



November 24, 2020

The Honorable Janet DiFiore
Chief Judge
New York State Court of Appeals
New York State Unified Court System
25 Beaver Street
New York, NY 10004

The Honorable Lawrence K. Marks
Chief Administrative Judge
Office of Court Administration
New York State Unified Court System
25 Beaver Street
New York, NY 10004

Dear Chief Judge DiFiore and Judge Marks:

Our organizations write to urge you to reverse your recent decision to bar some judges who are qualified from continuing to serve past the retirement age of 70. We believe that given the backlog of cases before the courts, that such a denial to continue service for these experienced, otherwise competent judges harms the public's rights to access the courts. Even in challenging times, the wisdom of the legal maxim holds: Justice delayed is justice denied.

We are sympathetic to the budgetary pressures that the courts are facing. However, budgetary concerns must be of secondary priority to the constitutional rights of New Yorkers. We urge you to reverse your decision.

As you know, there has been widespread concern over this decision. As the Bar Association of the City of New York commented, "These difficult times require experienced judges to cut through the considerable backlog of cases built up from the pandemic."

The courts have been facing backlogs from the earliest days of the pandemic. A recent report, *Report From The Special Advisor On Equal Justice In The New York State Courts*, cited the problems that have resulted from the ongoing lack of resources and the impact on racial and ethnic minorities.

"But, in one form or another, multiple interviewees from all perspectives still complain about an under-resourced, over-burdened New York State court system, the dehumanizing effect it has on litigants, and the disparate impact of all this on people of color. Over and over, we heard about the "dehumanizing" and "demeaning cattle-call culture" in these high-volume courts."

Eventually, the courts will have to eliminate these backlogs. The loss of judges would require the remaining jurists to deal with their own case backlogs as well as pick up the orphaned dockets from the loss of these four dozen judges. Of course, that would further exacerbate delays – and impact the public. Moreover, it is likely that the courts will ultimately need more judges to handle

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the enormous caseloads, but in doing so it will add judges without the experience of those that are departing under your decision.

Given the difficulties in this mounting backlog, we urge you to reverse your decision to bar competent and willing judges from working beyond their retirement age. In addition, we urge you to review this age limit. While that limit may have made sense a century ago, in the modern world, it is clear that many professionals continue to serve their clients competently beyond the age of 70.

We look forward to your response.

Sincerely,

Susan Lerner
Executive Director
Common Cause New York

Laura Ladd Bierman
Executive Director
League of Women Voters of New York State

Blair Horner
Executive Director
N.Y. Public Interest Research Group

John Kaehny
Executive Director
Reinvent Albany

Cc: Senate Judiciary Chair Hoylman
Assembly Judiciary Chair Dinowitz