

SUBMISSION TO

THE NEW YORK STATE COMMISSION ON LEGISLATIVE, JUDICIAL & EXECUTIVE COMPENSATION



ASSOCIATION OF JUSTICES OF THE SUPREME COURT
OF THE STATE OF NEW YORK

SUPREME COURT JUSTICES' ASSOCIATION
OF THE CITY OF NEW YORK

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October 2023

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I. INTRODUCTION – CORRECTING CONSTITUTIONAL INJURY

This Commission is statutorily charged with setting judicial compensation in New York in a fair, consistent, and deserved manner. In addition to discharging its duties and considering the statutory criteria of comparability with appropriate positions, the State's ability to pay, and other relevant factors, this Commission should also be cognizant of the genesis of its task. The Commission, like its predecessors, is tasked with remedying a long-standing constitutional injury impacting New York State Judges¹.

For decades, Judges were forced to watch their compensation used as a political bargaining chip, never receiving the independent evaluation required. That changed after the Court of Appeals' groundbreaking decision in Maron v. Silver, 14 N.Y.3d 230 (2010). There, the Court of Appeals addressed whether the Legislature's failure to make upward adjustments to the Judges' compensation for more than 10 years violated the New York State Constitution's Compensation Clause (Article VI, Section 25) and Separation of Powers Doctrine. The Court of Appeals found that pay increases for Judges were long overdue because of an improper link between judicial pay and other political matters. Maron, 14 N.Y.3d at 260. The Maron court reasoned:

All parties agree that a salary increase is justified and, yet, those who have the constitutional duty to act have done nothing to further that objective due to disputes unrelated to the merits of any proposed increase. This inaction not only impairs the structural independence of the Judiciary, but also deleteriously affects the public at large, which is entitled to a well-qualified, functioning Judiciary.

¹ The Associations are comprised of City and State Supreme Court Justices, thus this submission is written primarily from that perspective. However, references to "Judges' compensation" or "judicial pay" encompasses support for the proportional increase in pay for all New York State Judges.

Id. As a result, the Court determined that a new approach to judicial compensation needed to be adopted through legislative action that considered judicial pay separately from legislative and executive compensation. At essence, the issue to be remedied in Maron, like the one here, was not a question of whether it was appropriate for Judges to receive pay increases, for all parties agreed that they should, but the interminable delay—or “continuing inertia”—in obtaining what is just and due to New York State Judges. Id. at 245-46.

The “continuing inertia” contemplated in Maron was finally broken by the initial commissions. In 2011, after submissions and testimony showing how far State judicial pay had fallen off the mark of federal judges, judges of other states (many of whom had far lower caseloads and complexity than New York), and the loss of buying power concomitant with a salary freeze, the Salary Commission gave New York State Judges a 27% increase in pay over three years after a thirteen-year period without any increase. They did so in light of concerns about the opportunity costs of becoming a judge due to stagnating salaries.² Thereafter, judicial salary increases took effect in 2012-2013, 2013-2014, 2014-2015, 2016-2017, 2017-2018, 2018-2019, and 2019-2020.³ Notwithstanding the creation of Salary Commissions to remedy delays in salary increases like those at issue in Maron, judicial salaries have nevertheless stagnated once again since Judges last saw a pay raise in 2019. Now, the responsibility to craft a proper remedy to regain parity with Federal District Court Judges rests with this Commission.

As will become evident through submissions to this Commission, there should be little controversy as to whether Judges deserve or need a pay increase. Yet, the two prior Commissions declined to increase judicial salaries in 2019 and again in 2020. In 2019, the

² Gregory DeAngelo & Bryan C. McCannon, Judicial Compensation and Performance, 25 SUP. CT. ECON. REV., 129, 130 (2017), <https://www.journals.uchicago.edu/doi/epdf/10.1086/699661>. (All websites last accessed Oct. 10, 2023.)

³ Id. at 133.

