



# THE STATE OF THE JUDICIARY 2011

**Jonathan Lippman** CHIEF JUDGE OF THE STATE OF NEW YORK

EXCELSIOR

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STATE OF THE JUDICIARY 2011

*Pursuing Justice*

CHIEF JUDGE JONATHAN LIPPMAN

FEBRUARY 15, 2011

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## INTRODUCTION

**G**OOD AFTERNOON, AND WELCOME TO COURT OF APPEALS HALL. On behalf of my colleagues, Senior Associate Judge Carmen Beauchamp Ciparick and Associate Judges Victoria A. Graffeo, Susan Phillips Read, Robert S. Smith, Eugene F. Pigott, Jr., and Theodore Jones — all seated behind me — I thank you for being with us today.

We assemble at a formative moment for the future of the State of New York and for the system of justice that we cherish. Our State, our communities and our Judiciary all face historic challenges. Each day in our courthouses we see the fallout from the economic downturn reflected in dockets surging with new foreclosure, eviction, family offense, consumer debt and criminal cases. This flood of cases carries with it the futures of millions of New Yorkers — many of limited means, including families, children and the most vulnerable members of our society — all seeking justice and often fighting for life's most basic needs, people who have nowhere else to turn to but the courts to protect their fundamental rights. They come in record numbers at the very time that courts and judges are stretched thinnest, when New York's economy and business climate are at their weakest. And it is our constitutional obligation — ours alone — to hear and resolve every single one of these matters with fairness, speed and wisdom.

Between the irresistible force of the economy on one side, and the immovable object of record dockets on the other, the Judiciary must continue to carry out its constitutional responsibilities. We of course recognize and accept our duty to do everything possible to reduce expenditures in response to New York's grave fiscal crisis. We will continue to look at every option to achieve savings. In fact, in the face of steadily increasing caseloads we have operated under strict hiring limitations for several years, and with virtually no new judgeships for much longer. Since 2001, overall court filings have increased by 15% to four and a half million annually, while nonjudicial staff have increased by 3%, and the number of judges by just 1%. But these numbers tell only part of the story. Orders of protection are up 66% since 2004, consumer debt cases have doubled over the last decade, and foreclosure filings have risen by more than 100% per-

cent in the last five years alone. Despite these challenging trends we have managed to stay relatively current, because efficiency and innovation have become a way of life for us — thanks to our dedicated judges and non-judicial staff who continue to meet every challenge with hard work and resourcefulness.

We have submitted a Judiciary budget for the coming fiscal year that represents a small operating reduction from last year, exclusive of escalating pension and fringe benefit costs. We have 1,000 fewer nonjudicial personnel today than we had just two years ago, including a reduction of over 10% in the courts' administrative staff.

As an independent, accountable and co-equal branch of government, it is our duty always to make the most effective use of resources, to be disciplined, and especially in times like these, to be prepared to make additional sacrifices. And we are. That is a given. But our ultimate duty to the people of New York, our partners in government, and the Constitution is to do justice. Doing justice is what the Judiciary is all about.

It is precisely when the economy falters that commercial disputes ripen into lawsuits, and their speedy resolution can make the difference between a healthy business climate and a hostile one. It is precisely when the economy stagnates that the courts become society's emergency room, dealing with the most intractable of human disputes — foreclosures and evictions, family violence and abuse, crime, delinquency, divorce, child custody and support, and on and on. These are the moments that matter most.

Surely, we could close courts, or greatly reduce the number of days and hours our courts are open, but at what at cost to our citizenry? What are the consequences? Do we tell a victim of domestic violence seeking a protective order to come back tomorrow or next week? Can we ignore constitutional and statutory speedy trial requirements and allow justice to be delayed at the expense of public safety and the rights and liberties that everyone is entitled to in this country? In Family Courts, can we tell the children languishing in foster care or the abused children needing a safe home that they have to keep waiting? In the commercial center of the world, do we have the luxury of saying that we do not have a fully functioning court system to resolve your disputes — so maybe you should set up shop in some other state more welcoming to the business community? Is that what we want for New York? Of course not! Not if our justice system, our State and the fabric of our society are to remain intact. These are very difficult

times that require all of us to pull together, but they are also the times when the courts and the justice system matter more than ever.

