

**STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES**

March 28, 2012

INTRODUCTION

Chairwoman Emerson, Representative Serrano, and members of the Committee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2013. In doing so, I will cover our concerns regarding staffing losses in the courts in 2012 due to funding constraints, the potential impact of across-the-board spending cuts in 2013 on the federal courts, the courts' workload and our use of staffing formulas to develop the Judiciary's budget request, and an update on our ongoing efforts to cut costs. This is my eighth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my sixth appearance before the Financial Services and General Government panel. Appearing with me today is Judge Thomas F. Hogan, the Director of the Administrative Office of the United States Courts. Chief Justice John G. Roberts, Jr. appointed Judge Hogan as Director this past October. Judge Hogan succeeds James C. Duff in this position.

STATEMENTS FOR THE RECORD

In addition to my statement and Judge Hogan's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade be included in the hearing record.

FISCAL YEAR 2012 FUNDING

I begin today by thanking the Committee on behalf of the entire Third Branch for making the federal Judiciary a funding priority in the fiscal year 2012 omnibus spending bill. At a 1 percent overall increase above the fiscal year 2011 enacted level, we realize the Judiciary fared better than many other federal entities. For the salaries and expenses account that funds the bulk of federal court operations, the omnibus appropriations bill provides funding slightly above a hard freeze. We understand the fiscal constraints under which you are operating and we appreciate the funding levels you were able to provide. I am compelled to report to the Committee, however, that continued funding at these levels could imperil the high quality of justice on which our nation relies. As a result of fiscal year 2012 funding levels, and out of concern for fiscal year 2013, the courts have already downsized by nearly 1,100 employees since July 2011. The vast majority of these losses were due to normal attrition, but we did offer

buyouts and early-outs in order to minimize forced downsizing. We are trying to ascertain the impact of these losses, but without a significant reduction in workload, which is unlikely, we are facing the possibility of delays in processing cases and a reduction in the supervision of felons on post-conviction release in the community. This will become most worrisome to us if the appropriations we receive in fiscal year 2013 again approximate a hard freeze. Based on our current estimates, at a hard freeze the courts will have to downsize by an additional 1,000 on-board staff. That will mean the courts will have lost a total of 2,100 clerks of court and probation and pretrial services staff since July 2011, a 9 percent loss of court staff.

For our other large accounts, we are grateful that the fiscal year 2012 omnibus bill funds fully the Defender Services, Court Security, and Fees of Jurors and Commissioners accounts. We also are appreciative of several provisions in the omnibus bill, including one-year extensions of the temporary district judgeships in Kansas and Hawaii, and a provision requiring the President to transmit to Congress the Judiciary's supplemental appropriations requests.

IMPACT OF THE BUDGET CONTROL ACT ON THE FEDERAL COURTS

I turn now to a subject that is of great concern to all of us in the federal Judiciary. As the Committee is aware, the Budget Control Act (BCA) of 2011 was signed into law last August and sets a course for reducing the nation's debt by \$2.2 trillion between fiscal years 2012 and 2021 through a combination of budget caps and spending cuts and/or revenue increases. Because deficit reduction legislation was not enacted by January 15, 2012, the enforcement mechanism in the BCA requires automatic spending cuts – sequestration – to take effect in January 2013 against fiscal year 2013 appropriations.

In September 2011, the Congressional Budget Office estimated that, if no deficit reduction plan was enacted, the sequestration process specified in the BCA would require a 10 percent cut to defense discretionary spending and a 7.8 percent cut to non-defense discretionary appropriations. After accounting for normal attrition and buyouts/early-outs, our latest analysis indicates a 7.8 percent cut would result in the forced downsizing of up to 4,400 employees *or* a four week furlough for all court staff. Most likely a combination of forced downsizing and furloughs would occur. These losses would follow the 2011 and 2012 staffing losses in the courts due to funding constraints. In other Judiciary accounts, payments to private attorneys providing defense counsel services to clients in our Defender Services program would have to be suspended the last six weeks of the fiscal year, and federal defender organization staff would have to be furloughed for six weeks. Security systems and equipment in our Court Security program would have to be cut nearly 50 percent, and 370, or 9 percent, of court security officers in federal courthouses would be lost. With insufficient funds to pay jurors, the courts would have to suspend all civil jury trials for the last six weeks of fiscal year 2013. Simply put, sequestration would have a devastating and long-lasting impact on the federal courts and the administration of justice in this country.

