

JUSTICE DELAYED: THE CRISIS OF UNDERMANNED FEDERAL COURTS

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, ARTIFICIAL INTELLIGENCE, AND
THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

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JUSTICE DELAYED: THE CRISIS OF UNDERMANNED FEDERAL COURTS

Tuesday, February 25, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND
ARTIFICIAL INTELLIGENCE, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 10:02 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

Present: Representatives Issa, Massie, Fitzgerald, Cline, Gooden, Kiley, Lee, Fry, Baumgartner, Ross, and Swalwell.

Also present: Representatives Jordan, Hunt, and Raskin.

Mr. ISSA. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone here today to this hearing on the Federal Courts. I'll now recognize myself for an opening statement.

Some opening statements are read from the notes, some are read from memory, and some are read from the events of the last six months.

Today's hearing, although it will cover legislative agendas beyond specifically the expansion of the Federal court to deal with the necessary—with the amazing backlog and the necessary expansion of the court, I think it's important that the opening statement sets a tone for what we want to accomplish.

In the last Congress, under the JUDGES Act, a bipartisan, bicameral effort was made, and it succeeded. In my 24-plus years here in Washington, it was the first time I ever saw a bipartisan, bicameral bill vetoed by a President.

I believe it was a short-sighted decision, primarily made by staff, or perhaps by the sense that one had to do it because so much had been said in the past. It didn't have to happen, and it shouldn't have happened.

The carefully crafted legislation before us today that will be undoubtedly marked up and voted on the House floor in the first few days of this Congress, was acceptable to all sides, because the principle that over, in the House version, eight years, and in the final version, in concert with the Senate, 10 years, that is at least three administrations, 2–3 Presidents, would have an impact on it, that

in fact, the order of the House—or the order of the judges was determined by the Judicial Conference’s need in order of priority, and by the availability of facilities to house those judges.

Those kinds of decisions do not change overnight, and although I expect a small change potentially in March when the Judicial Conference gives us an update, it might increase by a few—I doubt that it will decrease—but we will adjust that if the bill has not yet been signed into law.

It has been decades since we made a major addition to the court. The caseloads have grown. They’ve grown to, more or less, for the common person, 1,000 cases a year per judge.

Now, the Federal court prioritizes criminal ahead of civil, but there’s no question at all that criminal cases are being pled out because there simply isn’t enough capacity in the court. Civil cases are being delayed or forced to endlessly go through what we used to call a “do” loop of, well, go negotiate again, go try to settle, because, in fact, the judge doesn’t have the two weeks it would take for a complicated civil case.

This and more are the reason that we came to an understanding between Chair and Ranking Member of both parties of both Houses in the last Congress.

Now, having said that, you will hear today, I suspect, that, in fact, my colleagues are no longer interested in that. There is one thing that has changed.

For the first couple of appointments, clearly President Trump would have the lead. I want to make a point here today. I’m a Californian. In California, the District court decisions are not made by the President alone.

The two Senators, under the long-standing and not overturned decisions on the blue slip, have real impact. I have watched under Republican Administrations for years the careful negotiation to find an acceptable conservative leaning, but acceptable to one or both of my Senators to lift the blue slip.

That process that requires my judges, judge candidates, and U.S. attorneys for that matter, to spend a lot of time meeting with the home State Senators, has worked. It isn’t expected to change.

So, even in the first two or four years of this legislation, there would be not one side or the other. This is not like a Supreme Court Justice or the expansion of the Supreme Court. It doesn’t reflect a massive change, just the opposite.

Unless the Senate and the White House remain in one party’s hands for a decade, which hasn’t happened in any modern time, this will, in fact, be a piece of legislation that will reflect the judges of both parties.

I just want to contrast that the bill that was unanimously supported in the Senate and even after the election, received 29 votes by Democrats, including many of my Californians, when it came up after the election.

I believe those 29 Democrats voted based on the courts’ needs, putting country ahead of party, putting the court ahead of party.

In contrast, I sit here with my Ranking Member. He’s a friend, and at times we can work together. I do remember that during his time in the Majority and another President, his alternative was not to reintroduce a bipartisan bill that spread over 10 years and an-

swered the needs requested by the Judicial Conference, and not one more, but rather his bill did exclusively District court judgeships, 203 of them, not 60-some, all of them in two years.

In fact, he had 25 cosponsors on that bill, all in one party. I will not repeat that just because we have the Majority. I will not suggest a bill that both parties shouldn't take. Just the opposite.

I've learned that if we're going to have a piece of legislation, it has to be balanced, and it has to be nonpartisan to the greatest extent possible—nonpartisan to the greatest extent possible.

We can never take party completely out of the process, but we can ensure that the unknown exceeds the known.

Today, our witness will speak of exactly that the judges are needed, that they've been needed for a long time, and that the impact on justice in America has been affected by that.

I know that, Judge Tymkovich, you will experience undoubtedly some questions that are outside the scope of this Subcommittee, and perhaps even outside the scope of all the legislation we may talk about that is germane.

I would explain to you, if you haven't seen C-SPAN over your few years, they may talk for five minutes. You may answer the answer that is relevant to what you came here for.

I say that because I expect that most people will understand that the questions should be germane to your expertise and to the subject matter. If they're not, each Member has their five minutes. Let them enjoy it. Answer that. I will give you time to answer a germane question if necessary, and I will not ask you to answer questions that are outside the scope of this hearing.

With that, I recognize the Ranking Member for his opening statement.

Mr. JOHNSON. Thank you, Mr. Chair, for holding this hearing, and one of the things that I have found to be delightful in being an attorney and in transitioning from the rules of evidence and civil procedure, or criminal procedure, into the Legislative Branch and hearings, and those rules that we abide by as lawyers, don't apply.

So, you can expect relevancy and those kinds of issues to perhaps pop up, but as I say, they are not mandatory. So, this hearing is another step in a decades' long scheme to capture or referees of justice, to make certain our third branch is so deeply loyal to one man that our system of justice cannot possibly work without him.

Our colleagues want us to believe that their sole focus is to strengthen our Federal judiciary. We know the truth. The truth is, when they had a chance last year, they put politics first.

The JUDGES Act of 2024 was a fair bill. It was premised on a good-faith, bipartisan agreement that the first set of judges in the bill would go to the next unknown President. The bill removed all politics from the process because we understood that politics is the reason we have gone so long without more Federal judges.

I put forward a bill to establish 203 judgeships in accordance with prior requests from the Judicial Branch. For some reason, the Judicial Conference has altered those numbers of late and been a little more conservative about what they are asking for in terms of numbers of judges.

It's clear, when you look across the country, that this 203 number would do the Judicial Branch much more justice than 50–60 District Court judgeships.

I look forward to one day Right-sizing our judiciary, which has been neglected for so long by the Legislative Branch. It's been since 1999–1979, actually—1990, since we've done appreciable numbers of authorizations for new judgeships.

So, for 30-plus years, we've been needing more judges, and I stand ready to do that at the proper time. This bill, and the way that it has come forward, is nothing but politics.

Our bill, or this bill last session, removed politics from the process, as I said, by ensuring that when it passed, we would not have known who the next President was. When it became somewhat iffy and things looked that they would go the other way, then my colleagues on the other side of the aisle decided to hold up on this bill until after the elections.

Then, once the election was held, the result known, then they decided to press forward with this legislation, injecting politics into the process.

Judges and judgeships were not known, were not important to Republicans then, but they are very important to them today. Their guy is now in the White House and this proves, once again, that what I said last Congress is true—Republicans only want to add new judgeships when they can rig the game in their favor.

This blatant attempt to stack the deck shouldn't surprise us. What we are witnessing today is the culmination of a plot that began 50 years ago in the early 1970s with soon to be Justice Powell when he wrote, quote,

The judiciary may be the most important instrument for social, economic, and political change.

Of course, that quote was taken from the Powell memo, where Lewis Powell recommended that we needed to put corporate power over the needs of the individual. So, that began a decades' long crusade to concentrate power in the hands of the few at the expense of the many.

This created the foundation for the meticulously constructed plan we are now watching play out in real time by the Trump–Musk Administration.

Donald Trump is laying waste to our democratic system. In just 36 short days, the Trump–Musk Administration has sought to unilaterally reinterpret the Constitution, bequeathing new powers to itself out of thin air, all while publicly undermining the Judicial Branch's previously unquestioned constitutional power to, quote, "say what the law is."

To me, none of these developments come as a shock. When you put a President above the law, like the immunity decision effectively did last year, he will behave like it doesn't apply to him.

All is not lost. Despite what many MAGA Republicans think, just because Trump says it's true doesn't mean that it's true.

Our Framers intentionally constructed the U.S. Government with three separate and distinct branches of government to check and balance one another. That way power would never be concentrated in any one branch.

Practically this meant Americans would be protected from the autocratic whims of one petty man and his billionaire Co-President, no matter how many years after the Constitution became the law of the land.

So, while we watch the Trump–Musk duo cosplay as king, we Americans know something they don’t. Time has caught up with Lewis Powell’s scheme. The clock has run out on the far Right’s attempt to overturn our democracy.

Our 250-year experiment in self-governance will succeed only if Americans continue to believe that judicial independence means that judges are not subject to pressure and influence.

Americans must believe that justice cannot be bought by billionaires with gifts of lavish vacations and luxury motor homes.

Americans must believe judges are free to make impartial decisions based solely on law and fact, free from fear and retribution.

Our independent judiciary is the backbone of our democracy, and I, for one, will not just stand here and let the Trump–Musk Administration try to dismantle it one branch of government at a time.

If my colleagues across the aisle came here today in good faith, I say, Welcome, let’s work together to find a compromise to help strengthen our third branch of government. Let’s have a good-faith discussion about the needs for more judges, starting with the next unknown President.

I yield back.

Mr. ISSA. I thank the gentleman. I now ask unanimous consent to enter into the record a number of bills: H.R. 1526, the “No Rogue Rulings Act,” which limits the ability of District court judges to issue nationwide injunctions; the H.R. 1109, the “Litigation Transparency Act of 2025,” which requires disclosure of third-party funders; the draft of the “JUDGES Act,” which is identical currently to the bill passed on a bipartisan, bicameral basis in the last Congress; and H.R. 4886, authored by the gentleman from Georgia.

I would say that since in the last Congress, everyone agreed that a bill that allowed for either Trump or Harris to determine the next judges, and was completely acceptable until it turned out that it would be Trump going first, but it was, in fact, either would do it, and we agreed to that, but if the gentleman agrees during the markup, I would be happy to substitute H.R. 4886 and the 203 judges if that’s his wish.

Without objection, so ordered.

We now go to the Chair of the Full Committee, Mr. Jordan, for his opening statement.

Chair JORDAN. Thank you, Mr. Chair. I just wanted to thank you and our witness today for coming on this—particularly the Chair, the important work you’ve done on this bill and other bills, some you’ve referenced in your unanimous consent request.

Increasing the number of judges is vitally important to the Judicial Branch of our government, and we all understand that. We did have a bill that every single Democrat in the U.S. Senate supported, and when it was brought up after the election, granted, several Democrats supported it then.

It’s a good piece of legislation. I hope we can pass it. I hope we can find a way to make it into law and do what everyone knows needs to be done.

I just wanted to thank the Chair again for his hard work, great work on this issue and so many others, and with that, I yield back.

Mr. ISSA. The gentleman yields back.

Does the Ranking Member of the Full Committee seek recognition?

Mr. RASKIN. Yes.

Mr. ISSA. The gentleman is recognized for his opening statement.

Mr. RASKIN. Thank you, kindly, Mr. Chair. Welcome to Judge Tymkovich. I'm delighted to see you and thank you for joining us today.

We've convened because of a broken promise. I don't mean Donald Trump's promise that egg prices would be lowered immediately on the first day of office—of course, they're now more expensive than they've ever been in U.S. history, and I don't mean the promise to end Russia's filthy war on Ukraine on day one.

Everybody knows that Donald Trump has now declared that President Zelenskyy is a dictator and that he started the war against Russia, even though we've got tape of Donald Trump at the time declaring Putin's war on Zelenskyy as an act of genius.

Now, I'd refer to a promise of the old-fashioned legislative variety, the kind that Congress used to run on when our word was our bond around here.

