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FEDERAL JUDICIAL SALARY RESTORATION ACT OF 2008

APRIL 1 (legislative day, MARCH 13), 2008—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1638]

The Committee on the Judiciary, to which was referred the bill (S. 1638) to adjust the salaries of Federal Justices and judges, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE FEDERAL JUDICIAL SALARY RESTORATION ACT OF 2008

Article III of the United States Constitution provides that the country's judicial power is vested in the Supreme Court and the inferior courts Congress sees fit to establish. It stipulates that the judges of these Federal courts "shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." Unfortunately, the compensation received by our Federal judiciary has not even kept pace with inflation. Just as his predecessor did before him, Chief Justice John Roberts has urged

Congress to address judicial salaries in his Year End Reports. In his most recent report he wrote that “salary restoration legislation is vital.”

Since 1969, the salaries of the Federal judges have significantly declined when adjusted for inflation. According to the Administrative Office of the United States Courts, judicial salaries have declined by nearly 25 percent. During the same time, private sector salaries have increased by more than 15 percent. By way of example, in 1969, a Federal district court judge earned 20 percent more than a law school dean and 30 percent more than a senior law professor at a top law school. Today, however, top law school deans earn twice as much as district court judges, and senior law professors at those schools make nearly 50 percent more.

While judicial salaries have failed to keep up with inflation, the workload of Federal judges has increased dramatically. Since 1960, the caseload for district court judges has climbed by almost 60 percent and the caseload of circuit court judges has jumped by more than 200 percent. Judges are working more than ever before and yet their pay has not even kept pace with inflation.¹

Between 1993 and 2001, the Federal judiciary received only three out of eight proposed cost-of-living adjustments. As a result, judicial salaries suffered a 13.5 percent decline during this time.² As of 2007, Federal judges had not received a cost-of-living adjustment in 6 of the past 13 years because Congress voted to deny its own Members a cost-of-living adjustment, which consequently limited judicial salaries under the Ethics Reform Act.³

In 2003, the Fair and Independent Federal Judiciary Act was introduced by Senators Hatch and Leahy. That legislation, which would have increased the salaries of judges and Justices, was reported out of the Senate Judiciary Committee and was later incorporated into legislation that was reported out of the Appropriations Committee. Unfortunately, the Republican leadership in the House failed to introduce a companion bill or even allow the judicial salary provision approved by two Senate Committees to be considered as part of an Omnibus Appropriations bill that year.

Upon introducing the Federal Judicial Salary Restoration Act last year, Senator Leahy noted:

To preserve a strong, independent judiciary, we must make judicial salaries competitive. Our legislation recognizes the important constitutional role judges play in administering justice, interpreting our laws, and providing the ultimate check and balance in our government. Eight years ago, in 1999, Congress doubled the President’s salary to \$400,000 a year. We are not proposing to increase judges’ salaries by 100 percent, but by half that—by 50 percent. The increase is an important step in ensuring the independence of the judiciary. Judicial independence is critical for preserving our system of government and protecting the rights of all Americans. Surely we can do half

¹Need for Federal Judicial Pay Increase Fact Sheet, U.S. Courts, <http://www.uscourts.gov/judicialcompensation/payfactsheet.html> (last visited March 18, 2008).

²American Bar Association & Federal Bar Association, *Federal Judiciary Pay Erosion: A Report on the Need for Reform 5* (Feb. 2001).

³American Bar Association’s Governmental Affairs Office, *Independence of the Judiciary: Judicial Salaries 1*, http://www.abanet.org/poladv/priorities/judicial_pay/ (last visited Mar. 18, 2008).

as much for the judicial branch of government as we did for the Executive eight years ago.

Senator Hatch expressed his support for this pay raise by commenting that:

Judges have not received a real pay raise in nearly 20 years and have not received most of the basic cost-of-living adjustments they were due. The value of judicial compensation has plummeted in the meantime. Our commitment to fairness and to the judiciary's diversity and independence requires that we begin making up some of the difference.

Paul Volcker, former Chairman of the Federal Reserve under the Carter and Reagan administrations, argued in *The Wall Street Journal* that congressional inaction on judicial pay could erode high professional standards and the independence of the judiciary. He discussed the appropriate compensation level for the judiciary, pointing out that:

While judges cannot expect to equal the salaries of partners in large law firms, the National Commission [on the Public Service] determined that their compensation should be comparable to that of law school deans, senior professors and other nonprofit leaders. Today, at \$165,200, district judge salaries fall more than 50% below what many law school deans or their top professors make.⁴

Former Chief Justice Rehnquist's end-of-year reports urged congressional action to raise judicial salaries. In his 2000 report he stated:

But in order to continue to provide the nation a capable and effective judicial system we must be able to attract and retain experienced men and women of quality and diversity to perform a demanding position in the public service. The fact is that those lawyers who are qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges.

The Founders established the independence of the Federal judiciary by designing the terms of service to be for life. When salaries do not even keep pace with inflation and judges are tempted to leave the bench for financial reasons, the purpose and benefits of life tenure are threatened. The Federal Judicial Salary Restoration Act of 2008 would increase the salaries of Federal judges to ensure that the design of life tenure is not eroded but it is also balanced with provisions to ensure that our federal judges maintain the highest ethical standards to promote confidence in their impartiality.

