

A Note from the Chair

As I write, the partial shutdown of the federal government has ended or, at a minimum, has been adjourned for several weeks. The legal community was lucky this time—the effects on the federal judiciary were limited, largely due to the remarkable work of chief judges and administrative staff who were able to ensure that the courts remained open and funded through the course of the shutdown. But it was a close call, and had the shutdown not ended the courts would have suffered the same impact as other parts of the government—furloughed employees, others required to work without pay, and a reduction in services to the public.



I express no position here on the politics of the issues that led to the shutdown—I do not see that as within the scope of my role as Chair of this august Section. But in this forum I think we are compelled to recognize what almost came to pass in the realm we occupy—the legal forum and the administration of justice—and to do what we can to ensure it does not happen again.

Once the judiciary ran out of funds, the impact would have been immediate. Article III judges would have continued to receive their salaries, as required under the Constitution, but all other employees of the judicial

branch would have gone unpaid—some sent home after being deemed “nonessential,” and others forced to work with no pay until the resolution of the shutdown. Then, the stresses placed on other government workers—we all have heard stories of individuals who took on second jobs, drove for Uber or Lyft, or simply were unable to pay their bills—would have been visited on employees of the judiciary. And while our colleagues in the courts would no doubt have made extraordinary efforts to keep the wheels of justice turning, inevitably we and our clients would soon have experienced a direct impact.

This cannot be permitted to happen to the judicial branch again. The judiciary is, of course, a co-equal branch of government, but it had no role in this battle between the executive and legislative branches. The Constitution protects Article III judges from a decrease in salary, but not the rest of the many thousands of employees who ensure that justice is done on a daily basis. And, if there is a next time, the impact on clients and the administration of justice could be severe.

Our New York Congressional representatives opposed the shutdown, and there are now discussions regarding the possibility of legislative action to ensure that government shutdowns do not occur in the future. I submit that whatever the outcome of those efforts, the judiciary must not be a pawn in any future budget battles. Our bar association, other bar associations around the country, and individual attorneys should support action to insulate the judiciary from any future shutdown. And if there is a next time, we should be vocal supporters of the judicial branch and opponents of any shutdown potentially impacting its operations.

Robert N. Holtzman

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