Democrats and Republicans agree that the courts need to have more Federal judges. It's been more than three decades since we passed a law to increase the numbers of judges on the bench.

We had a bipartisan deal last Congress to give the courts the added judges they need. Our stalwart Ranking Member, Mr. Johnson, and our distinguished Chair, Mr. Issa, worked on a painstaking and honorable bipartisan deal to create a bill that would've spread additional District court judgeship appointments, recommended by the Judicial Conference, over multiple Presidential administrations beginning with the next unknown President.

That was the key. Pass the bill before the election so neither side, no one would know whether this party or that party might benefit in the short-term.

The Senate upheld their end of the bargain and passed the bill on a bipartisan basis last August. Then, the House GOP leadership suddenly broke the promise and refused to bring the bill up for a vote before the Presidential election. In other words, before the winner of the next election was known.

Instead, they waited to know who would be President. If it was Harris, they would oppose it. If it was Trump, they would support it. Now, of course, they support it, itching to appoint loyal MAGA judges to the bench, to uphold the lawlessness of Elon Musk and Donald Trump, which has already elicited more than 25 temporary restraining orders and preliminary injunctions across the land. They're very happy to talk about creating new seats on the Federal bench.

They broke their deal. They've undermined justice in the courts. We were willing to enter into a fair deal because we believe in equal justice under the law. Our friends seem to believe today only in, heads I win, tails you lose.

If my GOP colleagues want to do it the right way, the fair way, and the way they agreed to do it last year, let's do it. I've got the

exact same bill, the precise bill we all agreed to last year, drawn up for this Congress, and we're ready to support it.

This is the deal we all agreed to last year, the number of judicial appointments, Mr. Chair, is exactly the same. The order of appointments by the States, exactly the same. Just as before, these appointments would begin with the next President, whoever that may be. Right?

It could be J.D. Vance. It could be Hank Johnson, it could be, if the Constitution changes, and I know some people are itching for that, it could be Donald Trump for all we know. Whoever is the President, we would do it, but we don't know, that's the whole thing.

We are all in the original position here. Just as before, these appointments would begin with the next President with unanimous bipartisan support. Please join me and Ranking Member Johnson today in moving to seriously fix our Federal judiciary without destroying it with last-minute party politics.

If you can't support the exact same agreement we all entered into, then we must call this hearing out for what it is—a power grab.

A week ago, President Trump signed an Executive Order declaring that he and the Attorney General will interpret the law for the Executive Branch. That statement cuts directly against the decision in *Marbury v. Madison*—and this is what I want to ask you about today, Judge Tymkovich, so I give you a little forewarning. I want to talk about *Marbury v. Madison*.

The Supreme Court said the judiciary could order Secretary of State Madison to deliver a signed judicial commission to William Marbury even if the President told him not to.

Remember, *Marbury v. Madison* is Secretary of State James Madison, not President Madison. Jefferson was the President, and he was telling Madison not to deliver the judicial commission that had already been signed and sealed, though not delivered.

Chief Justice Marshall said, "It is emphatically the province and the duty of the judicial department to say what the law is." Debunking more than two centuries ago, the delusions of executive supremacy and interpreting the law that are circulating in Washington today.

Former Trump Chief of Staff John Kelly told the press that President Trump, quote, "prefers the dictator approach to government."

Candidate Trump told *Fox News* host Sean Hannity in December 2023, that he would be, quote, "a dictator on day 1."

Just last week, the official White House X account posted a picture of Donald Trump wearing a crown and proclaiming, "Long live the king."

He must've forgotten about Tom Payne, who he actually had the audacity to quote on inauguration day, who said that, "In the autocratic societies, the king is the law, but in the free societies, the law is king." The law is king.

We overthrew monarchy in a revolution, and now our Constitution explicitly bans the award of titles and nobility.

President Trump has been hard at work removing safeguards against lawlessness and corruption. He's been gutting the career Civil Service and replacing it with an army of sycophants.

He's illegally sacked 18 Inspector Generals, the people responsible for rooting out waste, fraud, and abuse. He's been slashing into independent and bipartisan agencies, charged with protecting the rights of workers, the integrity of elections, the safety of consumer products, and our bank deposits.

He's been ordering career prosecutors to carry out unlawful orders in criminal cases to test whether their loyalty is to the Constitution or to him personally.

He's been firing people who refuse to bend the knee, including staunch conservative Republicans.

He's been threatening FBI agents for doing their jobs and investigating members of the violent extremist militias who beat cops as they mobbed the Capitol in their drive to overturn the 2020 election.

He has attempted, with the stroke of a pen, to revoke birthright citizenship, which is enshrined in the 14th Amendment. He's shut down agencies created by the Congress, which he has no power to do.

Now, our GOP colleagues who have a slight Majority in the House and the Senate have done nothing to stand up for Congress' powers under Article I. Instead, they've surrendered to this President, who is trampling the powers of Congress.

Republican Senator Thom Tillis shrugged off Trump's power grab and laughed it off.

That runs afoul of the Constitution in the strictest sense, but it's not uncommon for Presidents to flex a little bit on where they can spend and where they can stop spending.

Despite the GOP's abdication of Congressional authority, there's still something that stands between Trump, Musk, and their dreams of tyranny—the independent judiciary—which is why we're watching in real time as the Republicans putting their loyalty to Trump and Musk over their oath to the Constitution, turn on the Federal court system.

The attacks on the judiciary did not come out of nowhere. For decades the Federalist Society has sought to undermine judicial independence.

Meanwhile, some of the same donors who fund right-wing candidates' political campaigns are funding Right-wing justices' vacations, further undermining the court's credibility.

Recent statements made by President Trump go further. They threaten to abolish our system of checks and balances. Vice President Vance has posted that judges aren't allowed to control the Executive's legitimate power, and Elon Musk has repeatedly undermined the judiciary on social media, saying things like, Activist judges should be removed from the bench or there's no justice; and, no judge is greater than the consensus will of the people.

Not to be outdone, President Trump posted, "He who saves his country violates no law."

Here's the good news, despite—yes?

Mr. ISSA. Is the gentleman prepared to summarize?

Mr. RASKIN. I'm prepared to summarize, Mr. Chair.

Mr. ISSA. I appreciate that.

Mr. RASKIN. You guys have given us a lot to talk about.

Look, over the last few days, I've seen colleagues introduce Articles of Impeachment against Federal judges because they don't like judges who actually stand up to these violations of the Constitution, and now we're seeing yet another plan to corrupt our judiciary take place.

Let's go back, Mr. Chair, to the nonpartisan agreement that was broken last Congress. We have no quarrel about the need for new judges. We all agreed to it, but it's got to be done in a way that it has always been done. It's done for the next administration when nobody knows who its going to help or who it's going to hurt.

Madison said in Federalist 47, the accumulation of all powers—Legislative, Executive, and Judiciary—in the same hands, whether of one, a few, or many, whether hereditary, self-appointed, or elected, may be pronounced the very definition of tyranny. Let's avoid that, and I yield back to you, Mr. Chair.

Mr. ISSA. I thank the gentleman for summarizing.

I will note that Monroe, Madison, Jefferson, and Washington were all Virginians, and so in that spirit, we'll go to the gentleman from Virginia, Mr. Cline, first.

Mr. CLINE. Thank you, Mr. Chair, and let's talk for a minute about the assault on an independent judiciary—

Mr. ISSA. I'm sorry. I apologize. He has to leave, but he does not leave until you finish, Your Honor.

With that, we go to our witness today, the Hon. Timothy—he has not. We gave our opening statement sadly.

The Honorable Timothy Tymkovich has served as the Tenth Circuit Court of Appeals judge since 2003, including for 2015–2022. His entire seven-year term, he has served as the senior judge. He has served as the Chair of the Judicial Conference Committee on Judicial Resources, as a Member of the Judicial Conference Workplace Conduct Work Group, the Cybersecurity Task Force, and has served on the Foreign Intelligence Surveillance Court Review since 2023.

We welcome the witness. I will mention to everyone that this is an open hearing, no FISA-related questions are possible. I say that just in the spirit of, we all know what we're not to touch it.

With that, Your Honor, thank you very much for being here. I look forward to your statement more than mine. You're recognized.

STATEMENT OF THE HON. TIMOTHY TYMKOVICH

Judge TYMKOVICH. Thank you, Mr. Chair and Ranking Member Johnson. I appreciate the opportunity to sit here today and talk about this important bill.

My name is Tim Tymkovich. I'm a judge on the Tenth Circuit Court of Appeals, appearing by designation of the Secretary of the Judicial Conference of the United States and on its behalf.

Thank you for asking me to appear today to discuss the growing shortage of Article III judgeships and its harmful effect on the American public.

I have previously served the Judicial Conference's Committee on Judicial Resources which has primary responsibility for our rigorous, independent process for evaluating judgeship needs.

In that capacity, I've had the opportunity to previously testify before Congress in 2013 about the judiciary's judgeship needs. Then, the problem has only gotten worse.

Only a few short months ago, both the House and the Senate passed legislation to address our severe judgeship shortage in an overwhelming bipartisan manner. For the first time in decades, legislation was presented to the President that would correct severe stresses on the dockets of many courts throughout the country.

Unfortunately, the previous administration vetoed the bill, publicly citing reasons that were not consistent with the record and reflect the misunderstanding of the facts.

The shortage of judges is having a profound effect on the American public. Citizens rely on the efficient and timely administration of justice.

The shortage is causing significant delays for litigants seeking to resolve cases in the Federal Courts, especially civil cases such as copyright, trademark, patents, and contract disputes which may take years to get to trial.

Over the past 20 years, the number of civil cases pending before—pending more than three years, rose 346 percent.

In some of our country's busiest District Courts, the time between filing and disposition for a civil right trial is four or five years, compared to 20 years ago when the time was less than 22 months.

Delays increase expenses for civil litigants and may increase the length of time criminal defendants are being held pending trial. Substantial delays erode public confidence in the judicial process and the timely administration of justice.

The problem is so severe that potential litigants may be avoiding Federal court altogether, not having the resources or time to wait for their case to be heard or resolved.

The problem cannot be addressed just by adding magistrate judges or hoping senior and visiting judges will lessen the workload and reduce the need for more judgeships.

The Judicial Conference process for determining the workload needs of the courts already takes into account the substantial contribution that magistrate judges, senior judges, and visiting judges are making.

It is the duty of the Judicial Conference to accurately, objectively, and fairly communicate to you the judgeship needs of the country. We have done so in the past, and I intend to do so again today in my testimony.

I recognize that the long delay in addressing the country's judicial needs stem in part from the difficulty in resolving ever-evolving political dynamics and partisan concerns.

These political challenges are exclusively for the political branches to resolve.

My duty here is again to put on the record that the judiciary has a severe shortfall in judgeships, which we hope you will fix as soon as you can.

As Congress recognized last year in passing the "JUDGES Act," the need is urgent and will benefit all Americans.

My submitted written testimony covers three main topics:

- (A) Outlining the implications of the judiciary lacking a sufficient number of judges;
- (B) explaining the rigorous objective process by which the Judicial Conference determines those needs; and
- (C) enumerating the judgeship needs of the District and Appellate Courts.

To summarize and conclude, the Judicial Conference has objectively determined the Nation's Federal Courts urgently need 68 new judgeships. We continue to review those needs objectively, and we will keep Congress apprised of them.

We urge you to quickly enact legislation that will address this serious problem. Thank you.

[The prepared statement of Judge Tymkovich follows:]

STATEMENT OF
THE HONORABLE TIMOTHY TYMKOVICH
JUDGE, UNITED STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT
on behalf of
THE JUDICIAL CONFERENCE OF THE UNITED STATES



BEFORE THE COMMITTEE ON THE JUDICIARY
THE SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, ARTIFICIAL INTELLIGENCE, AND THE
INTERNET
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“JUSTICE DELAYED: THE CRISIS OF UNDERMANNED
FEDERAL COURTS”

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Chairman Issa, Ranking Member Johnson, and members of the Committee:

Good morning, I am Tim Tymkovich, Judge on the Tenth Circuit Court of Appeals, appearing by designation of the Secretary of the Judicial Conference of the United States and on its behalf. I appreciate your invitation to appear today to discuss the growing shortage of Article III judgeships and its harmful effect on the American public. The judgeship needs of the federal Judiciary is an area of particular expertise for me as a former chair of the Judicial Conference's Committee on Judicial Resources, which has primary responsibility for the Judicial Conference's rigorous, independent process for evaluating judgeship needs.

