



Administrative Office of the Courts

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Judicial Branch testimony in opposition to LD 1192, An Act Regarding the Composition of the Judiciary:

Senator Carney, Representative Moonen, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide testimony in opposition to this bill.

The current composition of the Supreme Judicial Court with seven total justices dates back to 1975. In the 107th Legislature, one associate justice was added because of increasing caseloads and a resulting delay in issuing decisions. The number of appeals in 1974 that caused the legislative change was 223. In fiscal year 2022, the Supreme Judicial Court decided 480 appeals, which is almost up to the pre-pandemic level of 550-575 cases. We expect the number to rise again as more trials occur.

Moreover, in the 1980's, additional reforms were made to the structure of the Maine courts. The appellate function of the Superior Court was discontinued and these direct appeals were instead made to the Law Court. Shortly thereafter, the Court Unification Task Force was convened and resulted in exclusive jurisdiction over family matters lying in the District Court with direct appeals to the Law Court. Both of these changes added significantly to the workload of the Law Court.

As you know, there is no intermediate appellate court in Maine. In addition, few appeals are discretionary;¹ most cases can be appealed as of right.

Another factor to consider regarding the size of the Supreme Judicial Court is the caseload ratio. Looking at similar small-population states with similar appellate structures, it is informative to review the case per justice ratio. When looking at states that have similar

¹ Appeals from the Workers Compensation Board as well as Petitions for Sentence Review or review of Post-Conviction Proceedings are discretionary.

populations, the average number of appeals per justice is 68.5. In Maine, the justices presently have a per justice caseload of 65. Assuming cases return to the pre-pandemic level of 550 - 575 cases annually, Maine's justices will be back to 79 - 82 per justice, already above average. If Maine were to reduce the number of justices to five, the caseload would rise to 91.4 if there were 480 appeals per year, and 110 – 115 per justice if appeals return to 550 – 575 per year.

As we all know, Maine is a small state. This can create a number of conflicts of interest for judges. Justices of the SJC who have previously worked in a large law firm or at the Attorney General's office, for example, tend to have many conflicts requiring recusal thereby reducing the number of justices available to hear the appeal.

This occurred recently in the CMP corridor cases, argued in May of 2022. In these two companion cases, *Black v. Bureau of Parks and Lands*, 2022 ME 58, and *NECEC Transmission LLC v. Bureau of Parks and Lands*, 2022 ME 48, three justices were required to recuse themselves. After one justice retired at the end of May, only three justices remained to decide the cases. Fortunately, two active retired Supreme Judicial Court justices were available to sit on the panels for these important cases, leaving five justices to rule on the appeals. If they had not been available, the panel would have been unduly small for cases of this magnitude.

As Chief Justice Stanfill stated in her recent State of the Judiciary address:

I have talked with the judge so discouraged because she cannot make headway regardless of how many cases she jams into dockets or how late she works. I have seen that our clerks are working nights and weekends to try to catch up. I have listened to judges tell me how the light has gone out of the job for them, leading to some early retirements. Our technology folks are working day and night to respond to demand. I witness the marshals calmly responding to increasing agitation and mental health issues at entry screening. Judicial Branch employees are feeling the weightiness of a realization that no matter what we do, we cannot address the backlog. Frankly, it hurts my heart. For folks whose goal is public service and helping others, that is a crisis of confidence.

A realigning of four judicial positions will not address the very real crisis of confidence that is burdening our courts right now. In fact, the Judicial Branch needs more judicial officers, judicial marshals, court clerks, and others to begin to catch up, reduce, and eventually eliminate the backlog.

We urge you to work with the Appropriations Committee to consider additional positions for the Judicial Branch. We urge you to vote in opposition to LD 1192.