

Good Government Groups Call on Governor and Legislature to Abandon Flawed, Last Minute Proposal Changing Method for Appointing Judges to the NYS Court of Appeals

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New York, NY – Citizens Union, the League of Women Voters of New York State, and the Committee for Modern Courts, released the following statement calling on the Assembly to reject Governor Hochul’s proposed “program bill” (A5983/S06061) which passed the Senate this morning and will change the selection process for appointing judges to the New York State Court of Appeals:

“The proposed program bill to change the appointing method for the New York State Court of Appeals is flawed and should not pass. We believe it would heavily politicize a sensitive nomination process that centers appropriate qualifications for each Court position, and conflicts with the plain language of the State Constitution.

“According to the proposed bill, which could reportedly move as part of budget legislation, if an Associate Judge of the Court of Appeals is appointed to be the Chief Judge, the Governor would be permitted to nominate someone to the vacant Associate Judge position from the list of recommended names that the Commission on Judicial Nomination provided to fill the Chief Judge position.

“First, we believe this proposal would be unconstitutional. The state constitution clearly contemplates that the Commission should be able to consider candidates for each vacancy as it comes up. Article 6, Section 2 of the Constitution provides that ‘whenever a vacancy in those offices occurs, [the Commission] shall prepare a written report and recommend to the governor persons who are well qualified for those judicial offices.’ The Commission is the only body authorized to provide a short list of recommended names to fill a vacancy, and it could very well determine that an Associate Judge position would generate a different list than a Chief Judge position.

“Second, Associate Judge and Chief Judge of the Court of Appeals are two positions requiring different qualifications. The Chief Judge oversees the entire state’s court system, which employs over 16,000 people and has a budget of more than \$2 billion. it would be perfectly appropriate for the Commission to decide certain individuals are extremely qualified to serve as Associate Judge but do not have the administrative experience to serve as Chief Judge. Under the Constitution, it is the Commission’s role to make the determination of which candidates to place before the Governor for nomination, not the decision of the two political branches of government. The Commission is the body charged with recommending persons well qualified (by their ‘character, temperament, professional aptitude and experience’) to hold a specific

judicial office. It is not up to the legislature or the Governor to truncate a list composed for a different purpose and then make a deal for nominations based upon the truncated list.

“Third, this proposal would reintroduce politicization into a sensitive nomination process that should be left detached from political-horse trading. The Commission on Judicial Nomination was designed to limit the direct politicization of the process by the Executive and Legislative branches while reflecting input into the selection process from all three branches. We should leave it that way. Making substantial changes to a constitutionally-controlled judicial appointment method – especially mid-process – simply for political convenience undercuts the very purpose of the constitutional provision. Discussions on how to improve this process or reduce extended periods of time without a full bench on the Court of Appeals should be done in a thoughtful and open legislative process, not through last-minute budget negotiations.

“We urge lawmakers and the Governor not to move this legislation forward.”

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