My testimony today has three main purposes: (1) to help Congress understand the implications of the Judiciary lacking a sufficient number of judges; (2) to explain the process by which the Judicial Conference determines those needs, and (3) to identify the judgeship needs of the district and appellate courts. I will also discuss the bipartisan progress made on this issue last year and the misconceptions expressed in statements from the previous administration.

Implications of Judgeship Shortfalls

The shortage of judges is having a profound effect on the American public as caseloads continue to grow and judges across the nation are faced with increasingly complex litigation. The shortage is causing significant delays for litigants seeking to resolve cases in court, especially civil cases such as copyright, trademark, patent, and contract disputes, which may take years to get to trial. Over the past 20 years, the number of civil cases pending more than three years rose 346 percent (by 63,337 cases) from 18,280 on March 31, 2004, to 81,617 on March 31, 2024. In some of our country's busiest district courts, the time between filing and disposition for a civil trial is four or five years, compared to 20 years ago, when the time was less than 22 months.

Delays increase expenses for civil litigants and may increase the length of time criminal defendants are held pending trial.¹ The result may be defendants spending more time behind bars before a jury can decide their cases, and a greater burden on victims and their families waiting for criminal cases to resolve, especially those involving violent crime.

Substantial delays chip away at the public's respect for the Judiciary and erode public confidence in the judicial process and the timely administration of justice. The problem is so severe that potential litigants may be avoiding federal court altogether, not having the resources or time to wait for their case to be heard or resolved. One cannot imagine the situation will improve on its own, without additional judges.

The problem cannot be addressed just by adding magistrate judges, or hoping senior and visiting judges will lessen the workload and reduce the need for more judgeships. Magistrate judges, senior judges, and visiting judges make valuable contributions to the work of district courts and can sometimes help alleviate workload problems. However, magistrate judges' jurisdiction is limited, and senior judges have complete discretion to determine the number and types of cases that they are willing to assist with. Furthermore, the Judicial Conference process for determining the workload needs of the courts already takes into account the substantial contributions that magistrate judges, senior judges, and visiting judges are making.

Bipartisan cooperation to address the public's need for additional judgeships

I next recap the bipartisan efforts to address judgeships in the last Congress, and address some misconceptions that were articulated by the administration when it unexpectedly objected

¹ District courts must prioritize their limited resources to resolve criminal cases as required under the Sixth Amendment and the Speedy Trial Act. However, with escalating discovery demands and insufficient judgeships, even criminal cases are taking more time to resolve than they did just five years ago. Over five years from March 31, 2019, to March 31, 2024, the median time from filing to disposition in a criminal felony case increased from just under 7 months to over 11 months, a more than 60 percent increase.

to the judgeship legislation at the very end of the legislative process.

I would like to thank you and your many other colleagues in Congress for your bipartisan support of the “Federal Judiciary Stabilization Act” last Congress, which passed the House 390-0. That law converted the existing ten temporary district judgeships in the Northern District of Alabama, the District of Arizona, the Central District of California, the Southern District of Florida, the District of Kansas, the Eastern District of Missouri, the District of New Mexico, the Western District of North Carolina, the Eastern District of Texas, and the District of Hawaii to permanent district judgeships, ensuring that those district courts, many of which were already struggling to keep up with their caseloads with their current number of judges, did not lose much-needed judicial resources.

We were disappointed that the “Judicial Understaffing Delays Getting Emergencies Solved Act of 2024” (JUDGES Act) was not signed into law but appreciate that Congress is trying to legislate this very important issue for the Third Branch.

Since your work last Congress, the shortage of judges in the federal courts is not fundamentally changed, nor is the resulting hardship faced by the American public. Indeed, since the last comprehensive judgeship bill was passed 35 years ago, civil caseloads in the district courts have grown by more than 30 percent, while the number of sitting judges has increased only four percent. In many parts of the country, the consequence falls upon the American public as citizens are forced to wait longer and longer to get their day in federal court.

This urgent problem can be solved by the few additional new judgeships per year, over the next 10 years, as proposed by the JUDGES Act. It would be only a small net increase in the regular rate of judicial turnover but would have a significant positive impact on the lives of American citizens who rely on the efficient administration of justice.

Statement of Administration Policy on the JUDGES Act

I would like to provide clarifications and information in response to the Statement of Administration Policy (SAP) issued on December 10, 2024, by the Office of Management and Budget on the JUDGES Act. The SAP stated “[w]hile judicial staffing is important to the rule of law, S. 4199 is unnecessary to the efficient and effective administration of justice.” Additional district court judgeships are, in fact, necessary to the efficient and effective administration of justice and for improving access to justice. District court filings have grown by 30 percent since 1990, with only a four percent increase in the number of authorized judgeships. This has contributed to significant delays in the resolution of cases and serious access to justice concerns. The SAP further stated that “[t]he bill would create new judgeships in states where Senators have sought to hold open existing judicial vacancies.” States with existing judicial vacancies, however, still need additional district court judgeships. Access to justice, based on caseload and judicial economy, is the primary motivating force behind the Judicial Conference’s recommendation for these new judgeships. The request and recommendation of the Conference are not based on existing or anticipated vacancies. So even if all the open existing judicial vacancies were filled, the Conference would still request the additional new judgeships. In other words, vacancies make a bad situation worse, rather than making an adequate situation bad.

The SAP additionally stated that “neither the House nor the Senate fully explored how the work of senior status judges and magistrate judges affects the need for new judgeships.” As explained above, the Conference review process incorporates the work of senior and magistrate judges into its recommendations. Senior and magistrate judges have been crucial to helping the district courts manage their growing caseloads for the past 30 years but have limitations—as I mentioned earlier, senior judges have discretion to determine the number of types of cases that they are willing to assist with, and magistrate judge jurisdiction is limited by statute—and do not

diminish the need for additional district court judges. Finally, the SAP stated that the bill was “[h]astily adding judges.” The legislation was not hastily drawn up, but was the product of years of study, analysis, and congressional review, including consideration of the work of senior, visiting, and magistrate judges.

The Judicial Conference Recommendation for Additional Judgeships

Every other year, the Judicial Conference conducts a survey of the judgeship needs of the federal courts of appeals and district courts. The latest survey presented to the Judicial Conference was in March 2023.² Consistent with the findings of that survey and the deliberations of the Committee on Judicial Resources of the Judicial Conference,³ the Judicial Conference recommended that Congress establish two new judgeships in one court of appeals and 66 new judgeships in 25 district courts. Table 1, below, as well as Appendix 1, which I am submitting with my written statement, contains the specific recommendation for each court.

The Judicial Conference will consider updated Article III judgeship recommendations in March 2025, which it will transmit to Congress shortly thereafter. The change in recommendation from biennial survey to survey is typically small, with the recommendation for most courts staying relatively consistent.

² The Judicial Conference will consider a new recommendation at its meeting in March. The Conference will provide the new recommendation, which may differ slightly from the 2023 recommendation overall and in some individual district courts, as soon as it has been approved.

³ The Committee on Judicial Resources of the Judicial Conference of the United States has jurisdiction to consider all issues of human resource administration in the Judiciary, including the need for Article III judges and support staff in the federal courts of appeals and district courts.

TABLE 1. ADDITIONAL JUDGESHIPS RECOMMENDED BY THE JUDICIAL CONFERENCE

2023

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIPS	JUDICIAL CONFERENCE RECOMMENDATION
U.S. COURTS OF APPEALS		2
NINTH	29	2
U.S. DISTRICT COURTS		66
ARIZONA	13	2
CALIFORNIA, CENTRAL	28	9
CALIFORNIA, EASTERN	6	4
CALIFORNIA, NORTHERN	14	6
CALIFORNIA, SOUTHERN	13	2
COLORADO	7	2
DELAWARE	4	2
FLORIDA, MIDDLE	15	5
FLORIDA, NORTHERN	4	1
FLORIDA, SOUTHERN	18	3
GEORGIA, NORTHERN	11	2
IDAHO	2	1
INDIANA, SOUTHERN	5	1
IOWA, NORTHERN	2	1
NEBRASKA	3	1
NEW JERSEY	17	3
NEW YORK, EASTERN	15	2
NEW YORK, SOUTHERN	28	2
NEW YORK, WESTERN	4	1
OKLAHOMA, EASTERN	1.5	2
OKLAHOMA, NORTHERN	3.5	1
TEXAS, EASTERN	8	2
TEXAS, NORTHERN	12	1
TEXAS, SOUTHERN	19	4
TEXAS, WESTERN	13	6

Caseload Information

The decades-long gap in significant judgeship authorizations we are currently experiencing is unusual in American history. Judgeship bills addressing an increasing caseload were enacted in 1966, 1970, 1978, and again in 1984. The last comprehensive judgeship bill for the U.S. courts of appeals and district courts was enacted in 1990. Smaller, targeted bills were enacted between 1999 and 2003 when Congress created a total of 34 additional judgeships in the

district courts (9 in fiscal year 2000, 10 in fiscal year 2001, and 15 in fiscal year 2003). It has now been more than 20 years since any judgeships were added.

The enactment of Public Law 101-650 in 1990 established 11 additional judgeships for the courts of appeals and 74 additional judgeships for the district courts. Between that time and the end of fiscal year 2022, adjusted filings in the court of appeals where the Judicial Conference is recommending additional judgeships were 588 per panel, far exceeding the Conference standard of 500 per panel. In the district courts, filings had grown by 30 percent (civil cases up 30 percent and criminal felony defendants were higher by 27 percent) since the last comprehensive judgeship legislation was enacted in 1990. Were it not for the assistance provided by senior, visiting, and magistrate judges, the courts of appeals and district courts would not have been able to keep pace with this increase in filings. For a more detailed description of the most significant changes in the caseload since 1991, see Appendix 2.

Although the national figures provide a general indication of system-wide needs, the Judicial Conference judgeship recommendations are based on relevant caseload information for each specific court. The judgeship needs of a particular court, however, require a more focused analysis of court-specific data. Indeed, in districts where the Conference has recommended additional judgeships, the need is much more dramatic compared to the national figures.

For the 25 district courts where the Judicial Conference has recommended additional judgeships, weighted filings averaged 649 per judgeship and nine courts have weighted filings above 500 per judgeship, five courts above 600, and three courts above 800. These are well beyond our standard of 430 for considering new judgeships.

For the circuit court where the Judicial Conference is recommending additional judgeships, adjusted filings were 588 per panel compared to the national average of 499 per panel.

Survey Process

In developing these recommendations for consideration by Congress, the Judicial 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, but the Judicial Conference makes the final recommendations on judgeship needs. Each judgeship recommendation undergoes careful consideration and review at six levels within the Judiciary, beginning with the judges of the particular court making a request. Next, the Subcommittee on Judicial Statistics conducts a preliminary review of the request and either affirms the court's request or offers its own modified recommendation, based on the court's workload and other contributing factors. The Subcommittee's recommendation and the court's initial request then are forwarded to the judicial council of the circuit in which the court is located for its review.

After the circuit judicial council's review, the Subcommittee on Judicial Statistics conducts a final review of the request and/or recommendation, taking into account any recent caseload changes and feedback from the court and circuit judicial council. The full Committee on Judicial Resources then makes a final recommendation to the Judicial Conference. In the 2023 survey, the courts requested 89 additional permanent judgeships. Our review procedure reduced the number of recommended additional judgeships to 68. By conducting these thorough surveys biennially, the Conference ensures our requests are up-to-date and reliable.

Judicial Conference Caseload Standards

The recommendations developed through this review process described above (and in more detail in Appendix 3) are based in large part on standards related to the caseload of the courts, but these standards do not by themselves fully describe each court's needs. The standards are merely the starting point in the process, not the end point. The caseload standards are expressed as filings per authorized Article III judgeship, which assumes that all judicial vacancies are filled. Thus, even though they don't contribute to our judgeship analysis, vacancies can create a very significant additional strain districts where they occur, magnifying the burdens created by insufficient judgeships. For example, in September 2022, there were nine vacancies in the courts of appeals and 68 vacancies in district courts, including 28 in districts for which the Judicial Conference requested additional judgeships.

