

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

23215

FILE: B-207501

DATE: September 27, 1982

MATTER OF: William E. Foley, et al., -  
Application of "Pay Caps" to Three  
Judicial Branch Positions

**DIGEST:**

Salaries of the Directors of Administrative Office of the United States Courts and Federal Judicial Center and the Administrative Assistant to the Chief Justice are by statute linked to the salary of a Federal district judge. Under Article III of the Constitution, as interpreted by the Supreme Court, Federal district judges have received several recent pay increases, notwithstanding the enactment of pay caps limiting pay increases for executive, legislative, and judicial branch officials. Since district judges' salaries have increased, these three officials are entitled to the same increases, despite pay caps.

The issue presented is whether the "pay caps" contained in various appropriations acts since 1976 limit the salaries of three judicial branch employees whose pay is set by statute to be "the same as" the pay of a United States district court judge. We hold that the Director of the Administrative Office of the United States Courts, the Director of the Federal Judicial Center, and the Administrative Assistant to the Chief Justice, are not subject to the pay caps contained in recent appropriations acts to the extent that the pay caps do not apply to district judges. The three officials, by specific statutory authority, are to be paid "the same as" district judges whose pay has increased, despite the enactment of pay caps, because of the constitutional protection accorded Article III judges against diminution of their salaries.

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BACKGROUND

This decision is in response to a request from the Honorable William D. Ford, Chairman, Committee on Post Office and Civil Service, House of Representatives, requesting our review of the rates of pay set for the positions of Director, Administrative Office of the United States Courts, Director, Federal Judicial Center, and Administrative Assistant to the Chief Justice. Pursuant to Pay Order 82-2 issued by the Administrative Office of the United States Courts (47 Fed. Reg. 4715, February 2, 1982), these three positions now receive an annual salary of \$70,300 while Public Law 97-92, 95 Stat. 1183 (1981), places a "cap" on the salaries of top executive, legislative, and judicial branch employees at \$59,500. We have received a letter on this matter from the General Counsel of the Administrative Office of the United States Courts (hereinafter referred to as the Administrative Office) defending the higher salary rate for these three positions on the basis of the statutory provisions directly linking the pay of the three positions to the pay of a Federal district judge.

The Director of the Administrative Office is the administrative officer of the Federal courts. 28 U.S.C. § 604. Prior to 1967 his salary was fixed at a specific amount ranging from \$10,000 in 1939 to \$27,000 in 1964. See 28 U.S.C. § 603. In 1967, pursuant to section 213(d) of the Federal Salary Act, Public Law 90-206, 81 Stat. 613, 635 (1967), the Congress provided that his salary "shall be the same as the salary of a district judge." 28 U.S.C. § 603 (1970).

The salaries of the other two judicial branch officials which are in question are set by reference to the salary of the Director of the Administrative Office. The Director of the Federal Judicial Center receives compensation "the same as that of" the Director of the Administrative Office. See

28 U.S.C. § 626 (1976). The Administrative Assistant to the Chief Justice receives a salary fixed by the Chief Justice "at a rate which shall not exceed the salary payable" to the Director of the Administrative Office. 28 U.S.C. § 677(a) (1976). Since the salaries of the positions of Director of the Federal Judicial Center and Administrative Assistant to the Chief Justice are tied to the salary of the Director of the Administrative Office, we shall focus our discussion on the salary rate of this latter position.

The salaries of high-level executive, legislative, and judicial branch officials are subject to adjustment by two mechanisms. First, the Federal Salary Act of 1967, Public Law 90-206, Title II, 81 Stat. 613, establishes the mechanism for a quadrennial review of executive, legislative, and judicial salaries. See 2 U.S.C. §§ 351-361 (1970). Second, the Executive Salary Cost-of-Living Adjustment Act, Public Law 94-82, Title II, 89 Stat. 419 (1975), provides that salaries covered by the Federal Salary Act of 1967 will receive the same comparability adjustment on October 1 of each year as is made to the General Schedule under the provisions of 5 U.S.C. § 5305. See 5 U.S.C. § 5318. See also 28 U.S.C. § 461.

In 1976 the Congress imposed the first in a series of "caps" on executive, legislative, and judicial branch salaries by limiting the use of appropriated funds to pay the salaries referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. § 356), to the rate payable on September 30, 1976. See Public Law 94-440, Title II, October 1, 1976, 90 Stat. 1439. The one flaw in this legislation with respect to Federal judges covered by Article III of the Constitution was that the pay cap was held by the Supreme Court to have "diminished" the compensation of Federal judges which, by operation of Public Law 94-82, automatically increased by 4.8 percent on October 1, 1976. In United States v. Will, et al., 449 U.S. 200 (1980), the Supreme Court held that Public Law 94-440 violated the compensation clause of Article III of the Constitution by purportedly repealing a pay increase that had already taken effect.

