STATEMENT OF JUDGE GEORGE Z. SINGAL
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Senator Leahy, Senator Feinstein, and members of the Committee, I am George Singal, District Chief Judge for the District of Maine and Chair of the Judicial Conference Committee on Judicial Resources. I would like to thank the Committee for its strong, 15-4 vote in favor of S. 2774, the Federal Judgeships Act of 2008. The Judicial Conference supports S. 2774, which reflects all outstanding Article III judgeship recommendations of the Judicial Conference. The Conference appreciates the Committee's action on the bill and the scheduling of this hearing.

The Judicial Resources Committee of the Judicial Conference of the United States is responsible for all issues of human resource administration, including the need for Article III judges and support staff in the U.S. courts of appeals and district courts. I am here today to provide information about the judgeship needs of the courts and the process by which the Judicial Conference of the United States (the "Conference") determines those needs.

Every other year, the Conference conducts a survey of judgeship needs of all U.S. courts of appeals and U.S. district courts. The latest survey was completed in March 2007. Consistent with the findings of that survey and the deliberations of my Committee, the Conference recommended that Congress establish 67 new judgeships in the courts of appeals and district courts. The Conference also recommended that five temporary district court judgeships be established as permanent positions and that one temporary district court judgeship be extended for an additional five years. Appendix 1 contains the specific recommendation as to

each court. One of the judgeships recommended by the Conference for the Ninth Circuit has already been addressed in a law enacted earlier in this Congress. All the remaining judgeships recommended by the Conference would be provided by S. 2774. For many of the courts, the recommendations, and the bill, reflect needs developed since the last omnibus judgeship bill was enacted in 1990.

Survey Process

In developing recommendations for consideration by Congress, the Conference (through its committee structure) uses a formal process to review and evaluate Article III judgeship needs. The Committee on Judicial Resources and its Subcommittee on Judicial Statistics conduct these reviews; the Conference makes the final recommendations on judgeship needs. Before a judgeship recommendation is transmitted to Congress, it undergoes consideration and review at six levels within the Third Branch, by: 1) the judges of the court making a request; 2) the Subcommittee on Judicial Statistics; 3) the judicial council of the circuit in which the court is located; 4) the Subcommittee on Judicial Statistics, in a further and final review; 5) the Committee on Judicial Resources; and 6) the Judicial Conference. In the course of the 2007 survey, the courts requested 75 additional judgeships, permanent and temporary. Our review procedure reduced the number of recommended judgeships to 67.

In the course of each judgeship survey, all recommendations made in the prior survey are re-considered, taking into account such factors as the most current caseload data and changes in the availability of judicial resources. In some instances, this review prompts adjustments to previous recommendations.

Judicial Conference Standards

The recommendations developed through the review process described above (and in more detail in Appendix 2) are based in large part on a numerical standard based on caseload. These standards are not in themselves indicative of each court's needs. They represent the caseload at which the Conference may begin to consider requests for additional judgeships – the starting point in the process, not the end point.

Caseload statistics must be considered and weighed with other court-specific information to arrive at a sound measurement of each court's judgeship needs; circumstances that are unique, transitory, or ambiguous are carefully considered so as not to result in an overstatement or understatement of actual burdens. The Conference process therefore takes into account additional factors, including:

- the number of senior judges, their ages, and levels of activity;
- magistrate judge assistance;
- geographical factors, such as the number of places of holding court;
- unusual caseload complexity;
- temporary or prolonged caseload increases or decreases;
- the use of visiting judges; and
- any other factors noted by individual courts (or identified by the Statistics Subcommittee) as having an impact on resource needs.

Courts requesting additional judgeships are specifically asked about their efforts to make use of all available resources. (See Appendix 3.)

The standard used by the Conference as its starting point in the district courts is 430 weighted filings per judgeship after accounting for the additional judgeships recommended. But the workload exceeds 430 per judgeship in all but one district court in which the Conference is recommending an additional judgeship. Weighted filings were 500 per judgeship or higher in 18 of those district courts, and five courts exceeded 600 weighted filings per judgeship.

