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# *Public Hearing*

before

## SENATE LABOR COMMITTEE

*"The public hearing will be held in accordance with Rule 24:3 of the New Jersey Senate on Senate Concurrent Resolution SCR-110"*

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**LOCATION:** Committee Room 6  
State House Annex  
Trenton, New Jersey

**DATE:** July 26, 2012  
2:00 p.m.

### **MEMBERS OF COMMITTEE PRESENT:**

Senator Fred H. Madden Jr., Chair  
Senator Richard J. Codey, Vice Chair  
Senator Sandra B. Cunningham  
Senator Dawn Marie Addiego



### **ALSO PRESENT:**

Gregory L. Williams  
*Office of Legislative Services*  
*Committee Aide*

Tina LaCasse  
*Senate Majority*  
*Committee Aide*

Bill Murray  
*Senate Republican*  
*Committee Aide*

*Hearing Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATOR FRED H. MADDEN JR. (Chair):** Good afternoon, ladies and gentlemen. Welcome to today's hearing in the Senate Labor Committee regarding Senate Concurrent Resolution 110.

May I have a roll call for attendance?

**MR. WILLIAMS (Committee Aide):** Yes, Mr. Chairman.

Senator Bucco. (no response)

Senator Addiego. (no response)

Senator Cunningham.

**SENATOR CUNNINGHAM:** I'm here.

**MR. WILLIAMS:** Okay, and Senator Addiego is here.

And Vice Chairman Codey.

**SENATOR CODEY:** Here.

**MR. WILLIAMS:** And Chairman Madden.

**SENATOR MADDEN:** Here.

Okay, ladies and gentlemen, I have one individual who has signed up to testify -- John Tomicki from the League of American Families. If there is someone else-- Not yet, John. Just hang on a second.

If there is someone else who wishes to testify but has not signed up, please report to the aide here, Greg Williams.

Ladies and gentlemen, the purpose of today's hearing is being held in accordance with Rule 24:3 of the New Jersey Senate on the following Senate Concurrent Resolution -- that's SCR-110 -- sponsored by Senator Turner and Senate President Steve Sweeney. It proposes a constitutional amendment clarifying the Legislature's authority to pass laws taking contributions from justices' and certain judges' salaries for employee benefits.

Regarding SCR-110, may I have a statement read for the record, please?

MR. WILLIAMS: Yes. This constitutional amendment clarifies the Legislature's authority to enact laws that deduct contributions from the salaries of Supreme Court justices and Superior Court judges to help fund their employee benefits, which include their pension and health care coverage. The amendment specifically concerns only those justices and judges, as only their salaries are referenced and protected from various reductions, during their terms of appointment, under the current provisions of Article VI, Section VI, paragraph 6 of the New Jersey Constitution.

The amendment responds to a question raised in a 2011 lawsuit filed after the Legislature passed, and the Governor signed into law, P.L.2011, chapter 78. That law increased the contributions to be deducted from the salaries of current and future Supreme Court justices and Superior Court judges starting in October 2011. The lawsuit, which was appealed to the State Supreme Court, argued for stopping the higher contributions with respect to the currently appointed justices and judges, citing the Constitution's Article VI, Section VI, paragraph 6, which states that the salaries of justices and judges "shall not be diminished during the term of their appointment." In response to that lawsuit, the State Supreme Court, in its July 24, 2012 decision, *Paul M. DePascale v. the State of New Jersey*, overturned P.L. 2011 chapter 678 by ruling that the law, as it pertains to the contributions by the justices and judges, violates the New Jersey Constitution.

SCR-110 adds language to that provision of the Constitution to permit the deduction of benefit contributions from justices' and judges'

salaries during their terms, as set from time to time by law, thus having the effect of making the provisions of P.L. 2011, chapter 78 permissible under the Constitution. It would become part of the New Jersey Constitution immediately upon approval by the voters, and make the higher benefit contribution requirements of P.L. 2011, chapter 78 applicable to all current and future justices and judges as of that date.

SENATOR MADDEN: Any questions, comments from members of the Committee?

