



Federal Bar Association

Office of the President

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April 27, 2011

The Honorable Richard Durbin
Chairman
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

The Honorable Jerry Moran
Ranking Minority Member
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

Dear Senator Durbin and Senator Moran:

I write on behalf of the Federal Bar Association to express our strong support for the Federal Judiciary's FY 2012 funding request. The Judiciary has demonstrated prudent judgment in its request to assure the best stewardship of its resources and the cost-efficient delivery of justice to all Americans throughout the federal court system. We urge the Congress to make the federal judicial system a high priority and provide the funds necessary for the federal courts to fulfill their constitutional and statutory responsibilities.

Significant numbers of members of the Federal Bar Association practice before the federal courts throughout the United States. Our members are critically concerned about the urgent need to assure that adequate funding is made available to the federal courts to provide for the prompt administration of justice. An independent judiciary, established by Article III of the Constitution, is an essential element of our system of government. An underfunded judiciary cannot effectively administer justice, which lies at the bedrock of the people's trust. A vibrant and strong national economy relies upon our federal court system in numerous ways, including the adjudication of business transactions and disputes arising in the course of interstate commerce.

The Judiciary's FY 2012 request reflects its smallest requested percentage increase on record. Its request is underscored by the exceptional workload challenges generated by increased bankruptcy case filings; significant caseloads in courts along the Southwest Border; and workload in the probation and pretrial services offices.

The Judiciary's annual appropriation makes up about two-tenths of 1% (0.2%) of the federal budget. As you know, in FY 2010 the Federal Judiciary received approximately \$6.86 billion to fund its operations, including money to fund: the Supreme Court; appellate, district, and bankruptcy courts; probation and pretrial services operations; the jury system; court security; Defender Services to provide legal representation to indigent criminal defendants; the United States Sentencing Commission; the Administrative Office of the U.S. Courts; and the Federal Judicial Center.

By way of comparison, the FY 2010 enacted appropriation for State and International Operations was more than seven times greater than the Judiciary's appropriation, and the FY 2010 appropriation for the Department of Homeland Security was more than six times greater than the judiciary's appropriation. Large executive branch agencies routinely receive appropriations that are many times more than that received by the Third Branch of government. Funding for the war effort exceeds the judiciary's entire annual appropriation every two weeks.

New laws, Administration priorities and the weakened economy have impacted the Judiciary's workload. Over the past thirty years, hundreds of new federal laws have increased the jurisdiction of the federal courts, resulting in rapid caseload growth and criminal filings, criminal defendants, appellate filings and probation workload all more than doubling since 1980. Over the same period, bankruptcy filings have grown four-fold, criminal defense representations in the Defender Services program are five times greater, and pretrial services workload is six larger.

We recognize the hard choices that the Congress and your Subcommittee must make in crafting the fiscal year 2012 budget and beyond. The members of our Association join with all Americans in their concern about growing federal debt and the need to assure a sustainable fiscal path for our nation. However, deep spending cuts in the federal budget, especially across-the-board cuts, would have a horrific impact on the federal court system and the administration of justice. Deep spending cuts will result in significant staffing losses in the offices of the clerks and probation and pretrial services. This could result in the return of the reduced staffing levels experienced in 2004 when budget cuts resulted in a six-percent decrease in the courts' workforce.

Based on the 2004 experience, the impact of these cuts will be felt throughout the federal courts across the nation and by the public in several ways:

- The sentencing process could be jeopardized because too few probation officers will be available to help judges fashion appropriate sentences.
- Testing and supervision of released prisoners may be reduced, resulting in a degradation of public safety.
- Victim advocacy responsibilities, including the determination of monetary losses and the collection of victim restitution and criminal fines, could be impaired.
- The costs of pre-trial detention of criminal defendants will continue to increase, affecting the right of speedy prosecution.
- Payment of court-appointed counsel for indigent defendants, as required by the Constitution, could become unavailable.
- Jury payments for civil trials will likely run out, throwing into jeopardy the availability of trial by jury.