In the courts of appeals, the starting point used by the Conference is 500 adjusted filings per panel. In 2007, four circuits exceeded 900 adjusted filings per panel; even so, two of these courts did not request an additional judgeship. The case mix in the circuits in which additional judgeships are recommended differs significantly from the case mix in the circuit courts that did not request additional judgeships. For example, criminal and prisoner petition appeals were approximately 60 percent of all appeals filed in the Fifth and Eleventh Circuits (which did not seek additional judgeships), but only about 30 percent in the Second and Ninth Circuits (which did). The Second and Ninth Circuits have also experienced dramatic increases in appeals of decisions by the Board of Immigration Appeals. In each circuit court in which the Conference is recommending additional judgeships, the caseload levels substantially exceed the standard, and other factors bearing on workload have been closely considered.

In short, caseload statistics furnish the threshold for consideration, but the process entails a critical scrutiny of the caseloads in light of many other considerations and variables, all of which are considered together.

Background-Caseload Information

The last comprehensive judgeship bill for the U.S. courts of appeals and district courts was enacted in 1990. Since that time, case filings have continued to rise.

By September 2007, filings in the courts of appeals had grown by 36 percent, while case filings in the district courts rose 29 percent (civil cases were up 22 percent while criminal felony filings rose 73 percent). Although Congress created some additional judgeships in the district courts in recent years in response to particular problems in certain districts, no additional judgeship has been created for the courts of appeals. As a result, the national average caseload per three-judge panel has reached 1,049. Were it not for the assistance provided by senior and visiting judges, the courts of appeals would not have been able to keep pace, particularly in light of the number and length of vacancies.

Even with the additional district judgeships, the number of weighted filings per judgeship in the district courts has reached 477-- above the Judicial Conference standard for considering recommendations for additional judgeships. I have provided at Appendix 4 a more detailed description of the most significant changes in the caseload since the last comprehensive judgeship bill.

Although the national figures provide a general indication of system-wide changes, the situation in courts where the Conference has recommended additional judgeships is much more dramatic. For example, there are 18 district courts with caseloads exceeding 500 per judgeship. The district courts in which the Conference is recommending additional judgeships (viewed as a group) have seen a growth in

weighted filings per judgeship from 427 in 1991 to 556 in September 2007--an increase of 30 percent.

The national data and the combined data for courts requesting additional judgeships provide general information about the changing volume of business in the courts. The Conference's recommendations are not, however, premised on this data concerning courts as a group. Judgeships are authorized court-by-court rather than nationally. So the caseload data most relevant to the judgeship recommendations are those that relate to each specific court in which the Conference is recommending an additional judgeship. The Administrative Office of the U.S. Courts has previously provided detailed justifications for the additional judgeships in each court.

Over the last 20 years, the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to both judiciary and congressional concerns. The Conference does not recommend (or wish) indefinite growth in the number of judges. The *Long Range Plan for the Federal Courts* (Recommendation 15) recognizes that growth in the judiciary must be carefully limited to the number of new judgeships that are necessary to exercise federal court jurisdiction. The Conference attempts to balance the need to control growth and the need to seek resources that are appropriate to the judiciary's caseload. In an effort to implement that policy, we have requested far fewer judgeships than the caseload increases combined with the other factors would suggest are now required.

Again, the Judicial Conference of the United States is grateful that the Committee voted 15-4 in support of S. 2774, the Federal Judgeships Act of 2008, which reflects the recommendations of the Judicial Conference and is supported by the Conference.