Commission cited budgetary shortfalls as the basis for denying salary increases. After OCA lobbied then-Governor Cuomo to reconsider judicial pay, a specially enacted Commission in 2020 deadlocked on whether to increase judicial pay because of new budgetary concerns occasioned by the COVID-19 pandemic.⁴ The Commission's economic fears in 2019 and 2020 did not come to fruition, as the State reported a General Fund operating surplus at the end of 2020 and 2022. The result is that New York State Judges' compensation has remained frozen for four years, resulting, once again, in salaries lagging significantly behind other State and Federal District Court judges with far lower caseloads. While concerns about a financial collapse due to COVID-19 did not materialize, the last four years led to diminished buying power for New York State Judges amidst mounting caseloads due to court closures and remote operations during the pandemic.

The result has been a continuing pattern of chasing, temporarily achieving but then not maintaining, competitive pay. The deleterious impact of continued delay is most evident in the failure to maintain the benchmark of parity with Federal District Court Judges set by the 2011 and 2015 Commissions. While New York Judges' salaries had briefly regained parity with Federal District Court Judges in 2018 and 2019,⁵ federal judicial salaries have since increased, as have salaries of state court judges in virtually all states, including those like New York with significant populations and high costs of living. New York Judges trail behind the Federal Judges once again, notwithstanding State Supreme Court Justices' significantly heavier

⁴ Since the statute requires that to be effective any recommendation of the Commission must be supported by at least one member of each appointing authority, a judicial salary increase was not effectuated because the appointees of the Speaker and the Temporary President of the Senate did not support an increase.

⁵ New York State Judges obtained parity with Federal District Court Judges in 1967-1990, 1999, 2014, and 2018-2019.

caseloads. In 2023, Federal Judicial District Court Judges earned \$232,600—\$21,700 more than their New York State judicial counterparts.

Allowing New York State Judges’ salaries to fall behind for another four years (creating an eight-year freeze), when they have historically mirrored those of the Federal District Court, threatens to return New York to the days when qualified lawyers forego serving in New York’s Court system for higher wages in the private sector. The 2015 Commission—faced with similarly static pay raises for New York State Judges—found that Supreme Court Justices’ salaries should be adjusted in 2019 to be “fixed at 100% of the salary of a Federal District Court Judge in effect at that time.”⁶ They did so based on the 2011 Commission’s determination that “such parity was the proper norm for judicial compensation in New York: ‘The Federal judiciary sets a benchmark of both quality and compensation – New York State should seek to place its judiciary on par.’”⁷ The 2015 Commission further reasoned that this recommendation “will establish equitable, appropriate and competitive judicial salary levels that will attract well-qualified lawyers to the New York State bench, retain the skilled and experienced judges now serving, and ensure a strong and independent judicial system into the future.”⁸

The 2015 Commission’s reasoning applies with equal force today. In the wake of the COVID-19 pandemic, when New York unquestionably needs more judges to dispense justice,⁹ this Commission should order (i) parity with Federal District Court Judges, currently set at \$232,600 for 2023, and (ii) establishment of a system by which parity may be maintained through subsequent cost of living adjustments (“COLA”) linked to the adjustments applicable for

⁶ Final Report on Judicial Compensation, COMM’N ON LEGIS., JUD. & EXEC. COMP., at 2 (Dec. 24, 2015) (“2015 Final Report”), <http://www.nyscommissiononcompensation.org/2015/pdf/Compensation-report-Dec24.pdf>.

⁷ Id. at 5.

⁸ Id. at 2.

⁹ Repeal the Cap and Do the Math: Why we need a modern, flexible, evidence-based method of assessing New York’s judicial needs, NYC BAR ASS’N, at 3 (Sept. 8, 2023), (“2023 NYC Bar Report”), <https://s3.amazonaws.com/documents.nycbar.org/files/NYCBARReportRepealTheConstCapOnJudges.pdf>.

Federal Judges. Doing so will continue to foster a vibrant and diverse pipeline of attorneys in New York’s judiciary who admirably view judicial service as their ultimate career goal.

