



THE U.S. JUDICIARY

The Judicial Branch of the federal government is made up of the Supreme Court, lower courts, special courts, and the administrative office of the courts, the Federal Judicial Center, and U.S. Sentencing Commission. While the U.S. Constitution establishes the Supreme Court, Congress is given discretion to determine the shape and structure of the remaining federal judiciary.

The total budget for the Judiciary in Fiscal Year (FY) 2010 was \$6.8 billion and the 2012 request is \$7.3 billion.¹ According to the Congressional Research Service, 73 percent of the total Judiciary budget is dedicated to the salaries and expenses account for the U.S. Courts of Appeals, District Courts, and Other Judicial Services. This includes justices and judges retired from office or from regular active service, judges of the U.S. Court of Federal Claims, bankruptcy judges, magistrate judges, and other officers, and employees of the federal judiciary.² The Judicial Conference of the United States, which oversees the administration of the courts, is implementing reforms expected to save \$400 million in 2012.³

Reducing Rising Rent Costs by Sharing Courtrooms

Rental payments by the Judiciary have increased dramatically in recent years. The Judiciary spent about \$1 billion of its \$6.8 billion budget on rent in 2010. The Judiciary's rent payments to the General Services Administration (GSA) increased from \$133 million in 1986 to \$980 million in FY 2006,⁴ according to a 2005 report by the Director of the Administrative Office of the Courts. A 2005 report noted the Judiciary pays more rent in actual dollars to GSA than any other federal agency except the Department of Justice (DOJ). As a percentage of its budget, DOJ pays about 3 percent while the courts pay 22 percent. Controlling the cost of courtroom and judicial office space could save taxpayers millions of dollars every year.

A 2010 Government Accountability Office (GAO) report recognized this problem and developed a model for courtroom sharing. GAO found there is enough unscheduled courtroom time for substantial courtroom sharing and sharing could have "reduced the number of courtrooms needed in courthouses built since 2000 by 126 courtrooms [or] about 40 percent."⁵ GAO notes judges

¹Garrett Hatch, *Financial Services and General Government Appropriations: FY2012 Budget Request Fact Sheet*, Congressional Research Service Report, R41655, June 16, 2011, at 1.

²Garrett Hatch, *Financial Services and General Government Appropriations: FY 2011 Appropriations*, Congressional Research Service, R41340, June 14, 2011, at 29.

³Statement of the Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States. Before the Committee on Appropriations, Subcommittee on Financial Services and General Government, United States House of Representatives, April 6, 2011, at 6.

⁴Statement of Leonidas Mecham, Director, Administrative Office of the United States Courts, Judicial Conference of the United States, before the Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, U.S. House of Representatives, June 21, 2005.

⁵Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accounting 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, Sept. 29, 2010, at 1.

initially raised concerns about sharing, but “overcame those challenges when necessary and no trials were postponed.”⁶

Because the cost of rent is such a large portion of the Judiciary’s budget, one of the cost saving initiatives developed by the Judicial Conference was a policy where two senior district judges will share one courtroom in new courthouse construction projects starting in 2008. Further savings could result by requiring all senior judges, not just those in new construction.

A significant number of courtrooms could be eliminated if senior judges were required to share when possible. Senior judges “essentially provide volunteer service to the courts” and “typically handle about 15 percent of the federal courts’ workload annually.”⁷ Although it depends on the court and the judge, most senior judges decrease their caseload by 50 percent. Currently, there are 394 senior district court judges across the country.⁸ According to a GAO analysis of unscheduled courtroom time, 3 senior judges could share one courtroom.⁹ A three to one sharing ratio should be required wherever feasible.

A courtroom sharing policy should also be required for magistrate judges. There are currently 528 full-time and 41 part-time magistrate judges across the country.¹⁰ According to GAO, there is enough unscheduled courtroom time for three district judges to share two courtrooms.¹¹ Eliminating one-third of the courtrooms would save \$99,343,750 annually in rental costs.

Re-establishing the Moratorium on the Construction of New Courthouses

Unneeded courthouse construction is costing taxpayers hundreds of millions of dollars. Thirty-three federal courthouses completed over the last 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 courthouses would have, and 3) without planning for courtroom sharing among judges,” according to a 2010 GAO report.¹² It cost \$835 million to construct this extra and unnecessary space. But that price tag does not reflect the total cost. The annual cost to “rent, operate and maintain” these courthouses is \$51 million.

A national moratorium on courthouse construction was in place from 2004 to 2006.¹³ The moratorium on new courthouse construction should be re-established.