Appendix 1

ADDITIONAL JUDGESHIPS OR CONVERSION OF EXISTING JUDGESHIPS RECOMMENDED BY THE JUDICIAL CONFERENCE
2007

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIPS	JUDICIAL CONFERENCE RECOMMENDATION
U.S. COURTS OF APPEALS		**13P, 2T**
FIRST	6	1P
SECOND	13	2P
THIRD	14	2P
SIXTH	16	1P
EIGHTH	11	2P
NINTH	28	5P, 2T
U.S. DISTRICT COURTS		**38P, 14T, 5T/P, 1T/E**
ALABAMA, MIDDLE	3	1T
ARIZONA	13	4P, 1T, T/P
CALIFORNIA, NORTHERN	14	2P, 1T
CALIFORNIA, EASTERN	6	4P
CALIFORNIA, CENTRAL	28	4P, 1T
COLORADO	7	1P, 1T
FLORIDA, MIDDLE	15	4P, 1T
FLORIDA, SOUTHERN	18	2P, 1T
HAWAII*	4	T/P
IDAHO	2	1T
INDIANA, SOUTHERN	5	1P
IOWA, NORTHERN	2	1T
KANSAS*	6	T/P
MINNESOTA	7	1P
MISSOURI, EASTERN	8	T/P
MISSOURI, WESTERN	6	1P
NEBRASKA	3	1P
NEVADA	7	1T
NEW JERSEY	17	1T
NEW MEXICO	7	1P, 1T, T/P
NEW YORK, EASTERN	15	3P
NEW YORK, WESTERN	4	1P
OHIO, NORTHERN	12	T/E
OREGON	6	1P, 1T
SOUTH CAROLINA	10	1P
TEXAS, EASTERN	8	1P
TEXAS, SOUTHERN	19	2P
TEXAS, WESTERN	13	1P
UTAH	5	1T
VIRGINIA, EASTERN	11	1P
WASHINGTON, WESTERN	7	1P

P = PERMANENT; T = TEMPORARY; T/P = TEMPORARY MADE PERMANENT
T/E = EXTENSION OF TEMPORARY

* If the temporary judgeship lapses, the recommendation is amended to one additional permanent judgeship.

Appendix 2

JUDGESHIP RECOMMENDATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

JUDICIAL CONFERENCE PROCESS

In developing judgeship recommendations for consideration by Congress, the Judicial Conference, through its committee structure, uses a formal survey process to review and evaluate Article III judgeship needs, regularly and systematically. The nationwide surveys of judgeship needs are based on established criteria related to the workload of the judicial officers. These reviews are conducted biennially by the Committee on Judicial Resources, with final recommendations on judgeship needs approved by the Conference.

The recommendations are based on justifications submitted by each court, the recommendations of the judicial councils of the circuits, and an evaluation of the requests by the Committee on Judicial Resources using the most recent caseload data. During each judgeship survey, the Conference reconsiders prior, but still pending, recommendations based on more recent workload data and makes adjustments for any court where the workload no longer supports the need for additional judgeships. The Judicial Conference has also implemented a process for evaluating situations where it may be appropriate to recommend that certain positions in district courts be eliminated or left vacant when the caseload does not support a continuing need for the judicial officer resource.

In general, the survey process is very similar for both the courts of appeals and the district courts. First, the courts submit a detailed justification to the Subcommittee on Judicial Statistics. The Subcommittee reviews and evaluates the request and prepares a preliminary recommendation which is given to the courts and the appropriate circuit judicial councils for their recommendation. More recent caseload data are used to evaluate responses from the judicial council and the court, if a response is submitted, as well as to prepare recommendations for approval by the Committee on Judicial Resources. The Committee's recommendations are then provided to the Judicial Conference for final approval.

COURT OF APPEALS REVIEWS

At its September 1996 meeting, on the recommendation of the Judicial Resources Committee, which consulted with the chief circuit judges, the Judicial Conference unanimously approved a new judgeship survey process for the courts of appeals. Because of the unique nature of each of the courts of appeals, the Conference process involves consideration of local circumstances that may have an impact on judgeship needs. In developing recommendations for courts of appeals, the Committee on Judicial Resources takes the following general approach:

A. Courts are asked to submit requests for additional judgeships provided that at least a majority of the active members of the court have approved submission of the request; no recommendations for additional judgeships are made without a request from a majority of the members of the court.

