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PUBLIC HEARING

before

SENATE JUDICIARY COMMITTEE

on

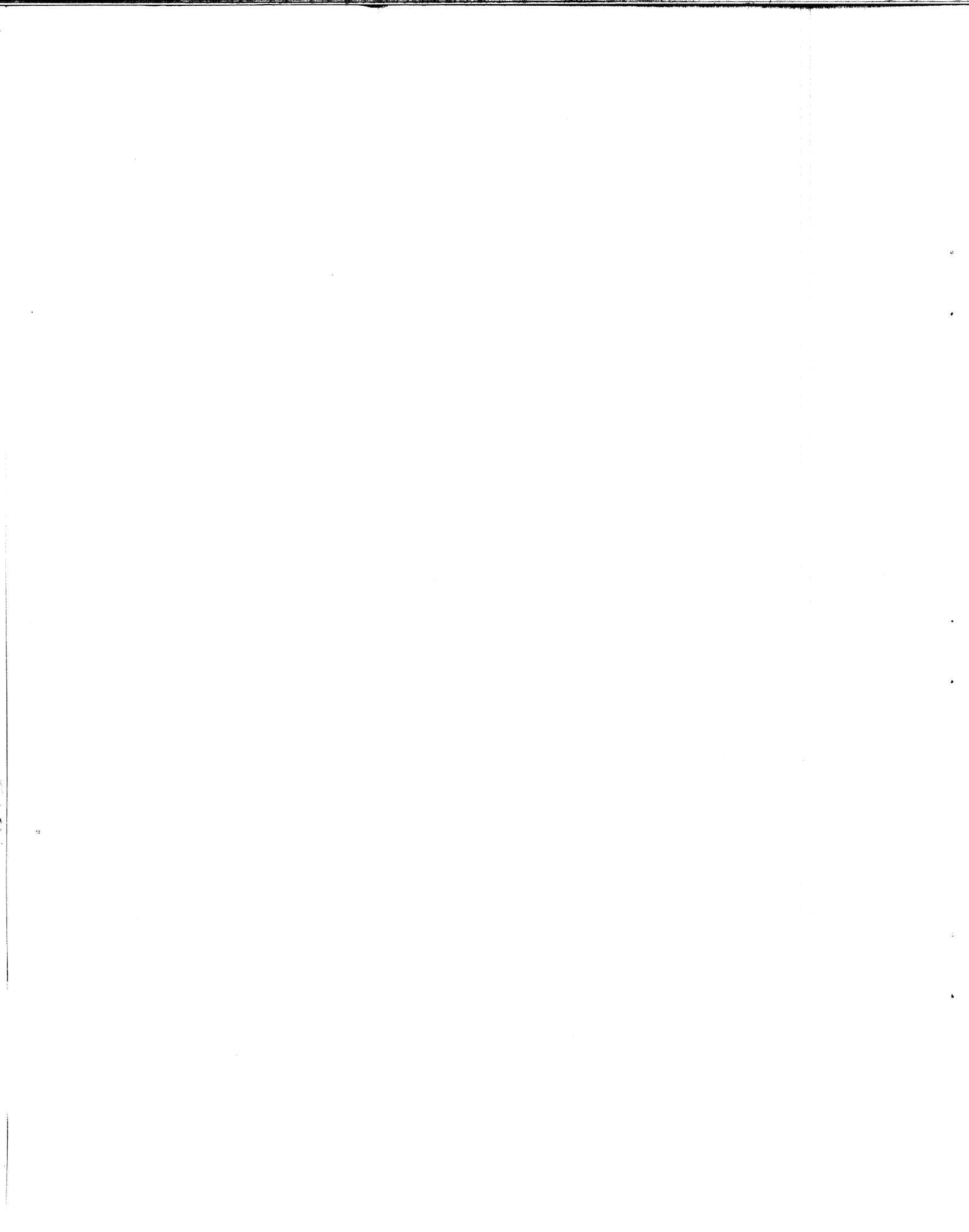
SENATE COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION NO. 36,
proposing to amend the Constitution
of the State of New Jersey, to
incorporate the County Courts into
the Superior Court.

Held:
April 12, 1972
Senate Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Joseph C. Woodcock, Jr. (Chairman)
Senator Peter W. Thomas

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SENATOR JOSEPH C. WOODCOCK, JR. (Chairman): This public hearing on Senate Committee Substitute for SCR 36, proposing an amendment to the State Constitution, 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.

