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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

August 2, 2013

RICHARD J. KESSLER, STAFF DIRECTOR
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The Honorable John D. Bates
Director
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Dear Judge Bates:

The Judicial Branch of the federal government plays a vital role in our tripartite system of government by ensuring proper checks and balances are imposed on the Executive and Legislative Branches. To execute its responsibilities efficiently and effectively, the Administrative Office of the United States Courts (AOUSC) must properly allocate its resources among all federal courts, the U.S. Sentencing Commission, its own administrative functions and the Federal Judicial Center. However, in a time when the Judiciary claims sequestration will result in furloughs,¹ cancelled hearings² and case dismissals,³ the federal Judiciary should halt non-essential conferences and excessive construction projects.

The total budget for the Judiciary in Fiscal Year (FY) 2012 was \$6.97 billion, and the FY 2013 request is \$7.12 billion.⁴ According to the Congressional Research Service, 72 percent of the total Judiciary budget is allocated to the salaries and expenses account for the U.S. Courts of Appeals, District Courts, and Other Judicial Services.⁵ We must ensure our courts are secure and provide effective administration of justice despite budgetary limits and sequestration; however, rather than properly assess both the salaries and expenses account and the remaining 28 percent of the budget dedicated to other expenditures, the AOUSC and various judicial officers assert there is no flexibility within the budget of the Judiciary to make cuts to comply with the sequester and also fulfill its constitutional duties.⁶

Yet, recent news reports highlight that judicial conferences are alive and well. Just before July 4th, the Fourth Circuit held its annual conference at the upscale Greenbrier Resort a

¹ Ben Geman, "Chief Justice Roberts: Sequester Cuts Hitting Federal Judiciary 'Hard'," The Hill, June 29, 2013, available at <http://thehill.com/blogs/blog-briefing-room/news/308591-chief-justice-roberts-sequester-hits-judiciary-particularly-hard-hopes-for-flexibility>.

² "Sequestration Pummels Oregon's Federal Courts," July 8, 2013, available at <http://www.opb.org/news/article/sequestration-pummels-oregons-federal-courts/>.

³ *Id.*

⁴ Garrett Hatch, *Financial Services and General Government appropriations: FY 2013 Appropriations*, Congressional Research Service, R42730, June 28, 2013, at 3, 37.

⁵ *Id.* at 38.

⁶ Lawrence Hurley, "Federal Judiciary Warns of Impact of Budget Cuts," Reuters, March 12, 2013, available at <http://www.reuters.com/article/2013/03/12/us-usa-courts-sequester-idUSBRE92B0ZP20130312>; see also Statement of Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States Before the House Appropriations Committee, Subcommittee on Financial Services and General Government, March 20, 2013, at 1-2, available at http://www.uscourts.gov/uscourts/News/2013/Judge-Gibbons-testimony_3-13.pdf.

few hours outside of Washington, D.C.⁷ One hundred and fifty judges and their staff enjoyed these accommodations at a cost to the taxpayers of \$270 per night per room.⁸ As a result, rather than staying open to address a busy docket, many Fourth Circuit courtrooms were empty on Friday. In times of limited financial resources and fear that furloughs may cause cancellation of hearings, the AOUSC should prioritize the administration of justice over a conference.

In fact, the Ninth Circuit was widely criticized for its 2012 conference, which was held in Maui, Hawaii.⁹ This is the fourth time in a decade that Hawaii hosted the Ninth Circuit conference.¹⁰

Last year, the Eighth Circuit held its conference in Kansas City, Missouri where judges were provided the opportunity to participate in the College Basketball Experience, which included a slam dunk competition.¹¹ Judges were “encouraged to wear [their] favorite team or school attire.”¹²

The Third Circuit has already announced its 2014 conference, which will be held in Hershey, Pennsylvania at the Hershey Lodge.¹³ They expect “high conference attendance” and will be hosting various bench and bar receptions and dinners.¹⁴

The Tenth Circuit will be holding its conference in August at the historic, upscale Broadmoor Hotel in Colorado Springs, Colorado.¹⁵ The block of rooms reserved for participants will cost \$273 per night plus a 9.63% tax and a 2.47% public improvement fee. There is an additional resort fee of “\$16 per day for single occupancy and \$2.50 per day for each additional occupant.”¹⁶ The Tenth Circuit also reminded judges and Judiciary employees they can use a new program to track these conference expenditures for purposes of reimbursement.¹⁷

