

# Journal of the Joint Assembly

IN JOINT ASSEMBLY, MARCH 30, 2011

10:30 A.M.

The Senate and House of Representatives met in the Hall of the House of Representatives pursuant to a Joint Resolution which was read by the Clerk and is as follows:

By Senator Nitka,

**J.R.S. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court and ten Judges of the Superior Court.

*Whereas*, declarations have been submitted by the following justices and judges that they be retained for another six-year term, the Honorable Justice Reiber, Justice Burgess, Justice Dooley, Justice Johnson, Justice Skoglund, Judge Bent, Judge Corsones, Judge Wesley, Judge Devine, Judge DiMauro, Judge Eaton, Judge Keller, Judge Kupersmith, Judge Levitt and Judge Rainville, and

*Whereas*, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each judge and the comments of members of the Vermont bar and the public, and

*Whereas*, the Committee anticipates that it will be unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the judges seeking to be retained in office by March 10, 2011, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 17, 2011, the date specified in subsection 10(b) of Title 2, and

*Whereas*, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly when the Committee is not able to make a timely recommendation, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the two Houses meet in Joint Assembly on Wednesday, March 30, 2011, at one o'clock in the afternoon to vote on the retention of a Chief Justice and four Associate Justices of the Supreme Court, and ten Superior Court Judges. In case the vote to retain said Justices and Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

### **Presiding Officer**

Honorable Philip B. Scott, President of the Senate, in the Chair.

### **Clerk**

John H. Bloomer, Jr., Secretary of the Senate, Clerk.

### **Statement of Presiding Officer**

Pursuant to our Constitution and statutes we are assembled here today in Joint Assembly to cast our votes on the retention of a Chief Justice and four Justices of the Supreme Court and ten of the Superior Court.

This year we are again operating under the Judicial Selection Act passed in 1966, and as amended in subsequent years. The procedure for the retention of incumbent Justices of the Supreme Court and incumbent Superior Judges will be in accordance with this Act. The Act as amended set the date for holding joint assemblies for the retention of judges to be the eleventh Thursday of the session.

The Act requires that the vote will be by *written* ballot on the specific question:

"Shall the following Judges be retained in office?"

There will be *two* separate written ballots: one containing the names of all of the justices for the Supreme Court; one containing the names of all of the judges for the Superior Court.

### **Retention of Supreme Court Justices**

We shall now proceed to the vote on the retention of the a Chief Justice and *four* Justices of the Supreme Court. Nominations are *not* received from the floor; rather, each justice who seeks retention files a declaration of intention to stand for retention with the Secretary of State. By this means each justice is *automatically* considered for retention pursuant to the terms of the Judicial Selection Act.

In addition, the Judicial Selection Act provides that when a candidate does so declare for retention, the question to be decided shall automatically be:

"Shall the following Justices of the Supreme Court be retained in office?"

The statute provides that the vote on this question shall be by *one* written ballot containing the names of all of the justices.

With respect to the retention of the incumbent justices of the Supreme Court, we have received declarations of intention to stand for retention to the office of Justice of the Supreme Court, as follows:

Paul L. Reiber, Chief Justice  
 John A. Dooley, Associate Justice  
 Denise R. Johnson, Associate Justice  
 Marilyn S. Skoglund, Associate Justice  
 Brian L. Burgess, Associate Justice

The question to be decided in each of these cases shall be as follows:

"Shall Chief Justice Paul L. Reiber be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Associate Justice John A. Dooley be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Associate Justice Denise R. Johnson be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Associate Justice Marilyn S. Skoglund be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Associate Justice Brian L. Burgess be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

The ballot which you will receive will contain these questions in printed form on *one* single ballot. The terms of these Justices of the Supreme Court is for six years, from and including the first day of April, 2011, and until his or her successor is elected and has qualified.

Accordingly, we will need Tellers, and the Chair will now make those appointments.

### **Tellers Appointed**

The Chair appointed the following Tellers:

Senator Jeanette K. White, of Windham District, as Chief Teller  
 Senator Mark A. MacDonald, of Orange District  
 Senator Anthony Pollina, of Washington District

Representative Susan Hatch Davis, of Washington  
Representative Dustin Allard Degree, of St. Albans City  
Representative Debbie G. Evans, of Essex  
Representative Herb Font-Russell, of Rutland City

To facilitate the procedure for this afternoon, the Chair will rule, unless there is objection, that any debate on each of the *five* Justices shall be conducted separately. At the conclusion of the debate for all of the Justices, any general debate on the entire question shall be in order.

