



Testimony  
Public Hearings on the Executive Budget  
before the  
Joint Fiscal Committees of the Senate and Assembly  
Public Protection

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Executive Director

February 9, 2011

The Fund for Modern Courts Testimony

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On behalf of Modern Courts, I want to thank the Committees for providing our organization with the opportunity to present testimony today.

The Fund for Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers. Modern Courts supports a judiciary that provides for the fair administration of justice, equal access to the courts, and that is independent, highly qualified and diverse. By research, public outreach, education and lobbying efforts, Modern Courts seeks to advance these goals and to ensure that the public confidence in the judiciary remains strong.

Modern Courts supports the budget as presented by the Judiciary. The Judiciary's core constitutional obligation is to hear each and every case that comes before it.<sup>1</sup> The Chief Judge in his 2010 State of the Judiciary stated, "As the economy has soured, families are unable to pay their mortgages, consumers default on credit card debt, business deals go bad, and incidents of violence occur in families torn apart by lost jobs and homes in jeopardy." To meet the Judiciary's constitutional obligation, especially during these precarious economic times, Modern Courts believes it is essential that sufficient resources be provided to the courts. Without proper resources, the courts will inevitably be able to do less. The question is what "less" can the people seeking justice do without? Cutting the Judiciary budget will not provide the kind of economic relief the state needs, but it would create costly crises elsewhere.

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<sup>1</sup> Constitution of the State of New York, Article VI, Judiciary.

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The crisis facing the Family Court is one area in which a reduced budget for the courts will further undermine the ability of our courts to meet their constitutional obligations.<sup>2</sup> Reduced resources in this area directly threaten the safety and stability of thousands of families and children. Modern Courts Family Court Task Force Report, issued in 2008, detailed the problems facing Family Court.<sup>3</sup> The array of specific problems in the Family Court is well-documented by many who have studied the court. The problems include huge dockets; lack of sufficient Family Court judgeships commensurate with dockets; unmanageable court calendars; frequent adjournments causing disruption in court proceedings and the effectiveness of judges' orders; the lack of legal representation for many individuals which causes ineffective advocacy; and the paucity, in many courts throughout the state, of information about how the system works or the provision of support for the parties when they first enter the courtroom resulting in more work for overburdened judges and court personnel.

In addition, Modern Courts' citizen court monitors have observed issues in Family Court that include how the lack of the simplest resource – thorough upfront

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<sup>2</sup> Constitution of the State of New York, Article VI, Section 13 (b). The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: (1) the protection, treatment, correction and commitment of those minors who are in need of the exercise of the authority of the court because of circumstances of neglect, delinquency or dependency, as the legislature may determine; (2) the custody of minors except for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; (3) the adoption of persons; (4) the support of dependents except for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage; (5) the establishment of paternity; (6) proceedings for conciliation of spouses; and (7) as may be provided by law: the guardianship of the person of minors and, in conformity with the provisions of section seven of this article, crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

<sup>3</sup> The Task Force interviewed experts on family court from every part of the state. All interviewed were intimately familiar with Family Courts in rural, suburban and urban areas of the State. Many have spent their entire professional careers working in Family Court and their dedication and passion to the success of the Family Court system is profound.

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assistance with information on court processes – is a missed opportunity of prevention and safety, instead there are repeated delays, dismissals and repeat filings.

Modern Courts recognizes that, the largest portion of the Judiciary budget is needed to meet salary and benefit payments for which the system is contractually obligated. It appears that the only way to realistically reduce costs would be to cut a significant number of non-judicial positions primarily through layoffs, which is unthinkable in view of the increased caseloads. The caseload in Family Court, for example, suggests that more resources, not fewer resources are needed. This is demonstrated by the fact, that legislation was introduced in 2009, to address the increasing caseloads in Family Court. After a thorough statewide analysis of Family Court dockets, a bill was introduced to increase the number of Family Court judges in counties across the state with the greatest need. Recognizing the fiscal constraints, it provided for twenty-one new judges (an earlier bill sought more judges), 7 for the five counties of New York City and the remaining 14 for Albany, Broome, Chautauqua, Chemung, Erie, Monroe, Nassau, Niagara, Oneida, Oswego, St. Lawrence, Schenectady, Suffolk and Westchester. Many legislators supported this bill recognizing the difficulty Family Court was having in meeting the ever increasing caseloads. But the legislation did not pass both houses. As a result the resources in Family Court remain diminished and frankly, as reported by our citizen court monitors and our Task Force on Family Court, dangerous for families in crisis. Implementing cuts to the courts now would make an already overwhelmed system that is working with too few resources than needed, worse.

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Diminished resources for the courts that result in reduced services will undermine public confidence in the courts. In addition, providing appropriate resources for our courts impacts on the safety and well-being of our economy. Reporting on the need for access to justice for the most vulnerable, the Chief Judge's Task Force on Civil Legal Services captured this important relationship: "This crisis of the unrepresented adversely impacts everyone in our State, from the strongest financial institution to the most vulnerable child. For those on the other side of the unrepresented — landlords, banks, and other businesses — litigation and other costs are higher, and the opportunity to avoid disputes through mediation and settlement often is lost. Because Judges and court personnel must spend tens of thousands of hours trying to assist the unrepresented in navigating our complex court system, our courts have become less efficient, and the quality of justice has suffered for every New Yorker, including in cases between represented parties. And, the State's economy loses literally hundreds of millions of dollars — conservatively estimated at more than \$400 million each year — because unrepresented New Yorkers lose their right to obtain federal funds, from disability payments to veterans benefits, and the State and local governments — and, ultimately, taxpayers — must step into the breach, by spending greater funds, including to combat homelessness, domestic violence, and poverty."

The lack of resources – including the lack of representation for the most vulnerable New Yorkers - impacts not only the courts but the business community and localities, as well. The same is true for diminishing the sound budget the Judiciary has generated. The courts cannot function properly if doors are closed or court clerks, petition

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clerks, court referees, magistrates and support personnel are no longer available to meet the needs of litigants, both those who are represented, which includes businesses large and small, and the unrepresented. The consequences of reduced judicial resources extends far beyond the courtroom.

The State is facing an unprecedented budget deficit, but the budget gap should not be closed by denying our Judiciary the full resources it needs to promote the rule of law and to serve the public by providing just and timely resolution of all matters before the courts. When our economic downturn draws us closer to the courts for assistance and resolution of disputes, draining the court of the means to serve the public and the rule of law weakens one of the three branches of government, at a time when its strength is most critical to every aspect of our State.

Thank you for your considered review.

*Modern Courts is a nonpartisan, nonprofit, statewide court reform organization founded in 1955. Through research, advocacy, and the efforts of more than 600 in-court volunteers statewide, Modern Courts helps ensure fair and efficient justice for all New Yorkers. Led by concerned citizens, prominent lawyers, and business leaders, Modern Courts is the only organization in New York State devoted exclusively to improving the judicial system.*