SENATOR CODEY: Yes.

SENATOR MADDEN: Governor Codey.

SENATOR CODEY: Yes, I just want to say that I respectfully disagree with the decision that was rendered.

When we as individuals think of our salary, we talk about our paycheck -- what our salary is. Legislators make \$49,000, all right? That's our salary. That has not changed as a result of this legislation. Judges' salaries -- what they make -- has not changed as a result of this legislation. However, they were trying to exempt themselves from the deductions from their salaries to pay for their benefits just like every other employee in the State of New Jersey. They should not be held any differently than every other public employee. Whether or not I agree with that legislation or disagree, it is the law of the land. And they are, like everybody else -- they are public employees. They have to do the same thing and it's the right thing to do. And what we're doing here today is the right thing by the public of the State of New Jersey, and let's move forward with this.

Thank you, Chairman.

SENATOR MADDEN: Thank you.

First to testify, the primary sponsor of SCR-110, Senator Shirley Turner.

Welcome, Senator.

**SENATOR SHIRLEY K. TURNER:** Thank you.

**SENATOR MADDEN:** You may commence.

**SENATOR TURNER:** And good afternoon to you, Chairman Madden and members of the Labor Committee.

First of all, I want to thank you for taking the time during this hot summer to help us in New Jersey to balance the scales of economic justice. We all know that we are in a deep recession and we have all been called on to sacrifice. And that should not exclude those people who are making the highest salaries and paying the least for their Cadillac plans in their pensions and benefits. Just because you are a judge does not exclude you from being a public servant.

We know that in 2011 we passed a reform to save the pensions of public employees. And that should be for all public employees, as Senator Codey indicated: those who are making the least, as well as those who are making the most, should be sharing in the sacrifice.

And we know that this particular pension -- the judges' pension is the pension that is the weakest. It is 52 percent, which is far below our other public employees' pensions. So we're here today not only to ask for economic justice, economic fairness for all New Jerseyans and all public employees, but also we're looking to save the pensions of our judges as well as those retired judges. And this is the reason that we did what we did in 2011 for all of our other employees.

So I'm here to ask that you pass this resolution so that we can clarify, once and for all, that when you have to pay your fair share of the cost of your benefits and pensions that does not violate the Constitution of the State of New Jersey. And in order to prevent any kind of conflict of interest, we need to put it on the ballot and let the people in the State of New Jersey decide that we are not diminishing judges' salaries when we mandate that they be treated like every other employee in this State.

Our judges are making somewhere close to \$160,000 or \$170,000 a year. And back under the reform, I recall, back under Corzine's Administration, the judges were treated disparately -- differently than everybody else. Every other State employee was told that they had to sacrifice. They were not getting any salary increases, no cost-of-living increases. But at that same time, the judges were given a 17 percent increase over the course of a year and a half. So they had no problem increasing their salaries, but now they're saying that it is unconstitutional that they should have to share in their pension and health benefit costs.

Judges receive 75 percent of their salaries when they retire, thereby when they retire it takes about six months to recoup what they paid into their pensions -- at 3 percent a year. So it is patently unfair that they have a Cadillac plan -- or more so, a Rolls Royce pension plan -- and they pay so little into it. And over the course of their lifetime, on average, they will receive \$2.3 million. Now, that is a great investment. Please, show me where I can go to get it.

So I'm asking you to pass this bill today -- this resolution -- so that we can put it on the ballot in time for November's election and let the people in the State of New Jersey decide, once and for all, there are no

special classes in this State. We all are going to have to share in the sacrifice and we're all going to have to pay our fair share.

Thank you very much.

SENATOR MADDEN: Thank you, Senator.

SENATOR TURNER: Any questions?

SENATOR MADDEN: Comments?

SENATOR CODEY: I have just one comment, Shirley.

I don't know if you were here; it used to be that judges did not contribute--

SENATOR TURNER: At all.

SENATOR CODEY: --to their pensions at all. We changed that some time ago. So once again we have to make sure that they're treated like other people.

