

June 24, 2009

The Honorable Daniel K. Inouye
Chair, Committee on Appropriations
U.S. Senate
Washington, D.C. 20510

The Honorable David R. Obey
Chair, Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Thad Cochran
Committee on Appropriations
U.S. Senate
Washington, D.C. 20510

The Honorable Jerry Lewis
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Re: Fully Funding the Administrative Conference of the United States for FY 2010

Gentlemen:

In the current Supreme Court term to date, Justices Stephen Breyer and Antonin Scalia have fully agreed only 50% of the time, one of the lowest agreement rates of the term, according to scotusblog.com. While many issues separate Justices Breyer and Scalia, one issue on which they heartily agree is the value of the Administrative Conference of the United States (ACUS). Last year, Congress took the momentous step of reauthorizing ACUS in the amount of \$3.2 million per year, and in the omnibus spending measure this spring Congress provided ACUS with \$1.5 million in startup funding. The Administration is hard at work identifying a nominee for Chair of ACUS, and we fully expect that ACUS will be operational by the end of the current fiscal year. The American Bar Association strongly urges you to fully fund ACUS in FY2010 so that it can deliver on the high expectations that we all have for it.

For over 25 years, ACUS advised the federal government on and coordinated important reforms to the administrative procedural law that is the backbone of federal regulation. ACUS enjoyed strong bipartisan support and assisted all three branches of government from 1968 until it was terminated in 1995. ACUS was a bargain: it employed a very small staff and attracted numerous academic consultants, on an as-needed basis, who received very modest payment for engaging in substantial research tasks. ACUS also leveraged the volunteer efforts of a great many administrative law luminaries—government officials, private lawyers, judges, and academics—who served in a variety of capacities and attended biennial meetings for no compensation beyond travel reimbursement. ACUS had a stellar track record of initiating government improvements and saving both the government and private sectors large sums of money.

In 2004, Congress held hearings on ACUS reauthorization during which Justices Breyer and Scalia joined to praise the work and cost-effectiveness of this modest agency.^[1] Congress then approved bipartisan legislation to reauthorize and resurrect the agency, which President Bush signed into law in 2004, but funds were not appropriated before the reauthorization period expired at the end of FY 2007. During the 110th Congress, both the House and the Senate again overwhelmingly approved a new bipartisan reauthorization bill, and in March, President Obama signed the omnibus bill that funded ACUS. We are in regular contact with Administration staff and have been advised that the Administration is working quickly to identify a nominee for Chair, who will then be able to appoint an Executive Director, rent space and get ACUS up and running.

As explained in two recent Congressional Research Service (CRS) studies, ACUS proved to be an extremely useful and cost-effective agency, and its recommendations often resulted in substantial monetary savings for agencies, private parties, and practitioners.^[2] For example, CRS noted in its October 2004 memorandum that “ACUS’s encouragement of administrative dispute resolution had saved ‘millions of dollars’ that would otherwise have been spent for litigation costs.” CRS also noted that in 1994, the FDIC estimated that “its pilot mediation program, modeled after an ACUS recommendation, had already saved it \$9 million.”

The ABA is confident that the new ACUS will again provide valuable advice to the American people and save tax dollars. Staff of the House Judiciary Committee organized a Congressional briefing on April 15 that generated a long list of timely issues where ACUS’s involvement could be crucial in identifying needed recommendations and facilitating agreement on them. The ABA’s Section of Administrative Law & Regulatory Practice supported that briefing and is working to distill its proceedings into a prioritized list of urgent and important topics. We are hopeful that ACUS will be able to begin working on these projects during this fiscal year.

ACUS is currently authorized at \$3.2 million per year. The President’s budget includes \$2.625 million for FY2010. While we appreciate the Administration’s admirable desire to restrain spending, we firmly believe that ACUS will actually produce savings that far exceed its budget, and hence we urge Congress to fund ACUS at the full authorized level.

If you have any questions or need more information, please contact me at (202) 662-1765 or the ABA’s senior legislative counsel for administrative law issues, Larson Frisby, at (202) 662-1098.

Sincerely,



Thomas M. Susman

[1] Copies of both justices' congressional statements, as well as other materials noting the many accomplishments and merits of ACUS, are available at http://www.abanet.org/poladv/documents/acusfunding_resources.pdf.

[2] Copies of the detailed CRS studies from October 2004 and September 2005 are available online at http://www.abanet.org/poladv/documents/acusfunding_resources.pdf.