

**STATEMENT OF HONORABLE D. BROOKS SMITH
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CHAIR, COMMITTEE ON SPACE AND FACILITIES,
JUDICIAL CONFERENCE OF THE UNITED STATES**

**BEFORE THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE OF THE
UNITED STATES HOUSE OF REPRESENTATIVES**

March 1, 2016

Chairman Barletta, Ranking Member Carson, and members of the subcommittee, I am D. Brooks Smith, a Judge of the U.S. Court of Appeals for the Third Circuit and Chair of the Judicial Conference Committee on Space and Facilities. I thank you for your invitation to appear today.

Before discussing the federal courthouse construction program, I would like to emphasize that the federal judiciary has listened to Congress. We have responded to expressions of concern from this Committee. And as you examine the topic of “Saving Taxpayer Dollars by Reducing Federal Office Space Costs,” I can assure you that the federal judiciary is pursuing that very objective. We have implemented an unprecedented space reduction plan. We have adopted circuit-wide policies to make sure that each circuit realizes no net new space growth. And we have established procedures to ensure that construction projects are prudently developed and implemented. In short, as the federal judiciary performs its paramount constitutional duties, we are doing so by being good stewards of the resources Congress has provided, while meeting the needs of the public and ensuring that security and safety concerns are met.

At the same time, we must recognize that there are courts that for too long have been housed in aging facilities that have serious space, security and operational deficiencies.

Accordingly, Congress provided \$948 million in lump-sum funding to the General Services Administration (GSA) in the Consolidated Appropriations Act of 2016 for the construction of courthouses. This appropriation will be used to build courthouses, or annexes in some locales, as prioritized by the current *Federal Judiciary Courthouse Project Priorities (CPP)* plan, formerly known as the *Five-Year Courthouse Project Plan*. It is our intention that, by working together with the relevant courts and GSA, this money will fully fund the top eight projects on the *CPP*: Nashville, Tennessee; Toledo, Ohio; Charlotte, North Carolina; Des Moines, Iowa; Greenville, South Carolina; Anniston, Alabama; Savannah, Georgia; and San Antonio, Texas. We also anticipate that this money will partially fund the ninth project on the plan, Harrisburg, Pennsylvania. And to put the issue of need in perspective, the majority of the funded projects have been on the Judiciary's construction priority list for over 15 years.

The FY 2016 omnibus appropriations bill also provided \$53 million to GSA for new construction and acquisition of federal buildings that jointly house U.S. courthouses and other federal agencies in Greenville, Mississippi and Rutland, Vermont. The Judiciary Capital Security program received \$20 million in funding.

In receiving this badly-needed funding, we recognize our responsibilities. The Third Branch is committed to being careful stewards of the taxpayers' dollars. Let me highlight two major efforts that illustrate that commitment. First, I will outline the recent changes that the Judicial Conference has made to the federal courthouse construction program to ensure that each project satisfies the housing needs of each court in the most cost-efficient manner possible. Second, I will address the steps being taken by the individual courts, the Administrative Office of the U.S. Courts (AO), the Judicial Conference, and GSA to manage these projects and spend appropriated funds in the most cost effective manner.

Recent Changes Made to the Federal Courthouse Construction Program

Over the past 10 years, the Judicial Conference has made a number of changes to its courthouse construction program in an effort to reduce costs, increase efficiencies, and prioritize requirements on the basis of urgency of need. Some of these changes were made in an effort to modernize our facility planning processes and take advantage of best practices in industry and government. As part of these changes, we responded to recommendations made by the Government Accountability Office (GAO) and incorporated guidance from Congress, specifically this subcommittee and the full Committee on Transportation and Infrastructure. These changes have provided cost savings and/or cost avoidance for all new courthouse construction needs for the Judiciary.

To provide an appropriate context for the changes made, I must begin with the Judicial Conference's adoption of the Asset Management Planning (AMP) process in 2008. The AMP process is used to identify and prioritize, on an objective basis, the space and facilities needs of the federal judiciary. The AMP process is a "good government" measure that was developed to: (1) achieve cost-containment goals; and (2) provide an objective and consistently applied methodology for identification of space needs, prioritization of those needs, and development of solutions. By applying this methodology, we ensure that only the most urgent project recommendations are approved by the Judicial Conference for inclusion on the *CPP* plan.

