November 14, 2012

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Mr. President:

I am writing on behalf of the American Bar Association and its nearly 400,000 members to urge your administration to take an active role in assuring that the judicial branch has adequate resources to carry out its important constitutional and statutory duties in these times of fiscal austerity. In particular, we hope that your administration will work to protect the judiciary from potentially devastating budget cuts mandated by sequestration and make the prompt filling of judicial vacancies and a fully-staffed and diverse bench top domestic priorities during your coming term of office.

Sequestration

Maintaining the vitality of, and public respect for, the judicial branch is an issue of immediate and enduring concern to the ABA. Our judicial system is predicated on the principles that each case deserves to be evaluated on its merits, that justice will be dispensed even-handedly, and that justice delayed is justice denied. None of this is achievable if the judiciary is denied the funds or the judges it needs to do its important work.

The spending cuts mandated by sequestration will require a reduction in force of 5,400 federal court employees nationwide, including law clerks and probation officers, and major cuts to court security programs. Courthouses across the country will have to close for part of the work week and curtail services to the public. Some will even have to suspend civil trials for a period of time. In addition, it is estimated that funding for defender services will run out before the end of FY 2013.

We urge you to support an exemption of the judicial branch from sequestration should Congress fail to agree to an alternative budget deficit plan, and object to alternative budget plans that contain draconian cuts that could cripple federal courts.

Although exempting the judiciary from sequestration would likely mean deeper cuts for other programs and departments, we nevertheless believe that an exception for the federal judiciary is justified and appropriate: no other cuts will adversely affect the core functions of a coequal and independent branch of government; and failure to exempt the judiciary would require the political branches to renege on their obligation to provide sufficient funding for the federal judiciary.
Deep funding cuts are not the only threat to the efficient operation of the federal judiciary. Members of the ABA know firsthand that longstanding vacancies and protracted delays in the nomination and confirmation process hinder the federal judiciary and impose heavy costs on businesses and the economy.

**Judicial Nominations and Confirmations**

Despite the modest progress made in reducing the vacancy rate to below nine percent earlier this session, there are 82 vacant seats on the Article III bench and nominees are pending for only 35 of those seats. In the coming months, 10 additional vacancies will arise as a result of scheduled retirements. If there are no additional confirmations in the waning months of this Congress, the 113th Congress will open with a staggering 92 or more judicial vacancies to fill—almost the same number of vacancies that existed at the start of the 112th Congress.

We ask that you urge Senate leaders before the 112th Congress adjourns sine die to schedule up-or-down votes, at a minimum, on the 15 nominations pending on the Senate calendar that were reported by the Senate Judiciary Committee with no or minimal opposition. Their confirmations would offset the upcoming vacancies and signal renewed bipartisan support for the judiciary.

A significant and lasting reduction in the number of vacancies on the federal bench will require your administration and the Senate to engage in a concerted, sustained, and cooperative effort. To this end, we urge you to redouble your efforts to make the prompt filling of judicial vacancies a priority of your administration and to submit a nomination to the Senate for every outstanding vacancy in a timely fashion, making special effort to promptly fill vacant judicial seats that the Administrative Office of the U.S. Courts has classified as judicial emergencies.

**The Effect of Inadequate Judicial Pay on Diversity**

It stands to reason that making timely nominations is easier if there is a large pool of qualified candidates from the private and public sectors from which to choose. However, statistics suggest that private practitioners are increasingly choosing not to be part of this pool. Today, only about 35 percent of district judges are appointed from private practice compared to 65 percent during the Eisenhower administration. The extent to which this change is due to the increasing politicization of the nomination and confirmation process or inadequate judicial pay—factors that undermine the stature and respect of the judiciary as an institution—is cause for concern and action. Most lawyers in private practice can ill afford to put their professional lives on hold for the duration of time required to get through the confirmation process. The salary of a district court judge may not be a deterrent to individuals who are already in public service, but it likely is a strong disincentive for lawyers in private practice who earn more substantial salaries.

During your second term, we hope that bipartisan accord will dominate judicial selection and that you will have an opportunity to support legislation to provide a much-needed judicial pay increase. The nation is best served by a truly diverse federal bench comprised of racially, ethnically, and religiously diverse men and women who have served in different capacities in both the public and private sectors.
I appreciate the opportunity to explain our concerns and offer our views. The American Bar Association stands ready to provide assistance on issues central to our system of justice that your administration will confront in the days and years ahead.

Sincerely,

Laurel G. Bellows