We recognize that there is still ample time prior to January 2013 for Congress and the President to reach agreement on an alternative deficit reduction plan before any across-the-board cuts take effect. We remain concerned, however, that an alternative plan could also include steep spending cuts to non-security spending that impact the Judiciary. Unlike many Executive Branch entities, we do not have programs or grants that we can cut in response to a budget

shortfall. Consequently, we could not reduce the scope or volume of our work if we faced deep funding cuts. A large funding shortfall would result in crippling staffing losses in our clerks of court and probation and pretrial services offices nationwide.

We recognize fully the serious fiscal condition of the country and the need to restrain federal spending. But, as you consider Judiciary funding, we ask the Committee to take into account the nature and importance of our work. The Judiciary performs constitutionally-mandated core government functions that are a pillar of our democratic system of government. If sufficient funding is not provided to the courts, we cannot function in the way the Founders envisioned and cannot afford the people of the United States the type of justice system that has been a hallmark of our liberty throughout our nation's history. We urge Congress to provide funding to the federal courts in fiscal year 2013 sufficient to maintain current services and fiscal year 2012 staffing levels, thus avoiding any further loss of court staff.

COURT STAFFING AND WORKLOAD

Let me turn briefly to a discussion of the federal courts' workload and the funding we request from Congress for court staff to handle that workload. I will discuss first the Judiciary's use of workload-driven staffing formulas, both to guide the formulation of the budget request and to allocate funding fairly and equitably to the nearly 400 court units across the country.

We use staffing formulas to determine the appropriate number of staff needed in appellate, district, and bankruptcy clerks of court offices, and probation and pretrial services offices. Workload factors such as case filings and the number of judges in the courts are the primary inputs to the formulas. Workload in the courts can fluctuate from year to year based on a multitude of factors, including changes in Department of Justice prosecutorial priorities, changes in the number of individuals and businesses filing for bankruptcy, and changes in the number of felons coming out of prison requiring supervision in the community by our probation officers. The staffing formulas capture these changes and enable us to align our annual budget request to Congress with changing workload demands. In reality, the Judiciary has not been requesting funding from Congress to support 100 percent of the staffing formulas. Staff working in clerks of court and probation and pretrial services offices number over 20,000 and their salaries and benefits costs represent the single largest expense in the Judiciary's budget, totaling \$2.4 billion in the fiscal year 2013 request. For this reason, the staffing formula results establish a staffing *ceiling* in our internal discussions of how much to request from Congress for court staff. We also consider the current federal budget climate, future funding prospects, and other factors in formulating the Judiciary's budget request.

The Judiciary's fiscal year 2013 request does not seek new court support staff to address all of our workload needs or new staff to replace the ones we expect to lose this fiscal year due to funding constraints. I reiterate we are only asking to maintain the fiscal year 2012 funded staffing level in fiscal year 2013, which would support a court staffing level equal to *80 percent* of the level indicated as necessary by the staffing formulas.

So how can the courts handle the workload at reduced staffing levels? The answer is that we will continue to prioritize our work to focus on essential activities of the courts first and foremost. We will remain vigilant in our efforts to cut costs and streamline court operations through the use of information technology and changes to our business processes. But, in the

end, with fewer staff some work will simply not be done. Staffing at public counters to assist individuals with case filings and court services will be reduced. With fewer employees to docket cases and perform quality assurance on electronic case filings, some case processing will be delayed. Computer software upgrades will be deferred. And our probation officers will have to reduce supervision of lower risk offenders in order to focus limited resources on high-risk offenders.

