

Statement of

The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
September 30, 2009

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Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2009
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One of the primary responsibilities of the Senate Judiciary Committee - and particularly of this Subcommittee on Administrative Oversight and the Courts - is to make sure the federal judiciary has the tools and the resources to perform its crucial role in our constitutional structure. Today's hearing takes up that responsibility by considering the need for federal judgeships in district and circuit courts across the country. We all recognize the importance of the federal judiciary in the proper functioning of our democracy and we all want to ensure that the courts have the resources they need to protect our liberties and administer justice.

The confirmation of Justice Sonia Sotomayor to the United States Supreme Court was the focus of great attention and much media coverage. That is understandable given the importance of our Supreme Court, but we must never forget that most of the judicial business in our federal system never comes close to the Supreme Court. Every day, Americans from all walks of life come to federal district court to vindicate their legal rights. The rule of law depends on the prompt and proper resolution of those cases. Justice delayed is often justice denied, so district courts must be able to process cases in a timely manner. Similarly, swift redress from a circuit court is not a matter of politics or controversy, but of simple justice and effective government. Courts must have resources adequate to meet their high purpose. We in Congress must ensure that they do not lack the tools for their constitutional role.

The Federal Judgeship Act of 2009, which was introduced by the Chairman of the Judiciary Committee, Senator Leahy, would fulfill that responsibility. That bill reflects the recommendations made by the Judicial Conference in March of 2009. It would be the first comprehensive judgeships legislation since 1990; a period which has seen significant expansion in the workload of the federal courts. It provides for 12 new Circuit Court judgeships and 51 new District Court judgeships. These recommendations are very similar to the 2007 recommendations that passed out of committee last year by a bipartisan vote of fifteen to four. The Federal Judgeship Act of 2009 should expect similar support from both sides of the aisle. I hope that the Judiciary Committee will consider and pass it soon.

The numbers underscore the need for action. On average, there are 573 so-called "weighted filings" in the District Courts for which new judgeships are recommended; well above the 430 "weighted filings" needed to trigger a judgeship recommendation by the Judicial Conference. For the six circuit courts where new judgeships are recommended, there are an average of 802

"adjusted filings" per panel, well above the 500 "adjusted filings" per panel measure used for judgeship recommendations.

Of course, the Courts do not simply consider mere statistics in making their judgeship recommendations. They also are careful to consider all the resources available to a district or circuit court, including senior and visiting judges who can contribute to sharing the workload, and the use of magistrate judges within statutory limits. Given the care and conservatism with which they have been developed, the Judicial Conference's recommendations deserve the utmost consideration. It is telling, for example, that while 77 new judgeships were requested by courts across the nation, the Judicial Conference has recommended 63 judgeships to Congress.

Congress has repeatedly put off dealing with the courts' growing workload. Now is the time to act, and I commend Chairman Leahy for his leadership on the issue. The federal judiciary is a beacon of principle and justice to the rest of the world. We must keep it that way.

Today we will hear from Judge Singal of the District of Maine who is appearing on behalf of the Judicial Conference and will explain the 2009 judgeship recommendations made by that body. We also will hear from Judge O'Neill of the Eastern District of California, a district facing an overloaded docket despite the best efforts of the active, senior, and magistrate judges. I know that this has been a district of great concern to Senator Feinstein, as it demonstrates the kind of pressures put on judges and the delays facing litigants as workloads spiral out of control. Finally, we will hear from Judge Tjoflat, a judge on the Eleventh Circuit, and its former chief judge. I welcome all the witnesses and look forward to their testimony. Thank you all for being here today.