

For Record



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

January 29, 2019

Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I write concerning H.R. 1, the "For the People Act of 2019," on which your committee has announced a hearing today, January 29, 2019. The bill addresses a broad range of issues related to voting, campaign finance, and ethics, most of which do not directly affect the Federal Judiciary. Although the Federal Judiciary has not yet had an opportunity to study fully all provisions of the bill, and the Judicial Conference has not taken a position on this specific bill (but has opposed certain language in it that appears in previous bills), there are three areas of concern in the bill that we would like to bring to your attention in the hope that you would consider modifying the bill accordingly. I respectfully request that you include this letter in the hearing record.

**Judicial Code of Conduct**

Section 7001 directs the Judicial Conference to issue a code of conduct which applies to each justice and judge of the United States. This language is identical to Section 201 of H.R. 6755, which was introduced last September in the 115th Congress. A code of conduct already exists for federal judges and to that extent this provision is redundant. Moreover, it would not be appropriate for the Judicial Conference to design or administer such a code for justices; the Judicial Conference does not oversee the Supreme Court and does not have expertise to craft a code for their use. For these reasons, in 2018, the Judicial Conference of the United States opposed identical language in Section 201 of H.R. 6755, or similar legislation, to the extent it requires the Judicial Conference to issue a code of conduct for each justice and judge of the United States.

Regarding the application of a code of conduct to the Supreme Court, Chief Justice Roberts in his 2011 Year-End Report on the Federal Judiciary stated clearly that "[a]ll Members of the Court do in fact consult the Code of Conduct [for United States

Judges] in assessing their ethical obligations. In this way, the Code plays the same role for the Justices as it does for all other federal judges....”

### **Notification of Restoration of Voting Rights**

Section 1404 establishes the requirement and process for notifying certain individuals of their right to register and to vote in certain elections. Subsection (b)(2)(A)(i) designates notification “by the Assistant Director for the Office of Probation and Pretrial Services of the Administrative Office of the United States Courts.” This position does not currently exist within the Administrative Office of the U.S. Courts (AO). Moreover, because of the way federal probation offices are organized within the judicial branch, we are doubtful that any other AO official would be the best repository for this responsibility. We would be pleased to work with Committee staff to draft suitable alternative language for this subsection. One possibility would be to require notification by the chief probation officer for the district in which the individual is received for supervision, or his or her designee, on the date on which the individual is first required to report to the probation office after sentencing.

### **Redistricting Reform**

Subtitle E of Title II of H.R. 1 would create new requirements for congressional redistricting, including a mandate for the development of a redistricting plan by the United States District Court for the District of Columbia for any state that fails to satisfy new requirements. The Judicial Conference has not had the opportunity to analyze fully the proposed legislation nor to study the challenges of its implementation or operational impact. After an initial review, however, we can identify several preliminary concerns.

A jurisdictional ambiguity in section 2432 raises concern. Subsection (a) provides for a civil enforcement action filed “in an appropriate district court” by the attorney general or a citizen for appropriate relief. Subsection (b), however, under the heading of “Expedited Consideration,” provides that any action under the “section” (rather than the “subsection”) must be filed in the District Court for the District of Columbia.

The Judicial Conference generally has objected to the creation of specialized courts or the concentration of certain subject matter review in one court, recommending that judicial review be provided by a court in the appropriate geographic region. If Subtitle E requires review of all objections to state redistricting plans throughout the country, as well as the original development of a plan upon state failure to develop one, in the District Court for the District of Columbia, it would conflict with the Judicial Conference’s general position on judicial review within the appropriate geographic region.

Honorable Jerrold Nadler

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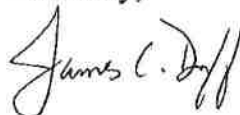
A jurisdictional grant to the District Court for the District of Columbia to develop redistricting plans for any state that fails to do so also appears to raise federalism concerns as it removes jurisdiction over redistricting from the relevant geographic region, particularly since the proposed criteria for development of redistricting plans under section 2413 are distinctly local in procedure and substance.

Finally, there is a concern that the proposed legislation may require the District Court of the District of Columbia to act outside its jurisdictional grant under the Constitution. It is difficult to identify an Article III "case or controversy" that would exist in the situations where H.R. 1 would trigger the court's responsibility to develop a state redistricting. Placing such responsibility on a federal court in the manner proposed in H.R. 1 might also raise federalism concerns as a usurpation of the states' traditional legislative function. At a minimum, such questions about constitutionality could result in complicating litigation that would run counter to the drafters' apparent interest in expedited proceedings.

To the extent H.R. 1 would require the Judiciary to undertake any of the aforementioned new responsibilities, additional staffing and resources would be needed to support those new operations.

Thank you for considering our preliminary views on this legislation. We may communicate again with Congress regarding this legislation after the Conference is able to give it more thorough study. If we may be of further assistance to you in this or any other matter, please do not hesitate to contact me or the Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502-1700.

Sincerely,



James C. Duff  
Secretary

Identical letter sent to:      Honorable Doug Collins