As a Judiciary, we must stay true to our core values, to our constitutional mission, a mission as old as the biblical command: “Justice, justice, shall you pursue.” The pursuit of justice is an ongoing endeavor, a constant striving, which is exactly what we have always tried to do. Our Judiciary has long been a national incubator for innovation. Courts across America look to New York as a model for how to convert challenge into opportunity: how to reform one of the nation’s largest jury systems, how to reduce recidivism and break the cycles of addiction and violence, how to enhance transparency and accuracy in foreclosures. And while today’s problems press our justice system like never before, we do not have the luxury of shrinking from these challenges, because the pursuit of justice demands not only that we keep our courthouses open, but that we provide justice to our citizens in ways that are meaningful, equal for all, and absolutely fair and impartial. Anything less than that is not justice at all. I believe we must confront, right now more than ever, the challenges posed by record numbers of unrepresented litigants in civil matters involving basic life needs, spiraling home foreclosures, wrongful convictions that imprison the innocent and leave the guilty unpunished, a juvenile justice system that is failing our communities and our children, sentencing laws that are outdated and counterproductive, threats to public confidence arising from judicial campaigns, and fair compensation for judges.

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## ACCESS TO CIVIL JUSTICE FOR POOR AND LOW-INCOME NEW YORKERS

**T**AKING ON THE CHALLENGE OF UNREPRESENTED LITIGANTS fighting for the necessities of life was the subject of my [Law Day address](#) last year. In September and October, I presided over four Statewide hearings to measure the unmet need for civil legal services and assess for the Legislature and the Executive the level of public resources necessary to meet those needs. To assist with the hearings and report on their results, I formed a Task Force to Expand Access to Civil Legal Services in New York, chaired by former president of the federal Legal Services Corporation, Helaine Barnett, and including judges, lawyers, business executives, and labor leaders, from all parts of our State. At the close of the last legislative session, the Senate and Assembly adopted a joint resolution stating that the “fair administration of justice requires that every person who must use the courts have access to adequate legal representation,” and requesting that the Chief Judge report annually to the Governor and Legislature on the findings of the hearings and the work of the Task Force, with recommendations to address gaps in available resources to meet the need for civil legal services.

In November the Task Force issued a [report](#) that is far and away the most comprehensive ever published on this issue. The findings were dramatic. Last year alone, 2.3 million litigants appeared in the New York courts without a lawyer, including:

- 98% to 99% of tenants in eviction cases,
- 99% of borrowers in hundreds of thousands of consumer credit cases,
- over 95% of parents in child support matters; and
- almost two-thirds of homeowners facing foreclosure who appear for settlement conferences mandated by our laws do so without a lawyer.

Many courtrooms are “standing room only,” filled with frightened, unrepresented litigants who are fighting to keep a roof over their heads, fighting to keep their children, fighting to keep their sources of income and health care. These are often the most vulnerable in our society to begin with — the elderly, children, single parents, and so many more. But the impact of lack of legal representation extends well beyond the unrepresented: more time is required of judges and court staff to deal with unrepresented liti-

gants, adjournments are much more frequent, and opposing parties represented by counsel (like landlords, banks, and businesses) have higher litigation and other costs. As a result, the courts become less efficient, and the quality of justice for every New Yorker suffers.

The Task Force found that we are meeting, at best, 20 percent of the civil legal needs of the poor and working poor in New York, and recommended that we include \$25 million for civil legal services in the Judiciary Budget for the coming fiscal year, as part of a four-year effort to increase civil legal services funding in this State by 50 percent. These monies, which I have requested, are absolutely central to the Judiciary fulfilling its constitutional mission of providing equal justice for all — the very reason we exist. Every society is ultimately judged by how it treats its most vulnerable citizens, and the Judiciary and the legal profession can and should be judged by whether the poor and the indigent are provided with meaningful legal representation. For me, this is every bit as important as keeping the doors of our courthouses open. I see it as *that* fundamental!

