

Comment from Senior Fellow Alan B. Morrison on *Choice of Forum for Judicial Review of Agency Rules*
April 26, 2024

Few minor thoughts, with reasons in italics where needed:

Lines 31-32, insert in bold: "The Conference also recommends that Congress amend 28 U.S.C. § 137 governing the assignment of **certain** cases to district judges." *We could be more specific, but at least we need to include a qualification because this does not apply to all cases as some have urged.*

Lines 35-37, insert in bold, deletion in brackets: "For one, a district court **does not need to create a record** [proceeding is often unnecessary] when an agency has already compiled a record that is adequate for judicial review, there are no disputed issues of fact, and further appeal is likely." *Proceedings of some kind may be necessary, but not to compile an evidentiary record.*

Lines 39-41, insert in bold, deletion in brackets: "For these and other reasons, Congress has in many contexts provided for direct review of agency rules **in the courts** [by a court] of appeals." *As written, it could be read to refer only to statutes that designate a particular court of appeals.*

Line 52-53, insert in bold, deletion in brackets: "The federal venue statute does not dictate [what] **in which** particular division of a district cases must be brought **when a rule issued by a federal agency is challenged**, allowing a litigant to choose the division." *The venue statute does specify the particular division in some cases, but just not those challenging federal agency actions.*

Lines 62-63, insert in bold: "In this respect, it is consistent with **-although not identical to-** a policy of the Judicial Conference under which"