercrombie	Filner	Manton	Rothman	Slaughter	Turner
Ackerman	Fox	Markey	Roybal-Allard	Snyder	Velazquez
Allen	Frank (MA)	Martinez	Rush	Spratt	Vento
Andrews	Frost	Mascara	Sabo	Stabenow	Visclosky
Baesler	Furse	McCarthy (MO)	Sanchez	Stark	Walsh
Baldacci	Gilman	McCarthy (NY)	Sanders	Stokes	Waters
Barcia	Green	McDermott	Sandlin	Strickland	Watt (NC)
Barrett (WI)	Gutierrez	McGovern	Sawyer	Stupak	Waxman
Becerra	Hall (OH)	McHale	Schumer	Tauscher	Wexler
Bentsen	Hamilton	McHugh	Scott	Thompson	Weyland
Berman	Harman	McIntyre	Serrano	Thurman	Wise
Blagojevich	Hastings (FL)	McKinney	Sherman	Tierney	Woolsey
Blumenauer	Hefner	McNulty	Skaggs	Torres	Wynn
Bonior	Hilliard	Meehan	Skelton	Towns	Yates
Borski	Hinchey	Meek (FL)			
Brown (CA)	Hinojosa	Meeks (NY)			
Brown (OH)	Holden	Menendez			
Cardin	Hooley	Millender-			
Carson	Hoyer	McDonald			
Clay	Jackson (IL)	Mink			
Clayton	Jackson-Lee	Moakley			
Clyburn	(TX)	Mollohan			
Conyers	Jefferson	Moran (VA)			
Coyne	Johnson (WI)	Morella			
Cummings	Johnson, E. B.	Murtha			
Danner	Kanjorski	Nadler			
Davis (IL)	Kaptur	Neal			
DeFazio	Kennedy (MA)	Oberstar			
DeGette	Kennedy (RI)	Obey			
Delahunt	Kildee	Olver			
Deutsch	Kilpatrick	Ortiz			
Dicks	Kind (WI)	Owens			
Dingell	Kleczka	Pallone			
Dixon	Kucinich	Pascrell			
Doggett	LaFalce	Pastor			
Doyle	Lampson	Payne			
Edwards	Lantos	Petri			
Engel	Levin	Pomeroy			
Eshoo	Lewis (GA)	Price (NC)			
Etheridge	LoBiondo	Quinn			
Evans	Lofgren	Rahall			
Farr	Lowe	Rangel			
Fattah	Maloney (CT)	Reyes			
Fazio	Maloney (NY)	Rivers			
			Aderholt	Frelinghuysen	Packard
			Archer	Gallegly	Pappas
			Armey	Ganske	Parker
			Bachus	Gekas	Paul
			Baker	Gibbons	Pease
			Ballenger	Gilchrest	Peterson (MN)
			Barr	Gillmor	Peterson (PA)
			Barrett (NE)	Goode	Pickering
			Bartlett	Goodlatte	Pickett
			Barton	Goodling	Pitts
			Bass	Gordon	Pombo
			Bateman	Goss	Porter
			Bereuter	Graham	Portman
			Berry	Granger	Pryce (OH)
			Bilbray	Greenwood	Radanovich
			Bilirakis	Gutknecht	Ramstad
			Bishop	Hall (TX)	Regula
			Bliley	Hansen	Riley
			Blunt	Hastert	Roemer
			Boehlert	Hastings (WA)	Rogan
			Boehner	Hayworth	Rogers
			Bonilla	Hefley	Rohrabacher
			Boswell	Hergert	Ros-Lehtinen
			Boyd	Hill	Roukema
			Brady	Hilleary	Royce
			Bryant	Hobson	Ryun
			Bunning	Hoekstra	Salmon
			Burr	Horn	Sanford
			Burton	Hostettler	Saxton
			Buyer	Houghton	Scarborough
			Callahan	Hulshof	Schaefer, Dan
			Calvert	Hunter	Schaffer, Bob
			Camp	Hutchinson	Sensenbrenner
			Campbell	Hyde	Sessions
			Canady	Inglis	Shadegg
			Cannon	Istook	Shaw
			Castle	Jenkins	Shays
			Chabot	John	Shimkus
			Chambliss	Johnson (CT)	Shuster
			Chenoweth	Johnson, Sam	Sisisky
			Christensen	Jones	Skeen
			Clement	Kasich	Smith (MI)
			Coble	Kelly	Smith (NJ)
			Coburn	Kim	Smith (OR)
			Collins	King (NY)	Smith (TX)
			Combest	Kingston	Smith, Adam
			Condit	Klug	Smith, Linda
			Cook	Knollenberg	Snowbarger
			Cooksey	Kolbe	Solomon
			Costello	LaHood	Souder
			Cox	Largent	Spence
			Cramer	Latham	Stearns
			Crane	LaTourette	Stenholm
			Crapo	Lazio	Stump
			Cubin	Leach	Sununu
			Cunningham	Lewis (CA)	Talent
			Davis (FL)	Linder	Tanner
			Davis (VA)	Lipinski	Tauzin
			Deal	Livingston	Taylor (MS)
			DeLay	Lucas	Taylor (NC)
			Diaz-Balart	Manzullo	Thomas
			Dickey	Matsui	Thornberry
			Dooley	McCollum	Thune
			Doolittle	McCrery	Tiahrt
			Dreier	McDade	Trafficant
			Duncan	McInnis	Upton
			Dunn	McIntosh	Wamp
			Ehlers	McKeon	Watkins
			Ehrlich	Metcalf	Watts (OK)
			Emerson	Miller (FL)	Weldon (FL)
			English	Minge	Weldon (PA)
			Ensign	Moran (KS)	Weller
			Everett	Myrick	White
			Ewing	Nethercutt	Whitfield
			Fawell	Neumann	Wicker
			Foley	Ney	Wolf
			Forbes	Northup	Young (AK)
			Fossella	Norwood	Young (FL)
			Fowler	Nussle	
			Franks (NJ)	Oxley	