The situation will be compounded if funding for some Executive Branch departments, such as the Department of Justice and the Department of Homeland Security increase, generating additional litigation and adding to the workload of the federal courts. Moreover, 80 percent of the Judiciary's costs are devoted to salaries and space rent. A significant portion of that is paid to the General Services Administration to lease courthouse space, even though the federal government already owns these buildings. The judiciary also must pay GSA each year for tenant alterations and cyclical building maintenance. Although GSA received "stimulus money" under the Recovery Act, the Judiciary did not receive any money for its own use.

The Judiciary does not have programs or grants available to cut in order to reduce its costs. Nor can it turn away the cases that arrive on its doorstep. As Judge Julia Gibbons noted in her April 6 testimony to the House Appropriations Subcommittee: "We do not have the discretion to decline or defer cases based on resource constraints. In fact, the opposite is true – we are required to adjudicate the cases that are brought to us regardless of staffing and resource levels in the federal courts."

As a result our federal court system is bursting at the seams. With 12 percent of judgeships vacant, temporary judgeships expiring, and more courts in emergency mode than ever, there is an unprecedented crisis in our Third Branch due to unprecedented numbers of judicial vacancies. For criminal defendants awaiting trial, it can mean more detention time, adding even more costs to the taxpayer. Just last year, the federal cost of pretrial detention alone was 1.4 billion dollars, according to the Department of Justice.

We believe that the Judiciary should be commended for its efforts to contain costs and implement more efficient ways to administer justice. This has been realized in a variety of strategic ways, including how courthouses and courtrooms are used and shared. This has not altogether removed the need for security improvement and construction in a small number of courthouses.

We support the Judiciary's new *Capital Security Program*, within the General Services Administration's Federal Buildings Fund, which would set aside funds dedicated to address security deficiencies in existing courthouse buildings where physical, interior alterations are viable. At least ten existing courthouses, which currently possess serious security deficiencies, would benefit from security upgrades to ensure the safety of judges, court staff and the public. These upgrades involve relatively small dollar investments – ranging from \$4 million to \$17 million -- compared to the cost of new construction.

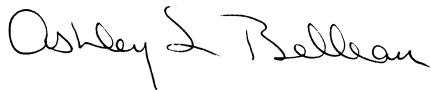
As you know, funding for courthouse construction and major renovation projects is included in the GSA Federal Buildings Fund budget and not in the Judiciary's budget. Unfortunately, GSA has not sought funding for courthouse construction projects in its FY 2012 budget request. This poses major problems for the Judiciary. There are five critical courthouse construction projects with pressing space requirements. These projects are located in Los Angeles, California; Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose California. We urge you and the Congress to consider the judiciary's relatively modest courthouse project needs and include them in the final FY 2012 funding legislation.

Appropriations Subcommittee on
Financial Services and General Government
United States Senate
April 27, 2011
Page 4

Thank you for your assistance in assuring that sufficient financial resources are devoted to the continuance of court operations that provide for the prompt delivery of justice. An underfunded judiciary cannot effectively administer justice, which lies at the bedrock of the people's trust. The spirit of our revolution was captured by Thomas Paine in *Common Sense* when he said in a monarchy the king is law, but "in America the law is king." We are a nation based on the rule of law. And for that rule to work you have to have sufficient funding for the courts to handle the cases and handle them in a thoughtful way. A strong, independent Judiciary is critical to our Nation and its respect for the rule of law.

We urge the Congress to make the federal judicial system a high priority and provide the funds necessary for the fulfillment by the courts of their constitutional and statutory responsibilities.

Sincerely yours,

A handwritten signature in cursive script that reads "Ashley L. Belleau".

Ashley L. Belleau
National President

cc: Senator Frank R. Lautenberg
Senator Ben Nelson
Senator Mark Kirk
Senator Dan Inouye
Senator Thad Cochran