Turning to workload, with the exception of bankruptcy filings, workload in the courts has begun to level out with most workload factors showing only small up or down changes. We project workload in our probation and pretrial services program to increase slightly in 2012, with new pretrial cases activated increasing 3 percent to 110,000 cases and the number of offenders under supervision of a probation officer increasing 2 percent to an all-time high of 131,600. After several years of steady growth we project a 2 percent decrease in our criminal caseload for 2012 to 77,000 filings, primarily due to fewer anticipated immigration prosecutions. Appellate filings are expected to be flat in 2012 at 55,300 filings, and we anticipate a 1 percent decrease in civil caseload to 287,000 filings.

Given the changing economic conditions in the country, bankruptcy filings have been particularly difficult to forecast. After several years of explosive growth – 29 percent in 2008, 35 percent in 2009, and 20 percent in 2010 – bankruptcy filings fell 3 percent in 2011 and are expected to fall another 11 percent in 2012 to 1,361,400 filings before reversing course and growing 8 percent to 1,473,200 filings in 2013. Declining consumer debt levels and a pause in home foreclosures contributed to the recent decline in filings. Our projections assume consumer debt levels will begin to climb again, resulting in more bankruptcies in 2013. In addition, if home foreclosures increase, then bankruptcies will grow at an even faster pace than the level we are projecting for 2013.

CONTINUED EFFORTS TO CONTAIN COSTS IN THE COURTS

The Judiciary continues to build on the cost-containment efforts we started in 2004. Over the last eight years many of the cost cutting initiatives have been implemented and have helped limit the growth in the Judiciary's budget. Our approach to cost containment is to identify the core functions and associated resource needs of the federal courts and to request from Congress only the funding necessary to perform those core functions. In fact, our fiscal year 2013 budget request reflects a 3.1 percent increase above fiscal year 2012, *the Judiciary's lowest requested increase ever*.

The Judiciary's biggest cost-containment success has been in limiting the growth in space rent costs. As a result of cost containment initiatives put in place in recent years, our fiscal year 2013 budget request for GSA rent reflects a cost avoidance of approximately \$400 million below estimates made prior to our cost-containment initiatives. Other areas of successful cost containment have been reducing the growth in the number of court support staff in the courts; prioritizing the work of probation and pretrial services offices to focus on the highest risk offenders; reviewing compensation policies; limiting the growth in the costs of law clerks; and investing in technology to enhance the productivity and service of the courts, to name a few.

We have begun a new round of cost containment, recognizing that we need to do even more. This next round will be more difficult and may require us to make choices that we would

prefer not to make. But we are committed to doing everything we can to conserve resources and be good stewards of the taxpayers' money. We will take these difficult steps in the belief that they are essential to positioning the Judiciary for the fiscal realities of today and the future.

One of our new initiatives is to maximize the implementation of shared administrative services among the courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. This will reduce the duplication caused by multiple human resources, procurement, financial management, and information technology staffs in a single judicial district or circuit. This effort will reduce staffing and overhead costs and streamline administrative processes in the courts. We also are updating our staffing formulas to take into account additional best practices, benchmarks, performance standards, incentives for efficiency, and the presumption of shared administrative services. We are developing standardized approaches to delivering information technology products and services to the courts. We will continue to reduce the amount spent on law books and law libraries in recognition of the increased reliance on computers to perform legal research. In our ongoing effort to reduce space costs we intend, to the extent practicable, to relocate probation and pretrial services offices out of leased space and move them into existing courthouses as well as identify and seek to close underutilized facilities. In identifying these new cost saving initiatives we involved our court advisory groups so that we had the perspective of our front-line workers when considering cost-cutting measures.

I will close on this topic by emphasizing that the Judiciary takes seriously its role as steward of the taxpayers' money and will continue to pursue cost savings wherever possible. In turn, we look to the Congress to provide the resources we need to do our work.

