

# ROLL CALL

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By Senator Orrin Hatch

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## **Fair Pay for Federal Judges Is Long Overdue**

Federal judges play a critical and unique role in our system of government. Congress' failure to provide adequately for reasonable and fair judicial compensation, however, is undermining judicial quality and independence. Like his predecessor William Rehnquist did for two decades, Chief Justice John Roberts has again called on Congress to remedy this failure. Congress can take a significant step toward that goal by promptly passing S.1638, the recently introduced bipartisan judicial pay bill.

Many lawyers, from whose ranks judges are drawn, make more money than workers in many other professions. That is why individual salary figures, by themselves, can be misleading. Instead, it is important to put judicial pay in its proper context. Most federal judges leave a much more lucrative sector of the legal profession to spend the rest of their lives serving the cause of justice. We all want the best of the best for the federal bench in terms of their qualifications, experience and temperament. Attracting and retaining the best of the legal profession for judicial service requires sufficient compensation.

Judicial pay no longer meets this standard. In 1969, federal judges made substantially more than senior law school professors or deans; academics have since left judges in the financial dust, today making about twice as much. Since 1990, a U.S. district judge's caseload has risen by nearly 30 percent, but his pay has inched up by less than 5 percent.

Compare the salaries of U.S. federal judges with jurists in countries with comparable legal systems. Canada's mid-level appellate judges make 35 percent more than U.S. court of appeals judges. In Britain, trial judges make 93 percent more than their U.S. district court counterparts, and the lord chief justice makes more than twice as much as Chief Justice Roberts.

Under these or any other reasonable standard, judges are inadequately paid and are falling further behind. Congress has given judges a real pay raise only once since 1969 and has regularly failed to give federal judges even an appropriate cost-of-living allowance to keep up with inflation. As a result, the value of judicial pay has declined by about 25 percent since 1969, while the value of the average American worker's pay has risen nearly 19 percent.

In addition to its manifest injustice, this inequity is dramatically changing the professional composition of the federal bench and judges' continued willingness to serve. The percentage of federal judges coming from private law firms has dropped from 65 percent in the 1950s to less than 40 percent today. The rate at which federal judges are leaving the bench entirely, often for more lucrative positions in private practice, is steadily increasing. Judicial pay must remain sufficient to attract individuals from throughout the legal profession, especially from the practicing bar.

Judicial pay has always been tied to judicial independence. One of the indictments against King George listed in the Declaration of Independence was that he made judges "dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries." America's founders addressed both of those threats to judicial independence in our Constitution, refusing to impose a specific limit on judicial tenure and prohibiting Congress from reducing judicial pay. Congress' negligence regarding judicial pay may not have reduced its amount, but it certainly reduced its value. This cannot be what America's founders had in mind and is not sufficient to protect the independence of our federal judiciary.

More than four years ago, the National Commission on the Public Service used judicial pay as "the most egregious example of the failure of federal compensation policies" and recommended "an immediate and substantial increase in judicial salaries." Congress did not respond then, but we must do so now. The bill now before Congress would raise judicial pay to within striking distance of what it would be if it had risen along with the pay of the average American worker. In seizing this opportunity, we can support the judiciary that sets the standard of independence and integrity for the rest of the world.

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