

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S5827

SPONSOR: DEFRANCISCO

TITLE OF BILL:

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing amendments to article 6 of the constitution, in relation to the composition of judicial departments and the restructuring of the unified court system, and the repeal of sections 9, 10, 11, 12, 13, 14, 16, 34, 35, 36, 36-a, 36-c and 37 and subdivision j of section 22 of article 6 of the constitution relating thereto

PURPOSE:

This resolution restructures the New York state unified court system to make it more efficient, cost effective, attractive to business, and sensitive to the needs of litigants. To achieve these goals, this resolution: (1) consolidates the state's numerous trial courts into a simple two tier structure of a Supreme Court and a state-wide network of District Courts; (2) creates a Fifth Department of the Appellate Division to reduce the overwhelming and unbalanced appellate caseload in the state; and (3) eliminates the constitutional ceiling on the number of Supreme Court judgeships that can be created by the Legislature.

SUMMARY OF PROVISIONS:

Section 1 of the resolution amends Article VI, Section 1 of the State Constitution to: (1) eliminate references to the courts contemplated to be merged as a result of this constitutional amendment; (2) acknowledge the existence of the Appellate Terms which were omitted from the original list of courts in the State Constitution; (3) include the Appellate Terms and the new District Court as courts of record; and (4) set standards for the service and execution of process, warrants and mandates of the new District Court.

Section 2 of the resolution amends Article VI, Section 2 of the State Constitution to eliminate transitional language that was necessary when Article VI was first adopted, but that now is not necessary.

Section 3 of the resolution amends Article VI, Section 4 of the State Constitution to: (1) recognize the Twelfth Judicial District; (2) direct the Legislature to divide the state into five judicial departments on or after September 1, 2010 but no later than September 1, 2011; (3) establish a default mechanism to divide the state into five judicial departments should the Legislature fail to close by September 1, 2011; (4) allow the Legislature to adjust the number or boundaries of the judicial departments once every ten years; (5) eliminate the restrictions on the number of justices in each judicial department; (6) establish a minimum requirement for the number of justices in the aggregate on the Appellate Division; (7) establish a mechanism for the designation of additional justices to the Appellate Division should the need arise and restrict justices designated in this manner to five year terms or the length of the need if less than five years; (8) add language to ensure a smooth transition for the Appellate Division and the justices serving on the

court at the time the amendment becomes effective; (9) recognize that, by virtue of the court restructuring, there may be appointed Justices of the Supreme Court ("JSC") who are eligible for designation to the Appellate Division; and (10) eliminate unnecessary transitional language. Section 4 of the resolution amends Article VI, Section 4 of the State Constitution to: (1) recognize that there are twelve judicial districts and that the Twelfth Judicial District consists of Bronx County; (2) allow the legislature to adjust the number or boundaries of the judicial district once every ten years; (3) acknowledge that as a result of the consolidation, there will be a segment of JSCs that are appointed; (4) eliminate the constitutional cap on the number of JSCs per judicial district; (5) establish as a constitutional floor for each judicial district the number of JSCs established for it on August 31, 2010; and (6) require that there be at least one JSC elected county-wide in each county outside New York City.

Section 5 of the resolution amends Article VI, Section 7 of the State Constitution to: (1) clarify the jurisdiction of the Supreme Court post consolidation; (2) authorize the creation of six divisions of the Supreme Court - Family, Probate, Criminal, State Claims, Commercial and General - with flexibility to change the divisional structure of the Supreme Court should future events dictate doing so; and (3) provide that to the extent practicable, each division of the Supreme Court is to be presided over by justices with expertise in the subject matter area to which it is devoted.

Section 6 of the resolution amends Article VI, Section 8 of the State Constitution to authorize the Appellate Division to confer jurisdiction over certain appeals upon an Appellate Term.

Section 7 of the resolution repeals sections 9-14, 16, 34, 35, 36, 36-a, 36-c and 37 of the State Constitution.

Section 8 of the resolution renumbers certain sections of Article VI of the State Constitution following the repeals as provided in section 7 of this resolution.

Section 9 of the resolution amends Article VI, Section 9 of the State Constitution, as renumbered by section 8 of this resolution, to: (1) establish and mandate a District Court for New York City and for the area of each city outside of New York City; (2) authorize the Legislature to fix the number of its judges and the methods by which judges are selected; (3) establish a procedure to create new District Courts for an area; (4) continue the Legislature's authority to subdivide what now are District Courts into component districts; and (5) set certain requirements and standards for judges of the new District Court.