As the first witness in favor of Senate Concurrent Resolution 36, I would call the sponsor, Senator Thomas of Morris County.

P E T E R W. T H O M A S: Thank you, Mr. Chairman.

This proposed amendment to the Constitution would indeed merge the County Court into the Superior Court. It would provide that there be a part of the Superior Court sitting at all times in each of the 21 counties, so that it would not be possible to create a vicinage and avoid having a part of the court sitting in a particular county. And it would also preserve that number of County Court Judges who are permitted by law, as of July 1st of 1972, in each of the 21 counties.

The present County Court system is the vestige that was left over from the Constitution of 1947. Up to that time, the practice in New Jersey of the court system was a labyrinth, a maze, of courts that included the Court of Errors and Appeals, which theoretically also contained six lay judges in the Supreme Court, which was really not supreme; the Court of Chancery; Common Pleas; the Circuit Court; the Orphans Court; the Court of Oyer and Terminer; the Court of Special Sessions; the Court of Quarter Sessions; and the Prerogative Court, which had nothing to do with prerogative writs; and the District Court plus the Municipal Courts in the State.

In 1947 at that Constitutional Convention, all these courts were abolished and we have had the framework of the present court system. But there was the hangover of the County Court and I think primarily for political reasons this was maintained. Again at the 1966 Constitutional Convention, there was a

specific prohibition at that time about considering any change in the New Jersey court system. I think the time has come for change.

At the present time, the judges of our County Court and Superior Court do exactly the same work. There are some differences, however. The judges of the County Court are appointed for different terms, five-year terms instead of seven. Their tenure rights are different. They do not obtain tenure until they have been reappointed for the third time, whereas a Superior Court Judge obtains tenure upon his reappointment.

Their retirement is different. A Superior Court Judge may retire at 65; a County Court Judge may not retire until he has reached the age of 70. He has no right of election.

Their retirement benefits are different and there are several different retirement programs that a County Court Judge can be in, including a separate system in Hudson and a separate system in Essex, and either the old State Retirement program or the newer PERS program. And, at least, the newest retirement program for County Court Judges is non-contributory and they may retire at half pay. The Superior Court Judges' retirement is slightly different. If they wish, they can pay the difference between the salary that was in effect in 1956, I believe, which was \$22,000, and what they are now receiving - they can pay 10 per cent of that difference and retire on three-quarters of their last pay.

The present system does not permit the degree of flexibility that we really should have in our court system. A County Court Judge, while he does perform all of the functions of the Superior Court Judge, cannot be assigned to the Appellate Division and he cannot serve as an Assignment Judge.

In addition to that, there is a great reluctance to the assignment from one county to another to meet the demands of the flow of traffic, shall we say, through the court system, of County Court Judges because not all of their salary is paid by the State, as is the case with the Superior Court Judge. Sixty per cent of that salary is paid by the county. When a County

Court Judge moves to another county, that new county must then pick up 60 per cent of his salary and they do it with a great deal of reluctance. For that reason, there is a reluctance on the part of the Chief Justice to assign County Court Judges out of their so-called home county.

If the distinction were abolished, there would also be certain administrative changes because, at the present time, there must in effect be two sets of books kept for the court system by our County Clerks. There must be a Superior Court set of books, shall we say, and a County Court set of books. In addition to that, there are separate rules for both courts and, of course, there are a myriad of statutes that deal with both courts. All of this could be eliminated and make the practice and the administration of the court system much easier.

There would be a saving to the county governments throughout the State of approximately \$1.8 million in salaries, which would have to be picked up by the State and would no longer be borne by the various counties.

It would also eliminate the distinction that we have now of the place where certain suits must be brought or appeals must be taken. For instance, prerogative writ matters must be instituted in the Superior Court and cannot be instituted in the County Court. Until we abolished the Workmen's Compensation appeal setup, Workmen's Compensation appeal cases had to be in the County Court. That no longer is true, but municipal appeals are to the County Court and also condemnation matters must be brought in the Superior Court.

I think that the resolution as prepared would preserve the right of each of the counties to have their equal number of judges that they presently are permitted under the law. There is now no county that has less than two judges in the State. Also it would, as I said, provide for the continuous sitting of a part of the court in every county. It would do away with what has been a problem in the past on reappointment of judges when there has been movement throughout the State by identifying a judge at the time of his appointment with a county and, therefore,

it would be clear when there was a reappointment or a vacancy just where that appointment would come from.

