



Federal Bar Association

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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 is enjoying its traditional August recess and will return on September 5 to a set of legislative-must-do's before September 30 that include raising the debt ceiling, passing a budget resolution, and funding the government into the next fiscal year. Meanwhile, the Trump White House continues to quietly move ahead at a relatively fast pace to fill a historic number of vacancies on the federal bench.

Judicial Vacancies

The Federal Judiciary [website](#) reported 138 Article III vacancies, as of August 7.

	Current Vacancies	Nominees Pending
Courts of Appeal	19	7
District Courts	111	22
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>2</u>
Total	138	31

Fifty-five of the vacancies are considered “judicial emergencies” by the Judicial Conference, the policy-making body of the Federal Judiciary.

A little more than six months into his presidency, President Donald Trump has won confirmation of a Supreme Court justice, three federal appeals judges and one district judge, outpacing his two most recent predecessors combined, the [Washington Times](#) reported. Those confirmations include: Associate Justice Neil M. Gorsuch, Amul Roger Thapar (Sixth Circuit), John Kenneth Bush (Sixth Circuit), Kevin Christopher Newsom (Eleventh Circuit) and David C. Nye (Idaho District).

President Trump has nominated 31 judicial nominees – far more than President Obama at this point and roughly equal to the pace of President Bush.

"This will be the single most important legacy of the Trump administration," Democratic Sen. Chris Coons of Delaware, a member of the Senate Judiciary Committee, told [Business Insider](#). "They will quickly be able to put judges on circuit courts all over the country, district courts all over the country, that will, given their youth and conservatism, will have a significant impact on the shape and trajectory of American law for decades." Coons attributed the historically high number of vacancies to "unprecedented obstruction by the Republican majority in the Senate in the latter years of the Obama administration" that led to many of these vacancies remaining unfilled.

FY 2018 Funding for the Federal Courts

A trio of Congressional must-do's await attention when Congress returns on September 5: passage of a FY 2018 budget resolution, approval of government funding package; and lifting the debt ceiling to avoid a catastrophic default. Despite Republican control of both chambers of Congress and the White House, accomplishment of all three tasks will be a daunting task for House and Senate GOP leaders, due especially to divisions among GOP House Members.

The most likely scenario in September is that a coalition of Republican leaders, Republican moderates and Democrats will craft an omnibus appropriations bill that extends government funding for three months and raises the debt ceiling.

The budget resolution is crucial to paving the way for Congressional clearance of tax reform legislation through a procedural tool called reconciliation that requires only 51 votes in the Senate for approval.

Earlier this summer, a favorable funding package for the federal courts was approved by the House Financial Services and General Government (FSGG) Appropriations Subcommittee. The package provides \$7.1 billion in discretionary appropriations for FY 2018, a 2.4 percent (\$167 million) increase above FY 2017. The House level is \$100 million below the Judiciary's re-estimated FY 2018 request, with the majority of the reduction in the courts' Salaries and Expenses account. The House full appropriations committee has not scheduled markup of the measure, nor has the Senate FSGG subcommittee announced its markup.

The House bill includes one-year extensions for five temporary district judgeships and seven temporary bankruptcy judgeships. The district judgeships are in Kansas, Missouri-Eastern, Alabama-Northern, California-Central and North Carolina-Western. The bankruptcy judgeships are in Delaware (2), Florida-Southern (2), Michigan-Eastern, Puerto Rico and Virginia-Eastern.

The Federal Bar Association on June 29, 2017 sent the attached correspondence to the Senate FSGG subcommittee in support of the Federal Judiciary's funding request.

FBA Opposition to Federal Employee Budget Cuts

The Federal Bar Association has communicated its concerns to Congress over proposed FY 2018 budget cuts aimed at the compensation of current and former employees of the federal government, including federal attorneys. The Trump Administration earlier this spring proposed massive budget cuts in the retirement and health benefits of federal employees and retirees. More recently, the House Budget Committee drafted a budget resolution that, if approved by Congress, would require \$32 billion in cuts federal employee/retiree benefits.

In an August 4 letter to the House panel with jurisdiction over the proposed cuts – the Oversight and Government Reform Committee, FBA Executive Director Stacy King and Government Relations Committee Chairman wrote, “Reductions in the retirement benefits of federal employees, including federal attorneys, are a slippery slope that can compromise the government’s capacity to attract and retain the expert legal talent it desperately needs. We urge the Committee to find other ways that do not reduce or erode the current pay and benefit structure of the federal workforce in its satisfaction of the FY 2018 budget instructions.” The letter is attached.

2018 Issues Agenda

The Government Relations Committee earlier this spring received five nominations to the 2018 Issues Agenda. On June 23, 2017, the Board of Directors approved the recommendation of the GRC that none of the nominations be added at this time to the Issues Agenda for various reasons, including the need for further due diligence.

Attachments