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In The Supreme Court of the United States

PETER H. BEER, TERRY J. HATTER, JR., THOMAS F. HOGAN, RICHARD A. PAEZ, JAMES ROBERTSON, LAURENCE H. SILBERMAN, A. WALLACE TASHIMA, and U.W. CLEMON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

DENNIS J. HERRERA, State Bar #139669
City Attorney
WAYNE SNODGRASS, State Bar #148137
VINCE CHHABRIA, State Bar #208557
Counsel of Record
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-4674
Facsimile: (415) 554-4747
E-Mail: vince.chhabria@sfgov.org

Attorneys for Amicus Curiae The International Municipal Lawyers Association

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QUESTION PRESENTED

Whether the Compensation Clause of Article III prevents Congress from withholding the future judicial salary adjustments established by the Ethics Reform Act of 1989.

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INTEREST OF AMICUS CURIAE[1]

International Municipal Lawyers Association ("IMLA") is a nonprofit, nonpartisan professional organization consisting of more than 1,400 members. The membership is comprised of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. Since its establishment in 1935, IMLA has advocated for the rights and privileges of local governments and the attorneys who represent them through its Legal Advocacy Program. IMLA has appeared as amicus curiae on behalf of its members before the United States Supreme Court, in the United States Courts of Appeals, and in the state supreme and appellate courts.

Local governments are often defendants in cases that involve high degrees of complexity or significant local controversy, including but not limited to actions brought pursuant to 42 U.S.C. § 1983 against law

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[1] Pursuant to this Court's Rule 37.2(a), counsel of record received timely notice of IMLA's intent to file this brief, and letters of consent from all parties to the filing of this brief have been submitted to the Clerk. This brief was not authored in whole or in part by counsel for any party, and no person or entity other than IMLA and its counsel made a monetary contribution to the preparation or submission of this brief.

enforcement officers or other government officials, actions brought pursuant to the Americans with Disabilities Act or other federal nondiscrimination statutes, and various federal constitutional challenges to local ordinances and policies. Local governments and the attorneys who represent them thus have a deep interest in the maintenance of a highly-qualified, independent federal judiciary. Because the judicial pay crisis poses a threat to that interest, IMLA submits this brief in support of petitioners.

STATEMENT

To understand the multiple constitutional violations involved in this case, it is necessary to examine annual judicial cost of living adjustments as part of the overall system for federal employee compensation. Under this system, it is more difficult for federal judges to obtain a cost of living adjustment than virtually all other federal employees – including even Members of Congress.

The large majority of federal workers are General Schedule ("GS") employees – that is, nonpolitical federal civil servants who serve in mostly "white collar" positions. Federal law provides that GS employees are to automatically receive an annual percentage salary adjustment that is 0.5 percent less than the Employment Cost Index ("ECI"), a measure of private-sector salaries published by the Bureau of Labor Statistics. 5 U.S.C. § 5303(a). There is one

exception to this rule: the law states that GS employees may be denied their automatic salary adjustment in a particular year if the President certifies that a "national emergency" or "serious economic conditions" would warrant such a denial. 5 U.S.C. § 5303(b)(1). Absent this Presidential certification, however, no further authorization by Congress is required to effectuate the annual adjustment.

"Blue collar" federal workers are compensated according to the Federal Wage System ("FWS"), which is administered by the federal Office of Personnel Management in coordination with other executive branch agencies. This system provides even greater assurance that wages will at least keep up with, and in most cases exceed,[2] wages in comparable private sector jobs. The law assures FWS workers that they will receive the "prevailing rate," which is generally measured by "those paid by private employers in the wage area for similar work . . . " 5 U.S.C. § 5343(c)(1). Private sector wage surveys must be conducted, at a minimum, every two years, 5 U.S.C. § 5343(b), and if a survey determines that the FWS workers are entitled to a salary adjustment, that adjustment generally applies retroactively. 5 U.S.C. § 5344(b). Again, annual Congressional authorization is not required for FWS employees to receive their pay adjustments.