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 following:

- the number of senior judges available to a specific court, their ages, and levels of activity;
- available magistrate judge assistance;
- geographical factors, such as the size of the district or circuit and the number of places of holding court;
- unusual caseload complexity;
- temporary or prolonged caseload increases or decreases;
- the use of visiting judges;
- the use of inter-circuit and intra-circuit assignments; and

- any other factors noted by individual courts (or identified by the Subcommittee on Judicial Statistics) as having an impact on the need for additional judicial resources. (for example, the presence of high-profile financial fraud and bribery prosecutions, the number of multiple defendant cases, and the need to use court interpreters in a high percentage of criminal proceedings).

Courts requesting additional judgeships are asked about their efforts to make use of all available resources. The Judicial Conference also looks at the effort each court has undertaken to manage the workload before requesting additional judgeships, including, for example, the use of alternative dispute resolution techniques.

District Court Analysis

For the district courts, the Judicial Conference, after accounting for the additional judgeship(s) requested by the court, initially calculates the number of weighted filings per judgeship to gauge the impact of the additional judgeships on the district. Weighted filings are used as a means of accounting for the varying complexity of different types of civil and criminal filings and differences in the time required for judges to resolve various types of civil and criminal actions. Rather than counting each case as the same, weights are applied based on the nature of cases. The total for “weighted filings per judgeship” is the sum of all weights assigned to civil cases and criminal defendants (and related proceedings like supervised release hearings), divided by the number of authorized judgeships. Please note that the weighted filings and caseload data mentioned in my testimony are from September 2022, consistent with what the Judicial Conference included with the March 2023 recommendations when they were sent to Congress.

The Judicial Conference uses a benchmark standard of 430 weighted filings per judgeship, as a minimum remaining workload that would result after additional requested judgeship(s) when considering requests for additional district court judgeships for courts with five or more authorized judgeships, and a standard of 500 weighted filings per judgeship for

courts with fewer than five authorized judgeships. For example, a court with seven authorized judgeships that is requesting an eighth would typically need its weighted filings to be above 430 when dividing its total weighted filings by eight. Applying these standards, the Judicial Conference recommended 66 new district judgeships in 25 districts. Even with these additional judgeships, weighted filings would still be 450 per judgeship or higher in 12 district courts. Weighted filings would exceed 500 per judgeship in nine district courts.

Appellate Court Analysis

In the courts of appeals, the Judicial Conference uses a standard of 500 adjusted filings per panel, remaining after any new requested judgeships, as its starting point. Adjusted filings are calculated by removing reopened appeals and counting original pro se appeals as one-third of a case. In the Ninth Circuit Court of Appeals, for which the Conference is recommending two additional judgeships, the caseload levels substantially exceed the standard. Even with the two additional judgeships recommended by the Judicial Conference, the caseload in the Ninth Circuit Court of Appeals would far exceed 500 adjusted filings per panel.

Conclusion

Over the last three decades, the Judicial Conference has refined the process for evaluating and recommending judgeship needs in response to both Judiciary and congressional concerns. The Judicial Conference does not recommend, need, or want indefinite growth in the number of judges. It recognizes that growth in the Judiciary should be limited to the number of new judgeships that are necessary to exercise federal court jurisdiction. The Judicial Conference attempts to balance the need to control growth with the need to seek resources that are

appropriate to the Judiciary's caseload. Therefore, we have requested far fewer judgeships than the caseload increases, and other factors, would suggest are now required.

As always, the Judicial Conference of the United States is grateful for your consideration of its Article III judgeship recommendations. Thank you for the opportunity to provide testimony on the need for new federal judges and for your continued support of the federal Judiciary. I am happy to respond to your questions.

Appendix 1

ADDITIONAL JUDGESHIIPS RECOMMENDED BY THE JUDICIAL CONFERENCE
2023

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIIPS	JUDICIAL CONFERENCE RECOMMENDATION	ADJUSTED FILINGS PER PANEL/WEIGHTED FILINGS PER AUTHORIZED JUDGESHIP
U.S. COURTS OF APPEALS		2	ADJUSTED FILINGS
NINTH	29	2	588
U.S. DISTRICT COURTS		66	WEIGHTED FILINGS
FLORIDA NORTHERN	4	1	5,902*
TEXAS WESTERN	13	6	848
DELAWARE	4	2	834
CALIFORNIA EASTERN	6	4	675
TEXAS EASTERN	8	2	657
INDIANA SOUTHERN	5	1	639
CALIFORNIA NORTHERN	14	6	606
TEXAS SOUTHERN	19	4	606
FLORIDA SOUTHERN	18	3	589
FLORIDA MIDDLE	15	5	581
COLORADO	7	2	580
NEW YORK SOUTHERN	28	2	571
TEXAS NORTHERN	12	1	565
GEORGIA NORTHERN	11	2	565
CALIFORNIA CENTRAL	28	9	560
NEW YORK EASTERN	15	2	548
NEW JERSEY	17	3	520
ARIZONA	13	2	493
CALIFORNIA SOUTHERN	13	2	485
IDAHO	2	1	462
NEBRASKA	3	1	461
OKLAHOMA EASTERN	1.5	2	445
NEW YORK WESTERN	4	1	440
IOWA NORTHERN	2	1	425
OKLAHOMA NORTHERN	3.5	1	396

*This figure includes over 31,400 cases related to a multidistrict litigation action in which the Northern District of Florida serves as the transferee court.

Appendix 2

CASELOAD CHANGES SINCE LAST JUDGESHIP BILL

A total of 34 additional district court judgeships has been created since 1991, but six temporary judgeships have lapsed. These changes have resulted in a four percent increase in the overall number of authorized district court judgeships, while filings have grown by 30 percent since 1991. Court of appeals judgeships have not increased since the last comprehensive judgeship bill. The following provides a summary of the most significant changes.

U.S. COURTS OF APPEALS

- The total number of appeals filed in 2022 was three percent (nearly 1,200 cases) below the number of appeals filed in 1991.
- While total criminal appeals have declined three percent since 1991, due to substantial decreases in drug and fraud cases, firearms appeals have more than doubled from 717 in 1991 to 1,574 in 2022, and the number of immigration appeals has increased from 145 to 611.
- Civil appeals have fallen 21 percent since 1991, as prisoner petitions have declined 14 percent and other types of civil appeals have decreased 25 percent. Despite the overall decline in prisoner petitions, appeals involving motions to vacate sentence have risen 23 percent since 1991.
- Despite fluctuations, the number of appeals involving administrative agency decisions has nearly doubled, growing from 2,859 in 1991 to 5,282 in 2022. The increases resulted primarily from appeals of decisions by the Board of Immigration Appeals, with the largest increase occurring in the Ninth Circuit.
- Original proceedings rose from 609 in 1991 to 3,564 in 2022, partially as a result of the Antiterrorism and Effective Death Penalty Act which requires prisoners to seek permission from courts of appeals for certain petitions. Although enacted in April 1996, data for these and certain pro se mandamus proceedings were not reported until October 1998.

U.S. DISTRICT COURTS

- Total filings have grown by over 77,000 cases, a 30 percent increase since 1991.
- The civil caseload has fluctuated but increased 30 percent overall.
 - " The largest growth in civil filings occurred in cases related to personal injury product liability which rose from 10,952 filings in 1991 to 60,062 in 2022. Many of these filings are part of multidistrict litigation actions comprising large numbers of pharmaceutical cases.

- " Intellectual property rights cases increased from 5,186 in 1991 to 12,106 in 2022, as copyright and patent cases each more than doubled.
- " Civil rights filings increased steadily after the Civil Rights Act of 1990 was enacted and reached a peak in 1997. Since that time the number of civil rights cases has fluctuated but remains nearly twice the number of filings in 1991. Since 2014, consistent growth in civil rights filings has resulted primarily from increases in cases related to the Americans with Disabilities Act.
- " Prisoner petitions, while fluctuating, have increased 10 percent, due primarily to significantly higher numbers of habeas corpus petitions and cases involving prisoner civil rights or prison conditions.
- " The number of social security cases filed has increased 58 percent since 1991.
- " Fair Debt Collection Practices Act (FDCPA) cases were first categorized separately in 2008. FDCPA filings have more than doubled from 4,239 in 2008 to 9,423 cases in 2022.
- The number of criminal felony defendants has increased 27 percent since 1991.
 - " The largest increase, by far, has been in immigration offenses which rose from 2,448 in 1991 to 19,108 in 2019.
 - " Defendants charged with firearms offenses more than doubled between 1991 and 2022, an increase of over 6,600 defendants.
 - " The number of drug-related filings fluctuated between 1991 and 2022, and at 18,836 are 15 percent below the number filed in 1991.
 - " The number of defendants charged with fraud-related offenses declined 30 percent between 1991 and 2022.
 - " Defendants charged with drug, immigration, firearms, and fraud offenses comprised 85 percent of all felony defendants in 2022.

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 judicial officers in the courts of appeals and district courts. These reviews are conducted biennially by the Committee on Judicial Resources (Committee), with final recommendations on judgeship needs approved by the Judicial 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 using the most recent caseload data. During each judgeship survey, the Judicial Conference reconsiders prior, but still pending, recommendations based on more recent caseload 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 workload 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 Committee's Subcommittee on Judicial Statistics (Subcommittee). 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 recommendations. 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. 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 court of appeals, the Judicial 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 Judicial 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 system¹ designed to measure judicial caseload, along with a variety of other factors, to assess judgeship needs. The Judicial Conference and the Committee review all available information on the workload 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 the additional judgeships requested*. For courts with fewer than five authorized judgeships, the addition of a judgeship would often reduce the caseload per judgeship substantially below the 430 level. Thus, for small courts the 430 per judgeship standard was replaced with a standard of current weighted filings above 500 per judgeship. These caseload levels are used only as a guideline and a factor 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 that 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 and geographic considerations 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.

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 3.72 cases while each homicide defendant is counted as 4.50 weighted cases. The weighting factors were updated by the Federal Judicial Center in June 2015 based on criminal defendants and civil cases closed in calendar year 2012.

Mr. ISSA. Thank you, Your Honor.

As said before, I now recognize the gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chair.

I appreciate you being here, Judge, and want to lend my support to your comments about the pressing need to address the problems that are existing in our judiciary, the backlogs.

The need to fill these judgeships is so critical, and it was critical at the end of last year as well when—and in what should be said clearly is an assault on the independent judiciary by the men and women on the other side of the aisle, by encouraging their President to veto this important bill.

This could've been done, and these judgeships could've been filled and the independent judiciary made that much stronger, but the other side decided to play politics, and it is unfortunate.

I also want to ask about the impact of the last administration's failure to enforce the laws of this country with regard to our border, the border crisis that was created by the last administration, encouraged by those on the other side of the aisle, and now, finally, we have a President who is addressing it.

In the meantime, in your testimony, you cite that the number of immigration appeals has increased from 145–611. Is that correct?

Mr. ISSA. The gentleman will suspend for a moment and pause.

Your Honor, if you don't mind, would you rise to take the oath? It was left out of the opening.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, to the best of your knowledge and belief?

Judge TYMKOVICH. I do.

Mr. ISSA. Please be seated. Let the record reflect that His Honor answered in the affirmative.

Mr. CLINE. All right. Thank you, Mr. Chair.

Mr. ISSA. The clock may start again. Thank you.

Mr. CLINE. That's all right.

I'm quoting your testimony back to you, so this should be an easy question. Is that correct, that the number of immigration appeals has increased from 145–611?

Judge TYMKOVICH. Yes.

Mr. CLINE. That the increase has resulted primarily from appeals and decisions by the Board of Immigration Appeals with the largest increase occurring in the Ninth Circuit. Is that correct?

Judge TYMKOVICH. That is correct.

Mr. CLINE. I know we have several Members from the Ninth on this Committee, on both sides of the Committee, who would like to see those judgeships filled.

You've noted how the civil caseload has increased substantially. How do immigration-related cases affect the overburdened Federal judiciary, and how does the complexity of immigration cases contribute to the crisis of undermanned Federal Courts?

