

The Continuing Saga of the Administrative Conference of the United States: Reauthorized But Not Yet Funded

By Warren Belmar*

In a rare example of overwhelming bipartisan support in the 108th Congress, the House and Senate each passed by unanimous consent, and President Bush on October 30, 2004 signed, H.R. 4917, the "Federal Regulatory Improvement Act of 2004," (P.L. 108-401), a bill authorizing appropriations for the Administrative Conference of the United States (ACUS) for Fiscal Years 2005, 2006, and 2007. This legislation, championed by Congressman Chris Cannon, Chairman of the House Judiciary Subcommittee on Commercial and Administrative Law, and 34 co-sponsors, ended a 9-year hiatus during which ACUS's infrastructure of chairman, council, staff, and public and private sector members and consultants, had been disbanded due to lack of funding. However, securing funding in the next Congress for the ACUS authorization for Fiscal Year 2005 and subsequent years presents a great challenge in these times of record-breaking federal deficits.

The Section of Administrative Law and Regulatory Practice has had a long history of cross-membership with ACUS, and has given its support to voluntary implementation of many of ACUS's recommendations. Accordingly, it is not surprising that our Section, and our past and present leaders, have actively participated in the 9-year effort to reauthorize ACUS. Indeed, it is safe to say that passage in the House and Senate, by unanimous consent or otherwise, would not have occurred without the supportive congressional testimony of Justices Antonin Scalia and Stephen Breyer, and

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former Section Chairs Phil Harter and C. Boyden Gray. It is now our turn to help secure funding for ACUS by recounting the innumerable accomplishments it achieved during its first 28 years, and identifying the ways in which it can continue such contributions today.

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ACUS had been established by The Administrative Conference Act, a bill signed in 1964 by President Johnson, as a permanent body to identify the causes of inefficiency, delay, and unfairness in administrative proceedings affecting public rights, and to recommend improvements to the president, the agencies, the Congress, and the courts. Starting in January 1968, with the appointment of its first chairman, and continuing for the next 28 years, ACUS achieved these purposes by bringing together the talents of a diverse group of senior agency officials, uncompensated private practitioners and academics, and a small but extremely competent staff, who worked together to craft recommendations which, by virtue of their merit,

were voluntarily adopted by various agencies, the Congress, and the courts.

ACUS's past achievements and potential future contributions were summarized in a short Congressional Research Service (CRS) study dated October 7, 2004, prepared in response to a request from Chairman Cannon, as follows:

Its past accomplishments in providing non-partisan, non-biased, comprehensive and practical assessments and guidance with respect to a wide range of administrative agency processes, procedures, and practices are well documented (footnote omitted). Its reactivation would fill the current urgent need for an expert independent entity to render relevant, cost-beneficial assistance with respect to complex and sensitive administrative process issues raised by 9/11 restructuring and reorganization efforts (*i.e.*, the creation of the Department of Homeland Security and the recommendation of the 9/11 Commission to establish a new intelligence structure) and the emergent transformation issues involving agency decisionmaking processes, procedures and practices that have arisen since 1995.

Section Chair Randy May has appointed former Section Chairs Warren Belmar and Phil Harter as co-chairs of an ad hoc Section committee to work with the ABA and others to urge the 109th Congress to provide funding for ACUS in accordance with the authorizations passed by the 108th Congress. Those interested in helping in this effort should contact them directly. ○