



Federal Bar Association

Capitol Hill Day 2024 Resource Materials

Table of Contents

Talking Points – Senate	1
Talking Points – House of Representatives	4
The Urgent Need for More Federal Judges	6
Funding to Implement the Daniel Anderl Judicial Security and Privacy Act	8
Legislation to Establish an Article I Independent Immigration Court	9
Foundation of the Federal Bar Association Charter Amendments Legislation	11

TALKING POINTS – SENATE

Introduction to FBA

- Founded in 1920, the FBA unites the bench and bar to advance the rule of law through education, leadership, and nonpartisan advocacy on public policy matters.
- There are nearly 100 local chapters across the country and roughly 15,000 members engaged in federal practice. We work in law firms, corporations, associations, and federal agencies and our members include around 2,000 federal judges. My chapter has roughly _____ members and we have activities such as _____.

FBA's Top Priorities this Congress

1. Funding to Increase Judicial Security – According to recent testimony from the Director of the US Marshals Service, threats against federal judges have more than doubled over the past 3 years, but our democracy depends on judges who are free to make decisions without fear of retribution. The FBA commends Congress for passing the Daniel Anderl Judicial Security and Privacy Act in 2022, which will protect federal judges and their families by making it easier for them to get personally identifiable information (PII) off the internet. Now, it is essential for Congress to appropriate the modest funding authorized by this new law so that the government can provide the critical protections it envisioned.

- Specifically, Congress should appropriate the \$10 million requested in the President's Budget to implement the Anderl Act's grant program, which authorizes the Attorney General to provide funds to help state and local governments that operate databases or registries respond to judicial requests for PII to be removed.

Ask: We hope the Senator will submit a programmatic funding request to the Appropriations Committee for \$10 million for Department of Justice's Office of Justice Programs (OJP) to implement the Daniel Anderl Act's grant program. In addition, if a joint letter is circulated, we hope the Senator will sign.

2. JUDGES Act (S. 2759) – FBA supports legislation to relieve our severely overburdened federal courts by increasing the number of federal judgeships. Our federal courts are facing enormous caseloads and the increasing backlog is adversely impacting both access to and the administration of justice. I have seen this firsthand in my state of _____. (add personal anecdote)

- Congress last enacted a comprehensive bill to increase the number of appellate and district judgeships in 1990 and judicial workloads have increased substantially since then.
- In March of 2023, the Administrative Office of US Courts' most recent biennial report on court workloads recommended adding 66 district court judges and 2 court of appeals judges. Senators Young (R-IN) and Coons (D-DE), with cosponsors Sens. Lankford (R-OK) and Padilla (D-CA), introduced the bipartisan JUDGES Act, which would add 66 new federal district judgeships in two batches: half in 2025 and half in 2029. This is a creative solution to objections that adding judgeships allows partisan bench-stacking.

- There is also a recent bipartisan House companion bill introduced by Courts Subcommittee Chairman Issa and Ranking Member Johnson, reflecting House interest in this issue.

Ask: FBA urges the Senator to consider cosponsoring the JUDGES Act and to let Judiciary Committee Chairman Durbin and Ranking Member Graham know that this policy issue needs to be a higher priority for Congress this year.

3. General Judiciary Funding – FBA is committed to supporting the annual budget for the federal judiciary, which has submitted a total request of \$10.2 billion for Fiscal Year 2025 for Article III courts. This includes \$9.3 billion in discretionary appropriations and \$852 million in mandatory appropriations. The funds are used for salaries and expenses for the entire judicial branch, probation and pretrial services, the cost of space, retirement, court security including hardening of facilities, and IT. The FBA also supports full funding for the Article I courts: U.S. Court of Appeals for the Armed Forces, U.S. Tax Court, and U.S. Court of Appeals for Veterans Claims.

Ask: Please ask the Appropriations Committee to provide the Judiciary’s requested amount, as well as the requested amounts for the Article I courts.

4. Immigration Court -- FBA has spent years helping draft model legislation that would establish an independent Article I Immigration Court. We are working with Senator Gillibrand and others to introduce this legislation in the Senate.

