



PREPARED ORAL TESTIMONY OF

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Federal Judgeship Act of 2013

Chairman Coons, Ranking Member Sessions, and distinguished Members of the Subcommittee, on behalf of the American Center for Law and Justice and our global affiliates, thank you for allowing me to come before you to discuss the Federal Judgeship Act of 2013. As an officer of the court for more than 30 years now, and having had the opportunity to appear on 12 occasions before the Supreme Court of the United States, I have a deep respect for our federal judiciary, and I am honored to be before you today to share my views about how to best preserve the greatest legal system in the history of the world.

Many of my comments today reflect the views contained in a memo that we at the American Center for Law and Justice released in 2009 when Senator Leahy introduced the Federal Judgeship Act of 2009. I've submitted a copy of that memo for the record. While the bill before us today varies slightly from the 2009 bill in the quantity of new judgeships to be created and the courts on which they would be seated, the core structure is the same. There is no question that the Congress has a duty to ensure the existence of a federal judiciary that is properly

equipped to handle the caseload that is expected of it. This includes an obligation to ensure the proper number of judges, adequate funding, and as much independence from political influence as is reasonably possible. With these criteria in mind, the ACLJ agrees with members of this subcommittee on both sides of the aisle that Congress should create new judgeships when there is a clear and demonstrable need for them. However, even when there is justification for incurring the cost that is associated with creating these judgeships, it is imperative that Congress do so in a way that vigilantly guards the independence of the judiciary. As such, we recommend that this subcommittee take the following concerns into consideration as it debates the current legislation.

First, and most important, we are concerned that this legislation invokes an undue amount of partisan influence into the makeup of the federal judiciary. This concern is triggered by both the fact that there is not a delay in the effective date of this legislation and the structure of the temporary judgeships that are created under this Act.

Regarding the effective date, the ACLJ believes as a matter of sound principle that all new judgeships should come into effect after the next presidential election. This eliminates the temptation for members of Congress on both sides of the aisle to base their support on who currently resides in the White House. It also reduces the appearance to some that it is an effort to pack the courts.

Regarding the temporary judgeships created by this Act, the current construct of the legislation does not actually create any temporary judgeships, but rather creates several permanent judgeships to be filled by the current President, and then subsequently eliminates the authority of a future President to fill a vacancy on that same court sometime in the future. Again, similar to our concerns about the effective date, this construct injects too much partisan influence

into the process and should be modified to preserve the integrity of the judiciary and retain a proper amount of separation for members of this subcommittee and the Senate as a whole.

Next, while I indicated that the ACLJ supports the creation of new judgeships when there is a clear and demonstrable need, it is important that we do not fall prey to the suggestion that more is automatically better. There is a high cost associated with every new judgeship. The estimates I've seen are that it costs about \$1 million a year for every new judgeship, which gives this bill for 91 new judgeships a 10-year cost of nearly \$1 Billion. As stewards of the American taxpayer dollar, Congress must give this cost careful consideration. Further, there is a strong case to be made that it is often more effective to provide existing judges with additional resources than it is to create a new judgeship. In many cases, this produces better results at a lower cost.

Finally, it is prudent to consider that an ever-expanding court can lead to instability in the law. This occurs as members of a court interact with each other less frequently, and as litigants before the court deal with increasingly divergent opinions rendered by the court. Again, more is not always better, and while Congress has an obligation to ensure that enough judgeships exist – and that they have proper resources, it also has an obligation to weigh the cost and to help the courts operate effectively and efficiently.

In conclusion, the ACLJ thanks this subcommittee for its dedication to our judiciary, and requests that careful consideration be given to these concerns in order to ensure that our taxpayer dollars are spent carefully, and in order to preserve the independent judiciary that all of us are rightfully proud of.

Thank you, Chairman Coons and Ranking Member Sessions. I am happy to answer your questions.