NOT VOTING—20

Boucher	Kennelly	Pelosi
Brown (FL)	Klink	Poshard
DeLauro	Lewis (KY)	Redmond
Ford	Luther	Riggs
Cejdenson	Mica	Rodriguez
Gephardt	Miller (CA)	Schiff
Gonzalez	Paxon	

□ 1214

Mr. KASICH changed his vote from "aye" to "no."

Ms. HARMAN, Mr. DEUTSCH, Mr. DAVIS of Illinois, Ms. MILLENDER-MCDONALD, and Messrs. SHERMAN, MCHUGH, MURTHA, BAESLER, MCINTYRE and HILLIARD changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. JACKSON-LEE of Texas:

Page 3, line 11 strike "or", line 18 strike the period, close quotation marks and period following and insert "; or", and after line 18 insert the following:

"(4) the substance of the agency matter is under consideration by a United States court of appeals and involves issues of civil rights, labor rights, or environmental protection."

Ms. JACKSON-LEE of Texas. Mr. Chairman, the intentions of H.R. 1544 are good intentions. I supported the Nadler-Frank legislation, and I am sorry that we did not see fit to add, I think, a very strong component to this legislation. But now, Mr. Chairman, I have to come and say that we need to understand that this legislation has as a potential, it may not be the desire, but the potential to negatively impact on some very serious rights of Americans.

I am a product of civil rights laws. Many of my constituents, many Americans, are the product of civil rights laws. Hispanic Americans who recently have seen a flood of legislation dealing with immigration laws, dealing with laws regarding their voting privileges and as we look toward the renewal of the Voter Rights Act of 1965, our civil rights are being impacted every single day. The working men and women of the 18th Congressional District and of this Nation are impacted by labor rights. All of us, every single day, are impacted by environmental protection laws as implemented under the laws of this Nation. I am concerned that this legislation gives us the potential of overturning or disallowing good laws that may have been ruled against. I believe it is imperative that we understand the importance of separating out the impact on civil rights, labor rights and environmental protection. Allow me to read from the subcommittee markup my statement:

The bottom line is how would a legislative initiative of this kind limit the ability of Federal entities to address the systematic encroachment of the judicial branch upon the civil liberties of

the average citizen, particularly the Department of Justice, its Civil Rights Division and the civil rights division of various agencies? The Department of Health and Human Services will be my primary focus in this categorical objection to the language of H.R. 1544, the limitation on these agencies' ability to appeal seemingly unjust circuit court decisions to the Supreme Court. For example, autonomy of relitigation in addition to their ability to create novel and ingenious ways of protecting the rights of citizens is a sacred craft that should be regulated only with the highest and most hesitant level of scrutiny. We must do all we can to ensure efficient and effective government, but not at the expense of our civil rights and liberties and, might I add, our labor rights and environmental laws. The primary source of my problem with this bill is that our trained public servants working in Federal Government agencies will not be allowed the discretion to determine whether a potential threat to standing civil rights and liberties posed by the new circuit court precedent should be challenged by the relitigation of that issue in open court.