- Immigration judges are part of the U.S. Department of Justice, and there is a case backlog of more than 3 million immigration cases. The bill would use the power of Congress under Article I to create a new court, just as it created the US Tax Court and the Court of Appeals for Veterans Claims when they were removed from Treasury and the VA.
- An independent immigration court would not set immigration policy – that would continue to be the responsibility of the Executive Branch. The immigration judges would just apply law and regulations to individual cases.
- FBA has worked alongside stakeholders including the American Bar Association, National Association of Immigration Judges, and the American Immigration Lawyers Association. More than 120 prestigious legal organizations support this proposal.
- Establishing an Article I immigration court would provide transparency to the public regarding removal proceedings, judge conduct, and discipline. Moreover, judges would be allowed to manage their caseloads without undue political pressure. Locating immigration courts in a political branch of government undermines Congress’s carefully designed immigration laws, and the current case backlog is the direct result of politicization of these courts.

Ask: When Senator Gillibrand circulates a draft bill for cosponsors, we hope the Senator will cosponsor it or otherwise support the bill as the Senate considers it.

5. FBA Foundation Charter Amendments Act (S. 2694) – In the 1950s, when Congress was bestowing charters on many recognized nonprofits, it enacted legislation creating a Congressional charter for the FBA Foundation. The FBA Foundation is a distinct legal entity from the FBA, with no board overlap. The Foundation primarily gives scholarships to high school and law students and also gives some grants to FBA chapters for work in their communities. The Foundation is not engaged in any political activity. The present FBA Foundation charter, now 70 years old, is outdated and impedes the efficient and effective operations of the Foundation.

- S. 2694 is nearly identical to a bill that the House unanimously passed in the 117th Congress. It simply cleans up the charter and brings it more in line with best practices for nonprofits. Congressional action is the only way the Foundation can update its governance structure and operations. Failure to pass the bill means that our Foundation will continue to have more cumbersome operations that hinder its ability to do good work.
- There is ample precedent for S. 2694. For example, in 2019, Congress enacted a bill to amend the Future Farmers of America charter and to help it restructure and change comparable charter provisions.

Ask: FBA urges the Senator to consider cosponsoring S. 2694, the FBA Foundation Charter Amendments Act, and to support its expeditious approval.

TALKING POINTS – HOUSE OF REPRESENTATIVES

Introduction to FBA

- Founded in 1920, the FBA unites the bench and bar to advance the rule of law through education, leadership, and nonpartisan advocacy on public policy matters.
- There are nearly 100 local chapters across the country and roughly 15,000 members engaged in federal practice. We work in law firms, corporations, associations, and federal agencies and our members include around 2,000 federal judges. My chapter has roughly ____ members and we have activities such as _____.

FBA's Top Priorities this Congress

1. Funding to Increase Judicial Security – According to recent testimony from the Director of the US Marshals Service, threats against federal judges have more than doubled over the past 3 years, but our democracy depends on judges who are free to make decisions without fear of retribution. The FBA commends Congress for passing the Daniel Anderl Judicial Security and Privacy Act in 2022, which will protect federal judges and their families by making it easier for them to get personally identifiable information (PII) off the internet. Now, it is essential for Congress to appropriate the modest funding authorized by this new law so that the government can provide the critical protections it envisioned.

- Specifically, Congress should appropriate the \$10 million requested in the President's Budget to implement the Anderl Act's grant program, which authorizes the Attorney General to provide funds to help state and local governments that operate databases or registries respond to judicial requests for PII to be removed.

Ask: We hope Representative XX will submit a programmatic funding request to the Appropriations Committee for \$10 million for OJP to implement the Daniel Anderl Act. In addition, if a joint letter is circulated, we hope Representative XX will sign.

2. Federal Judgeship Act of 2024 (H.R. 7597) – FBA supports legislation to relieve our severely overburdened federal courts by increasing the number of federal judgeships. Our federal courts are facing enormous caseloads and the increasing backlog is adversely impacting both access to and the administration of justice. I have seen this firsthand in my state of _____. (add personal anecdote)

- Congress last enacted a comprehensive bill to increase the number of appellate and district judgeships in 1990 and judicial workloads have increased substantially since then.
- In March of 2023, the Administrative Office of US Courts' most recent biennial report on court workloads recommended adding 66 district court judges and 2 court of appeals judges. Courts Subcommittee Chairman Issa and Ranking Member Johnson recently introduced the bipartisan **Federal Judgeship Act of 2024 (H.R. 7597)**, which, similar to the bipartisan JUDGES Act pending in the Senate, would add the 66 new federal district judgeships, as well as the two Ninth Circuit Court of Appeals seats also recommended by the Judicial Conference, in multiple batches over several years. This is a creative solution to objections that adding judgeships allows partisan bench-stacking.