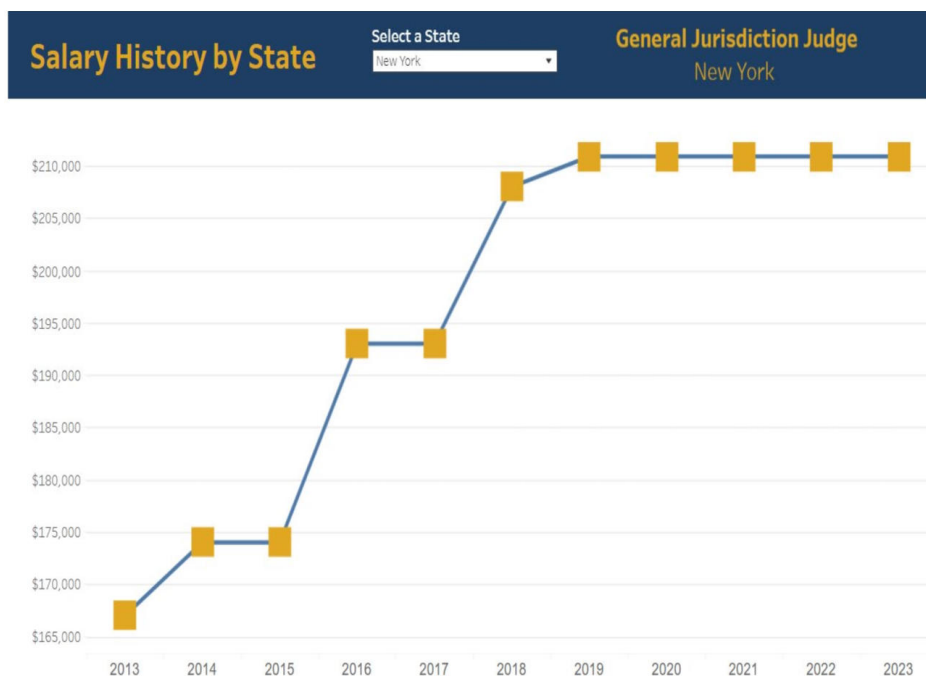
Accordingly, the Association of Justices of the Supreme Court of the State of New York and the Supreme Court Justices’ Association of the City of New York (together, the “Associations”), *jointly support the Office of Court Administration in its request that judicial pay be brought to 2024 Federal District Court salaries on the first date of increase (April 1, 2024), and thereafter be linked to the anticipated regular cost of living adjustments to be received by the federal judiciary*, the latter element needed to keep compensation from again eroding.

II. NEW YORK JUDGES’ PURCHASING POWER HAS SIGNIFICANTLY DIMINISHED IN THE ABSENCE OF ADEQUATE PAY RAISES

The extent to which New York State Judges’ purchasing power has diminished since they last received a pay raise in 2019 is a key factor necessitating pay parity with Federal District Court Judges. In that regard, the Commission is statutorily charged with considering the rates of inflation. See L. 2019, ch. 59, Part VVV (incorporating L. 2015, ch. 60, Part E). The 2015 Commission previously found that “[w]ith brief exceptions, the compensation of New York’s Judicial Branch has failed to keep pace with the rate of inflation since the 1970s.”¹⁰ That is true today more than ever before. In spite of improvements to New York State’s economic outlook, New York State Judges have not seen pay increases that have kept pace with staggering inflation numbers since the COVID-19 pandemic. The absence of any pay increase commensurate with inflation figures has significantly diminished New York State Judges day-to-day buying power. The graph below illustrates the extent to which judicial salaries have stagnated, even as recently as 2013.¹¹

¹⁰ 2015 Final Report, *supra* note 6 at 5.

¹¹ Survey of Judicial Salaries, NAT’L CTR. FOR STATE COURTS (2023) (“Survey of Judicial Salaries”), <https://www.ncsc.org/salarytracker/explore-the-data>.



