# Court Clog

#### Caseloads low and declining, but on the brink.

**Roeder**  **16** Oliver May 17, 2016 "The Supreme Court’s Caseload Is On Track To Be The Lightest In 70 Years" FiveThirtyEight

In one sense, Monday was a noisy news day at the Supreme Court. It handed down decisions in six cases, including yet another challenge to Obamacare, which the court essentially punted, sending the challenge back to various federal appeals courts. But in another sense, it was a day as quiet as Clarence Thomas during oral argument. The court agreed to hear exactly zero new cases, continuing to set a sparse stage for its next term, which may see the lightest caseload in its already-light recent history. **So far, only 12 cases are on the court’s docket for the October 2016 term, which runs through June 2017**.1 **That number is far below the pace that we averaged in the 1980s and ’90s**. And if the first few months of the year are an indication, **the upcoming court term may be the lightest in at least 70 years**. **The long, downward trend in the court’s caseload began around 1980, when it routinely heard over 150 cases a term**. **These days,** **it hears about half that many**. **In 2014, the court heard 71 cases, the fewest since at least World War II**, according to the Supreme Court Database. **Now that record looks in danger of falling**. **The court still has ample time to add cases to next term’s docket** — indeed, it often adds many between May and October — **but its pace of granting cases for next term is lagging**, as the adjacent chart, based on data from SCOTUSblog’s Kedar Bhatia, shows. Over the past five terms, the court had added nearly 18 cases to the next term’s docket by this point in May, on average. Thus far this term, they’ve granted just 12.

#### Courts have heavy burdens now and are on the brink—one big push causes collapse of the judiciary and democracy.

**Bannon 13** Alicia Bannon, serves as counsel for the Brennan Center’s Democracy Program, where her work focuses on judicial selection and promoting fair and impartial courts. Ms. Bannon also previously served as a Liman Fellow and Counsel in the Brennan Center’s Justice Program. J.D. from Yale Law School in 2007, where she was a Comments Editor of the Yale Law Journal, “Testimony: More Judges Needed in Federal Courts,” September 10, 2013, http://www.brennancenter.org/analysis/testimony-federal-courts-need-more-judges

**While the current high level of judicial vacancies partially explains this high per-judge burden**, even if every existing vacancy were filled, **the existing workload per sitting judge would still exceed historical levels**, as reflected by the red line in Figure 2. In contrast, the green line estimates what per-judge caseloads would be if all 2009-2013 vacancies had been filled and Congress had created 85 additional district court judgeships (the number of additional permanent and temporary judgeships proposed in the Act). As Figure 2 demonstrates, authorizing these additional 85 judgeships is necessary to restore the number of pending cases per sitting judge to the level of the late 1990s. **The growing workload in district courts around the country negatively impacts judges’ ability to effectively dispense justice, particularly in complex and resource-intensive civil cases, where litigants do not enjoy the same “speedy trial” rights as criminal defendants**. For example, the median time for civil cases to go from filing to trial has increased by more than 70 percent since 1992, from 15 months to more than two years (25.7 months). **Older cases are also increasingly clogging district court dockets**. Since 2000, cases that are more than three years old have made up an average of 12 percent of the district court civil docket, compared to an average of 7 percent from 1992-1999. For a small company in a contract dispute or a family targeted by consumer fraud, **these kind of delays often mean financial uncertainty and unfilled plans, putting lives on hold as cases wind through the court system**. All too often, justice delayed in these circumstances can mean justice denied. These patterns of delay are starkly reflected in the districts for which additional judgeships are recommended, many of which lag behind the national average in key metrics. In the Eastern District of California, for example, the median time for civil cases to go from filing to trial is almost four years (46.4 months). This district would receive six additional permanent judgeships and one additional temporary judgeship under the Act. In the Middle District of Florida, over 23 percent of the civil docket is more than three years old. This district would receive five additional permanent judgeships and one additional temporary judgeship under the Act. The federal courts are a linchpin of our democracy**, protecting individual rights from government overreach, providing a forum for resolving individual and commercial disputes, and supervising the fair enforcement of criminal laws. In order for judges to perform their jobs effectively,** however, **they must have manageable workloads.** The Brennan Center urges Congress to promptly pass the Federal Judgeship Act of 2013, so as to ensure the continued vitality of our federal courts.

