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SENATE

REPORT
110–256

TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 550

TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA



JANUARY 8, 2008.—Ordered to be printed
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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 550]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 550) to preserve existing judgeships on the Superior Court of the District of Columbia, having considered the same reports favorably thereon, without amendment, and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The purpose of S. 550 is to preserve existing judgeships within the Superior Court of the District of Columbia inadvertently impacted by the 107th Congress under the Family Court Act of 2001.

II. BACKGROUND

DISTRICT OF COLUMBIA LOCAL COURT SYSTEM

The local District of Columbia Courts consist of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. The District of Columbia Courts constitute the Judicial Branch of the District of Columbia, and they are separate and distinct from the legislative and executive branches of the District of Columbia.[1]

[1] D.C. Code Section 1–204.31 (2003); 2002 Annual Report of the District of Columbia Courts, p. 11.

Under the terms of the National Capital Revitalization and Self Government Act of 1997, Congress oversees the District of Columbia court system, which is funded by the federal government.[2]

Judges on both the District of Columbia Court of Appeals and the Superior Court are selected through a process that includes the involvement of both local and federal entities. When a vacancy occurs on the Court, notice is sent to the District of Columbia Judicial Nominations Commission, a District of Columbia agency composed of seven members.[3]

The Judicial Nominations Commission solicits applicants for the vacancy, conducts an investigation and review of each applicant, and selects three possible candidates to fill the vacancy. The names of those three candidates are sent to the President, who then selects one of the names to fill the vacancy on the Court. Once the nomination is made, it is sent to the Senate for confirmation.[4]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The Superior Court of the District of Columbia is the local trial court of general jurisdiction in the District of Columbia.[5] It is organized into divisions—including civil, criminal, probate, and the Family Court—that provide specialized handling of cases in those areas.

The last major reform of the District of Columbia Courts occurred in 2002. On January 8, 2002, President Bush signed into law the District of Columbia Family Court Act of 2001 (Act).[6] The purpose of that Act was to restructure the then-family division of the Superior Court into a new Family Court. The Act was intended to promote the efficiency and consistency in the assignment of judges to the Family Court, improve the handling of cases involving families and neglected children, and help recruit and retain experienced judges to serve in the Family Court.[7]

Section 11–903 of the District of Columbia Code establishes an overall limit on the number of judges that may be seated on the Superior Court. The current limit is 58, in addition to a chief judge. Section 3(a) of the Family Court Act, among other things, allows the limit to be exceeded to appoint additional Family Court judges if the number of judges in the Family Court is less than 15 and if certain other conditions are met.[8]

Section 3(b) of the Act required the Court to complete a transition plan and submit it to Congress within 90 days of enactment. Section 3(c) of the Act required that the transition plan include a determination of the numbers of judges then-serving as Superior Court judges who meet the qualifications, and are willing and able,

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[2] Public Law No. 105–33, 111 Stat. 251. For a history of the District of Columbia court system, see Senate Report No. 107–108, Appendix 1.

[3] D.C. Code section 1–204.34 (2003) (One member is appointed by the President, two members are appointed by the Board of Governors of the unified District of Columbia Bar, two members are appointed by the Mayor, one member is appointed by the D.C. Council, one member is appointed by the chief judge of the U.S. District Court for the District of Columbia).

[4] D.C. Code section 1–204.33 (2003).

[5] D.C. Code section 1–204.31 (2003).

[6] Public Law No. 107–114.

[7] See Senate Report No. 107–108.

[8] These other requirements include: (1) there are no other judges already on the Court who are willing to volunteer for a transfer into the Family Court from another division, (2) the chief judge obtains permission from the Joint Committee on Judicial Administration with the Court, and (3) the chief judge reports to Congress on the need to exceed the cap. D.C. code § 11–908A(a)(3).

to serve as Family Court judges. In addition, section 3(c) required that, should the number of judges in the Family Court be less than 15, then a corresponding number of vacancies would be created on the Superior Court.

On April 5, 2002, the Chief Judge submitted to Congress the required transition plan. Under the plan, the Chief Judge determined that the number of judges qualified and willing to serve on the Family Court was 12 and, therefore, pursuant to the Family Court Act, three new vacancies were created on the Family Court, notwithstanding the overall limit to the number of judges on the Superior Court in section 11–903 of the District of Columbia Code.[9] In other words, three "vacancies" on the Court were created, but the overall cap on the number of associate judges on the Superior Court remained at 58, as the Act failed to account for the new seats in the overall limit set forth in section 11–903.

THE PROBLEM AND NEED FOR LEGISLATION

On January 21, 2003, the President nominated Judith Nan Macaluso, Jerry Stewart Byrd, and Joseph Michael Ryan III to fill the three newly-created Family Court seats. Those nominations were referred to the then-Senate Governmental Affairs Committee, as the committee of jurisdiction over the District of Columbia Courts. In addition to the three nominations to fill the three newly-created Family Court seats, several judges were nominated in 2003 to fill vacancies created by retiring judges.

