

Supreme Court of Vermont
Office of State Court Administrator



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TO: Representative Sarah Copeland-Hanzas, Chair
House Government Operations

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Continuation of Testimony on behalf of the Judiciary re:
Overview of Pension Proposal March 24, 2021

DATE: March 30, 2021

This outline calls attention to the lack of equity in the proposed Group D outcomes for sitting judges, particularly as they impact women; the negative impact of the proposal on the ability to recruit new well-qualified lawyers to become judges; and the absence of any evidence that the proposals would yield material savings to contributed to unfunded pension liabilities, which is the basis of the Committee's pension reform proposal.

Equity and Unintended Consequences

The arbitrary lines that were drawn by the current proposal for Group D, in combination with the significant diminution of benefits for Group D in comparison to the proposed changes for other plans:

- have created a division of haves and have nots in the judge ranks that makes no sense, either from a financial point of view (we understand from Committee discussion and testimony that little to no savings are realized) or the point of view of equity
- threaten a wave of early judge retirements that would impair the administration of the Judicial Branch; and
- discourages recruitment of well-qualified lawyers to serve as judges.

To the best of our knowledge, following inquiry, there has been no cost / benefit analysis to support a rationale for the harsh changes made to Group D. The benefit to harvest savings to go to the unfunded liability does not exist. The cost of this proposal is the division and discouragement of the small and

important group of people who decide court cases throughout the State of Vermont. This significant cost is not worth the tiny amount of savings.

Due to the way the proposal for Group D is designed, ten superior judges, six probate judges, and one supreme court justice are dramatically affected. That is about 20% of the Group D active employees. It is only a very small number of people, representing small, if any, savings to be applied to the state's underfunded pension liability, but representing a dramatic impact to the individuals involved and, therefore, on the Judiciary as a whole.

Here are specific examples of what we assume to be unintended consequences:

- the current proposal has a grossly disproportionate impact on women. 7 of the 10 affected trial judges are women. This cannot be consistent with the recent efforts of the three branches of government to increase gender diversity on the bench.
- Two current judges appointed at the same time are treated very differently simply as a matter of their age. Judge #1 can serve another 7 years and receive a pension benefit of $.0333 \times 12 \times$ last year's salary. Judge #2 needs to serve another fifteen years to age 67, at which time she will receive a pension benefit of $.0333 \times 20 \times$ the average of her last year 7 years' salary, but capped at 62% of average (versus 66% if the judge serves 20 years under the current plan.) Judge #2 also needs to contribute an extra 1.1% of gross salary for each of the next 15 years in order to get that benefit. **THERE ARE AT LEAST FOUR INSTANCES OF THIS INEQUITY APPLICABLE TO JUDGES APPOINTED AT THE SAME TIME, WITH NO RATIONAL BASIS FOR IT.**
- The current proposal has a discouraging impact on recruiting from the ranks of lawyers currently in public service, some of whom were required to cash in prior retirement assets in order to become a part of the Group D plan as a judge. 7 of the 10 affected trial judges came from public service. Some have served many years already. Some were appointed only very recently. This cannot be consistent with the recent efforts of the three branches of government to increase practice area diversity on the bench to better reflect the diversity of subject matter areas addressed by the state court system.
- The current proposal also has a discouraging impact on recruiting from the ranks of lawyers in private practice who consider these benefits in making the sometimes-difficult financial decision to apply.

cc: Rep. John Gannon, Vice Chair
Rep. Robert LaClair, Ranking Member
Rep. Peter Anthony
Rep. Harold "Hal" Colston, Clerk
Rep. Mark Higley
Rep. Robert Hooper

Rep. Samantha Lefebvre
Rep. Michael McCarthy
Rep. Michael Mrowicki
Rep. Tanya Vyhovsky
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