#### Judicial resources are overstretched but qualified immunity doctrine allows quick dismissal of frivolous suits – the plan would clog the courts

Putnam and Ferris 92DEFENDING A MALIGNED DEFENSE: THE POLICY BASES OF THE QUALIFIED IMMUNITY DEFENSE IN ACTIONS UNDER 42 U.S.C. § 1983” BRIDGEPORT LAW REVIEW QUINNIPIAC COLLEGE Volume 12 Number 3 Spring 1992

A second policy consideration present in section 1983 litigation and furthered by the qualified immunity defense is the limiting of overdeterrence. Increasingly, courts are sensitive to the possibility that state and local government officials, because they are so often targets of section 1983 actions, are being improperly deterred in the performance of their duties.1 " The Supreme Court's absolute and qualified immunity decisions demonstrate its desire to reduce not only the incidence of official liability but the financially burdensome costs of defense, as well.14 **National resources are** obviously **scarce**, **yet increasing numbers of section 1983 actions are being filed in overburdened federal courts**. **Reducing the load of these cases on the court system is** a third **essential** policy consideration. Some **courts have questioned whether the abundance of section 1983 cases in federal courts is an efficient use of judicial resources** in light of the perception that many such actions are of questionable merit."6 **The** **Supreme Court has thus encouraged the use of summary judgment where courts are faced with such cases**. For instance, in Butz v. Economou, 7 the Court held: **Insubstantial lawsuits can be quickly terminated by federal courts** alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive a motion to dismiss. Moreover, the Court recognized in Scheuer that damages **suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on** the defense of **immunity**.... In responding to such a motion, plaintiffs may not play dog in the manger; and firm **application of the Federal Rules of Civil Procedure will ensure that federal officials are not harassed by frivolous lawsuits**.18 The **courts' use of summary judgment** and other procedural devices **is** thus **an important safety measure** for both the courts and defendants facing suit. Finally, **because it creates a monetary damages action for constitutional violations, section 1983 may encourage plaintiffs' attorneys to push a number of constitutional provisions to their outer limits.** The presence of **further incentives**, such as the availability of attorney's fees, **creates** an additional **inducement to plaintiffs' lawyers who** may **read the Constitution too expansively. Such incentives** tend to propagate constitutionally trivializing actions**. The avoidance of these constitutionally unworthy cases is the** fourth major **objective of** the **qualified immunity** defense in section 1983 litigation.'9 The Court voiced this concern in Baker v. McCollan.20 In Baker, the Court held that "[s]ection 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law."'" **To protect against such trivialization, the** United States Supreme **Court has established that merely negligent conduct does not implicate the Due Process Clause** and is therefore not actionable under section 1983.2

#### Court clog turns case – hinders justice and rights protection and hurts the economy

**Leahy 12** Sen. Patrick Leahy (D-VT). “Statement Of Senator Patrick Leahy On The Nominations Of Mary Elizabeth Phillips To The Western District Of Missouri And Thomas Owen Rice To The Eastern District Of Washington.” March 6th, 2012. <http://www.leahy.senate.gov/press/statement-of-senator-patrick-leahy-on-the-nominations-of-mary-elizabeth-phillips-to-the-western-district-of-missouri-and-thomas-owen-rice-to-the-eastern-district-of-washington>

While consensus judicial nominations are stalled without a final vote by the Senate, millions of Americans across the country are being harmed by delays. The American people and our Federal courts cannot afford these unnecessary and damaging delays. As the ABA president noted last week: “Backlogs mean justice delayed **in cases involving protection of individual rights, advancement of business interests**, compensation of injured victims **and enforcement of federal laws.** **Longstanding vacancies** on courts with staggering caseloads impede access to the courts. They **create strains** **that**, if not eased, **threaten** **to** reduce the quality of our justice system. **They erode confidence in the courts’ ability to uphold constitutional rights and render fair and timely decisions. Delay at the federal courts puts** **people’s lives on hold while they wait for their cases to be resolved.** Businesses face uncertainty and costly holdups, preventing them from investing and creating jobs. In sum, judicial vacancies kill jobs. Justice delayed, as the famous maxim goes, is justice denied**. It’s bad for business, it’s unfair to individuals, and it slows government enforcement actions, which ultimately costs taxpayers money.”**

#### Also – court clog hurts minorities and kills civil rights litigation

**Brunt 15** Alexa Van Brunt, "Poor people rely on public defenders who are too overworked to defend them" Guardian, http://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked, June 17, 2015