Judge TYMKOVICH. Well, thank you for the question. The immigration docket varies throughout the circuits. As you noted, the Ninth Circuit has a particularly heavy number of immigration cases.

I had the chance to recently be a visiting judge at the Ninth Circuit, and in our—in my two days there, we had three immigration cases. So, even at the circuit level, we're seeing a substantial number of cases and that docket has been steady, it's been growing, and I don't see any reason that this would discontinue.

Mr. CLINE. Regarding the complexity of immigration cases?

Judge TYMKOVICH. They can be complex. It's an evolving area of the law. There's a number of issues that the Supreme Court has yet to address, but yes, they can be among the most complex, given the types of record and the type of legal framework that's involved.

Mr. CLINE. Do you think it would reduce Federal Courts' case-loads if all immigration-related cases were consolidated into a single Federal court?

Judge TYMKOVICH. I haven't thought about that. It's an interesting concept. I'll take it back to the Judicial Conference as something that we might study.

Mr. CLINE. I think that when you're looking at immigration cases, they can be complex, but they are also fairly consistent when you're talking about across the country, geography, not as—factoring in less than the substance of the case, but I would think that it might lend itself to some improvements there.

I appreciate you being here, appreciate your testimony, and with that, I'll yield back.

Mr. ISSA. Would the gentleman yield?

Your Honor, I have just one quick question while we're in between. The Ranking Member is also a Member of the Transportation Committee. Could you briefly give us, just so we get an understanding, the need to put these judgeships in overtime, related to the available courtrooms and so on, the facilities needed to add 60-plus members for the court?

Judge TYMKOVICH. I haven't had an opportunity to study that question. We work closely with the GSA in locating space for judges, whether in courthouses that have available space or nearby private facilities. That's part of the process we go in locating new judges even when we—

Mr. ISSA. The process doesn't begin until we authorize the judges? Is that correct, effectively?

Judge TYMKOVICH. That's correct. That's correct.

Mr. ISSA. Being a Californian and a San Diegan, where we have leased space and a complex situation, isn't it true that's one of the inefficiencies of the court right now, that we're finding we're leasing space and that means you have security in two locations, a lot of facility-related ones that don't begin until we assure you that what your number is going to be in the future?

Judge TYMKOVICH. Yes, we have a space and facilities commission—a Committee that addresses those types of concerns, and I'm sure that they'll take a look at the question that you've presented.

Mr. ISSA. With that, my Ranking Member, who serves on both Committees, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chair. I would note that across the country, there are courthouses with vacant courtrooms ready to receive newly authorized judgeships and judges, like in the Northern district of Georgia, for instance, where under the legislation that is about to be filed, I think we get two of the four that we real-

ly need in the Northern district of Georgia, but we have room for at least three District court judgeships in the Richard B. Russell Federal building back there.

I'm sure that there are other courthouses across the country that can accommodate and need new judges and judgeships.

For my colleague who had to depart, who was so much interested in immigration cases, he didn't ask you about the 20 Immigration Court judges that Trump and Musk just summarily dismissed last week.

Nonetheless, Judge Tymkovich, I thank you for being here today.

Since he took office, Donald Trump has shown open contempt for our Constitution, the rule of law, and for the independence of our Federal court system.

So, I have a hard time understanding how we are supposed to sit here and cordially talk about giving this man more Federal judges to appoint. The blatant disregard of the constitutionally based doctrine of the separation of powers by the Trump-Musk Administration is the crisis that we should all be talking about, because it's not a matter of if Trump will challenge the court's authority. It's a matter of when and how far he will go.

Again, thank you, Judge Tymkovich, for agreeing to appear before us. I read your testimony, and I agree that we need more judgeships, I've been sensitive to that need for many years.

Our judiciary is only as good as the independence of the judges we appoint, and I cannot, in good conscience, advocate in favor of allowing this President to appoint individuals who have sworn fealty to him over our Constitution.

Our Constitution's twin principles of the separation of powers and checks and balances has worked in tandem for the last 250 years to ensure that our Constitution secures Americans' rights to impartial justice.

Our Nation's rule of law is grounded in the independence and impartiality of our courts and their power to say what the law is.

Judge Tymkovich, based on your years of experience, are you aware of any instance in which a President of the United States willfully disobeyed or resisted a lawful writ, process, order, rule, decree, or command of a Federal court?

Judge TYMKOVICH. I'm here to talk about the urgent need of the judiciary for additional judge—

Mr. JOHNSON. Well, I understand that.

Judge TYMKOVICH. —and it wouldn't be appropriate for me to comment on any pending cases.

Mr. JOHNSON. Well, I understand, but I've been around for 70 years, 50 of which—or 45 of which, has been as a lawyer, and I've never known of a President willfully refuse to comply with a court order. I see it coming.

Now, should that happen, a judge would theoretically be able to hold a President in contempt of court. Isn't that correct?

Judge TYMKOVICH. We have a principle of separation of powers and long-standing rules in case law that addresses that, yes.

Mr. JOHNSON. Yes, and if a President willfully failed or refused to comply with a court ruling, they could be held in contempt of court theoretically. It would be up to the U.S. Marshals Service,

which is a part of the Justice Department, to be the enforcement arm for the Federal Courts. Is that correct?

Judge TYMKOVICH. Your hypothetical would have to play itself out.

Mr. JOHNSON. It would be the U.S. Marshals who fall under the Department of Justice who would have to carry out the contempt order. So, what would happen if the U.S. Marshals Service, under the command of the Justice Department, at the direction of the President, refused to carry out a court order of contempt? What would then be the State of our democracy?

Judge TYMKOVICH. Again, I'm here on behalf of the Judicial Conference to talk about the shortage of judges that we have, and I would comment on those needs in particular.

Mr. JOHNSON. Well, the American people would love to have heard your response to those questions, but they will get those responses from many commentators who are pondering that question, and what it would mean for our democracy should that take place.

With that, I yield back.

Mr. ISSA. I thank the gentleman, and I can't answer that question for sure either, but I will say that famously, Teddy Roosevelt said he was going to send the great white fleet around the world, and Congress said that they couldn't afford it. He said, "Great, I'm going to send them anywhere I want to, and you can pay to get them back."

This is not the first time we've had a challenge, but I will research that other one, too.

We now recognize the gentleman from Wisconsin for his questioning, Mr. Fitzgerald.

Mr. FITZGERALD. Thank you, Mr. Chair, and thank you, your Honor, for being here today.

I wanted to just ask about a specific judge, and I think the reason I'm trying to frame it up this way is because it might give you an opportunity to just give us more information about a process obviously.

For nearly the past two years, Judge Pauline Newman, a Reagan appointee, has been suspended from active service, given conflicting allegations about her competency.

While she's in her nineties, obviously that in itself is probably having an effect on her, but is not the issue, nor certainly a basis for what has been called the stealth, quote, "stealth impeachment."

Given her apparent indefinite suspension, the court is operating with what is considered an unmanned seat. You can be as specific, I guess, as you want or general as you can be.

Accordingly, access to judges for entrepreneurs, veterans, and others, they seem to be kind of hindered, and I wonder if justice delayed is not justice denied.

Can you comment on whether a Federal court can hear cases en banc when a judge is in the suspension penalty box, I guess is maybe the way to refer to it, which is certainly the case right now with Judge Newman?

Judge TYMKOVICH. Yes, I cannot comment on that. It's a pending matter before that court, and its particular rules would govern the participation in judicial proceedings.

Mr. FITZGERALD. Do you have any idea how widespread this is, where we've got judges in place that are not performing on a daily basis the requirements of what typically you would expect a sitting judge to do?

Judge TYMKOVICH. I'm not aware.

Mr. FITZGERALD. OK. OK. Chair Issa and I have introduced legislation requiring disclosure of certain third-party litigation, funding arrangements in Federal Courts.

In October 2024, the Judicial Conference agreed to create a Subcommittee to study whether the conference should propose a Federal rule requiring the disclosures of third-party litigation funding, otherwise known as TPLF.

Judge, do you have any idea, can you give us any summary or background on where you think that Subcommittee is, and is that something that eventually we could expect a decision from the Subcommittee specifically?

Judge TYMKOVICH. Yes, I wasn't briefed on that as a part of my testimony this morning. However, I'm quite confident the conference is doing, as it's represented by the House, and it's studying the issue under the appropriate Committee of the Judicial Conference.

Mr. FITZGERALD. Has the Committee—do they have a—I don't want to say predisposed, but do they have any kind of position right now on the way they feel about what's currently happening under the guise of that effort?

Judge TYMKOVICH. Yes, not to my knowledge.

Mr. FITZGERALD. OK. Very good. Thank you. I yield back.

Mr. ISSA. Would the gentleman yield?

Mr. FITZGERALD. I do yield.

Mr. ISSA. The Ranking Member and I were just going over the history, and so perhaps I won't ask the judge, but I want to put into the record that under the last administration, I think His Honor is aware that the U.S. Supreme Court ruled that President Biden could not, in fact, forgive student loans.

In fact, after that ruling, the President said, "Well, I'm going to find another way, and I'm going to effectively do the same thing." He did. It did not get back to the Supreme Court before he left office.

It does appear to this Member as though the President, given a clear understanding that it was Congress' ability to appropriate money or to forgive substantial money across the board, made a ruling and that those dollars currently that were forgiven were in clear violation of the court's intent.

Whether or not the President would've eventually succeeded in circumventing the court is a different question.

Second, the law, the statute that—a number of statutes that President Biden used to, on a wholesale basis, allow 10 million-plus people to enter the country, repeatedly were ruled not to be right according to the court. Until his last day, the border remained open.

I might say that constitutional challenges do get resolved at the U.S. Supreme Court, to the extent that the U.S. Supreme Court comes back again and again and again, if necessary, against an intransigent President like the last one.

With that, it is my pleasure to recognize the gentleman from Maryland, the Ranking Member of the Full Committee for his five minutes.

Mr. RASKIN. Thank you, Mr. Chair, and forgive me for a quick digression, Judge.

The case having to do with college student loans was decided on statutory grounds by the Supreme Court, saying that the President lacked statutory authority to forgive the student loans, and then that was the invitation taken by President Biden to find another statutory mechanism by which to do it. It was not a constitutional decision, but I'm happy to order up a copy of the case so we can look at it.

Mr. ISSA. No, when I said it, I said that ultimately any—firing people is a statutory decision, not a constitutional decision. The question of the gentleman from Georgia was about could you defy that—

Mr. JOHNSON. The clock is running.

Mr. RASKIN. All right. I don't want to devour all my time here, but a statutory firing can be unconstitutional if due process is denied, or it's based on political discrimination or retaliation. The Supreme Court has repeatedly found that, as in *Connick v. Myers* and a whole string of authority.

So, Judge Tymkovich, let me just start with you for a second. You've written eloquently about the Republican Guarantee Clause, and about *Marbury v. Madison* in there.

Would you mind just stating for the Committee the importance of getting new judges based on what judicial review is? What is judicial review, and why is it important to have new judges?

Judge TYMKOVICH. Yes. Thank you for the question. It really is kind of foundational to the request that we're making in supporting this type of bill.

As was indicated, there's been no substantial increase in Federal judges since 1990. Since then, our caseloads increased by 37 percent. Yet, we've only had a handful of judges that were—

Mr. RASKIN. No, I got you, Your Honor. I guess, would you help us explain to America why it's important to have Federal judges on the bench? Because some people say, Well, that's just another person sitting around with a bunch of law clerks not doing anything.

Why is it of fundamental constitutional importance for us to have judges on the bench?

Judge TYMKOVICH. Well, of course, the Judiciary is the third branch of government, established by the Constitution in tandem with the first, Article I, the Legislative Branch; Article II, the Executive Branch; and Article III, the Judicial Branch.

The Republican form of government, the Guarantee Clause, guarantees that we have a Republic, a Republican form of government that includes elected officials and subject to the legislative process, subject to the judicial process when cases are brought.

Mr. RASKIN. All right. Let me give you an example. We've got more than 75 cases now that have been brought in Federal Courts against the new administration for illegally seizing money, impounding the money that Congress has appropriated for particular purposes, for illegally firing workers who have protections under Civil Service not to be fired for political or for arbitrary reasons,

and there have been more than 20 temporary restraining orders and preliminary injunctions issued in these cases to vindicate the Constitution, under judicial review.

