Calendar No. 399

108TH CONGRESS *1st Session*	SENATE	REPORT 108–200

TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1561

TO PRESERVE EXISTING JUDGESHIPS ON THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2003.—Ordered to be printed

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Ms. COLLINS, from the Committee on Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1561]

The Committee on Governmental Affairs, to whom was referred the bill (S. 1561) to preserve existing judgeships on the Superior Court of the District of Columbia, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

I. PURPOSE AND SUMMARY

The purpose of S. 1561 is to preserve existing judgeships on the Superior Court of the District of Columbia.

II. BACKGROUND

DISTRICT OF COLUMBIA LOCAL COURT SYSTEM

The local District of Columbia Courts consist of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. The District of Columbia Courts constitute the Judicial Branch of the District of Columbia and they are separate and distinct from the legislative and executive branches of the Dis-

trict of Columbia.[1] The District of Columbia court system is overseen by Congress and funded by the federal government.[2]

Judges on both the District of Columbia Court of Appeals and the Superior Court are selected through a process that includes the involvement of both local and federal entities. When a vacancy occurs on the Court, notice is sent to the District of Columbia Judicial Nominations Commission, a District of Columbia agency composed of seven members.[3] The Judicial Nominations Commission solicits applicants for the vacancy, conducts an investigation and review of each applicant and selects three possible candidates to fill the vacancy. The names of those three candidates are sent to the President, who then selects one of them to nominate to fill the vacancy on the Court. Once the nomination is made, it is sent to the Senate for confirmation.[4]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The Superior Court of the District of Columbia is the local trial court of general jurisdiction in the District of Columbia.[5] It consists of six divisions including civil, criminal, probate, social services, and the Family Court. The last major reform of the District of Columbia Courts occurred in 2002. On January 8, 2002, President Bush signed into law the District of Columbia Family Court Act of 2001.[6] The purpose of that Act was to restructure the then-family division of the Superior Court into a new Family Court. The Act was intended to promote the efficiency and consistency in the assignment of judges to the Family Court, improve the handling of cases involving families and neglected children, and help recruit and retain experienced judges to serve in the Family Court.[7]

Section 11–903 of the District of Columbia Code establishes an overall limit on the number of judges that may be seated on the Superior Court. The current limit is 58 in addition to a chief judge. Section 3(a) of the Family Court Act, among other things, allows the limit to be exceeded to appoint additional Family judges if the number of judges in the Family Court is less than 15 and if certain other conditions are met.[8] Section 3(b) of the Act required the Court to complete a transition plan and submit it to Congress within 90 days of enactment. Section 3(c) of the Act required that the transition plan include an analysis of the number of judges then sitting in the Family Court. In addition, section 3(c) required that, should the number of judges in the Family Court be less than 15, then a corresponding number of vacancies would be created on the Court.

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[1] See D.C. Code section 1–204.31 (2003); 2002 Annual Report of the District of Columbia Courts, p. 11.

[2] For a history of the District of Columbia court system, see Senate Report No. 107–108, Appendix.

[3] See D.C. Code section 1–204.34 (2003) (One member is appointed by the President, two members are appointed by the Board of Governors of the unified District of Columbia Bar, two members are appointed by the Mayor, one member is appointed by the D.C. Council, one member is appointed by the chief judge of the U.S. District Court for the District of Columbia.)

[4] D.C. Code section 1–204.33 (2003).

[5] D.C. Code section 1–204.31 (2003).

[6] Public Law No. 107–114.

[7] See Senate Report No. 107–108.

[8] These other requirements include: (1) there are no other judges already on the Court who are willing to volunteer for a transfer into the Family Court from another division, (2) the chief judge obtains permission from the Joint Committee on Judicial Administration within the Court, and (3) the chief judge reports to Congress on the need to exceed the cap.

On April 5, 2002, the chief judge submitted to Congress the required transition plan. The plan determined that the number of judges qualified and willing to serve in the Family Court was 12 and, therefore, pursuant to the Family Court Act, three new vacancies were created on the Family Court, notwithstanding the overall limit to the number of judges on the Superior Court in section 11–903 of the District of Columbia Code.[9] As a result, the nomination process was triggered and on January 21, 2003 the President nominated Judith Nan Macaluso, Jerry Stewart Byrd, and Joseph Michael Ryan III to fill the three newly created Family Court seats. Those nominations were referred to the Senate Governmental Affairs Committee, as the committee of jurisdiction over the District of Columbia Courts.

THE PROBLEM AND NEED FOR LEGISLATION

Prior to the nominations of the three Family Court nominees, the Committee had also received the nomination of Fern Flanagan Saddler. As with most DC Court nominations, she was nominated to fill a vacancy created by a retired judge, Judge Patricia Wynn, and was not designated for a particular division. Later in the year, the Committee received the nominations of Brian F. Holeman and Craig S. Iscoe to be Superior Court judges to fill vacancies created by retired judges Mary Ellen Abrecht and Frederick D. Dorsey, respectively. On June 26, the Committee favorably reported the nominations of Fern Saddler and Judith Nan Macaluso to the full Senate and on June 27, both were confirmed.