Money can buy you a great defense team, but what if you can’t afford one? More than [80% of those charged with felonies](http://goo.gl/juSlp5) are indigent. As a result, **they are unable to hire an attorney and instead rely on representation by a public defender**. Public defenders are, as a general matter, the hardest working sect of the legal bar. But our **nation’s public defender systems have long been plagued by** [**underfunding and excessive caseloads**](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf). In Florida in 2009, the [annual felony caseload](https://www.acslaw.org/files/BennerIB_ExcessivePD_Workloads.pdf) per attorney was over 500 felonies and 2,225 misdemeanors. According to the US Department of Justice, in 2007, [about 73%](http://www.bjs.gov/content/pub/pdf/clpdo07.pdf) of county public defender offices exceeded the maximum recommended [limit](http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Defense#thirteentwelve) of cases (150 felonies or 400 misdemeanors). Too often, those who are poor receive lower quality defense than those who have the means to pay. The **on-going decimation of public defense prevents defense attorneys from conducting “**[**core functions**](http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam.pdf)**,” including factual investigation into the underlying charge**s. In a lawsuit brought in Washington State, it emerged that publicly appointed defense attorneys were [working less than](http://thinkprogress.org/justice/2013/12/05/3025441/federal-judge-agrees-overworked-public-defenders-warm-body-law-degree/) an hour per case, with caseloads of 1,000 misdemeanors per year. This state of affairs also [leads to](http://www.twincities.com/ci_15799495) exorbitant [trial delays](http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf). Consequently, roughly [500,000](http://www.yalelawjournal.org/essay/pretrial-detention-and-the-right-to-be-monitored#_ftnref1) pre-trial detainees sit in jail year after year before being adjudged guilty of any crime. **This makes a mockery of the innocent-until-proven-guilty principle so sacred to our system of justice**. Just two years ago, then-Attorney General Eric Holder acknowledged that the country’s indigent defense systems were “[in a state of crisis](http://www.theatlantic.com/national/archive/2013/03/eric-holder-a-state-of-crisis-for-the-right-to-counsel/274074/).” **Overworked and poorly prepared attorneys** [**were unable to provide effective representation**](http://www.nlada.org/Defender/Defender_Gideon/Defender_Gideon_5_Problems) **to those they counsel, in** [**violation of**](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAAahUKEwiv_Yf77YXGAhWIfJIKHXHcAFM&url=https://www.nacdl.org/WorkArea/DownloadAsset.aspx?id%3D22024%26libID%3D21994&ei=vo94Va-mNIj5yQTxuIOYBQ&usg=AFQjCNEndTL0MxU61mXkVDXZlnAFWIyvRg&sig2=_1HxzyxKB54ZnXCTRbpOHw) **their ethical obligations to provide competent and diligent representation and their clients’ rights** under the Sixth Amendment. Holder’s words came on the 50th anniversary of [Gideon v Wainwright](http://en.wikipedia.org/wiki/Gideon_v._Wainwright), in which the Supreme Court held that states are constitutionally required to provide counsel to defendants unable to afford to hire their own. Four years later, the Supreme Court [ensured](http://en.wikipedia.org/wiki/In_re_Gault) the same right for juveniles. Gideon prompted the widespread creation of public defender systems on which so many rely. Yet, **the conditions underlying Holder’s condemnation of public defense systems persist**. Though funding for indigent defense systems [vary](http://www.bjs.gov/content/pub/pdf/idsus0812.pdf) by state, such systems are unified in being cash-strapped. Louisiana has had ongoing problems with the funding of its public defender systems since at least 1986 ([controversially](http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor), Louisiana public defense [is supported by](http://www.nola.com/news/baton-rouge/index.ssf/2015/03/public_defender_baton_rouge.html) the court costs and fines paid by public defenders’ own clients). Ten judicial districts in the state are slated [to run out of funds](http://www.thenewsstar.com/story/news/local/2015/03/15/louisiana-faces-another-public-defender-funding-crisis/24814909/) to pay their public defenders as early as this month. Other parishes have already implemented “[restricted services plans](http://www.nola.com/news/baton-rouge/index.ssf/2015/03/public_defender_baton_rouge.html)” – meaning public defenders are refusing to take on new cases. Indeed, in recent years public defenders in [Missouri, Kentucky and Pennsylvania](http://www.npr.org/2014/05/29/316735545/why-your-right-to-a-public-defender-may-come-with-a-fee) have also **refused to represent new clients due to an overload of cases. The costs of relying on such overburdened attorneys to provide the primary assurance of a fair trial are significant. 95% of criminal cases** [**end in**](http://www.yalelawjournal.org/pdf/968_ob7yki3f.pdf) **plea bargaining. Excessive caseloads contribute to this trend, and result in a “**[**meet ‘em and plead ‘em**](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf)**” system of justice, in which clients have little more than a brief conversation in the courtroom with a harried public defender before pleading guilty**. In Chicago, where I practice as a civil rights litigator, people are [spending longer stints in jail](http://www.chicagoappleseed.org/wp-content/uploads/2012/06/CAFFJ-Pre-Trial-Delay-and-Length-of-Stay-Final.pdf) (an average of 56 days for those in on drug charges.) Part of the reason is the rampant use of continuances, a sign of an overworked public defender system. Consequently, pre-trial detainees incur a “trial tax” – those who decide to fight their case are forced to stay in jail longer than those who plead guilty. Rikers island survivor Kalief Browder [faced this same dilemma](http://www.newyorker.com/magazine/2014/10/06/before-the-law). T**here are also clear racial implications to the poor health of public defender systems. Black people are** [**disproportionately caught up**](http://sentencingproject.org/doc/publications/rd_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf) **in the criminal justice system**. In 2011, black Americans – 12% of the US population – constituted 30% of persons arrested for a property offense and 38% of persons arrested for a violent offense. **This group bears the brunt of our public defender systems’ underfunding and overwork.**

#### Turns and outweighs the case

#### A. Caseloads take longer which limits the aff’s solvency because police won’t be held accountable if judges can’t do their jobs

#### B. Hurts the minorities the most because they are left with public defenders who don't do their job either