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May 7, 2007

Hon. Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Hon. Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

We write for ourselves and six other former members of the House of Representatives and the Senate. We recommend, with deference, that if Congress is unable to raise legislative salaries to an appropriate level, that it decouple its salaries from those of federal judges and high-level executive branch officials and raise those salaries to appropriate levels. This salary linkage has not served Congress well and has prevented a rational salary setting system for judges and executive officials.

Salaries of executive branch officials, Members of Congress, and federal judges have all suffered in recent years. We are particularly concerned about judges' salaries. Inadequate salaries pose a great threat to the judicial branch and the nation to the degree those salaries threaten our ability to attract and keep judges. We find persuasive the case for higher judicial salaries made by Supreme Court justices, independent observers such as Paul Volcker, many segments of the bar, and numerous editorial pages.

By any measure, federal judges' earning power has declined; since 1969, federal district judges' real pay has dropped by roughly 25 percent while the average American worker's has risen by about 19 percent. Judges should not earn what the cream of the private bar earns, but district judges now earn well below the salaries of many law deans, senior professors, and CEOs of non-profits—groups with which they were once on a par—and they earn less than some executive branch attorneys and other employees for whom Congress has created salary exceptions that reflect job market realities.

The danger posed by current judicial salaries is not unfillable judicial vacancies or a mass exodus of judges (although resignations are increasing). The danger rather is an alteration of the federal bench from one drawn from all elements of the legal profession to one populated only by the independently wealthy and those for whom a federal judicial appointment represents a salary enhancement.

Majorities in Congress have believed that the best way to achieve salary fairness for members is by coupling their salaries to those of deputy cabinet secretaries and agency heads, and federal judges—district judges consistently since 1987, district or circuit judges intermittently before then. Linkage reflects a hope that the public will tolerate legislative

**AD HOC GROUP ON
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Howard H. Baker, Jr.
(U.S. Senate,
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Richard A. Gephardt
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Henry J. Hyde
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salary increases if tied to the same increases for less visible officials.

The attached paper by scholars at the Brookings Institution and the American Enterprise Institute for Public Policy Research (AEI) demonstrates that linkage's benefits to legislators are less clear-cut than generally assumed. In the 1960s, 1970s and 1980s, the several substantial salary boosts that members received to offset partially the impact of inflation on their buying power came mainly in years when their salaries were not linked to those of other officials. Since 1987, a period of consistent linkage, member, judge, and officials' salaries have all grown by three percent in 2007 dollars, while average worker wages have grown by 17 percent.

The Brookings-AEI paper also shows that there is little to justify linkage as compensation policy. Linkage does not allow assessment of different salary needs of positions that differ in responsibilities and career anticipations. Linkage has not, as we said above, prevented lesser positions in the executive branch from receiving salaries higher than those of members, judges, and executive officials. Linkage does not symbolize interbranch equality. Strict salary linkage is not used by other governments. And, judging from recent newspaper commentary, informed public opinion does not support linkage.

The damage that linkage does to a rational system of salary setting for top officials is not a new discovery. One of our group, Senator Howard Baker, told the Commission on Executive, Legislative, and Judicial Salaries in 1988: "I think we as a nation are prepared to pay for a good and honest and capable government. The stumbling block in all of this is a system which ties all senior-level federal pay increases to Congressional pay raises."

Sincerely,



John C. Danforth



Leon E. Panetta

cc: Hon. Charles E. Schumer
Hon. Jeff Sessions

Enc: *How to Pay the Piper: It's Time to Call Different Tunes for Congressional and Judicial Salaries* (April 2007)