This year, the Eleventh Circuit held its conference from May 2-4 at the Westin Savannah Harbor Golf Resort and Spa, “where Southern charm meets modern luxury.”¹⁸ The conference was held only weeks after the Chief Judge of the Eleventh Circuit commented on the “devastating impact” the sequester has had on the federal judiciary.¹⁹ This year’s conference theme was “Justice, History, and Civil Liberties,” featuring “historical presentations about Thomas Jefferson and the trial of the slave ship *Wanderer*.”²⁰ In response to the Atlanta-Journal Constitution’s article on this conference, the Eleventh Circuit stated, “no taxpayer funds were

⁷ Scott MacFarlane, “Fourth Circuit Judges Hold Official Conference at Greenbrier,” WSOCTV.com, July 4, 2013, available at <http://www.wsocvt.com/news/news/local/fourth-circuit-judges-hold-official-conference-gre/nYdZx/>.

⁸ *Id.*

⁹ Letter from Senators Grassley and Sessions to the United States Court of Appeals for the Ninth Circuit on the 2012 Ninth Circuit Judicial Conference, May 18, 2012.

¹⁰ “Judges Under Fire for Maui Conference Have History of Tropical Getaways,” Fox News, May 22, 2012, available at <http://www.foxnews.com/politics/2012/05/22/judges-under-fire-for-maui-conference-have-history-tropical-getaways/>.

¹¹ *Id.*; see also Eighth Circuit Judicial Conference Tentative Agenda, available at https://www.ca8.uscourts.gov/judconf/Attorney_Agenda2012.pdf.

¹² *Id.*

¹³ United States Court of Appeals for the Third Circuit, “Save the Date,” available at <http://www.ca3.uscourts.gov/save-date>.

¹⁴ *Id.*

¹⁵ 2013 Tenth Circuit Bench and Bar Conference, available at <http://tenthcircuitconference.org/>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Jamie Dupree, “Federal Court Defends Judiciary Conference at Georgia Resort,” The Atlanta Journal-Constitution, May 9, 2013, available at <http://m.ajc.com/weblogs/jamie-dupree/2013/may/09/federal-court-defends-judicial-conference-georgia-/>.

¹⁹ *Id.*

²⁰ *Id.*

spent for speakers for the conference or for the slave ship *Wanderer* presentation.” While “the government travel costs for the 2013 conference are not yet compiled,”²¹ the Eleventh Circuit estimated it spent approximately \$211,000 in taxpayer funds on travel and lodging for its 2011 conference in Orlando, Florida.²²

While taxpayers expect judges will sometimes need to spend tax dollars to meet in order to share information, gather knowledge on legal topics and to gain further understanding of pressing issues in their districts, in these fiscal times, they also expect non-essential conferences to be cut when judges claim there are not enough resources for basic judicial services such as trying cases and funding public defenders. The AOUSC should re-evaluate these expenditures and significantly reduce them going forward.

Speaking at the Fourth Circuit’s conference at the Greenbrier Resort, the Chief Justice noted the Judiciary is predominantly made up of people, and as a result, “when we have sustained cuts that mean[s] people have to be furloughed or worse and that has a more direct impact on the services that we can provide.”²³ That is true, but there are numerous other areas in which the Judiciary could reduce costs to save money.

For example, unneeded courthouse construction costs taxpayers hundreds of millions of dollars. Over the last several years, the Government Accountability Office (GAO) has reported on the changes that should be made to the numerous, ongoing federal courthouse construction projects. In 2010, GAO found thirty-three federal courthouses completed over the prior decade “include 3.56 million square feet of extra space consisting of space that was constructed 1) above the congressionally authorized size, 2) due to overestimating the number of judges the courthouse would have, and 3) without planning for courtroom sharing among judges. Overall, this space represents about 9 average-sized courthouses.” It cost \$835 million to construct this space, and \$51 million in rent, operation and maintenance costs.²⁴