⁴Paul A. Volcker, Judgment Pay, *Wall St. Journal*, Feb. 10, 2007, available at <http://online.wsj.com/article/SB117107297874404462-search.html> (last visited Mar. 18, 2008). Currently, U.S. District judges and judges of the U.S. Court of International Trade earn an annual salary of \$169,300; judges of the U.S. Courts of Appeals earn \$179,500; Associate Justices of the U.S. Supreme Court earn \$208,100; and the Chief Justice of the United States earns \$217,400.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

INTRODUCTION OF THE BILL

After months of working to build a bipartisan coalition, Senator Patrick Leahy introduced S. 1638, the Federal Judicial Salary Restoration Act of 2008, on June 15, 2007, joined by Senators Hatch, Reid, McConnell, Feinstein, and Graham. Since the bill's introduction, Senators Kennedy, Bingaman, Cantwell, Kerry, Bennett, Lieberman, Domenici, Lautenberg, Warner, Snowe, Inouye, Smith, Landrieu, Corker, and Pryor have joined as cosponsors. The bill was referred to the Committee on the Judiciary. It was the first judicial salary legislation introduced in the 110th Congress.⁵

COMMITTEE CONSIDERATION

The Senate Judiciary Committee held a hearing on February 14, 2007, entitled "Judicial Security and Independence." Associate Justice Anthony Kennedy of the Supreme Court appeared before the Committee. He testified:

Members of the Federal judiciary consider the problem so acute that it has become a threat to judicial independence. . . . Your judiciary, the Nation's judiciary, will be diminished in its stature and its capacity if there is continued neglect of compensation needs. . . . A judiciary committed to excellence secures the Rule of Law. . . . Without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee the prosperity and secure the liberties of its people.

The Federal Judicial Salary Restoration Act was first listed on the Executive Business Meeting Agenda on November 15, 2007. It was considered by the Judiciary Committee on December 13, 2007 and January 31, 2008. During the December 13, 2007 meeting, Senator Feinstein and Senator Kyl each offered an amendment to the bill and both amendments were accepted.

Senator Feinstein offered a substitute amendment containing the complete amendment language adopted by the House Judiciary Committee. This amendment provides a lesser number than the 50 percent pay raise that was introduced. The amendment provides that salaries be increased to the following amounts: U.S. District judges and judges of the U.S. Court of International Trade would be increased to \$218,000; salaries of judges of the U.S. Courts of Appeals would be increased to \$231,100; salaries of Associate Justices of the U.S. Supreme Court would be increased to \$267,900; and the salary of the Chief Justice of the United States would be increased to \$279,900. The amendment also repealed Section 140 of Public Law 97-92 (as amended), which requires specific Congressional authorization for judicial cost of living adjustments and further provided that cost-of-living adjustments to Federal judicial sal-

⁵ Chairman John Conyers introduced companion legislation, H.R. 3753, in the House of Representatives on October 4, 2007, joined by Representatives Bachus, Berman, Biggert, Boehner, Gohmert, Hoyer, Lungren, Pence, Schiff, Wasserman Schultz, and Watt. Since the bill's introduction, Representatives Cannon, Cohen, Cuellar, Davis of Alabama, Dreier, Eshoo, Feeney, Gerlach, Lewis of California, Moran of Kansas, Ruppertsberger, Herseth, Sandlin, Boucher, Delahunt, Lofgren, Smith of Texas, and McDermott have joined as cosponsors. The House measure was amended and ordered to be reported from the House Judiciary Committee on December 12, 2007.

aries each year be made in the same percentage as cost-of-living adjustments in salaries under the General Schedule pursuant to 5 U.S.C. § 5303.

The Feinstein amendment alters the requirements for Federal judges and Justices to retire with their full salary. The amendment replaces the so-called “Rule of 80” with a “Rule of 84.” It provides that, in order to be eligible for retirement with their full salary under 28 U.S.C. § 371(a), Federal judges or Justices must have a combined age and years of service of at least 84. The amendment allows current judges and Justices to elect to retire with their full salary under the new “Rule of 84” or the previous “Rule of 80,” and provides that if a judge elects to retire under the “Rule of 80” the salary on retirement shall be equal to the salary on the day before the enactment of the Act. The amendment leaves the existing “Rule of 80” in place to govern a judge’s eligibility for senior status.

The amendment increases the workload requirements for senior judges, requiring them to carry a load of cases and administrative duties of at least a third of the work an average judge in active service would perform. Lastly, the amendment reduces the annuity of a retired judge or Justice who earns income in retirement that exceeds the salary the judge or Justice was receiving at the time of retirement. Beginning in calendar year 2009, the amendment reduces the annuity of a retired judge or Justice by \$1 for every \$2 of income earned in excess of the judicial salary, up to a maximum 67 percent reduction in the annuity. The reduction expires at the end of the year in which the retired Federal judge or Justice earns the additional income. The amendment does not apply to judges and Justices who are already retired under 28 U.S.C. § 371(a) on the date of enactment of the Act. The Feinstein amendment was adopted by voice vote.

Senator Kyl offered an amendment to increase fees that bankruptcy trustees receive from \$15 to \$75. The Kyl Amendment was adopted by voice vote.

The Federal Judicial Salary Restoration Act was considered again at the Judiciary Committee’s executive business meeting on January 31, 2008. The committee approved the bill after considerable debate on several additional amendments.

