

# Federal judges from 2 California districts ask for more judgeships

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“We are a collegial, hardworking bench, appointed by six presidents of both parties,” testified Chief Judge Kimberly J. Mueller of the U.S. Eastern District of California. “But for 20 years we’ve been in a judicial emergency. We cannot fulfill our obligations without congressional action creating new judgeships.”

Two California federal judges went to Congress on Wednesday with a simple message: The state needs more judgeships.

The hearing before the House Subcommittee on Courts, Intellectual Property, and the Internet was titled “The Need for New Lower Court Judgeships, 30 Years in the Making.” Chief Judge Kimberly J. Mueller of the U.S. Eastern District of California and Senior Judge Larry A. Burns of the U.S. Southern District of California, each testified that their courts need several new judges. The Eastern District also has two vacancies, while the Southern District has five.

“We are a collegial, hardworking bench, appointed by six presidents of both parties,” Mueller said. “But for 20 years we’ve been in a judicial emergency. We cannot fulfill our obligations without congressional action creating new judgeships.”

California Republican Rep. Darrell Issa noted Congress must also fund staff and office space.

“These judgeships come with a need for offices and courtrooms,” Issa said. “Those courtrooms can take three to eight years to build.”

“We need at least five new judges, and we have the infrastructure to house them and their staff,” Mueller said. “We urgently ask your help to meet the needs of the public we serve.”

She decried how Congress decades ago abandoned its long-standing policy of regularly expanding the federal courts to match population growth. The results have been especially noticeable in fast-growing western and southern states, from California to Georgia and North Carolina.

Mueller compared her court's predicament to the speedy conveyor belt in the famous chocolate factory scene in "I Love Lucy." The court has had just six judgeships since 1978, when the district's population was half what it is today. She said partly because of the two vacancies, the district's caseload is effectively almost three times the national average. The result is that the court ranks 93rd out of 94 federal districts in its time to close cases.

She noted her court has hosted many visiting judges to help out in recent years, but said this is no substitute for full judgeships. But visiting judges don't come with staff, she said, nor do they have an ongoing caseload.

Burns said his court's caseload grew 17% between 2003 to 2019, compared with a 13% average for federal district courts. The court's weighted caseload, which considers the complexity and time demands of different case types, is even higher. Meanwhile, the court receives a steady stream of illegal entry and drug smuggling cases coming out of the district's 140-mile border with Mexico.

"Our criminal case load is staggering," Burns said.

Many of the hearing participants agreed that partisan politics has played a significant role in the failure to approve new judge positions. But members of Congress each blamed the other party.

Issa noted many of former President Donald Trump's nominees never received Senate votes, often after getting "blue-slipped," or rejected, by California's Democratic U.S. Senators Diane Feinstein and Kamala Harris. Trump nominated Fresno attorney Dirk B. Paloutzian and Sacramento Superior Court Judge James P. Arguelles to the Eastern District. Neither was confirmed, nor were several Trump nominees to other California districts.

Issa suggested Congress pass legislation creating new judgeships, but stipulate the next president would fill them in almost four years so neither side would gain partisan advantage.

This drew a rebuke from Rep. Mondaire Jones, D-NY, a former clerk in the Southern District of New York.

"I am intimately familiar with the burdens placed on Article III judges and their law clerks," Jones said. "It is for this reason I am a bit disheartened to hear a number of my Republican colleagues suggest a tactic ... that would effectively amount to delaying justice for the purpose of satisfying some of them that their preferred president gets to appoint a number of the judges."

Jones added, "Expanding the courts will also help ensure that they reflect the diversity of the American people."

While the hearing was mainly about the district courts, it almost inevitably turned into a debate over the 9th U.S. Circuit Court of Appeals. Republican members have long criticized what they see as the court's liberal bent and have often proposed splitting it in two.

Vanderbilt Law School professor Brian T. Fitzpatrick testified the Supreme Court has reversed the 9th Circuit more than other courts. He endorsed splitting the circuit, with Southern California being placed into a new circuit while other Western states and Northern California share a circuit with Oregon and Washington.

California Rep. Ted Lieu, who clerked on the 9th Circuit for Judge Thomas Tang, said he's open to splitting the circuit. But he also accused Fitzpatrick of cherry-picking his data.

"Since 2005, the 9th Circuit has never been highest in terms of being overturned by the Supreme Court," Lieu said. "Mr. Fitzpatrick is misleading us."

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