



Recommendation 69-1

Statutory Reform of the Sovereign Immunity Doctrine

(Adopted October 21-22, 1969)

The technical legal defense of sovereign immunity, which the Government may still use in some instances to block suits against it by its citizens regardless of the merit of their claims, has become in large measure unacceptable. Many years ago the United States by statute accepted legal responsibility for contractual liability and for various types of misconduct by its employees. The "doctrine of sovereign immunity" should be similarly limited where it blocks the right of citizens to challenge in courts the legality of acts of governmental administrators. To this end the Administrative Procedure Act should be amended.

Recommendation

1. Section 702 of title 5, United States Code (formerly section 10(a) of the Administrative Procedure Act), should be amended by adding the following at the end of the section:

An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

2. Section 703 of title 5, United States Code (formerly section 10 (b) of the Administrative Procedure Act), should be amended by adding the following sentence after the first full sentence:

If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Citations:

___ FR _____ (2012)

1 ACUS 23

Notes: (1) This recommendation was not published previously in the Federal Register. (2) This recommendation was implemented by Pub. L. 94-574.