An amendment was offered by Senator Feingold to address the gifts or additional compensation that Federal judges can receive. First, subject to the exceptions described below, this amendment caps private gifts of, or reimbursement for, travel expenses, meals, lodging, and outside income connected with a single trip or event at \$2,000 per trip or event. This cap on expenses will allow judges to continue traveling to speak at legal conferences and law schools, or to judge moot court competitions so long as they are not reimbursed for more than \$2,000. At the same time, it attempts to reduce the appearance problems created by judges receiving gifts of luxury accommodations or exorbitant “lecture fees.” During consideration of his amendment, Senator Feingold said of large direct payments to judges for single speeches or lectures, “I think that it is excessive, and certainly it is unnecessary if a large pay raise now under consideration passes.” Judges are public servants. Their expertise is valued and they should be free and encouraged to share it with law students, but Senator Feingold noted they should not

create the appearance that they are profiting from their public positions and the knowledge they have gained from their service.

Questions were raised during the debate on this amendment concerning how it affects judges receiving outside income for teaching at a local or distant law school. In the case of a judge traveling to a law school to deliver a single lecture or several lectures in one day or over several days, a single \$2,000 limit applies to all travel expenses and any payment the judge receives for teaching. In the case of a judge who teaches a weekly or monthly seminar over a semester, a separate limit applies to each trip or class. Thus, this amendment has little effect on a judge teaching a weekly class at a local law school, but it does limit the payments and reimbursements that a judge could receive for a single lecture or group of lectures. The committee is aware that some judges have received fees of \$5,000 or even \$10,000 for teaching a single class. That magnitude of payment is prohibited under the amendment.

The second part of the amendment prohibits judges from accepting reimbursement for travel expenses, meals, lodging, gifts, and outside income in connection with programs whose purpose is the education of Federal or State judges. This prohibition is also subject to the exceptions described below.

For several years, news reports of judicial education trips have inspired a great deal of controversy. Often valued at thousands of dollars, these trips are frequently held at posh vacation resorts. An ABC "20/20" expos in 2001 included film of judges playing golf, swimming laps, and sunbathing at an Arizona resort where one such expense-paid educational seminar was held. Senator Feingold described this part of his amendment by noting:

These kinds of education vacation trips, which have been valued at over seven thousand dollars in some cases, create, I think, an appearance that the judges who attend are profiting from their position and that wealthy interests may be using their deep pockets to try to win influence over, or gain favor with, judges. This is an appearance, I think, that is at odds with the traditions of our judiciary.

Press reports indicate that these programs are often funded by corporations or other entities with cases before the court. The Montana-based Foundation for Research on Economics and the Environment ("FREE"), for example, is one of the leading sponsors of judicial education programs, sometimes held at a dude ranch and historic railroad hotel in Montana or at a tourist ranch near Yellowstone National Park. According to news reports, contributors to FREE include ExxonMobil, Philip Morris, and R.J. Reynolds.⁶

Nor are such trips solely sponsored by one side of the ideological spectrum. A recent story in the Washington Examiner revealed that a group called the Institute for Law and Economic Policy, founded by plaintiff class-action lawyers, invited Federal judges to its programs in Los Cabos, Mexico and the Doral Gold Resort and Spa.⁷ These trips continue despite Chief Justice John Roberts's ac-

⁶Eric M. Weiss, Firms Donated to Groups That Gave Judges Free Trips, Washington Post, May 25, 2006 at A27.

⁷Are They Hiding Something?, Washington Examiner, Feb. 15, 2008, editorial.

knowledge that special interests should not be allowed to lobby Federal judges.

Several leading newspapers have issued editorials condemning these judicial seminars as “junkets” and calling on Congress to ban them as part of legislation increasing the salaries of Federal judges.⁸

Both the \$2,000 limit on reimbursements for travel and the prohibition on judicial education trips are subject to an identical exception. Federal, State, and local bar associations, subject-matter bar associations, judicial associations, the Judicial Division of the American Bar Association, and the National Judicial College are not covered by this amendment. Federal and State governments are also not covered, but both public and private educational institutions are covered. These exceptions are largely drawn from guidelines promulgated by the Judicial Conference relating to disclosure of judicial education trips.⁹

The Judicial Conference’s interpretations, as of the time that this amendment was adopted, of terms used in the amendment should inform interpretation of this amendment. For example, the Judicial Conference has stated:

[T]he phrase subject-matter bar association refers to an association of lawyers who practice in a specific area of the law, such as administrative, admiralty, antitrust, elder, immigration, or patent law. Associations of lawyers whose members comprise or frequently represent the same side in litigation are not considered to be subject-matter bar associations for purposes of this policy.¹⁰

As used in this amendment, the term “Federal bar association” is intended to cover the Federal Bar Association and bar associations of various Federal courts.

Senator Feinstein offered a second degree amendment to the Feingold Amendment to exempt from the \$2,000 reimbursement limit trips approved by the Department of State to promote the rule of law and develop legal systems where reimbursement is provided only for travel, meals and lodging expenses. The Feinstein amendment was accepted.

The Feingold amendment, as modified by the Feinstein second degree amendment, was accepted by voice vote. At the request of Senators, a roll call vote was held and the amendment was approved. The vote record is as follows:

TALLY: 10 YES, 9 NO

Yeas (10)—Leahy (D-VT), Kennedy (D-MA), Biden (D-DE), Kohl (D-WI), Feinstein (D-CA), Feingold (D-WI), Schumer (D-NY), Durbin (D-IL), Cardin (D-MD), Whitehouse (D-RI).

⁸See Junkets for Judges: They Should End in Return for Higher Pay, Washington Post, Feb. 10, 2008, editorial at B6; Protection and Pay for Federal Judges, N.Y. Times, Dec. 28, 2007, editorial at A22.

