

P U B L I C H E A R I N G

before

ASSEMBLY COMMITTEE ON REVISION
AND AMENDMENT OF LAWS

on

ASSEMBLY CONCURRENT RESOLUTION NO. 58,
to amend the State Constitution to
incorporate the existing County Courts
into the Superior Court, transferring their
jurisdiction and pending causes to the
Superior Court.

Held:
June 29, 1972
Senate Chamber
State House
Trenton, New Jersey

Testimony of Edward B. McConnell
Administrative Director of the Courts

MEMBER OF COMMITTEE PRESENT:

Assemblyman Kenneth A. Black, Jr. (Chairman)

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STATE OF NEW YORK

IN SENATE

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE
IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

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ASSEMBLY CONCURRENT RESOLUTION No. 58

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 14, 1972

By Assemblymen SPIZZIRI, DE KORTE, REID, RYS, DAWES,
KENNEDY, KALTENBACHER, DENNIS, VEIT, PARETI,
FRIEDLAND and HIGGINS

Referred to Committee on Revision and Amendment of Laws

A CONCURRENT RESOLUTION proposing to amend Article VI, Sections I, III, V, VI, and VII, and Article XI, and to repeal Article VI, Section IV, of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring)*:

1 1. The following proposed amendment to the Constitution of
2 the State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 a. Article VI, Section I, paragraph 1, be amended to read as
4 follows:

5 1. The judicial power shall be vested in a Supreme Court, a
6 Superior Court, **County Courts** and inferior courts of limited
7 jurisdiction. The inferior courts and their jurisdiction may from
8 time to time be established, altered or abolished by law.

9 b. Article VI, Section III, paragraphs 1, 2 and 3, be amended
10 to read as follows:

11 1. The Superior Court shall consist of such number of judges as
12 may be authorized by law, **but not less than 24,** each of whom
13 shall exercise the powers of the court subject to rules of the
14 Supreme Court. *The Superior Court shall at all times have at*
14A *least two judges who are residents of each of the 21 counties of this*
14B *State.*

15 2. The Superior Court shall have original general jurisdiction
16 throughout the State in all causes, *all the jurisdiction heretofore*
17 *exercised by the County Courts and such other jurisdiction con-*
18 *sistent with this Constitution as may be conferred by law.*

18A c. Article VI, Section III, paragraph 3 be amended to read as
18B follows:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

18c 3. The Superior Court shall be divided into an Appellate Division,
 18d a Law Division, and a Chancery Division. Each division shall have
 18e such parts, consist of such number of judges, and hear such causes,
 18f as may be provided by rules of the Supreme Court. *At least one of*
 18g *the judges of the superior court shall at all times be assigned to sit*
 18h *in each of the 21 counties.*

19 d. Article VI, Section IV, be repealed.

20 e. Article VI, Section V, paragraphs 1 and 2 be amended to
 21 read as follows:

22 1. Appeals may be taken to the Supreme Court:

23 (a) In causes determined by the appellate division of the
 24 Superior Court involving a question arising under the Constitution
 25 of the United States or this State;

26 (b) In causes where there is a dissent in the appellate division
 27 of the Superior Court;

28 (c) In capital causes;

29 (d) On certification by the Supreme Court to the Superior Court
 30 and, where provided by rules of the Supreme Court, to the [County
 31 Courts and the] inferior courts; and

32 (e) In such causes as may be provided by law.

33 2. Appeals may be taken to the appellate division of the
 34 Superior Court from the law and chancery divisions of the
 35 Superior Court[, the County Courts] and in such other causes as
 36 may be provided by law.

37 e. Article VI, Section VI, paragraphs 1, 2, 4, 5 and 7 be
 38 amended to read as follows:

39 1. The Governor shall nominate and appoint, with the advice
 40 and consent of the Senate, the Chief Justice and associate justices
 41 of the supreme court, the judges of the superior court, [the
 42 judges of the county courts] and the judges of the inferior courts
 43 with jurisdiction extending to more than one municipality. No
 44 nomination to such an office shall be sent to the Senate for confirma-
 45 tion until after 7 days' public notice by the Governor.

46 2. The justices of the supreme court[.] and the judges of the
 47 superior court [and the judges of the county courts] shall each
 48 prior to his appointment have been admitted to the practice of law
 49 in this State for at least 10 years.

50 4. The justices of the supreme court[.] and the judges of the
 51 superior court [and the judges of the county courts] shall be
 52 subject to impeachment, and any judicial officer impeached shall not
 53 exercise his office until acquitted. The judges of the superior court
 54 [and the judges of the county courts] shall also be subject to
 55 removal from office by the Supreme Court for such causes and in
 56 such manner as shall be provided by law.

