

Journal of the Joint Assembly

IN JOINT ASSEMBLY, MARCH 23, 2017

4:00 P.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. 21. Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and three Justices of the Supreme Court and ten Superior Court Judges.

Whereas, declarations have been submitted by the following justices and judges that they be retained for another six-year term, the Honorable Justice Reiber, Justice Eaton, Justice Robinson, Justice Skoglund, Judge Arms, Judge Bent, Judge Carlson, Judge Corsones, Judge Devine, Judge DiMauro, Judge Kainen, Judge Morrissey, Judge Rainville and Judge Schoonover, and

Whereas, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each judge and the comments of members of the Vermont bar and the public, and

Whereas, the Committee anticipates that it will be unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the judges seeking to be retained in office by March 9, 2017, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 16, 2017, the date specified in subsection 10(b) of Title 2, 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 23, 2017, at four o'clock in the afternoon to vote on the retention of a Chief Justice and three Associate Justices of the Supreme Court and ten Superior Court Judges. In case the vote to retain said Justices and Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Presiding Officer

Honorable David E. Zuckerman, 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 a Chief Justice and three Justices of the Supreme Court and ten Judges of the Superior Court.

This year we are again operating under the Judicial Selection Act passed in 1966, and as amended in subsequent years. The procedure for the retention of incumbent Justices of the Supreme Court and incumbent Superior Judges will be in accordance with this Act. The Act as amended set the date for holding joint assemblies for the retention of judges to be the eleventh Thursday of the session, in order to give the Joint Committee on Judicial Retention adequate time to consider the judges who are up for review. This year, pursuant to statute which permits this, 4 V.S.A. § 608, we have delayed this Joint Assembly from the eleventh Thursday of the session (which was March 16th) to the present date March 23rd.

The Act requires that the vote will be by *written* ballot on the specific question:

"Shall the following Judges be retained in office?"

There will be *two* separate written ballots: one containing the names of all of the justices for the Supreme Court; one containing the names of all of the judges for the Superior Court.

Retention of Supreme Court Justices

We shall now proceed to the vote on the retention of the a Chief Justice and *three* Justices of the Supreme Court. Nominations are *not* received from the floor; rather, each justice who seeks retention files a declaration of intention to stand for retention with the Secretary of State. By this means each justice is *automatically* considered for retention pursuant to the terms of the Judicial Selection Act.

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

"Shall the following Justices of the Supreme Court 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 justices.

With respect to the retention of the incumbent justices of the Supreme Court, we have received declarations of intention to stand for retention to the office of Justice of the Supreme Court, as follows:

Paul L. Reiber, Chief Justice
 Harold E. Eaton, Jr., Associate Justice
 Beth Robinson, Associate Justice
 Marilyn S. Skoglund, Associate Justice

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

"Shall Chief Justice Paul L. Reiber be retained in office?"

Yes _____ No _____.

"Shall Associate Justice Harold E. Eaton, Jr. be retained in office?"

Yes _____ No _____.

"Shall Associate Justice Beth Robinson be retained in office?"

Yes _____ No _____.

"Shall Associate Justice Marilyn S. Skoglund be retained in office?"

Yes _____ No _____.

The ballot which you will receive will contain these questions in printed form on *one* single ballot. The terms of these Justices of the Supreme Court is for six years, from and including the first day of April, 2017, and until his or her successor is elected and has qualified.

Accordingly, we will need Tellers, and the Chair will now make those appointments.

Tellers Appointed

The Chair appointed the following Tellers:

Senator Jeanette K. White, of Windham District, as Chief Teller
 Senator Deborah J. Ingram, of Chittenden District
 Senator Brian P. Collamore, of Rutland District
 Representative Kurt Wright, of Burlington

Representative Matt Hill, of Wolcott
Representative Barbara Murphy, of Fairfax
Representative Linda Joy Sullivan, of Dorset

To facilitate the procedure for this afternoon, the Chair will rule, unless there is objection, that any debate on each of the *four* Justices shall be conducted separately. At the conclusion of the debate for all of the Justices, any general debate on the entire question shall be in order.

Prior to any debate or voting, we will receive the report of the Joint Committee on Judicial Retention relating to these Justices of the Supreme Court who have filed for retention. The Chair now recognizes the Chair of this Committee, the Member from Newbury, Representative Conquest, for the purpose of receiving his report.