This resolution in substantially the form as we have it today passed the Assembly last year, but did not have sufficient support in the Senate to be removed from Committee in the Senate. I would hope that that situation is changed this year and that we will be able to move this resolution so that the question can go on the ballot in the fall.

SENATOR WOODCOCK: Thank you, Senator Thomas, I agree with you.

Does anyone wish to be heard on Senate Concurrent Resolution Number 36?

MR. MC CONNELL: I don't wish to be heard particularly, but I will be pleased to answer any questions.

SENATOR WOODCOCK: Mr. McConnell, if you would come down, I don't know that we have any questions, but I think we certainly would like to hear from the Administrative Director of the Courts.

SENATOR THOMAS: Let the record show that I am going to change seats and join the Chairman as a member of the Committee.

E D W A R D B. M C C O N N E L L: I am Edward McConnell, Administrative Director of the Courts.

Senator Thomas, I think, has placed on the record the arguments and reasons in favor of the constitutional amendment that is proposed by this resolution, and has done it better than I could do it.

Any remarks I would have can be referred to in writing because basically they were made at the hearing a year ago on the Assembly Resolution. I have a copy of them here if you want to have it for your convenience.

All we would like to do is to urge again the adoption of this constitutional amendment because of the reasons that Senator Thomas has mentioned.

There are three supplemental and probably inconsequential matters that I would like to mention.

I have an up-to-date cost estimate in terms of the

judges' salaries and because of the increase in the number of County Court judges recently, due to the census and the five bills that were signed this winter ---

SENATOR WOODCOCK: Could we have that so we can incorporate that in the record.

MR. MC CONNELL: Yes. The number of County Judges has increased to 101 and the county's share, assuming all those positions were filled, has gone up to \$2,242,200. So, assuming all those positions were filled, it would be to that extent that the counties would be relieved of the expense and an additional expense to the State. Those figures, of course, do not include the fringe benefits. We don't know actuarially how to figure those out.

(Cost estimate submitted by Mr. McConnell can be found on page 9.)

The other matter is that the proposed amendment provides for the same number of judges or at least the same number of judges in each county as there are judges of the County Court on July 1, 1972. I think this is very desirable in order to insure that each county has judges appointed from that county. I know it has been a matter of concern in terms of the consolidation. As things now stand though, there would be only one county that would be left with only one judge and a year ago I suggested the possibility of providing for two judges from each county.

SENATOR THOMAS: What county is that?

MR. MC CONNELL: Salem County is the only one that is left. That is why we have 101. So perhaps between now and July 1st, if legislation were enacted to increase Salem, to authorize it to have two, whether they were appointed or not, you would then have a pattern that would be consistent throughout the State.

SENATOR THOMAS: Wouldn't that be desirable from a political standpoint also because of the attempt at bipartisan ---

MR. MC CONNELL: We have recommended it. I recommended it last year as something to be considered because of the fact

if a judge was resident in a county and he was the lone judge resident in that county, it would be possible when his term expired, from the local political situation, the judges would not be bipartisan and he might have a problem.

SENATOR WOODCOCK: As I recall, didn't that happen in Hunterdon County? There was always a shuffling of judges.

MR. MC CONNELL: Yes. It has always happened where there was a single judge. Presumably the Superior Court would continue to be a bipartisan court. The only problem would be whether it would be bipartisan with respect to the resident judges, and I think now because of the legislation that was enacted that gave Cape May a second judge and gave Hunterdon, Warren and Sussex a second judge, Salem is now the only one that is left alone. So whether this constitutional amendment goes through or not, it would be desirable to have that second judge. And if it were done before July 1st, whether or not it would be filled, it would at least give you a nicer pattern, I think, for freezing into the Constitution.

The other thing, I mentioned a year ago the fact that with the adoption of a constitutional amendment, there would be a need for some implementing legislation. I don't believe there has been any implementing legislation introduced in this session. As a starting point, I would refer you to S 273 of the 1970 session, which is a bill which I think accomplishes those things that are essential. That bill declares it a public policy that half of the judges be from opposite political parties, provides for changeover on the appointing power, for example, and deals with the Surrogate and the Clerk situations.

