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

before

SENATE JUDICIARY COMMITTEE

on

SENATE CONCURRENT RESOLUTION NO. 36
(Amending Article VI and Article XI of the New Jersey
Constitution to incorporate County Courts
into the Superior Court)

Held:
February 22, 1973
Senate Chamber
State House
Trenton, New Jersey

Members of Committee present:

Senator Richard R. Stout (Acting Chairman)
Senator John L. Miller

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Held:
March 22, 1973
Senate Chamber
State House
Trenton, New Jersey

Members of Committee present:

Senator Raymond H. Bateman (Acting Chairman)

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SENATE COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION No. 36

STATE OF NEW JERSEY

ADOPTED MARCH 27, 1972

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 to
10 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. *There shall at all times be superior Court judges*
15 *resident of each county equal in number to at least that number of*
16 *judges of the county court authorized to be appointed for each*
17 *county court as of ***[July 1, 1972]*** *July 1, 1973* with the county*
18 *of residence of a judge being determined as of the time of his*
18A *appointment.*

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

23 c. Article VI, Section III, paragraph 3 be amended to read as
24 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.

25 3. The Superior Court shall be divided into an Appellate Division,
26 a Law Division, and a Chancery Division. Each division shall have
27 such parts, consist of such number of judges, and hear such causes,
28 as may be provided by rules of the Supreme Court. *There shall*
29 *be at all times at least one part of the Superior Court in each*
30 *county with at least one judge who at the time of his assignment*
31 *to sit therein is a resident of the county.*

32 d. Article VI, Section IV, be repealed.

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

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

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

39 (b) In causes where there is a dissent in the Appellate Division
40 of the Superior Court;

41 (c) In capital causes;

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

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

46 2. Appeals may be taken to the appellate division of the
47 Superior Court from the law and chancery divisions of the
48 Superior Court[, the County Courts] and in such other causes as
49-50 may be provided by law.

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

53 1. The Governor shall nominate and appoint, with the advice
54 and consent of the Senate, the Chief Justice and associate justices
55 of the supreme court, the judges of the superior court, [the
56 judges of the county courts] and the judges of the inferior courts
57 with jurisdiction extending to more than one municipality. No
58 nomination to such an office shall be sent to the Senate for confirma-
59 tion until after 7 days' public notice by the Governor.

60 2. The justices of the supreme court[.], and the judges of the
61 superior court [and the judges of the county courts] shall each
62 prior to his appointment have been admitted to the practice of law
63 in this State for at least 10 years.

64 4. The justices of the supreme court[.], and the judges of the
65 superior court [and the judges of the county courts] shall be
66 subject to impeachment, and any judicial officer impeached shall not
67 exercise his office until acquitted. The judges of the superior court
68 [and the judges of the county courts] shall also be subject to

69 removal from office by the Supreme Court for such causes and in
70 such manner as shall be provided by law.

71 5. Whenever the Supreme Court shall certify to the Governor
72 that it appears that any justice of the supreme court~~[,]~~ or judge
73 of the superior court ~~[or judge of the county court]~~ is so in-
74 capacitated as substantially to prevent him from performing his
75 judicial duties, the Governor shall appoint a commission of three
76 persons to inquire into the circumstances; and, on their recommen-
77 dation, the Governor may retire the justice or judge from office, on
78 pension as may be provided by law.

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

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

SECTION VI

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

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

89 (b) The judges of the county courts shall become judges of the
90 superior court. All such judges who had acquired tenure on the
91 County Court shall have tenure on the Superior Court without the
92 necessity of further appointment. All other such judges shall have
93 an initial term of 7 years commencing upon the effective date of this
94 amendment and upon subsequent appointment to the Superior
95 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,
6A the following legend shall immediately precede the question:

- 7 If you favor the proposition printed below make a cross (×),
8 plus (+) or check (√) in the square opposite the word "Yes." If
9 you are opposed thereto make a cross (×), plus (+) or check (√/
10 in the square opposite the word "No."
11 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.	

February 22, 1973

SENATOR RICHARD R. STOUT (Acting Chairman):
I will call this hearing to order.

This is a public hearing being conducted by the Senate Judiciary Committee to consider Senate Concurrent Resolution No. 36, with Senate Committee Amendments, which proposes an amendment to the State Constitution.