To enhance long-range facilities planning, the AMP process integrates costs, space needs, and functionality. AMP analysis is more detailed and robust than was the previous long-range facilities planning process – a process that was criticized by GAO and Congress. The AMP process assesses facilities in a holistic and objective manner. It identifies space alternatives and strategies, considers the costs and benefits of space housing strategies, and thereby determines

the best strategy to meet the current and future needs of the court. Under the AMP process, each district and circuit adopts a long-range facilities plan which entails an evaluation of each courthouse location for urgency of space needs. As part of this process, facility benefit assessments are conducted on each courthouse to determine how well the existing facility supports the needs and operations of the court. AMP evaluates the building condition and its security needs. An Urgency Evaluation Results List is then developed each year, placing each courthouse location in rank order. This objective ranking reflects the urgency of the Judiciary's space needs.

Another significant change to the program began in 2008, when the Judicial Conference, in response to a request made by this subcommittee, adopted the first of three separate courtroom sharing policies. Currently, courtroom sharing is required in all new construction projects for senior, magistrate, and bankruptcy judges. The Judiciary also requires sharing policies to be followed when a court needs to build out additional space in an existing facility as a result of a newly authorized judgeship or because a judge has taken senior status. Additionally, in response to direction given by both this subcommittee and recommendations from GAO, the Judicial Conference eliminated the inclusion of projected new judgeship space needs from the project requirements for new construction. These policies balance the Judiciary's obligation to be good stewards of taxpayers' funds along with our duty under the Constitution to provide access to justice and ensure that cases are handled in a fair and expeditious manner.

In 2013, the Judicial Conference adopted a policy to reduce its national space footprint by 3 percent by the end of Fiscal Year (FY) 2018. This goal was prorated among the circuits and based off of the square footage of total space holdings within each circuit as of the beginning of FY 2013. The Judiciary has already accomplished over 50 percent of its goal, releasing 445,796

usable square feet (USF) back to GSA. This reduced space represents an annual cost avoidance of \$11.8 million. In addition, space reduction projects currently underway will yield another 355,137 USF, equal to 40 percent of the national goal. At the same time the Judicial Conference adopted the space reduction target, it also established a “No Net New” policy whereby any increase in square footage within a circuit must be offset by an equivalent reduction identified within the same fiscal year. While the space reduction program will conclude at the end of FY 2018, the “No Net New” policy will continue.

These two policies shape the way the Third Branch now thinks about how to plan and use space. Courts are now assessing their existing footprints and evaluating varied approaches, not only for meeting their reduction goals, but for building a stronger foundation upon which to base efficient growth. In short, I am confident that we have reached a new era in space usage – one characterized primarily by a recognition of budgetary limitations and the need for watchful fiscal discipline.

An important component of the Judiciary’s new era in space usage is the Integrated Workplace Initiative (IWI). Founded in 2011, this program strives to identify innovative management, technology, and space planning techniques; optimize space utilization; and reduce rent costs. Since its inception, alternative workplace strategies have been developed and incorporated into the *U.S. Courts Design Guide (Design Guide)*. The *Design Guide* identifies key components of an efficiently designed office environment that supports mobile work, encourages collaboration, and leverages modern technology. Use of alternative workplace strategies for court projects is not mandatory, because individual court operations, security concerns, building conditions, and project costs can affect the degree to which any of these strategies are feasible. But while not mandatory, these projects are a key component of the

Judiciary's ongoing space reduction program. Currently, there are 16 different IWI projects nationwide at various stages of development and construction. Among those projects is a National Demonstration IWI project that will serve the Facilities and Security Office at the AO, allowing judges and court executives to visit Washington, D.C. to witness just how this innovative approach to space usage works.