Federal law places executive branch political appointees, Members of Congress, and Article III judges

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[2] *See* 5 U.S.C. § 5343(e)(1).

into yet another category when it comes to salary adjustments. Under Section 704(a) of the Ethics Reform Act of 1989, these three sets of federal employees automatically qualify for annual salary adjustment of 0.5 percent less than ECI, but only if GS employees receive their annual salary adjustment. App. 1-3. Additionally, the Act specifies that the increase may never be greater than 5 percent. *Id.* at 2. Under the terms of the Ethics Reform Act, annual Congressional authorization is not required once the above conditions for an automatic salary adjustment have been met.[3]

Although the Ethics Reform Act, by its own terms, treats federal judges the same as Members of Congress and executive branch political appointees (calling for them to receive automatic annual cost of living adjustments so long as GS employees receive them), a separate statute creates an additional obstacle to the attainment of annual salary adjustments by the judges. This statute provides that federal judges will not receive their salary adjustment – even if Members of Congress and political appointees in the executive branch receive theirs pursuant to the automatic mechanism set forth in the Ethics Reform

[3] Although this formula provided in the Ethics Reform Act is codified in three different parts of the United States Code (namely, the separate code provisions governing compensation for Members of Congress, executive branch political employees, and federal judges), it is clear from the text of the Act that Congress intended for these three sets of federal employees to be tied to one another when it came to annual salary adjustments.

Act – unless Congress separately and affirmatively acts to approve the adjustment for the judges. It states:

> Notwithstanding any other provision of law . . . none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase . . . any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted. . . .

App. 18. (Further Continuing Appropriations Resolution of 1982, Pub. L. No. 97-92, § 140, 95 Stat. 1200 (1981), as amended Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 2002, Pub. L. No. 107-77, Title VI, § 625, 115 Stat. 803 (2001) (codified in relevant part at 28 U.S.C.A. § 461 note ("Specific Congressional Authorization Required for Salary Increases for Federal Judges and Justices of the Supreme Court")) (West 2010)).

This provision was originally adopted as a rider to an appropriations bill in 1981, and it is commonly referred to as "Section 140" because it was contained in Section 140 of that bill. Because it was part of an appropriations bill and did not make clear that it would apply in subsequent years, Section 140 should have applied only for that year, as the Federal Circuit eventually held. *See Williams v. United States*, 240 F.3d 1019, 1026-27 (Fed. Cir. 2001). From the time of its passage, however, Congress treated Section 140 as

having the perpetual force of law – that is, as creating a yearly prerequisite to judicial salary adjustments, even after the Ethics Reform Act of 1989 purported automatically to give the judges the adjustments. *See* App. 8-16. (28 U.S.C.A. § 461 note ("Salary Adjustments for Justices and Judges") (West 2010)).

In 2001, in the wake of the Federal Circuit's ruling in *Williams* holding that Section 140 should have applied only in the year it was originally passed, Congress retroactively amended Section 140 to specify that, for *every* fiscal year, judges would not be entitled to an annual salary adjustment under the Ethics Reform Act unless special legislation was enacted to provide them one. App. 18. (28 U.S.C.A. § 461 note ("Specific Congressional Authorization Required for Salary Increases for Federal Judges and Justices of the Supreme Court") (West 2010) (amending Section 140 to provide "[t]his section shall apply to fiscal year 1981 and each fiscal year thereafter")).

Until fairly recently, notwithstanding Section 140, annual salary adjustments for federal judges remained in step with adjustments for executive branch political appointees and Members of Congress. That is because when the political appointees and Members of Congress received their automatic adjustments under the Ethics Reform Act, Congress also enacted special legislation pursuant to Section 140 to authorize the adjustment for judges called for by the Ethics Reform Act. Conversely, when the political appointees and Members of Congress have not received an adjustment (either because the GS employees

did not receive one, or because Congress enacted eleventh-hour legislation to cancel the adjustment due under the Ethics Reform Act), Congress also has not enacted special legislation to give judges a salary adjustment. *See* Barbara L. Schwemle, Congressional Research Service, Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries 2-4 (updated July 28, 2008) (providing year-by-year account of salary adjustments provided pursuant to, or denied in spite of, the Ethics Reform Act).