This hearing is held by direction of the Senate and in accordance with the procedure for consideration of proposed amendments to the Constitution, directed by the Constitution and the Rules of the Senate.

Is there anyone here interested in Senate Concurrent Resolution No. 36 pertaining to the merger of the Superior Court and the County Courts?

I understand that the Director of the Courts will file a statement in connection with this proposed amendment.

I would like to note the presence of a representative of the County Officers Association, Mr. Frederick Kniesler, Special Deputy County Clerk of Monmouth County. It is understood that the County Officers Association will file a statement reflecting their views on the proposed amendment.

Is there anyone here who would like to be heard? Hearing no one, I shall adjourn this hearing.

(Hearing adjourned)

March 22, 1973

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SENATOR RAYMOND H. BATEMAN (Acting Chairman):

This is a public hearing on Senate Committee Substitute for Senate Concurrent Resolution 36, with Senate Committee amendments, which proposes an amendment to the State Constitution. It is being held by the Senate Judiciary Committee by direction of the Senate and in accordance with the procedure for consideration of proposed amendments to the Constitution directed by the Constitution and the Rules of the Senate.

The record of the public hearing held on this resolution on February 22, 1973, shall be incorporated with and become a part of the record of this hearing.

My name is Ray Bateman. I am a member of the Senate Judiciary Committee and in the temporary absence of the Chairman, Senator Woodcock, I will preside. As soon as the Senator arrives, he will take it over.

There are several people here who have asked to testify and the first to testify on Senate Committee Substitute for Senate Concurrent Resolution Number 36 will be Mr. Edward McConnell, the Administrative Director of the Courts.

MR. MC CONNELL: Mr. Chairman, I would like to suggest, if it would be appropriate, that Judge Clapp testify before me because then I will be in a position, as I think some others here will be, to express agreement with the proposal which he is prepared to make.

SENATOR BATEMAN: That is fine.

The first person to testify will be Mr. Alfred C. Clapp, who is testifying, I gather, sir, from the New Jersey Bar Association.

JUDGE CLAPP: That's right. I have been asked to speak for the New Jersey Bar Association in favor of this resolution.

SENATOR BATEMAN: It is nice to have you here, Judge Clapp. You are on familiar grounds.

A L F R E D C. C L A P P: Thank you, sir.

I could speak first of all generally for this resolution and then I have two suggestions for changes in the language. I am sorry to see changes in it, but I think that they should be made.

In general, I have been very strongly for this resolution over the years. In fact, I drew some legislation. It can be done legislatively or through the Constitution. I much prefer the constitutional change.

The Superior Court and the County Courts have concurrent jurisdiction on the law side. The practicalities are such that we now have a common calendar on the law side. The system that has grown up with the existence of two courts doing substantially the same business, except possibly in prerogative writ cases in some counties, and so on, is a real problem in morale. And beyond that, you have the question of the tenure and the term of appointment. I think I can put it pretty flatly, as the reason why my legislation failed and why I think this is good legislation, if I say that the remarks that were made in the caucus back in the days when I was pushing my legislation were: "We want these judges to come back to their makers every five years." The implications that go with that remark, I think, very clearly show the virtues of this resolution.

I have two suggestions as to changes to be made in it. I have just been talking with a group from the County Clerks Association and the Surrogates Association. I would think that a change should be made so as to continue them in office notwithstanding the passage of this resolution by the electorate.

When we drew the Constitution, you will find in the schedule, as we call it, of the Constitution, a clause, "Until otherwise provided by law.... the judicial officers, surrogates and clerks of all courts

now existing,.... and the employees of such officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted."

In pursuance of that thought, I have made the suggestion just a few minutes ago that in this resolution there be included a provision to this effect, namely, "until otherwise provided by law, the county clerk of each county and the surrogate of each county shall be the clerks of the Superior Court for their respective counties," and you can continue, if you wish, "and shall perform such duties and maintain such files and records as may be required by law and rule of court."

This, I think, assures them of a continuance of their positions and authority and responsibilities in the county. I think this leaves it in a status that can be acceptable from all viewpoints.