In 2011, GAO testified further on this issue, highlighting how the above causes of extra space were specifically applicable to a Los Angeles courthouse. Authorized in 2000, the new L.A. courthouse was to be a 41-courtroom, 1,016,300 square foot project.²⁵ However, the General Services Administration (GSA) decided to design a 54-courtroom, 1,279,650 square foot space, but did not notify Congress for 18 months. Eventually, the Office of Management and Budget (OMB) rejected the proposal, forcing GSA to design a 41-courtroom building, which contributed to a 2-year delay in construction for the project.²⁶ As a result, the project was over budget, leading to further project delays. GAO also testified there was an overestimate on how many judges the L.A. court would need and a failure to account for courtroom sharing, resulting

²¹ *Id.*

²² *Id.*

²³ Ben Geman, “Chief Justice Roberts: Sequester Cuts Hitting Federal Judiciary ‘Hard’,” *The Hill*, June 29, 2013, [available at http://thehill.com/blogs/blog-briefing-room/news/308591-chief-justice-roberts-sequester-hits-judiciary-particularly-hard-hopes-for-flexibility](http://thehill.com/blogs/blog-briefing-room/news/308591-chief-justice-roberts-sequester-hits-judiciary-particularly-hard-hopes-for-flexibility).

²⁴ Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accountability Office, *Federal Courthouse Construction, Better Planning Oversight and Courtroom Sharing Needed to Address Future Costs*, Testimony Before the Committee on the Judiciary, Subcommittee on Courts and Competition Policy, U.S. House of Representatives, September 29, 2010, at 1.

²⁵ Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accountability Office, *Federal Courthouse Construction: Nationwide space and cost Issues Are Applicable to L.A. Courthouse Project*, Testimony Before the Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, U.S. House of Representatives, November 4, 2011, at 10.

²⁶ *Id.*

in construction of more courtrooms than necessary.²⁷ In 2012, GAO again testified on this project, noting the judiciary ultimately supported GSA's decision to design a "600,000 square-foot courthouse with 24 courtrooms and 32 chambers" to be used in conjunction with existing space.²⁸ However, this proposal does not address one of the primary issues in the project—to centralize the court on one site.²⁹ Instead of spending millions of dollars on unneeded and poorly planned courthouse construction, the federal Judiciary should properly assess these costs in advance by accounting for congressional size limits, the number of judges utilizing the courthouse, courtroom sharing and maintenance costs.

Rather than jeopardize the effective administration of justice in order to comply with budget cuts, the AOUSC should focus on complying with the sequester through changes to other areas of its budget such as re-establishing the moratorium new courthouse construction projects, decreasing the cost of grounds maintenance, controlling administrative costs, addressing the cost of senior judges, and reducing rent costs by sharing courtrooms.

To better understand the impact of sequestration on the AOUSC, please respond to the following requests no later than August 16, 2013:

1. Please provide the total cost of all federal judicial conferences held in each of fiscal years 2008, 2009, 2010, 2011 and 2012, including all airfare, lodging, leasing, rental, planning, per diem, and other costs associated with each conference.
2. Please provide a list of expenses of each attendee for each conference listed in response to Question 1 that were paid for or reimbursed with federal taxpayer dollars.
3. Please provide the total number of AOUSC employees who attended each conference listed in response to Question 1, noting the totals for each category of employees. Please also include the total number and affiliation of all other non-judiciary attendees.
4. Please provide the total cost of any pre-conference travel expenditures incurred by AOUSC employees to plan each conference, such as hotel, transportation and meal costs.
5. How many courthouse construction projects are currently underway? For each project, please provide the judicial district, city, courthouse name, date the project began, total costs incurred to-date, reason for the project, estimated completion date and estimated total cost.
6. Please provide the total number of furloughs incurred by the AOUSC as a result of sequestration. Please include the category of employee, salary, and type of work performed by each staff member furloughed.

²⁷ *Id.* at 11.

²⁸ Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accountability Office, *L.A. Courthouse: Initial Project Justification is Outdated and Flawed*, "Testimony Before the Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, And Emergency Management, U.S. House of Representatives, August 17, 2012, at 5.

²⁹ *Id.*

7. Is the AOUSC still paying bonuses and performance awards to its employees during sequestration?

Thank you for your attention to this important matter. Should you have any questions or concerns, please contact Sarah Beth Groshart of my staff at 202-224-4751.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Coburn", with a stylized flourish extending from the end.

Tom A. Coburn, M.D.
Ranking Member