



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE ROSLYNN R. MAUSKOPF
Secretary

July 28, 2023

The Honorable Patty Murray
Chair
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Chris Van Hollen
Chair
Subcommittee on Financial Services
and General Government
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Susan Collins
Vice Chair
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Bill Hagerty
Ranking Member
Subcommittee on Financial Services
and General Government
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairwoman Murray, Chairman Van Hollen, Vice Chairwoman Collins, and Senator Hagerty:

We write to convey our deep concern regarding Judicial Branch funding levels contained in the House and Senate versions of the fiscal year (FY) 2024 Financial Services and General Government (FSGG) appropriations bill, H.R. 4664 and S. 2309 respectively, that were reported out of the Appropriations Committees on July 13, 2023. We recognize the highly constrained budget environment in which the Appropriations Committees are writing FY 2024 appropriations bills and appreciate the efforts by the leaders of both FSGG subcommittees to provide the Judicial Branch with modest overall increases in both bills despite FSGG 302(b) allocations being well below the FY 2023 level. However, we are compelled to advise Congress of the detrimental impacts of the House and Senate funding levels on the administration of justice and the functioning of the federal courts if those funding levels were enacted into law. These impacts include:

- staff downsizing in clerks of court and probation and pretrial services offices, and federal defender offices (FDOs);
- an inability to provide court-appointed counsel to all eligible defendants under the Criminal Justice Act (CJA);
- cutbacks to core court services;

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- risks to public safety due to higher caseloads for probation and pretrial services officers;
- cutbacks in planned critical cybersecurity and information technology modernization investments; and
- deferring essential courthouse security improvements.

We look forward to working closely with the Appropriations Committees prior to conference on a final FY 2024 FSGG bill to ensure the Judicial Branch is sufficiently resourced to carry out its constitutional and statutory responsibilities.

The Judicial Branch's FY 2024 budget request seeks \$9.14 billion, an 8.0 percent increase above the FY 2023 enacted level. More than 80 percent of our requested increase is necessary simply to maintain current operations, including addressing space rental and other inflationary adjustments, as well as funding a 5.2 percent pay adjustment for 2024, the highest proposed federal civilian pay adjustment since 1980. In addition, we have proposed new investments in priority areas, including judicial security protections needed to address an environment of increasing threats to judges, staff, and court facilities, and information technology upgrades necessary to further address cybersecurity vulnerabilities and modernize the branch's IT infrastructure. The House level of \$8.68 billion in H.R. 4664 is \$454 million below the Judicial Branch's FY 2024 request, and the Senate level of \$8.57 billion in S. 2309 is \$117 million below the House bill, and \$571 million below the request level. The impacts of the House and Senate levels for our three largest accounts are described below.

Defender Services

The Defender Services program provides court-appointed representation under the CJA to defendants unable to afford counsel. The House bill funds Defender Services at \$1.41 billion and the Senate bill funds the program at a FY 2023 hard freeze of \$1.38 billion. These levels are \$122 million and \$150 million, respectively, below the FY 2024 request of \$1.53 billion, and, due to a decrease in offsetting prior year balances, would actually fund the Defender Services program below the FY 2023 financial plan obligation level.

If the shortfall were applied solely to FDO staff, those FDOs would have to downsize by 368 full-time equivalents (FTE) (9 percent) at the House level and 493 FTE (12 percent) at the Senate level below July 2023 on-board strength of 4,181 FTE.¹ Alternatively, if the shortfall were applied to payments to private practice "panel" attorneys appointed by courts to take CJA cases, payments would need to be suspended beginning July 11, 2024, under the House bill and beginning June 18, 2024, under the Senate bill, through September 30, 2024. The deferred payments would have to be made in FY 2025, thereby increasing funding requirements in that year. Some combination of FDO staffing reductions and panel attorney payment deferrals could

¹The number of people lost in federal defender offices would be greater than the FTE figures cited given that it would take several months into FY 2024 to fully implement staffing reductions.

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also be implemented. Staffing cuts would limit FDOs' ability to accept appointments, and the prospect of months-long payment delays could deter CJA panel attorneys from accepting appointments or discourage them from remaining on the CJA panel altogether. Over 90 percent of federal defendants receive court-appointed representation so these budget balancing cuts would negatively impact the progress of significant numbers of criminal cases in the federal courts and a defendant's constitutional right to counsel and a speedy trial. Given the uncertainty regarding FY 2024 funding, on July 13, 2023, the Administrative Office of the U.S. Courts implemented an immediate hiring freeze for FDOs nationwide, subject to limited exceptions.

