

CHAPTER 156

LAWS OF 19 78

SENATE BILL 10014

ASSEMBLY BILL _____

S. 10014

A. 12830

SENATE-ASSEMBLY

April 26, 1978

IN SENATE—Introduced by Sens. GORDON, BARCLAY, ANDERSON, OHRENSTEIN, BERNSTEIN—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY—Introduced by M. of A. COOPERMAN—read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to providing for a state commission on judicial conduct; a commission on judicial nomination; the administration of the unified court system; to repeal article two-A thereof relating to a state commission on judicial conduct and certain other provisions thereof relating to the administration of the unified court system and to amend the penal law, the public officers law and the civil practice law and rules in relation to making certain conforming amendments therein

Bill compared by _____	DATE RECEIVED BY GOVERNOR: MAY 2 1978
_____	ACTION MUST BE TAKEN BY: _____
_____	GOVERNOR'S ACTION:

DATE 5/19/78

Memorandum No. _____

SENATE VOTE 39 Y 15 N

Date 5/8/78

Bill is disapproved

ASSEMBLY VOTE 93 Y 50 N

Date 5/8/78

Counsel to Governor

C 156

1978

SENATE

The Senate Bill

by Mr. GORDON et al Calendar No. 1000

Senate No. 10,014

Assem. Rept. No. _____

Entitled: "

S. 10014

A. 12830

AN ACT to amend the judiciary law, in relation to providing for a state commission on judicial conduct; a commission on judicial nomination; the administration of the unified court system; to repeal article two-A thereof relating to a state commission on judicial conduct and certain other provisions thereof relating to the administration of the unified court system and to amend the penal law, the public officers law and the civil practice law and rules in relation to making certain conforming amendments therein

~~SENATE HAS HAD THEREON~~

" was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	47	Mr. Anderson			8	Mr. Levy	
	49	Mr. Auer	_____		50	Mr. Lombardi	
	16	Mr. Babush			24	Mr. Marchi	
	45	Mr. Barclay			5	Mr. Marino	
	18	Mr. Bartosiewicz	EXCUSED		48	Mr. Mason	_____
	23	Mr. Beatty	_____		30	Mrs. Mendez	
	33	Mr. Bernstein			28	Mr. McCall	
	19	Mr. Bloom	EXCUSED		59	Mr. McFarland	
	12	Mr. Bronston			42	Mr. Nolan	
	41	Mr. Bruno			27	Mr. Ohrenstein	
	7	Mr. Caemmerer	_____		17	Mr. Owens	EXCUSED
	34	Mr. Calandra			11	Mr. Padavan	
	21	Mr. Conklin			60	Mr. Paterson	_____
	25	Mr. Connor			53	Mr. Perry	
	46	Mr. Donovan			36	Mr. Pisani	
	6	Mr. Dunne	_____		57	Mr. Present	
	54	Mr. Eckert	_____		39	Mr. Rolison	
	15	Mr. Farber			31	Mr. Ruiz	_____
	44	Mr. Farley			40	Mr. Schermerhorn	_____
	35	Mr. Flynn			2	Mr. Smith, B.C.	_____
	32	Mr. Galiber			51	Mr. Smith, W.T.	_____
	56	Mr. Gallagher	_____		22	Mr. Solomon	
	14	Mr. Gazzara	_____		43	Mr. Stafford	
	13	Mr. Gold			55	Mr. Tauriello	_____
	26	Mr. Goodman			3	Mr. Trunzo	
	20	Mr. Halperin			58	Mr. Volker	
	4	Mr. Johnson			52	Mr. Warder	
	15	Mr. Knorr	_____		38	Mrs. Winikow	
	1	Mr. LaValle					
	29	Mr. Leichter					

AYES 39
NAYS 15

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

S
10014

3/8 1978 C 156 Court Reform

(Republicans in Italics)

