



January 9, 2017

TO: Federal Bar Association

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

Newly elected and incumbent Members of the 115th Congress were sworn in last this week, and Donald Trump will take the presidential oath of office on January 20. This could be the [busiest and most consequential](#) week before Trump takes office. Nine Cabinet confirmation hearings are scheduled in the Senate this week, with as many as five on Wednesday. Confirmation hearings for Attorney General nominee Jeff Sessions will occur on Tuesday and Wednesday.

Senate Majority Leader Mitch McConnell has said he plans to seek confirmation votes on multiple nominees on the afternoon of Inauguration Day. By Inauguration Day in 2009, President Obama had secured the confirmation of seven of his Cabinet nominees. Concerns over adequate vetting of the financial disclosure reports of some nominees could delay confirmation votes on some nominees, and Democrats are likely to push for delay. With only 48 seats in the Senate, Democrats will lack the power to defeat party-line confirmation votes for executive branch and district and circuit judgeships, with procedural delay and rebuttal messaging their primary strategy. Ironically, greater minority leverage to quash cabinet and judicial nominees existed when the Democrats were in the majority in November 2013, but the Democrats changed the rules to block filibuster tactics and require only 51 votes to confirm nominees, rather than 60.

The last time a Cabinet nomination was blocked was in 1989 when former Sen. John Tower (R-TX) was narrowly rejected by the Senate to become President George H.W. Bush's defense secretary. It marked only the ninth Cabinet nomination in history to be rejected by the upper chamber.

Chief Justice Roberts' Year-End Report

The Chief Justice last weekend issued his traditional year-end report, focusing primarily on the operational business of the federal courts and praising district judges for their unceasing tenacity in administering justice. While the federal courts in general and the Supreme Court in particular were a focal point during the contentious 2016 election season, the Chief Justice [steered well clear](#) from controversy in his annual report.

Roberts used his [Year-End Report on the Federal Judiciary](#) to highlight what he said was the underappreciated role of federal district judges. “While the Supreme Court is often the focus of public attention, our system of justice depends fundamentally on the skill, hard work, and dedication of those outside the limelight,” the Chief Justice commented. There are 677 district judgeships authorized by Congress, and Roberts noted that they are aided by more than 500 senior district judges, who are eligible for retirement with full pay but still continue to work part time.

On caseloads, the Chief Justice reported that for the 12-month period ending September 30, 2016:

- The number of cases filed in the Supreme Court decreased
- The number of cases filed in the regional appellate courts increased
- The number of cases filed in the district courts increased
- The number of cases filed in the bankruptcy courts decreased

Judicial Vacancies

Current Article III vacancies continue to rise to historic levels, well over the 100-vacancy mark. It is more than double the 54 openings Obama faced eight years ago following George W. Bush’s presidency. Of the 677 authorized judgeships, 88 (13%) currently remain vacant. There also are now 42 judicial emergencies, as declared by the federal judiciary.

The Federal Judiciary [website](#) reported the following vacancies as of January 9, 2017:

	Current Vacancies	Nominees Pending
Supreme Court	1	0
Courts of Appeal	17	0
District Courts	88	0
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>0</u>
Total	114	0

Judiciary Funding

Funding for the federal courts remains at last year's spending levels, as with the rest of the government. Just before adjourning in December, the 114th Congress adopted a continuing resolution that extended government spending FY 2016 funding levels for roughly another five months to April 29, 2017.

That extension will provide time for Congressional leaders to coordinate action with the White House on two budget resolutions (for FY 2017 and FY 2018) that will pave the way later this session on reconciliation legislation (requiring only 51 votes). The first budget resolution is expected to include legislation to repeal and partially replace the Affordable Care Act. The second budget resolution could include tax and entitlement reform measures.

The Federal Bar Association continues to call upon Congress to assure adequate funding for the federal courts and will reiterate that message later this spring during Congressional consideration of the Federal Judiciary's FY 2018 spending request. FBA members from across the country will meet with their Members of Congress to discuss federal court funding and other issues during the FBA Capitol Hill Day on Thursday, April 20.

Statute of Limitations Measure on Nazi-Looted Art Becomes Law

The Federal Bar Association achieved one of its legislative priorities in December 2016 when the Congress passed bipartisan legislation that will assist Holocaust survivors and their families to reclaim art looted by the Nazis. Since 2013, the FBA through its Issues Agenda has called for Congressional action to help resolve identification and ownership issues related to Nazi-confiscated art.

The Holocaust Expropriated Art Recovery (HEAR) Act of 2016 ([H.R. 6130](#)) was [approved](#) by the House of Representatives and the Senate over a 3-day span in December, just prior to the holiday recess.

The [bill](#) loosens the statute of limitations in restitution cases involving Nazi-confiscated artworks, generally increasing the amount of time Holocaust victims and their heirs have to file a lawsuit seeking the recovery of a stolen work after it is discovered. The new law creates a single federal statute of limitations for such cases – set at six years from the date of discovery of the circumstances of the claim (including the location of the work) for claims not yet known. For others that are either already time barred, or within some existing state statute of limitations, the “date of discovery” is deemed to be the effective date of the law. Observers have noted that while the legislation is not perfect, it should reduce sometimes lengthy debate in federal proceedings over the laws in the corresponding state where the case is brought.

Call for Nominations to the 2018 FBA Issues Agenda

FBA leaders and members are invited to nominate issues to be considered for the inclusion in the FBA FY 2018 Government Relations Issues Agenda.

The deadline for all agenda nominations is Wednesday, February 1, 2017.

Further details on the Issues Agenda nomination process, along with the FY 2018 nomination form, may be found on the FBA website [here](#).