FISCAL YEAR 2013 BUDGET REQUEST

For fiscal year 2013, the Judiciary is seeking \$7.19 billion in appropriations, a 3.1 percent overall increase above fiscal year 2012, the lowest requested increase on record, as I mentioned earlier in my testimony. Judiciary accounts include \$213 million for adjustments to base for standard pay and non-pay changes, including a 0.5 percent ECI adjustment for Judiciary personnel consistent with the President's recommendation for Executive Branch personnel. The request also includes a total of \$6 million for program increases for Supreme Court communications infrastructure enhancement and façade restoration, three new magistrate judges and associated chambers staff, and several smaller enhancements. I will summarize the 2013 requests for our three largest accounts.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations including the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. In recognition of the fiscal constraints we all face, the Judicial Conference made some very tough choices and elected to limit the growth of this account to 2.7 percent for fiscal year 2013 to \$5.15 billion. One decision was not to request funding for this account for new staff to address workload needs, or to restore the staff we expect to lose in fiscal year 2012 as a result of budget constraints. We are also not requesting \$38 million in base funding for national information technology projects and court allotments (the funding we send out to the courts). These IT projects, such as the modernization of our financial systems, will have to be delayed or deferred. Reductions to court allotments will not allow the

courts to replace equipment in a timely fashion and will fund only their most critical IT needs. The request includes only a single program increase for three new magistrate judges and associated staff.

The Defender Services program, which provides criminal defense services under the Criminal Justice Act to defendants that are unable to afford counsel, requires a 3.2 percent increase to \$1.06 billion in fiscal year 2013 to handle an estimated 205,000 defense representations. The request provides a small cost-of-living adjustment to the panel attorney non-capital rate (from \$125 to \$126 per hour) and capital rate (from \$178 to \$179 per hour), consistent with the cost-of-living adjustment requested for federal workers. The request also includes a program increase for four new case budgeting positions that will focus on reducing defense costs in high-cost cases. The requested increase for this account reflects \$5.5 million in cost-containment savings.

Our Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 2.9 percent increase to \$515 million for fiscal year 2013. The request will provide for additional court security officers, higher Federal Protective Service costs, and other standard adjustments. The requested increase for this account reflects \$10 million in cost-containment savings.

A summary of fiscal year 2013 adjustments to base and program increases and appropriations requirements for each Judiciary account are included at Appendix A.

We believe the requested funding level represents the minimum amount required to meet our Constitutional and statutory responsibilities. We understand the fiscal constraints under which you are operating, but I reiterate the points I made earlier in my testimony that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does.

CONCLUSION

Chairwoman Emerson and Representative Serrano, I hope that my testimony today provides you with some insight into our concern regarding 2012 staffing losses in the courts, the devastating impact sequestration would have on the federal courts in 2013, our use of staffing formulas to develop the Judiciary's budget request, and our ongoing efforts to cut costs and do more with less. I realize that fiscal year 2013 is going to be a very difficult budget year, perhaps the most difficult ever. We are committed to containing costs and exploring new and better ways of conducting court business. Our initiatives have significantly reduced the Judiciary's appropriations requirements, but we are very concerned we are approaching a point where we may be sacrificing the quality of justice as a result of budget constraints. I know you agree that a strong, independent Judiciary is critical to our nation. I urge you to continue making the Judiciary a funding priority to enable us to maintain the high standards of the United States Judiciary.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Committee may have.

SUMMARY OF THE JUDICIARY'S FISCAL YEAR 2013 REQUEST

The judiciary's fiscal year 2013 appropriation request totals \$7,188,716,000, an increase of \$218,695,000 (3.1 percent) over fiscal year 2012 enacted appropriations levels.