Those Who Voted
in the Affirmative

Those Who Voted
in the Negative

Those Who Voted
in the Affirmative

Those Who Voted
in the Negative

Those Who Voted
in the Affirmative

Those Who Voted
in the Negative

Mr. Abramson
Miss Amatucci
Mr. Barbaro
Mr. Bersani
Mr. Betros
Mr. Bianchi
Mr. Boyland
Mr. Brewer
Mr. Burns
Mr. Burrows
Mr. Bush
Mr. Butler
Mr. Calogero
Mr. Cincotta
Mr. Cochrane
Mrs. Connelly
Mr. Connors
Mr. Connor
Mr. Cook (C.D.)
Mrs. Cooke (A.P.)
Mr. Cooperman
Mr. Dabj
Mr. D'Amato
Mr. D'Andrea
Mr. Deawie
Mr. DelliBovi
Mr. Del Toro
Mr. DeSalvio
Mr. DiCarlo
Mrs. Diggs
Mr. Dokuchitz
Mr. Duryea
Mr. Emery
Mr. Engel
Mr. Esposito
Mr. Eye
Mr. Farrell
Mr. Ferris
Mr. Fink
Mr. Finneran
Mr. Flack
Mr. Flanagan
Mr. Fortune
Mr. Freemaning
Mr. Friedman
Mr. Goldstein
Mr. Goodhue
Mr. Gorski
Mr. Gottfried
Mr. Graber

Mr. Gramis
Mr. Greco
Mr. Greenberg
Mr. Griffith
Mr. Gulotta
Mr. Hanna
Mr. Hannon
Mr. Harenberg
Mr. Harris
Mr. Hawley
Mr. Healey
Mr. Henderson
Mr. Herbst
Mr. Hevesi
Mr. Hinchey
Mr. Hirsch
Mr. Hoblock
Mr. Hochbrueckner
Mr. Hoyt
Mr. Hurlay
Mr. Johnson
Mr. Keane
Mr. Kishes
Mr. Kioider
Mr. Koppell
Mr. Kremer
Mr. Lafayette
Mr. Landes
Mr. Lane
Mr. Lasher
Mr. Lee
Mr. Lehner
Mr. Lentol
Mr. Levy
Mr. Lewis
Mrs. Lipschutz
Mr. Lopresto
Mr. Madison
Mr. Marchiselli
Mr. Marshall
Mr. Martin
Mr. McCabe
Mrs. McGee
Mr. McGrath
Mr. McInerney
Mr. Mega
Mr. Miller (G.W.)
Mr. Miller (H.M.)
Mr. Miller (M.H.)
Mr. Mirto

Mr. Molinari
Mr. Montano
Mr. Murphy (G.A.)
Mr. Murphy (M.J.)
Mr. Nadler
Mr. Nagle
Mr. Nicolosi
Mr. Nine
Mr. Nortz
Mr. Orazio
Mr. Passanante
Mr. Pesce
Mr. Proud
Mr. Rappleyea
Mr. Reilly
Mr. Riford
Mr. Robach
Mr. Ross
Mr. Ryan (A.W.)
Mr. Ryan (E.F.N.)
Mr. Sanders
Mr. Schimminger
Mr. Schmidt
Mr. Schumer
Mr. Sears
Mr. Serrano
Mr. Siegel
Mr. Silver
Mr. Solomon
Mr. Stavisky
Mr. Stephens
Mr. Strelzin
Mr. Sullivan (E.C.)
Mr. Sullivan (P.M.)
Mr. Tallon
Mr. Tills
Mr. Vann
Mr. Vezella
Mr. Virgilio
Mr. Walsh (D.B.)
Mr. Walsh (S.P.)
Mr. Warren
Mr. Wemple
Mr. Weprin
Mr. Wertz
Mr. Wilson
Mr. Yevoli
Mr. Zagame
Mr. Zimmer
Mr. Speaker

AYES 93

NOES 50

5-10,014



THE SENATE
STATE OF NEW YORK
ALBANY
12224

BERNARD G. GORDON
37TH DISTRICT
CHAIRMAN
COMMITTEE ON JUDICIARY

LEGISLATIVE OFFICE BUILDING
N. Y. S. CAPITOL
ALBANY, N. Y. 12224
1019 PARK STREET
PEEKSKILL, N. Y. 10566
TELEPHONE
914-PE 7-1100-1

MAY 12 1978

May 10, 1978

Honorable Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Gribetz:

I am enclosing herewith a copy of the memorandum in support of Senate bill 10014 and would appreciate your best efforts to have this legislation signed by the Governor.

Very truly yours,

Harvey Felton
Harvey Felton
Counsel

Enclosure



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

S-10,014

C-155 of '78

CHARLES D. HENDERSON
P. O. BOX 6
HORNELL, N. Y. 14843

MAY 13 REC'D

COMMITTEES
RULES
WAYS & MEANS
REAL PROPERTY TAXATION
ELECTION LAW

May 10, 1978

Re: Senate Intro 10014

My dear Governor:

There are many significant reasons why I am constrained to respectfully request, as urgently and forcibly as I know how, that you veto the above legislation.