And expanding civil legal representation actually more than pays for itself. Civil legal services save our State and local governments hundreds of millions of dollars a year by preventing unwarranted evictions, avoiding foster care placements, curbing costs for homelessness, incarceration and social services, and bringing federal funds into New York. Moreover, those federal monies have a multiplier effect when they are spent here and flow through the State economy. The investment we are asking the State to make will redound to its benefit many times over — the Task Force estimates that for every dollar spent on civil legal services in this State, five dollars are returned to our economy and to the State's bottom line.

And make no mistake, expanded legal representation improves the efficiency of our courts and the overall business climate in our State. That is why so many of our largest financial and banking institutions, business leaders, real estate owners, and hospitals testified at the hearings that civil legal services are beneficial to their institutional performance and financial well being. They support expanding civil legal services as a fiscally responsible move and recognize that access to civil legal assistance is not only important to the fabric of our society but also benefits the business community by keeping cases out of court and reducing litigation costs when cases do end up there.

What we are recommending is a measured, common sense approach that prioritizes our resources, particularly in light of today's fiscal realities — we cannot provide a lawyer to every poor person with a legal problem, as much as we would want to. What we are seeking is to provide legal representation to those struggling to access life's most basic necessities, such as shelter, food, and personal safety.

To me, this is not complicated. The funding we seek for civil legal services will improve the lives of New Yorkers, improve the State's bottom line, improve the business climate, improve the functioning of the court system, and enable us to carry out our constitutional mission of providing equal justice for all.

I look forward to working with Governor Cuomo and the Legislature to ensure that New York makes this investment in our people, our economy, the efficiency of our government and the basic fairness of our justice system.

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## INDIGENT DEFENSE

**L**EGAL REPRESENTATION OF INDIGENT DEFENDANTS IN CRIMINAL CASES was recognized as a constitutional right in 1963 by the Supreme Court in the landmark case of *Gideon v Wainwright*. Five years ago, the Commission on the Future of Indigent Defense Services concluded that New York's indigent defense system is severely dysfunctional and structurally incapable of providing poor defendants with effective legal representation. Indigent defense representation that meets the constitutional mandate of *Gideon* is very much a counterpart to our efforts to ensure civil legal representation for New Yorkers fighting for the basic necessities of life. Indeed, no challenge is more fundamental to the future of our State's criminal justice system.

Fortunately, there is finally cause for optimism thanks to the Legislature's historic creation last June of an Indigent Legal Services Board and a State Office of Indigent Legal Services, the ILS Office. The nine-member Board, which as Chief Judge I have the honor of chairing, consists of a diverse, accomplished group of people representing the State's counties and all branches of State government. The Board has broad statutory powers and will work with the ILS Office to distribute funds, monitor performance, collect information and take action to promote the effective assistance of counsel.

As required by statute, one of the Board's first actions was to seek out a Director for the ILS Office, someone experienced in leading a large public defense organization. I am delighted to announce today that after a nationwide search the Board has found such a leader in William J. Leahy, Esq. Mr. Leahy, the former Chief Counsel to the Massachusetts Committee for Public Counsel Services, comes with a superb record as an administrator and nearly four decades of experience in this field. We are indebted to Massachusetts Governor Deval Patrick and former Chief Justice Margaret Marshall for their strong support of Mr. Leahy's candidacy.

Guided by nationally recognized principles for a strong public defense delivery system, the Board and ILS Office will work to ensure that every person entitled to counsel in New York is represented by an attorney with the ability and experience appropriate for the complexity of the case, a caseload sufficiently limited to permit effective representation, adequate investigative and other ancillary resources, and proper training and supervision.

In the coming year, the focus will be on assisting and evaluating our State's multiplicity of counsel assignment systems, and supporting creative, cost-effective delivery systems that meet the fundamental constitutional right we are charged with enforcing. We will seek the participation, cooperation and input of all who are affected by and have an interest in strengthening New York's indigent defense system, particularly county and State officials.

The developments I have just described give us all reason to believe that the promise of *Gideon* — and the pursuit of justice — will soon be stronger than ever in our great State.