B. Each court requesting additional judgeships is asked to provide a complete justification for the request, including the potential impact on its own court and the district courts within the circuit of not getting the additional judgeships. In any instance in which a court's request cannot be supported through the standards noted below, the court is requested to provide supporting justification as to why the standard should not apply to its request.

C. The Committee considers various factors in evaluating judgeship requests, including a statistical guide based on a standard of 500 filings (with removal of reinstated cases) per panel and with pro se appeals weighted as one third of a case. This caseload level is used only as a guideline and not used to determine the number of additional judgeships to recommend. The Committee **does not** attempt to bring each court in line with this standard.

The process allows for discretion to consider any special circumstances applicable to specific courts and recognizes that court culture and court opinion are important ingredients in any process of evaluation. The opinion of a court as to the appropriate number of judgeships, especially the maximum number, plays a vital role in the evaluation process, and there is recognition of the need for flexibility to organize work in a manner which best suits the culture of the court and satisfies the needs of the region served.

DISTRICT COURT REVIEWS

In an ongoing effort to control growth, in 1993, the Conference adopted new, more conservative criteria to evaluate requests for additional district judgeships, including an increase in the benchmark caseload standard from 400 to 430 weighted cases per judgeship. Although numerous factors are considered in looking at requests for additional judgeships, the primary factor for evaluating the need for additional district judgeships is the level of weighted filings. Specifically, the Committee uses a case weighting system[1] designed to measure judicial workload, along with a variety of other factors, to assess judgeship needs. The Conference and its Committee review all available data on the caseload of the courts and supporting material provided by the individual courts and judicial councils of the circuits. The Committee takes the following approach in developing recommendations for additional district judgeships:

A. In 2004, the Subcommittee amended the starting point for considering requests from current weighted filings above 430 per judgeship to weighted filings in excess of 430 per judgeship *with an additional judgeship*. This caseload level is used only as a guideline and is not used to determine the number of additional judgeships to recommend. The Committee **does not** attempt to bring each court in line with this standard.

B. The caseload of the individual courts is reviewed to determine if there are any factors present to create a temporary situation that would not provide justification for additional judgeships. Other factors are also considered that would make a court's situation unique and provide support either for or against a recommendation for additional judgeships.

C. The Committee reviews the requesting court's use of resources and other strategies for handling judicial workload, including a careful review of each court's use of senior judges, magistrate judges, and alternative dispute resolution, in addition to a review of each court's use of and willingness to use visiting judges. These factors are used in conjunction with the caseload information to decide if additional judgeships are appropriate, and to arrive at the number of additional judgeships to recommend for each court.

D. The Committee recommends temporary judgeships in all situations where the caseload level justifying additional judgeships occurred only in the most recent years, or when the addition of a judgeship would place a court's caseload close to the guideline of 430 weighted filings per judgeship. The Committee sometimes relaxes this approach in the case of a small court, where the addition of a judgeship would drop the caseload per judgeship substantially below the 430 level. In some instances the Committee also considers the pending caseload per judgeship as an additional factor supporting an additional temporary judgeship.

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[1] "Weighted filings" is a mathematical adjustment of filings, based on the nature of cases and the expected amount of judge time required for disposition. For example, in the weighted filings system for district courts, each civil antitrust case is counted as 3.45 cases while each homicide defendant is counted as 1.99 weighted cases. The weighting factors were updated by the Federal Judicial Center in June 2004 based on criminal defendants and civil cases closed in calendar year 2002.