However, beginning in Fiscal Year 2007, the situation changed. That year, GS employees received their automatic salary adjustment. Pursuant to the Ethics Reform Act, political appointees in the executive branch received their automatic salary adjustment. But Congress did not enact special legislation pursuant to Section 140 to give judges the adjustment the Ethics Reform Act called for them to receive. Thus, for the first time since passage of the Ethics Reform Act of 1989, the link between judicial salary adjustments and adjustments for executive branch political appointees was severed, with the political appointees getting the better end of the deal. This same year, Congress also enacted eleventh-hour legislation to deprive its Members of the adjustment that the Ethics Reform Act called for them to receive. App. 20. (Pub. L. No. 110-5, § 115, 121 Stat. 8).

The same thing happened again in Fiscal Year 2010, with virtually all federal employees receiving

automatic adjustments as promised by law, judges being denied the adjustments prescribed by the Ethics Reform Act due to the absence of special legislation, and Members of Congress cancelling their own scheduled cost of living adjustment. App. 21. (Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, Div. J., § 103, 123 Stat. 524).

The upshot is that, in Fiscal Years 2007 and 2010, federal judges were denied cost of living adjustments while virtually every other federal employee received one, including the high-level executive branch officials to whom judges are supposed to be linked for the purpose of annual salary adjustments. This is over and above the losses suffered by judicial officers from the cancellation of earlier adjustments due them under the Ethics Reform Act.

REASONS FOR GRANTING THE WRIT

When each layer of the above-described statutory scheme is peeled back, another constitutional violation reveals itself. First, Section 140 violates the Compensation Clause because it discriminates against federal judges, making it more difficult for them to obtain annual cost of living adjustments than virtually every other federal employee – including even political appointees in the executive branch and Members of Congress. This discrimination has existed since Section 140's enactment, but it has

resulted in actual pecuniary loss for the judges since Fiscal Year 2007, because in that year (and again in Fiscal Year 2010) judges were effectively singled out for denial of cost of living adjustments.

Second, even absent Section 140, Congress has repeatedly violated the Compensation Clause by canceling cost of living adjustments due under the Ethics Reform Act. Even if it may have been legally appropriate for Congress to enact eleventh-hour legislation to cancel cost of living adjustments that were due executive branch political appointees and Members of Congress under the Act, the Compensation Clause is a limitation on Congressional power that prohibits eleventh-hour legislation to cancel the adjustments due sitting Article III judges.

Finally, the problems described above are merely symptoms of a more fundamental constitutional defect in the system for adjusting judicial pay: the current system, by linking judicial salary adjustments to the salaries of political employees, violates the principle of separation of powers, which protects compensation for members of the judicial branch from being held hostage to the naked political considerations attendant with compensating political officials.

I. SECTION 140 VIOLATES THE COMPENSATION CLAUSE BECAUSE IT SINGLES OUT ARTICLE III JUDGES FOR ADVERSE TREATMENT IN THE AREA OF COMPENSATION.

The Compensation Clause "offers protections that extend beyond a legislative effort directly to diminish a judge's pay, say by ordering a lower salary." *United States v. Hatter*, 532 U.S. 557, 569 (2001). The Clause also protects against laws that "effectively single[ ] out . . . federal judges for unfavorable treatment" in their compensation. *Id.* at 561. Were this not so, the Compensation Clause could not effectively protect the independence of the judiciary, because "a legislature could circumvent even the most basic Compensation Clause protection" by enacting discriminatory compensation laws that "precisely but indirectly achieved the [same] forbidden effect" as a salary reduction. *Id.* at 569.

In *Hatter*, this Court struck down a statutory scheme that forced federal judges, along with a small number of other federal employees, to pay a tax that virtually no other federal employee was required to pay. *Id.* at 564, 572-73. Section 140 suffers from a similar constitutional defect. When considered in the context of the entire web of enactments governing federal salary adjustments, the upshot of Section 140 is that it makes it more difficult for federal judges to obtain a cost of living adjustment than virtually any other federal employee. The law provides that GS employees must receive an automatic adjustment

unless the President declares an emergency. FWS employees are guaranteed a prevailing wage, which by definition keeps up with (and often exceeds) the earnings of similar workers in the private sector. Federal law provides that high-level political appointees in the executive branch are to receive an automatic adjustment if GS employees receive theirs. So too for Members of Congress. But even if the conditions are met for all these federal employees to obtain cost of living adjustments – and even if they all actually receive cost of living adjustments – federal judges do not receive an adjustment unless Congress takes the extra step of enacting special legislation to authorize one for them. Section 140 thus "singles out judges for adverse treatment" and, in so doing, violates the Compensation Clause. *Id.* at 574.

