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President

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Honorable Tom DeLay
Majority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Majority Leader:

I urge you to use your leadership position to assure that a provision securing a 16.5% pay raise for Federal judges is included in the final version of fiscal 2004 appropriations legislation that will be considered by the House and Senate before adjournment this session. The Senate version of the Commerce, Justice, State (CJS) bill, as approved by the CJS Subcommittee, contains the pay raise provision. Rather than advancing as a freestanding bill, we understand that negotiations are underway to combine the CJS bill with other remaining appropriations measures into an omnibus bill for final passage. The Senate leadership has pledged its support for the judicial pay provision; we urge you to do the same.

As you know, President Bush has explicitly endorsed this 16.5% judicial pay raise. His Administration shares our concern that the growing inadequacy of federal judicial pay impairs the stature and threatens the quality of our federal bench. The problem has been well documented by many sources. The Chief Justice of the United States repeatedly has used his Year-End Reports to Congress to explain why judicial pay remains “the most pressing issue facing the judiciary.” The prestigious National Commission on the Public Service (otherwise known as the “Volcker Commission”) released a detailed report on the public workforce last January, which concluded that “judicial salaries are the most egregious example of the failure of Federal compensation policies.” The ABA and the Federal Bar Association recently issued a joint report documenting the urgent need for judicial pay reform. I enclose the latter for your ready reference.

I am aware that a major objection to enacting the proposed judicial pay raise is that it will disturb pay parity between Members of Congress and Federal judges by breaking the linkage in base salary levels. I am also aware that the salaries of Members of Congress, like those of our federal judges, have not kept pace with inflation and have not been adjusted to maintain some kind of reasonable relationship with the private sector. In short, there is no doubt that Congressional salaries also need to be raised.

I urge you to consider two important points.

First, 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.

Second, 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.

Objecting to the proposed 16.5% judicial salary increase on the basis of its effect on linkage, therefore, is short sighted. The 27th Amendment and history lead to the conclusion that delinkage is a prerequisite to any future Congressional salary increase, but that linkage will be restored promptly because of this nation's strong, ingrained belief in pay parity.

I promise that I will use the power of my office as ABA president to support all efforts to raise Congressional salaries to comparable levels. Should Congress decide to include a comparable pay raise for its own Members in the omnibus appropriations measure, the ABA will support such a move and publicly defend it. If, on the other hand, Congress decides only to enact a judicial pay raise this session and defer its own pay raise until next session or next Congress, the ABA will support this strategy and use its resources to work for passage of appropriate legislation at the appropriate time.

I hope you will do all you can to assure that Congress enacts legislation this session that includes, at a minimum, the 16.5% judicial pay raise provision that has been endorsed by President Bush and included in the Senate version of the CJS legislation.

I would be happy to discuss ways the Associations might be of assistance in this matter. Please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis W. Archer". The signature is fluid and cursive, with the first name "Dennis" being the most prominent.

Dennis W. Archer