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“Budget Crisis: Federal Courts and the Rule of Law”

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1. President Yilmaz, Professor Feyzioglu, I am honored to join you today and to have the opportunity to begin a dialogue with the Turkish Industry and Business Association. I hope this relationship will continue to grow in the years to come. Turkey is among the brightest economic lights in today’s world.
2. The American Bar Association is the global voice of the legal profession. We are nearly 400,000 members strong. We celebrate our international membership, including lawyers in Europe, Asia and around the world. The ABA began in the United States, and that is where my remarks will focus today.
3. I have been asked to provide an overview of the political landscape of my country, specifically the fiscal give-and-take inherent to democracy in the United States. My comments will touch on the October 2013 federal government shutdown and the wider challenge U.S. federal courts face regarding inadequate funding.
4. The structure of the U.S. government bears some resemblance to the government of Turkey. As in Turkey, the United States divides the powers of state among the branches of government, and both of our countries recognize the importance of an independent

judiciary. The U.S. Congress creates budgets for the government, but the President must consent to the spending plan.

5. As in Turkey, the government of the United States benefits from a multiparty system, whereas European democracies typically feature many different parties with more specialized interests. In the U.S., the Democratic and Republican parties have broad platforms that promote comprehensive economic and social agendas.
6. Currently, the U.S. House of Representatives is controlled by the Republicans, the Senate is controlled by the Democrats and President Barack Obama is a member of the Democratic Party — which means we have a divided government. Neither party has the ability to enact its agenda without discussion and compromise.
7. It is in this political environment that the October 2013 U.S. government shutdown occurred.
8. The shutdown was prefaced by years of intense, last-minute budget negotiations that only narrowly averted crisis through compromise. Every fiscal budget is a battle over issues as broad as how to wage wars, and as small as things such as environmental studies.
9. But since President Obama's re-election in 2012, the budget process has grown more divisive and more contentious. Republicans have used budget negotiations to attempt to prevent President Obama from advancing his agenda. Democrats have waged a defensive battle, but with little positive response from the other side.

10. By September of 2013, both sides realized that the chance for stalemate and a government shutdown was very real. Influential members of the Republican Party decided to oppose any continuation of the budget process that provided funding for the nation's health care law.
11. The Affordable Care Act, a comprehensive overhaul of U.S. health care, was passed by a Democratic Congress and signed into law by President Obama in 2010. The law extended health care benefits to many Americans. Last fall, Republicans, some of whom were elected in part because of their opposition to the Affordable Care Act, declined to support a budget that funded the law. President Obama insisted that the Affordable Care Act was the law and that funds should be appropriated for it.
12. Neither side gave ground, and, as a result, the United States government shut down for 16 days.
13. Many underlying factors contributed to the October shutdown. Partisanship, certainly, was foremost. Democrats and Republicans have very different economic and social visions for the United States, and the budget process has become the forum for that debate.
14. Other dynamics also were in play. Many Republicans and Democrats believed a shutdown would benefit their party and their individual electoral standings. Some thought shutting down the work of the government would represent voter antipathy for the

administration of President Obama and his signature health care reforms. There was also a tide of brinksmanship. And, ultimately, both sides feared not only losing, but also that defeat would demoralize their supporters in this year's coming Congressional elections.

15. A more subtle undercurrent that accelerated these factors is the decline in civility and personal relationships that have historically characterized the U.S. government. There is a tradition of courtesy and rapport in Congress that has broken down in many ways.
16. The government shutdown is also illustrative of a simple, but profound, conflict inherent between the need in a democracy to represent voters back home and the responsibility of elected officials to govern for the good of the country. There is tension in these two responsibilities. This is the burden of representative democracy. Policymakers are asked to balance priorities on top of their own electoral future. And there are consequences when that balance is not maintained.
17. Standard & Poor's estimates that the shutdown cost the U.S. economy \$24 billion. The region around the nation's capital lost \$217 million per day in wages. Multimillion-dollar government contracts were in jeopardy. The world economy shuddered.
18. Less obvious was the danger that the shutdown posed to the U.S. judiciary. And it was on this topic that I testified before a U.S. congressional forum concerning the shutdown.