The only other suggestion I have -- and, as I say, I hesitate to make any changes in this thing. But since you are going to possibly make one change, it might be advisable to change Section VI, which now provides this: "The judges of the county courts shall become judges of the superior court. All such judges who had acquired tenure on the County Court shall have tenure on the Superior Court without the necessity of further appointment. All other such judges shall have an initial term of 7 years commencing upon the effective date of this amendment and upon subsequent appointment to the Superior Court shall acquire tenure."

There are 101 judges of the County Courts now. Let's say about 25 per cent of them already have tenure. So they will immediately acquire tenure - OK.

The next sentence is this: "All other such judges shall have an initial term of 7 years commencing upon the effective date of this amendment..." I would

suggest that language be changed so that their initial term commences upon the termination of their respective appointments. This staggers the terms of the judges so that you don't throw into one Governor the appointment of 75 county judges at the end of the 7 years after the effective date of the amendment.

With those two suggestions, I very strongly - and speaking for the State Bar which is very much in favor of this resolution -- I very strongly urge its adoption, sir.

SENATOR BATEMAN: Thank you very much, Judge Clapp.

I was going to ask the other Senators on the Judiciary Committee if there are any questions. But I am the only one and I have no questions as to the two points that you made, both of which are well taken.

Mr. McConnell, would you like to testify now?

E D W A R D B. M C C O N N E L L: Mr. Chairman, I would likewise like to testify in favor of the resolution.

I have previously at other hearings set forth what from the standpoint of the State and the Judiciary are the advantages of consolidation.

I have here a summary of my observations with respect to the resolution --

SENATOR BATEMAN: Would you like to put that into the record?

MR. MC CONNELL: (Continuing) -- which I can turn over to the committee and save the time of reviewing them.

SENATOR BATEMAN: Fine.

(Written statement submitted by Mr. McConnell can be found beginning on page 9.)

MR. MC CONNELL: I would like at this time to concur with the suggestions which Judge Clapp has made for the amendment of the resolution. Like him, I feel it is undesirable, of course, at this late date to again have an amendment. But it seems necessary in

order to resolve some of the problems that have arisen, and the suggestion which he made with respect to the status of the county clerks and the surrogates seems to be one which is satisfactory to the Judiciary and to these officials.

The other with respect to the term of the incumbent judges likewise would help avoid a situation where the Governor would be faced in the future with an overwhelming number of appointments to make at a single time.

With those observations, I will conclude my testimony unless there are any questions which you wish to ask me.

SENATOR BATEMAN: I have no questions. Thank you, Mr. McConnell. We will put your statement into the record and distribute it here to anybody who wants copies.

MR. MC CONNELL: Thank you, Senator.

SENATOR BATEMAN: We have a number of county officials here today. I would first introduce Mr. Edward Kelly, Jr. Mr. Kelly, what is your title with the County Officials?

E D W A R D A, K E L L Y, J R.: I am the County Clerk, Burlington County, Senator. I am also State President of the New Jersey County Officials Association, which incorporates the clerks, sheriffs, surrogates and registrars of deeds.

First off, I would like to thank the committee for inviting us here today to make any objections or comments.

I would also concur with the Judge and Mr. McConnell, only if Senate Bill No. 928 is part of SCR 36. Because SCR 36 does not make any provision at all for the county clerks or the county surrogates. So if S 928, Senator Thomas's bill, is in the same status now as SCR 36, our Association would go on record to support SCR 36.

I might also add it should be stated that the surrogate shall be the clerk of the Superior Court in his respective county in matters pertaining to probate, and the Clerks, in matters pertaining to law or criminal matters, to distinguish between the Clerk and the Surrogate. Because we do have different functions in our respective counties.

There is a representative here from the Surrogates, Mr. Job, and Mr. Snyder is here representing the 21 Clerks, and maybe they would like to say something, Senator. Again, I am overall President of the Association.

We concurred in the brief moment we had before this hearing to go along with SCR 36 if S 928 is part of it. Thank you very much.

SENATOR BATEMAN: Thank you.

We have with us Surrogate Gill Job. Would you like to say a few words?

G I L L J O B: Thank you, Senator.

I would just like to concur in the sentiments expressed by our newly-elected leader of the County Officers Association and say pursuant to the remarks made by Judge Clapp, and with those provisos included, that we have no objections to the bill.