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## CIVIL JUSTICE: CONFRONTING THE FORECLOSURE CRISIS

**A**CROSS NEW YORK, AS IN MUCH OF AMERICA, many of our communities have been ravaged by the burst of the housing bubble. As a result, foreclosure filings doubled in just the last five years, and in some counties foreclosure filings more than tripled. In 2010 alone, New York courts held more than 100,000 settlement conferences in

foreclosure cases. Currently, nearly 80,000 foreclosure cases are pending Statewide.

Of course, the full impact is even greater than numbers alone suggest. Not only are New Yorkers losing their homes in record numbers but the foreclosure process itself has been called into doubt — foreclosure forms robo-signed by personnel with little or no knowledge of the underlying facts, homes foreclosed on servicemen and women in violation of the law, mortgages whose owners cannot be confidently identified. These and other problems raise fairness questions that go to the very heart of the court process.

In October 2010, [we promulgated a rule](#), now being replicated elsewhere, requiring attorneys representing residential foreclosure plaintiffs to vouch for the accuracy of the records on which the foreclosure is based. As officers of the court, attorneys invoking judicial power must execute an affirmation that they have taken reasonable steps to assure that documents filed in support of residential foreclosures are accurate.

The affirmation rule was a major step in bringing transparency and accountability to the foreclosure process, but we can and must do more. A truly glaring problem, as I suggested earlier, is that the foreclosure process presents a need for legal counsel at precisely the moment when a lawyer is least affordable. Far too many homeowners enter our courts without legal help and with little understanding of the legal process. Many are so intimidated by the process and its consequences that they don't show up at all.

Despite the increase in pro bono volunteers who have stepped up to provide legal assistance, 63% of homeowners appearing for mandatory court settlement conferences are unrepresented, and the percentage is even higher in New York City. It is ironic that we generally provide assigned counsel at arraignment to people caught in public with an open can of beer — and rightly so — but if those people appear in court because they are about to lose the roof over their heads, they are on their own.

To begin to address this disparity, we will establish a program to ensure, over time, that all homeowners who cannot afford a lawyer will be provided with legal assistance or representation at foreclosure settlement appearances. The settlement conferences mandated by law several years ago are considered the defining moment in the foreclosure process: the first opportunity for many defendants to learn about their legal rights and protections, about settlement options, and about the court process that lies ahead. It is the moment when having a lawyer at the table matters most.

At the outset, we will work with The Legal Aid Society in Queens, which has one

of the highest foreclosure default rates in the state, and with Hudson Valley Legal Services in Orange County. At the end of the year, we hope to expand this effort across the State. Legal services attorneys with foreclosure expertise, including experience in handling veterans' issues, will be assigned to courthouses in the counties involved. After a screening process designed to make sure that the foreclosure settlement conferences are as meaningful as possible, these legal services attorneys will provide legal assistance or representation to unrepresented homeowners at the initial conference in as many cases as possible. Thereafter, the attorney will either keep the case and continue with representation or refer the homeowner to a network of legal services, pro bono or law school clinic counsel who will be standing by to provide additional legal assistance in support of this project.

I believe this approach is a major step toward addressing the foreclosure representation crisis in New York.

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## CRIMINAL JUSTICE: WRONGFUL CONVICTIONS

**N**OTHING IS MORE DAMAGING TO THE PURSUIT OF JUSTICE than the conviction of an innocent person. Since DNA was first used over 20 years ago to exonerate an innocent defendant, 266 DNA exonerations have been documented — 27 of them in New York, not to mention scores of other exonerations based on traditional, non-DNA evidence. Every wrongful conviction is a double injustice that punishes the innocent and allows the guilty to go free, and an ugly stain on the reputation of the courts, chipping away at our legitimacy in the public eye. But each one is also a valuable opportunity for self-examination — what misled police and prosecutors? What caused juries and judges to find an innocent person guilty beyond a reasonable doubt? If we care about justice, then we are absolutely duty-bound to search out the answers to these questions.

In 2009, I appointed The Justice Task Force to carry out this mission and recommend reforms to safeguard against wrongful convictions. Consisting of prosecutors, defense attorneys, judges, police chiefs, legislators, legal scholars, forensic experts and victims' advocates, and co-Chaired by my Court of Appeals colleague, Theodore Jones, Jr., and Westchester County District Attorney, Janet DiFiore, the Task Force has met

dozens of times, dissected the records of 53 documented exonerations in New York, interviewed experts, conducted field trips, and examined the most critical issues. I am very pleased to announce that the Task Force is today issuing its initial [reform recommendations](#), available on its new website: [www.NYJusticeTaskForce.com](http://www.NYJusticeTaskForce.com).