Ask: FBA hopes Representative XX will cosponsor H.R. 7597 and let Judiciary Committee Chairman Jordan and Ranking Member Nadler know that this policy issue needs to be a higher priority for Congress this year.

3. General Judiciary Funding – FBA is committed to supporting the annual budget for the federal judiciary, which has submitted a total request of \$10.2 billion for Fiscal Year 2025 for Article III courts. This includes \$9.3 billion in discretionary appropriations and \$852 million in mandatory appropriations. The funds are used for salaries and expenses for the entire judicial branch, probation and pretrial services, the cost of space, retirement, court security including hardening of facilities, and IT. The FBA also supports full funding for the Article I courts: U.S. Court of Appeals for the Armed Forces, U.S. Tax Court, and U.S. Court of Appeals for Veterans Claims.

Ask: Please ask that the Appropriations Committee provides the Judiciary’s requested amount, as well as the requested amounts for the Article I courts.

4. Legislation to Establish an Article I Independent Immigration Court -- FBA has spent years helping draft model legislation to establish an independent Article I Immigration Court. This legislation was recently re-introduced in this Congress by Rep. Lofgren as **The Real Courts, Rule of Law Act (H.R. 7724)**

- The proposed legislation would use the power of Congress under Article I to create a new court, just as it created the US Tax Court and the Court of Appeals for Veterans Claims when they were removed from Treasury and the VA.
- Establishing an Article I immigration court would provide transparency to the public regarding removal proceedings, judge conduct, and discipline. Moreover, judges would be allowed to manage their caseloads without the undue political pressure of the current system. Further, FBA believes that locating immigration courts in a political branch of government undermines Congress’s carefully designed immigration laws and the current 3 million case backlog is the direct result of politicization of these courts.
- An independent immigration court *would not set immigration policy* – that would continue to be the responsibility of the Executive Branch. The immigration judges would just apply law and regulations to individual cases.
- FBA has worked alongside stakeholders including the American Bar Association, National Association of Immigration Judges, and the American Immigration Lawyers Association. More than 120 prestigious legal organizations support this proposal.

Ask: FBA hopes Representative XX will consider cosponsoring H.R. 7724 to establish an independent U.S. Immigration Court.

THE URGENT NEED FOR MORE FEDERAL JUDGESHIPS

S. 2759 JUDGES Act (bipartisan)/H.R. 7597 Federal Judgeship Act of 2024 (bipartisan)

Sponsors: Sen. Todd Young (R-IN) Rep. Darrell Issa (R-CA)
 Sen. Chris Coons (D-DE) Rep. Hank Johnson (D-GA)
 Sen. James Lankford (R-OK)
 Sen. Alex Padilla (D-CA)

Actions: Pending before the Senate and House Judiciary Committees

What Does the JUDGES Act Do?

- Requires the appointment of **31 district court judges on or after January 21, 2025**, in specified judicial districts in Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Nebraska, New Jersey, New Mexico, New York, and Texas.
- Requires appointment of an additional **32 district court judges on or after January 21, 2029**, in specified judicial districts in Arizona, California, Colorado, Delaware, Florida, Georgia, New Jersey, New York, and Texas.
- Creates 3 new temporary judgeships in Oklahoma
- Converts certain temporary district court judgeships to permanent judgeships in specified judicial districts in Arizona, California, Florida, Missouri, New Mexico, North Carolina, and Texas.
- Extends temporary judgeships in Alabama and Kansas

What Does the Federal Judgeship Act of 2024 Do?

- Requires the appointment of **66** district court judges in specified judicial districts in Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Nebraska, New Jersey, New York, Oklahoma, and Texas. These judgeships would be added in four roughly equal batches in 2025, 2027, 2029, and 2031.
- In 2025, converts certain temporary district court judgeships to permanent judgeships or extends temporary judgeships in specified judicial districts in Alabama, Arizona, California, Florida, Kansas, Missouri, New Mexico, North Carolina, and Texas.
- Requires the appointment of two Ninth Circuit Court of Appeals judges, one in 2027 and one in 2031.

Ask: Consider cosponsoring legislation to add more federal judgeships (S. 2759/H.R. 7597) and let leadership know that this issue needs to be a priority for Congress this year.

