S.270
Testimony of John J. Easton, Jr.
Former Attorney General of Vermont
1981-1985
to
Senate Committee on Government Operations
February 11, 2014

Madame Chair and Members of the Committee,

It is my pleasure to give you some brief comments on S. 270. I truly regret that I cannot be with you in person to deliver my remarks and to answer any questions that they might prompt.

I had the honor of being elected Attorney General of Vermont as a Republican in 1980. In 1982 I was re-elected after winning the primary elections on both the Republican and Democrat ballots. Serving as Attorney General was truly a privilege – one that I still treasure over 30 years later.

Having been elected, I probably won't surprise any of you by maintaining that an elected attorney general is preferable to that of an appointed one. Forty-three states, Guam and, as of this year, the District of Columbia popularly elect their attorneys general. I believe the rationale of these jurisdictions is simple. An attorney general should be independent. Popular election is a better means of assuring independence than a gubernatorial appointment.

Among lawyers, the position of attorney general is unique: he or she represents both the public interest and the state, including its agencies and officers. With two clients - the people and the state – independence is essential.

An attorney general must have an allegiance to the law, not to an executive, and an obligation to represent both the state and the public interest,. Appointment by a governor tends to produce more loyalty to that appointing authority and makes it difficult to fulfill this unique role. This is especially likely when the governor has a different opinion from that of the attorney general on a particular issue.

When both the governor and the attorney general are independently elected, the result could be a divided executive branch. While opportunities for conflict exist, sometimes based on politics and sometimes on simply different positions on public policy issues, there are many more reasons for cooperation than conflict. Both the governor and attorney general are expected by the public who elected them to fulfill the duties of their offices and not be seen as unwilling to work together.

Yet, conflict will occur on occasion, even when both officials are from the same party. A governor expects an appointed attorney general to exclusively represent the governor's interests. However, the attorney general must represent the governor **and** the public. That

role requires the attorney general to exercise independent legal judgment – sometimes against the governor's interest.

I recall an instance shortly after I was elected, before I even took office. My predecessor, M. Jerome Diamond, a Democrat, had issued a report involving state police misconduct – the so-called *router bit affair*. The governor, Richard A. Snelling, a Republican, had a very different opinion regarding the conclusions of the report, especially since he had previously appointed a distinguished commission to investigate the affair and the commission had issued its report.

I was the newly-elected Republican attorney general and it was expected that I would agree with the governor that the Attorney General's report was "politically motivated." After reading the report I found that its conclusions seemed to be based on objective information and facts. I, therefore, supported its findings.

Needless to say, Governor Snelling was not happy with me or my determination. The report's conclusions deserved a public airing so that the public, policy-makers and legislators could make their own independent judgments. I have no question that, had I been appointed by the governor, the findings by my predecessor would not have received the public attention and scrutiny warranted. And this important report would have been relegated to the category of "politically motivated."

In these comments I have not addressed potential disagreements between the attorney general and state's attorneys because I did not experience any of significance during my two terms. I do not see that an attorney general's appointment *vs.* election would change any issues arising out of the concurrent criminal jurisdiction of those two offices.

In addition to testifying that I do not favor the appointment of the attorney general, I would also offer one observation about the language of S. 270. The grounds for removal in 3 V.S.A. § 151 (b)(2) are overly broad. For example, what is *inefficiency in office?* While books on management are replete with techniques for improving office efficiency, I am unaware of legal standards by which *inefficiency in office* would be determined.

In conclusion, I believe the citizens of Vermont are best served by having an independent attorney general. Independence is achieved by popular election. This allows the attorney general to fulfill the many responsibilities of the office: to uphold the law, represent the public and serve as lawyer to state agencies and officials. Sometimes these duties come into conflict. On most occasions they do not and the independence of the attorney general is compatible with the interests of the governor. Experience has shown that even when there is conflict between the governor and the attorney general, the result is a better-informed public.

I appreciate the opportunity to bring these remarks before the Committee.