

**THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT
OF THE STATE OF NEW YORK,
THE SUPREME COURT JUSTICES ASSOCIATION OF THE CITY OF NEW YORK,
THE JUDICIAL FRIENDS ASSOCIATION, and
THE LATINO JUDGES ASSOCIATION**

STATEMENT IN OPPOSITION TO S5414/A5366

We once again raise our voices in support of a fair and equitable judicial system across New York State. Our associations represent more than 400 New York State Supreme Court Justices, including Justices of Black and Hispanic heritage. We articulate the underlying principles as an initial comprehensive approach to improving our current judicial system consistent with (1) our earlier court consolidation proposal; (2) the recommendations of the Equal Justice in the Courts Commission led by Secretary Jeh Johnson; (3) the Judicial Friends' Report to Combat Racism issued on August 31, 2020 (<https://judicialfriends.org/the-judicial-friends-association-releases-report-systemic-racism-in-the-new-york-state-court-system-with-solutions-to-eradicate-it/>); and (4) the LJA (Latino Judges Report) Overview of Latinos/Hispanics in the New York State Court System, November 2020 (<https://latinojudgesassociation.org/wp-content/uploads/2021/06/overview-of-latino-judges-2020-updated-with-preamble.pdf>).

We oppose S5414/A5366 (Hoylman/Bores), which purports to amend Article 6 of the Constitution by removing the population requirement that determines the number of Supreme Court Justices elected in any judicial district. The practical impact of such change would eliminate empirical methodology in determining the number of Supreme Court justices in each jurisdiction. Instead, the current constitutionally governed process would be replaced by a process left wholly to the discretion of the Legislature and/or the Office of Court Administration.

Since 1962, the constitutional formula to determine the number of Supreme Court Justices in a judicial district has been a ratio of one Supreme Court Justice per 50,000 people.¹ At that time, the Constitution was changed to reduce the number from 60,000 people per Justice to 50,000 people per Justice. Now, sixty-two years later, the Hoylman/Bores bill purports to eliminate the constitutionally protected requirement which uses population to determine the number of elected Supreme Court Justices in all judicial districts. This would be analogous to removing the constitutionally established 150 Assembly Districts or the 63 State Senate Districts.

The New York Constitution establishes three co-equal branches of government: Executive, Legislative, and Judicial. Population changes should drive the apportionment or redistricting of the number of justices in the Supreme Court. The even distribution of Justices within the population ensures the citizenry's constitutional and voter protections, safeguards the

¹ The New York State Constitution specifically provides that the "legislature may increase the number of justices of the supreme court in any judicial district, except that the number in any district shall not be increased to exceed one justice for fifty thousand, or fraction over thirty thousand, of the population thereof as shown by the last federal census or state enumeration."

independence of our judiciary, and promotes racial and gender diversity among the Justices. As such, the apportionment population requirement helps protect our judiciary from short term “political fixes” and political influence.

Thus, we strenuously oppose the elimination of the constitutionally protected methodology. The population formula ensures that each Judicial District, irrespective of its location, is afforded a fair and equitable allocation of Justices to address the needs of their population. Critically, Supreme Court Justices are elected officials, who are elected by registered voters from the population. The State Constitution has determined that voter population is a fair indication of equal representation within each judicial (and legislative) district (see *Reynolds v Sims*, 377 U.S. 533 [1964]).² Justices are elected at-large by popular vote from their Judicial districts. Hence, based upon the Constitutional principal of one-person, one-vote, elected Justices are tied by social contract to the voters/people in their respective judicial districts.

By removing the population formula, S5414/A5366 would open the door to unequal representation. Like the 1962 Legislative Session, the 2024 Legislative Session can increase the number of Justices by amending the Constitution to lower the population requirement, in this instance, from 50,000 to 30,000 people per justice, as would be proposed by an amended A9286.

Any “new” legislation affecting the judiciary’s number, just like the reapportionment or redistricting of our legislative counterparts, must be faithful to the constitutional mandate of separation of powers. The preservation of judicial independence is a cornerstone of our democracy. S5414/A5366 would destroy that balance, as the number of Justices would become a political football. The proponents of such a drastic change should have sought the opinion of the New York State Attorney General as to the constitutionality and voting rights implication of the proposed bill. Simply stated, the legislature enacted the New York State Voting Rights Act to protect voters, whereas this proposed measure threatens to divest voters of voter choice and diversity.

We respectfully submit that this bill will disproportionately increase the number of Justices in New York County at the expense of neighboring counties. By neutralizing the state constitutional safeguard of equal representation, additional judicial seats will be accorded to areas with less population, and thus enact an important prong of the DiFiore Court Consolidation Plan which was previously rejected by the legislative body.

We further conclude that the proposed bill is racially retrogressive: it would adversely decrease racial diversity among the elected judiciary by unfairly minimizing the importance of the racial demographics of relevant supreme court districts.

² At present, based upon the State Constitution and the certification of Supreme Court Justices, there are just over 400 Supreme Court Justices. Three hundred and sixty-four (364) Justices are mandated by the State Constitution, which mandates one justice in each judicial district for every 50,000 residents and approximately 42 certificated Justices pursuant to Judiciary Law Sections 117 and 118.

Our organizations have proposed legislation to adjust the population ratio so as to increase the number of justices while protecting the independence of the judiciary from inappropriate political considerations. Additional judgeships should be objectively allocated to the districts where they are most needed. Here are our recommendations:

- Instead of removing the cap, lower the population requirement of 50,000 people to 30,000 people. This would result in an increase of 235 more Supreme Court Justices and preserve voter rights and racial diversity.
- Increase justices proportionately; target jurisdictions that may require additional assistance; use certificated Justices to fill the gaps; and prevent centralization of power in OCA to maintain judicial independence.
- Create an independent taskforce to evaluate local and regional needs. Issue a report with recommendations that could, for example, increase the monetary threshold for commercial division disputes, expand the use of judicial hearing officers, and support court improvement.

Together, the Association of Justices of the Supreme Court of the State of New York; the Supreme Court Justices Association of the City of New York; the Judicial Friends Association; and the Latino Judges Association stand ready to work with elected officials and others to craft a workable proposal that increases the number of Justices commensurate with the needs of litigants in both civil and criminal matters.

Our underlying principles are straightforward, in keeping with our oath to faithfully serve the people of New York State:

- The court system must provide access to justice in a dignified and transparent manner to all court users, regardless of income, location, color, gender, sexual orientation, or the nature of their legal problem.
- The court system must advance equity, diversity, and inclusion and ensure that its resources are equitably distributed.
- The independence of the judiciary must be safeguarded.
- To promote diversity, we reject any changes that are retrogressive and dilute the voting rights of minority voters.
- Decisions should be made by a transparent process that acknowledges the wealth of experience and knowledge of the judges and staff who work in the courts every day.