I am sure, Mr. Chairman, that many are saying, what if the shoe is on the other foot, for I do realize that in years past the courts came to our rescue in environmental law, civil rights and labor protection. Tragically sometimes we have to look at the cup being half full. That means now we have gone full swing. Now our courts are interfering with civil rights around the Nation.

In particular, as we watched the litigation of Proposition 209 in California, we found that as our Justice Department attempted to intervene in that instance, we determined and saw the results, cases going on in the Southern District of Texas where our administrative agencies are not even allowed to intervene on cases dealing with affirmative action and civil rights, where courts have single-handedly dismantled the civil rights legacy of all that occurred in the sixties and seventies.

I think it is imperative as the shoe is shifted to the other foot that we still give our agencies if they are appealing decisions that infringe upon the civil rights of our citizens and infringe upon the labor rights of our citizens and infringe upon environmental rights.

Under its present language H.R. 1544 would potentially restrict agency divisions assigned the task of protecting civil rights and liberties from contesting a host of adverse and intolerable circuit court precedents in open court. I do not oppose the stated purpose of this bill, but simply question whether in its current form it is the best way to achieve its author's desired end. Again, my primary concern is how this bill will affect an agency's ability to contest those circuit court precedents which unjustly result in the denial or refusal of previously acknowledged civil rights or liberties. It is good that the previous amendment limited it to the IRS, Social Security benefits and

Medicare, which is what I truly believe in, but unfortunately such amendment did not pass. Now we have a situation where legislation has a potential to run away with our rights.

Mr. Chairman, I offer this amendment out of concern of the human and civil rights and labor rights and environmental rights of our citizens. I ask my colleagues to join me in upholding these rights by supporting this amendment.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment.

Not only do I oppose the amendment from the basic tenets of the bill that we have introduced here which has as its foundation, Mr. Chairman, equal treatment for all of our citizens in front of the various agencies of the Federal Government. We start with that premise, that that is what we are trying to protect, and then say that in the furtherance of policy on the part of any agency, that they must acquiesce to the court decisions in their circuit or elsewhere when opposition to it would be, in effect, nonacquiescence in the law that is already established. That is a fair premise upon which to start. That is one reason that I oppose it.

Secondly, to chop out of the purview of the bill this agency or that agency, whether it has to do with labor or environmental protection or any issue of the day, would mean that that would render the bill useless and toothless. For that reason, added to the first, we should have enough reason to oppose the amendment. But there is a third one, and the one that it seems to me allows this amendment to crash down as being one that we should be voting down.

The gentlewoman herself makes the strongest argument when she says that the courts have historically been the last resort of our citizens and those who felt that the legislative process was inadequate to meet the problems of civil rights were exhilarated when in case after case the courts found that the agencies were incorrect and that the civil rights of individuals were paramount. It was court decisions to which acquiescence was preached on behalf of civil rights in the past.

Now, the gentlewoman says the shoe is on the other foot and she seeks to, in effect, preach nullification, if she says that now I am appraising, she says that the court system is no longer able to protect the rights of citizens; therefore, we have to look to an agency in the Federal Government, in the administration, to thwart the prospective judgment of the court. In other words, she is preaching nonacquiescence, which is the reason we are here in this bill in the first place, because there has been too much nonacquiescence, a point that the Judicial Conference well noted in urging us to do something about this.

The last point that I wish to make, that even if we were to give credence to all that the gentlewoman from Texas

has said, that there are cases in which, my goodness, acquiescence in the law would be horrid, would be terrible to contemplate, to obey the law would be ridiculously harmful, I say to her, as I have said before, that in the very language of this bill, we have those exceptions carved that would protect the gentlewoman's worries about what the court might do. Because in the last section of our bill, we say that an agency is not precluded in making a decision at variance with the court actions if, and then we list 3 exceptions that would allow a kind of nonacquiescence, the third one being they would be able to nonacquiesce if it is reasonable to question the continued validity of that precedent in light of the subsequent decision of that Court of Appeals or the United States Supreme Court, a subsequent change in any pertinent statute or regulation, and here is the crucial language, or any other subsequent change in the public policy or circumstances on which that precedent was based.

