

# Journal of the Joint Assembly

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IN JOINT ASSEMBLY, MARCH 24, 2022

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. 44.** Joint resolution providing for a Joint Assembly to vote on the retention of six Superior Judges.

*Whereas*, declarations have been submitted by the following six Superior Judges that they be retained for another six-year term, Judge Thomas S. Durkin, Judge David Fenster, Judge Kerry A. McDonald-Cady, Judge Robert A. Mello, Judge John Pacht, and Judge Helen M. Toor, and

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

*Whereas*, the Committee is unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the candidates seeking to be retained in office by March 17, 2022, the date specified in subsection 608(e) of Title 4, 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 Thursday, March 24, 2022, at ten o'clock and thirty minutes in the forenoon to vote on the retention of six Superior Judges, *and be it further*

***Resolved:*** That the Joint Assembly shall be concurrently conducted electronically at which members of the General Assembly may participate and

debate from a remote location if they notify the Speaker of the House in the case of House members, or the President of the Senate in the case of Senators, that the member meets one of the COVID-19-related conditions set forth in 2022, J.R.H. 17 (remote participation in joint committees under restricted, COVID-19-related circumstances), *and be it further*

**Resolved:** That balloting for any members participating remotely shall be conducted through electronic means in a timeframe prescribed in the Joint Assembly, whereby remote members' completed ballots shall be submitted electronically to the Secretary of the Senate and the Clerk of the House, who may provide assistance to those remote voters in accordance with 17 V.S.A. § 2569 (assistance to voter) in order to ensure that remote members' votes are not distinguishable from in-person members' votes in order to maintain the confidentiality of the votes of remote members, and who shall commingle those completed ballots with those of the members who vote in-person at the Joint Assembly, *and be it further*

**Resolved:** That in case the vote to retain the Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays, Sundays, and Mondays excepted, and proceed until the above is completed.

#### **Presiding Officer**

Honorable Mary R. Gray, 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 six Superior Judges.

This year we are again operating under the Judicial Retention Act passed in 1976, as amended in subsequent sessions of the General Assembly, which establishes the procedure for retention of incumbent Superior Judges and magistrates. The date for holding joint assemblies for the retention of judges is set by statute to be the eleventh Thursday of the session, which date may be deferred pursuant to 4 V.S.A. § 608(g).

This year pursuant to statute which permits this, 4 V.S.A. § 608, we delayed the Joint Assembly from the eleventh Thursday to the present date, March 24th.

The procedure to be followed requires that the vote be by written ballot. There will be one written ballot containing the names of all the Judges of the Superior Court.

### **Retention of Superior Judges**

We shall now proceed to the matter of retention of the six incumbent Superior Judges. As stated previously, we are operating under the Judicial Retention Act passed in 1976, which establishes the procedure for the retention of Superior Judges. Nominations may not be received from the floor; rather, each judge seeking retention must file a declaration of intention to seek retention with the Secretary of State or if a Superior Judge is appointed after September 1 of the year preceding the expiration of the term of office that Superior Judge shall automatically be a candidate for retention without filing notice. The name of each judge seeking retention is automatically voted on pursuant to the terms of the Judicial Retention Act.

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

"Shall the following Superior 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 candidates for retention as Superior Judges.

### **Tellers Appointed**

Accordingly, we will need tellers, and the Chair will now appoints as tellers:

Senator Jeanette K. White, of Windsor District, as Chief Teller  
Senator Mark A. MacDonald, of Orange District  
Senator Brain A. Collamore, of Rutland District  
Representative Carol Ode, of Burlington  
Representative Barbara Murphy, of Fairfax  
Representative Michael Nigro, of Bennington  
Representative Lawrence Cupoli of Rutland

We shall now proceed to the matter of retention of the incumbent superior judges. For these positions we have received declarations of intention to seek retention to the office of Superior Judge from the following:

Thomas S. Durkin  
David Fenster  
Kerry A. McDonald-Cady  
Robert A. Mello  
John Pacht  
Helen M. Toor

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

"Shall Superior Judge Thomas S. Durkin be retained in office?"

Yes\_\_\_\_\_No\_\_\_\_\_.