Committee Reports

Representative Charles Conquest, 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 Senator Margaret K. Flory, of Rutland District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Chief Justice Paul L. Reiber.

The Chair then recognized Representative Gary Viens, of Newport City, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice Harold E. Eaton, Jr.

The Chair then recognized Senator Michael D. Sirotkin, of Chittenden District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Supreme Court Justice Beth Robinson.

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 Supreme Court Justice Marilyn S. Skoglund.

Debate

There being no further debate, before the ballots are passed out, I want to remind you of the rules that govern us:

- A. In so far as they are applicable, the Senate rules apply.
- B. No Representative or Senator may be absent from this Joint Assembly unless sick or otherwise necessarily detained.
- C. Upon being called to order, every Representative and Senator shall be seated.

D. It is the duty of each Representative and Senator to vote unless excused by this Joint Assembly or unless he or she is directly or immediately interested in the question being voted on.

E. Pursuant to Rule 69 Senator Benning and Representative Willhoit have requested to be excused from voting on Judge Bent. Hearing no objection to this request. They are excused as requested.

F. You are to remain seated while the tellers distribute the ballots.

G. If a member is not seated, no ballot will be placed at the member's desk or seat.

H. You are to remain seated during voting **and** while the ballots are collected by the tellers.

I. There is to be no milling about in the chamber during the counting of the ballots.

J. You are requested to remain in your seats during the counting of the ballots unless it is necessary to step out of the chamber.

K. If you leave the chamber during the counting of the ballots, you will not be permitted to re-enter the chamber until the counting of the ballots has been completed.

The tellers will now distribute the ballots to the members of this joint assembly for this vote.

Results of Balloting

Balloting then proceeded for the office of Justices of the Supreme Court, with the following results:

For Chief Justice Paul L. Reiber

Total votes cast.....	136
Necessary for a majority.....	69
For retention.....	135
Against retention.....	1

Whereupon the Chair declared that

PAUL L. REIBER, of Chittenden

having received a majority of the total votes cast was duly retained in the office of Chief Justice of the Supreme Court for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Associate Justice Harold E. Eaton, Jr.

Total votes cast.....	134
Necessary for a majority.....	68
For retention.....	132
Against retention.....	2

Whereupon the Chair declared that

HAROLD E. EATON, JR., of Woodstock

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Associate Justice Beth Robinson

Total votes cast.....	134
Necessary for a majority.....	68
For retention.....	130
Against retention.....	4

Whereupon the Chair declared that

BETH ROBINSON, of Ferrisburgh

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2017, and until her successor is elected and has qualified.

For Associate Justice Marilyn S. Skoglund

Total votes cast.....	135
Necessary for a majority.....	68
For retention.....	133
Against retention.....	2

Whereupon the Chair declared that

MARILYN S. SKOGLUND, of Montpelier

having received a majority of the total votes cast was duly retained in the office of Associate Justice of the Supreme Court for a term of six years, from and including the first day of April, 2017, and until her successor is elected and has qualified.

Retention of Superior Court Judges

We shall now proceed to the vote on the retention of the *ten* Judges of the Superior Court. Again, nominations are *not* received from the floor; rather, each candidate who seeks retention files a declaration of intention to stand for retention with the Secretary of State. By this means the name of each candidate is *automatically* considered for retention pursuant to the terms of the Judicial Selection Act.

In addition, the Judicial Selection Act provides that when a judge does so declare for retention, the question to be decided shall automatically be:

"Shall the following Superior Court 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 superior judges.

With respect to the retention of the incumbent superior judges, *ten* declarations of intention to stand for retention to the office of Superior Court Judge were received. As such, we have *ten* Superior Court Judges seeking retention and are as follows:

Alison Sheppard Arms
Robert E. Bent
Thomas Carlson
Cortland T. Corsones
Theresa S. DiMauro
Thomas J. Devine
Michael Kainen
Mary Morrissey
A. Gregory Rainville
Kristin Schoonover

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

"Shall Superior Judge Alison Sheppard Arms be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Robert E. Bent be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Thomas Carlson be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Cortland T. Corsones be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Thomas J. Devine be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Theresa S. DiMauro be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Michael Kainen be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Mary Morrissey be retained in office?"