Finally, our courthouse construction program has undergone a major transition. In 2014, all construction projects were reprioritized according to the results of the AMP process. In undertaking this major reassessment, the Committee I chair and the Judicial Conference acted in accord with what we considered were the wishes of the full House Transportation and Infrastructure Committee. When the Judicial Conference originally adopted the AMP process, it grandfathered the projects on the then-existing *Five-Year Plan* that had already received some amount of funding from Congress. But these projects had not initially been subjected to the AMP process, and their respective rankings were maintained. In August 2013, however, the Committee recommended to the Judicial Conference that all districts with a project on the *Five-Year Plan* undergo an AMP evaluation. This recommendation was made in response to a GAO study and subsequent hearing before this committee in April 2013. In September 2014, the Judicial Conference adopted a *Five-Year Plan* which incorporated the results of the AMP evaluations and, with the exception of Nashville, projects were prioritized solely on the basis of Urgency Evaluation (UE) scores. Reprioritizing the remaining projects by UE scores ensured that all current and future projects will be judged by the same objective evaluation methodology.

We retained Nashville as the number one priority because we considered it the fiscally responsible thing to do. Significant investment had already been made in the project. At the

time of our reprioritization, the site had already been acquired, and \$25.1 million of the \$26.1 million appropriated by Congress up to that point had been obligated.

Considering this reprioritization, the Judicial Conference recognized that the then-*Five-Year Plan* may not reflect an accurate funding timeline or the relative urgency-of-need for projects on the plan, particularly for those on the out-years of the plan. Accordingly, in an effort to better manage stakeholder expectations, to provide GSA with sufficient certainty for proceeding with capital planning processes, and to respond to congressional concerns and GAO recommendations, the Judicial Conference, in September 2015, approved a change in the name, format, and methodology of the courthouse construction plan. It is now designated the *Federal Judiciary Courthouse Project Priorities (CPP)* plan. The Judicial Conference is now able to submit a planning document to Congress that improves on the old *Five-Year Plan* by providing a combination of both flexibility and reasonable predictability.

Under the new format, Part I of the *CPP* consists of current-year courthouse construction priorities that are included in the Judiciary's annual budget submission. The priority of projects on Part I is maintained until a project is fully funded and removed from the plan. Part II of the *CPP* identifies out-year courthouse construction priorities. These are projects which have been assessed under the AMP process and prioritized based on the project's UE score, but are not part of the current-year courthouse construction priorities that are included in the Judiciary's annual budget submission. Each project in Part II will have its UE score refreshed annually, thus the prioritization of Part II projects may change from year to year.

Management and Execution of Fiscal Year 2016 Courthouse Construction Funding

Turning to the FY 2016 appropriation for courthouse construction, the Third Branch and the GSA are committed to working closely together to responsibly manage the funded projects. Our top priority in this effort is to ensure that all of the projects receive the funding that Congress intended. Working with GSA, our goal is to build appropriate facilities that satisfy the housing and security needs of the individual courts, in an innovative and cost-efficient manner, applying the same fiscal discipline we have exhibited in the cost containment strategies and initiatives I have previously discussed.

For projects funded under the heading of “new construction projects of the Federal Judiciary” in the Consolidated Appropriations Act of 2016, GSA, in consultation with the AO, is required to submit a spending plan and description for each project to be undertaken to the Committees on Appropriations of the House of Representatives and the Senate. By mid-April 2016 that plan will be submitted, detailing how the \$948 million will be allocated. Because the individual projects and the spending plan are still under development, I am unable to comment with specificity on the contents of that plan. I can assure you that steps that are being taken by the Judiciary and GSA to manage this funding in a fiscally prudent way.

We also recognize the essential role of this Subcommittee and the full Committee. As each project prospectus is developed by GSA, we look forward to working with you throughout the authorization process.

Since the FY 2016 omnibus appropriations bill was enacted, the AO and GSA have been in constant communication to implement a management strategy, develop plans, and coordinate actions necessary for the successful execution of the courthouse projects funded in the FY 2016 appropriations act. Rather than manage each project separately, the AO and GSA are working

together to manage this effort at a portfolio level to ensure not only that courts' housing needs are met, but that the money is allocated in a manner consistent with congressional intent. To this end, I convened a conference call in late January with the eight courts that anticipate full project funding from this appropriation. During this call, I, along with AO staff, informed each court of the steps that must be taken to refresh program requirements, develop the spend plan, and receive congressional authorization.