First, by approving this legislation it is my sincere opinion that in the end we will inflict grievous harm to the people of this state and their last resort in this Democracy, our court system. I believe we owe to the people the opportunity to have all of the facts, the true facts, behind this legislation rather than the myths of the plush hundred-thousand dollar campaign by David Garth which persuaded about 20% of the total registered voters in this state to surrender their elective franchise.

Paranthenetically, this is the second time in the history of free people of this world that any group of citizens voluntarily surrendered their vote. The first time was in Germany in April of 1933 and I need not remind you of the disastrous results of that experiment which should be a warning to New York State.

This bill, which exceeds and distorts the intent of the amendments to the Constitution, enacts the most fundamental changes in our system of government since the Civil War. No public hearings were held on this bill and its final form was only available to legislators a few days before the debate and vote. Hardly appropriate or proper procedure in considering an issue of such grave significance to future generations and our system of government. After giving the people all the facts and soliciting their thoughts and opinions, let us reconsider the legislation to minimize the damage already done.

Examination of the bill discloses portions that are diametrically opposed to the principles and basic concepts of our democracy based on a majority of votes. When we deviate from the principle of the majority, as we do in requiring accord of two-thirds of the Commission of Judicial Nominations, we are creating a dictatorship by placing the veto in the hands of the appointees of the Governor or Chief Judge of the Court of Appeals. With a quorum of ten, as the

Honorable Hugh L. Carey

May 10, 1978

Page two

bill provides, three appointees would have veto power over any proposed nominee.

Secondly, I contend that the bill violates the Constitution by limiting the number of names which the Chief Executive of this state may consider for appointment as justices or appointment to any office. The bill further flies in the face of propriety by setting different limits for nominees for judgeships on the same court.

When you combine the two - two-thirds vote plus limitation in number of nominees to be considered, you have created a dictatorship of the elite, the classic definition of fascism.

Considering the constitutionality of the proposal, the amendment calls for well qualified. How then can you establish or limit the well qualified to a fixed number? What happens if one hundred applicants are interviewed and the nominators find that fifty are well qualified? Where in the amendment or bill does it say how the further elimination will take place in order to reduce the fifty well qualified to nine, or seven or three well qualified? When we fix the number we are saying nine or seven or three "best qualified". The Constitutional Amendment clearly says well qualified and makes no mention of best qualified.

We therefore find ourselves in the incongruous position of picking out of fifty well qualified candidates a specific number of the most well qualified because that is what the proposed statute states. Can you or anyone define a set of standards or criteria for the most well qualified? Perhaps we could say those born under the sign of Sagittarius, had blue eyes and were less than five-foot-ten would be "best qualified" of the "well qualified", most likely a choice of the Wall Street board room.

May I further submit that it is an invasion of the appointive powers of the Governor, your power, to limit the number of well qualified from which to make an appointment. How can the Governor be held accountable to the people if his powers are circumscribed and limited as this bill does? The limitation imposed by this bill is contrary to other constitutional provisions for appointment.

It is provided in Article VI, Section 21 of the Constitution that the Governor appoints judges to fill unexpired terms in Supreme Court, County Court, Surrogate Court, Family Court and others. The principle of appointment is the same in this section as in the new amendment to the Constitution. Nowhere in that section will you find a limitation on the number of names to be considered by the Governor in filling such vacancies.

The Governor presently names or appoints judges to the Court of Claims by power contained in Article VI, Section 9 of the Constitution. Nowhere will you find a limitation upon the number of names which the Governor may consider in naming a judge to the Court of Claims.

Further, the position of the Chief Judge of the Court of Appeals combines the responsibilities of a judge of the Court of Appeals with some administrative duties. However, with the new amendment the powers of court administration are so expanded that the administrative duties of the Chief Judge have become so diminished that in seeking a well qualified Chief Judge, the requirements would concomitant to those of a well qualified associate judge.

Why, then, are not the present sitting judges automatically well qualified? Any other posture creates the theatre of the absurd. Why a different number of nominees for an associate judge than a chief judge as the bill provides?

The disgraceful and repugnant method by which the amendments and implementing legislation was presented to the people and the Legislature has never been equalled, at least in this century. How, in good conscience, Governor could you, the Chief Judge of the Court of Appeals and legislative leaders who participated in this ignominious power grab form such an unholy alliance in the rape of the people?

Surely you are aware of how the shell game operated. In the 1976 Special Session called by you all three amendments were wrapped up in one bill, and over the protests by many members of both houses to separate the issues, passage in this form was accomplished. The proposed changes were advertised to the public as one amendment.

