



OPINION

Pay judges more

By DAVID M. AXELRAD

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Scott Baker [argues](#) against increased compensation for federal judges because he finds no evidence that “lower pay means lousy judges.” Baker recommends that Congress reconsider enactment of currently pending legislation that would increase federal judicial salaries.

Currently, federal appellate judges earn \$175,100 a year, and federal district judges earn \$165,200. Many would say that’s a substantial salary. But, as Chief Justice John G. Roberts Jr. [pointed out](#) [pdf] last year, “today, federal district judges are paid about half what the deans and senior law professors at top schools are paid. Adjusted for inflation, the average U.S. worker’s wages have risen 17.8% in real terms since 1969. Federal judicial pay has declined 23.9%.” So, for 24% less than what they earned nearly 40 years ago, federal judges are asked to play a crucial role in our lives and in the effective functioning of our democracy.

Baker’s response to this situation is a variation of the adage “if it ain’t broke, don’t fix it.” His first point is that there is no evidence judges are retiring because of the financial pressure of dwindling salaries. But tell that to J. Michael Luttig, a highly respected judge of the U.S. 4th Circuit Court of Appeals who was on the short list of potential Supreme Court nominees. Luttig left his judgeship recently to become general counsel of Boeing Co. News accounts [noted](#) that Luttig has two children approaching college age and that he needed a better paying job. Judge Paul Cassell of the Utah federal District Court resigned after only five years on the bench, also [citing](#) financial reasons, among them three children approaching their college years.

As Chief Justice Roberts noted, “In the face of decades of congressional inaction, many judges who must attend to their families and futures have no realistic choice except to retire from judicial service and return to private practice. The numbers are sobering. In the past six years, 38 judges have left the federal bench, including 17 in the last two years.”

A recent statistical analysis by the Congressional Research Service casts doubt on any correlation between the level of judicial salaries and the rate at which federal judges leave the bench. But it still [mentions](#) [pdf] that “generally speaking, as salaries rose, the percentage of judges who left office by resignation fell” and acknowledges the [concern](#) of the American Bar Assn. and Federal Bar Assn. that “even though the absolute number of departures is not large, the trend is alarming because the number is increasing significantly in a profession where there is an expectation, grounded in the Constitution, of life tenure.”

Baker also claims there is no need to increase the number of applicants for the federal judiciary from the private sector because there is no evidence that lawyers who might be attracted by higher judicial salaries would necessarily make good judges, or that increasing the number of judges from the private sector would make any real difference in judicial decision-

making. But the fact that there are people of differing abilities and temperament in various sectors and at various income levels is not evidence against raising salaries. As Roberts noted, a judiciary restricted either to persons so wealthy that they do not care about salary or to persons for whom the current salary is a pay raise “would not be the sort of judiciary on which we have historically depended to protect the rule of law in this country.”

Baker’s bottom line is that as long as the federal judiciary is able to attract dedicated, intelligent men and women willing to sacrifice more lucrative jobs in the private sector, there is no real need to raise their salaries. But why should that sacrifice be necessary? Why should the most critical and demanding jobs in the public sector go only to those willing or able to sacrifice? Why aren’t positions in the public sector so well compensated that they become as coveted and sought after as comparable jobs in the private sector?

The idea that positions of public trust should go only to those willing to sacrifice a more lucrative position makes little sense. Why, for example, should the work of public school teachers who educate our children during their formative years be valued less than the work of private college professors? Why should the work of legislators be valued less than the work of doctors and lawyers?

Increasing federal judicial salaries is not expensive. And doing so would ensure that our federal judges stay on the job, open the judiciary to a much broader cross-section of people and give full recognition to the value of the work performed by these highly skilled professionals in the most critical of public sector positions. It’s a matter of honor and respect, not just a matter of fairness.

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