To provide some context and perspective, the funding shortfalls at the House and Senate levels would have consequences comparable to the sequestration cuts in FY 2013 and early FY 2014. During that period, FDOs lost around 500 positions, approximately one-third of them attorneys; FDOs experienced approximately 165,000 furlough hours (equal to more than 20,000 furlough days); and CJA panel attorney rates were cut temporarily (for six months) by \$15 per hour and panel attorneys experienced several weeks of suspended payments. As a result, in many judicial districts, attorneys were not available to provide representational services as needed by the courts, resulting in case delays. It took the Defender Services program several years to recover from sequestration. In fact, FDO staffing levels did not return to pre-sequestration strength until 2016. We ask for your assistance to ensure that funding shortfalls do not again constrain our ability to provide court-appointed counsel to eligible defendants.

Courts' Salaries and Expenses

The courts' Salaries and Expenses account funds the operations of the regional courts of appeals, district courts, and bankruptcy courts, and probation and pretrial services offices nationwide, including nearly 27,500 judges and court staff. The House bill funds courts' Salaries and Expenses at \$6.06 billion and the Senate bill provides \$6.02 billion, \$320 million and \$361 million, respectively, below the FY 2024 request level of \$6.38 billion. Absent other budget balancing reductions, clerks of court and probation and pretrial services offices would have to downsize on a national basis by as many as 582 FTE (3 percent) at the House level and 840 FTE (5 percent) at the Senate level below July 2023 on-board strength of 18,322 FTE.² Staffing losses in clerks of court offices will impact core court services like case intake and docketing, jury management, the processing of restitution payments to victims of crimes, and timely noticing to creditors in bankruptcy cases, as well as require reductions in services to the public, such as hours at filing intake counters and assistance to pro se filers (filers not represented by counsel). Staffing losses in probation and pretrial services offices bring risks to public safety as remaining officers are forced to supervise higher numbers of defendants and offenders, including high-risk offenders, resulting in overworked officers, a greater risk of recidivism, and a detrimental impact on defendants and offenders who need rigorous monitoring and supportive services to reintegrate successfully and safely into their communities.

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The House and Senate levels would also impact our ability to address growing cybersecurity threats facing the Judicial Branch. The combination of a cyberthreat environment that is ever increasing in both threat volume and sophistication and aging IT systems leaves the Judicial Branch highly vulnerable to cyberattacks. Congress provided critical funding in FYs 2022 and 2023 to enable us to embark on a multi-year effort to bolster our cyber-defenses and modernize critical IT systems. However, we require a sustained level of investment to keep these projects on track to ensure the security and integrity of our IT systems. At the House and Senate levels we would have to scale back planned FY 2024 spending on cybersecurity and IT modernization by as much as 25 percent which would slow the momentum we have achieved to date.

Court Security

The Court Security program provides for the security of federal courthouses and court facilities, including security systems and equipment, contract court security officers, Federal Protective Service security coverage, and a vulnerability management program to identify and address threats to judges, court personnel, and court facilities. The House bill funds Court Security at \$782.7 million and the Senate bill funds the program at a FY 2023 hard freeze of \$750.2 million. The House level closely approximates the budget request of \$783.5 million.

Funding at the lower Senate level would come at a time that the Judicial Branch is working to enhance courthouse security in response to growing threats. According to the U.S. Marshals Service, the number of threats and inappropriate communications targeting judges and other personnel essential to court proceedings rose from 926 in 2015, to 3,706 in 2022, a 300 percent increase. We continue to implement the security provisions of the Daniel Aderl Judicial Security and Privacy Act, named in honor of federal judge Esther Salas's son who was murdered at their New Jersey home in July 2020 by an assailant posing as a deliveryman. The Act was signed into law in December 2022 and enhances security by reducing judges' personally-identifiable information available on the Internet. The Senate level would require deferral of some security systems and equipment improvements requested by the U.S. Marshals Service, such as upgrades to courthouse access systems, security screening and x-ray equipment, and replacement of outdated courthouse video security systems, which would represent a setback in our efforts to strengthen courthouse security in the face of growing threats.

Other Judicial Branch Organizations

Other Judicial Branch organizations – the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of International Trade, the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the U.S. Sentencing Commission – are funded in the House bill at a FY 2024 current services level less the cost of the proposed 5.2 percent federal pay adjustment. The Senate bill provides a FY 2023 hard freeze level. The vast majority of the budgets for these organizations are personnel costs so a funding shortfall has a direct and immediate impact on

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Closing

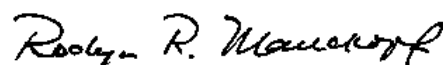
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Sincerely,



Amy J. St. Eve
Chair, Committee on the Budget

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The Honorable Rosa DeLauro
Ranking Member
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The Honorable Steny H. Hoyer
Ranking Member
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Dear Chairwoman Granger, Chairman Womack, Ranking Member DeLauro, and Ranking Member Hoyer:

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