



Federal Bar Association

CONSIDER ALL JUDICIAL NOMINEES WITHOUT DELAY

The Federal Bar Association urges the Senate to work in a bipartisan fashion to promptly confirm qualified judicial nominees to vacant Federal district and appeals court positions. The President and the Senate have a Constitutional obligation to assure that the Federal courts are sufficiently staffed with judges to render prompt justice. The escalating retaliation against qualified judicial nominees should end.

Judicial Vacancies Remain a Massive Problem

There currently are 83 vacancies in the Federal Judiciary – nearly one in 10 federal judgeships. This is 60 percent more vacancies than existed in January 2009. Thirty-six of these vacancies arise in some of the busiest courts in the nation and have been identified by the Federal Judiciary as “judicial emergencies.”

Twenty-two judicial nominees are currently pending in the Senate, with 13 awaiting floor action, all of them with little or no opposition.

More than 85 vacancies have plagued the Federal Judiciary for over the past four years, due to White House and Congressional delay in the nomination and confirmation of judicial appointees. In the meantime, federal court caseloads overall have increased.

Why Judicial Vacancies Are Harmful

Delay in filling vacancies on the Federal bench harms the delivery of justice. Vacancies increase caseloads per judge, creating delays that jeopardize the ability of courts to expeditiously deliver judgments. Judges and their staffs are doing their best to keep up, but the increases in workload in some courts has been significant.

Judicial vacancies create delays, which translate into costs for litigants. Vacancies harm businesses whose viability relies on the timely resolution of commercial disputes. Our economy depends on courts to enforce contracts, protect property and determine liability. Delay results in uncertainty that discourages growth and investment, hurting our economy.

Our criminal justice system is also affected by judicial vacancies. Major crimes like terrorism, bank robbery and kidnapping are tried in federal courts, where sequestration job cuts are exacerbating slowdowns. Plus, the number of defendants pending in criminal cases before U.S. district courts has increased 33 percent since 2003.

The Senate and the White House Should Take Three Steps To Erase Judicial Vacancies

First, the Senate should schedule up-or-down floor votes on the 13 judicial nominees favorably reported out of the Senate Judiciary Committee with little or no opposition.

Second, the 11 nominees who were pending on the floor when the 112th Congress adjourned should be fast-tracked toward an up-or-down floor vote. These nominees already have undergone serious scrutiny and earlier received Judiciary Committee approval. Common sense urges quickly returning them to the floor for a vote.

Third, the Senate majority and minority leaders should agree to prioritize filling judicial emergencies and shorten the period of time between nomination and votes.

Fourth, the White House should promptly offer a nominee for every open seat on the bench.

The Acute Need for Additional Judgeships

The Federal Bar Association also supports the Judiciary's request to Congress for additional Article III and bankruptcy judgeships. Nationwide, Article III district courts have experienced a 38 percent growth in caseload since 1990, the last time Congress passed a comprehensive judgeship bill. During the same period, there has been only a 4 percent increase in judgeships. Our bankruptcy system has also come under increasing stress. Since 1990, the bankruptcy courts have seen a 56 percent increase in case filings, while only experiencing a 7.4 percent increase in judgeships.

We are mindful of the dire fiscal realities our Federal government faces. However, inadequate numbers of judgeships have created enormous difficulties for many of our courts across the nation. It has reached the most urgent levels in five district courts struggling with extraordinarily high and sustained workloads: the Eastern District of California, the Eastern District of Texas, the Western District of Texas, the District of Arizona and the District of Delaware. Congress should devote foremost attention to these needs.

About the FBA

The Federal Bar Association is the foremost national bar association devoted exclusively to the practice and jurisprudence of federal law and the vitality of the United States federal court system. More than 16,000 lawyers and judges belong to the Federal Bar Association. The Federal Bar Association as a matter of policy takes no position on the credentials or qualifications of specific nominees to the federal bench. The FBA's foremost interest lies in the assurance of prompt, dispositive action by the President in nominating federal judicial candidates and the Senate in confirming (or not confirming) them.

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