Mistaken eyewitness identifications are the leading cause of wrongful convictions and the Task Force made that issue its first priority, developing a comprehensive set of best practices to improve the accuracy and reliability of eyewitness identifications in New York. These best practices cover issues such as:

- Advising witnesses on key aspects of the identification process before it begins;
- Documenting all lineup and photo array procedures and logistics;
- Addressing in detail the composition and manner in which lineups and photo array identifications are conducted; and,
- Providing training for law enforcement and judges on the inherent risks of eyewitness identification procedures, and how to work effectively with witnesses and victims during identifications.

The Task Force's last proposal in this area is to add a special instruction to the Pattern Jury Instructions to address cross-racial identifications and the difficulty many people have in accurately identifying members of a different race.

I particularly want to thank the New York State District Attorneys Association for recognizing the need for a level playing field to guard against wrongful convictions and for their leadership and contributions to the identification best practices, as well as the Innocence Project at Cardozo Law School for the wonderful advisory assistance they have provided to the Task Force.

In terms of legislative changes, the Task Force recommends amending the Criminal Procedure Law to allow photo identifications to be admissible at trial, and to prescribe the administration of identifications, where practicable, by a person who does not know the suspect's identity. Finally, after exhaustive study and much debate, the Task Force recommends expansion of the New York State DNA Databank. Under current law, DNA samples are collected from persons convicted of a felony or one of 35 specified misdemeanor offenses, which covers less than half the Penal Law convictions in New York. The Task Force found that collecting DNA samples from persons convicted of all

Penal Law misdemeanors, as well as non-Penal Law felonies, would represent a major step in preventing and remedying wrongful convictions by directing criminal investigations toward actual perpetrators and increasing the opportunity for wrongfully convicted individuals to prove their innocence through Databank hits that implicate others. This recommendation truly reflects a painstaking — and I emphasize that word — reconciliation of many competing and difficult policy interests, and will surely result in a public dialogue within and outside the criminal justice community that we must have on this critical issue.

The Task Force’s work on other wrongful convictions issues that must be addressed, such as post-conviction DNA testing, is ongoing, and we certainly look forward to additional recommendations in the months ahead. On behalf of the entire Judiciary, I thank the Chairs, members and pro bono counsel for the tremendous energy and commitment they have devoted to eliminating the scourge of wrongful convictions, and I pledge to work with our partners in government and the entire criminal justice community to implement the Task Force’s recommendations.

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## SENTENCING COMMISSION

**A**LTHOUGH OUR SOCIETY HAS LEARNED A GREAT DEAL about crime and punishment in recent years, New York’s sentencing laws have not been revised in more than four decades. It is critical that we modernize our sentencing laws and practices to reflect the best and latest knowledge about public safety, individualized punishment, reduced recidivism, successful re-entry and rehabilitation, and the rights of crime victims. Last October, I appointed a permanent Sentencing Commission for New York and charged it with performing a top to bottom evaluation of our sentencing laws. The Commission is being led by Manhattan District Attorney Cyrus Vance, Jr., and Kings County Administrative Judge Barry Kamins. Made up of leading representatives of New York’s criminal justice community, the Commission is already hard at work and I have no doubt that its recommendations will contribute to a much improved sentencing structure that strengthens public safety and lowers recidivism.

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## JUVENILE JUSTICE

**I**N HIS RECENT STATE OF THE STATE ADDRESS, GOVERNOR CUOMO focused attention on an issue that few governors have ever chosen to highlight: the inefficiencies and inequities of our juvenile justice system. Prosecutors, defense attorneys and judges from across a broad political spectrum — upstate and downstate — now agree that we must do better. Sending troubled young people to State facilities at a cost of \$230,000 per year is currently yielding us a recidivism rate in excess of 80 percent.