Section 10 of the resolution adds a new Section 10 to Article VI of the State Constitution to set forth the jurisdiction of the District Courts, establishing that it shall be uniform across the State.

Section 11 of the resolution amends Article VI, Section 11 of the State Constitution, as renumbered by section 8 of this resolution, to eliminate references to City Courts which will no longer exist post consolidation.

Sections 12, 14, 15 and 18 of the resolution amend Article VI, Sections 13, 15, 17 and 23 of the State Constitution, as renumbered by section 8 of this resolution, to eliminate references to the abolished courts and insert references necessitated by the consolidation.

Section 13 of the resolution amends Article VI, Section 14 of the State Constitution, as renumbered by section 8 of this resolution, to allow for certain standards and requirements for judges in the current system

to be applicable to judges post consolidation.

Section 16 of the resolution amends Article VI, Section 19 of the State Constitution, as renumbered by section 8 of this resolution, to eliminate a provision that authorizes the Appellate Divisions to assign retired JSCs. This section of the resolution also makes basic changes in the constitution to reflect the court restructuring.f

Section 17 of the resolution amends Article VI, Section 20 of the State Constitution, as renumbered by section 8 of this resolution, to provide that a JSC may be assigned to any division or divisions of the Supreme Court. This section of the resolution also provides that Housing Court Judges and their successors in office shall be assigned to the Housing Division of the New York City District Court. Other District Court Judges may be assigned to the Housing Division, and District Court Judges/former Housing Judges may be assigned outside the Housing Division.

Section 19 of the resolution adds a new Section 27 to Article VI of the State Constitution to provide for transition from the current system to the new system. In particular, this section of the resolution provides that the County Court, Family Court, Surrogate's Court and the Court of Claims will be merged into the Supreme Court with their judges becoming JSCs City Courts, District Courts of Nassau and Suffolk County and the Civil and Criminal Courts of the City of New York will be merged into a District Court. This section further provides for language to assist in the transition phase.

Section 20 of the resolution adds a new Section 29 to Article VI of the State Constitution to: (1) replace the substance of repealed sections 36-a, 36-c and 37, providing continuity for all amendments to Article VI adopted since 1962, subject to the changes made in this resolution; and (2) establish September 1, 2011 as the effective date for the constitutional amendments made by the resolution.

EXISTING LAW:

Article VI, Section 1(a) of the State Constitution provides for a statewide "unified court system". This system exists today as a convoluted network of trial and appellate courts. The trial courts consist of: (1) the Supreme Court; (2) the County Court; (3) the Surrogate's Court; (4) the Family Court; (5) the Court of Claims; (6) the Civil Court of the City of New York; (7) the Criminal Court of the City of New York; (8) the District Courts of Nassau and Suffolk County; (9) the City Courts; and (10) the village and town justice courts. The appellate courts consist of: (1) the Court of Appeals (the highest court in the state); and (2) the Appellate Division of the Supreme Court.

Article VI, Section 6 of the State Constitution imposes a limit on the Legislature for the allocation of justices of the Supreme Court in any judicial district to no more than one justice per 50,000 residents as shown by the last federal census or state enumeration. Article VI, Section 4 of the State Constitution divides the state into four judicial departments and restricts the number of Appellate Division Justices to seven each in the First and Second Departments and five each in the Third and Fourth Departments. Article VI, Section 4 of the State Constitution also allows the Appellate Divisions to certify to the Governor that one or more additional justices are needed for the speedy disposition of cases and based upon that certification, the Governor may designate one or more additional justices to any judicial department making such certification Justices designated in this manner serve for the length of the need. All other justices of the Appellate Division, not including the Presiding Justices, serve for five year terms. Presiding Justices serve for the length of their term of office.

STATEMENT IN SUPPORT:

New York State's "Unified Court System" is one of the most confusing,

inefficient and expensive judicial systems in the nation. Rooted in 1846 - the year Article VI of the State Constitution was adopted - this system consists of a convoluted network of trial courts with overlapping and inconsistent jurisdictions, an intermediate level appellate court and a high court. With a massive caseload, a shortage of judges, and an inefficient and inflexible structure, the system is severely overstressed and is in dire need for change.