Honorable Hugh L. Carey

May 10, 1978
Page four

In 1977 a newly elected Legislature in one resolution adopted the proposed changes, but in a manner without precedent the questions were submitted to the people in three separate amendments with an effective date of April 1, 1978.

Careful examination of the records would have disclosed to the Court of Appeals that there were several violations of the people's Constitution, but it is obvious that little effort to establish the truth was exerted by the Chief Judge and architect of the despicable power grab under the guise of court reform.

It is ironic that this country has fought so many wars and so many of our young have made the supreme sacrifice of their lives to make the world safe for democracy and protect the right to vote while the people of New York are excluded by a conspiracy of power hungry, power mad elitists who make the state safe for Wall Street.

Obviously you, or at least you and the Chief Judge, are credited with forcing the Legislature again to vote on all three enabling bills plus additional non-relevant material in one bill, not in three separate parts as had been voted on by the people. Shame, what a reprehensible exertion of power and disregard for the people and their responsibilities.

While the people had an opportunity through public hearings to express themselves on the "concept" of so-called court reform amendments, you know Governor they never had an opportunity in any way to express themselves or be given the facts on the implementing legislation which you must veto or sign.

You have an opportunity to right some of the wrong by a veto of this measure so the people may be apprised of what is being proposed and given an opportunity to express their opinion to their representatives. Your veto message of the implementing legislation last year was very interesting. Perhaps the same ingenious treatment could be applied to this bill.

Honorable Hugh L. Carey

May 10, 1978

Page five

In still another matter, the extraordinary powers given the Administrative Judge is totally and utterly beyond comprehension unless it is designed to inhibit and impair the independence and integrity of the judiciary statewide. What is being created is a Czar over the entire court system under the semblance of court reform.

I predict that the unnecessary powers in this part of the bill will lead to abuse that will destroy the court system and come back to haunt those who contrived the scheme.

That portion of the bill dealing with the Commission on Judicial Conduct will result in political corruption the like of which this state has never seen before. No judge will be able to remain independent and unfettered in the discharge of his obligations. When we adopt a statute that provides virtually no due process guarantee for any member of the judiciary, as this bill does, we are granting greater protection to the murderer and rapist than to a judge.

It will be only a matter of time before the whole judicial system will be a shambles and tool of a fascist few. Just imagine a power hungry administrator who wanted to pack all the courts with his political cronies. We have, with this bill, created the perfect vehicle with which to remove from the courts all judges that do not knuckle to or acquiesce to the desires of the hierarchy. It is simple; all the control is in the hands of those with the power to appoint.

In addition Governor, either you or those dealing for you did not wish to give our present Commission on Judicial Conduct, which is only two years old, a chance to see it if could ease whatever ailments affect the judiciary. Why? Because it did not provide enough power to dictate and rule absolute by the zealots?

You can give the system a chance to work and save the system from destruction by a veto of the bill before you and insist that the three parts of the judiciary amendments to the Constitution be considered separately. It is possible to accomplish court reform without destroying the Republic.

Honorable Hugh L. Carey


May 10, 1978
Page six

Your obligation and mine to our constituents, the people of this state, is to first listen to them, give them all the facts, and then exercise judgment to protect their rights, not to destroy them.

I regret to say that I do not think, at least from the viewpoint of giving the people all the facts, that our responsibility has been exercised in a judicious manner. The legislation before you was conceived in private, behind closed doors, no public hearings were held before the measure was presented to the Legislature with very little notice.

No doubt you will not see this communication, but it will be a matter of record and at least I will be able to face the voters and openly tell them I tried to protect their right of choice which I predict, with the signing of this legislation, will be on the way to annihilation.

Respectfully yours,



Charles D. Henderson

Honorable Hugh L. Carey
Governor, State of New York
Executive Chamber
The Capitol
Albany, New York

S-10,014

Memorandum




STATE OF NEW YORK
EXECUTIVE CHAMBER

May 10, 1978

THOMAS R. FREY
DIRECTOR
OF STATE OPERATIONS

Handwritten scribble

To: Judah Gribetz

From: Thomas Frey 

no comment on S.10014

S-10,014



STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

ARTHUR LEVITT
STATE COMPTROLLER

IN REPLYING REFER TO

May 17, 1978

MAY 18 REC'D

REPORT TO THE GOVERNOR ON LEGISLATION

TO: The Honorable Judah Gribetz, Counsel to the Governor

RE: Senate 10014 Introduced by Senator Gordon, et al.