While Judges' salaries stagnated, cost of living and inflation in New York are at recent highs. The Council for Community & Economic Research ranked New York the 4th most expensive state to live in for the second quarter of 2023 (including Washington, D.C. and Puerto Rico).¹² Inflation, too, is on the rise since Supreme Court Justices received their last pay raise in 2019. In 2019, the national inflation rate was 2.3%.¹³ As of February 2023, the national inflation rate was 6.04%.¹⁴ Since 2019, when Judges last saw pay raises, the value of a dollar has dropped 20%.¹⁵ This means that New York's Judges have taken a \$35,000 pay cut in real terms since they last received a pay increase in 2019.¹⁶ Experts indicate that Americans are

¹² Cost of Living Data Series, MISSOURI ECON. RSCH. & INFO. CTR. (2023) ("Cost of Living Data Series"), <https://meric.mo.gov/data/cost-living-data-series>.

¹³ U.S. Inflation Calculator, Current U.S. Inflation Rates: 2000-2023, COINNEWS MEDIA GRP. CO., <https://www.usinflationcalculator.com/inflation/current-inflation-rates/>.

¹⁴ US Inflation Rate (I:USIR), YCHARTS (2023), [https://ycharts.com/indicators/us_inflation_rate#:~:text=US%20Inflation%20Rate%20\(I%3AUSIR\)&text=US%20Inflation%20Rate%20is%20at,in%20price%20over%20a%20year](https://ycharts.com/indicators/us_inflation_rate#:~:text=US%20Inflation%20Rate%20(I%3AUSIR)&text=US%20Inflation%20Rate%20is%20at,in%20price%20over%20a%20year).

¹⁵ CPI Inflation Calculator, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/data/inflation_calculator.htm.

¹⁶ CPI Inflation Calculator, U.S. BUREAU OF LABOR STATISTICS, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=210%2C900.00&year1=202308&year2=201908>.

paying over \$709 more per month for common goods than they were just two years ago.¹⁷ The Governor acknowledged the impact that increased cost of living has had on New Yorkers, announcing raises in the minimum wage that will be indexed to inflation.¹⁸

Inflation and increased cost of living is particularly severe for Judges serving in the New York City metropolitan area. Manhattan, Brooklyn, Queens, and Nassau County, where nearly half the New York Supreme Court Judges sit, ranked in the top 15 most expensive urban areas in the country in 2022, with a Cost of Living Index significantly above the national average.¹⁹

A recent study found that earning \$100,000 in New York City feels like \$35,791 when taking into account taxes and the cost of living.²⁰ The same study found that a \$250,000 salary in a city like New York is worth less than \$83,000 when compared to the national average after accounting for the price of housing, groceries, utilities, transportation, and other goods and services.²¹ Reports from City & State show that housing costs are up a staggering 12.8 to 16.4%, electricity and gas are up 17%, and food costs are up 6.7%.²²

¹⁷ Haley Brown, et al., Average New Yorkers rocked by inflation: 'I can't afford proper food', N.Y. POST (Aug. 14, 2023), <https://nypost.com/2023/08/14/average-new-yorkers-rocked-by-inflation-i-cant-afford-proper-food/>.

¹⁸ Zack Fink, Minimum wage will soon be tied to inflation in New York, SPECTRUM NEWS (May 16, 2023), <https://ny1.com/nyc/all-boroughs/politics/2023/05/16/minimum-wage-will-soon-be-tied-to-inflation-in-new-york#:~:text=According%20to%20the%20governor%2C%20inflation,city%2C%20Long%20Island%20and%20Westchester.>