SENATOR ADDIEGO: Did they claim it was unconstitutional then?

SENATOR TURNER: Then -- that's what I was going to ask. How did it get through? How--

SENATOR CODEY: Not that I-- No. We just changed it -- that's all.

SENATOR ADDIEGO: Oh.

SENATOR CODEY: Yes.

SENATOR CUNNINGHAM: We didn't go to court?

SENATOR CODEY: No, they didn't go to court.

SENATOR MADDEN: Senator Turner, thank you for your testimony.

SENATOR TURNER: Thank you; thank you very much.

SENATOR MADDEN: Members of the Committee and the public, a written statement in support of Senate Concurrent Resolution 110 is submitted in the record officially. And the statement is the statement of Assemblywoman Amy Handlin, Assemblywoman Caroline Casagrande, and Assemblywoman Donna Simon, regarding Senate Resolution 110 -- all in support.

Next up to testify, Mr. John Tomicki, from the League of American Families.

John, when you're ready, just-- You've been here before.

**JOHN T. TOMICKI:** I'm sorry?

SENATOR MADDEN: You've been here before; just-- Red light means go.

MR. TOMICKI: Yes. If you can hear me, that's fine. I'm going to be extremely brief.

Thank you, Mr. Chairman, for calling us up. My name is John Tomicki, Executive Director of the League of American Families. We represent approximately 100,000 households in the State of New Jersey.

There is no doubt that some of us consider the Supreme Court of the State of New Jersey a bit of an oligarchy. We have seen many of its decisions, I think, step over the line where they have really begun to legislate from the bench.

Ideas, it is said, are consequences. In truth, ideas are the consequences of your belief system. When we testified in opposition to Justice LaVecchia's confirmation she was asked a question at the Judiciary--

SENATOR CODEY: Chair, Chairman.

This has nothing to do with the bill.

MR. TOMICKI: This is a public hearing. It's not on the bill; it's a public hearing, Senator.

SENATOR CODEY: It's a public hearing, but on the piece of--

MR. TOMICKI: And with all due respect-- Yes, it gets to it, because Justice LaVecchia wrote the decision.

SENATOR CODEY: So what, sir?

MR. TOMICKI: She stated that she felt her role was to fill in the gaps. That's not the role of a Supreme Court. There was no gap to fill here, because it was a determination in what you're addressing correctly now: what is a salary and what is compensation. And that's where the Court simply got it wrong. How do you say, as you can, adjust your compensation as legislators and State employees, which there are thousands. But to the justices it was, shall we say, different. Their salaries were not being changed.

I'm glad that leadership in both houses moved quickly to get prepared should the decision have come down in this direction. Those words, compensation and salaries, were two different words; they have two separate meanings. Now, the attorney for the judge who brought the case stated that this proposed amendment, on which this is a public hearing, is going to threaten the independence of the judiciary. How could that be true? It's 375 judges versus thousands. There was no intent in the legislation, no testimony ever given that this was being aimed at the judiciary.

The majority of this Court, again, could not resist the temptation to again legislate from the bench. But as always the people will have the final say. You are doing the correct steps. The legislation has

come out of committee; the legislation is posted for votes in both chambers for Monday. And the people will have the final answer.

Again, I believe that the attorney for judge is saying that somehow this is going to threaten the independence of the judiciary. No, this does not. The only thing you might have to worry about is that the Supreme Court itself might try to challenge an amendment to the Constitution as being unconstitutional, but I don't think they would dare to do that.

So with all due respect to the former Governor, I thank you for the time in keeping within the scope of this. Because as this is a public hearing and not a hearing on releasing the bill--

And we thank you, Mr. Chairman.

SENATOR MADDEN: Questions, comments, members of the Committee?

Seeing none--

SENATOR CODEY: My only comment, Mr. Chairman, is we can conclude this public hearing--

SENATOR MADDEN: Thank you for your testimony, John.