TITLE: An act to amend the judiciary law, in relation to providing for a state commission on judicial conduct; a commission on judicial nomination; the administration of the unified court system; to repeal article two-A thereof relating to a state commission on judicial conduct and certain other provisions thereof relating to the administration of the unified court system and to amend the penal law, the public officers law and the civil practice law and rules in relation to making certain conforming amendments therein

EFFECTIVE DATE: This act shall take effect immediately and the provisions of sections one through four hereof shall be deemed to have been in full force and effect on and after April first, nineteen hundred seventy-eight.

This Department has no objection to the enactment of this bill.

ARTHUR LEVITT
STATE COMPTROLLER

By

Calvin M. Berger
Counsel to the Comptroller

S-10,014



COUNTY OF BROOME
SURROGATE'S COURT CHAMBERS
BINGHAMTON, NEW YORK
13901

JOHN M. KEANE
SURROGATE

MAY 16 1978

May 15, 1978

Hon. Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

Re: S. 10014

Dear Mr. Gribetz:

You have asked the Surrogates' Association for comment on the above numbered bill.

This bill implements the three constitutional amendments approved by the voters at the election last November. According to news sources, it has been the subject of much discussion and debate among the members of the Legislature. The legislation is required under the amendments which were passed.

At the present time this Association has no objection to the legislation in its present form.

Sincerely yours,

Chairman, Legislative Committee
Surrogates' Association

COMMITTEE FOR MODERN COURTS, INC.

36 WEST 44TH STREET □ ROOM 711 NEW YORK, NEW YORK 10036 (212) 575-1578

Chairman:

John J. McCloy

May 16, 1978

Vice Chairmen:

Marion P. Ames
Samuel J. Duboff
Whitney North Seymour, Jr.
Gary H. Sperling

Hon. Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

MAY 18 REC'D

Secretary:

Amelie Wallace

Re: S.10014 A.12830

Treasurer:

Arthur B. Newman

Dear Mr. Gribetz,

Board of Directors:

Marion P. Ames
Peter A. Burmeister
Nathaniel Caldwell
Melber Chambers
Richard Childs
Mrs. Edwin F. Chinlund
Lila A. Coleburn
Mary Lou Crowley
D. Clinton Dominick
Samuel J. Duboff
Duncan Elder
Pauline Feingold
Frances Friedman
Allen Geller
Justin M. Golenbock
Marjorie G. Gordon
Donald Grajales
William Hoppen
Roger B. Hunting
Robert Kasanof
Prof. Fannie J. Klein
Lawrence Lachman
E. Nobles Lowe
John J. McCloy
Robert MacCrate
Ralph J. Maffei
Robert R. Meehan
Jeanne Moore
Archibald R. Murray
Arthur B. Newman
Kenneth Norwick
Robert L. Ostertag
Hon. David W. Peck
A.N. Romm
Prof. Maurice Rosenberg
Richard Rothschild
Arthur Schiff
Jacob Sheinkman
Whitney North Seymour, Jr.
Hon. Caroline K. Simon
Luella Slaner
Gary H. Sperling
Herbert Sturz
Marvin Sussman
Mrs. Harrison Tweed
Amelie Wallace
Lawrence Wilkinson

Thank you for the opportunity that you have provided for the Committee for Modern Courts to comment on this bill.

The legislation is in many respects true to the court reform amendments sought to be implemented. An exception to this, however, lies in Article 3-A, section 63, subsection 1, 2(a), which provides for seven names to be recommended to the Governor by the Commission for the position of Chief Judge of the Court of Appeals.

As you know, good government groups (including the League of Women Voters, Citizens Union, Common Cause, New York State Congress of Parents and Teachers, the City Club of New York, the Women's City Club, the Federation of Protestant Welfare Agencies, and the New York State Council of Churches) have been unanimous in their call for a small number of names as being necessary to implement what the people voted for in November -- a judicial nominating commission (not a screening panel as existed in New York City).

Most groups originally suggested 3 names; this number is also in the Model Judiciary Article published by the national court reform organization that has extensively studied this issue, the American Judicature Society.

Executive Director:

Fern Schair

Many of the good groups have stated that, for the sake of a quick resolution of the issue, they would support a bill providing for 3 to 5 names; any higher number would seriously damage the merit selection system sought to be implemented.

Therefore, although we recognize the long, serious consideration that went into the drafting of this bill, and the many fine provisions the final measure contains, we cannot support this measure.