And although this discrimination manifests itself each year (because the judges face the same barrier each year), the discrimination inflicted by Section 140 has, since 2007, resulted in actual pecuniary loss for the judges. Prior to 2007, whenever Congress cancelled the adjustments mandated by the Ethics Reform Act, it did so for all three sets of federal employees that the Act sought to join at the hip: executive branch political appointees, Members of Congress, and federal judges. However, for Fiscal Year 2007, and again for Fiscal Year 2010, Congress *did not* outright cancel the cost of living adjustment called for by the Ethics Reform Act. Instead, it allowed the adjustment to take effect for the numerous

executive branch political employees, declined to enact legislation pursuant to Section 140 to allow the judges to receive their adjustment, and cancelled the adjustment only for Members of Congress. Thus, as in *Hatter*, these two years saw the federal judiciary and a relatively small handful of other federal employees (namely, Members of Congress) singled out for adverse treatment in the area of compensation.

It is no answer to say that judges did not suffer compensation "discrimination" in Fiscal Years 2007 and 2010 because Members of Congress also denied themselves cost of living adjustments. First, as already discussed, *Hatter* also involved a situation where the judges were singled out for adverse treatment along with a handful of other federal employees. *Hatter*, 532 U.S. at 564, 572-73. Here, the GS employees and FWS employees received cost of living increases, and hundreds of executive branch political appointees from agencies all throughout the federal government[4] were given preferential treatment over judges even though the Ethics Reform Act called for the two groups to be treated equally. Second, the events of Fiscal Years 2007 and 2010 show that it is *even more* difficult for judges to obtain their salary adjustment than Members of Congress, because affirmative action is required to deny the Members their promised adjustment, while mere inaction will deprive judges of the same adjustment. Third, in these

[4] *See* 5 U.S.C. § 5312-17.

two fiscal years, but for Section 140, the judges would have received their adjustments automatically pursuant to the Ethics Reform Act, just as the executive branch political appointees did (and just as virtually every other federal employee did). That Members of Congress also chose to take affirmative action to cancel their adjustment does not change the fact that the judges were denied their adjustment because, and only because, of a statute that singles them out for adverse treatment. This is discrimination in compensation.

Nor is it an answer to say Congress did not actually intend to discriminate against judges. There is no reason to believe that Congress, during the decades-long process of creating the multi-layered statutory scheme that exists today, intentionally sought to punish or retaliate against the judiciary. But as explained in *Hatter*, "this Court has never insisted upon such evidence. . . . If the Compensation Clause is to offer meaningful protection . . . we cannot limit that protection to instances in which the Legislature manifests, say, direct hostility to the Judiciary." 532 U.S. at 577.[5]

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[5] In any event, Members of Congress readily acknowledge that the current system discriminates against federal judges. Senator Feinstein, who with Senators Hatch, Leahy and Graham has introduced legislation to repeal Section 140 and link automatic salary adjustments for judges to GS employees rather than political employees, stated: "The way the pay system works now, federal judges are at a stark disadvantage each year for receiving a cost-of-living adjustment to keep their salaries in

(Continued on following page)

II. REGARDLESS OF SECTION 140, CONGRESS VIOLATES THE COMPENSATION CLAUSE EACH TIME IT ENACTS LAST-MINUTE LEGISLATION CANCELING COST OF LIVING ADJUSTMENTS DUE JUDGES UNDER THE ETHICS REFORM ACT.

In the numerous years prior to 2007 in which Congress cancelled the cost of living adjustments due under the Ethics Reform Act, the cancellations may not have been "discriminatory" in the Compensation Clause sense, because the entire group of federal employees covered by the Act were subject to the cancellations. *See* Pet. 8-9 (citing statutes). In other words, unlike in Fiscal Years 2007 and 2010 when Section 140 caused the denial of the judicial salary adjustment, in the prior years the judges would have, even absent Section 140, been part of the larger group denied cost of living adjustments. Nonetheless, these prior cancellations also violated the Compensation Clause. As petitioners ably show, the Framers could not possibly have envisioned, and the Compensation Clause cannot possibly tolerate, a scenario in which Congress sets a definitive formula for judicial

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pace with inflation. While most federal civilian employees receive an automatic cost-of-living adjustment, federal judges do not. Instead, they currently receive an adjustment only if Congress passes a special law and also provides an adjustment for itself. Judicial salaries should not be ensnared in Congressional-pay politics. Judges should simply be on the same system that other federal employees are." 155 Cong. Rec. S11,050 (daily ed. Nov. 3, 2009) (statement of Sen. Feinstein).

compensation – a formula that members of the judiciary by any reasonable standard had the right to expect and rely upon – only to repeatedly cancel the scheduled increases at the eleventh hour.