Prior to any debate or voting, we will receive the report of the Joint Committee on Judicial Retention relating to these Justices of the Supreme Court who have filed for retention. The Chair now recognizes the Chair of this Committee, the Senator from Windsor District, Senator Nitka, for the purpose of receiving his report.

### **Committee Reports**

Senator Alice W. Nitka, then delivered a general report for the Joint Committee on Judicial Retention with respect to the candidacy of all the Judges.

The Chair then recognized Representative Willem W. Jewett, of Ripton, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice Paul L. Reiber.

The Chair then recognized Senator Sally G. Fox, of Chittenden District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice John A. Dooley.

The Chair then recognized Representative Eldred Minor French, of Randolph, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice Denise R. Johnson.

The Chair then recognized Representative Cynthia Martin, of Springfield, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice Marilyn S. Skoglund.

The Chair then recognized Senator Joe Benning, of Caledonia District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice Brian L. Burgess.

### **Debate**

There being no further debate, before the ballots are passed out, I want to remind you of the rules that govern us:

- A. In so far as they are applicable, the Senate rules apply.

B. No Representative or Senator may be absent from this Joint Assembly unless sick or otherwise necessarily detained.

C. Upon being called to order, every Representative and Senator shall be seated.

D. It is the duty of each Representative and Senator to vote unless excused by this Joint Assembly or unless he or she is directly or immediately interested in the question being voted on.

E. Pursuant to Rule 69 Senator Nitka has requested to be excused from voting on Judge Eaton and Senator Benning has requested to be excused from voting on Justice Dooley and Judge Bent. Hearing no objection to these requests. They are excused as requested.

F. You are to remain seated while the tellers distribute the ballots.

G. If a member is not seated, no ballot will be placed at the member's desk or seat.

H. You are to remain seated during voting **and** while the ballots are collected by the tellers.

I. There is to be no milling about in the chamber during the counting of the ballots.

J. You are requested to remain in your seats during the counting of the ballots unless it is necessary to step out of the chamber.

K. If you leave the chamber during the counting of the ballots, you will not be permitted to re-enter the chamber until the counting of the ballots has been completed.

The tellers will now distribute the ballots to the members of this joint assembly for this vote.

### **Results of Balloting**

Balloting then proceeded for the office of Justices of the Supreme Court, with the following results:

For Chief Justice Paul L. Reiber

Total votes cast.....	157
Necessary for a majority .....	79
For retention .....	156
Against retention .....	1

Whereupon the Chair declared that

**PAUL L. REIBER, of Chittenden**

having received a majority of the total votes cast was duly retained in the office of Chief Justice of the Supreme Court for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Associate Justice John A. Dooley

Total votes cast.....	159
Necessary for a majority .....	80
For retention .....	128
Against retention .....	31

Whereupon the Chair declared that

**JOHN A. DOOLEY, of South Burlington**

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Associate Justice Denise R. Johnson

Total votes cast.....	157
Necessary for a majority .....	79
For retention .....	146
Against retention .....	11

Whereupon the Chair declared that

**DENISE R. JOHNSON, of Middlesex**

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2011, and until her successor is elected and has qualified.

For Associate Justice Marilyn S. Skoglund

Total votes cast.....	156
Necessary for a majority .....	79
For retention .....	149
Against retention .....	7

Whereupon the Chair declared that

**MARILYN S. SKOGLUND, of Montpelier**

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2011, and until her successor is elected and has qualified.

For Associate Justice Brian L. Burgess

Total votes cast.....	156
Necessary for a majority .....	79
For retention .....	155
Against retention .....	1

Whereupon the Chair declared that

**BRIAN L. BURGESS, of Montpelier**

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

**Retention of Superior Court Judges**

We shall now proceed to the vote on the retention of the *ten* Judges of the Superior Court. Again, nominations are *not* received from the floor; rather, each candidate who seeks retention files a declaration of intention to stand for retention with the Secretary of State. By this means the name of each candidate is *automatically* considered for retention pursuant to the terms of the Judicial Selection Act.

In addition, the Judicial Selection Act provides that when a judge does so declare for retention, the question to be decided shall automatically be:

"Shall the following Superior Court Judges be retained in office?"

The statute provides that the vote on this question shall be by *one* written ballot containing the names of all of the superior judges.

With respect to the retention of the incumbent superior judges, *ten* declarations of intention to stand for retention to the office of Superior Court Judge were originally received. Subsequently, *one* of the Superior Court Judge's withdrew his request for retention.