Sincerely,



Fern Schair
Executive Director

dl

Citizens
Union of the City
of New York
15 Park Row, New York, N.Y. 10038 (212-6343)

C-156
MAY 23 REC'D

Terence H. Benbow
Chairman

Gary H. Sperling
Executive Director

Vance M. Benguiat
Associate Director

RECEIVED AFTER ACTION BY GOVERNOR

May 18, 1978

Hon. Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.10014/A.12830

Dear Judah:

Responding to your request for comment on the bill cited above, I enclose a copy of my memorandum on behalf of Citizens Union, distributed in connection with our approval of the measure.

As it happens, the established court reform groups split on this matter. We were pleased to have the opportunity to demonstrate our flexibility in approving the final compromise -- flexibility foreshadowed in my letter to you last December.

Cordially,


Gary H. Sperling
Executive Director

Encl.

cc: S. Michael Nadel, Esq.

C-156

S-10,014

CITIZENS UNION
15 PARK ROW
NEW YORK, N. Y. 10038

Bill Jacket

MAY 24 REC'D

May 18, 1978

Hon. Judah Gribetz
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.10014/A.12830

Dear Judah:

Responding to your request for comment on the bill cited above, I enclose a copy of my memorandum on behalf of Citizens Union, distributed in connection with our approval of the measure.

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Cordially,

Gary H. Sperling
Executive Director

Encl.

cc: S. Michael Nadel, Esq.

To: Members of the Senate and Assembly
From: Gary H. Sperling, Citizens Union Executive Director
Date: May 1, 1978
Re: Implementing legislation for court reform

Bill [unclear]

Citizens Union has carefully followed the development of implementing legislation for the three court reform amendments approved by the voters last November. Since the three amendments -- on judicial selection, administration and conduct -- took effect on April 1, their implementation is now a month overdue.

We had been troubled in recent weeks both by this delay and by the possibility that the substance of the legislation -- when it finally came to the floor -- would violate the spirit of the amendments. So we are gratified that the Legislature now seems ready to act and that the final language, though far from perfect, evades so many of the pitfalls we have cautioned against since the amendments were approved.

Only two of the three necessary implementing proposals have been the subjects of substantial controversy:

Merit selection of the Court of Appeals. Discussion here has centered on the important question of how many names the Nominating Commission shall submit to the Governor for final consideration. Most jurisdictions with nominating panels call for the submission of three names to the appointing authority; in light of this successful experience, and in the belief that it would limit selection to only the very best candidates, Citizens Union has favored the same limit.

The bill as it is now proposed provides for a range of three to five names for Associate Judge vacancies. We have endorsed that as a necessary legislative compromise.

Unfortunately the same bill provides for a flat seven names for Chief Judge. Although we continue to oppose that number as far too high, we are heartened by the acceptance by legislative leaders of language that makes it clear that the higher number pertains only to that single office and is meant to have no precedential effect in the event that merit selection is extended -- as we hope it will be -- to the rest of our state court system.

Most important, we've come a long way from earlier suggestions that no numerical limit at all be imposed; the concept of a limited number will be established and applied to six out of seven positions.

Commission on Judicial Conduct. Discussion here centered on a half-dozen or so issues regarding the operation of the Commission. Earlier drafts of legislation included several adverse provisions, reflecting a legitimate but overstated concern with the need to protect judges under investigation. That need is recognized by the bill in its current form, but those harmful provisions relating to rules of evidence, burden of proof and the like that would have impeded the Commission's day-to-day work have been removed.

Although public hearings will be barred by the proposed measure, the public's "need to know" will be accommodated by a provision for commission reports which is much improved over earlier drafts, although still not ideal. An important provision to prevent judges from ending serious investigations by merely resigning has been added. The question of penalties for "leaks" has not been resolved in an entirely satisfactory manner, but the language in the bill will probably be more cumbersome than intimidating.

* * *

To sum up, the implementing proposals have come a long way forward. They are still not all that Citizens Union hoped for (e.g., seven names for Chief Judge leaves just too much discretion), but they otherwise provide reasonable procedures for Court of Appeals nominations and the basis for an effective Commission on Judicial Conduct. That's quite a lot, and we commend all those who have helped to achieve it.

MEMORANDUM

AN ACT to amend the judiciary law and the civil practice law and rules, in relation to the establishment of a commission on judicial conduct, in relation to the establishment of a commission on judicial nomination and in relation to administration of the unified court system.

JUDICIAL CONDUCT:

The bill establishes a new commission of eleven members with a quorum of eight members with the concurrence of six members needed for issuance of a formal complaint and hearings as well as for a determination to admonish, censure, remove or retire or suspend, or to refer an issue to a 3 member panel.