Rather than repeating the arguments in the petition, we simply add one point here. The United States, both below and in the *Williams* litigation, relied heavily on then-Chief Justice Burger's opinion in *United States v. Will*, 449 U.S. 200 (1980). That opinion contains language, not necessary to the result reached, that might be read to suggest Congress is *always* free to alter, for the worse, a formula for judicial compensation, so long as the alteration occurs before the relevant fiscal year begins. Specifically, the *Will* Court, justifying its holding that Congress could permissibly deviate from the indefinite formula at issue in that case prior to the start of the fiscal year, stated: "To say that the Congress could not alter a method of calculating salaries before it was executed would mean the Judicial Branch could command Congress to carry out an announced future intent as to a decision the Constitution vests exclusively in the Congress." 449 U.S. at 228.

To the extent this statement is read to suggest that Congress may *never* make a binding salary commitment to the judicial branch for future years, it is simply wrong. It is true that, as a general rule, one Congress may not bind the authority of its successors. But sometimes this general rule is trumped by a specific constitutional provision that does, in fact, limit the power of one Congress to undo the promises

of a previous Congress. *See, e.g., Perry v. United States*, 294 U.S. 330, 349 (1935) (U.S. Const. art. 1, § 8, cls. 2, 5), *Lynch v. United States*, 292 U.S. 571, 579 (1934) (U.S. Const. amend. 5). The Compensation Clause is one such limitation on Congressional power, albeit an extremely narrow one. In the limited area of judicial compensation, the Clause creates a "one-way compensation ratchet" to protect against encroachments upon judicial independence, preventing Congress from canceling, at the eleventh hour, judicial compensation that was previously prescribed by statute. *Williams v. United States*, 535 U.S. 911, 914 (2002) (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). In suggesting that the general rule preventing current Congresses from binding future ones should necessarily trump the more specific and narrow limitation the Compensation Clause was designed to impose, the *Will* Court got it exactly backwards.

None of this is to say that when Congress sets compensation for judicial officers, it is bound in perpetuity to provide compensation at that level or greater. Congress may alter judicial compensation, even for the worse. It simply must do so prospectively, so that it does not strip *existing* judges of the package of compensation and benefits that the law promised them when they were appointed. A prospective reduction in compensation would appear to pose no threat to judicial independence, and would disturb no settled expectation held by sitting judicial officers. But the power to cancel compensation to sitting

judges that the law promised them when they were appointed is very much a threat to judicial independence, and very much disturbs the expectations of Article III judges.

To the extent *Will* is construed (as the United States appears to do) as granting Congress the unfettered power to diminish compensation promised by law to existing judges, the Court should revisit the matter in this case. Otherwise, the Compensation Clause could become so toothless as to be unable to protect against *any* reduction or elimination of future judicial compensation presently promised by law to sitting judges, such as, for example, retirement benefits.

III. A SYSTEM THAT MAKES JUDICIAL COST OF LIVING ADJUSTMENTS DEPENDENT PURELY ON THE FATE OF COMPENSATION FOR POLITICAL EMPLOYEES VIOLATES THE PRINCIPLE OF SEPARATION OF POWERS.

The violations discussed above are symptomatic of a more fundamental constitutional flaw in the current system for compensating judicial officers. The flaw is that "automatic" salary adjustments for judges are dependent upon the receipt of salary adjustments by political employees. By holding judicial compensation hostage to the very politics from which the Constitution insulates the judiciary, the current system violates the principle of separation of powers.