⁹See Judicial Conference Policy on Judges’ Attendance at Privately Funded Educational Programs, adopted September 19, 2006, effective January 1, 2007, available at http://www.uscourts.gov/Press_Releases/judbrappc906c.pdf (last visited Feb. 14, 2008).

¹⁰See Administrative Office of the United States Courts, Privately Funded Seminars Disclosure System, Frequently Asked Questions, available at <http://www.uscourts.gov/SeminarDisclosureSystem/faqs.cfm#seven> (last visited Feb. 14, 2008).

Nays (9)—Specter (R-PA), Hatch (R-UT), Grassley (R-IA), Kyl (R-AZ), Sessions (R-AL), Graham (R-SC), Cornyn (R-TX), Brownback (R-KS), Coburn (R-OK).

Senator Durbin offered an amendment to ensure that the \$60 per case raise for bankruptcy trustees—which was adopted as the Kyl amendment during the December 13, 2007 committee meeting—would not be funded by assessing a new or additional fee to individual debtors or their attorneys. The Durbin amendment was adopted by voice vote.

Senator Sessions offered an amendment to include active and senior judges of the United States Court of Federal Claims in the semiannual disclosure reports prepared by the Administrative Office of the United States Courts under 28 U.S.C. § 476. This amendment defines active and senior judges of the Court of Federal Claims as “judicial officers” for the purpose of that statute so that members of the Court of Federal Claims are subject to the same disclosure reports as other Federal courts. This means that information regarding the court’s caseload will be part of the Administrative Office of the Courts semiannual public report that sets out workload data for the courts. The Sessions Amendment was adopted by voice vote.

Senator Specter and Senator Kyl introduced an amendment containing several ethical reforms for judges and Justices. First, the amendment prohibits Justices and judges from accepting honorary club memberships valued at more than \$50 per year, which is the current limit under Senate ethics rules.¹¹ Justices and judges have accepted club memberships valued at several thousand dollars from organizations such as the Del Paso Country Club, the Washington Golf & Country Club, the Coral Ridge Country Club, the Robert Trent Jones Golf Club, and others.

Second, the amendment requires a Justice’s or judge’s annual financial disclosure report¹² to include the value of payments and reimbursements received by the Justice or judge—or by a spouse or dependent child—for transportation, lodging, meals, and other expenses, in addition to a description of all meetings and events attended during travel. Further, the disclosure forms must be posted on the website of the Administrative Office of the United States Courts.

Third, the amendment provides that the Regulations of the Judicial Conference under Titles III and VI of the Ethics Reform Act of 1989 shall apply to the Chief Justice of the United States, Associate Justices of the Supreme Court of the United States, and officers and employees of the Supreme Court of the United States. Currently, those regulations are only binding on the lower courts; the Supreme Court is left to decide for itself whether to comply. Also, not later than 90 days after the date of enactment of this Act, the Judicial Conference shall conduct a thorough review of its regulations. The Specter-Kyl amendment was adopted by a voice vote.

Other matters of concern that were raised but not included in the Specter-Kyl amendment, as passed included acceptance by Justices and judges of reimbursement for international travel and outside earned income. For example, in 2006, two Justices were each

¹¹ See United States Senate Select Committee on Ethics, Senate Ethics Manual 60 (2003).

¹² See Ethics in Government Act of 1978 (5 U.S.C. App.), § 102(a)(2)(B).

reimbursed for over a month of international travel to destinations such as Italy, Israel, Switzerland, Austria, and England. Senators Specter and Kyl agreed to strike language prohibiting gifts of foreign travel.

During the meeting, two proposed amendments were rejected by the committee. Senator Durbin offered an amendment that would have increased judicial pay by 16.5 percent instead of the 29 percent raise that is provided by the Feinstein substitute amendment. The amendment was rejected on a roll call vote. The vote record is as follows:

TALLY: 4 YES, 15 NO

Yeas (4)—Kohl (D-WI), Feingold (D-WI), Durbin (D-IL), Sessions (R-AL).

Nays (15)—Leahy (D-VT), Kennedy (D-MA), Biden (D-DE), Feinstein (D-CA), Schumer (D-NY), Cardin (D-MD), Whitehouse (D-RI), Specter (R-PA), Hatch (R-UT), Grassley (R-IA), Kyl (R-AZ), Graham (R-SC), Cornyn (R-TX), Brownback (R-KS), Coburn (R-OK).

Senator Sessions offered a second degree amendment to the Feingold amendment to exempt public and private universities from the legal education program cap of \$2,000. The amendment was rejected on a roll call vote. The vote record is as follows:

TALLY: 9 YES, 10 NO

Yeas (9)—Specter (R-PA), Hatch (R-UT), Grassley (R-IA), Kyl (R-AZ), Sessions (R-AL), Graham (R-SC), Cornyn (R-TX), Brownback (R-KS), Coburn (R-OK).

Nays (10)—Leahy (D-VT), Kennedy (D-MA), Biden (D-DE), Kohl (D-WI), Feinstein (D-CA), Feingold (D-WI), Schumer (D-NY), Durbin (D-IL), Cardin (D-MD), Whitehouse (D-RI).

The Committee then voted to report the Federal Judicial Salary Restoration Act of 2008, as amended, favorably to the Senate. The Committee proceeded by roll call vote as follows:

TALLY: 11 YES, 7 NO, 1 NOT VOTING

Yeas (11)—Leahy (D-VT), Kennedy (D-MA), Kohl (D-WI), Feinstein (D-CA), Schumer (D-NY), Cardin (D-MD), Specter (R-PA), Hatch (R-UT), Graham (R-SC), Cornyn (R-TX), Coburn (R-OK).