57 5. Whenever the Supreme Court shall certify to the Governor
 58 that it appears that any justice of the supreme court [.] or judge
 59 of the superior court [or judge of the county court] is so in-
 60 capacitated as substantially to prevent him from performing his
 61 judicial duties, the Governor shall appoint a commission of three
 62 persons to inquire into the circumstances; and, on their recommen-
 63 dation, the Governor may retire the justice or judge from office, on
 64 pension as may be provided by law.

65 7. The justices of the supreme court[,] and the judges of the
 66 superior court [and the judges of the county courts] shall hold
 67 no other office or position, of profit, under this State or the United
 68 States. Any such justice or judge who shall become a candidate for
 69 an elective public office shall thereby forfeit his judicial office.

70 f. Article XI be amended by adding thereto Section VI as follows:

SECTION VI

71 When the amendment to the Judicial Article of this Constitution
 72 providing for the abolition of the County Courts takes effect:

73 (a) The jurisdiction of the County Courts, as well as all matters
 74 pending therein, shall be transferred to the Superior Court;

75 (b) The judges of the county courts shall become judges of the
 76 superior court. All such judges who had acquired tenure on the
 77 County Court shall have tenure on the Superior Court without the
 78 necessity of further appointment. All other such judges shall have
 79 an initial term of 7 years commencing upon the effective date of this
 80 amendment and upon subsequent appointment to the Superior
 81 Court shall acquire tenure.

1 2. When this proposed amendment to the Constitution is finally
 2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
 3 it shall be submitted to the people at the next general election
 4 occurring more than 3 months after such final agreement and be
 5 published at least once in at least one newspaper of each county
 6 designated by the President of the Senate and the Speaker of the
 7 General Assembly and the Secretary of State, not less than 3
 8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 the following legend shall immediately precede the question:

- 8 If you favor the proposition printed below make a cross (×),
 9 plus (+) or check (√) in the square opposite the word "Yes." If
 10 you are opposed thereto make a cross (×), plus (+) or check (√)
 11 in the square opposite the word "No."
 12 b. In every municipality the following question:

	Yes.	Shall the amendment to Article VI and Article XI of the Constitution to incorporate the existing County Courts into the Superior Court, transfer their jurisdiction and pending causes to the Superior Court, and appoint their judges to the superior court, be approved?
	No.	

ASSEMBLYMAN KENNETH A. BLACK, JR. (Chairman):
The public hearing on Assembly Concurrent Resolution number 58 being conducted by the Committee on Revision and Amendment of Laws will now come to order.

Before I call upon witnesses I'd like to make a brief statement, to wit, that Assemblyman Spizziri, the prime sponsor of Assembly Concurrent Resolution number 58, contacted me by phone yesterday and advised that he would be unable to attend the hearing. He has a personal matter which prevents his being here this morning. However, he will submit a prepared statement at a later date.

I believe we have only one speaker to comment with regard to Assembly Concurrent Resolution number 58 and I believe that gentleman is here with us at the present time.

Will you step forward, sir, and identify yourself and give your testimony?

E D W A R D B. M c C O N N E L L: My name is Edward McConnell and I am the Administrative Director of the Courts.

While I am only one witness here representing the Judiciary, I am sure that the comments which I will make with respect to the bill would have the enthusiastic support of all of the County Court Judges whose status would be affected by this constitutional amendment, if enacted.

I am sure they would all be here if they weren't hard at work holding court.

As you know, the substance of Assembly Resolution 58 is the same basically as that of Senate Concurrent Resolution number 36 on which a hearing was held a few weeks ago, although the language of the two resolutions differs somewhat.

To begin with, I would like to place on the record some of the advantages which would accrue to the judicial system and the people of the State through the

enactment of this resolution and the subsequent amendment of the constitution if approved by the electorate.

It would combine two courts of general jurisdiction that presently exist, the Superior Court and the County Court, into a single court of general jurisdiction which would be the Superior Court.

First of all, this would permit the best utilization of the judges of these two courts. For example, at the present time for practical reasons there are key assignments which can only be given to a judge of the Superior Court. These would be, for example, an assignment to the Appellate Division, an Assignment Judge, and generally Chancery Division general equity assignments.

By having a larger pool of judges comprised of those who are now in the Superior Court and the County Court from which the selection could be made, the judges could be placed in those positions where their skills and talents best qualified them to be. I am sure all of us know judges of the County Courts who, for practical reasons, can not be considered for these key assignments regardless of their qualifications for them.

