

Dear Chief Justice Reiber,

On behalf of the House Committee on Judiciary, I am writing to express our concern about the impact that the suspension of civil jury trials has had in Vermont. The Committee appreciates the work that the Judiciary has done to consider how to permit civil jury trials to once again be held safely. Due to the state of emergency caused by the pandemic, implementing protocols that would protect public health during jury trials has understandably been very difficult. However, the suspension of civil jury trials for over a year, while a necessary step, has resulted in the denial of justice for Vermont citizens.

At a May 6, 2021 hearing, the House Judiciary Committee heard testimony regarding the ongoing concern related to the backlog of jury trials in civil cases. In particular, the Committee considered H.417, a bill to require six-person civil jury trials in Vermont. Seating six jurors rather than twelve would allow civil cases to proceed more expeditiously to trial and would give litigants the impetus to settle.

At a May 7, 2021 hearing, Legislative Counsel testified that a legislative requirement for six-person juries would likely be unconstitutional. He explained, however, that the Court could require six-person civil jury trials under its emergency authority. Thus, we are suggesting that the courts do just that.

The Court has exercised its emergency authority before to limit the use of twelve-person juries during an emergency. In 1990, in response to budgetary rescissions ordered by the Governor and the Legislature during a financial emergency, the Court issued an Administrative Directive ordering the suspension of all jury trials for six months. [\*Vermont Supreme Court Administrative Directive No. 17 v. Vermont Supreme Court\*, 154 Vt. 392 \(1990\)](#). Several litigants with pending cases filed suit alleging that the Directive violated their right to a jury trial under the Vermont Constitution. *Id.* at 394. The Court held that the temporary suspension of jury trials during an emergency did not violate the jury trial right, and that the Court had the power to issue the order under its authority to exercise administrative control of the courts under Chapter II of the Vermont Constitution. *Id.* at 396-99, 403. The holding in that case seems directly applicable here. If the Court has the constitutional authority to temporarily suspend jury trials completely during an emergency, then it would certainly have the authority under similar circumstances to take the less drastic measure of temporarily ordering six-person juries.

At a May 12, 2021 hearing, Chief Superior Judge Brian Grearson and Vermont State Court Administrator Patricia Gabel testified in the House Judiciary Committee. They explained the current efforts of the courts to accommodate 12-person juries at several courthouses. Although the Judiciary's priority will be to schedule criminal trials, they explained that 12-person civil trials will soon be scheduled, likely in July. Patricia Gabel agreed, however, that scheduling six-person civil trials in buildings where the court could accommodate six-person but not twelve-person juries could allow the courts to move more cases through the system more expeditiously. We believe that scheduling six-person juries in courts that can accommodate 12-person juries would also be more efficient by requiring smaller juror draws and less courthouse space, thus allowing additional cases to be scheduled. With the prospect of imminent trials, civil cases will settle, helping to clear the backlog.

Although the Governor has relaxed mask mandates in conformance with recent Center for disease Control and Prevention guidelines, we continue to urge the courts to consider requiring six-person juries for civil trials until the backlog of civil cases has been addressed. The new rules do not apply in certain settings such as in health care and long-term care facilities, correctional centers, and public transportation. Arguably, in the close congregate settings of jury trials, the relaxed rules should not apply. Six-person juries with their smaller juror draws would continue to provide additional safety measures for jurors and courthouse staff.

Juries should represent a cross section of Vermont's population. Jury pools will contain both vaccinated and unvaccinated Vermonters. They will contain individuals who continue to be concerned about the risk of contracting COVID. Requiring six-person juries would allow the courts to draw from a more inclusive juror pool in a manner that is protective of jurors' health.

We appreciate the court's COVID-19 ReStart efforts. But until the courts have addressed the backlog of civil cases, we respectfully recommend that the courts require six-person juries to ensure access to justice while safeguarding public health.

Sincerely,

Representative Maxine Grad, Chair  
House Judiciary Committee