Nays (7)—Feingold (D-WI), Durbin (D-IL), Whitehouse (D-RI), Grassley (R-IA), Kyl (R-AZ), Sessions (R-AL), Brownback (R-KS).

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1—Short title

Section 1 states that this Act may be cited as the “Federal Judiciary Salary Restoration Act of 2008.”

Section 2—Restoration of compensation

Section 2(a) increases the salaries of Federal judicial officers as of the first applicable pay period on or after enactment. Salaries of U.S. district judges and judges of the U.S. Court of International Trade are increased to \$218,000; salaries of judges of the U.S. Courts of Appeals are increased to \$231,100; salaries of Associate Justices of the U.S. Supreme Court are increased to \$267,900; and

the salary of the Chief Justice of the United States is increased to \$279,900.

Section 2(b) provides that if any other adjustment is to be made in the pay of a Federal judge or Justice as of the same date as the salary increases provided under the Federal Judicial Salary Restoration Act, the increase under this Act shall be applied first.

Section 3—Repeal of prohibition on salary increases

Section 3 repeals Section 140 of Public Law 97–92, as amended by Public Law 107–77. Until this repeal, Section 140 requires specific congressional authorization for any salary increase for Federal judges or Justices.

Section 4—Retirement provisions

Section 4(a) amends 28 U.S.C. § 371 to establish new age and service requirements for Federal judges and Justices to retire on salary. It requires a judge or Justice to serve until the sum of his or her age and years of service is at least 84, to be eligible for retirement on salary. Under Section 4(a), a judge or Justice remains eligible to retire in senior status if the sum of his or her age and years of service is at least 80.

Section 4(b) allows any Federal judge or Justice to elect to retire under 28 U.S.C. § 371(a) on the on the basis of the new age and service requirements established in Section 4(a), or on the basis of the age and service requirements that existed prior to the enactment of this Act. It provides that if a judge or Justice elects to retire under the prior age and service requirements, the annuity of that judge or Justice shall be equal to the salary the judge or Justice received on the day before enactment of this Act.

Section 4(c) amends the workload requirements for senior judges under 28 U.S.C. § 371(e)(1). For a judge to continue on senior status, Section 4(c) requires the judge to have carried in the preceding calendar year a load of cases and administrative duties equal to or greater than the amount of work an average judge in active service would perform in four months.

Section 5—Annual salary adjustments

Section 5 amends 28 U.S.C. § 461(a) to provide that Federal judicial salaries shall be adjusted annually by the same percentage as the annual percentage adjustment in rates of pay under the General Schedule pursuant to 5 U.S.C. § 5303. Section 5 further provides that the adjustment to Federal judicial salaries shall take place at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment in rates of pay under the General Schedule takes place under 5 U.S.C. § 5303.

Section 6—Income limitation on retirement annuity

Section 6(a) states that beginning in calendar year 2009, the annuity in a calendar year of a Federal judge or Justice who retires under 28 U.S.C. § 371(a) shall be reduced if the retired judge or Justice earns income in such calendar year that exceeds the amount of the salary the judge or Justice was receiving at the time of retirement. For every \$2 in earned income in excess of the salary the judge or Justice was receiving at the time of retirement, the

annuity of the judge or Justice shall be reduced by \$1, except that the reduction in the annuity in a calendar year as a result of such earned income may not exceed 67 percent of the amount of the annuity. Section 6(a) further states that the reduction in the annuity of a judge or Justice in a given year shall expire at the end of that year.

Section 6(b) states that Section 6(a) shall not apply to any individual who has retired under 28 U.S.C. § 371(a) before the date of enactment of this Act.

Section 7—Limitation on acceptance of limited memberships

Section 7(a)(1) gives the term “gift” the same meaning as is applied under section 105(9) of the Ethics in Government Act of 1978, with the exception that subparagraphs (A) through (F) shall not apply. Likewise, section 7(a)(2) give the term “judicial officer” the same meaning as is applied under section 109(10) of the Ethics in Government Act of 1978.

Section 7(b) dictates that a judicial officer may not accept a gift of an honorary membership with a value of more than \$50 in any calendar year.

Section 8—Judicial travel reporting requirements

Section 8(a) requires that in addition to the contents of reports required under section 102(a)(2)(B) of the Ethics of Government Act of 1978, judicial officers must disclose an itemization of the payments and reimbursements received for transportation, lodging, and meals for themselves or accompanying spouse or dependent child, and a description of all meetings and events attended during the event.

Section 8(b) amends section 5 of the Ethics in Government Act of 1978 by adding that the Judicial Conference and the Director of the Administrative Office of the United States Courts shall make each report filed under this Act accessible on the website of the Administrative Office of the United States Courts.

Section 9—Application of ethics regulations of the Supreme Court

Section 9 applies the Regulations of the Judicial Conference of the United States under Title VI of the Ethics Reform Act of 1989 concerning outside earned income, honoraria, and outside employment and the regulations of the Judicial Conference of the United States under Title III of the Ethics Reform Act concerning gifts to the Chief Justice of the United States, Associate Justices of the Supreme Court, and officers and employees of the Supreme Court of the United States. The Judicial Conference must conduct a review of regulations described in this section not less than 90 days after the enactment of this Act.