As such, we have *nine* Superior Court Judges seeking retention and are as follows:

Robert E. Bent  
 Cortland T. Corsones  
 Thomas J. Devine  
 Theresa S. DiMauro  
 Harold E. Eaton, Jr.  
 Michael S. Kupersmith  
 Linda Levitt  
 A. Gregory Rainville  
 John P. Wesley

The question to be decided in each of these cases shall be as follows:

"Shall Superior Judge Robert E. Bent be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge Cortland T. Corsones be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge Thomas J. Devine be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge Theresa S. DiMauro be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge Harold E. Eaton, Jr. be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge Michael S. Kupersmith be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge Linda Levitt be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge A. Gregory Rainville be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

"Shall Superior Judge John P. Wesley be retained in office?"

Yes \_\_\_\_\_ No \_\_\_\_\_.

The ballot which you will receive will contain these questions in printed form on *one* single ballot. The terms of these Superior Court Judges is for six years, from and including the first day of April, 2011, and until their successors are elected and qualified.

To facilitate the procedure for this afternoon, the Chair will rule, unless there is objection, to receive any debate on each of these *nine* Judges separately and at the end of the debate for the Judges, any general debate on the entire question shall be in order.

The Chair then recognized Representative Thomas F. Koch, of Barre Town, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Bent.

The Chair then recognized Representative Willem W. Jewett, of Ripton, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Corsones.

The Chair then recognized Senator Sally G. Fox, of Chittenden District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Devine.

The Chair then recognized Senator Alice W. Nitka, of Windsor District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge DiMauro.

The Chair then recognized Representative Thomas F. Koch, of Barre Town, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Eaton.

The Chair then recognized Representative Eldred Minor French, of Randolph who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Kupersmith.

The Chair then recognized Senator Peter W. Galbraith, of Windham District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Levitt.

The Chair then recognized Representative Cynthia Martin, of Springfield, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Rainville.

The Chair then recognized Senator Joe Benning, of Caledonia District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Wesley.

### **Results of Balloting**

Balloting then proceeded for the office of Judges of the Superior Court, with the following results:

For Superior Judge Robert E. Bent

Total votes cast .....155  
 Necessary for a majority .....78  
 For retention .....149  
 Against retention .....6

Whereupon the Chair declared that

**ROBERT E. BENT, of St. Johnsbury**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Superior Judge Cortland T. Corsones

Total votes cast .....156  
 Necessary for a majority .....79  
 For retention .....155  
 Against retention .....1

Whereupon the Chair declared that

**CORTLAND T. CORSONES, of Mendon**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Superior Judge Thomas J. Devine

Total votes cast .....156  
 Necessary for a majority .....79  
 For retention .....151  
 Against retention .....5

Whereupon the Chair declared that

**THOMAS J. DEVINE, of Moretown**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Superior Judge Theresa S. DiMauro

Total votes cast .....155  
 Necessary for a majority .....78  
 For retention .....151  
 Against retention .....4

Whereupon the Chair declared that

**THERESA S. DiMAURO, of West Windsor**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until her successor is elected and has qualified.

For Superior Judge Harold E. Eaton, Jr.

Total votes cast .....	156
Necessary for a majority .....	79
For retention .....	154
Against retention .....	2

Whereupon the Chair declared that

**HAROLD E. EATON, JR., of Woodstock**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Superior Judge Michael S. Kupersmith

Total votes cast .....	155
Necessary for a majority .....	78
For retention .....	133
Against retention .....	22

Whereupon the Chair declared that

**MICHAEL S. KUPERSMITH, of Milton**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Superior Judge Linda Levitt

Total votes cast .....	153
Necessary for a majority .....	77
For retention .....	146
Against retention .....	7

Whereupon the Chair declared that

**LINDA LEVITT, of Williston**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until her successor is elected and has qualified.

For Superior Judge A. Gregory Rainville

Total votes cast .....	153
Necessary for a majority .....	77
For retention .....	151
Against retention .....	2

Whereupon the Chair declared that

**A. GREGORY RAINVILLE, of St. Albans**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

For Superior Judge John P. Wesley

Total votes cast .....	155
Necessary for a majority .....	78
For retention .....	147
Against retention .....	8

Whereupon the Chair declared that

**JOHN P. WESLEY, of Brattleboro**

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2011, and until his successor is elected and has qualified.

**Dissolution**

There being no further business, the Chair then declared the Joint Assembly dissolved.

JOHN H. BLOOMER, JR.  
 Secretary of the Senate  
 Clerk of the Joint Assembly