The gentlewoman's concerns are addressed by the very bill which she is aiming to destroy by offering an amendment that would render the bill useless. I say to her that she should work with us in the implementation of this bill and to be able to in the forefront of her advocacy for any one of these concerns, environmental protection or civil rights, turn to that portion of this bill which would allow her to show that acquiescence would not be in the best interests of our people.

Mr. NADLER. Mr. Chairman, I move to strike the last word.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. NADLER. I yield to the very distinguished gentlewoman from Texas, the sponsor of this amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the ranking member very much both for his leadership and for his kindness. Mr. Chairman, I wish in the best of all worlds we had been able to accept the Nadler-Frank amendment that would have clarified that this legislation pertains to programs such as Social Security and Medicare and that it would not interfere with the rights, the life and death rights of many Americans. In fact, I disagree with my chairman, not on his leadership but on his interpretation. I am not advocating nullification for an agency to be able to ignore a circuit court precedent, but I do argue to preserve their right to contest unjust decisions.

As I have said, we are now moving to the cup is half full, to the shoe on the other foot. I recognize that we are in different times. As we moved in the civil rights movement, we looked to the Department of Justice to send in and to be able to have FBI agents. We looked to the Department of Justice to go into courts and argue our cases. In that instance, those cases prevailed in some circumstances and generated legislative authority under the Civil

Rights Act of 1964 and the Voting Rights Act of 1965. We now have a circumstance where tragically the civil rights of our citizens, laws are being legislated, courts are determining the other direction. I would not want to see those individuals in the Federal Government who are pressing forward on issues dealing with the labor rights of my community and this Nation, with the civil rights of those children who will come behind me and the environmental laws that I need to protect every single citizen of this Nation to be denied by this legislation.

□ 1230

Mr. Chairman, I ask my colleagues would they want to have a constituent in their district denied the expertise of the Department of Justice or the Environmental Protection Agency or the NLRB, the National Labor Relations Board, and those other agencies that are needed?

Allow me to put into the RECORD and read very briefly a letter, Mr. Chairman, from the Mexican-American Legal Defense and Education Fund.

The letter referred to follows:

MEXICAN AMERICAN LEGAL
DEFENSE, AND EDUCATIONAL FUND,
Washington, DC, February 23, 1998.

DEAR REPRESENTATIVE: On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I urge your opposition to H.R. 1544, the "Federal Agency Compliance Act."

Because of your historical respect for the integrity of the legal system, it is important that you consider the problems inherent in the changes proposed by H.R. 1544 with respect to both intracircuit and intercourt nonacquiescence and the litigation needs of those represented by various governmental agencies.

H.R. 1544 purports to address the problem of governmental agencies' failure to explicitly comply with appellate court rulings both within and outside a particular circuit. While there is both a need for individuals to have their claims heard as well as having a consistent result within each agency, this bill does nothing to promote internal procedure to address more efficient internal rule-making and guidance, nor enhance the ability of an agency to pursue a full determination of an individual claim. By limiting each agency's discretion in determining the cases it will appeal, agencies such as the U.S. Department of Justice and the Social Security Administration can only do less to adequately and legally interpret and pursue particular cases deemed to be significant in determining substantive policy.

Furthermore, in its vagueness, this bill may instead require more litigation to determine whether decisions are "substantially favorable to the government" or whether a "substantial change in public policy" has occurred. Because most agencies have already adopted internal guidance requiring intracircuit acquiescence, this legislation fails to do that which it allegedly seeks, namely require agencies to avoid unnecessary litigation.

While the needs of both agencies and individuals require a clear and equitable means by which to resolve pending litigation, I urge your consideration of the inherent problems of this bill that limits the ability of agencies to seek appropriate legal remedies.

Sincerely,

ANTONIA HERNÁNDEZ,
President and General Counsel.

Mr. Chairman, I will just simply say that their opposition to this legislation because of historical respect for the integrity of the legal system is important. They consider the problems inherent in the changes proposed by H.R. 1544 with respect to both intracircuit and intercourt nonacquiescence and the litigation needs of those represented by various governmental agencies.

While the needs of both agencies and individuals require clear and equitable means by which to resolve pending litigation, I urge consideration of the inherent problems of this bill that limits the ability of agencies to seek appropriate legal remedies, and I will add the rest into the RECORD at some point, Mr. Chairman.

