



October 12, 2016

TO: Federal Bar Association

FROM: West Allen, Chair, Government Relations Committee
Bruce Moyer, Counsel for Government Relations

SUBJ: Update on Government Relations and Public Policy Developments

Congress currently is in recess, and lawmakers will return to Washington in mid-November after the upcoming Presidential and Congressional elections for a lame-duck session that could extend into mid-December. What occurs in the lame-duck session will depend largely on the outcome of the Presidential and Congressional contests and their bearing on control of the White House and House and Senate.

Judicial Vacancies

On September 19, the Federal Bar Association, in a letter to Senate leaders (attached), urged the scheduling of up-or-down floor votes before the end of the current session on the 20 district court nominees pending on the Senate calendar. These nominees are noncontroversial and have waited significant periods of time for the Senate to act upon their nominations. They have been reported out of the Senate Judiciary Committee without dispute.

The FBA letter noted:

“As lawyers, we appreciate the important role that the federal district courts play in the administration of justice. Our district courts and their judges have been rightfully described as “the workhorses of our federal court system.” Vacancies on these courts place added pressure on the speed with which the courts can dispense justice,

underscoring the axiom that “justice delayed is justice denied.” The prompt delivery of justice is integral to public respect for the law and public confidence in our judicial institutions.

We note that the corresponding judgeships of more than one-third (7 of 19) of the judicial nominees who await a final Senate vote are considered “judicial emergencies” by the United States Judicial Conference because of their high caseloads and/or the significant amount of time the judgeship has remained vacant. Action on these nominees is especially warranted.

Plainly the lack of sufficient numbers of judges on our federal courts is costing our country in dollars and needless delay. It is money being needlessly wasted. This is not good for any litigant, or the state of justice in our nation. We urge you to schedule floor votes on the 20 district court nominees pending on the Senate calendar before the end of the current Congress.”

The Federal Judiciary website reported the following vacancies as of October 12, 2016:

	Current Vacancies	Nominees Pending
Supreme Court	1	1
Courts of Appeal	13	7
District Courts	77	44
US Ct of International Trade	2	2
US Ct of Federal Claims	<u>6</u>	<u>5</u>
Total	99	59

The Supreme Court, which began a new term on October 3, has remained without a ninth justice for seven months since President Obama nominated D.C. Circuit Appeals Court Chief Judge Merrick Garland to fill the vacancy created by the untimely death of Justice Antonin Scalia in February. That seat is likely to stay empty until well into 2017, and depending on which party wins the White House and controls the Senate in November, possibly long beyond that.

Federal Judiciary Funding

Congress approved a 10-week government funding stopgap bill on September 28 that will fund the federal courts and the rest of the federal government at current FY 2016 levels through December 9, 2016. The Continuing Resolution, H.R. 5325, punts on final decisions about FY 2017 appropriations until after the November elections.

Despite approval by the House and Senate appropriations committees of the Federal Judiciary’s FY 2017 budget request, funding for the courts stalled because of its jurisdictional inclusion in a larger, controversial funding measure covering the IRS and

other financial-related agencies. The House and Senate have been unable to agree upon and pass a single one of the twelve regular appropriations measures.

Holocaust Expropriated Art Recovery (HEAR) Act, S. 2763

The Senate Judiciary Committee on September 29, 2016 unanimously approved and sent to the Senate legislation that would replace the current state statutes of limitations for prosecuting Nazi-looted art thefts with a federal six-year statute of limitations starting from the time the theft is identified. This is to clarify the confusion created by some statutes of limitations that toll when the crime was committed and create obstacles in the restoration of art expropriated by the Nazis to their rightful owners.

The Federal Bar Association's 2016 Issues Agenda supports Congressional action to address identification and ownership issues related to Nazi-confiscated artworks, pursuant to the Washington Conference Principles on Nazi-Confiscated Art, as signed by the United States and the international community. The Federal Bar Association is concerned that victims of such looting do not have a forum in which to resolve their claims on the merits. By creation of a federal six-year statute of limitations, the legislation will better assure justice and the restoration of Nazi-looted art to their rightful owners.