SENATOR CODEY: --that it bothers me that the justices weren't smart enough to render their decision after August 1. (laughter)

SENATOR MADDEN: Ladies and gentlemen, as far as testimony, that was the only witness who had signed up. Is there anybody who entered the room since the meeting commenced who wishes to testify -- step forward? (no response)

Seeing none, ladies and gentlemen, that concludes today's hearing on SCR-110 in the Senate Labor Committee. Thank you for your time and have a safe trip home.

**(MEETING CONCLUDED)**

**APPENDIX**



## NEW JERSEY GENERAL ASSEMBLY

STATEMENT OF ASSEMBLYWOMAN AMY HANDLIN,  
ASSEMBLYWOMAN CAROLINE CASAGRANDE,  
AND ASSEMBLYWOMAN DONNA SIMON  
ON  
SENATE CONCURRENT RESOLUTION NO. 110  
July 26, 2012

As the sponsors of this constitutional amendment in the General Assembly, we are greatly relieved that the Legislature is now heeding our repeated calls for action on this important measure of fairness and fiscal responsibility. We have advocated this amendment to protect the core element of public employee pension and benefit reform ever since legal challenges first began to make their way through the court system; that core element is a fairer balance of the responsibility to protect and fund those benefits for all State and local public employees.

Unless all parties – including the State and public employees themselves – participate in a meaningful way, the essential balance struck by the bipartisan reforms is lost. The reform law undergirds the commitment of the elected branches of State government to phase in full funding of the necessary State payments, and requires every category of public employee to pay more toward the generous benefits they currently enjoy.

The July 24, 2012 decision of the New Jersey Supreme Court threatens to upset this balance by excluding one category of public employee from the responsibility of sharing more of the cost for their own benefits: sitting judges and Justices of the New Jersey judiciary. In a narrow 3-2 decision, the Court ruled that sitting judges and Justices do not have to pay more of their own salaries to fund their own benefits due to a constitutional provision that is intended to prevent political intimidation of the Judiciary.

This decision cannot be allowed to unwind the historic, balanced pension and health benefit reforms that had been debated for years and finally enacted under the leadership of Governor Christie and with the bipartisan support of the Legislature. These vital reforms are designed to save benefit programs that are teetering on the verge of collapse, including the Judicial Retirement System (JRS), whose financial position is the worst of any of the New Jersey public employee retirement programs.

The average salary for a judge is \$166,000 per year, placing judges among the highest paid public employees, and they just recently received a 5 percent raise. Judges currently contribute 3 percent of their salaries toward a pension that averages \$110,760 annually upon retirement. The average lifetime payout for a retired judge is about \$2.3 million in benefits, while their average lifetime contribution is only \$59,300. There are more retirees and beneficiaries receiving benefits in the Judicial Retirement System than there are active contributors.

STATEMENT OF ASSEMBLY SPONSORS

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According to July 1, 2009, actuarial valuations, the JRS had the smallest employee contribution rate; the highest employer contribution rate, at 28.74 percent; and the lowest employee percentage of cost at 9.45 percent. What that means is that taxpayers foot over 90 percent of the cost of providing judges with their pensions. By comparison, teachers pay 43.75 percent of the cost of their pensions, and local non-uniformed public employees pay 58.14 percent.

We can correct the Court's mistake by putting the question before the people in November. The voters should have the final say as to whether judges are to be included in or excluded from the pension and benefit reforms. This determination should not be made by those with a vested interest. The reforms were never intended to exempt a select group of well-paid public servants, and the voters must be given the chance to say whether the shared sacrifices required to save the public employee pension and benefit systems will be all-inclusive as intended, or whether some highly paid appointees should be excluded.

With so many people struggling during these difficult economic times, reforming the pension system and health benefits programs is an opportunity to deliver substantial tax relief while preserving the system for its participants. This measure is not a radical step, but one that is necessary in order to give voters the power to prevent judges from avoiding their responsibility to help save the system that is extremely generous to them.

*Respectfully submitted to the Senate Labor Committee for the public hearing on Senate Concurrent Resolution No. 110 pursuant to Article IX, Paragraph 1 of the New Jersey Constitution, July 26, 2012*