"Shall Superior Judge David Fenster be retained in office?"

Yes\_\_\_\_\_No\_\_\_\_\_.

"Shall Superior Judge Kerry A. McDonald-Cady be retained in office?"

Yes\_\_\_\_\_No\_\_\_\_\_.

"Shall Superior Judge Robert A. Mello be retained in office?"

Yes\_\_\_\_\_No\_\_\_\_\_.

"Shall Superior Judge John Pacht be retained in office?"

Yes\_\_\_\_\_No\_\_\_\_\_.

"Shall Superior Judge Helen M. Toor be retained in office?"

Yes\_\_\_\_\_No\_\_\_\_\_.

The ballot which you will receive will contain these questions in printed form on one single ballot. The term of these Superior Judges are for six years, from and including the first day of April, 2022, and until their successors are elected and qualified.

To facilitate the procedure for this morning, the Chair will rule, unless there is objection, that debate on these six Judges will be received separately. At the end of the debates for the six Judges, any general debate on the entire question shall be in order.

### **Committee Reports**

Prior to any debate, we will receive the report of the Joint Committee on Judicial Retention. The Chair now recognizes the Chair of this Committee, the member from Stannard, Joseph Troiano, for the purpose of receiving his report.

Representative Joseph Troiano, 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 the member from Rutland City, Representative Notte, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Judge Thomas S. Durkin.

The Chair then recognized Senator Joseph C. Benning, of Caledonia District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Judge David Fenster.

The Chair then recognized the member from Burlington, Representative Colburn, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Judge Kerry A. McDonald-Cady.

The Chair then recognized Senator Richard J. McCormack, of Windsor District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Judge Robert A. Mello.

The Chair then recognized the member from Pittsford, Representative Shaw, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Judge John Pacht.

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 Judge Helen M. Toor.

### **Results of Balloting**

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

*For Superior Judge Thomas S. Durkin*

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

Whereupon the Chair declared that

### **THOMAS S. DURKIN, of BRATTLEBORO**

having received a majority of the total votes cast was duly elected to the office of Superior Judge for a term of six years, from and including the first day of April, 2012, and until his successor is elected and has qualified.

*For Superior Judge David Fenster*

Total votes cast.....	155
Necessary for a majority.....	78
For retention.....	155
Against retention.....	0

Whereupon the Chair declared that

### **DAVID FENSTER, of MIDDLEBURY**

having received a majority of the total votes cast was duly elected to the office of Superior Judge for a term of six years, from and including the first day of April, 2022, and until his successor is elected and has qualified.

*For Superior Judge Kerry A. McDonald-Cady*

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

Whereupon the Chair declared that

**KERRY A. McDONALD-CADY, of EAST DOVER**

having received a majority of the total votes cast was duly elected to the office of Superior Judge for a term of six years, from and including the first day of April, 2022, and until her successor is elected and has qualified.

*For Superior Judge Robert A. Mello*

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

Whereupon the Chair declared that

**ROBERT A. MELLO, of HINESBURG**

having received a majority of the total votes cast was duly elected to the office of Superior Judge for a term of six years, from and including the first day of April, 2022, and until his successor is elected and has qualified.

*For Superior Judge John Pacht*

Total votes cast..... 155  
 Necessary for a majority..... 78  
     For retention..... 155  
     Against retention..... 0

Whereupon the Chair declared that

**JOHN PACT, of HINESBURG**

having received a majority of the total votes cast was duly elected to the office of Superior Judge for a term of six years, from and including the first day of April, 2022, and until his successor is elected and has qualified.

*For Superior Judge Helen M. Toor*

Total votes cast..... 156  
Necessary for a majority..... 79  
For retention..... 153  
Against retention..... 3

Whereupon the Chair declared that

**HELEN M. TOOR, of CHARLOTTE**

having received a majority of the total votes cast was duly elected to the office of Superior Judge for a term of six years, from and including the first day of April, 2022, and until her successor is elected and has qualified.

**Dissolution**

The purposes for which the Joint Assembly was convened having been accomplished, the Chair then declared the Joint Assembly dissolved.

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