Section 10—Judicial gifts

Section 10(a)(1) states that a Federal Justice or judge shall not accept in connection with a single trip or event, travel, food, lodging, reimbursement, outside earned income, or anything that would be considered a gift under the Regulations of the Judicial Conference of the United States under Title III of the Ethics Reform Act of 1989 valued at more than \$2,000 from a source other than the Federal, State, or local government, or local bar association,

subject-matter bar association, judicial association, the Judicial Division of the American Bar Association, or the National Judicial College.

Subsection 10(a)(2) prohibits Federal judges and Justices from accepting, in connection with a single trip or event, travel, food, lodging, reimbursement, outside earned income or anything that would be considered a gift under the Regulations of the Judicial Conference of the United States under the Regulations of the Judicial Conference of the United States under Title III of the Ethics Reform Act of 1989 if it is linked with attending—as a speaker or participant—a program, whose purpose is the education of the United States Federal or State judges from a source other than the Federal, State, or local government, or local bar association, subject-matter bar association, judicial association, the Judicial Division of the American Bar Association, or the National Judicial College.

Section 10(b) provides that subsection 10(a)(1) is not applicable to trips applied by the State Department to promote the rule of law or developing legal systems in foreign countries, if the reimbursement only covers transportation, meals, and lodging.

Section 10(c) stipulates that the total value of items listed in subsection 10(a)(1) that a Federal judge or Justice can accept, cannot amount to more than \$20,000 a year. The monetary amounts listed in section 10(a) will be adjusted by the twelve-month percentage increase in the Consumer Price Index for all Urban Consumers based on data available from the preceding year.

Section 11—United States Court of Federal Claims Accountability

Section 11 amends 28 U.S.C. § 476 by adding that the term “judicial officer” includes active and senior judges of the United States Court of Federal Claims.

Section 12—Bankruptcy Trustees

Section 12(a) amends 11 U.S.C. § 330(b)(2) by replacing \$15 with \$75 anywhere it appears.

Section 12(b) prohibits additional fees from being charged to individual debtors or their attorneys to provide funding for any of the \$60 increase in the trustee payments provided for by the amendment made in section 12(a).

Section 12(c) dictates that this section shall take effect 180 days after the enactment of this Act. In addition, the amendments made by this section shall not apply to cases brought under title 11 of the United States Code before the effective date of this section.

Section 13—Severability

Section 13 provides that if any provision of this Act or amendment made by this Act, or the application of any such provision is held to be unconstitutional, the remainder of this Act, any amendments made by this Act, and the application of any provision of this Act shall not be affected.

Section 14—Authorization of appropriations

Section 14 authorizes that the necessary funds be appropriated to carry out this Act.

Section 15—Effective date

Section 15 states that this Act, its amendments, and the repeal made by this Act take effect on the date of enactment.

IV. COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 1638, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MARCH 28, 2008.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1638, the Federal Judicial Salary Restoration Act of 2008.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1638—Federal Judicial Salary Restoration Act of 2008

Summary: S. 1638 would increase the salaries and change certain retirement benefits for some judges and justices of the United States. The bill also would allow those judges and justices to receive annual cost-of-living adjustments (COLAs) without further Congressional approval and would increase the compensation paid to Chapter 7 bankruptcy trustees.

CBO estimates that enacting S. 1638 would increase direct spending by \$1.9 billion over the 2009–2018 period. The bill also would increase revenues by \$321 million over the 2009–2018 period. In addition, CBO estimates that implementing S. 1638 would result in additional discretionary spending of \$166 million over the 2009–2013 period and \$418 million over the next 10 years, assuming appropriation of the necessary amounts.

S. 1638 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1638 is shown in the following table. The costs of this legislation fall within budget functions 600 (income security) and 750 (administration of justice).

	By fiscal year, in millions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009– 2013	2009– 2018	
CHANGES IN DIRECT SPENDING													
Salary increase and COLA for Article III and bankruptcy judges:													
Estimated budget authority	90	102	113	124	135	147	160	172	184	198	564	1,425	
Estimated outlays	86	101	112	123	134	146	158	171	183	197	556	1,411	
Judicial retirement benefits:													
Estimated budget authority	1	1	2	3	5	6	7	9	11	14	12	59	
Estimated outlays	1	1	2	3	5	6	7	9	11	14	12	59	
Additional compensation for bankruptcy trustees:													
Estimated budget authority	40	40	40	40	40	40	40	40	40	40	200	400	
Estimated outlays	40	40	40	40	40	40	40	40	40	40	200	400	
Total changes:													
Estimated budget authority	131	143	155	167	180	193	207	221	235	252	776	1,884	
Estimated outlays	127	142	154	166	179	192	205	220	234	251	768	1,870	
CHANGES IN REVENUES													
Judiciary filing fees:													
Estimated revenues	25	30	30	30	30	30	30	30	30	30	145	295	
Retirement contributions:													
Estimated revenues	2	2	2	2	3	3	3	3	3	3	11	26	
Total changes in revenues	27	32	32	32	33	33	33	33	33	33	156	321	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Salary increases and COLA for magistrate and CFC judges:													
Estimated authorization level	27	30	33	37	40	43	47	50	54	58	167	419	
Estimated outlays	26	30	33	37	40	43	47	50	54	58	166	418	

Notes.—COLA = Cost-of-living adjustment; CFC = Court of Federal Claims; * = less than \$500,000.

Basis of estimate: CBO estimates that enacting S. 1638 would increase direct spending, revenues, and spending subject to appropriation, as discussed in the following sections. For this estimate, CBO assumes that the number of vacant judgeships and the number of senior judges would not significantly change over the 10-year period. CBO also assumes that the bill will be enacted by the beginning of fiscal year 2009.

