



## Memo in Opposition

### **Regarding Provisions of Senate 4001-A and 4005-B that Seek to Impose Improper Reporting Requirements and a Financial Penalty on the State Judiciary**

Modern Courts opposes attacks on the independence of the Judiciary. Provisions of Senate 4001-A and 4005-B that would impose unnecessary and intrusive reporting requirements on the Judiciary concerning training, performance and security will do just that. The harm would be compounded by the unprecedented imposition of a \$10 million penalty, to be deducted from the already bare-bones budget on which the Unified Court System operates, for failing to submit the improper reports.

In part, here are the provisions we oppose:

Section 1 of the Part DDD of the Senate Budget Bill (s.4005-b) would amend Judiciary Law § 212 to add a new subdivision 3 containing new reporting requirements concerning judicial education and training.

Section 2 of Part DDD of the Senate Budget Bill (s.4005-b) would amend Judiciary Law § 212 to add a new subdivision 4 that would create new reporting requirements concerning judicial performance reviews.

Section 3 of Part DDD of the Senate Budget Bill (s.4005-b) would amend Judiciary Law § 212 to add a new subdivision 5 that would impose new judicial threat reporting requirements.

If the UCS fails to comply with sections 1, 2, or 3 of this act, the Legislature must, by concurrent resolution, declare such failure no later than the first day of February of such year, triggering a \$10 million automatic cut to non-personal services funding in the UCS budget. (s.4001-a)

It is axiomatic in our democracy that “[t]he judicial component of government is independent in order to insulate its members from punitive or coercive actions by the legislative

and executive departments of the government. If the judiciary is independent, then it can make fair decisions that uphold the rule of law, an essential element of any genuine constitutional democracy.”<sup>1</sup>

The Legislature has the authority to set the judicial budget and direct certain priorities. Based upon public hearings with input from citizens and from the Judiciary, it has the power of appropriation. Proper exercise of that power, however, requires a delicate balance to ensure the proper functioning of fundamental checks and balances, and to avoid overreaching and control.

As reported by the Brennan Center for Justice, “in 2022, state lawmakers [across the country] introduced, and in some instances passed, legislation that would make state courts more political or limit their ability to serve as independent checks on governors or state legislatures. These measures undermine the critical role that state courts play in our democracy to ensure lawmakers do not overstep their authority and to act impartially when vindicating individual rights.”<sup>2</sup> Among the examples cited are interfering with judicial decision making and reducing or controlling court resources.<sup>3</sup> Such legislative acts may appear innocuous, but they seek to diminish judicial independence and politicize the courts. Our Legislature must resist such measures.

In the case of the proposed legislation, while the provisions may appear on their face merely to require innocuous fact-gathering, in reality they threaten to compromise judicial independence and are, in any event, unnecessary.

At the heart of the independence of the Judiciary is ensuring that the Executive and Legislative branches do not interfere with the decision-making power of judges. We are concerned that the reporting requirements and the \$10 million penalty, create, at a minimum, a chilling effect on how judges make their decisions. This can happen, for example, if the Legislature decides to impose its policy perspective on training materials and penalizes the courts for not following their direction; or decides that a judge is not properly making a decision because they do not meet arbitrary time constraints; or seeks details concerning appeals of a particular judge’s decisions without context or analysis of the reasons; or seize the power unilaterally to withdraw budgeted funds after the fact to enforce its will, without the Governor’s approval or input from the Judiciary – an unprecedented breach of separation of powers.

This year, the New York State Legislature has an opportunity to make extraordinary improvements in access to justice by supporting the right to counsel in eviction proceedings, reducing the impact of fines and fees, increasing the rate of compensation for assigned counsel, enhancing the role of the Judicial Conduct Commission, and providing audio-visual coverage of judicial proceedings. Many of these initiatives are led by members of the Senate. We

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<sup>1</sup> [https://www.annenbergclassroom.org/glossary\\_term/judicial-independence/](https://www.annenbergclassroom.org/glossary_term/judicial-independence/)

<sup>2</sup> <https://www.brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-december-2022-update>

<sup>3</sup> Id.

enthusiastically support their work. The Legislature also has the power, as Modern Courts and more than one hundred organizations across the State have advocated, to consolidate the NYS court system to improve the structure and system of justice.

When one branch of government seeks inappropriately to police another branch of government, a line is crossed, undermining an essential pillar of a sound democracy: the independent operation of three co-equal branches of government.

For the above reasons, Modern Courts opposes those parts of Senate 4001-A and 4005-B that Seek to Amend the Judiciary Law and Impose a Penalty on the Unified Court System's Budget.