Now, say we didn't have half of those judges. Would that be less justice than would be done right now?

Judge TYMKOVICH. Well, certainly, we need additional judges to address additional work, and whether it's as a result of the types of challenges you were mentioning, or I think, more importantly, for the American people is just the day-to-day cases where they have the inability to get a timely resolution of the case. This bill—

Mr. RASKIN. These are day-to-day cases now, as you know, at least here in Washington, these are day-to-day cases. The January 6th cases, which were dominating the docket around here are gone after Donald Trump's pardon of more than 1,500 insurrectionists, including violent, criminal felons who beat police officers in the face with confederate battle flags and pipes and broken furniture.

Now, what's taken over is these cases where workers are trying to go and vindicate their rights from NIH, FDA, or NOAA, and the FBI.

There were Federal prosecutors who were fired simply for having participated in the January 6th cases, and I know that most judges would think that is deeply problematic that prosecutors were being fired simply for doing their job.

If we don't have the judges to deal with this, would we be in a dangerous situation with respect to an Executive Branch cannibalizing all parts of the government?

Judge TYMKOVICH. Well, we believe the need for new judges is urgent and necessary now—

Mr. RASKIN. Well, I agree with you about that, and I thank you for your testimony and for your hard work.

Judge TYMKOVICH. Thank you.

Mr. ISSA. I thank the gentleman, and with that, we go to the gentleman from California, Mr. Kiley, for five minutes.

Mr. KILEY. Thank you, Mr. Chair. I am a cosponsor of the JUDGES Act, your legislation, which we worked very hard to get passed last year, which passed the Senate and the House with overwhelming bipartisan support, but unfortunately, it was vetoed by former President Biden.

I condemn the former President's veto in the strongest terms. This was done for one reason and one reason alone, because he lost. Is there any doubt at all that if former Vice President Harris had won the election that President Biden would have signed that legislation?

The way that it was crafted was in order to try to shield the bill from these sort of crass, political, calculations, from the pettiness and rank partisanship that ultimately dictated former President Biden's decision.

It was crafted and passed from behind a veil of ignorance. The Senate passed it overwhelmingly in August of last year, before we knew who the winner of the Presidential election would be.

Not only that, but the appointment of judges was phased in so it wouldn't just be the next President, or now the current President, who would get to make all the appointments.

So, I get asked a lot at town hall meetings, at other gatherings, by constituents, how do we overcome the political division in this country? Why do things keep getting worse and worse?

This is just a perfect example, where you had a President who defied the bipartisan will of Congress, who defied the recommendation of the Judicial Conference simply because he was upset with the outcome of an election and didn't want to cede any advantage to his political opponents. I think it's absolutely disgraceful.

The reality is that we have caseloads in every circuit in this country that have become a serious problem. At this point, there are 210,800 cases, civil cases, that have been pending for more than three years.

I'll say that again. The number of cases that have been pending for more than three years is over 210,000, and of course there are many that have been pending for much longer.

Now, it should be acknowledged that some of this represents the propensity for frivolous litigation across many different areas of law. It also reflects the fact that we have not, in a significant way, authorized new judges since 1990.

So, what's the consequence of that, when we have this sort of limited access to justice? Well, imagine if we had a judiciary that existed on paper, but we had no judges at all.

At that point, we'd have a Constitution, citizens would have rights, but there'd be no means of vindicating them, no means of enforcing them, so they would be essentially meaningless.

Well, that same problem exists to a commensurate degree if we have an inadequately staffed judiciary, if we have citizens who have to wait years and years and years to have their cases resolved and heard.

When you have these cases tied up for so long, this is just an enormous, dead weight loss in our economy. Protracted litigation doesn't result in any sort of increased productivity or anything like that. It's just sheer loss.

What's more, it particularly disadvantages smaller litigants, let's say, a startup trying to defend its intellectual property. While this case is going on for years and years and years, they're not able to market their product, they'll lose market share, they're not able to get investors, the company might die.

In fact, some larger litigants explicitly use that as a strategy to prevail in their cases.

It's worth asking why is this the case? Why has the rest of the government continued to grow and grow and grow, but we haven't been able to keep up with the number of judges we need?

I would surmise that perhaps it's because judges don't have high-powered lobbyists who are able to go around, aren't able to mobilize powerful interests on their behalf to expand their ranks in the same way that you have for other areas of government.

Maybe I'd ask you that question, Judge Tymkovich. Why do you think this has become sort of a persistent problem where we're not able to maintain the number of judges that we need, and do you see any solutions to it that would help us overcome some of the political barriers?

Judge TYMKOVICH. Well, like I said, I testified on this very issue 10 years ago, and the problem was grave then and it's only gotten

worse over the last decade. Last year, a bill did get through both houses of Congress.

So, to the extent the process works with what you up there do, not what we do, we're hopeful that there can be an opportunity to solve the problem in the judiciary. We currently have 20 judicial emergencies around the country. They're not located in one district or another.

The bill that was proposed involves 25 different courts, District Courts over 15 different States across the country. There's a widespread need for the bill, and there's widespread opportunity for Members of Congress to address needs within their local communities as well.

Mr. KILEY. Thank you. I yield back.

Mr. ISSA. Gentleman yields back.

We now go to the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Well, thank you very much, Mr. Chair, and thank you, Judge, for being here. It's not often that we get a chance to talk to a judge in these chambers, and it's very much appreciated. The fact that you served on the FISA Court is emblematic of the respect you are held by your colleagues in the judiciary. So, I appreciate that.

In addition to the workload issue that you've raised, I think it's very important that we guard the integrity and independence of the Judicial Branch. Last year, the Ninth Circuit Judicial Council referred Joshua Kindred to the House for impeachment due to serious misconduct, a hostile work environment, inappropriate relationships with law clerks, false statements and the like.

This was extraordinary since 1804 only 15 Federal judges have been impeached. As you know, the constitutional standard for impeaching a Federal judge is high, as established by Article II, Section 4's requirement of high crimes and misdemeanors, which some interpret in conjunction with the Article III, Section 1 standard of good behavior.

Judge, to your knowledge, has the Judicial Conference ever referred to a judge for impeachment simply because of the disagreement over a ruling?

Judge TYMKOVICH. Representative, I'm not aware of the Judicial Conference or its Committee on judicial conduct and disability in every instance. I'm reluctant to answer that because I don't know, but I'll get back to you with a response after the conclusion of the hearing.

Ms. LOFGREN. Well, I appreciate that. I'll just note that, in fact, to date there is no known instance of the Judicial Conference referring to a judge for impeachment based on a ruling. Every referral has been based on serious misconduct allegations, bribery, perjury, corruption, not legal decisions.

Would you think it would be all right for the Congress to impeach a judge because they didn't like the decision he or she made?

Judge TYMKOVICH. Well, I'm going to defer to Congress. The House and the Senate have the sole authority over the impeachment clause, and I think it's a part of the political process that would not be appropriate for me to comment on.

Ms. LOFGREN. Well, I'd just like to note that just last week, one of my colleagues on the other side of the aisle filed an impeach-

ment resolution against Judge Paul Engelmayer, not for misconduct, but because of a ruling they disagreed with. Then days later, Representative Van Orden posted this on X:

The American people gave @realDonaldTrump a mandate and no politician disguised as a jurist will interfere with it.

Then over the weekend, Elon Musk demanded that—Judge Abelson’s impeachment after he blocked an Executive Order on DEI. He’s also—Musk has also urged Congress to purge judges who rule against Trump.

I’d just like to note that not only would it be improper and unconstitutional to impeach judges because of their decisions, the proper response is to appeal those decisions. It has potentially the impact of intimidating judges who should be completely independent. I will note that for the most part the judiciary here in America has made their rulings, it doesn’t matter who appointed them, based on the facts and the law, and that’s just what we need in the third branch.

I’ll just say one other thing about the immigration issue. For years and years, Judge Mary Schroeder and I worked together trying to come up with a solution to the appeals problem in the Ninth Circuit but also elsewhere, and it’s not just the number of judges, but how we structure that whole system.

I would recommend that you take a look at a bill I introduced called “Real Courts Rule of Law” that would help clear up the procedures to relieve the burden on the judiciary. The Federal Bar Association told me it was one of, if not their top, priority in terms of legislation. I wouldn’t ask you to comment on it today, but I would recommend that you take a look at it.

I’ll just say that in my 50 years as a member of the bar, I’ve never seen the attacks that we’re seeing today on the independence of the judiciary, and I find it very troubling indeed.

With that, Mr. Chair, I yield back.

Mr. ISSA. The gentlelady yields back. We now recognize the gentleman from Kentucky, Mr. Massie.

Mr. MASSIE. Mr. Chair, I’d like to yield my time to the Chair.

Mr. ISSA. I thank the gentleman.

Your Honor, I won’t ask you to comment on maybe a former Majority leader in the Senate’s threat against the court, even though I have seen those sorts of things.

I will ask you to opine on one thing that is slightly outside of today’s hearing, but I think it’s well within your jurisdiction or your history and knowledge. That is, one of the bills that is being considered as part of today’s hearing is H.R. 1526, the “No Rogue Ruling Act,” which would limit the decision power when made outside the D.C. Circuit.

In your history of seeing things which affect Washington, DC, and the Executive Branch that are filed all over the country as over a hundred cases, only nine have been filed in the D.C. Circuit. Not from a what’s right or wrong, but from an efficiency standpoint, from a quickness and accuracy, is it, in fact, appropriate that national prohibitions on the Executive Branch most appropriately be brought historically to the D.C. Circuit for handling?

Judge TYMKOVICH. Mr. Chair, I don’t have the authority to comment on that on behalf of the Judicial Conference. Obviously—

Mr. ISSA. As an Appellate judge, what have you seen?

Judge TYMKOVICH. Well, as an Appellate judge, we do hear cases from administrative agencies throughout the circuits, but it's a more limited jurisdiction.

I think the Conference would be happy to study the details of the proposed legislation and then comment, when appropriate, when they understand what exactly the legislation is intended to—

Mr. ISSA. I appreciate that. In your viewing of history, though, isn't it true that most commonly a decision by a District court judge or even the Appellate court in one circuit is not binding on others, but, in fact, that's what the Supreme Court does is find ambiguity between multiple circuits and settle it once and for all? That's essentially the history of 200-plus years?

Judge TYMKOVICH. Yes, that's correct.

Mr. ISSA. OK. We'll just leave it as we have a long history, and that's not what's happening in these national prohibitions.

Back to the court. I agree with you that impeachment is a political decision, and so the Judicial Conference weighing in and recommending a political solution is not likely to be anything, although in your histories looking at that, the Judicial Conference does, in fact, review the conduct of judges and does offer a path to disciplining and/or disapproving of actions of judges in addition to their Chief Judge in each circuit. Isn't that true?

Judge TYMKOVICH. That's correct.

Mr. ISSA. During your time, there have been a number of efforts by both this Supreme Court Chief Justice and others to strengthen that capability. Is that true?

Judge TYMKOVICH. You have to give me some more specifics. I'm—

Mr. ISSA. Justice Roberts has done things that others haven't; for example, a form of admonishment of districts in Texas that were grabbing cases and holding them tight such that they had a substantial portion of the entire Nation's. You saw Chief Justice Roberts weigh in on a way to curtail that activity.

In other words, in your history, there is some significant self-regulating or self-looking over the shoulder of your colleagues. Even though you're equals, there is some group effort to find and hold Members who are outside of the bans of normal behavior.

Judge TYMKOVICH. That's correct.

Mr. ISSA. OK. I just want to make sure that we put that on the record because I think sometimes, we look at the exceptions rather than the rule. I will say that when I look at the other branches of government, we should all hope we regulate ourselves as well as the Judicial Branch.

Back to the bill at hand, in your estimation, will the 66, 67 judges, both temporary and permanent, depending on how we do it, will they, in fact, catch us up to where we were 20 years ago?

Judge TYMKOVICH. It is a substantial and significant improvement from where we are. It has been a long, long time since we've had help in the judiciary and—

Mr. ISSA. My time is expiring, but I just want a yes or no. Will we, in fact, have larger caseloads even after we implement these than you had 20 years ago?