Subsequently, the Committee learned that with the confirmation of Judges Macaluso and Saddler, the Court only had two open seats due to the overall limit on the number of judges; however, there were four nominations still pending in the Committee. If all four of those nominations had involved judges not specifically designated to serve on the Family Court, the limit on the number of judges in section 11–903 would have permitted only two of the four nominated individuals to serve on the Court, even if the Senate confirmed all four. While the Family Court Act resulted in creating three new seats on the Court, that Act failed to account for the new seats in the overall limit outlined in section 11–903. In addition, while the four nominations were still pending in Committee, on September 25, the Committee received the additional nomination of Gregory E. Jackson to fill the seat of retired judge Mildred M. Edwards.

In response to this problem, Chairman Collins, along with Senators Voinovich and Durbin, Chairman and Ranking Member of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, introduced S. 1561 to amend section 11–903 to reflect the addition of the three newly created seats on the Court pursuant to the Family Court Act. In addition, the Committee determined that it would move forward with the nominations of Joseph Michael Ryan III, Jerry Stewart Byrd, Brian F. Holeman, and Craig S. Iscoe. The Family Court Act provides an exception to section 11–903 to allow Family Court judges to be seated notwithstanding the limit. Therefore, the Committee determined that if Brian F. Holeman and Craig S. Iscoe were con-

[9] District of Columbia Family Court Transition Plan, April 5, 2002, p. 30.

firmed prior to the confirmations of Joseph Michael Ryan III and Jerry Stewart Byrd, the Family Court nominees, all four could be seated as judges, notwithstanding the fact that there were only two vacancies on the Court. Once the Holeman and Iscoe nominations were confirmed, there were no more seats remaining on the Court; however, because of the exception in the Family Court Act, the Court could exceed the section 11–903 limit to seat the two Family Court judges.

On October 22, 2003, the Committee favorably reported the four nominations to the full Senate and on October 24, the Senate confirmed first the nominations of Brian F. Holeman and Craig S. Iscoe and then, on the same day, confirmed the nominations of Joseph Michael Ryan III and Jerry Stewart Byrd. However, Gregory E. Jackson, the most recent nominee received by the Committee, will not be able to be seated as judge even if he is confirmed.

In addition, notwithstanding the confirmation of Brian F. Holeman and Craig S. Iscoe, should section 11–903 not be amended, the result may be a permanent decrease in the number of judges serving in the non-Family Court divisions of the Superior Court, including civil and criminal, as other judges decide to retire. In 2002, the civil division had nearly 98,000 cases available for disposition and the criminal division had 50,000, compared to 38,000 in the Family Court.[10] Based upon the caseload statistics in the Court's 2002 Annual Report, the loss of three seats in the other divisions of the Superior Court would result in an average increase of the caseload by nearly 7% per judge. This is particularly troubling because the District of Columbia Superior Court's caseload tends to be among the highest in the Nation. For example, in the period from 1999 through 2001, D.C. had nearly 6,700 felony case filings per 100,000 population, the highest in the country.[11] In 2001, the District had the highest number of civil filings per 100,000 of the population[12] and only five states exceeded the District in the number of filings per judge.[13]

The loss of three seats in the non-Family Court divisions of the Superior Court could have a detrimental effect on the administration of justice in the District by adding to the already high caseload level of the judges. S. 1561 would address that concern by increasing the limit on the number of judges from 59 to 62.

III. Legislative History

S. 1561 was introduced on August 1, 2003 by Senators Collins, Voinovich, and Durbin and was referred to the Committee on Governmental Affairs and then referred to the Subcommittee on Government Management, the Workforce, and the District of Columbia. The bill was polled out of subcommittee on October 15, 2003. On October 22, 2003, the Committee considered S. 1561 and ordered the bill reported by voice vote.

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[10] 2002 Annual Report of the District of Columbia Courts.

[11] Examining the Work of State Courts, 2002: A National Perspective from the Court Statistics Project, p. 65.

[12] Examining the Work of State Courts at 18.

[13] Examining the Work of State Courts at 12.

IV. Section-by-Section Analysis

Section 1 amends section 11–903 of the District of Columbia Code to increase the limit on the number of judges on the Superior Court of the District of Columbia by three.

V. Estimated Cost of Legislation

S. 1561—A bill to preserve existing judgeships on the Superior Court of the District of Columbia

S. 1561 would amend the District of Columbia Code to increase the number of associate judges on the Superior Court of the District of Columbia from 58 to 61. Under current law, the Superior Court is subject to a cap of 58 judgeships. Based on information from the Superior Court, CBO estimates that increasing the cap on judgeships to 61 would cost about $1 million a year for salaries and benefits of additional judges and support staff, subject to appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues.

S. 1561 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

VII. Changes in Existing Law

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

DISTRICT OF COLUMBIA CODE

TITLE 11, ORGANIZATION AND JURISDICTION OF THE COURTS

CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

§ 11–903. Composition

The Superior Court of the District of Columbia shall consist of a chief judge and [fifty-eight] *61* associate judges.

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