"[T]he doctrine of separation of powers is a *structural safeguard* rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified. In its major features . . . it is a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995). Thus, a statutory scheme violates the principle of separation of powers when it "undermine[s] the authority and independence of one or another coordinate Branch." *Mistretta v. United States*, 488 U.S. 361, 382 (1989). *See also INS v. Chadha*, 462 U.S. 919, 963 (1983) (Powell, J., concurring). As regards the judiciary, the separation of powers principle ensures that "no provision of law 'impermissibly threatens the institutional integrity of the Judicial Branch.'" *Mistretta*, 488 U.S. at 383 (quoting *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986)).

The current system of judicial compensation, by linking automatic cost of living adjustments for members of the judicial branch to the politics of compensation for political employees, "impermissibly threatens the institutional integrity of the Judicial Branch." *Id.* As events of the past several decades have shown, if a cost of living adjustment for political employees – particularly Members of Congress – is a prerequisite to the attainment of a similar salary adjustment by Article III judges, that adjustment often will not come. And as shown by the amicus

curiae briefs of the Federal Circuit Bar Association, et al. and the Federal Judges Association, the failure to adjust judicial salaries to maintain at least reasonable pace with the cost of living, and to maintain at least a reasonable relationship to private sector salaries, weakens the judiciary by diminishing its ability to retain experienced judges and to attract new, highly-qualified applicants to the bench.

The one appellate court to consider this issue has squarely held that separation of powers principles are violated when the political branches make a salary adjustment for legislators a prerequisite to a salary adjustment for judges. In *Maron v. Silver*, 14 N.Y. 3d 230, 260 (2010), six of the seven Justices of the Court of Appeals of New York held that "by failing to consider judicial compensation independently of legislative compensation, the State defendants have imposed upon the Judiciary the same restrictions that have been imposed on the Legislature, and have blurred the line between the compensation of the two branches, thereby threatening the structural independence of the Judiciary." The Court emphasized the judiciary's "unique place in the constitutional scheme," stating that the "legitimate needs of the judicial branch" will not receive constitutionally appropriate attention if the judiciary is held hostage to the politics of compensation for legislators. *Id.* at 259.

The holding of the Court of Appeals of New York applies equally, if not more strongly, to the federal system. Federal judges do not run for election. They

do not raise funds for candidates or causes. They do not participate in political campaigns or otherwise engage in political activity. They cannot be removed from office for political reasons. They are, in effect, insulated from politics. Yet their annual salary adjustments, rather than being linked to the other nonpolitical employees of the federal government, are entirely "ensnared in Congressional-pay politics."[6] Holding judicial pay hostage to the political considerations attendant with giving pay increases to political officials is inconsistent with the role federal judges play in our constitutional system, and as such it violates the principle of separation of powers. Should the Court grant certiorari, it should do so to consider this question as well.[7]

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[6] Statement of Sen. Feinstein, *supra* note 5.

[7] The Court has discretion to consider arguments raised for the first time in an *amicus curiae* brief. *See* Eugene Gressman, et al., Supreme Court Practice, 741 & n.63 (9th ed. 2007) (citing cases). Moreover, this pure question of law is fairly included within – indeed it is intertwined with – the question presented by the petition within the meaning of Rule 14.1(a) of this Court, because, as petitioners put it, the Framers included the Compensation Clause "in the Constitution as a bulwark of judicial independence integral to the separation of powers." Pet. 16. *See also* Pet. 1 (" . . . judicial independence hinges in part on insulating judicial compensation from the political process").

IV. THE CONSTITUTIONAL PROBLEMS PRESENTED BY THIS CASE REQUIRE THE COURT'S IMMEDIATE ATTENTION.

The judicial pay crisis is showing no sign of being resolved by the political branches. Indeed, as the web of statutory provisions affecting judicial pay has become more tangled, the crisis has worsened, and the constitutional problems have become more acute. What once was a system in which judicial compensation often fell victim to politics (itself a constitutional problem) is now a system in which judges are singled out for adverse treatment and denied cost of living adjustments promised them by law even when virtually all federal workers, including executive branch political appointees, receive theirs. Meanwhile, judicial compensation continues to drop, both in real terms and, more importantly, in relation to private sector salaries. Any hope that existed in 2001, when the Court denied the petition for certiorari in *Williams*, that this crisis would resolve itself without high court intervention should now be long gone.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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Respectfully submitted,

VINCE CHHABRIA
Deputy City Attorney
City and County of San Francisco

Attorney for Amicus Curiae
The International Municipal
Lawyers Association