On June 27, 2003, the Senate confirmed Judge Macaluso to fill a Family Court vacancy and Fern Flanagan Saddler, who was nominated to fill a general Superior Court vacancy created by a retired judge. On October 24, 2003, the Senate confirmed Craig Iscoe and Brian Holeman as Superior Court judges. The two remaining Family Court nominees—Judge Byrd and Judge Ryan—were then confirmed, under the provisions of the Family Court Act which allowed the limit on the total number of Superior Court judges to be exceeded under certain conditions to allow for the appointment of Family Court judges. With these two confirmations, the Family Court had its full complement of 15 dedicated judges. The Superior Court, however, now had 60 associate judges.

Moreover, on September 25, 2003, while the four previous nominations were still pending in Committee, the Committee received the additional nomination of Gregory E. Jackson to fill the seat of the retired judge Mildred M. Edwards. The Senate, however, could not confirm him for the position at that time, however, because he would have been the 61st associate judge on the Superior Court, and confirming him would have meant exceeding the statutory maximum number of judges set out in D.C. Code § 11–903. Instead, Mr. Jackson had to wait for additional retirements to bring the total number of Superior Court judges below the statutory maximum; as a result it was over a year before his nomination was reported out of Committee and confirmed by the Senate.

Since then, that unfortunate pattern has continued, with individuals nominated for "vacancies" on the Superior Court upon the retirement of a judge, but then forced to wait until the overall number of judges is reduced through subsequent retirements before the

[9] See District of Columbia Family Court Transition Plan, April 5, 2002, p. 30.

candidate can be confirmed. Often, this has resulted in significant delays in consideration of nominees—and inconvenience or hardship for nominees whose status and employment remain in limbo.

Should section 11–903 not be amended, moreover, the result may be a permanent decrease in the number of judges serving in the non-Family Court divisions of the Superior Court, including civil and criminal, as judges retire but cannot be replaced immediately.

Such a decrease in the number of judges would worsen existing case backlogs. In 2002, when the Family Court Act of 2001 went into effect, the civil division of the Superior Court had nearly 98,000 cases available for disposition, and the Family Court had over 38,000 cases available for disposition.[10] Since that time, the caseload of the civil division has increased somewhat, while the Family court has reduced its caseload somewhat. In 2006, the civil division had 116,306 cases available for disposition, while the Family Court had 27,420 available for disposition.[11] Although the civil division and the Family Court have high clearance rates,[12] because of the large scale of the court's operations, they both carry large case backlogs. At the end of 2006, the civil division had 38,636 cases pending, while the Family Court had 14,482 cases pending.[13]

Insufficient judicial staffing and the resulting delays in case resolution have detrimental effects on the parties to the cases, delaying access to justice while increasing the cost and prolonging the uncertainty involved in litigation. S. 550 would address these issues by increasing the number of associate judges from 58 to 61.

III. Legislative History

The legislation was introduced as S. 550 by Senators Akaka, Voinovich, and Lieberman on February 12, 2007, and was referred to the Committee on Homeland Security and Governmental Affairs on the same date. Previous versions of the bill, S. 1561, introduced by Senators Collins, Voinovich, and Durbin in the 108th Congress, and S. 2068, introduced by Senators Collins, Voinovich, and Akaka in the 109th Congress, passed the Senate by unanimous consent. No action was taken in the House of Representatives. On February 15, 2007, the Committee considered S. 550 and ordered the bill reported favorably by voice vote without amendment. Members present were Lieberman, Akaka, Carper, Pryor, Landrieu, Tester, Collins, Voinovich, and Coburn.

IV. Section-by-Section Analysis

Section 1 amends section 11–903 of the District of Columbia Code to increase the limit on the number of judges on the Superior Court of the District of Columbia from 58 to 61.

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[10] 2002 Annual Report of the District of Columbia Courts, p. 65. Cases available for disposition include cases pending at the beginning of the year, plus new cases filed and cases reactivated during the course of the year.

[11] 2006 Annual Report of the District of Columbia Courts, p. 29.

[12] In 2006, the Family Court division had an overall clearance rate of 90 percent. The civil division had a clearance rate for civil actions of 128%—i.e., it disposed of more civil action cases than were added—although its overall clearance rate for all cases (including landlord-tenant and small claims) was not available. 2006 Annual Report of the District of Columbia Courts, p. 29.

[13] 2006 Annual Report of the District of Columbia Courts, p. 29.

V. ESTIMATED COST OF LEGISLATION

FEBRUARY 22, 2007.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 550, a bill to preserve existing judgeships on the Superior Court of the District of Columbia.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 550—A bill to preserve existing judgeships on the Superior Court of the District of Columbia

S. 550 would amend the District of Columbia Code to increase the number of associate judges on the Superior Court of the District of Columbia from 58 to 61. Under current law, the Superior Court is subject to a cap of 58 judgeships. Based on information from the Superior Court, CBO estimates that increasing the cap on judgeships to 61 would cost about $1 million a year for salaries and benefits of additional judges and support staff, subject to appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues.

S. 550 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

DISTRICT OF COLUMBIA CODE

TITLE 11, ORGANIZATION AND JURISDICTION OF THE COURTS

CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

11–903. COMPOSITION

The Superior Court of the District of Columbia shall consist of a chief judge and [fifty-eight] *61* associate judges.

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