



July 12, 2016

TO: Federal Bar Association

FROM: West Allen, Chair, Government Relations Committee
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SUBJ: Update on Government Relations and Public Policy Developments

The Importance of an Independent Judiciary

The Board of Directors of the Federal Bar Association on July 6 issued a statement regarding recent personal attacks on the judiciary and the importance of an independent judiciary. Similar pronouncements were recently issued by two FBA chapters, along with a statement from seventeen former FBA national presidents.

In its July 6 statement, the FBA Board of Directors said:

“An independent judiciary is central to our democracy and the preservation of public trust in the rule of law. At the same time, litigants in our courts must have the right to challenge a judge’s ruling for reasons based in fact, law or policy. Indeed, we affirm and embrace the right of litigants to assert claims of judicial bias under applicable laws, as well as every person’s right of free speech. But we exhort all people to refrain from attacks on our judiciary based solely on ethnic, racial, religious, gender or sexual-orientation grounds. We urge all to accord the judiciary the respect and dignity necessary for judges to conduct their constitutional responsibilities.”

The above statement, along with those of the San Diego Chapter, the Northern District of California Chapter and seventeen former FBA national presidents are posted on the FBA

website here: <http://www.fedbar.org/Leadership/Independent-Judiciary.aspx>

Judicial Vacancies

The Federal Judiciary website lists the following judicial vacancies and pending nominees as of this date:

	Current Vacancies	Nominees Pending
Supreme Court	1	1
Courts of Appeal	9	7
District Courts	71	42
US Ct of International Trade	2	2
US Court of Federal Claims	<u>6</u>	<u>5</u>
Total	89	57

Since assuming control of the Senate last year, the Republican-led Senate has confirmed a total of 20 district and circuit court judges. When Democrats led the Senate during the final two years of the presidency of George W. Bush, they had confirmed 68 judges by the same point.

During the last two years, total vacancies rose from 43 to 89. Judicial emergencies nearly tripled. There are now 29 judicial emergencies, with Texas bearing the highest number of district vacancies and judicial emergencies (10) of any state. The problems originate with the reluctance of the two Texas Senators – John Cornyn (R-TX) and Ted Cruz (R-TX) – to turn in their respective blue slips for five of their nominees to the Judiciary Committee, a step required before the Committee will hold a hearing on any nominee. The other five Texas vacancies are without nominees.

Slowness in the return of blue slips by home-state Senators also exists in other states, including Indiana, Alabama, South Carolina, Nevada, North Carolina, Pennsylvania and Kentucky. In some cases, Republican senators aren't turning in their blue slips because they say their assessment of the underlying nominee differs from their original thinking when they were recommended to the White House. Sen. Marco Rubio (R-FL) says he no longer supports his Florida Southern district nominee, Mary Barzee Flores. Sen. David Perdue (R-GA) withdrew his support for his nominee, Dax López, to a seat that has been vacant for over two years and represents a judicial emergency. In the meantime, Sen. Chuck Grassley (R-IA), who chairs the Judiciary Committee, has signaled his intent to refrain from holding any more nominations hearings after the Senate departs in mid-July for its summer recess.

Federal Judiciary Funding

Politics, procedure and policy in Congress are complicating Congressional action on funding bills as the election season ramps up. The House of Representatives approved the Federal Judiciary's FY 2017 \$7 billion discretionary spending request on July 7 when the chamber approved the Financial Services and General Government appropriations measure (HR 5485). The same measure has stalled in the Senate and is not likely to win approval for reasons unrelated to the federal courts.

Approval of a stop-gap resolution that continues funding into the new fiscal year, past October 1 and the November elections, is likely, but questions remain for how long the extension will reach. House Republican leaders favor a short extension until December, but Republican conservatives favor a longer one reaching into next spring. In the coming days, House Speaker Paul Ryan (R-WI) will be faced with either forging a compromise with conservatives over a longer extension, or appealing to House Democrats for support for a shorter extension.

Conversion of Temporary Judgeships

House and Senate bills, supported by the Federal Judiciary and the Federal Bar Association, have been introduced that would convert certain temporary U.S. district court judgeships to permanent judgeships in judicial districts in Alabama, Arizona, California, Florida, Kansas, Missouri, New Mexico, North Carolina and Texas. The Temporary Judgeship Conversion Act would permanently authorize nine judgeships in nine district courts without adding or altering funding or removing judges from other districts.

The Senate bill, S. 2314, was earlier introduced by Sen. Jerry Moran (R-KS). A companion House bill, H.R. 5675, was recently introduced by Rep. Martha McSally (R-AZ).

Federal Bar Foundation Charter Legislation

Rep. Steve Chabot (R-OH) and Rep. Pedro Pierluisi (D-PR) on June 28 introduced legislation, the "Foundation of the Federal Bar Association Charter Amendments Act of 2016," to effect technical changes in the charter of the Foundation.

Congressional Calendar

The House of Representatives and the Senate will begin their summer recess on July 15. House and Senate lawmakers are expected to return to Washington on September 6.