

RETIREMENT EQUITY FOR U.S.  
DISTRICT COURT JUDGE JOHN S.  
UNPINGCO OF PITI, GUAM

**HON. MADELEINE Z. BORDALLO**

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 4, 2009

Ms. BORDALLO. Madam Speaker, today I have introduced a private relief bill to grant full annuity set forth in 28 U.S.C. 373 to the Honorable John S. Unpingco of Piti, Guam, former Judge of the United States District Court of Guam.

Prior to his confirmation on October 8, 1992, by the United States Senate as Judge of the District Court of Guam, Judge Unpingco served a combined total of 27 years as an officer in the United States Air Force, the United States Air Force Reserve, and as a federal civilian employee in the Department of the Air Force. However, despite his long and distinguished career as a public servant, upon attaining the age of 65 Judge Unpingco will not qualify for a full annuity from the Administrative Office of the United States Courts (AO), from the United States Air Force, or from the Federal Government for his civilian service. Under current law, upon attaining the age of 65, Judge Unpingco can only receive an annuity prorated to his service on the federal bench and valued at approximately 12/15th of the salary he earned at the time he stepped down from the bench.

The issue of retirement inequity is one unique to Judges appointed to serve on the bench for the District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands. Each of these Courts was established pursuant to an Act of Congress enacted in under the authority of Congress to govern territories granted by Section 3 in Article IV of the Constitution. Article IV judges are appointed for fixed-length terms pursuant to statute. Article III judges, however, their counterparts serving on the bench in District Courts in the 50 States and in the District of Columbia, are appointed for life in accordance with the Constitution.

In the 109th Congress, I wrote with my colleague from the Virgin Islands, Mrs. CHRISTENSEN, to the Judicial Conference of the United States, to request their review of draft legislation to amend 28 U.S.C. 373 to allow for the retirement of Article IV judges under terms more equal to those provided under current law for judges of Article III Courts and the United States Tax Court. The Committee on the Judicial Branch of the Judicial Conference of the United States carefully examined our legislative proposals on this issue and responded in writing on January 5, 2006, indicating that this is a matter more appropriately addressed at this time through a private relief bill. To date, Congress has confirmed the appointments of 16 Judges to the Article IV Courts for the Districts of Guam, the Northern Mariana Islands, and the Virgin Islands. Length of terms has varied over time and across the three courts. There are unique circumstances surrounding Judge Unpingco's executive and judicial service. He separated from the civil service to fulfill a judicial responsibility on behalf of his country, and served on the federal bench in good faith.

It is at the suggestion of the Committee on the Judicial Branch of the Judicial Conference

of the United States and in accordance with precedent that I have introduced this private relief bill. I do so in the hopes that a distinguished public servant will collect the full and fair annuity that he selflessly worked toward over the course of his 27 year career in public service. While I intend to introduce legislation at a later time to establish the District Court of Guam as an Article III Court, I remain concerned about current inequity in the law affecting Article IV Judges. Thirty-seven private bills have been enacted into law by the previous five Congresses. Congress has previously considered private relief bills pertaining to annuities payable to federal Judges, including for example for a Judge in a territory of the United States. The most recent example being S. 115 for the relief of Judge Louis LeBaron, who was a Justice of the Territorial Supreme Court of Hawaii and which was introduced in the 1st Session of the 99th Congress on January 3, 1985.

I look forward to working with the Chairman and Ranking Member of the Committee on the Judiciary to address the underlying inequity in retirement benefits for Article IV Judges and in this particular case to bring relief to Judge Unpingco through the enactment of the bill I have introduced today. I hereby enter for print in the CONGRESSIONAL RECORD to accompany the introduction of this bill and to supplement these remarks, the correspondence I exchanged with the Administrative Office of the United States Courts (AO) and the Judicial Conference of the United States and its enclosures on this matter.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, February 4, 2005.

MR. LEONIDAS RALPH MECHAM,  
Director, The Administrative Office of the U.S.  
Courts, One Columbus Circle, NE, One Columbus Circle, NE, Washington, DC.