Judge TYMKOVICH. Based on our report and survey, this would give a substantial improvement of where we are now. Thank you.

Mr. ISSA. Thank you. We now go to the gentlelady from North Carolina, Ms. Ross.

Ms. ROSS. Thank you, Mr. Chair. Thank you to our witness for being with us today.

This is a very important hearing on judicial vacancies, and I want to discuss the very real and urgent need for additional Federal judges, one that directly affects the people of North Carolina. In the Eastern District of North Carolina, we now have two Members on this Committee from the Eastern District of North Carolina.

We have thousands of Camp Lejeune veterans and their families awaiting justice. These are men and women who served our country honorably only to suffer from devastating illnesses caused by toxic water contamination. Their cases are backlogged in an overburdened court system that simply does not have the resources to deliver timely justice.

It's unconscionable that these families have already endured so much and must wait even longer because there simply aren't enough judges in the Eastern District to hear their cases.

Addressing this backlog should be our focus, and we will have a bill to do just that. It should be a priority of this Committee and every Member who claims to care about justice for our veterans. Let's be honest, that is not why we're here today.

If this Committee was serious about addressing judicial shortages in an impartial manner, we would have passed the JUDGES Act last Congress, well before the last election, giving the first set of judgeships to an unknown President. Today's hearing isn't about solving the real problem facing our judicial system; it's about installing judges who will serve an agenda rather than uphold the law.

My Republican colleagues, many of whom I have great respect for, Mr. Chair, refuse to act early on, and we even discussed this early on when a bipartisan solution was on the table, and we could already have more judges. Alas, we have American families, veterans, and businesses who have been waiting.

Now, I'll turn to my questions. Judge Tymkovich, even though the Judiciary is an independent branch of government, you've relied on both the Legislative and the Executive Branch for certain functions. For example, the judiciary receives most of its Federal funding through appropriations from Congress. Is that correct?

Judge TYMKOVICH. Correct.

Ms. ROSS. For Fiscal Year 2025, the judiciary requested an increase of 39.5 million in funding for the court security account because these funds are necessary to address significant increases in threats against Federal judges.

Can you describe these increased threats and the types of services funded by this account?

Judge TYMKOVICH. Thank you for the question. I would refer it to our Judicial Security Committee, which I'm not a part of. So, I can only comment to a large extent that there have been appropriations by Congress that have allowed for increased Judicial Security over the last five years or so, and we appreciate that.

Ms. ROSS. Yes. So, in fact, there were 457 cases in 2023, and they doubled. The Marshals Service provided that information.

The Marshals Service is particularly responsible for providing this security and executing court orders. Isn't that correct?

Judge TYMKOVICH. Yes.

Ms. ROSS. Are you aware that one of their duties is investigating these threats against Federal judges?

Judge TYMKOVICH. I think that's correct, yes.

Ms. ROSS. They use the Judicial Security Fund to provide that kind of security, correct?

Judge TYMKOVICH. Yes.

Ms. ROSS. What is the risk to judges if the Marshals Services—Marshals Service failed to provide this kind of security?

Judge TYMKOVICH. If they failed to provide that type of security? It's a context-specific question, but it's an important part of the overall security of the Federal judiciary.

Ms. ROSS. Removing the security, which could happen under this administration because they've been removing security from our former President, people who worked in the military, could threaten the safety and the independence of our judicial system. Would you agree with that?

Judge TYMKOVICH. I'm not aware of any current reductions, but we continue to support adequate funding for judicial security.

Ms. ROSS. Well, I appreciate that. I hope that you will support having the Marshals Service execute its duty to the judiciary despite any pressure from the Executive Branch.

Thank you, Mr. Chair, and I yield back.

Mr. ISSA. I thank the gentlelady.

We now recognize the gentlelady from Florida, Ms. Lee.

Ms. LEE. Thank you, Mr. Chair. Welcome, Judge Tymkovich. Thank you for joining us today.

During your opening statement, you referenced the bipartisan JUDGES Act, and the veto and message associated therewith from the White House and indicated that it was not reflective of reality and to misunderstanding the facts. I agree completely and believe that is such an important part of this hearing today.

First, it's also important to note that the suggestion that this act was partisan is not rooted in fact. It was a bipartisan bill that would not only add additional Article III judges, but it would have staged the addition of those judges so that they crossed multiple administrations. It was an unnecessary and an unwarranted veto that exacerbated the burden on the courts and continued to inhibit access to justice.

I come from the Middle District of Florida where, as I'm sure you know, is one of the most populous and the busiest districts anywhere in the United States of America, whether we go by weighted caseloads or unweighted. It is an incredibly busy district.

I had the privilege early in my career of serving as a judicial law clerk to one of our Article III judges, later as an AFD and an AUSA. I've spent much of my career inside the walls of the Tampa Federal Courthouse and can attest firsthand as to just how diligent and hardworking those judges, the magistrates and everyone else in that courthouse are, and how vital it is that we properly fund

our courts as a co-equal independent branch of government that needs to be properly staffed and funded to do its job.

You mentioned something else in your opening that I want to go back to, and that is the concept of speedy trial. For those who are not criminal practitioners, would you please elaborate for us, Your Honor, on the distinction between civil and criminal cases, what happens if criminal defendants do invoke their right to a speedy trial, what then happens to a judge's civil docket, and how does that affect access to courts?

Judge TYMKOVICH. Well, as a former law clerk, the criminal cases take precedence over the civil cases. A defendant in our system of justice is entitled to statutory protections that ensure that the trial occurs on a speedy basis. The Constitution also has a due process guarantee that requires judges to expedite those cases within timelines that are set either by statute or by case law.

If we have an inadequate number of judges in District Courts with particularly heavy criminal dockets—presumably, the Middle District of Florida, which I see it would be eligible for several new judgeships—it can put a lot of pressure on the rest of the civil docket if those criminal cases are taking over the time that's necessary to try them.

Ms. LEE. That's exactly something that's very important to understand.

When that happens, then civil litigants, individuals and businesses that have disputes that need resolution in the courts, their cases will get delayed. Another thing that you touched on is the concept that when that happens, when those delays are too pronounced, when they're too long, that can have a chilling effect on people coming to court or electing to use a trial as a potential resolution for their dispute.

Would you share with us a little bit more about your view on why it's important that Americans who have a dispute that want it resolved, that would like to go to trial, have the ability to utilize our courts efficiently and effectively to do that?

Judge TYMKOVICH. Every dispute in this country should be resolved quickly, fairly, and efficiently. The current status of the Federal Courts, because of our judgeship needs, is compromising the ability of those types of cases and those types of litigants to have their day in court.

Without getting their day in court, we think that erodes trust in the judiciary—faith in our system. To the extent we have an adequate number of judges to maintain and move our dockets, everybody benefits from that.

Ms. LEE. I noted in your introduction today that you take on a number of special responsibilities within the Judicial Conference, and I know many of your colleagues also do this. We're here today, we're talking with one of the easiest to access data points, which is the overwhelming number of cases that are assigned to every judge across America.

Tell me why those extra responsibilities, judges who are willing to teach, to take on the FISA court, to work on cybersecurity, why are those important and how does that add to the workload of a judge who is really performing their job very well?

Judge TYMKOVICH. It's an important question, and it's equally important to note that the survey results, the methodology that we use to estimate the number of judgeships that are needed, is not based on those extra duties.

The numbers that you get for the basis for this legislation are purely based on whether court is deciding cases. Most of our judges do extracurricular activities, teaching, going out into the community, serving on Judicial Conference Committees, like I am. Those are all important functions for the judges, and I think it's important for the public at large.

We don't get credit for those for purposes of this judgeship bill. Just note that's in addition to what the basis for this request is.

Ms. LEE. Thank you, Mr. Chair. I'm out of time.

Mr. ISSA. Thank you.

I now recognize my colleague from California and note that we, as Californians, are recipients of six out of the 21 judgeships that would be granted in the next four years.

Mr. Swalwell is recognized.

Mr. SWALWELL. Thank you, Mr. Issa. Thank you, Your Honor, for appearing today.

As you know—and you've practiced in many different courts and areas and jurisdictions. A local U.S. attorney working with the Federal Bureau of Investigation, if they want to bring or proceed in an investigation, at some point court supervision becomes involved, meaning that an FBI agent can talk to witnesses, they can subpoena metadata phone records without going to the courts, but if they want a search warrant or if they want to do a wiretap or impanel a grand jury, at some point the courts become involved.

What do you believe the role of the courts should be as an independent branch when the U.S. Attorney's Office brings a criminal investigation that warrants their involvement?

Judge TYMKOVICH. Well, again, that's somewhat out the scope of my testimony this morning on our judgeship needs.

The criminal process is well-developed, and I didn't personally practice as a criminal lawyer before I came on the bench, but that's a large part of my docket now. The system is quite developed as far as grand jury impaneling and subpoenaing records and the like. So, it's an ordinary and common part of our practice.

To the extent we have heavy criminal dockets in some of the courts that are underserved, it's going to compromise the efficiency and the speed with which those types of criminal investigations can take place.

Mr. SWALWELL. If the court is routinely rejecting search warrant applications or evidence to impanel a grand jury, do you believe the court has an obligation or like a duty to report to the public that there is not just an insufficiency in evidence in a particular case or cases, but that the government continues to fail to meet its burden?

I guess I'm just asking, once the courts get involved, if the courts don't see the evidence there and the government routinely is coming back to the courts, the court knows that the government doesn't have the goods to proceed, but the public does not know. At some point, if the government seems to be abusing its power, what is the

mechanism for the public to know besides the court just saying no and the case not being able to proceed?

Judge TYMKOVICH. I haven't studied that issue, and grand jury secrecy is an important part of the system. We can certainly take—I can go back to my colleagues and take a look at that. I don't know if it's been studied yet, but it might be worth taking a look at.

Mr. SWALWELL. Thank you. Your Honor, you agree that the U.S. Marshals, all 94 of them who are appointed by the President and confirmed by the Senate, can also unilaterally be removed by the President?

Judge TYMKOVICH. I'm sorry. Could you repeat the question?

Mr. SWALWELL. That a U.S. Marshal may also be removed by the President.

Judge TYMKOVICH. I'm not familiar with the management of the Marshals Service to that degree.

Mr. SWALWELL. Are you familiar, though, that recently in the D.C. District Court that U.S. Marshals were intervening and directing judges to expedite the release of the January 6th inmates whose cases had been pardoned?

Judge TYMKOVICH. I'm not familiar with that.

Mr. SWALWELL. What would you think of having an independent protection agency for judges that is outside the appointment of the President? Meaning a judge of security is dependent in many ways on the Marshals Service who the President appoints to protect the judges, and if a President doesn't like a decision that's coming from a judge, theoretically, they could pull their security. We've seen this with this administration where former Secretary of State Pompeo and National Security Advisor John Bolton had their security details recently pulled by the President, and it was seen as being done in a punitive way.

Do you think you could better protect judges if your security was more independent, similar to the structure we have here with the Capitol Police and its oversight?

Judge TYMKOVICH. I haven't studied that. It would be appropriate for our Judicial Security Committee to take a look at that and evaluate whether that makes sense for the Federal judiciary.

Mr. SWALWELL. Thank you.

Mr. ISSA. Would the gentleman yield?

Mr. SWALWELL. Yes.

Mr. ISSA. Your Honor, we know you're from Colorado and you're representing today. If you don't mind—we'll make it part of the record; Mr. Swalwell and I will forward that question. If you don't mind making sure that this is a question that legitimately this Subcommittee would have of—we've granted additional security recently after attacks on members of the court, and you, as a FISA judge, recognize the additional threat.

The question of whether we should look at a makeup that is more under the control of your branch, is a legitimate question that I hadn't heard before, and Mr. Swalwell and I find opportunities to agree on questions. If you don't mind taking that back, I know you have someone behind you that I know very well will take it back. That's why I thought I'd make the point that it's a truly bipartisan question.

Judge TYMKOVICH. We will. Thank you.

Mr. ISSA. Thank you.

Mr. SWALWELL. Thank you. Yield back.

Mr. ISSA. We now go to the gentleman from South Carolina, Mr. Fry, for five minutes.

