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**To:** Rep. Marc Mihaly, Chair  
House Committee on General and Housing

**From:** Teri Corsones

**Re:** S.125

**Date:** April 23, 2025

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Thank you for the opportunity to comment on Section 5 of S.125, which proposes to create a bargaining unit for Judiciary supervisory employees by striking the word “supervisory” from 3 V.S.A. §1011(8)(C). The Judiciary strongly opposes the proposal for the reasons summarized below. Because there was a question when the bill was introduced in the Committee as to whether the Judiciary has had a chance to comment on the bill in the past, this memo will also address that question at the outset.

### **I. Judiciary Opportunity to Comment**

Some reference has been made to the proposal having been made in last year’s session and no opposition voiced at that time. If the proposal was made in last year’s session, the Judiciary was not aware of the proposal and was not asked to testify about it. We haven’t been able to find a record of the proposal being made in last year’s session, but wanted to clarify that if the proposal was made and had we had the opportunity to comment on it we would have certainly expressed opposition.

When we learned of the proposal being made this session in the Senate Committee on Economic Development, Housing and General Affairs, we asked for the opportunity to testify and it was recommended that due to the timing of the bill’s introduction shortly before cross-over, to seek time to testify when the bill would be in the House. In response to the question in this Committee as to whether the Judiciary testified in the Senate, that is why we did not. We very much appreciate the opportunity to testify today.

## II. There are But Four Supervisors in the Vermont Judiciary

Vermont law has historically exempted several categories of Judiciary employees from collective bargaining, including judicial officers, managers, supervisors, law clerks, attorneys and confidential employees. See 21 V.S.A. §1502. Only four Judiciary exempt employees have “supervisor” in their job title. It’s our understanding that no mention was made in the Senate that there are just four supervisors in the Vermont Judiciary when S.125 was discussed.

S.125 proposes that a separate bargaining unit be set up for what amounts to four employees. We are at a loss to understand the wisdom of bargaining for and administering a contract for four employees, especially when a comprehensive Personnel Policy exists for those employees as well as for all other exempt employees. The Personnel Policy for exempt employees includes many (if not all) of the same rights and benefits that the Collective Bargaining Agreement provides for non-exempt employees.

It’s unclear what value a separate bargaining agreement would offer the four supervisory employees that they do not already have under the Personnel Policy. The four supervisors enjoy identical compensation terms as those negotiated with the hourly employee bargaining unit. The terms cover wage increases, step equivalents, paid days off, and pension. Bargaining a separate contract would also require substantial resources for which the Judiciary has not budgeted.

## III. Labor Relations Law Tenets Support Exempting Supervisors from Bargaining Units

Attorney Joe McNeil is a Vermont labor lawyer with over 40 years’ experience in the field. Attorney McNeil helped negotiate the first contract covering hourly employees in the Judiciary. He will testify regarding a basic tenet of labor law that holds that supervisors have been historically exempt from bargaining units. Both the National Labor Relations Act (29 U.S.C.A. 152 (3)) and the Vermont Labor Relations Act (21 V.S.A. 1502(6)) provide that the term “employee” shall not include any individual employed as a supervisor. The definition of “supervisor” is identical in both statutes (see 29 U.S.C. §152(11); 21 V.S.A. §1502(13)).

The United States Supreme Court has noted why unionization of supervisors can be problematic. In the seminal labor relations case *NLRB v. Bell Aerospace Co*, 416 US 267, 281 (1974) the Court noted “[U]nionization of supervisors . . . upset the balance of power in collective bargaining and tended to blur the line between management and labor . . . unionization of supervisors had deprived employers of the loyal

representations to which they were entitled” (citation omitted). All supervisory employees are expected to represent the interest of the Judiciary in their supervisory roles. If they have a self-interest in supporting and complying with competing union interests it would make it difficult to fulfill their supervisory roles. We would disagree that “it is not unusual to allow supervisors to organize”, as has been suggested in recent testimony.

#### IV. Distinctions Between Executive Branch Supervisors and Judiciary Branch Supervisors

The Judiciary Branch includes approximately 400 employees and 4 supervisors. In stark contrast, the Executive Branch includes approximately 10,000 employees and approximately 1,250 supervisors. Due to its sheer size, leadership in the Executive Branch is much more diffuse than in the Judiciary, with different layers of management structure. The Judiciary relies on managers and supervisors to directly implement management policies and procedures. There would be an inherent conflict in supervisors representing the interests of management, and at the same time supervisors being part of a union with different interests and priorities.

#### V. Conclusion

This opportunity is the first that the Judiciary has had to comment on the proposed amendment in S.125 to remove Judiciary supervisors from the list of exempt employees. The Judiciary strongly opposes the proposed amendment given that only four employees are in the supervisory category, and it makes little sense to negotiate a separate collective bargaining unit for four employees, especially when a Personnel Policy already exists that provides similar if not identical rights to supervisory employees. Labor law tenets historically preclude supervisors from being included in a bargaining unit due to inherent conflicts and competing interests. 1,250 Vermont Executive Branch supervisors being included in a bargaining unit are an exception to that tenet, which we respectfully submit does not justify including 4 Judiciary supervisors in a separate bargaining unit. Thank you again for the opportunity to comment.

cc: Rep. Ashley Bartley, Vice Chair  
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