Let me conclude and say that this legislation is legislation that could be good, but it cannot be good if it denies the rights of citizens who need the protection of our civil rights laws, need the protection sometimes of the Federal Government and its expertise, need the protection of labor laws, need the protection of environmental laws. I ask my colleagues would they want to vote for legislation that slams the door of justice on those citizens who stand before our court systems and need the kind of justice that can be implemented by a strong fight on their behalf in the Federal Government? I would think not.

Mr. Chairman, to make this legislation better I would ask that my amendment be voted on as well as approved by this body.

Mr. Chairman, I rise today to speak in support of my amendment to H.R. 1544, the Federal Agency Compliance Act. The primary source of my problem with this bill, is that our trained public servants working in federal government agencies will not be allowed the discretion to determine whether a potential threat to standing civil rights and liberties posed by a new circuit court precedent, should be challenged by the re-litigation of that issue in open court. I believe that the discretion that our federal agencies and the experts they employ currently wield in matters of civil justice, is, at its core, a political necessity that no good government can do without.

Under its present language, H.R. 1544 would potentially restrict agency divisions assigned the task of protecting civil rights and liberties, from contesting a host of adverse and intolerable circuit court precedents in open court. I do not oppose the stated purpose of this bill, but simply question whether in its current form it is the best way to achieve its authors' desired end. Again, my primary concern is how this bill will affect an agency's ability to contest those circuit court precedents which unjustly result in the denial or refusal of a previously acknowledged civil right or liberty. In essence, the only reason that these sub-agencies were created was so that they could be champions of justice for the uninformed, disadvantaged, and mistreated. If this Congress moves to prevent the full exercise of these agencies' discretion to litigate, by passing H.R. 1544, they will effectively deem the civil rights divisions of these various federal agencies as impotent, if not irrelevant.

My proposed amendment to this bill will, in turn, allow federal agencies to proceed with appellate challenges to those matters in which issues of civil rights or liberties are centrally involved. I have not proposed an amendment that would allow only those decisions that I disagree with to be challenged in Circuit Court, but instead, I have offered an alternative to the present language of H.R. 1544 that is in the defense of the fair process of government. I may not agree with every appellate challenge made by federal agencies to federal court decisions, but I am surely not prepared to suspend their right to make such challenges in every possible regard because of my displeasure. If the purpose of H.R. 1544 is not to inhibit the exercise of our civil rights and liberties in this country, then its language should be changed accordingly. If it is, then the authors of this bill should have the courage to say so. If civil rights, and all of their many forms, are not the target of this legislation, passing this amendment is the simplest way to take them out of play.

Furthermore, I fear that if the Civil Rights Divisions in the Department of Justice, Department of Health and Human Services, and the Department of Education, among others, are barred from relitigating those claims deemed "off-limits" by the letter of H.R. 1544, we will start down a slippery slope of ineffectual and indifferent regard for our most sacred, long-standing civil rights that will eventually marginalize the entire federal government's civil rights agenda. We must remember that the government exists not simply to protect us against each other, but at times to protect us against the encroachment of government itself. In this case, an exception for civil rights cases is necessary so that the government through our federal agencies can seek, when necessary, to defend the rights of the American people against the often highly-prejudiced decisions of our federal circuit courts. Often our federal agencies, and their activism in the arena of civil rights, is the only thing keeping our struggle for social justice in this country in balance.

Even though, I believe that this limitation on the purview of civil rights activism by federal agencies was an unfortunate by-product of this legislation and not the original intent of this bill, it is a lurking problem, nonetheless. During the Judiciary Committee Mark-Up of this bill, my efforts to try to amend the language of this bill so that the effects of this potentially dangerous threat to all of our civil and political rights might be mitigated proved unsuccessful. So now, I am giving the supporters of this bill a final warning. If we are going to make an error in the enactment of this legislation, it is my belief that we should err on the side of the civil rights and liberties of the American people, and not in favor of a more efficient bureaucracy. Our government, through the vehicle of its federal agencies, must be allowed the full discretion to propose novel and ingenious criticisms of adverse civil rights precedents when it deems such action to be necessary. Rogue circuit court decisions like the Hopwood versus Texas decision in the 5th Circuit, which affects the exercise of affirmative action in educational settings throughout the entire state of Texas, must not escape the legal scrutiny of relevant federal agencies when such scrutiny is applicable.

