



Memorandum in Support

No Cap Act

A.5366 (Bores)/S.5414 (Hoylman-Sigal)

Her Justice supports the enactment of A.5366 (Bores)/S.5414 (Hoylman-Sigal), which would amend the State Constitution to repeal the cap on the number of Supreme Court justices that can serve a particular judicial district. This antiquated and inefficient method for allocating judicial resources negatively impacts the administration of justice not just in the Supreme Court but also in the other courts within the Unified Court System, including what are often called the “People’s Courts” – the Family Court, Civil Court, and local criminal courts.

For 30 years, Her Justice has stood with women living in poverty in New York City by recruiting and mentoring volunteer lawyers to provide free legal help to address individual and systemic legal barriers in the areas of family, matrimonial and immigration law. Through our pro bono first model, our small legal team trains and mentors thousands of volunteer attorneys from more than 100 premier law firms and corporations to assist women living in poverty, bringing the power of the private bar to those who need it most. This approach has enabled us to assist tens of thousands of women over the years, far more than we could have reached relying exclusively on direct service. In FY2023, our staff trained and mentored over 2,800 volunteer attorneys serving over 4,000 women and children and hosted 43 outreach events for our community-based organization partners.

Her Justice and our pro bono partners have represented thousands of clients in the New York State courts – principally the Supreme Court Matrimonial Parts and the Family Courts – since our founding. The New York Unified Court System, and particularly the Family Courts, have been historically under-resourced, which impacts court operations and functionality. In addition to the challenge of inadequate resources, New York’s Unified Court System has struggled because of the constitutionally prescribed method by which the Legislature determines the number of justices that can be elected to the State Supreme Court. Since it was enacted in 1846, and as amended in 1961, Article 6 of the New York State Constitution has set the number of Supreme Court seats (elected positions) for geographically defined judicial districts by using a population-based ratio of one justice per 50,000 people. The formula caps the number of Supreme Court seats within each judicial district, leaving the Legislature powerless to authorize additional seats to meet the needs of the courts in such districts.

The population-based “constitutional cap” has proven problematic and has had ripple consequences throughout the court system. To address the long-time challenge of an insufficient number of judicial seats, New York State has implemented stopgap measures that have resulted in a complicated, confusing, and inefficient court system that fails to provide justice to all. To address the lack of resources at the Supreme Court level, the Office of Court Administration has resorted to designating judges from other courts to sit on the Supreme Court on an “acting” basis, including assigning Family Court judges to



sit in Supreme Court as “temporary” acting justices – some for years. This approach “robs Peter to pay Paul.” Not only has it depleted already strained courts of judicial resources, but it has created a de facto permanent and large class of “temporary Acting Supreme Court Justices,” sitting in a court other than the one to which they were either elected or appointed. Further, the effort to ameliorate the loss of Family Court judges by assigning jurists from other courts (generally Civil or Criminal) to sit temporarily in Family Court has proven problematic; those judges often have no prior Family Court experience and lack adequate family law training. This purported solution is even more troubling when considering that these jurists then preside over matters of critical importance to the stability and security of families. Her Justice clients and pro bono attorneys in our Supreme Court matrimonial practice experience similar struggles both given the under-resourced court and the assignment of jurists to these important matters who do not have the expertise to adjudicate critical custody and financial issues involved in divorce.

Her Justice Family Court clients routinely experience the effects of this problematic approach. Given the huge caseloads in the chronically under-resourced Family Court, the loss of even one judge to the Supreme Court has a significant impact on the overall operations and efficiency of the Court. Litigations in the New York City Family Courts are generally plagued by delays. As Her Justice described in our 2021 policy research report, [Towards Justice for Parents in Child Support Courts](#), court delays can be the worst enemy of parents who are living in poverty and raising children on their own. Delays can defer urgently needed support – including for a recent Her Justice client who filed a petition for child support enforcement in May 2024 and who received a return date of January 2025, which means her children will continue to go without child support for at least another eight months. For some parents, delays between court dates mean having to choose between pursuing child support and keeping a job. As Her Justice client, Talia, said in an interview for the 2021 policy report, “I kept telling the judge, ‘I cannot afford to take time off of work, to pay for parking, for tolls, etc.’ The judge had nothing to say.” The under-resourced judicial bench in Family Court, which contributes to systemic delays in cases, and the impact of the constitutional cap on this and other parts of the court system, should be viewed as unacceptable as a matter of public policy.

For the above reasons, Her Justice believes New York should adopt A.5366/S.5414 and amend the Constitution to repeal the cap on Supreme Court Justices. In this era of metrics, New York State should join other states and adopt a modern, evidence-based method of assessing judicial needs. We urge the Legislature to pass the amendment in the current legislative session so it can be put before voters in a timely manner.

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