Mr. FRY. Thank you, Mr. Chair. Thank you, Judge, for being here.

I think it's remarkable. We heard this last year on the JUDGES Act and how short you were on personnel to adjudicate cases. This, as part of our jurisdiction, is an important dialog to have.

Judge, during the 118th, the Senate unanimously passed, as you testified to, the JUDGES Act. After the election, though, the bill lost a lot of—in fact, all bipartisan support—most bipartisan support with only 29, Democrats voting in favor. Although the bill passed both chambers, President Biden, who previously was supportive of it, vetoed it.

Judge, do you believe that the JUDGES Act was an appropriate solution to address our Nation's judicial shortage?

Judge TYMKOVICH. Yes, I do.

Mr. FRY. In your opening remarks, you referred to the Statement of Administration policy, SAP, on the JUDGES Act. SAP criticized the bill for, quote, "hastily adding judges." You countered this claim stating the legislation was not hastily drawn up, but was the product of years of study, analysis, and Congressional review.

Does this mean that you disagree with the prior administration's assessment? If so, can you expand on why?

Judge TYMKOVICH. Well, the Judicial Conference certainly stands by the recommendation that we—for developing new judgeships. It's a very rigorous, objective, and honest process.

We evaluate thousands of cases to evaluate whether a particular district needs a new judgeship. We look at special factors, like the contributions of senior judges and magistrate judges. So, the process that we go through is very rigorous, very objective, and a lot of math in there. The Committee that looks at this issue is called our Subcommittee on statistics. You have to know a little bit about math to understand that.

It's a very rigorous, objective process, and it is not—like I said in my testimony, we've been presenting these types of surveys for 30 years. I've been heavily involved with it over the last 15 years, and I'm really confident that our process is well-designed to address the vacancy needs of the Federal judiciary.

Mr. FRY. Well, knowing that—and, obviously, it sounds like it took years—it was a year-long or multiple year-long process. That information was readily supplied to the administration, I'm sure, on you all's behalf. Is that correct?

Judge TYMKOVICH. I believe so.

Mr. FRY. OK. So, what insight do you have to on why former President Biden chose to veto this bill given your work on this issue?

Judge TYMKOVICH. I don't have any view on that.

Mr. FRY. Well, it's pretty patently obvious that it would be partisan politics. Partisan motivations given—do you think that may have changed if Kamala Harris had won the Presidency, that he would have not vetoed that legislation?

Judge TYMKOVICH. I don't know. That's a question for the administration.

Mr. FRY. OK. All right. I think we can all read between the lines here. As President was previously supportive of this, Democrats were certainly supportive of it, and then they weren't within the same Congress.

We'll move to injunctive relief in my brief time here. Judge, what is a preliminary injunction, and how does it differ from a TRO, just from a legal standpoint?

Judge TYMKOVICH. Well, you're taking me back to law school.

Mr. FRY. Let's do it.

Judge TYMKOVICH. Well, a temporary restraining order is an emergency order that maintains the status quo during the pendency of a case. Preliminary injunction is an injunction that stays a proceeding through a trial on the merits, generally. There's many, many deviations and variations to that statement.

Mr. FRY. What is the standard for a preliminary injunction?

Judge TYMKOVICH. It requires some type of emergency relief, extraordinary circumstances by a party that would be concretely harmed.

Mr. FRY. What about a TRO?

Judge TYMKOVICH. Similar.

Mr. FRY. What is a nationwide injunction, and how does it differ from a normal, ordinary preliminary injunction?

Judge TYMKOVICH. Well, it's a little outside the scope of my testimony on judgeships. Injunctions generally bind the parties that are before the court. Nationwide injunctions have broader scope.

Mr. FRY. What is the legal authority that would be relied on for issuing a nationwide injunction?

Judge TYMKOVICH. It depends on the presentation of the parties. So, there's really no fixed loadstar to that.

Mr. FRY. It's up to the discretion of an individual judge?

Judge TYMKOVICH. It's generally discretionary—

Mr. FRY. OK.

Judge TYMKOVICH. —subject to judicial—subject to circuit review and Supreme Court review.

Mr. FRY. OK. What is your assessment of the common law around it that it is entirely up to the judicial—

Judge TYMKOVICH. I'm sorry. The what?

Mr. FRY. The common law aspect of this, is it entirely up to the individual judge to make that determination on whether they issue a very narrow or a very broad nationwide injunction?

Judge TYMKOVICH. There are actually guardrails within probably each circuit's case law on the scope of injunctions.

Mr. FRY. Thank you, Mr. Chair. I see my time has expired, and I yield back.

Mr. ISSA. I now recognize Mr. Hunt—Mr. Gooden—sorry—for five minutes.

Mr. GOODEN. Yield time to Mr. Issa.

Mr. ISSA. Thank you. I thank the gentleman.

As we're getting a little closer to the end, there's a little bit of back and forth, but I want to make sure we make the record clear on a number of areas.

One of them is that we have noticed the Litigation Transparency Act, and I know that's, again, outside the specifics of what you came prepared for, but I do want to ask you a couple of quick questions.

Are you familiar with the Delaware case in which a litigant was ordered to disclose the economic beneficiary of litigation?

Judge TYMKOVICH. I'm not aware of that case, Mr. Chair.

Mr. ISSA. OK. Have you had cases in which the litigant was acting on behalf of other funders to your explanation that you didn't know about?

Judge TYMKOVICH. Not to my knowledge.

Mr. ISSA. Have you ever had a case in which there were third-party funders of litigation?

Judge TYMKOVICH. I'm not sure I would know that in a particular case.

Mr. ISSA. OK. As a Federal judge—and I go to the old school that the difference between God and a Federal judge is God knows he's not a Federal judge. I know it always gets a laugh, especially from those on the bench.

If you had a case and you chose to ask for disclosure of who the funders of the litigation were, on the plaintiff's side and, of course, on the defendant's side and if, as is the case, it is normal discovery and disclosure in the case of the defendant about whether they have insurance or some other mechanism to pay the damages, would you say that was within your current authority to balance, to ask?

Judge TYMKOVICH. I haven't studied our rules that govern disclosure—party disclosure. We do have those within the Rules of Civil Procedure, jurisdiction. I'm not actually familiar with what the scope might be as it pertains to your question.

Mr. ISSA. Well, the scope, in a sense, is this. Currently, if you're the defendant, let's say in a patent case or any case, the plaintiff asks for and demands and gets a disclosure of whether you're insured, in other words, how deep your pockets are.

Judge TYMKOVICH. Uh-huh.

Mr. ISSA. The plaintiff also gets your balance sheet, your profits, and all other information germane to whether or not you can pay if you lose, and they get that normally prior to winning the case—isn't that true?—as part of discovery.

Judge TYMKOVICH. I think it might be part of discovery.

Mr. ISSA. The Litigation Transparency Act simply says that the judge has a—not a demand, but a right and a full expectation that they may ask for and get disclosure as to who the beneficiaries or the financiers are of the plaintiff. In other words, both sides get to look into each other's pockets about how deep it is.

Does that seem unreasonable to you as a man holding that—wearing the blindfold and holding the scale?

Judge TYMKOVICH. I think it's a policy question that Congress can address and give us direction.

Mr. ISSA. Thank you. That's exactly the answer I needed to make my day.

Back to the situation at hand. This is not a hypothetical question because it's a real question that we may have to deal with in finding a way to carve law this Congress related to this.

If you had a choice of waiting four years or getting your judges in an order that is not ideal but, in fact, allows you to have judges somewhere among the 60-some judges sooner, in other words, if in the first four years you got judges that were not previously in the order of implied shortage and importance, would that be better than not having judges?

Judge TYMKOVICH. Yes. The position of the judicial conference is that we need the judges urgently now as soon as we can get them in whatever format we can get them and whatever order of release that we can get them.

Mr. ISSA. OK. Suffice it to say, for purposes of us on the dais who are—and Members of the Senate today, the record is that if you get a judge somewhere—because you can move judges as needed in an emergency situation—that would begin to alleviate them, is it fair to say that some of those judges might end up being confirmed in California but working somewhere else or vice versa at least some of the time in order to ease court burden?

Judge TYMKOVICH. That's correct.

Mr. ISSA. OK. You're not limited from doing that, so it is something that the court could find a way to do even though it would have some cost?

Judge TYMKOVICH. Yes. There's a mechanism for doing that.

As I mentioned earlier, I've sat on the Ninth Circuit as a visiting judge. I've sat in Oklahoma where we have an enormous caseload driven by the *McGirt* decision, which expanded Federal jurisdiction in that State. I've sat in Colorado and New Mexico. Judges—not just me, a lot of judges help out in emergencies.

Mr. ISSA. I might note that the Senate's major change between the House and Senate version was, in fact, related to Oklahoma and the perception of whether that was temporary or permanent.

Judge TYMKOVICH. We appreciate that.

Mr. ISSA. That you. I'd ask unanimous consent that Mr. Hunt be waived onto the Committee.

Mr. HUNT. Thank you, Mr. Chair.

Mr. ISSA. Thank you. Without objection.

Pursuant to the rules, I now recognize myself and yield to Mr. Hunt.

Mr. HUNT. Thank you, Mr. Chair.

We tried to solve this problem when we had a Democrat in office, and people say that we're not bipartisan. We can be when we want to be.

Last Congress, I was a proud original cosponsor to my colleague, Darrell Issa's bill, the JUDGES Act. The JUDGES Act passed the Senate unanimously and passed the House in a bipartisan manner. However, despite the overwhelming support for the bill, President Biden voted against the JUDGES Act after President Trump got elected. President Biden also bragged about ignoring the Supreme Court's ruling that he didn't agree with. Now, we're hearing that if President Trump ignores judges, we're in a constitutional crisis.

If everyone is following along, it means that a constitutional crisis only occurs when Republicans ignore Federal judges. The Left is using activist judges to not only legislate from the bench, but also to encroach on the Executive Branch. The Left will call it sim-

ple checks and balances, but everyone in this room that went to law school or can even read a civic book knows this playbook.

The Democrats lost the election in overwhelming fashion, and now they're resorting to law fair to prevent the will of the people from having their day. Is it justice delayed or is it democracy delayed?

The same party that raided the home of President Trump and weaponized the DOJ against President Trump is now using the limited power they have to delay, delay, and delay reality.

What the Left is experiencing isn't new. They're simply experiencing the five stages of grief, and unfortunately for them, they are stuck on Stage 1: Denial. The American people really need to get them to Stage 5 as fast as possible, which is acceptance, because that's exactly what the American people voted for, and that's exactly where the American people are.

This is the year 2025, and I want to help Democrats get to reality. This is the reality. The duly elected President of the United States is Donald Trump. President Trump is a leader of the Executive Branch. More than 77 million Americans voted for this result.

Delaying the process of this administration is democracy delayed. This is called acceptance. You can't deny it any longer. Let's not play politics with the judiciary system. Let's pass the JUDGES Act and create more judgeships for our already overwhelmed Federal judiciary.

Everyone complains about the case backlogs, but we can fix it right here, right now. The American people deserve it. Do you know how we know that? Because the American people voted for it.

With that, I yield back the remainder of my time.

Mr. RASKIN. Would the gentleman yield for a question?

Mr. HUNT. I yield my time back to the Chair.

Mr. ISSA. Thank the gentleman.

I'd yield to the Ranking Member for his question.

Mr. RASKIN. Thank you kindly. Just in the discussion about denial, it occurred to me whether the gentleman accepts that Joe Biden was the duly elected President from 2020. Is there an answer to that?

Mr. ISSA. Since, it's my time, I will acknowledge that the gentleman—former President from Delaware was elected properly under the law, and I was there on January 6th, as were you, and that was so noted by the House and the Senate.

I appreciate the question. It is, in fact, something that I hope we can put behind us is the question of whether or not the Electoral College, once making a decision, is final. It was final in 2020 and—or 2021, and it is final in 2025.

That's a great question, but it's not one for our witness here today.

I'm going to get you out of here a minute early, Your Honor.

I would say, without objection, all members will have five legislative days on which to submit additional written questions for the witness and additional materials for the record.

This concludes today's hearing, and I thank our witness for appearing before the Committee today.

Without objection, we stand adjourned.

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=117919>.