⁶Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accounting 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, Sept. 29, 2010, at 1.

⁷United States Courts website, Frequently Asked Questions, at <http://www.uscourts.gov/Common/FAQS.aspx>.

⁸United States Courts website at <http://www.uscourts.gov/JudgesAndJudgeships/BiographicalDirectoryOfJudges.aspx>.

⁹Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accounting 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, Sept. 29, 2010, at 1.

¹⁰Phone conversation with Ann McKenna, Administrative Office of the Courts, June 9, 2011.

¹¹Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accounting 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, Sept. 29, 2010, at 1.

¹²Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, Government Accounting 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, Sept. 29, 2010, at 1.

¹³Statement of the Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States. Before the Committee on Appropriations, Subcommittee on Financial Services and General Government, United States House of Representatives, April 6, 2011, at 4.

The 2011 budget request from the Judiciary includes “30 additional court security officers for anticipated new and renovated existing space ... and enhancements to security systems and equipment.”¹⁴ A moratorium would decrease court security costs as fewer new courthouses would mean less security is needed.



Unnecessary space in the St. Louis, Missouri, federal courthouse cost an extra \$88.8 million to construct. The 398,000 square feet of unnecessary space will cost taxpayers an additional \$2.8 million a year in rent and maintenance.¹⁵



The 238,000 square feet in unnecessary space included in the Ferguson federal courthouse in Miami, Florida cost an extra \$48.5 million to construct and an extra \$3.8 million every year for rent, operations and maintenance costs.¹⁶

¹⁴Garrett Hatch, *Financial Services and General Government Appropriations: FY 2011 Appropriations*, Congressional Research Service, R41340, June 14, 2011, at 29.

¹⁵ Tom Murse, “Government Overspent on 7 Federal Courthouses,” US Government Info, accessed July 7, 2011; <http://usgovinfo.about.com/od/moneymatters/tp/7-Overpriced-Federal-Courthouses.htm> .

Reducing the Size and Cost of Judiciary Staff

Personnel costs are expected to cost the judiciary an addition \$1.4 billion for *existing* court support staff by 2018.¹⁷ This does not include additional staffing amounts.

The FY2011 request for this account was \$5.31 billion, an increase of \$299 million (5.9 percent) over the FY2010 level of \$5.01 billion. According to the budget request, this increase is needed “primarily for inflationary and other adjustments to maintain the courts’ current services.” Of this total, 33 percent was for court support personnel salaries; 21 percent for judges and chambers staff salaries and benefits; 17 percent for rent; 11 percent for court support personnel benefits; 10 percent for operations and maintenance; and 7 percent for information technology.¹⁸

The staff of the federal judiciary, like the staff for the executive and legislative branches of government, can be reduced. President Obama’s bi-partisan fiscal commission recommended reducing judiciary staff by 10 percent. To meet this goal, judges can share secretaries and share judicial clerks. The judiciary staff should be reduced by 10 percent.

Cost of Senior Judges

The cost of senior judges is difficult to determine because these judges are lumped in with the costs of full time, active judges. However, there are 394 senior district court judges and 112 senior circuit court judges. They all receive full pay and benefits when they either take senior status or retire. District court judges make \$174,000 per year and circuit court judges make \$184,500. Thus, their salaries alone are \$68.6 million (district) and \$20.7 million (circuit) for a total of \$89.3 million.¹⁹ The total budget for all personnel (not just judges, but clerks, secretaries, etc.) for the district and circuit courts for 2010 was \$3,236 million.²⁰ Also, senior judges’ salaries are not stagnant once they retire; they receive all the pay increases active judges receive. Further, allowing judges to take senior status opens up a vacancy on the court, just like a retirement, so it increases the overall cost of the judiciary.

In addition, there is a Judicial Retirement Funds account that received \$72 million for the Judicial Officers’ Retirement Fund, \$6 million for the Judicial Survivors’ Annuities Fund, and \$4 million for the U.S. Court of Federal Claims Judges Retirement Fund for a total of \$82 million in in 2010 mandatory spending.²¹

¹⁶ Tom Murse, “Government Overspent on 7 Federal Courthouses,” US Government Info, accessed July 7, 2011; <http://usgovinfo.about.com/od/moneymatters/tp/7-Overpriced-Federal-Courthouses.htm>.

¹⁷ Statement of the Honorable Julia S. Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States. Before the Committee on Appropriations, Subcommittee on Financial Services and General Government, United States House of Representatives, March 19, 2009, at 5.