Direct spending

CBO estimates that enacting S. 1638 would increase direct spending by nearly \$1.9 billion over the 2009–2018 period for salary increases, cost-of-living adjustments, and additional retirement benefits for judges appointed under Article III of the Constitution and bankruptcy judges, as well as additional compensation for Chapter 7 bankruptcy trustees.

Salary Increase and COLA for Judges Appointed Under Article III of the Constitution and Bankruptcy Judges. Salaries and benefits of Article III and bankruptcy judges are provided annually without the need for discretionary appropriations. Increases in such compensation thus would increase direct spending. In 2007, total compensation paid to those judges totaled \$313 million. (CBO estimates that \$282 million of that amount was for salaries.)

S. 1638 would increase the current salaries of Article III judges, including the Chief Justice and associate justices of the Supreme Court, judges of the circuit and district courts, and judges on the Court of International Trade, by approximately 29 percent. Under current law, bankruptcy judges' pay is set at 92 percent of district judges' pay; thus, bankruptcy judges also would receive a salary increase of nearly 29 percent under the bill. Based on information from the Administrative Office of the United States Courts (AOUSC), CBO estimates that increased spending on salaries and benefits would total about \$80 million annually, beginning in 2009.

In addition, the bill would allow those judges and justices to receive an annual COLA without further Congressional approval. The bill also would change the way such COLAs are calculated to match adjustments made to the General Schedule under the Federal Employees Pay Comparability Act. Using CBO's forecast for the employment cost index, we estimate that annual COLAs would range from 2.5 percent to 3.0 percent over the next 10 years.

Together, CBO estimates that salary increases and annual COLAs for Article III and bankruptcy judges would increase direct spending by \$556 million over the 2009–2013 period and by \$1.4 billion over the 2009–2018 period.

Judicial Retirement Benefits. The salary increase provided under S. 1638 would result in increased retirement benefits for both active and senior Article III judges, bankruptcy judges, and certain surviving spouses. S. 1638 also would change the retirement rules for Article III judges who are not yet eligible for retirement benefits (active judges). In total, CBO estimates that enacting the bill would increase direct spending for retirement benefits by \$59 million over the 2009–2018 period.

The increase in pay under S. 1638 would automatically increase retirement benefits for Article III judges and bankruptcy judges because their retirement benefits are based on the most recent salary at retirement. In order to receive increased retirement benefits

based on the higher pay, S. 1638 would require active judges to continue working past age 65—to age 67—and would require an additional four years of service at all retirement ages.

CBO expects that all judges who are currently eligible to retire or who will become eligible over the next 10 years would delay retirement to receive that increased benefit. (Retirement eligibility for those currently eligible to retire and for all bankruptcy judges would remain unchanged.) Thus, based on information from the AOUSC and the actuarial valuation for the plan, CBO estimates that raising the salaries of those judges and justices and changing the eligibility for active judges would increase direct spending by \$20 million over the 2009–2018 period.

All judges and justices can elect to participate in a retirement plan that provides survivor benefits. Those benefits are based on the average salary or retirement benefits of the judges or justices prior to death. Under the bill, survivors of active Article III judges would be able to receive a death benefit based on the judges' higher salary if the judge dies prior to reaching the higher age and meeting the length-of-service criteria. Based on information from the actuarial valuation for the plan, CBO expects that 60 percent of judges would participate in the plan that provides survivor benefits. We estimate that raising the salaries of those judges would increase direct spending for survivor benefits by \$39 million over the 2009–2018 period.

Additional Compensation for Bankruptcy Trustees. The bill also would increase the amount paid to private trustees to administer Chapter 7 bankruptcy cases. Under current law, each debtor filing for Chapter 7 bankruptcy pays a \$15 fee, which is disbursed to the private trustee; the receipt or expenditure of that fee is not recorded on the federal budget. Under the bill, the payment to the private trustees would increase to \$75, but individual debtors would be prohibited from paying more than a \$15 fee. CBO assumes that the judiciary would be required to pay the increase in the trustee's compensation.

To generate the necessary funding, CBO assumes that the judiciary would collect additional miscellaneous court filing fees which may be spent without further appropriations. Our estimate of increases in such fees, which are treated as revenues, is described in the following section. CBO estimates that additional compensation for the private trustees would total \$40 million a year through 2018, based on projections of the number of Chapter 7 bankruptcy filings. Thus, we estimate that increasing compensation for Chapter 7 bankruptcy trustees would increase direct spending by \$40 million over the 2009–2018 period.

Revenues

CBO estimates that enacting S. 1638 would increase revenues by \$321 million over the 2009–2018 period. That amount includes additional judiciary filing fees and increased retirement contributions.

Judiciary Filing Fees. CBO assumes that, under the bill, the judiciary would be required to collect additional court filing fees to pay for the proposed increase in trustee's compensation. Such fees are treated as revenues and have totaled between \$190 million and \$275 million annually over the last five years. CBO estimates that revenues from additional filing fees would total \$295 million over

the 2009–2018 period. That amount is net of reductions in payroll and income taxes.

Retirement Contributions. Under current law, all participants in the plan that pays benefits to survivors are required to contribute 2.2 percent of their pay prior to retirement and 3.5 percent of their earnings after retirement. Bankruptcy judges are required to contribute 1 percent of their pay to participate in the Judicial Officers’ Retirement Plan. Such contributions are treated as revenues in the budget. Thus, CBO estimates that the increase in pay under S. 1638 would increase revenues by \$26 million over the 2009–2018 period.