This legislation is aimed at making New York's judicial system more efficient, cost effective, attractive to business and sensitive to the needs of litigants. To accomplish these goals, this resolution: (1) consolidates the state's numerous trial courts into a simple two-tier structure of a Supreme Court and a state-wide network of District Courts; (2) creates a Fifth Department of the Appellate Division to reduce the overloaded and unbalanced appellate caseload in the state; and (3) eliminates the constitutional ceiling on the number of Supreme Court judgeships that can be created by the Legislature. Implementation of this reform would result in total savings of \$502 million annually - \$59 million annually for the state and \$443 million annually for businesses, municipalities, state agencies and individuals with respect to productivity, lost wages, attorneys' fees and related costs.

CONSOLIDATION OF TRIAL COURTS

New York's judicial system consists of the following trial courts: (1) the Supreme Court; (2) the County Court; (3) the Court of Claims; (4) the Family Court; (5) the Surrogate's Court; (6) the Civil Court of the City of New York; (7) the Criminal Court of the City of New York; (8) the District Courts; (9) the City Courts; and (10) the Town and Village Justice Courts. A brief description of the trial courts follows below.

THE TRIAL COURTS

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SUPREME COURT: The Supreme Court has general original jurisdiction in law and equity. It has branches in every county of the state and hears major civil cases, including tort, contract, matrimonial and corporate cases. In New York City, the Supreme Court presides over all felony criminal prosecutions. The Supreme Court rarely hears family-related matters unless they arise in the context of a matrimonial action.

* **County Court:** County Courts are located in each county outside of New York City. County Court judges preside over all felony criminal prosecutions, but cannot preside over family-related matters or major civil litigation (unless they are from counties that do not separately elect Family Court or Surrogate's Court judges)

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FAMILY COURT: Family Courts are located in each county outside of New York City and in one city-wide family court within New York City. Family Courts preside over a wide array of family-related matters but do not have jurisdiction to hear matrimonial cases (or custody matters within a matrimonial context) or family-related criminal matters, even if a case relates to a family already before the judge in another context. As such, while Family Court judges may issue orders of protection, conflicting or inconsistent orders involving the same family may issue from the Supreme Court or a criminal court that is, handling another aspect of the matter.

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SURROGATE'S COURT: Surrogate's Courts are located in each county of the state and preside over all matters concerning the estates of decedents. In addition to adoptions, guardianships and related matters. Surrogate's Court judges cannot preside over any other types of matters, even if they relate to a decedent's estate.

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COURT OF CLAIMS: The Court of Claims is located in regional sites around the state. It has exclusive authority to hear claims against the state or by the state against the claimant and cannot hear any other types of claims. As a result, a case involving claims against the state and other parties must be heard in both the Court of Claims and another

court, resulting in duplicative proceedings and possibly inconsistent judgments.

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CIVIL COURT OF THE CITY OF NEW YORK: This Court is located in New York City and presides over civil disputes involving damage claims of \$25,000 or less, in addition to commercial landlord-tenant disputes and ejectment actions. The Housing Part of the New York City Civil Court handles residential landlord/tenant disputes.

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CRIMINAL COURT OF THE CITY OF NEW YORK: This Court is located in New York City and presides over non-felony criminal prosecutions and violations of local ordinances.

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DISTRICT COURT: located in Nassau and Suffolk Counties, these courts hear cases involving claims of \$15,000 or less, and preside over non-felony criminal prosecutions and violations of local ordinances.

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CITY COURT: Located in each of the sixty-one cities outside of New York City, these courts preside over civil claims for \$15,000 or less and also serve as local criminal courts for non felony criminal prosecutions. These courts cannot preside over felony prosecutions, family-related matters and major civil litigation.

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TOWN AND VILLAGE JUSTICE COURTS: These courts are located in towns and villages throughout the state and preside over lesser civil actions and non felony criminal actions.

With so many different trial courts - some with narrow jurisdiction and others with overlapping jurisdiction - New York's judicial system has become the epitome of inefficiency, delay and backlog. This has caused significant harm to individuals, businesses, families and children who have found themselves entangled in the court system that, for litigants and practitioners alike, may seem impossible to navigate.