Pay cap legislation was passed in 1977 and 1978 to prevent the scheduled October increases from taking effect as intended on the salaries of high-level executive, legislative, and judicial branch employees. Since these appropriation act limitations were enacted prior to the October 1 effective date, they were not found to be unconstitutional with respect to Federal judges. United States v. Will, 449 U.S. 200, 226-229. See also Public Law 95-66, July 11, 1977, 91 Stat. 270; Public Law 95-391, § 304(a), September 30, 1978, 92 Stat. 763, 788-789.

In 1979 the pay cap legislation contained in a continuing appropriations act was not enacted until after October 1. See Public Law 96-86, § 101(c), October 12, 1979, 93 Stat. 656, 657-658. The Supreme Court ruled in Will that although the language of the 1979 pay cap referred to "executive employees," the limitation was intended to apply to judges as well as other high-level Federal officials. 449 U.S. 200, 229-230. As was the case in 1976, the Supreme Court ruled in Will that the 1979 pay limitation violated Article III of the Constitution with respect to Federal judges. 449 U.S. 200, 230.

Pursuant to the Will decision, the salaries of Federal judges were also increased in 1980 and 1981. The pay limitation in 1980 was contained in Public Law 96-369, § 101(c), October 1, 1980, 94 Stat. 1351, 1352, and it resulted in a pay increase for Federal judges of 9.1 percent. See Executive Order 12,248, 45 Fed Reg. 69,199 (1980). Similarly, Federal judges received a 4.8 percent pay increase in 1981 since the pay limitation was contained in Public Law 97-51, § 101(c), October 1, 1981, 95 Stat. 958. See Executive Order 12,330, 3 C.F.R. 188, 196 (1982).

Since the Supreme Court's decision in Will, the salary rates of the Director of the Administrative Office and the other two positions have been increased consistently with that of the district judges, and that salary is now set at \$70,300.

OPINION

The language of 28 U.S.C. § 603 is clear and unambiguous in providing that the salary of the Director of the Administrative Office shall be "the same as" that of a district judge. Our review of the pay cap legislation from 1976 to 1981 reveals no express reference to the Director's salary and no attempt to amend or repeal section 603.

The key issue is whether the intent of the Congress to link the pay of the Director and district judges or the intent of Congress to apply the pay cap to the Director is paramount. After a review of the two acts, and their legislative history, we have concluded that the linkage of the pay of the two positions is paramount.

The recent pay caps have limited or prevented annual pay increases for Federal executives under the Executive Salary Cost-of-Living Adjustment Act. However, the three judicial branch positions in question are not included under the latter authority since the Act, Public Law 94-82, enumerates the eight judicial officers who are subject to the annual adjustment, including district judges. See 28 U.S.C. § 461. We have held that this authority is limited to the eight judicial officers expressly mentioned (not including these three positions), and does not therefore apply to other judicial officers such as magistrates and jury commissioners. 55 Comp. Gen. 1077 (1976).

There remains, however, a conflict between the application of a pay cap which purportedly covers all high-level executive, legislative, and judicial branch employees and the language of a specific statute which provides the salary of a position shall be "the same as" that of a district judge. As noted by the report from the Administrative Office, repeals by implication are not favored. Posadas v. National City Bank, 296 U.S. 497, 503 (1936). In addition, without clear intention, a specific statute will not be controlled or nullified by a general statute, regardless of the priority of enactment. Morton v. Mancari, 417 U.S. 535, 550-551 (1974), as quoted in Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976).

We further note that the Congress, in the Federal Salary Act of 1967, set the salary of the Deputy Director of the Administrative Office at level V of the Executive Schedule. See 28 U.S.C. § 603 (1970). By setting the salary of the Director at a rate "the same as" a district judge, the Congress evidently intended to link the salary to a comparable judicial position rather than to the Executive Schedule. We do not believe it is appropriate to undo that linkage in the absence of clear congressional intent to repeal or limit the operation of 28 U.S.C. § 603.

We believe the same analysis applies to the positions of Director, Federal Judicial Center, and Administrative Assistant to the Chief Justice. Neither 28 U.S.C. § 626 nor 28 U.S.C. § 677(a), which link the salary of these two positions to the salary of the Director, Administrative Office, have been repealed or amended by the pay cap legislation.

As noted above, the most recent pay cap contained in Public Law 97-92 limits pay for positions in the Executive Schedule or positions which "correspond" to those rates of pay. See Public Law 97-92, §§ 101(g) and 141. The three judicial branch positions are not positions in the Executive Schedule and their salaries do not "correspond" to the rates of pay of the Executive Schedule. Instead, by statute, they are linked to the pay of a district judge.

Accordingly, we conclude that, despite the general application of the pay caps, the salaries of these three judicial branch positions have been properly set at a rate "the same as" that of a district judge.

*Harry R. Van Cleve*

for  
Comptroller General  
of the United States