Spending subject to appropriation

CBO estimates that implementing S. 1638 would increase federal spending by \$166 million over the 2009–2013 period and \$418 million over the next 10 years to provide a salary increase and annual COLAs for Court of Federal Claims (CFC) and magistrate judges, assuming appropriation of the necessary amounts. Under current law, the salary of CFC judges is equal to that of district judges, while the salary of magistrate judges is 92 percent of district judges’ pay. Accordingly, both CFC and magistrate judges would receive a salary increase of about 29 percent and an annual COLA under the bill. Current salaries for the judges affected by this provision total about \$80 million annually.

Intergovernmental and private-sector impact: S. 1638 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On February 1, 2008, CBO transmitted a cost estimate for H.R. 3753, the Federal Judicial Salary Restoration Act of 2007, as ordered reported by the House Committee on the Judiciary on December 12, 2007. CBO’s estimates of direct spending and revenues related to judicial pay and retirement are identical for both bills over the 2009–2018 period. H.R. 3753 would not increase the compensation paid to Chapter 7 bankruptcy trustees.

Estimate prepared by: Federal Costs: Leigh Angres—Judges’ and Bankruptcy Trustees’ Compensation; Taylor Tarver—Retirement Benefits; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: MarDestinee Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the committee finds that no significant regulatory impact will result from the enactment of S. 1638.

VI. CONCLUSION

The Federal Judicial Salary Restoration Act of 2008, S. 1638, addresses an important national interest. As the Chief Justice noted in his recent Year End Report, “The pending legislation strikes a reasonable compromise for the dedicated federal judges who, year after year, have discharged their important duties for steadily erod-

ing real pay.” The legislation raises judicial salaries by nearly 29 percent, and increases the age and service requirement from 80 to 84 for judges and Justices who choose to retire with their full salary. It provides Federal judges and Justices more compensation, but is balanced by imposing new the ethical restrictions that Congress recently imposed upon itself. The Committee on the Judiciary reports this bipartisan legislation favorably to the Senate for its timely consideration.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1638, 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):

PUBLIC LAW 97-92

* * * * *

JOINT HOUSE RESOLUTION 370—DECEMBER 15, 1981

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§ 140. [Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted: Provided, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court.]

PUBLIC LAW 107-77

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HOUSE RESOLUTION 2500—NOVEMBER 28, 2001

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§ 305. [Pursuant to section 140 of Public Law 97-92, Justices and judges of the United States are authorized during fiscal year 2002, to receive a salary adjustment in accordance with 28 U.S.C. 461: Provided, That \$8,625,000 is appropriated for salary adjustments pursuant to this section and such funds shall be transferred to and merged with appropriations in title III of this Act. This title may be cited as the “Judiciary Appropriations Act, 2002.”]

TITLE 28, UNITED STATES CODE

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CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

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§ 371. Retirement on Salary; Retirement in Senior Status

(a) Any Justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c)(1) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1) Any Justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c)(2) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

(2) * * *

(c) *AGE AND SERVICE REQUIREMENTS.*—

(1) *RETIREMENT ON SALARY.*—*The age and service requirements for retirement under subsection (a) are as follows:*

<i>Attained Age:</i>	<i>Years of Service:</i>
67	17
68	16
69	15
70	14
71	13
72	12

(2) *RETIREMENT IN SENIOR STATUS.*—*The age and service requirements for retirement under subsection (b) are as follows:*

<i>Attained Age:</i>	<i>Years of Service:</i>
65	15
66	14
67	13
68	12
69	11
70	10

(d) * * *

* * * * *

(e)(1) In order to continue receiving the salary of the office under subsection (b), a Justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The Justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in 4 months. In the instance of a Justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The Justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom partici-

pation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the Justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in 4 months.

(C) The Justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 4 months work.

(D) * * *

(E) * * *

(2) * * *

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(3) * * *

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(4) * * *

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TITLE 28, UNITED STATES CODE

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CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

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§ 461. Adjustments in Certain Salaries.

[(a)(1) Subject to paragraph (2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay under the General Schedule (except as provided in subsection (b)), each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.]

[(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.]

(a) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay

under the General Schedule(except as provided in subsection (b)), each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of \$100 (or, if midway between multiples of \$100) equal to the percentage of such salary rate which corresponds to the percentage of the adjustment taking effect under such section 5303 in the rates of pay under the General Schedule.

(b) * * *

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TITLE 5, UNITED STATES CODE

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APPENDIX 4—ETHICS IN GOVERNMENT ACT OF 1978

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(a) * * *

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(b) * * *

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(c) * * *

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(d) * * *

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(e) Notwithstanding subsection (b)(2), the Judicial Conference and the Director of the Administrative Office of the United States Courts shall make each report filed by a judicial officer under this Act (other than a report filed under section 107) available on the website of the Administrative Office of the United States Courts.

TITLE 28, UNITED STATES CODE

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CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

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(a) * * *

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(b) * * *

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(c) In this section, the term “judicial officer” includes active and senior judges of the United States Court of Federal Claims.

TITLE 11, UNITED STATES CODE

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CHAPTER 3—CASE ADMINISTRATION

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(a) * * *

* * * * *
(b)(1) There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.

(2) The Judicial Conference of the United States—

(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title;

to pay \$75 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$75 shall be paid in addition to the amount paid under paragraph (1).

(c) * * *

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(d) * * *

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