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January 30, 2008

Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: FEDERAL JUDICIAL SALARIES

Dear Senator:

The Senate Judiciary Committee is scheduled this week to mark up S. 1638, bipartisan legislation that will provide an immediate pay increase for federal judges. We are writing you again to emphasize the American Bar Association's grave concern over the cost of continued congressional inaction on this important matter and to urge your support for S. 1638.

Justice Kennedy succinctly stated what is at stake in testimony before this Committee last year when he said, "Without a functioning, highly qualified judiciary, no nation can hope to guarantee the prosperity and secure the liberties of its people.... We are in real danger of losing, through gradual but steady decline, the highly qualified judiciary on which our Nation relies."

While it is clear that salaries of Members of Congress also have not kept pace with inflation and have not been adjusted to maintain some kind of reasonable relationship with the private sector, we defer to you on a timetable for seeking a congressional pay raise. However, we are gravely concerned by the fact that federal judges repeatedly have suffered the consequences of Congress's decision to delay or deny itself a salary adjustment. We urge Congress to separate action on a judicial pay raise from the difficult, politically charged job of raising its own pay, and to fulfill its responsibility to provide for the adequate compensation of our federal judges whom we expect to serve on the bench for life. This expectation, rooted in principles of independence and grounded in our Constitution, deserves careful consideration. Judicial pay should not act as a disincentive to serve for life, yet that is what is happening. Since the last pay raise well over a decade ago, judicial pay has not even kept pace with inflation, robbing judges of the prospect of salary stability during their tenure on the bench. While public service has its own rewards, it should not be necessary for judges, once in office, to worry that the purchasing power of their salaries will continue to decline unabated.

The urgent need for an immediate judicial pay raise does not argue against the need for a similar congressional pay raise, nor would enactment of judicial pay legislation block future enactment of similar legislation with respect to congressional pay. In fact, history has amply demonstrated that, since emergence of the notion of linkage of the base salaries of top-level federal officials in 1969, disparities in salary levels between congressional members and judges have arisen over the years and have always been temporary. Pay parity has always been restored because it is rooted in the firm public policy conviction that there should be inter-branch pay parity for work of comparable complexity and importance. Furthermore, no matter the legislative vehicle used to provide public servants in upper levels of government with the pay raise they deserve, a temporary delinkage of congressional and judicial salaries will inevitably result because of the requirements of the 27th Amendment to the U.S. Constitution respecting congressional pay.

As you know, on December 13, the Senate Judiciary Committee adopted an amendment offered by Senator Feinstein to reduce the size of the salary increases in the bill as introduced. As a result, S. 1638 now provides for a 31 percent increase in judicial salaries, which mirrors the increase in the House-approved companion bill. The size of this salary increase is similar to the last catch-up judicial pay raise, enacted by Congress in 1989. While we believe that a larger pay raise is in order, given the similarity in conditions prior to the last pay raise with conditions today, S. 1638, as currently drafted to provide for a 31 percent salary increase, is a reasonable compromise that will restore the cumulative salary lost to denied cost-of-living adjustments and provide for an additional modest increase that at least acknowledges the significant upward trend in workers' wages since 1990. We urge you to reject any effort to further reduce the size of the judicial salary increase or to offset it by reductions in other forms of compensation.

To delay or deny a salary increase for judges this year will further erode already inadequate salaries. The cost of continued inaction is far greater than the budgetary cost of this proposed pay raise legislation.

The ABA hopes that the Senate Judiciary Committee will promptly act to report out S. 1638 with a 31 percent salary increase for federal judges, and that you will continue to do everything within your power to assure the enactment of an immediate and substantial judicial pay raise during this session of Congress.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and is positioned above the typed name and title.

Denise A. Cardman
Acting Director