



**Gabe Roth,  
Executive Director, Fix the Court**

**Statement for the Record**

**United States Senate Committee on the Judiciary**

**“The Judicial Conference’s Recommendation for More Judgeships”**

**June 30, 2020**

Chairman Graham, Ranking Member Feinstein and members of the Committee: thank you for the opportunity to submit testimony addressing the Judicial Conference’s recommendation for more judgeships ahead of your hearing on the matter. My name is Gabe Roth, and I am the executive director of Fix the Court, a national nonpartisan organization that advocates for greater transparency and accountability in our federal courts.

Last year, the Judicial Conference put forth a recommendation that Congress add to the judiciary 65 new district judgeships and five new circuit judgeships and move eight temporary district judgeships to permanent status<sup>1</sup>. This is a reasonable, apolitical proposal that reflects a simple fact: since the last major judgeships bill was passed in 1990, federal caseloads have increased 30 percent, and courts across the country are struggling to keep up with filings,<sup>2</sup> despite the 200 new Article III judges President Trump has appointed.

The snag, as it has been for years, is the politics of the proposition. We would caution that any proposal to add new judges in a partisan fashion is ultimately self-defeating. The courts’ authority rests on the public’s faith and confidence in their legitimacy, and so any effort to stack the deck to partisan ends undermines and hollows out the core undergirding the entire system. We believe that both parties have a political and civic interest in a healthy and independent judiciary, so we propose that Congress add judges in a fair and nonpartisan way.

Our solution is to stagger the addition of judgeships. The idea is not new, but in order to avoid another 30-year impasse with a contemporaneous upsurge in case filings, it takes on greater urgency and suitability. Under our plan, six new district judges and one new circuit judge would be added every two years, with the entire roster in place by 2041. Here is how it would work:

(1) Following the Judicial Conference’s spring meeting in even-numbered years, the Conference would recommend to the House and Senate Appropriations Committees specifically which six or seven judgeships (six district, zero or one circuit; see chart below) are the most pressing based on current caseloads and should be authorized in the following year’s federal budget.

(2) Over the next few months, and upon the consideration and advice of the House and Senate Judiciary Committees, the Appropriations Committees would endorse those recommendations.

---

<sup>1</sup> “Table 1: Additional Judgeships or Conversion of Existing Judgeships Recommended by the Judicial Conference, 2019,” [https://www.uscourts.gov/sites/default/files/2019\\_judicial\\_conference\\_judgeship\\_recommendations\\_0.pdf](https://www.uscourts.gov/sites/default/files/2019_judicial_conference_judgeship_recommendations_0.pdf)

<sup>2</sup> Cara Bayles, “Crisis to Catastrophe: As Judicial Ranks Stagnate, ‘Desperation’ Hits the Bench,” *Law360*, March 19, 2019, <https://www.law360.com/articles/1140100/as-judicial-ranks-stagnate-desperation-hits-the-bench>

(3) Once an agreement on the new judgeships is reached among the Committees and the Conference, language and funding for them would be included in the final appropriations bill, which would peg the new judgeships to January 21 of the following year<sup>3</sup>. This would mean, for example, a summer 2020 recommendation of seven judges would lead to a summer/fall 2020 appropriation and a new slate of judgeships to be nominated and confirmed after January 21, 2021.

(4) If the five circuit court judgeships prove too difficult to add in the short term, they may be added at any point, though preferably in a manner that is staggered like the district judgeships.

(5) The eight temporary-to-permanent judgeships may be added at any point, though based on the judiciary’s recent emergency budget request<sup>4</sup>, that should occur sooner rather than later.

(6) If caseloads continue to rise at a rate that outpaces newly added judgeships, the Judicial Conference should return to Congress with an updated recommendation, which may yield a different formula.

Year	No. of district	No. of circuit	Temp.-> perm.
2021	6	1	8
2022	0	0	0
2023	6	1	0
2024	0	0	0
2025	6	1	0
2026	0	0	0
2027	6	1	0
2028	0	0	0
2029	6	1	0
2030	0	0	0
2031	6	0	0
2032	0	0	0
2033	6	0	0
2034	0	0	0
2035	6	0	0
2036	0	0	0
2037	6	0	0
2038	0	0	0
2039	6	0	0
2040	0	0	0
2041	5	0	0
	65	5	8

Two decades may seem like a long time to arrive at a fully staffed bench, but given the contentiousness of adding new judgeships, incremental progress may be the only way to ensure the process is conferred with broad-based legitimacy.

Though no sizeable slate of judgeships has been added to Article III for three decades, we came close in 2018, when the House Judiciary Committee passed the Judiciary ROOM Act<sup>5</sup>, which contained the 52 new district judges and eight temporary to permanent judges in the Judicial Conference’s 2017 recommendation. The bill included an amendment introduced by Rep. Jamie Raskin that would have delayed the start of the new judgeships to 2021, which would have meant that no one voting on the bill would know who the appointing president, or the confirming senators, would be – a wise model for future congressional efforts.

An unresolved impediment to the ROOM Act was over how to pay for the new judgeships, which cost about \$1 million each per year once salaries, support staff, office space and supplies, IT needs and health and retirement accounts are tallied. Though this proposal does not address the budgeting issue, we believe that for the right plan, Congress can find this *de minimis* allocation or revenue generator, if needed. After all, staggered judgeships mean lower CBO scores.

Finally, we believe that in addition to an increase in Article III judges, adding to the number of Article I magistrate judges would help alleviate the federal caseload backlog and would sidestep some of the partisan considerations endemic to discussions of enlarging Article III. Magistrate judges may preside over nearly all of the same types of legal matters that district judges handle; they already dispose of 1.4 million of them

<sup>3</sup> That is, after the date a new Congress and/or new president will have been sworn in.

<sup>4</sup> “Judiciary Seeks Funding, Legislative Changes to Aid COVID-19 Response,” May 5, 2020, <https://www.uscourts.gov/news/2020/05/05/judiciary-seeks-funding-legislative-changes-aid-covid-19-response>

<sup>5</sup> H.R. 6755, The Judiciary Reforms, Organization and Operational Modernization Act of 2018, or the Judiciary ROOM Act of 2018, introduced Sept. 13, 2018, 115<sup>th</sup> Congress.

annually<sup>6</sup>. Growing their ranks would reduce logjams, improve case management and assist the third branch in heaving closer to the constitutional and statutory goals of dispatching justice with alacrity.

I would like to reiterate my thanks to Chairman Graham and Ranking Member Feinstein on behalf of Fix the Court for your leadership on judicial reform efforts and for the opportunity to submit comment. I look forward to working with the Committee on strategies for meeting the Judicial Conference's recommendation for more judgeships.

---

<sup>6</sup> See Anthony Marcum, "The Federal Courts Need More Judges – Magistrates Can Help," *Washington Examiner*, June 20, 2018, <https://www.washingtonexaminer.com/opinion/the-federal-courts-need-more-judges-magistrates-can-help>, and Table S-17, Matters Disposed of by U.S. Magistrate Judges For the 10-Year Period Ended September 30, 2019, [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_s17\\_0930.2019.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_s17_0930.2019.pdf).