DEAR DIRECTOR MECHAM: We write to you in your capacity as Secretary to the Judicial Conference of the United States, to request the Judicial Conference's support for amending Section 373, of Chapter 17, in Part I, of Title 28 of the United States Code, to allow for the retirement of Article IV judges of the District Court of Guam, the District Court of the Northern Mariana Islands, and the District Court of the Virgin Islands, under terms more equal to those provided under current law for judges of Article III courts and judges of the United States Tax Court. Specifically, we request the Judicial Conference's support for the repeal of the age restriction and the revision of the service requirement in Section 373 to allow for retirement should a judge of an Article IV Court not be reappointed.

As you know, the U.S. District Courts in the 50 States and Puerto Rico were created under Article III of the United States Constitution. The District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands were created by Congress under authority to govern territories granted by Section 3 in Article IV of the United States Constitution. Article III judges are appointed for life in accordance with the United States Constitution whereas Article IV judges are appointed for a term of ten years pursuant to statute. The difference in terms of appointment is significant as it pertains to retirement eligibility.

Since Article III judges serving life-time terms may only be removed for cause, there are few circumstances by which fulfillment of resignation and retirement requirements is not realized. However, Article IV judges do not enjoy the same advantage. Under current

law, an Article IV judge is first eligible for retirement at age 65 provided he has accrued 15 years of judicial service. If upon expiration of his term, an Article IV judge is not reappointed, he is eligible to receive a proportional annuity upon reaching age 65 provided he has at least ten years of judicial service.

It is understood that Article III judges are appointed for life-time terms because the framers of the Constitution recognized that an effective and independent judiciary could only be realized if judges were free from political interference in their decision-making. We are seeking changes to the retirement provisions for Article IV judges to provide consistency with the principles espoused by the framers. Article IV judges should not have to face the possibility of having to seek employment at the expiration of their term. Having to do so raises possible conflict of interest and judicial independence concerns our founding fathers sought to prevent from occurring.

We are proposing that Article IV judges be afforded a similar option to retire as judges in the U.S. Tax Court, who also do not receive life-time appointments, but are eligible to retire at the expiration of their term regardless of age. Under Section 7447(b)(3) of Title 26 of the United States Code, judges of the United States Tax Court who are not reappointed can retire upon completion of their term provided they have notified the President of their willingness to accept reappointment within a specified period of time. We are proposing similar consideration for Article IV judges. Specifically, that an Article IV judge, who is not reappointed, would be allowed to retire after the expiration of their term. An Article IV judge retiring under this provision would receive an annuity equal to 50% of the judge's salary at the time of retirement. Then, upon reaching the age of 65, the retired judge would be eligible to receive the annuity amount authorized under current law (28 U.S.C. 373(e)).

Alternatively, we propose that an Article IV judge, who has at least ten years of judicial service, but is not reappointed, and who has not reached the age of 65, be eligible to retire at the expiration of his term provided he has a combined total of 15 years of Federal service, including a minimum of 10 years of judicial service, which may include military and civil service.

Enclosed, for your review, is draft legislative language for each of these proposals. Amending the retirement provisions would ensure the judicial independence of Article IV judges and provide for their freedom from political interference. In addition, it would place the Article IV judges of the U.S. District Courts of Guam, the Mariana Islands and the Virgin Islands on more equal terms with their colleagues serving in other U.S. Courts. Thank you for your consideration of this request. We look forward to working with you to address this matter in the 109th Congress and would appreciate your review of and comment on the enclosed legislative proposals.

Sincerely,  
MADELEINE Z. BORDALLO,  
Member of Congress.  
DONNA M. CHRISTENSEN,  
Member of Congress.