ACTIONS TO MAXIMIZE USE OF JUDGESHIPS

In addition to the conservative and systematic processes described above for evaluating judgeship needs, given the current climate of fiscal constraint, the judiciary is continually looking for ways to work more efficiently without additional resources. As a part of the normal judgeship survey process or as a separate initiative, the judiciary has used a variety of approaches to maximize the use of resources and to ensure that resources are distributed in a manner consistent with workload. These efforts have allowed us to request fewer additional judgeships than the increases in caseload would suggest are required. Among the more significant methods in use are:

(1) **Surveys to review requests for additional permanent and temporary judgeships and extensions or conversions of temporary judgeships to permanent:**
As described previously, surveys are conducted biennially of all Article III judgeship needs. To reduce the number of additional judgeships requested from Congress, the Judicial Conference has recently adopted more conservative criteria for determining when to recommend creation of additional judgeships in the courts of appeals and district courts.

(2) **Recommending temporary rather than permanent judgeships:**
Temporary, rather than permanent, judgeships are recommended in those instances where the need for additional judgeships is demonstrated, but it is not clear that the need will exist permanently.

(3) **Development of a process to recommend not filling vacancies:**
In March 1997, the Judicial Conference approved a process for reviewing situations where it may be appropriate to recommend elimination of a district judgeship or that a vacancy not be filled. The Judicial Conference includes this process in its biennial surveys of judgeship needs for recommending to the Executive and Legislative Branches that specific vacant positions be eliminated or not be filled. A similar process has been developed and is in use for the courts of appeals.

(4) **Use of senior judges:**
Judicial officer resource needs are also met through the use of Article III judges who retire from active service to senior status. Most senior Article III judges perform substantial judicial duties; over 400 senior judges are serving nationwide.

(5) **Shared judgeships:**
Judgeship positions have been shared to meet the resource needs of more than one district without the cost of an additional judgeship.

(6) **Intercircuit and intracircuit assignment of judges:**
To furnish short-term solutions to disparate judicial resource needs of districts within and between circuits, the judiciary uses intercircuit and intracircuit assignments of Article III judges. This program has the potential to provide short-term relief to understaffed courts.

(7) **Use of Magistrate Judges:**
Magistrate judges serve as adjuncts to the district courts, supplementing the work of the Article III judges. Use of magistrate judges on many routine court matters and proceedings allows for more effective use of Article III judges on specialized court matters.

(8) **Use of alternative dispute resolution:**
Since the late 1970s and with increasing frequency, courts use various alternative dispute resolution programs such as arbitration, mediation, and early neutral evaluation as a means of settling civil disputes without litigation.

(9) **Use of technology:**
The judiciary continually explores ways to help align caseloads through technological advancements, where judges can assist other districts or circuits without the need to travel.

Over the last 20 years, the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to congressional concerns. In addition, some adjustments have been made because the Conference recognizes that there cannot be indefinite growth in judicial officer resources and is concerned about continuing growth. This issue is recognized in Recommendation 15 of the Long Range Plan for the Federal Courts, which acknowledges the need for growth in the judiciary to be carefully controlled so that creation of new judgeships is limited to that number necessary to exercise federal court jurisdiction. The Judicial Conference is constantly evaluating the need to control growth and the need to seek resources that are appropriate to the workload. In an effort to place that policy in effect, the Conference has requested far fewer judgeships than the caseload increases would suggest are now required.

Appendix 4

CASELOAD CHANGES SINCE LAST JUDGESHIP BILL

A total of 34 additional district court judgeships have been created since 1991, but five temporary judgeships have lapsed, including two in 2004. These changes have resulted in a four percent increase in the overall number of authorized district court judgeships; court of appeals judgeships have not increased. Since the last comprehensive judgeship bill was enacted for the U.S. courts of appeals and district courts, the numbers of cases filed in those courts have grown by 36 percent and 29 percent, respectively. Specific categories of cases have seen dramatic changes over the last 16 years, some increasing and some decreasing significantly. Following is a summary of the most significant changes.

