

House Calls for Elimination of 'Judge Shopping' in Federal Courts



The House of Delegates reached a consensus during the ABA Annual Meeting in Denver to endorse the random assignment of federal judges to cases. This decision follows concerns over the practice of "judge shopping" - where litigants strategically select districts and judges that offer the most favorable outcomes. Sponsored by the Litigation Section, Resolution 521 addresses the imperative of maintaining public trust in the federal courts.

Laurence Pulgram, a delegate from California representing the Litigation Section, introduced Resolution 521. He emphasized that the practice of forum-shopping, particularly selecting divisions with just one judge, undermines the fairness of the judicial process. By choosing a specific division, litigants can predictably secure a particular judge's assignment to their case, which has raised accusations of bias and favoritism. Pulgram stated that this resolution aims to combat this practice and restore public confidence in the federal judicial system.

According to the accompanying report, as of 2018, approximately 35 out of 55 divided federal district courts featured either a single or two district judges assigned to each division. This setup made it conducive for litigants to exploit the system, potentially leading to perceptions of manipulation and injustice.

Mark I. Schickman, a delegate from California representing the Civil Rights and Social Justice Section, lent his support to Resolution 521. He stressed that the resolution isn't driven by specific cases but rather by the overarching principle of respecting and safeguarding the judiciary's independence.

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One notable consequence of judge shopping has been the skewing of case assignments in favor of political agendas. Plaintiffs challenging policies introduced by the Biden administration, such as student loan forgiveness, immigration, and healthcare, have often chosen divisions with limited federal judges, ensuring the cases would be heard by judges appointed by previous Republican administrations. This practice undermines the judicial system's impartiality, as litigants seek to strategically position their cases in a manner that favors their desired outcomes.

The prevalence of judge shopping was further illustrated by instances where patent owners filed cases with nationwide implications in divisions with only a single judge. For instance, the Western District of Texas saw a significant portion of patent cases handled by a single judge, Alan Albright. Chief Justice John Roberts acknowledged this issue in his 2021 Year-end Report on the Federal Judiciary, suggesting that the practice raised concerns over party-based case assignments and the potential manipulation of judge selection.

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However, the concern isn't limited to patent cases alone. In the application of *United States v. Texas and Louisiana*, a striking 19 challenges to federal law were filed by Texas in 2021 and 2022. Of these, 18 cases were assigned to district judges appointed by a president from a different political party than the one promoting the contested policy. Moreover, 15 out of these 18 cases were directed to divisions with either a single-judge or two-judge setup, further highlighting the susceptibility of these divisions to judge shopping tactics.

The resolution garnered joint support from the Tort, Trial and Insurance Practice Section as well as the Civil Rights and Social Justice Section, indicating a collective commitment to ensuring the impartiality and fairness of the federal judicial system.

Don't be a silent ninja! Let us know your thoughts in the comment section below.