FAQs:

1. Do we really need more judges?

Yes. Congress last enacted a comprehensive bill to increase the number of appellate and district judgeships in 1990 and judicial workloads have increased substantially since then.

2. What is a manageable caseload and what are judges facing now?

According to the Judicial Conference (“JC”), a manageable district court caseload is 430 weighted filings per year. In fiscal year 2022, weighted filings, which account for the different amounts of time district judges require to resolve various types of civil and criminal actions, were above 500 per judgeship in 17 of the 30 courts in which the Conference is recommending additional judgeships or the conversion/extension of existing temporary judgeships to permanent status. In the other 13, caseloads also were well above the manageable threshold.

3. How many new seats are needed?

After assessing the caseloads of all district and circuit courts in granular detail, in March of 2023 the Judicial Conference recommended that Congress create 68 new judgeships across the country: 66 new district court judges and 2 new circuit court judges.

4. Isn't this just partisan court-packing?

The JUDGES Act and the Federal Judgeship Act of 2024 attempt to address this concern by establishing the new judgeships in multiple groups over the course of multiple future Administrations.

FUNDING TO IMPLEMENT THE DANIEL ANDERL JUDICIAL SECURITY AND PRIVACY ACT

What does the legislation do and why is funding needed?

- Establishes guidelines for protecting the personal information (PII) of active, senior, recalled, or retired federal judges and their immediate families;
- Prohibits government agencies from publicly posting judges' PII and allows judges to request the removal of their information within 72 hours if it is already posted;
- Prohibits commercial data collectors from selling, trading, licensing, purchasing, or providing judges' PII;
- Allows injunctive relief and a private right-of-action for violations;
- Creates a federal grant program for state and local governments to help cover costs to protect judges' PII, such as programs to redact information from tax, property, and state motor vehicle records, or the hiring of a third party to scrub the information from the internet; and
- Authorizes funding for the AO and U.S. Marshals Service (USMS) to anticipate, deter, monitor, assess, investigate, and address threats, acts of aggression, and violations.

Ask: Please submit a programmatic funding request to the Appropriations Committee for \$10 million for OJP to implement the Daniel Anderl Act's grant program. In addition, if a joint letter is circulated, we hope the Member will sign.

FAQs:

1. Why do judges need this special protection?

“Our constitutional system depends on an independent Judiciary,” said Judge Roslynn R. Mauskopf, director of the Administrative Office of the U.S. Courts. “Judges must be able to make decisions without fear of reprisal or retribution. This is essential not just for the safety of judges and their families, but also to protect our democracy.”

2. Are judges and court personnel really in that much danger?

Testifying before the House Judiciary Subcommittee on Crime and the Federal Government in February of this year, USMS Director Ronald Davis said that threats against federal judges have doubled in the past 3 years. From 2015 to 2021, threats against federal court personnel jumped more than 450 percent, from 926 incidents recorded in 2015 to 4,511 incidents in 2021.

3. Why do we need this legislation after the FY22 and FY23 appropriations bills provided funds for the Judiciary Vulnerability Management Program, which includes the ability to redact judges' personally identifiable information from online data sources?

The FY22 and FY23 spending bills provided funds to begin implementing the program. Additional funds and permanent authorization are needed to fully implement the OJP grant program and for the USMS to address the increase in threats.

LEGISLATION TO ESTABLISH AN ARTICLE I INDEPENDENT IMMIGRATION COURT

The FBA has for several years helped develop model legislation that was reflected in the **Real Courts, Rule of Law Act of 2024 (H.R. 7724)**, recently re-introduced this Congress by Rep. Zoe Lofgren (D-CA). The Real Courts, Rule of Law Act would establish a new independent Immigration Court comparable to other Article I courts like the U.S. Tax Court and the U.S. Court of Appeals for Veterans Claims. Sen. Kirsten Gillibrand (D-NY) is planning to introduce a Senate companion bill soon.

The legislation would provide a structural overhaul for our nation's immigration court system, which is currently housed within the Department of Justice. The current system lacks procedural and structural safeguards that protect it against political influence and ensure impartiality and independent decision-making.

It is very worrisome that there is a case backlog of 3 million immigration cases, which has grown from 200,000 in 2009. Average disposition times have increased from 14.5 months in 2009 to just under 5 years.

Immigration judges must adjudicate cases in accordance with the policies and priorities of the governing administration. They have little discretion over the management of their individual courtrooms and the administration of their dockets, which undermines the fairness and efficiency of the courts as well as public perception of their neutrality and independence.