As highlighted in the report by the Special Commission on the Future of New York State Courts (the "Commission"), the court structure has had disastrous consequences on many families. Because of the limited jurisdiction of some courts, many families in turmoil, including families dealing with issues of domestic violence, child custody and divorce, have spent years shuttling back and forth between the Family Court, Supreme Court and Criminal Court, only to end up with inconsistent results arising out of the same or substantially similar facts.

Setting aside the obvious human toll, there is also a fiscal impact to this nonsensical and archaic court structure. Businesses have suffered losses of hundreds or millions of dollars in decreased productivity and lost time. Individuals, including witnesses who testify in court, have lost wages, incurred travel costs and attorney's fees, all for unnecessary trips to court. Many have even lost their jobs or have been compelled to cut their education short to make needless court appearances.

Consolidating New York State's trial courts into a simple two-tier structure of a Supreme Court and a network of District Courts will provide much needed relief, not only to litigants, but also businesses, employers and the state. Under the consolidation plan, the County Courts, Court of Claims, Family Court and Surrogate's Court would be merged into the Supreme Court with their judges then becoming JSCs. The Supreme Court would then be divided into six divisions - Family Division, Criminal Division, State Claims Division, Probate Division, Commercial Division and General Division. The resolution would further provide for flexibility to allow for a change in the divisional structure of the court system so that the rigidity and inflexibility that exists today will not exist in the future.

Likewise, the Civil and Criminal Courts of the City of New York would be merged into the District Court in New York City. The District Courts of Nassau and Suffolk County and the City Courts outside the City of New York would become part of the larger District Court network. Judges of the Civil and Criminal Courts of the City of New York, the District

Courts of Nassau and Suffolk County and the City Courts would become Judges of the new District Court system and cases pending in these courts would be deemed as pending in the District Court. Consolidation of the myriad of trial courts would eliminate a multiplicity of cases and parallel proceedings in different courts. After consolidation, all proceedings would be heard in either Supreme Court or District Court. Victims of domestic violence and families in crisis would have all of the issues relevant to their circumstances heard before one judge. Doing so would bring greater efficiency and stability to the courts and the judicial process, and prevent inconsistent results arising out of the same or similar set of facts. Restructuring the courts system in this manner would also bring New York at par with other comparable states such as California and New Jersey, which streamlined their court systems long ago.

CREATION OF THE FIFTH DEPARTMENT

The Appellate Division has not been adjusted since 1894 and is outdated and unbalanced. The Second Department carries the burden of approximately one-half of the state's population along with forty-one percent of the appellate caseload state-wide. It is critical therefore that a Fifth Department be added to the Appellate Division so that the overloaded and unbalanced appellate caseload of the state may be shared more evenly and efficiently.

It is also important that the Legislature be given the flexibility to approve certain changes to the Appellate Division system without the need for a constitutional amendment. The past more than one-hundred years of rigidity and inflexibility have dealt a near crippling blow to the appellate process, with an overwhelming caseload for the Judicial Departments and not enough judges to hear them. This result dictates that the Legislature be given this flexibility to make adjustments to the number and boundaries of the Judicial Departments in the future should doing so be required. As such, this resolution would allow the Legislature to make such adjustments every ten years without the need for a constitutional amendment.

ELIMINATION OF THE CONSTITUTIONAL CEILING ON THE NUMBER OF JUDGESHIPS

Article VI of the New York State Constitution imposes on the Legislature a limit of allocating one justice per 50,000 residents in each judicial district. With the explosion of litigation in certain portions of the state, such as New York City, this limitation has placed an enormous strain on the judicial system, causing backlogs, delays, and unnecessary costs to all concerned.

While Article VI does contain a provision permitting the Chief Administrator of the Courts to temporarily assign Supreme Court judges from the Court of Claims, County Court, Surrogate's Court and from the New York City Civil and Criminal Courts, heavy reliance on this stopgap measure has thinned the ranks of judges in the New York City Civil and Criminal Courts to the point where those courts are chronically underserved. Lifting the constitutional ceiling, as recommended by the Commission will bring much needed relief to the present system.

BUDGET IMPLICATIONS:

This resolution is expected to result in savings of \$59 million in the court system's annual budget, as shown in the Commission's report.

EFFECTIVE DATE:

This constitutional amendment becomes effective following passage by the Legislature over two successive legislative sessions and approval by voters.