AMENDMENT No. 1 to 28 U.S.C. 373(e) OFFERED  
BY MS. BORDALLO

Section 373(e) of title 28, United States Code, is amended—

- (1) by inserting “(1)” after “(e)”;
- (2) by striking: “, or who is not reappointed (as judge of such court),” and
- (3) by adding at the end the following:
 

“(2) Any judge of the District Court of Guam, the District Court of the Northern

Mariana Islands, or the District Court of the Virgin Islands who is not reappointed (as judge of such court) following the expiration of his or her term of office shall, upon the completion of such term, be entitled to receive, during the remainder of his or her life, an annuity as follows:

“(A) If the judge has not yet attained the age of 65 years, the annuity of the judge shall be equal to 50 percent of the salary the judge received when leaving office, subject to subparagraph (B).

“(B) If the judge has attained the age of 65 years, or in the case of a judge described in subparagraph (A), upon attaining the age of 65 years—

“(i) if his or her judicial service, continuous or otherwise, aggregates 15 years or more, the annuity of the judge shall be equal to the salary received when leaving office; or

“(ii) if his or her judicial service, continuous or otherwise, aggregated less than 15 years but not less than 10 years, the annuity of the judge shall be equal to that proportion of the salary received when leaving office which the aggregate number of such years of judicial service bears to 15.”

AMENDMENT NO. 2 TO 28 U.S.C. 373(e) OFFERED BY MS. BORDALLO

Section 373(e) of title 28, United States Code, is amended—

(1) by inserting “(1)” after “(e)”;

(2) by striking “, or who is not reappointed (as judge of such court),”; and

(3) by adding at the end the following:

“(2) Any judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who is not reappointed (as judge of such court) following the expiration of his or her term of office shall, upon the completion of such term, be entitled to receive, during the remainder of his or her life, an annuity equal to the salary received when leaving office, if the judicial service of the judge, continuous or otherwise, aggregates 10 years or more, and the service of such judge as an officer or employee of the United States, continuous or otherwise, including military service, aggregates 15 years or more.”

JUDICIAL CONFERENCE OF  
THE UNITED STATES,

Washington, DC, February 23, 2005.

Hon. MADELEINE Z. BORDALLO,  
House of Representatives, Cannon House Office  
Building, Washington, DC.

Hon. DONNA M. CHRISTENSEN,  
House of Representatives, Longworth House Of-  
fice Building, Washington, DC.

DEAR DELEGATES BORDALLO AND CHRISTENSEN: Thank you for your letter of February 4, 2005, requesting the judiciary's review of draft legislation to amend the retirement provisions for territorial district court judges contained in section 373, of title 28, United States Code.

By copy of this letter, I am requesting that the Judicial Conference Committee on the Judicial Branch, which is chaired by Chief Judge Deanell Reece Tacha (United States Court of Appeals, Tenth Circuit), review and make any appropriate recommendations to the Judicial Conference on this matter. The Judicial Branch Committee has jurisdiction over judicial compensation and benefits matters, including judges' retirement.

In the interim, should you have any questions or concerns, please do not hesitate to contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, at (202) 502-1700.

Sincerely,

LEONIDAS RALPH MECHAM,  
Secretary.

COMMITTEE ON THE JUDICIAL  
BRANCH, JUDICIAL CONFERENCE OF  
THE UNITED STATES,

Portland, ME, January 5, 2006.

Hon. MADELEINE Z. BORDALLO,  
House of Representatives, Cannon House Office  
Building, Washington, DC.

Hon. DONNA M. CHRISTENSEN,  
House of Representatives, Longworth House Of-  
fice Building, Washington, DC.

DEAR DELEGATES BORDALLO AND CHRISTENSEN: I am writing in furtherance of Administrative Office Director Leonidas Ralph Mecham's letter dated February 23, 2005, concerning your request for Judicial Conference review of proposed legislation to amend the retirement provisions for territorial district court judges, contained in section 373 of title 28, United States Code.

The Judicial Conference Committee on the Judicial Branch discussed your legislation at length during its December 1-2, 2005, meeting. As discussed below, the Committee recommended no action on this issue by the full Judicial Conference.