On September 14, 2016, the FBA sent a letter (attached) to the Senate Judiciary Committee expressing strong support for the Holocaust Expropriated Art Recovery Act of 2016, S. 2763, and urging prompt Senate approval of the legislation.



Federal Bar Association

September 19, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230 Capitol
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
S-221 Capitol
Washington, DC 20510

Re: Action on Pending District Court Nominees

Dear Majority Leader McConnell and Minority Leader Reid:

On behalf of the thousands of lawyers who practice in the federal courts, I write to urge you to schedule floor votes on the 20 district court nominees pending on the Senate calendar. These nominees are noncontroversial and have waited significant periods of time for the Senate to act upon their nominations. They have been reported out of the Senate Judiciary Committee without dispute, and we believe that the process merits them a prompt up-or-down vote.

As you know, the Federal Bar Association is the nation's foremost bar association devoted to federal jurisprudence and the practice of law in the federal court system. We regularly have called upon the President and Congress to act promptly and responsibly in nominating and confirming nominees to the federal courts.

As lawyers, we appreciate the important role that the federal district courts play in the administration of justice. Our district courts and their judges have been rightfully described as "the workhorses of our federal court system." Vacancies on these courts place added pressure on the speed with which the courts can dispense justice, underscoring the axiom that "justice delayed is justice denied." The prompt delivery of justice is integral to public respect for the law and public confidence in our judicial institutions.

We note that the corresponding judgeships of more than one-third (7 of 20) of the judicial nominees who await a final Senate vote are considered "judicial emergencies" by the United States Judicial Conference because of their high caseloads and/or the significant amount of time the judgeship has remained vacant. Action on these nominees is especially warranted.

Plainly the lack of sufficient numbers of judges on our federal courts is costing our country in dollars and delay. It is money being needlessly wasted. This is not good for any litigant or the state of justice in our nation. We urge you to schedule floor votes on the 20 district court nominees pending on the Senate calendar before the end of the current Congress.

Thank you for your leadership and your attention to our concerns.

Sincerely,

Karen Silberman
Executive Director



Federal Bar Association

September 14, 2016

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Holocaust Expropriated Art Recovery Act of 2016, S. 2763

Dear Chairman Grassley and Ranking Member Leahy:

I wrote on behalf of the Federal Bar Association to express our strong support for the Holocaust Expropriated Art Recovery Act of 2016, S. 2763, set for consideration during the Executive Business Meeting of the Senate Judiciary Committee on September 15. The Federal Bar Association is the nation's foremost bar association devoted to federal jurisprudence and the practice of law in the federal court system.

The Federal Bar Association has supported Congressional action to address identification and ownership issues related to Nazi –confiscated artworks, pursuant to the Washington Conference Principles on Nazi-Confiscated Art, as signed by the United States and the international community. The Federal Bar Association is concerned that victims of such looting do not have a forum in which to resolve their claims on the merits. Those concerns would be mitigated by S. 2763, which would preempt existing statutes of limitation or defenses relating to the passage of time, and establish a statutory imitation period of six years after the actual discovery of Nazi-confiscated artwork by the lawful owners.

Beginning with the London Declaration, the United States has supported a policy of returning Nazi-confiscated art, including art taken through forced and coerced transfers, to its countries of origin, with the expectation that the art would be returned to lawful owners. Under U.S. leadership, the international community has endorsed these principles as well. In the 1998 Washington Principles on Nazi-Confiscated Art and the Terezin Declaration of the 2009 Prague Conference on Holocaust Assets, more than forty countries joined the United States in agreeing that their respective legal systems or alternative dispute resolution processes should facilitate just and fair solutions for art that was taken by the Nazis and heir collaborators.

The Federal Bar Association supports the return of stolen art to the victims of Nazism and the final resolution of this unfinished business from World War II. The Holocaust Expropriated Art Recovery Act of 2016, S. 2763, would go far in addressing the Federal Bar Association's interest in U.S. compliance with the Washington Conference principles and in providing a fair and impartial forum for the resolution of such claims.

We urge the Senate Judiciary Committee to approve the Holocaust Expropriated Art Recovery Act and send it to the Senate floor as promptly as possible.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'K. Silberman', with a stylized flourish at the end.

Karen Silberman
Executive Director