The only other thing - and I don't want to do it as a suggestion other than to call attention to it because I think we could live with the provision in the resolution as it presently stands, and the court feels likewise - I think it would be preferable, but I don't know whether it would be acceptable to the smaller counties because I know last year Senator Cafiero had a problem in that regard. At the top of

page 2, the language now is: "There shall be at all times at least one part of the Superior Court in each county with at least one judge who at the time of his assignment to sit therein is a resident of the county." Now it is possible you might not have a judge resident of a county at any particular point in time, because under the prior provision residency is determined as of the time of appointment plus you have a situation that you might have a vacancy as well. I think preferable language would be: "There shall be at all times at least one judge of the Superior Court assigned to sit in each county." That would be preferable. Whether it would be satisfactory is the other question.

SENATOR THOMAS: Mr. McConnell, I can assure you that that language has been gone over very carefully and is in there for the reason that it reads the way it does.

MR. MC CONNELL: I suspected that was so because of the discussion of this last year and I wanted to indicate that while it would require, I think, a practical interpretation, we don't feel it would create any insurmountable problem or any objection to it going through in the present form. Although, as I indicated, if it were acceptable, the other language, I think, would have been preferable.

Those are the only things that I want to comment on because all of the other matters, I think, have been covered by Senator Thomas and are also included in my remarks of last year.

SENATOR THOMAS: I do want to say that we do recognize that additional legislation would have to be passed to implement this if this were to be approved by the voters. There has already been some preliminary discussion by the Committee on this. I am not sure that S 273 would necessarily be the answer, for instance, turning over the appointive powers that County Court Judges presently have to the Assignment Judges. I am not sure that that would necessarily be the way the legislation might come out.

MR. MC CONNELL: I understand that and I discussed this point last year. There are other alternatives. But it

ought to be dealt with so that you don't have a situation where you end up with 170 or 180 or 190 judges having the appointing power.

SENATOR THOMAS: When this passes, I think that would be the time to sit down - have our Committee or however the Chairman wants - sit down with you and possibly the Chief Justice to point out exactly what should be done and make recommendations.

MR. MC CONNELL: There would be time between the enactment of the resolution and the adoption of the constitutional amendment to take care of the implementing factors. Presumably the constitutional amendment would become effective on Election Day if it were favorably voted on. It ought to be done before then.

SENATOR WOODCOCK: Thank you very much, Mr. McConnell, for coming down here. I think you have given us something to think about with respect to the implementing legislation that would have to be drafted. I think there are at least three people in the State of New Jersey that believe that this ought to come about. If there are no other questions, thank you very much for coming.

MR. MC CONNELL: Thank you, sir.

SENATOR WOODCOCK: Is there anyone else wishing to be heard on Senate Concurrent Resolution Number 36? Hearing no response, I will close the hearing and adjourn the meeting of this Committee. Thank you.

(Hearing Concluded)

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EXHIBIT SUBMITTED BY MR. MC CONNELL

4/12/72

County	County Judges Authorized	County's Share 60% of salary of \$37,000	State's Share 40% of salary of \$37,000	Total Cost of County Court Judges' Salaries
Atlantic	4	\$ 88,800	\$ 59,200	\$ 148,000
Bergen	10	222,000	148,000	370,000
Burlington	4	88,000	59,200	148,000
Camden	6	133,200	88,800	222,000
Cape May	2	44,400	29,600	74,000
Cumberland	4	88,800	59,200	148,000
Essex	12	266,400	177,600	444,000
Gloucester	4	88,800	59,200	148,000
Hudson	6	133,200	88,800	222,000
Hunterdon	2	44,400	29,600	74,000
Mercer	4	88,800	59,200	148,000
Middlesex	6	133,200	88,800	222,000
Monmouth	4	88,800	59,200	148,000
Morris	6	133,200	88,800	222,000
Ocean	6	133,200	88,800	222,000
Passaic	6	133,200	88,800	222,000
Salem	1	22,200	14,800	37,000
Somerset	4	88,800	59,200	148,000
Sussex	2	44,400	29,600	74,000
Union	6	133,200	88,800	222,000
Warren	<u>2</u>	<u>44,400</u>	<u>29,600</u>	<u>74,000</u>
Totals	<u>101</u>	<u>\$2,242,200</u>	<u>\$1,494,800</u>	<u>\$3,737,000</u>

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 with the county of residence of a*
18 *judge being determined as of the time of his 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:

25 3. The Superior Court shall be divided into an Appellate Division,
26 a Law Division, and a Chancery Division. Each division shall have

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

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 (X),
 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.	

JUN 27 1985