The Committee considered both proposals at length. It was the unanimous view of the Committee that the proposed legislation involved matters that are essentially private relief bills (intended to benefit a single territorial district court judge) and that this objective should not be achieved by amending title 28, United States Code. The Committee's determination is consistent with Judicial Conference precedent. During the 1970s, the Conference declined to endorse legislation that was intended to benefit a single territorial district court judge on at least three occasions. At the time, the Conference declined to endorse legislation that would have increased the retirement benefits accruing to certain territorial judges for their services as territorial judges in prior years (when the salary of that position was less than \$20,000 per year). The Conference was of the view that the bill as framed would apply to only one territorial judge and, therefore, if the Congress desired to enact such legislation, it would better be accomplished by a private bill (and not by amendment of title 28).

I should note that the Committee also considered whether to recommend to the Conference a more general resolution (e.g., that the Conference resolve to recommend that Congress amend the age and service provisions governing territorial district judges' retirement (28 U.S.C. 373(a)) to make them more congruent with those available to other fixed-term judges). After considerable discussion, that proposal was also considered to be unsatisfactory. The Committee believes that territorial district judges accept their judgeships knowing that non-reappointment is a possibility. There was also concern about maintaining parity with other fixed-term judges, such as bankruptcy and magistrate judges, whose retirement system is contributory.

I regret that my reply could not be more favorable. Should you have any questions or concerns, please do not hesitate to contact Cordia Strom, Assistant Director for Legislative Affairs at the Administrative Office of the U.S. Courts, at 202/502-1100.

Sincerely,

D. BROCK HORNBY,  
District Judge.

REMEMBERING EMILY CAMPBELL  
BROWN

HON. TIM RYAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 4, 2009

Mr. RYAN of Ohio. Madam Speaker, I rise to honor Emily Campbell Brown, the extraordinary mother of our former colleague and now member of the other body, Senator SHERROD BROWN. Mrs. Brown died at her home in Mansfield, Ohio, on Monday at the age of 88.

She was born and raised in Mansfield, Georgia, and married Dr. Charles G. Brown of Mansfield, Ohio in 1946. She taught English at the High School and was a leader in the Mansfield YWCA. She and her husband were instrumental in the founding of the Mansfield chapter of Habitat for Humanity and the Ohio Hunger Task Force. She was always active in the Richland County Democratic Party. In 2007 the Richland County Democratic Party established the Emily Brown Young Democrat Award in her honor. Just last year she campaigned for important issues and candidates.

She raised three sons, Robert, Charles, and our friend SHERROD, and was blessed with 6 grandchildren and a great grandson.

Madam Speaker, our thoughts and prayers are with Senator BROWN and all of his family in this difficult time as we remember his mother, a remarkable lady Emily Campbell Brown. Her progressive spirit and commitment to social justice lives on through her sons and her family.

Madam Speaker, I ask unanimous consent that a column written by Connie Schultz the daughter-in-law of Emily Brown and the wife of Senator BROWN that appeared in today's Cleveland Plain Dealer be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

[From the Cleveland Plain Dealer, Feb. 4, 2009]

EMILY CAMPBELL BROWN, AN ACCOMPLISHED  
LADY WHO DEFINED HER OWN LEGACY  
(By Connie Schultz)

It didn't take long for me to realize I'd met my match in the likes of Emily Campbell Brown.

Six years ago, before I married her son, we were dressing for a black-tie event at her home. After I'd wriggled into a floor-length gown, she scooted up next to me.

“Cohhhhhnie,” she said in the Southern lilt that always coaxed another syllable out of my name. “Would you like to borrow a necklace?”

Aw, how sweet. “Thank you, Emily,” I said, “but I'm afraid that might draw attention to my chest.”

“Hmmm,” she said, glancing at my neckline. “Isn't that what you're trying to do?” I could hear her son chuckling in the next room.

“Emily,” I said, kissing her powdered cheek. “You and I are going to do just fine.”

Most of the obituaries for Emily, who died Monday at 88, identify her first and foremost as the mother of my husband, U.S. Sen. Sherrod Brown. They mention that she also raised two other successful sons, and that she married a doctor.

She was proud of the men in her life, but to define Emily by her relationships is to diminish the giant force of a woman who made social justice the cornerstone of her life, and that of her family. One of the first e-mails