I would like to bring up one additional point that was not mentioned by Judge Clapp and that is the very important matter of the fees. I notice that Senate 928 does include a stipulation that the fees received for the services rendered by the Surrogate shall be paid to the County Treasurer for the use of the county. I would not like to see that deleted either in the case of the Surrogate or the County Clerk.

I am cognizant of the fact that there is a bill in the Assembly introduced by Assemblyman DeKorte which stipulates that all fees collected by the Surrogate are to go to the Superior Court.

I think this is a matter, Judge Clapp, that perhaps our committee can work out, so that there is no loss of revenue as far as the Surrogate's fees and the County Clerk's fees are concerned.

Other than that, we have no objections to the bill, Senator.

SENATOR BATEMAN: Thank you very much.

We have two Clerks with us, Harry Snyder and Walter Halpin. Do you both want to testify?

MR. HALPIN: I will yield to Mr. Snyder.

H A R R Y J. S N Y D E R: I am Harry Snyder, Warren County Clerk, Belvidere, New Jersey, and Chairman of the Clerks Division of the County Officers Association.

I would like to concur with what Edward Kelly, our President, has said and Gill Job, our Surrogate Chief, in that we will support the resolution, providing it is clearly understood that all of the provisions of Senate Bill 928 are incorporated in SCR 36.

I want to add to what Gill Job has just said. One of the very important features of that bill is that the fees of the County Clerk shall stay in the county. Thanks very much.

SENATOR BATEMAN: Thank you for succinct and brief message.

Is there anyone else in the audience who would like to testify on the Senate Committee Substitute for SCR 36?

If not, I will declare this brief rehearing on the Senate Committee Substitute closed. We may have to have for the record one more brief public hearing if the Judiciary Committee, after reading the testimony that has been made today, decides to make further amendments. To meet the constitutional provisions, we will have one further hearing if those amendments are made.

I appreciate on behalf of the rest of the members

of the Committee who are on their way that you all came down. I know many of you have been working on this and have been involved in testimony and hearings on this subject for a long period of time.

MR. KELLY: May I ask if another meeting is held that we be notified in advance?

SENATOR BATEMAN: Certainly. We will be happy to do that.

If there is nothing further, the meeting will stand adjourned.

(Hearing Adjourned)

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Edward B. McConnell
Administrative Director of the Courts

ADVANTAGES OF CONSOLIDATION OF THE SUPERIOR
AND COUNTY COURTS
SCR 36 - 1973

The existing situation of having two courts, the Superior Court and the County Court, with basically overlapping jurisdiction, has been a matter of discussion since the Constitution of 1947 was enacted. The Supreme Court has long recommended the consolidation of the two courts and it was with pleasure that we have noted the strong recommendation by the Governor in favor of such a consolidation.

The following are the advantages which it appears would result from a consolidation of the two courts:

(1) It would permit the best possible utilization of the skills and abilities of all of the judges of the Superior and County Courts. At the present time, we have 96 Superior Court Judges authorized, and 101 County Court judgeships, a total of 197. Yet, from a practical standpoint, when it comes to selecting judges for assignment to the Appellate Division, Assignment Judges, General Equity, and other key assignments in the courts, the Chief Justice is limited to the pool of Superior Court Judges. Having a larger pool would permit the maximum utilization of the talents of all of the judges of the courts of general jurisdiction. There are judges of the County Courts who have abilities which are now unable to be recognized to the full.

(2) Having one large pool of judges without so many judgeships being geographically allocated, would make for a better distribution of judges according to the workload. Presently the geographical

location of the County Court judge is a factor which must be taken into consideration when judicial assignments are made.

In the long run, the better utilization of the talents of the judges and the better distribution of judges according to workload, should have beneficial effect on the disposition of the work of the courts. It should be emphasized, however, that the consolidation of these two courts is not a solution to the calendar problem. The advantages are not primarily the expedition of the work of the courts, although in the long run it should have a beneficial effect by permitting the maximum utilization of each judge's talents.

