

Federal court vacancies imperil justice in Texas

In 1787, when Alexander Hamilton wrote Federalist Paper No. 78, he observed that the federal judiciary "has no influence over either the sword or the purse" and therefore is the "weakest" of the three branches of government. It is the weakest for another reason: It must depend on the other two branches to fill its ranks.

If these ranks don't get filled and if new judges don't replace retiring ones, then the courts become clogged and cases cannot be resolved in a timely manner. Unfortunately, this is the state of affairs in Texas.

There are 52 federal trial courts in our State, divided into four districts. We now have eight vacancies. Two more are expected within the next year. If there are no replacements by then, one bench in every five will be empty.

This is not a good thing. Federal judges are asked to resolve some of the most difficult legal disputes in our nation — cases involving patents, the environment, civil and constitutional rights, taxation, antitrust, securities fraud, mass torts, claims against the federal government, terrorism and serious crimes. The issues are complex, but the matters must be attended to, not only for the benefit of the parties, but also for the benefit of our society. The sooner our courts make decisions, the better.

Yet, cases cannot get timely resolution if the dockets are overcrowded. Even at full strength, without vacancies, the Texas federal courts carry heavy loads. In fact, the dockets are so

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large that national surveys suggest that Texas deserves 10 additional courts.

Before I retired in 2013, I worked side by side with the men and women serving the federal judiciary in Texas. They are remarkably diligent and completely dedicated. But now, those judges are not only doing their jobs and handling their dockets, they are also handling the dockets of their retired colleagues. They are no longer giving 100 percent every day. They are giving 120 percent. I greatly admire their devotion to duty, but that kind of effort is not sustainable over an extended period of time.

Let me make the point another way. Imagine if the Dallas Mavericks or the San Antonio Spurs or the Houston Rockets played their games with only four players on the court. Things wouldn't go well. Neither will things go well in our federal courts if these vacancies persist.

Some federal trial judges in Texas were appointed by Republican presidents and some were appointed by Democratic presidents, but it makes no difference. To a person, their fidelity to the law is paramount. In the present circumstances, however, their ability to perform their con-

stitutional responsibilities is threatened. The matter has reached a crisis point and must be addressed.

Since federal judges receive a lifetime appointment, their selection requires serious consideration. Under our constitutional system, the president nominates and the Senate confirms.

The appointment process in any state can become complicated when the president is in one party and the state's senators are in another party, as in Texas. It is normally the case that each side brings a different perspective to the table, and that is how it should be. Yet, even within these confining circumstances, the good news is that President Barack Obama and Sens. John Cornyn and Ted Cruz have found common ground in the recent appointment of Judge Gregg Costa to the Fifth Circuit Court of Appeals.

This example now provides an indication that both sides have developed a process to fill other existing vacancies. Such statesmanship will be to their credit. And there's not a minute to spare.

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