To ensure success, it is our goal that each project stays at or below the budget planning number provided to the particular court. I personally emphasized that point during the conference call. Throughout the design and development process of each project, we intend for this number to remain firm and all stakeholders acknowledge that tradeoffs may be necessary so that each project can be delivered in a cost-effective manner.

Successful management, development, and execution will require each court to carefully evaluate its housing needs and requests. At the outset, we are asking each court to explore options, such as a renovation or an annex strategy, before considering construction of a new courthouse. Already, two projects on the *CPP* – Toledo, OH and Charlotte, NC – have agreed to pursue an annex instead of a new courthouse. In these two locations, the courts will be able to maintain their presence in notably historic buildings, while at the same time building out additional space intended to meet their modern day housing and security needs.

GSA is required to develop a backfill strategy for any property that is vacated as a result of new courthouse construction. The Judiciary is committed to assisting GSA in this effort. A renovation and annex strategy may not be possible for each location, but we have made all courts aware of the Judiciary's commitment to cooperate with GSA and to perform due diligence in helping to develop a backfill strategy for vacated courthouses.

Over the past two months, each court, in conjunction with the AO, has been reviewing its programming requirements to ensure they reflect the current needs of that court. Because the vast majority of projects have been waiting for funding for over 15 years, there have been many changes to the programming requirements of each court since these projects were first added to the Judiciary's courthouse construction priority list. Some courts have reduced the number of courtrooms and chambers needed for their projects, applying the Judicial Conference courtroom sharing policies for senior district judges, magistrate judges, and bankruptcy judges. All projected judgeships are eliminated from the housing requirements. Additionally, as a result of a decline in staffing, square footage requirements for district and bankruptcy clerks' offices and probation and pretrial offices are being reduced. Courts are working to make these projects as trim as possible, advancing only those needs that are essential to each court's operation. And in keeping with our ongoing effort to employ the Integrated Workplace Initiative where appropriate, we are asking courts to explore incorporating an IWI concept to improve space utilization rates and reduce construction and rent costs.

In this same vein, courts are being asked to carefully consider whether they will be requesting exceptions to the *Design Guide*. Only a few of the projects have asked for exceptions to the *Design Guide*. We have emphasized that requested exceptions must be narrow and essential to the mission of the court. We have explained to courts that any exception will likely increase the cost of their projects and require the approval of both the Space and Facilities Committee and the Judicial Conference. Given those realities, only those exceptions that are critical to the mission of an individual court will proceed. I can assure you that as the Space and Facilities Committee reviews each request, we will be especially mindful of the justification and the budget impact of each exception.

Upon passage of the Consolidated Appropriations Act, we recognized the need to fully and promptly engage affected courts in the process of managing each project. Beginning February 17, and on every day last week, the AO hosted a series of focused meetings, individually with each court. Staff from the AO, GSA headquarters, and GSA regional offices participated in these meetings which allowed stakeholders to identify any outstanding issues that require resolution. These meetings allowed us to gain consensus on how to proceed toward project execution promptly and within the budget constraints for each project. This has been a thoroughly collaborative process, and, I am confident we can ensure that each project is developed in a way that not only stays within budget, but also delivers the housing and security solutions that these courts have been waiting so many years for.

We in the Third Branch are appreciative of the commitment Congress has made to jump-starting the courthouse construction program. Again, we look forward to working with this Subcommittee and full Committee as the projects come to you for authorization. We are also well aware of the concerns raised over past construction efforts. We have responded to those concerns and will continue do so. The Judiciary has conducted a comprehensive review of our program in recent years and made changes necessary to transform our program for the future to assure that we are making the optimum, efficient use of our space inventory, consistent with our constitutionally mandated duties to deliver justice. In the spirit of good stewardship, we will be working hard to deliver results that will meet all of the individual courts' needs. We will do so in an effective, cost-efficient manner befitting the trust that Congress has placed in us by appropriating these needed funds.

Chairman Barletta and Ranking Member Carson, thank you again for the opportunity to appear today to discuss the federal courthouse construction program. I would be happy to answer any questions the Subcommittee may have.