Second, while the combination of these two courts into one would not be a solution to our calendar problems, by permitting maximum effective use of available judges, it would assist in some way in improving the expedition of the court's work. For one thing, for example, it would permit a reduction of travel time, probably, for judges who now may have to be assigned considerable distances from their homes. Any time a judge travels for an hour, it means an hour out of his day.

Third, and probably most important from the standpoint of the judges, is that this would eliminate the inequities that presently exist between the judges of the two courts. As the lawyers of the State know,

every Superior Court Judge is assigned to the County Court and every County Court Judge is assigned to the Superior Court and they try cases off the same calendar regardless of the court in which the case was instituted. This means that for all practical purposes, the County Court Judges are doing the same work as Superior Court Judges but they are not getting the same treatment.

The situation has been improved recently when they were given the same salary as that of judges of the Superior Court but they don't receive the same pension benefits, they don't have the same term, they don't have the same tenure, and in the hierarchy of things they don't have the same status so that an appointment from the County Court to the Superior Court is considered to be a promotion even though it results in no difference at all in the work which the judge does.

I am sure in any organization you would find a lack of complete esprit de corps if you had two people side by side doing the same work who are being treated differently. So that this would have an important effect on the general morale of the judges of the County Court.

Interestingly enough, it would also have some advantages for the judges of the Superior Court because in certain instances, because of the fact that the two courts exist, there are disadvantages by an appointment from the County Court to the Superior Court.

For example, if a judge on the County Court is appointed to the Superior Court and there is no need for his services in that particular county because of the status of the calendars, the Superior Court Judge must be assigned elsewhere and the newly appointed judge to the County Court who takes his place stays at home. This is a reverse inequity that the senior judge does the travelling and the junior judge stays at home and enjoys the benefits that normally would accrue to someone with seniority.

Fourth, there are certain jurisdictional problems that would be eliminated by the combination of these two courts into one. While many of these problems have been eliminated by having comparable rules for the two courts and by provisions in the rules that where a court is found to be without jurisdiction a case, instead of being dismissed, should be transferred to the court having jurisdiction, nevertheless there are certain instances where lawyers and judges need to be concerned about whether they have brought the case or whether they are trying the case in the right court. For example, condemnation proceedings can only be brought in the Superior Court. Corroborative writ proceedings can only be brought in the Superior Court. Appeals from the Municipal Courts go only to the county courts. Certain election matters may only be tried in the County Court and not in the Superior Court by virtue of special statutes.

It would become unnecessary for lawyers and judges to be concerned about these jurisdictional questions if these courts were combined into one.

Fifth, there would be a reduction in the complexity of the rules, the statutes and the clerical procedures because of the fact that you would have one court instead of two and many of the statutes and rules could be simplified because of the fact that you'd only have one court and some of the clerical work could be simplified. For example, the County Clerk, who is Clerk of the County Court, acts also as Deputy Clerk of the Superior Court but he needs to keep a separate set of books, one for the County Court work and one for the Superior Court work. The Superior Court records are duplicated by the Clerk of the Superior Court in Trenton. There could be, I think, substantial improvement and simplification of the record-keeping problems by having only one court.

Next, I think there would be some advantage

to the small counties from a combination of these two courts. For practical reasons, a judge of the County Court in a small county today may not be considered for appointment to the Superior Court because the volume of work in his county does not require the services of a Superior Court judge in addition to the County Court judge, so that if he were to accept an appointment to the Superior Court, it would of necessity mean that he would have to be transferred and travel a substantial distance to another county to sit. If he were a Superior Court judge, this problem wouldn't exist; the county would have its fair share of judges and they would all be Superior Court judges.

Seventh, I think one of the main advantages of having a single court would be that it would make it easier for the Governor's talent scouts to secure the best possible lawyers for appointments to the bench, because geography would not be a controlling factor. If, in a small county, for example, you had a lawyer who was well qualified and interested in going on the bench, he could accept an appointment without having to have a vacancy in that particular county. Likewise, from time to time, in some county there may be a shortage of lawyers interested in going on the bench and the best man available might be in another location. This sometimes happens because of the fact that all of the lawyers who practice in a county may not have their residences there and for appointments to the County Court it is not where the lawyer practices but where his residence is that controls whether or not he is eligible for appointment to the bench in that county.

It would also mean that the Governor in making his appointments from time to time would accommodate the bench to the volume of work without having to be concerned about the specific number of judges that must come from a particular geographical area. So that as the volume of work in a particular area of the State increased,

additional appointments could be made from that general area without having to amend the statutes from time to time to try and balance out the authorized number of judges against the constantly changing volume of work in a particular area.