If a panel is convened, two of the three members constitute a quorum.

The commission has the powers to conduct hearings, subpoena, confer criminal immunity, report annually to the Governor and Legislature and Chief Justice.

Panels and referees may hold hearings but cannot undertake tasks that are specifically reserved to the commission itself.

If a formal complaint is issued, judge has rights to counsel, transcripts of proceedings and if a hearing is held, prior notice of 20 days and copies of statements to be used against him. Hearings are not to be public absent the judge's demand for same. A final determination of the commission is to be transmitted to the Chief Judge together with all findings. After service of same on the judge the papers would be made public.

If a judge resigns, jurisdiction is continued in the commission for 120 days after receipt of the resignation by the chief administrator.

Confidentiality of the commission work is imposed upon all officers, employees and agents of the commission and provision is made for enforcement of the imposition of confidentiality.

Provisions made on the bill for cases in transition from the former commission to the new entity.

JUDICIAL NOMINATION:

The principal feature of this measure include:

---a limit on the number of persons who may be recommended to the Governor as well-qualified for a vacancy for Chief Judge. The commission shall recommend seven persons. For each vacancy in the office of the Associate Judge, the commission would be authorized to submit at least three, but no more than five persons. In the event of multiple vacancies, the minimum number would be increased by one for each vacancy and the maximum would be also increased by one [§63 (3)].

--- a recommendation that a person is well-qualified would require the concurrence of eight members of the 12 member commission [§63 (3)].

--- no person can be recommended to the Governor who has not been personally interviewed by the commission, and who has not filed a financial statement consisting of the person's assets, liabilities and sources of income [§63 (4)].

--- the commission's report to the Governor recommending persons as well-qualified would be made public, together, with the commission's findings relating to the nominees' character, temperament, professional aptitude, experience and fitness for office. The financial statement of the person appointed by the Governor would also be made public [§63 (4)]. All officers, employees and agencies of the commission shall be bound by the stricture of confidentiality.

--- a timetable for filling vacancies. The Governor would have thirty days in which to make an appointment from among the persons recommended to him, and the Senate would have thirty days to exercise its authority to advise and consent. [§67].

The provisions of this measure ensure that the commission's principal function is to nominate well-qualified persons to the Court of Appeals, rather than to merely screen candidates. The process would be a public one in which community and professional organizations can recommend persons for consideration by the commission, and the public will have the opportunity to observe and to participate in the selection process once recommendations are made to the Governor.

The fiscal impact to the State is not expected to exceed \$100,000, and the commission will be funded in the executive budget.

ADMINISTRATION:

The purpose of this section of the bill is to implement new section 28 of Article VI of the State Constitution relating to administration of the unified court system.

The principal features of this measure include:

--- A new Article 7-A of the Judiciary Law which identifies the administrative officers and agencies of the unified court system and defines their functions. Pursuant to section 28 of Article VI, effective April 1, 1978, the Chief Judge of the Court of Appeals is the chief judicial officer of the unified court system. The Chief Judge will appoint, with the advice and consent of the Administrative Board of the Courts, a Chief Administrator of the Courts who, on behalf of the Chief Judge, will supervise the administration and operation of the courts, a function previously exercised by the Appellate Divisions of the Supreme Court under former section 28. The Chief Judge will also establish statewide standards and administrative policies in consultation with the Administrative Board. They will be promulgated after approval by the Court of Appeals.

Section 28 of Article VI provides that the Chief Administrator will have such powers and duties as may be delegated to him by the Chief Judge, and such additional powers and duties as may be provided by law. New Article 7-A codifies these provisions of section 28.

New Article 7-A also codifies the constitutional functions of the Chief Administrator to promulgate rules of conduct for judges, to prepare the judiciary budget, to designate appellate terms, and to temporarily assign judges and justices of the court system. Further, it vests him with the administrative functions and responsibilities previously exercised by the State Administrator. The Judicial Conference would be continued as an advisory body, with its membership expanded to include a member of the bar from each judicial department.

--- Amendment to the CPLR to transfer authority to adopt rules to govern the arbitration of claims less than \$6,000 to the Chief Judge of the Court of Appeals. At present, this authority is vested in the Administrative Board of the Judicial Conference.

EFFECTIVE DATE: Immediately upon enactment into law.