How do we solve this problem? Governor Cuomo has proposed closing underutilized youth prisons, and the monies saved can be reinvested in meaningful community alternatives. The Judiciary has made its own commitment to reform, improving our Family Courts in so many ways and supporting Mayor Bloomberg's efforts to promote alternatives to detention in New York City. These efforts are beginning to bear fruit. In 2000, more than 2,500 young people were in State custody. Today, that number is fewer than 800. Meanwhile, the availability of more alternative-to-detention programs in New York City has enabled judges to reduce the number of young people detained at arraignment by nearly 30 percent. This change has not come at the expense of public safety — the re-arrest rate for young people with pending cases has actually dropped by 34 percent.

As much as we have accomplished independently, so much more can be achieved when we work together. That's why in the days ahead, we will work with the other branches to continue to advance a reform agenda, beginning with efforts to strengthen juvenile probation. As we reduce the number of young people in custodial settings, we will invariably increase the number sentenced to probation. Given this reality, we all have a stake in making sure that probation departments have access to state-of-the-art training and knowledge. That's why I have proposed to the Legislature that the Judiciary provide state oversight of juvenile probation, to give troubled young people the structure, support and supervision they need to get their lives back on track.

A stronger probation system would also enable us to build on our successful efforts in New York City to accurately assess the risk that any given young person will re-offend. We need to expand this risk assessment model to the rest of the State so that

judges can make more informed decisions in each case. And we must work to match risks to responses — providing judges with sentencing options that are calibrated to all young offenders, whether they be low, medium or high risk.

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## PROTECTING JUDICIAL NEUTRALITY

**A** CORNERSTONE OF OUR JUDICIARY — of any Judiciary — is its commitment to the even-handed application of the rule of law. Whether a party appearing before us is impoverished or listed among the Fortune 500, it is our duty to bring to every matter an unbiased perspective and unquestionable integrity. Our commitment to apply the law impartially and completely beyond the reach of private interest is a principle as ancient as Solomon and as modern as the Supreme Court's recent landmark decision in *Caperton v. Massey Coal*. That case focused a national spotlight on judicial impartiality and the conduct of judicial elections, with Congress holding hearings to examine judicial recusal standards and numerous states reevaluating their judicial recusal rules and procedures.

In New York, almost one thousand judges participate in partisan election campaigns that require tens or even hundreds of thousands of dollars to finance. While the elective system in New York has produced some of the best judges in our nation's history, including the likes of Benjamin Cardozo, changing times and technologies have made it extremely difficult, if not impossible, to reconcile the appearance of impartiality with the reality of judicial campaigns.

For many years, judges have operated under an ethical duty to remain unaware of their campaign contributors. Candidates might see names on campaign stationery or attend cocktail receptions with contributors present, but contributions were made to committees run by others and the candidates did not see donor lists. It was hardly a perfect system, but on the whole it worked because a judge's lack of knowledge of campaign contributors was credible.

But in the digital age, anyone with a laptop can visit the board of elections website and find out in a matter of seconds exactly who gave how much to whom in any New York judicial election. Such an extraordinary change in our culture means that we can

no longer reasonably expect those who bring their disputes to our courts to believe that judges are unaware of facts that are as easy to ascertain as yesterday's basketball scores. It simply doesn't make sense anymore, which means that the appearance of impropriety arising from judges hearing cases involving recent contributors has become unavoidable — and unacceptable.

That is why today I am announcing the following. The Administrative Board of the Courts, the court system's policy making body that includes myself and the Presiding Justices of the four Appellate Departments around the State, has approved for public comment [a new rule](#) that assures that no case will be assigned to a judge where the attorneys or parties in the case contributed \$2,500 or more within the previous two years to the judge's campaign. By this new rule, the Judiciary in New York will be the first in the country to systemically address this problem at its source — determining as a matter of court system policy that judges will not hear matters involving lawyers and parties who have contributed substantial monies to their campaigns. We are not saying that lawyers and judges are doing anything wrong in making and receiving campaign contributions. To the contrary, campaign contributions are very much a part of the constitutionally established process by which we select most of our Judges in New York. What we are saying, however, is that foreclosing even the appearance of impropriety is absolutely central to maintaining public confidence in the Judiciary. In this same spirit, our rule reminds judges to be mindful of existing judicial disqualification rules given the ready public availability of records of campaign contributions.