19. U.S. courts have responsibilities beyond the adjudication of cases brought before them. The federal judiciary maintains pretrial programs to help children and first offenders avoid long jail sentences. Federal courts are responsible for supervising defendants awaiting trial and those on post-conviction release. Court-appointed attorneys must represent the poor who are accused of crimes, and citizens must be organized into juries to pass sentence on their peers.
20. Keep in mind that the U.S. judiciary has no control over its workload. Congress passes laws that expand the definition of what is criminal. Congress also decides the laws setting out which parties can seek judicial relief, and the government applies those laws. U.S. courts are active participants in the justice system, but not in the process of crafting the law.
21. Caseloads are staggering. In 2012, more than 350,000 cases were filed in U.S. federal district courts and courts of appeals. Federal bankruptcy courts heard 1.2 million cases. More than 137,000 poor people were represented by court-appointed counsel.
22. When U.S. courts receive less money, they cannot bar their doors. They cannot refuse to hear a dispute between two businesses. They cannot refuse to rule on the Constitutionality of laws. They cannot refuse to hear a man or woman's plea and let that person languish in a prison cell.

23. Instead, the backlog of cases grows, the time that parties must wait for judicial relief grows and the expense for businesses that are made to wait for trial grows. U.S. courts will hear the cases, but it may be years before they are completed.
24. Fortunately, the government shutdown ended before U.S. courts experienced a crisis. Through clever accounting and revenue generated from filing fees, federal courts were able to function during the shutdown, but only barely. If the shutdown were prolonged beyond two weeks, the courts would have been forced to close their doors for most purposes.
25. The October 2013 federal government shutdown was a shock to the system and a wakeup call to many who do not regularly follow the courts. They heard for the first time that justice was in jeopardy. But for the American Bar Association, the shutdown was just another example of how our justice system is at risk.
26. Before the October 2013 shutdown, the ABA warned that federal courts faced terrific challenges as a result of inadequate funding. That threat to the judiciary is called sequestration. Sequestration is an obscure legal procedure of Congress, but it results in automatic spending cuts that reduce government expenditures across the board. Imagine if your business decided overnight to cut 5 percent from every department and every process, whether that is payroll, manufacturing or shipping, regardless of the consequences. That is the irrationality of sequestration.

27. Also a product of a combative Congress, sequestration was an agreement made in 2011 between Democrats and Republicans to limit spending by the federal government. Sequestration removed 5 percent from every government budget. The military, health and human services, even the judiciary, lost 5 percent of its budget, with further cuts to come.
28. For the judiciary, sequestration is hugely disruptive. It cut \$350 million from the judiciary's fiscal 2013 budget. As a direct result of sequestration, there are fewer staff to process new civil and bankruptcy cases, resulting in slowdown throughout the court system. There are also fewer probation officers, fewer public defenders and even less funding for security guards at federal courthouses. In fact, staffing levels are at their lowest since 1997.
29. To give you an idea of how small a percentage of the entire federal budget the judiciary makes up, imagine an apple. Imagine slicing that apple into 100 thin pieces. Now imagine taking one of those pieces and cutting it again into five pieces. One of those bits of a sliver, that minute one-fifth of 1 percent, is the total expenditure of the United States government for the federal judiciary. Courts are hardly a significant financial burden on the federal government.

30. Just last month, Supreme Court Chief Justice John Roberts, the highest court official in the United States, issued a serious warning. He wrote that budget cuts remain, quote, “the single most important issue facing the courts.” He went on to say that continued anemic budgets pose a genuine threat to public safety. Unless sequestration is reversed and federal courts receive a small increase in their budget, Justice Roberts warned that courts will be forced to lay off an additional 1,000 staffers. Remember that courts cannot simply refuse cases because of workload. Instead, the consequence will be costly delay. You can imagine the cost for your business if you paid lawyers to prepare a lawsuit and then had to wait for years for a result.