- A total of \$212.7 million (97 percent) of the \$218.7 million increase requested will provide for pay adjustments, inflation and other adjustments to base necessary to maintain current services. Of this amount,
 - An increase of \$109.7 million is for inflationary pay and benefit rate increases, including a 0.5 percent ECI adjustment for Judiciary personnel consistent with the President's pay recommendation for Executive Branch personnel; non-pay inflationary adjustments, adjustments for the Vaccine Injury Trust Fund; and an increase for the restoration of base requirements to the U.S. Court of Appeals for the Federal Circuit.
 - An increase of \$50.7 million is for GSA rent and related costs.
 - An increase of \$45.4 million is necessary to replace non-appropriated sources of funds used to support base requirements in fiscal year 2012 with direct appropriations.
 - An increase of \$27.7 million is associated with increases in the number of senior judges and staff and average number of filled Article III judgeships and staff.
 - An increase of \$25.1 million is for an increase in mandatory payments to the retirement trust funds for judges, workload changes in Defender Services, and a projected net change in available jurors.
 - An increase of \$9.2 million is for the annualization of new court personnel for the Supreme Court, Defender Services positions, Judiciary-funded staff at the U.S. Marshals Service, and for court security officers expected to be hired in fiscal year 2012.
 - An increase of \$5.4 million is for security-related adjustments.
 - A net decrease of \$6.8 million is associated with decreases to non-recurring costs for expenses related to the court security program, requirements in the Administrative Office account, and filled fiscal year 2012 judgeships.
 - A decrease of \$53.7 million is associated with cost-containment reductions to the Defender Services program, the Court Security program, and information technology projects in the courts' Salaries and Expenses account.

- The remaining \$5.9 million (3 percent) of the requested increase is for program enhancements, as follows:
 - An increase of \$3.6 million will provide for the Supreme Court police radio infrastructure upgrade and for the facade restoration at the Supreme Court.
 - An increase of \$1.8 million will provide for 3 additional magistrate judges and associated staff (9 FTE) in districts with growing caseload.
 - An increase of \$0.4 million will provide for four new case budgeting positions (2 FTE) for the Defender Services program.
 - An increase of \$0.2 million will provide for education and training program enhancement (2 FTE) at the Federal Judicial Center.
 - A net decrease of \$0.1 million will replace two existing contractor positions, funded by the Judiciary at the U.S. Marshals Service, with two new lower cost positions (1 FTE).

**Judiciary Appropriations
(\$000)**

Appropriation Account	FY 2012 Enacted Appropriation	FY 2013 Request	Change FY 2013 vs. FY 2012	% Change FY 2013 vs. FY 2012
U.S. Supreme Court				
Salaries & Expenses	\$74,819	\$77,165	\$2,346	3.1%
Care of Building and Grounds	<u>8,159</u>	<u>11,963</u>	<u>3,804</u>	<u>46.6%</u>
Total	82,978	89,128	6,150	7.4%
U.S. Court of Appeals for the Federal Circuit	32,511	34,328	1,817	5.6%
U.S. Court of International Trade	21,447	22,880	1,433	6.7%
Courts of Appeals, District Courts & Other Judicial Services				
Salaries & Expenses - Direct	5,015,000	5,148,799	133,799	
Vaccine Injury Trust Fund	<u>5,000</u>	<u>5,354</u>	<u>354</u>	
Total	5,020,000	5,154,153	134,153	2.7%
Defender Services	1,031,000	1,063,517	32,517	3.2%
Fees of Jurors & Commissioners	51,908	54,635	2,727	5.3%
Court Security	500,000	514,673	14,673	2.9%
Subtotal	6,602,908	6,786,978	184,070	2.8%
Administrative Office of the U.S. Courts	82,909	85,148	2,239	2.7%
Federal Judicial Center	27,000	27,729	729	2.7%
Judiciary Retirement Funds	103,768	125,464	21,696	20.9%
U.S. Sentencing Commission	16,500	17,061	561	3.4%
Direct	\$6,965,021	\$7,183,362	\$218,341	
Vaccine Injury Trust Fund	\$5,000	\$5,354	\$354	
Total	\$6,970,021	\$7,188,716	\$218,695	3.1%