In light of these facts, I urge all of my colleagues, whether you are supporters of H.R.

1544 or still undecided, to keep these concerns in mind as you review the merits of this legislation, again. Ask yourself the question, why should we harm the civil rights of the many in order to expedite or eliminate the interaction with the judicial process for the few? There must be a better way to achieve this goal. So I ask you to oppose H.R. 1544 as it stands, and pass the Jackson-Lee Amendment.

Mr. NADLER. Mr. Chairman, reclaiming my time, I want to, first of all, commend the gentlewoman from Texas (Ms. JACKSON-LEE) for the work she has done in bringing this problem to the attention of the committee and now to the House, and I wish that the amendment that I sponsored that was defeated a few moments ago had been passed. It would have taken, this is one of the problems that it would have taken care of, and one source of opposition to the bill in chief that would have been removed, and I hope that as we move forward with this bill in conference, if it passes the House, that we can work to alleviate the problems presented or illustrated by this amendment and by the amendment that I offered earlier so that we have a bill that in the end we can support, especially since we will need that support on final passage.

The CHAIRMAN pro tempore. The time of the gentleman from New York (Mr. NADLER).

(By unanimous consent, Mr. NADLER was allowed to proceed for 30 additional seconds.)

Mr. NADLER. Mr. Chairman, we will need all that bipartisan support in both Houses at the end of the day.

So I look forward to working with the gentlewoman and I hope with the majority in trying to work these problems out. In the meantime, I urge the adoption of this amendment as resolving one of the problems with the bill, and even with this amendment adopted, the bill will still deal with the core problem with the 98 percent for which it was, of the problem for which it was designed, and it would be more likely to be passed. So I urge the adoption of the amendment.

The CHAIRMAN pro tempore (Mr. SNOWBARGER). The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. JACKSON-LEE of Texas:

Page 5, insert after line 20 the following:

SEC. 4. APPLICATION.

The amendments made by sections 2 and 3 shall not apply to an agency in its actions

involving a commercial transaction with a business located in a foreign country.

Ms. JACKSON-LEE of Texas. Mr. Chairman, let me first say that we all want to see positive results coming from this legislation, but my concern is that I think it makes no sense to limit the ability of critical government agencies such as the National Labor Relations Board, as I spoke earlier, and the Environmental Protection Agency, along with our civil rights agencies, not to be able to protect the rights of our citizens, and of course that is the basis of the Nadler amendment previously and my amendment that was just on the floor.

This amendment that I now have goes to a much narrower point. That point deals with the provisions that apply to an agency dealing with the foreign governments and foreign businesses. Whatever justification there might be for forcing line adherence to legal precedents when the cases involve U.S. citizens and companies, there is no reason for these entities to be forbidden when it comes to a foreign company. This simply says that someone who is here in America has a right to have the protection of their government when dealing with a foreign entity, one that is larger, one that is stronger, one that has the backing of its government. That is, I think, a clear, a clear principle that we should advocate, is that our citizens have our protection both by the agencies and both by the courts.

For example, it is a possibility in a trade or a dumping dispute against a foreign company. We need to make sure the Commerce Department or other agency is fully armed to protect American jobs and American goods, and if the Agriculture Department is seeking to rid the country of disease through foreign products, that we need to make sure that we are fully prepared to protect American consumers.

This Nation faces a record and growing deficit. In the wake of the recent turn down or turmoil in Asia, we might expect, for example, dumping claims. We do not want them, we hope we do not get them, but we need to have the protection of the Federal Government and agencies who again have the expertise to protect in these two-person situations.

When foreign companies fight our government in court, they are forced to challenge work in adverse or work with adverse court precedence. This will not be true of our government under this bill, however. All my amendment does is create a level playing field with foreign companies, and this should be done to protect our citizens.

Again, I say do we want justice to be slammed in the face of our citizens or do we want them to have the opportunity to have the expertise, the power of Federal agencies on their side in pressing the point dealing with foreign companies? I hope that my colleagues will join me in supporting a very fair and balanced amendment that simply

says it gives our citizens, our businesses a working chance, a viable chance, in a contest with foreign entities in this instance of doing business in a new world order.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from Texas.

First of all, I want to thank the gentlewoman from Texas for bringing to the attention of the Members another region of the Federal agency world which is covered and should be covered by our bill; namely, the Commerce Department. That is one example that I had not yet had the time to show the Members should also be covered by our bill as well as every other agency to provide equal justice for our citizens no matter in which agency they appear to claim certain benefits and rights and privileges.