Yes _____ No _____.

"Shall Superior Judge A. Gregory Rainville be retained in office?"

Yes _____ No _____.

"Shall Superior Judge Kristine Schoonover be retained in office?"

Yes _____ No _____.

The ballot which you will receive will contain these questions in printed form on *one* single ballot. The terms of these Superior Court Judges is for six years, from and including the first day of April, 2017, and until their successors are elected and qualified.

To facilitate the procedure for this afternoon, the Chair will rule, unless there is objection, to receive any debate on each of these *ten* Judges separately and at the end of the debate for the Judges, any general debate on the entire question shall be in order.

The Chair then recognized Representative Barbara Rachelson, of Fairfax, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Arms.

The Chair then recognized Representative Joseph Troiano, of Stannard, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Bent.

The Chair then recognized Senator Michael D. Sirotkin, of Chittenden District, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Carlson.

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 Court Judge Corsones.

The Chair then recognized Representative Charles Conquest, of Newbury, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Devine.

The Chair then recognized Senator Margaret K. Flory, of Rutland District who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Kainen.

The Chair then recognized Representative Gary Viens, of Newport City, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Morrissey.

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 Court Judge Rainville.

The Chair then recognized Representative Charles Conquest, of Newbury, who delivered the report of the Joint Committee on Judicial Retention with respect to the candidacy of Superior Court Judge Schoonover.

Results of Balloting

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

For Superior Judge Alison Sheppard Arms

Total votes cast.....	135
Necessary for a majority.....	68
For retention.....	134
Against retention.....	1

Whereupon the Chair declared that

ALISON SHEPPARD ARMS, of South Burlington

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until her successor is elected and has qualified.

For Superior Judge Robert E. Bent

Total votes cast.....	133
Necessary for a majority.....	67
For retention.....	127
Against retention.....	6

Whereupon the Chair declared that

ROBERT E. BENT, of St. Johnsbury

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Superior Judge Thomas Carlson

Total votes cast.....	136
Necessary for a majority.....	69
For retention.....	134
Against retention.....	2

Whereupon the Chair declared that

THOMAS CARLSON, of Hinesburg

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Superior Judge Cortland T. Corsones

Total votes cast.....	136
Necessary for a majority.....	69
For retention.....	135
Against retention.....	1

Whereupon the Chair declared that

CORTLAND T. CORSONES, of Mendon

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Superior Judge Thomas J. Devine

Total votes cast.....	135
Necessary for a majority.....	68
For retention.....	131
Against retention.....	4

Whereupon the Chair declared that

THOMAS J. DEVINE, of Moretown

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Superior Judge Theresa S. DiMauro

Total votes cast..... 136
 Necessary for a majority..... 69
 For retention..... 127
 Against retention..... 9

Whereupon the Chair declared that

THERESA S. DiMAURO, of West Windsor

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until her successor is elected and has qualified.

For Superior Judge Michael Kainen

Total votes cast..... 128
 Necessary for a majority..... 65
 For retention..... 126
 Against retention..... 2

Whereupon the Chair declared that

MICHAEL KAINEN, of White River Junction

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Superior Judge Mary Morrissey

Total votes cast..... 135
 Necessary for a majority..... 68
 For retention..... 134
 Against retention..... 1

Whereupon the Chair declared that

MARY MORRISSEY, of Jericho

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until her successor is elected and has qualified.

For Superior Judge A. Gregory Rainville

Total votes cast..... 133
 Necessary for a majority..... 67
 For retention..... 96
 Against retention..... 37

Whereupon the Chair declared that

A. GREGORY RAINVILLE, of St. Albans

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until his successor is elected and has qualified.

For Superior Judge Kristin Schoonover

Total votes cast..... 136

Necessary for a majority..... 69

For retention..... 129

Against retention..... 7

Whereupon the Chair declared that

KRISTIN SCHOONOVER, of Huntington

having received a majority of the total votes cast was duly retained in the office of Superior Judge for a term of six years, from and including the first day of April, 2017, and until her successor is elected and has qualified.

Dissolution

There being no further business, the Chair then declared the Joint Assembly dissolved.

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