(3) The consolidation would eliminate the existing inequities between judges who now are on different courts but who do the same work. All of the trial judges of the Superior Court are presently assigned by the Chief Justice to sit in the County Court, and all County Court judges are assigned by the Chief Justice to sit in the Superior Court. As a matter of fact, the judges of the two courts try cases off the same calendars without regard to the court to which they were appointed or the court in which the suit was instituted. And yet, while the judges of these two different courts perform identical work, they are not treated identically. Fortunately, in recent years, the Legislature has equalized the salaries of the judges although, oddly enough, some of the County Court judges now have a greater take-home pay than do the Superior Court judges because the County Court judges have noncontributory pension and the Superior Court judges do not.

The pension systems are different for the judges of the two courts; they have different terms; and they have different tenure. And not an inconsequential factor when you consider that people are the most important aspect of any system, is the status problem. The County Court judge is just considered to be a rung lower on the ladder than a Superior Court judge, even though he is doing the same work.

There is another inequity in the situation that's brought about by having County Court judges who are appointed territorially and Superior Court judges all appointed at-large. In many instances a County Court judge who accepts appointment to the Superior Court finds himself being assigned elsewhere - in other words, having to travel - whereas the newly appointed County Court judge who takes his place remains at home. Thus you often have a situation where the senior judge, in point of service, is traveling while the new and younger judge gets the privilege of staying at home.

(4) While most of the technical jurisdictional problems that have existed by reason of having two courts have been eliminated, partly by the cross-assignment of judges and partly by the fact that the court rules provide that whenever a court finds itself to be without jurisdiction the case is to be transferred to the court which does have jurisdiction, there are still some jurisdictional problems which have to be considered by lawyers and by judges because the jurisdiction of the two courts, while substantially similar, is not identical.

By way of illustration, Municipal Court appeals and most election contest matters, or many of them, by statute go to the County Court; whereas condemnation proceedings and prerogative writs can only be brought in the Superior Court. These are things to which every lawyer and every judge must be alert and which, occasionally, result in unnecessary litigation because a case is brought in the wrong court.

(5) Another advantage of combining the two courts would be a reduction in the complexity of rules, statutes and clerical procedures that now result from the fact that you have two courts of substantially similar jurisdiction. The different rules and different statutes dealing with these two courts could be substantially simplified and everyone's work made a little bit easier. The same is true of the clerical procedures of the two courts. The County Clerk, who serves as the Deputy Clerk of the Superior Court in the county, is also the Clerk of the County Court and, in effect, has to keep two sets of books covering the same sort of thing; one set for the Superior Court cases (for which records must also be kept in Trenton) and the other for the cases in the County Court.

(6) Quite oddly and contrary to the general impression, the present system places the small county at a disadvantage when it comes to appointments to the Superior Court. The reason for this is that where you have a County Court judge resident in a small county who might be considered for appointment to the Superior Court, he

often has the choice of taking the appointment to the Superior Court and being assigned a substantial distance away from his home or to remain on the County Court and stay at home. This makes a difficult choice for him and, over the years, there have been judges of the County Court who should have been considered for promotion and would have been had they been in a large county. The consolidation would give an equal opportunity for all judges of equal ability to serve at the level to which their abilities entitle them.

(7) There is an advantage which would accrue to the Governor and his panel of talent scouts who are looking for lawyers of ability and which would have a beneficial effect on the courts themselves, and that is it would facilitate recruiting the best available talent for the bench because in making appointments the geographical boundaries of a county would be less important. There are occasions and times, and it differs from time to time and from county to county, when it has been difficult to find a lawyer with the ability desired in a county where a judge is needed who is willing at the time to take an appointment to the bench. This is so not only in small counties where there are very few lawyers but it is also true in some of the larger counties because many lawyers who practice in a county don't necessarily live there and yet, for appointment purposes, it's the residence that counts and not the place where the lawyer has maintained his law office.

(8) Finally, and this perhaps is somewhat of a duplication, the coordination of the two courts would make it easier to see that

judges were appointed from the areas where the workload was the greatest. This is not always possible now because, quite understandably, as populations shift and workloads shift, it is difficult to adjust the number of judges authorized by statute for a particular county or counties. This would not be a problem if you had basically one large pool of judges at large because the Governor could then give consideration not only to the geographical factor but also to where the workload at the time was. It would provide for a constant adjustment, through the appointing power, of judges to workload.

It should be noted that it will be necessary to have supplementary legislation to deal with the implementation of the constitutional amendment if and when it is adopted and becomes effective.

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