

Prepared Statement of Senator Chuck Grassley

*Ranking Member, United States Senate Committee on the Judiciary
Hearing before the House Committee on the Judiciary*

“Are More Federal Judges Always the Answer?”

October 29, 2013

Mr. Chairman, Ranking Member Conyers, and Members of the Committee, thank you for the opportunity to be here.

Our federal judiciary is special. I have tremendous respect for it.

We need to preserve and protect it. And we need to strengthen it.

As legislators, we also have an obligation to be good stewards of taxpayer dollars.

The federal government shouldn't expect a good result from simply throwing additional money at an issue. This is especially true during these trying fiscal times.

Fortunately, one of the best ways to strengthen the judiciary also happens to be the most cost-effective.

I have been committed to reallocating judicial resources in a more efficient way for many years.

During the 1990s when I was Chairman of the Subcommittee on Administrative Oversight and the Courts, I led a multi-year effort to study the allocation of court resources. This included an examination of court caseloads and the allocation of judgeships.

There has been some controversy over the years regarding the D.C. Circuit. And some of that controversy has centered on the D.C. Circuit's caseload.

My work on the court study ultimately led to a successful effort during the Bush Administration to remove a seat from the D.C. Circuit, and reallocate it to the 9th Circuit.

Let me emphasize two important points about that effort.

First, Republicans worked to remove a seat from the D.C. Circuit while a Republican occupied the White House.

Second, although the D.C. Circuit seat was removed immediately, the new seat in California did not take effect until January of 2009.

In other words, we took away from President Bush the opportunity to make that nomination. But we did not give him an opportunity to make an additional nomination in the 9th Circuit. Instead, we delayed that authority until a new President could make that nomination.

For additional context, I'd remind people that in 2006, the other side argued that we should not fill any more than 10 seats on the D.C. Circuit based on the caseload. They successfully blocked Mr. Keisler on that basis.

Since that time, the caseload statistics have declined even further. They have fallen so much during the last few years that the caseload per active judge today, with 8 active judges, is nearly the same as it was back then, with 10 active judges.

In fact, Chief Judge Garland – a Clinton appointee to the D.C. Circuit – recently confirmed that the caseload has continued to fall.

According to Chief Judge Garland, the number of cases scheduled for oral argument per active judge has fallen steadily over the last 10 years. In 2006 there were 90 cases scheduled for oral argument per active judge. By the 2012 to 2013 term that number had declined to 81.

Moreover, other judges on the court confirm that the caseload simply doesn't merit additional judges. As one judge wrote to me:

“I do not believe the current caseload of the D.C. Circuit or, for that matter, the anticipated caseload in the near future, merits additional judgeships at this time. . . . If any more judges were added now, there wouldn't be enough work to go around.”

That is a current judge on the court saying, “If any more judges were added now, there wouldn't be enough work to go around.” Who is in a better position to know the workload than the judges themselves?

Given that it seems so clear additional judges aren't needed, why would the President nominate not one, not two, but three more judges to this court?

Why would the President make such an aggressive push to confirm judges that aren't needed? Remember, these judgeships come at a cost of roughly \$1 million per judge, per year. And these are lifetime appointments. That is \$1 million per year, for a lifetime appointment.

Unfortunately, we know the answer. The other side hasn't been shy about its reasons.

Four of the active judges on the court were appointed by Republican Presidents, and four were appointed by Democrat Presidents. But, senior members of the Senate Majority have said they need to "switch the majority" on the court.

Why is that? Why would they be intent on “switching the majority”?

Well, as one of the President’s prominent allies put it, “the president’s best hope for advancing his agenda is through executive action, and that runs through the D.C. Circuit.”

And, we have all heard the President pledge that if Congress doesn’t act, then he will simply go around it through executive order. But of course, that strategy works only if the D.C. Circuit rubber stamps those executive actions.

Mr. Chairman, that is a cynical and ideologically driven approach to one of our nation’s most respected courts. And it is not how we should be making decisions to spend millions of dollars on lifetime appointments.

I have offered a fair solution to this problem. The Court Efficiency Act would remove one seat from the D.C. Circuit entirely, therefore saving the taxpayer money.

It would then reallocate two other seats to circuits where they are needed, the Second and Eleventh.

Importantly, unlike in 2008, this legislation would take effect immediately. In practical terms, this means that President Obama would still be able to make these appointments. He simply makes them to circuits where they are needed.

Mr. Chairman, you titled this hearing, “Are More Federal Judges Always the Answer?” Based on the objective criteria that I’ve discussed here today, the answer to that question is clearly No.

For that reason, instead of focusing on confirming judges who aren't needed – and in the process wasting millions of dollars in taxpayer money – we should be looking for smart ways to reallocate our judicial resources.

Thank you again, Mr. Chairman, for the opportunity to be here.