



## **STATEMENT IN SUPPORT OF PROPOSAL 6**

### **A STATE CONSTITUTIONAL AMENDMENT TO RAISE THE RETIREMENT AGE FOR CERTAIN JUDGES**

On Election Day, New York voters will be asked to vote on six proposed amendments to the State Constitution. Proposal 6 would extend the mandatory retirement age for certain judges in New York State courts. The New York City Bar Association supports Proposal 6 because it would make available a pool of experienced and productive judges to handle ever-increasing caseloads throughout New York State.

#### **BACKGROUND**

The proposed constitutional amendment would amend section 25, article 6 of the State Constitution. As required by law, the bill passed both legislative chambers in two consecutive sessions. It now has been placed on the ballot for voter consideration and will become law immediately if the referendum passes.

The State Constitution currently requires all state judges to retire at age 70. However, judges of the State's highest court, the Court of Appeals (appointed by the Governor for 14-year terms) and justices of the State's main trial court, the Supreme Court (elected by the voters for 14-year terms) may serve in the Supreme Court for up to six years after retirement so long as court administrators certify, every two years, that (1) the judge's services are necessary to expedite the business of the court, and (2) the judge is mentally and physically able and competent to perform the full duties of the office.

Proposal 6 would change the current law to: (1) allow Court of Appeals judges to remain on that Court until age 80 (though no judge may be appointed or reappointed to the Court of Appeals after reaching age 70); and (2) allow Supreme Court justices to serve an additional four years, until age 80, subject to the two-year certification process described above.<sup>1</sup>

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<sup>1</sup> The current system in which Court of Appeals judges are certified to sit only in the Supreme Court would be eliminated.

## POSITION<sup>2</sup>

The City Bar supports Proposal 6, consistent with our longstanding position that the mandatory judicial retirement age, which was enacted in 1869, is outdated. Many individuals who reach the age of 70 have a substantial number of productive years ahead of them. Many states and the federal judiciary permit judges to serve past the age of 70, and New York should as well. The certification process is in place to determine that only those who remain competent to serve will be permitted to continue.<sup>3</sup>

While the proposed change might seem relatively small, the potential impact on our strained court system is significant. The Office of Court Administration estimates that up to 40 justices who otherwise would retire might remain on the bench over the next four years. Despite growing caseloads, the number of positions authorized for trial level judges has remained constant and there is little prospect that more positions will be authorized. By ensuring that experienced, productive judges continue to serve, the amendment provides the clearest path to increase judicial capacity in the foreseeable future. Issues pertaining to the operation of the judiciary rarely are placed in front of the electorate. The people should exercise their power to provide relief to the court system this year.

The added judicial resources would enable administrators to redeploy Supreme Court and Acting Supreme Court justices to courts with a particular need for more judicial resources to handle heavy caseloads. One court that particularly would benefit from additional judges is the Family Court, which serves some of the most important and sensitive needs of ordinary New Yorkers. In the past 20 years, despite advocacy by this bar association and others, only four Family Court judges have been added statewide (and none in New York City) despite a more than 50% increase in the Family Court caseload. New York State Chief Judge Jonathan Lippman, who has ultimate administrative authority for the court system, has stated his intention to transfer a significant number of justices who possess the necessary qualifications to the Family Court. We look forward to the placement of additional judges on the Family Court with the sensitivity to handle the difficult issues it faces every day.

We are aware that some have expressed concern that the proposed amendment would limit opportunities for new, and potentially diverse, judges to be appointed or elected. However, the amendment will not affect the number of opportunities for trial court judges. Under current law, which would be unaffected by the proposed amendment, a vacancy occurs when a Supreme Court justice first reaches the age of 70 and is filled at that time through the normal election process; the number of years beyond 70 for which justices serve as certificated justices does not affect the number of vacancies created. Although the replacement of sitting Appellate Division

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<sup>2</sup> This position was developed and approved by the City Bar's Executive Committee, which received and considered comments from certain City Bar committees that address issues relating to the State's court system.

<sup>3</sup> We note concerns that have been raised regarding the certification process, which often is seen as not sufficiently rigorous, thereby permitting justices to serve who no longer are able to perform their duties. We agree that a more rigorous certification process is needed. Chief Judge Lippman has promised to improve the certification process, including a public comment procedure, and we look forward to working toward such improvements.

and Court of Appeals judges would be slowed some, we believe that the focus should be on the availability of and access to trial level positions, the pool from which candidates for appellate positions frequently are drawn.

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Even as we support the proposed amendment, we must underscore the need for additional relief for our strained court system and urge the legislature and the judiciary to turn their attention in the coming session to additional important court reform issues, including the following:

**1. *Extend the retirement age for other courts***

The current amendment would extend the retirement age only for Supreme Court justices and Court of Appeals judges. The other trial courts, such as Family Court, Criminal Court, Civil Court and Surrogate's Court in New York City, also would benefit from the experience and availability of their own retiring jurists. The City Bar continues to believe the State Constitution should be amended to allow all State judges to serve past the age of 70.

**2. *Court Consolidation***

The fractured nature of the State's court system remains a major source of inefficiency and waste in New York.

There is an urgent need for a constitutional amendment that would consolidate and simplify the state's myriad trial courts. At present there are 11 separate trial level courts in New York State. In most instances, they do not accomplish any significant benefit of specialization, but the fractured nature of our system makes it difficult to assign judges to areas of greatest need and leads to other inefficiencies, including disparate treatment of judges in different courts who perform essentially the same functions. For decades, commissions, scholars, legislative panels, and others (including the City Bar) have decried the inefficient and wasteful structure of New York's trial courts and advanced proposals for reform. The latest commission estimated that court consolidation would save the State \$500 million per year. Time after time, however, such efforts have stalled because of entrenched and competing interests and a lack of political will. So, while we support the current amendment as a step in the right direction on retirement age, we believe that it should be the first step in a much broader effort at constitutional reform of the judiciary.

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