I'd like to also mention what this bill and constitutional amendment do not do. There has been some concern, I think, on the part of the County Clerks and the Surrogates that the enactment of this resolution, and the amendment of the Constitution following it, might result in the elimination of their duties and responsibilities. That certainly is not the intent of this provision and, in fact, their services would still be needed in exactly the same way as they are now.

Accordingly, it seems to me essential that along with this resolution there be companion legislation establishing the duties of the County Clerk as Deputy Clerk of the Superior Court in the county, continuing the Surrogate as Deputy Clerk of the Superior Court for probate matters in the county, and one further matter that would need to be dealt with in a companion bill would be taking care of the appointing authority that is now vested in judges of the County Court because if they went in as judges of the Superior Court and the law provided that appointing authority was vested in the justices of the County Court, we would then have a situation where a couple of hundred Superior Court judges would be the appointing authority rather than the handful of judges at the county level.

The recommendation which we had previously made was that such companion legislation provide that wherever appointing authority was granted to the county judges in the statutes that this be transferred to the assignment judge of the county. In the companion bill to SCR-36, which is S-928, a different formula has been selected to deal with that problem, but it is a problem that would need to be dealt with to avoid some confusion.



That, Mr. Chairman, is a brief summary of the advantages that would accrue from the enactment of this resolution and the amendment of the Constitution.

The present situation, as everyone knows, results from a compromise that was made at the Constitutional Convention in 1947 in order to insure that there would be local judges in each county. I think the increase in the population of all counties, from a practical standpoint, insures that now, and in addition in your resolution you have made provisions for each county being guaranteed a certain number of judges.

From time to time recommendations have been made by the Bar Associations, by the Supreme Court and by the Governor for streamlining, with further improvement, of our judicial system and it is one, I think, which is desirable and would inure to the benefit of all concerned and there would seem to be no countervailing interest, in reviewing the matter; there really does not appear to be any good reason at this date why such a change should not be made.

If there are any questions you have, I'd be pleased to answer them.

ASSEMBLYMAN BLACK: Yes, I do, sir.

Not being an attorney myself, I have some questions relative to the court's operation. You mentioned, first of all, some question with regard to the Surrogate's position as well as the County Clerk's position. Am I correct in assuming that there would be substantially no change in their duties with the adoption of this particular resolution?

Mr. McCONNELL: It is not intended that this Constitutional Amendment have any effect upon their duties. Now it would require companion legislation though to preserve that status. For example, the County Clerk, by statute, is clerk of the County Court so that if you are to eliminate the County Court, there would be no court for him to be clerk of, so you would need

legislation that would specify that he would become Deputy Clerk for the County of the Superior Court and would continue to do the same work that he now does. In fact, now, the County Clerk by rule serves as Deputy Clerk of the Superior Court. The duties of both the County Clerk and the Surrogate are prescribed by statute. There is nothing in the Constitution which prescribes their function so that it is both necessary and appropriate that companion legislation clarify their status and make it plain that they will continue to do the same functions in the same way that they now do them although they would be doing them for the Superior Court rather than for the County Court.

ASSEMBLYMAN BLACK: My next question would be - the costs of the County Courts are borne by, I believe, the residents of the county - who bears the cost of the Superior Court?

MR. MC CONNELL: The costs of the County Courts are borne by the counties except for a rebate by the State for a percentage of the County Court Judge's salary. The expenses of the Superior Court are partly paid by the State and partly by the counties. The judges of the Superior Court are all paid by the State 100%. The Chancery Division and Appellate Division of the Superior Court are financed completely by the State but the Law Division of the Superior Court, which most of the judges are assigned to, except for the judges' salaries, is an expense of the counties.

The only effect on the financial side of things that this Constitutional Amendment would have would be to transfer from the counties to the State the salaries of the County Court judges less the State rebate. Our fiscal note to Senate Concurrent Resolution number 36 indicates that this would transfer from the counties to the State approximately two million one hundred and forty-nine thousand dollars, based on the present authorized number of county court judges and present salaries.

ASSEMBLYMAN BLACK: I think that answers my question, sir, thank you very much.

MR. MC CONNELL: Yes, sir, it is a pleasure to be here.

ASSEMBLYMAN BLACK: If there is anyone in addition who would like to give testimony at this time with regard to Assembly Concurrent Resolution number 58, please so indicate.

(no response)

There being none, let the minutes of this public hearing indicate that it was terminated at 10:28 A.M.

(Hearing concluded)

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