31. It is important to note that federal courts have done their utmost to cut costs and improve efficiencies. The federal judiciary developed a plan in 2004 to contain rent payments, limit space and slow the construction of new facilities. The courts also eliminated some staff positions and adopted information technology systems to reduce expenditures for staffing. Court administrators have also saved money by cutting empty positions and sharing administrative services among court units.

32. Why do courts receive such a small percentage of the federal budget? There are many reasons. First, courts do not require a sizable percentage of the U.S. budget to operate effectively. Their duties are administered in courthouses; the major costs are salaries and rent. The cost of doing business is simply greater for other sectors of government.

33. That said, even the one-fifth of 1 percent of the federal budget that the courts receive requires a fight because the courts are not a significant political presence with policymakers. Consider the priorities of an elected official, a member of Congress. There are local priorities that affect individual constituents. There are state priorities such as funding for additional police officers or for road construction. There are regional priorities including energy production and clean air. And there are national security priorities.
34. U.S. courts do not fit cleanly into any one of these priorities, although they touch individuals and businesses at every level. Courts do not have constituents in the general public clamoring for their funding. Competing interests drown out the rational argument courts make for enhancing their funding.
35. This is why it is critical for lawyers to be advocates for our courts. This is why the American Bar Association is the staunchest defender of court funding and the preservation of justice and the enduring rule of law. Courts need champions to explain to the public why they are important to their daily lives. Courts need advocates to explain to policymakers in Congress why they are important to the security and prosperity of the United States.
36. The American Bar Association is actively working with Congress to increase court funding. Our 400,000 members are a powerful network that is able to engage Congress

and press for higher appropriations. Lawyers are proud to defend their courts, and we have seen judges lobby policymakers for greater resources. In 2013, the chief judges of 87 federal district courts issued a letter to Vice President Joe Biden asking for greater investments in the justice system and decrying cuts mandated by sequestration.

37. Looking ahead, will politicians continue to use the budget process to fight ideological battles? Yes. It is a platform for public officials, and a budget is an expression of nation's priorities. If you care about how government shapes the lives of its citizens, then the budget is your vehicle. Unfortunately, this will have consequences for even the nonpolitical judiciary.
38. Will there be future government shutdowns? History suggests that there will be. Since 1977 there have been 17 funding gaps, although most were very short. In fact, since 1955 there have only been four years on record in which the U.S. government was able to pass all spending measures on time.
39. Will U.S. courts continue to face fiscal uncertainty? Regrettably, yes. Federal courts will continue to process very high numbers of case filings. They will continue to do so with comparatively few resources. The courts will continue to ask for modest increases, and Congress will respond with modest interest. It is role of the American Bar Association and of U.S. lawyers to advocate for our courts. Not simply because we work in the courts,

but because our justice system demands it. Lawyers are the defenders of justice. The ABA, as the voice of lawyers must lead the fight.

40. Finally, will the rule of law in the United States suffer as a result? In the short term, perhaps, but not irreversibly. At our core, Americans are independently minded. We expect limited government interference with our lives. We recognize, however, that the financial and social independence we enjoy is only possible in a nation of laws. We do not believe that anyone is above the law. We have held our highest elected officials to the letter of the law. Americans respect courts and judges as the ultimate authority of what is lawful.

41. Federal courts may face budget shortfalls. Our courts may not have the resources and staff power we hope for. Justice may be slow, but it is inexorable. Americans know that, and that is why we will never allow the rule of law to erode. The rule of law underpins our success as a nation.

42. Allow me to end with these thoughts: Courts are not just a place where contract disputes are settled. They are the foundry of economic liberty, where respect for the right to property is cast every day. Courts are not merely arbiters between parties. They are the crucible of truth.

