



Federal Bar Association

Office of the President

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September 29, 2009

The Honorable Sheldon Whitehouse
Chairman
Subcommittee on Administrative
Oversight and the Courts
Committee on Judiciary
United States Senate
Washington, DC. 20510

The Honorable Jeff Sessions
Ranking Minority Member
Subcommittee on Administrative
Oversight and the Courts
Committee on Judiciary
United States Senate
Washington, DC. 20510

Re: S. 1653, The Federal Judgeship Act of 2009

Dear Chairman Whitehouse and Senator Sessions:

On behalf of the 16,000 lawyers and judges who are members of the Federal Bar Association, I write to extend our support for S. 1653, The Federal Judgeship Act of 2009. I request that this statement be entered into the record of your Subcommittee's hearing, "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2009," scheduled for September 30.

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. We endorse S. 1653 and urge the Senate's swift approval of this measure. The legislation would establish 12 new judgeships in six courts of appeals and 51 new judgeships in 25 district courts.

A substantial number of our members are located in the federal circuits and districts affected by the legislation and are extremely supportive of the benefits that additional judgeships would provide. Our members appear before the federal bench every day. Their professional lives revolve around advocacy and the search for justice in the federal courthouse. They are becoming increasingly frustrated by the substantial delays that are occurring in the disposition of civil and

criminal cases in the federal courts. They believe that these growing delays are due increasingly to the inadequate presence of judges to address the growing dockets of cases.

Our members tell us time and again of their respect for the diligence and hard work of their federal judges in their attempt to hear and decide cases in a timely manner. But there are limits on how much the bench can accomplish with existing resources. The problem is simply that there are not enough judges. That is why we believe that Congress should promptly exercise its Constitutional authority to create additional circuit and district judgeships consistent with the recommendations of the Judicial Conference of the United States. This should be accomplished comprehensively, not incrementally, and now.

The maintenance of a sufficient number of judgeships in our federal courts is critical to the assurance of the prompt and efficient administration of justice. As you know, the last time that Congress enacted a comprehensive Article III judgeships bill was nearly two decades ago in 1990. The Federal Judgeship Act of 1990 (Public Law 101-650) established 11 judgeships for the courts of appeals and 74 additional judgeships (including 13 temporary) for the district courts. Since that time, no judgeship has been created for the courts of appeals, and 34 district judgeships have been added to respond to particular problems in certain districts. Yet caseloads in both the appellate courts and district courts have increased dramatically in the past 20 years.

The judgeships established by S. 1653 are consistent with the recommendations of the Judicial Conference, which in March 2009 recommended that Congress establish 12 new circuit appeals judgeships and 51 judgeships in 25 district courts. The Judicial Conference also recommended that five temporary district court judgeships be converted to permanent positions, and that one temporary district court judgeship be extended for an additional five years. These recommendations were based upon an exhaustive biennial review by the Judicial Conference of court caseloads and other factors to assure the adequacy of delivery of civil and criminal justice in the federal court system. That review consisted of six levels of scrutiny within the judiciary before the Judicial Conference transmitted its recommendations to Congress.

The Judicial Conference review showed that caseloads in both the courts of appeals and the district courts have grown significantly since 1990. By the end of fiscal year 2008, filings in the courts of appeals had grown by 42 percent, while district court case filings had risen by 34 percent (civil cases were up 27 percent and criminal felony cases were higher by 81 percent). Although Congress has created 34 additional judgeships in the district courts since 1999 in response to particular problems in certain districts (9 in fiscal year 2000, 10 in fiscal year 2001, and 15 in fiscal year 2003), no additional judgeships have been created for the courts of appeals. As a result, the national average circuit court caseload per three-judge panel has reached 1,104 filings compared to 773 in 1991. In the district courts, even with 34 additional judgeships, weighted filings were 472 per judgeship as of September 2008, compared to 386 per judgeship in 1991.

The caseload situation in courts where S. 1653 would establish additional judgeships is much more dramatic than indicated by national totals. According to the Judicial Conference, for the 25 district courts where the legislation would establish additional judgeships, weighted filings averaged

573 per judgeship and ten courts have caseloads near or above 600 weighted filings per judgeship. For the six circuit courts where the legislation establishes judgeships, adjusted filings averaged 802 per panel and two courts have caseloads near or above 1,000 per panel.

We support the creation of new judgeships necessary to exercise federal court jurisdiction with the full understanding that there will be costs involved. We are as interested as the Congress in assuring that the federal courts maximize the use of their resources to avoid the creation of additional judgeships as much as possible. We also believe that the federal courts need to continue to create efficiencies through the continuing use of a range of measures, including: temporary rather than permanent judgeships; shared judgeships; inter-circuit and intra-circuit assignment of judges; alternative dispute resolution; and technological advances to permit the assistance of judges in other districts or circuits without the need to travel.

The assurance of the prompt and efficient administration of justice depends upon an adequate number of judges on the federal bench. Indeed, justice delayed is justice denied. It is now time to provide for Congress to assure the availability of swift justice everywhere in the United States by authorizing the comprehensive creation of adequate numbers of judgeships in the federal circuit and district courts, as recommended by the Judicial Conference and embodied in S. 1653. We strongly support this legislation and urge its prompt approval by the Senate Judiciary Committee.

Thank you, for the consideration of these comments in connection with your September 30 hearing and for your leadership in oversight and support of the federal courts system.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lawrence R. Baca". The signature is fluid and cursive, with a large loop at the beginning.

Lawrence R. Baca
National President