¹⁸ Garrett Hatch, *Financial Services and General Government Appropriations: FY 2011 Appropriations*, Congressional Research Service, R41340, June 14, 2011, at 36.

¹⁹ U.S. Courts Website at www.uscourts.gov.

²⁰ Office of Management and Budget, The Appendix, Budget of the United States Government, Fiscal Year 2012 Judicial Branch, Courts of Appeals, District Courts, and Other Judicial Services, at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jud.pdf>.

²¹ Office of Management and Budget, The Appendix, Budget of the United States Government, Fiscal Year 2012 Judicial Branch, Judicial Retirement Funds at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jud.pdf>.

Adjusting Civil Court Filing Fees to Cost of Living Increases

The Judiciary could offset some costs it incurs by increasing civil court filing fees. The current filing fee of \$350 has not been adjusted since 2006. The Judiciary should link the fees to annual cost of living increases. The fees brought in approximately \$87.4 million in 2009. If the fees were tied to cost of living adjustments, the Judiciary would have collected an additional \$9 million.

The filing fee for the U.S. Tax Court is \$60.²² These fees should also be adjusted to annual cost of living increases.

Reducing Cost of Grounds Maintenance

The Supreme Court received \$15 million in appropriated funds in 2010 for building and grounds maintenance and has requested \$9 million for 2012. The maintenance fund has an estimated \$23 million in unobligated balances it will carry over in 2012.²³ It appears the appropriations for these purposes have exceeded the amount needed or above what could be spent. These unobligated balances should be used to pay for future maintenance and the total annual appropriation should be reduced by 20 percent.

Controlling the Growth of Administrative Costs

The Administrative Office of the Courts (AOC) provides a wide range of administrative, management, program, and information technology services to the U.S. courts, but the increase in budget request from \$83 million in 2011 to \$89 million in 2012 is not justified.²⁴ Funding should be maintained at 2011 levels.

Focusing the Mission and Downsizing the Cost and Size of the U.S. Sentencing Commission

The U.S. Sentencing Commission collects, analyzes, and distributes information on Federal crime and sentencing issues, serving as an information resource for Congress.²⁵ It also establishes sentencing policies, advises policymakers on the development of crime policy, and provides training for judges, prosecutors, probation officers and the defense bar.

The Commission, in large part, performs many functions Congress can and should perform itself. It also collects duplicative statistics similar to those compiled by the Bureau of Justice Statistics and the FBI.

²² United States Tax Court website, updated September 1, 2010; <http://www.ustaxcourt.gov/fees.htm>.

²³ Office of Management and Budget, The Appendix, Budget of the United States Government, Fiscal Year 2012 Judicial Branch, Courts of Appeals, District Courts, and Other Judicial Services, at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jud.pdf>.

²⁴ Garrett Hatch, *Financial Services and General Government Appropriations: FY 2011 Appropriations*, Congressional Research Service, R41340, June 14, 2011.

²⁵ United States Sentencing Commission website, "About the Commission." http://www.ussc.gov/About_the_Commission/index.cfm.

The cost, size, and mission of the Commission should be significantly downsized. The total amount paid for salaries of the commissioners and their staff should be reduced by 50 percent. To help achieve this reduction, the number of commissioners should be reduced from seven to three. The Commission also spends \$1 million on travel.²⁶ These costs are unnecessary and should be eliminated.

SAVINGS/PROGRAM REDUCTIONS

Reduce total budget of Courts of Appeals, District, and other judicial services by two percent
 Re-establish Courts of Appeals and District Court Building Moratorium
 Court of Appeals and District Court rental fees senior judges sharing
 Court of Appeals and District Court Rental Fees Magistrate Judges sharing
 Reduce Court of Appeals and District Court staff by 10 percent
 Reduce total budget of legal activities and U.S. Marshals by 2 percent
 Reduce staff budget for Supreme Court by 10 percent
 Reduce Supreme Court transportation spending by 20 percent
 Reduce Supreme Court Grounds maintenance by 20 percent
 Maintain Court Security funding at 2010 levels
 Maintain 2010 personnel spending levels for Administrative Office of the Courts
 Eliminate travel for U.S. Sentencing Commission
 Reduce number of commissioners from 7 to 3 and the overall salary costs for U.S. Sentencing Commission by 50 percent

JUDICIAL BRANCH TEN YEAR SAVINGS

Total: \$7.78 billion

²⁶ Office of Management and Budget, The Appendix, Budget of the United States Government, Fiscal Year 2012 Judicial Branch, Courts of Appeals, District Courts, and Other Judicial Services, at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jud.pdf>.