An independent immigration court would not set immigration policy – that would continue to be the responsibility of the Executive Branch. The immigration judges would just apply law and regulations to individual cases.

We believe the new court would be more efficient because the judges could manage their dockets better. We also believe there would likely be fewer appeals, because an independent court would not be seen as an arm of the prosecution. We do not believe the cost of the new court would exceed current spending levels on the immigration court system within DOJ.

An identical bill in the 117th Congress was endorsed by the American Bar Association, the American Immigration Lawyers Association, the Federal Bar Association, and the National Association of Immigration Judges.

Ask: FBA hopes the Member will consider cosponsoring or supporting the Real Courts, Rule of Law Act or its Senate companion, when that bill is introduced.

FAQs:

1. What would the Real Courts, Rule of Law Act of 2024 do?
 - Establish an independent immigration court—known as the United States Immigration Court—consistent with Article I of the United States Constitution and composed of a trial division, an appellate division, and an administrative division. Once enacted, the legislation provides for an interim period in which current immigration judges would continue to serve in the newly established court for a few years while the President nominates and the

Senate confirms appellate level immigration judges for 15-year terms. The appellate judges would, in turn, make 15-year appointments for all the immigration judges to serve in the new court.

- Improve transparency and accountability in Immigration Court proceedings by requiring publication of all court rules and procedures, as well as precedent decisions and pleadings, while protecting confidential information.
- Improve efficiencies by allowing the Immigration Court to establish its own budget without review by the Executive Branch and empowering immigration judges to control their own dockets and compel agency action that is unlawfully withheld or unreasonably delayed.
- Strengthen the integrity of immigration court proceedings by giving immigration judges authority to impose civil money penalties for contempt of court.
- Ensure due process by preserving the privilege of counsel, ensuring quality interpreter services, and mandating legal orientation programs for individuals appearing before the Court.

LEGISLATION TO AMEND THE FOUNDATION OF THE FEDERAL BAR ASSOCIATION'S CHARTER

In the 1950s, when Congress was bestowing charters on a number of recognized nonprofits, it enacted legislation creating a Congressional charter for the FBA Foundation. The FBA Foundation is a distinct legal entity from the FBA, with no board overlap. The Foundation primarily gives scholarships to high school and law students and also gives some grants to FBA chapters for work in their communities. The Foundation is not engaged in any political activity.

In the two preceding Congresses, the House has passed FBA Foundation Charter Amendments bills, but those bills have not received Floor votes in the Senate. This Congress, the bipartisan effort began in the Senate with the **Foundation of the Federal Bar Charter Amendments Act (S. 2694)**, sponsored by Sens. Kennedy (R-LA) and Whitehouse (D-RI). The Senate bill is nearly identical to the bill that the House unanimously passed in the 117th Congress. It simply cleans up the charter and brings it more in line with best practices for nonprofits.

Ask: FBA urges the Senator to consider cosponsoring S. 2694, the FBA Foundation Charter Amendments Act, and to support its expeditious approval.

Why Does the FBA Foundation Need this Legislation?

The present FBA Foundation charter, now 70 years old, hinders the operations of the Foundation in several ways:

1. The charter requires six-year terms for board members, making it harder to find a robust field of director candidates since many volunteers can't commit to a six-year term. It also means less board turnover and current views in the nonprofit community are that more frequent board turnover is helpful.
2. The governance sections are very restrictive for current day governance best practices.
3. The charter requires that the Foundation's officers include a historian, which is not needed because administrative staff keeps the records of the Foundation. Electing a volunteer to a position without duties leaves the volunteer dissatisfied with their service experience.
4. Upon dissolution, the proposed amendments would give the board authority to distribute any remaining assets, instead of requiring those assets be deposited in the U.S. Treasury. The Foundation's assets are made up of mostly donations from private individuals and some donations' use is restricted by direction of the donor. No other organization – not even the U.S. Capitol Historical Society – requires the deposit of the remaining assets in the U.S. Treasury upon dissolution of the organization.
5. The charter requires the Foundation to be located in DC, which is not conducive to convenient and efficient operations. (Congress permitted the Future Farmers to select their location in amendments enacted in 2019).
6. Congressional action is the only way the Foundation can update its governance structure and operations. Failure to pass the bill means that our Foundation will continue to have more cumbersome operations that hinder its ability to do good work.