In a State that elects 73% of its judges in partisan elections, these changes will go a long way toward putting New York at the forefront of national efforts to promote public confidence in the independence, fairness and impartiality of the Judiciary. I have no doubt that this new rule will generate a great deal of public comment, and I welcome it.

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## JUSTICE FOR JUDGES: REFORMING JUDICIAL COMPENSATION

**F**OR NEW YORK, no State of the Judiciary address can be complete without addressing the issue of judicial compensation. Until recently, the news for judges was consistently bleak: declining real pay, the longest salary freeze in the nation, and the lowest

cost-adjusted judicial pay of any state in the nation. It strains belief that New York judges have entered the 13th consecutive year of frozen pay without so much as a cost of living adjustment.

Today I am delighted to report significant progress in transforming New York's broken judicial compensation system. First and foremost, thanks to the vision and leadership of the Legislature and former Governor Paterson, a permanent quadrennial judicial compensation commission was enacted into law to take judicial pay out of the political arena. After over a decade of struggle and debate, this commission is the key to preserving the future excellence and independence of the Judiciary, and ensuring that judicial pay issues will not depend on the political winds of the day or be subject to interminable freezes that harm our ability to attract the best possible candidates to the bench.

As the quadrennial commission prepares to begin its work on April 1, today I announce the Judiciary's two appointments to the commission. First, Robert Fiske, Jr., from Davis Polk & Wardwell, one of the most respected lawyers in America. As a former U.S. Attorney for the Southern District of New York, Whitewater Independent Counsel, and nationally recognized litigator, Bob Fiske has the experience, the understanding and the wisdom to properly value the work that New York State judges perform. My second appointment to the quadrennial commission is Kathryn S. Wylde, the President & CEO of the Partnership for New York City, a nonprofit organization of the city's business leaders established by David Rockefeller in 1979. Ms. Wylde leads the Partnership's efforts to strengthen New York's economy by working with the government, labor and the not-for-profit sectors. She is also the Deputy Chair of the Board of the Federal Reserve Bank of New York, and a member of the Board of Directors of the Committee to Save New York. There is no one in this State who better understands the connection between a strong economy and a well-qualified Judiciary.

Their eminent professionalism and expertise, representing the bar and the business community, uniquely qualify Bob Fiske and Kathy Wylde to serve on the commission as it sets a proper objective basis to fix new pay levels for New York judges — based on the market for legal talent in our State, judicial salaries in comparable jurisdictions, living costs, and the long-term interests of New York's economy and legal system. I am confident that the commission will achieve a just result for our Judiciary and the people

we serve, and I know we all look forward to receiving the commission's determinations this summer.

While every one of us must be prepared to make sacrifices in this era of tough choices, judges have begun their 13th consecutive year of sacrifice — and that's just too much based on any objective standard. I look forward in the months ahead to ensuring — at long last — that judges are treated fairly. Judges very much need and deserve an appropriate salary increase that restores them to fair compensation levels at the earliest possible moment, as well as a schedule of regular cost of living increases to keep their salaries at competitive levels.

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## CONCLUSION

**I WANT TO CONCLUDE THIS STATE OF THE JUDICIARY ADDRESS** by thanking the dedicated judges and court staff who are working in the trenches to resolve the difficult 21st century issues reflected in our court dockets that affect the daily lives of our citizens and the quality of life in our communities, particularly during these hard economic times when our caseloads continue to climb ever higher but resources are more scarce than ever before. We in the Judiciary fully recognize our obligation to join Governor Cuomo and the Legislature in responding to our State's grave economic problems — and we are and we will. At the same time, we must, and we will, hear and decide each and every case that is filed in the courts. It is this obligation that defines us as an independent and co-equal branch of government. We do not have the option of picking and choosing which cases we will hear, of turning people away, or of turning a deaf ear to those who come to our courthouse doors seeking justice. Rest assured that today, tomorrow, and in all the days to follow, the New York State court system will never stray from our constitutional mission of pursuing justice for each and every citizen of this State. Thank you.