Secondly, the Department of Commerce, for example, which is alluded to by the gentlewoman from Texas (Ms. JACKSON-LEE) could make decisions that would disfavor American citizens as much as it could make decisions that would benefit them. And so the gentlewoman says do not bother with the courts, leave them out of it, let the Department of Commerce decide finally what is best for the American citizen. Even if a decision of the Commerce Department under her analogy finds against the American citizen and says in favor of a foreign business entity.

Well, to make the decision as to whether it is beneficial to an American citizen or not historically and constitutionally and pragmatically and with the separation of powers in tact, it will be the court that will determine the relative merits of the proposition to either protect an American citizen against a foreign company or deny benefits to an American citizen because of a foreign company. The court will decide whether the Commerce Department decision is appropriate or not.

But that is not the basic issue. The basic issue is should we allow the Department of Commerce or any other agency in the Federal Government to look at the court decision on a proposition that is now before them that is lying on the desk for immediate action and say nuts to that decision, we are going to apply what we think is the best possible plan for this claimant even if it is to the detriment of that claimant, and if it is depriving of a benefit, all the more reason why they should acquiesce to the judgment of the court.

So we are saying follow the law, Commerce Department, follow the law, and then if for some egregious invisible rationale we again determine, my gosh, it might be disastrous to have to obey the law, then we can revert to the language of the bill that we have so carefully crafted that would allow those special circumstances in which it can be proved that following the policy of the Commerce Department and the example that the gentlewoman has given,

to follow the policy would be strong enough to allow an exception to the purview of the bill. That is the way to approach this.

We believe that in order to provide equal justice at the start, we also allow justice to prevail if some great wrong would be committed by acquiescence to the law. But the way we have crafted it, that has to be proved, it has to be demonstrated, and that is fair in itself.

I urge rejection of the amendment and adherence to final passage in favor of the bill.

Mr. NADLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the ranking member very much, and I appreciate the argument of the chairman, but let me just simply say we do not allow foreign nationals to give monies to politicians; why then should we allow foreign companies to fight our Government in court, and they have a better leg up or greater standing than our own Federal agencies to be able to protect or contest the kinds of decisions that may negatively impact on our companies, citizens, and others doing business.

As Fuji Film comes into our court system, it seems that they may have a greater standing in our court system than our Department of Commerce or Department of Justice. We are simply trying to protect jobs here. We are trying to give an equal playing field, if my colleagues will, which all of America believes in, give us an equal playing field, allow our agencies to go in, but again with their expertise and fight fairly in court against decisions that may be adverse to our business community, to those who are doing international trade, to those who find themselves in a litigation mode against a foreign entity, and why give that foreign entity, if my colleagues will, the chance to come and overcome our maybe small- or medium-sized business or maybe large corporation who stands by themselves without the clout and protection of the Federal Government.

One of the points that we have noted when we do international business is that the governments of our foreign countries are intimately interwoven in their countries doing business. Why then, if we are in trouble here in the United States and have a litigation matter without businesses should we not allow our clout, Federal agencies, to be engaged in the fight and to have the ability to be in the fight on an equal playing field.

Mr. Chairman, I ask my colleagues to join me in support on behalf of American businesses and American citizens to give them an equal playing field in the court of international thought, international business and making sure that they have the clout of the American Government behind them.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. The Chair informs the gentleman from New York (Mr. NADLER) that although time is not controlled, the time has passed. He cannot yield blocks of time when we are in the Committee of the Whole, but must remain on his feet under the five minute rule.

The gentleman from New York (Mr. NADLER) is recognized for the remainder of his time.

Mr. NADLER. Mr. Chairman, I want to simply observe that this amendment, like the last amendment offered by the distinguished gentlewoman from Texas, is a worthy amendment and improves the bill. I urge its adoption. I urge all my colleagues to vote for it.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

Mr. GEKAS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. COMBEST) having assumed the chair, Mr. SNOWBARGER, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1544), to prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits, had come to no resolution thereon.

□ 1245

WITNESS PROTECTION AND INTERSTATE RELOCATION ACT OF 1997

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 366 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 366

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2181) to ensure the safety of witnesses and to promote notification of the interstate relocation of witnesses by States and localities engaging in that relocation, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the