U.S. COURTS OF APPEALS *(Change in authorized judgeships: 0)*

- The total number of appeals filed has grown by over 15,000 cases since 1991.
- Appeals of criminal cases have increased 28 percent.
- The most dramatic growth in criminal appeals has been in immigration appeals, which increased from 145 in 1991 to 2,007 in 2007.
- Appeals of decisions in civil cases from the district courts have risen 8 percent since 1991.
- The most dramatic growth in civil appeals has been in prisoner appeals where case filings are up 42 percent since 1991.
- Appeals involving administrative agency decisions have fluctuated over the years, but have grown from 2,859 in 1991 to 10,382 in 2007. The increases began in 2002 due to appeals of decisions by the Board of Immigration Appeals (BIA). Dramatic increases in BIA appeals occurred in the Ninth and Second Circuits.
- Original proceedings have grown from 609 in 1991 to 3,775 in 2007. The Antiterrorism and Effective Death Penalty Act, enacted April 1996, requires prisoners to seek permission from courts of appeals for certain petitions. Data for these and certain pro se mandamus proceedings were not reported until October 1998. Between 1999 and 2007, original proceedings filings rose 12 percent.

U.S. DISTRICT COURTS *(Change in authorized judgeships: +4%)*

CIVIL CASELOAD

- The civil caseload has fluctuated over the past 16 years, but has increased 22 percent overall since 1991.

- The increase in civil filings since 1991 resulted primarily from cases related to personal injury product liability (233%), copyright, patent and trademark (108%), civil rights (60%), social security (53%), and prisoner petitions (27%).

- Some of the increases in civil filings resulted, in part, from legislative actions:

  - civil rights filings increased steadily after the Civil Rights Act of 1990 was enacted. Filings rose from 19,892 in 1991 to 43,278 in 1997, then remained relatively stable for several years before declining in 2005, 2006, and 2007.

  - prisoner petitions rose through the first half of the 1990's, rising 61 percent between 1991 and 1996, due primarily to a 57 percent increase in prison civil rights cases. Motions to vacate sentence and habeas corpus petitions were also significantly higher. Prison litigation reform was enacted in 1996, and prison civil rights filings have since fallen 42 percent and are now below the number of cases filed in 1991. Habeas corpus petitions, on the other hand, have increased 87 percent since 1991. Overall, prisoner petitions increased 27 percent between 1991 and 2007.

- Personal injury product liability filings rose 200 percent from 1991 to 1997, due primarily to breast implant cases and a large number of cases filed in the Middle District of Louisiana related to an oil refinery explosion. Filings have since fluctuated significantly, but the number of cases filed in 2007 was more than three times the number filed in 1991. A large proportion of these cases involve multi-district litigation related to pharmaceutical products.

- Filings related to social security fluctuated considerably between 1991 and 1996, but nearly doubled between 1996 and 2002. Although filings have declined since 2002, the number of social security cases filed in 2007 was 53 percent above the number filed in 1991.

- Protected property rights cases rose 68 percent between 1991 and 2000, due primarily to significant increases in trademark and patent cases. Filings declined slightly between 2000 and 2002, but have since risen 31 percent due primarily to increases in copyright cases, which more than doubled. Since 1991, filings have increased 108 percent.

- In the District of South Carolina, nearly 20,000 civil cases related to a single case in the U.S. Bankruptcy Court were filed in 2004.

FELONY CRIMINAL CASELOAD

- Criminal felony case filings have increased 73 percent since 1991 and the number of criminal felony defendants is 51 percent higher. After fluctuating between 1991 and 1994, both case filings and defendants steadily increased through 2004. Criminal filings have declined slightly over the last three years.

- The largest increase, by far, has been in immigration filings which rose from 1,992 in 1991 to 16,593 in 2007.

- Firearms filings fluctuated between 1991 and 1997, but rose 198 percent between 1997 and 2004. Although filings have declined slightly since 2004, the increase from 1991 to 2007 totaled nearly 4,500 cases.

- The number of drug-related filings in 2007 was 43 percent above the number filed in 1991 despite a 10 percent decline since 2002.

- Although filings have fluctuated over the years, the number of fraud cases has increased 16 percent from 5,931 in 1991 to 6,854 in 2007.

- Filings related to drugs, immigration, firearms, and fraud offenses comprise more than 80 percent of all felony cases filed.