S-10,014

State of New York
OFFICE OF COURT ADMINISTRATION
Agency Building 4 • 20th Floor
Empire State Plaza
Albany, New York 12223
~
Telephone (518) 474-1038



RICHARD J. BARTLETT
State Administrative Judge

May 16, 1978

Honorable Judah Gribetz
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224

Re: Senate 10014

Dear Mr. Gribetz:

I write on behalf of Chief Judge Breitel and myself concerning this measure which is before the Governor for executive action. The bill implements the three court reform amendments, dealing with appointment of judges to the Court of Appeals, judicial discipline, and administration of the courts.

We, of course, are most gratified that our joint efforts with the Governor to achieve these significant reforms of the unified court system met with the approval of the people last November. We trust that the remaining reforms of court merger and merit selection will be accomplished in the near future. Our comments follow regarding the provisions of the implementation bill itself.

The bill requires the Commission on Judicial Nomination to nominate to the Governor seven persons for Chief Judge of the Court of Appeals, and at least three but no more than five persons for Associate Judge. The requirement that the Commission name no more nor less than seven persons for Chief Judge frustrates the intent of the voters, clearly expressed in the approval of the three amendments, that only the most qualified persons should be considered for appointment as Chief Judge. Not only does the Chief Judge preside over the state's highest court, but he is responsible for the administration of the entire court system. As we stated recently, requiring the Commission to certify that

more persons are well qualified for Chief Judge than for the less demanding office of Associate Judge, and compelling the Commission to nominate a fixed number of persons for Chief Judge while permitting discretion with respect to the lesser office, makes no sense.

The provisions of the bill relating to administration reflect the drafting proposals of this Office. The sections dealing with judicial conduct, while inconsistent with some of our legislative proposals, are consistent with many others and we have no objection to their approval.

While distressed by the provisions relating to the judicial nominating process, we recognize that implementing legislation must be enacted in law without further delay; and that the Legislature is unlikely to reconsider its position with respect to the number of persons who may be recommended to the Governor by the Commission. We therefore recommend that this measure be approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Bartlett". The signature is written in a cursive, slightly stylized font.

Richard J. Bartlett

RJB/dbm

S-10014 RR 51

Bill Number: Assembly _____ Senate _____

Memo on original draft of bill

Memo on amended bill

*Sen Sub
Passed
5/8/78*

Sponsors: Members of Assembly: Arthur J. Cooperman

Senators: _____

MAY 12 RECD

Introduced at the request of _____

Title of Bill: AN ACT to amend the judiciary law, in relation to providing for a state commission on judicial conduct; a commission on judicial nomination; the administration of the unified court system; to repeal article two-A thereof relating to a state commission on judicial conduct and certain other provisions thereof (cont.)

Purpose or General Idea of Bill: To implement the constitutional amendments ratified by the people at the general election in November, 1977, to provide for:

1. Gubernatorial appointment of judges of the Court of Appeals upon the recommendation of a Commission on Judicial Nomination;
2. Centralized administration of the unified court system by a chief administrator or of the courts in consultation with the administrative board;
3. Creation of a Commission on Judicial Conduct to receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge of the unified court system.

Summary of Specific Provisions:

1. The bill provides for the organization and procedure of the Commission on Judicial Nomination and prescribes the functions, powers and duties of the Commission. For each vacancy in the office of Chief Judge of the Court of Appeals, the Commission will recommend seven well qualified candidates to the governor, and for each vacancy in the office of Associate Judge the Commission will recommend from three to five candidates.
2. The bill enacts a new Article 7-A of the Judiciary Law to reflect the new system of court administration adopted by constitutional amendment. The Chief Judge of the Court of Appeals is designated the chief judicial officer of the unified court system and is vested with the responsibility for the administrative supervision of the court system through his delegate, the chief administrator, to be appointed by the Chief Judge with the advice and consent of the Administrative Board.
3. The bill provides for the organization and procedure of the Commission on Judicial Conduct which will conduct investigations of complaints, hold hearings, and determine that a judge be admonished, censured, removed from office or retired. The determinations of the Commission will be subject to review by the Court of Appeals.

Effects of Present Law which this Bill would Alter: Establishes new Commissions on Judicial Nomination and Judicial Conduct and provides for centralized administration of the unified court system as required by the constitution.

Justification: The legislation is necessary to implement the constitutional amendments approved by the people at the general election of November 1977.

Prior Legislative History: None.

Fiscal Implications for State and Local Governments: The Commission on Judicial Conduct... funds for the operation of the... will be appropriated in the 1978 Supplemental

Effective Date:

Title of Bill: (cont.) relating to the administration of the unified court system and to amend the penal law, the public officers law and the civil practice law and rules in relation to making certain conforming amendments therein.