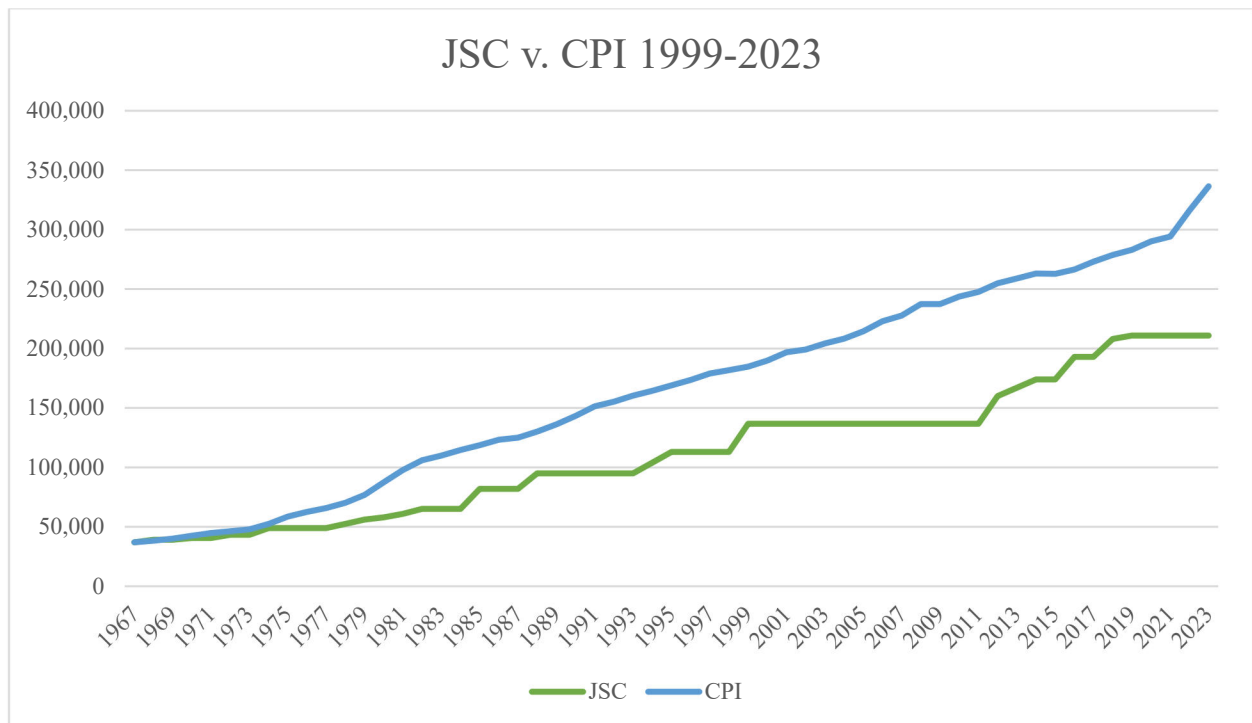
¹⁹ 2022 Annual Average Cost of Living Index Released, COUNCIL FOR CMTY. & ECON. RSCH. (2023), <https://www.coli.org/2022-annual-average-cost-of-living-index-released/>; Mike Winters, The 15 U.S. cities with the highest cost of living—San Francisco isn't No.1, CNBC (Aug. 22, 2023), <https://www.cnbc.com/2023/08/22/us-cities-with-the-highest-cost-of-living.html>.

²⁰ Patrick Villanova, CEPF, What \$100,000 Is Actually Worth in the Largest U.S. Cities – 2023 Study, SMART ASSET (Mar. 30, 2023), <https://smartasset.com/data-studies/dd-what-100000-is-worth-2023>.

²¹ Patrick Villanova, CEPF, Where High Earners Lose The Most To Taxes and Cost of Living – 2023 Study, SMART ASSET (June 1, 2023), <https://smartasset.com/data-studies/where-high-earners-lose-most-taxes-cost-living-2023>; Isabel Engel, The 7 U.S. Cities Where a \$250,000 Salary is Worth the Least – New York is No. 1, CNBC (June 19, 2023), <https://www.cnbc.com/2023/06/19/7-us-cities-where-250k-salary-is-worth-the-least-nyc-is-no-1.html#:~:text=Across%20the%20United%20States%2C%20%24250%2C000,taxes%20and%20cost%20of%20living.>

²² Eric Holmberg, All the way inflation is stressing New York City residents, CITY & STATE NEW YORK (May 22, 2023), <https://www.cityandstateny.com/personality/2023/05/all-ways-inflation-stressing-new-york-city-residents/386638/>.

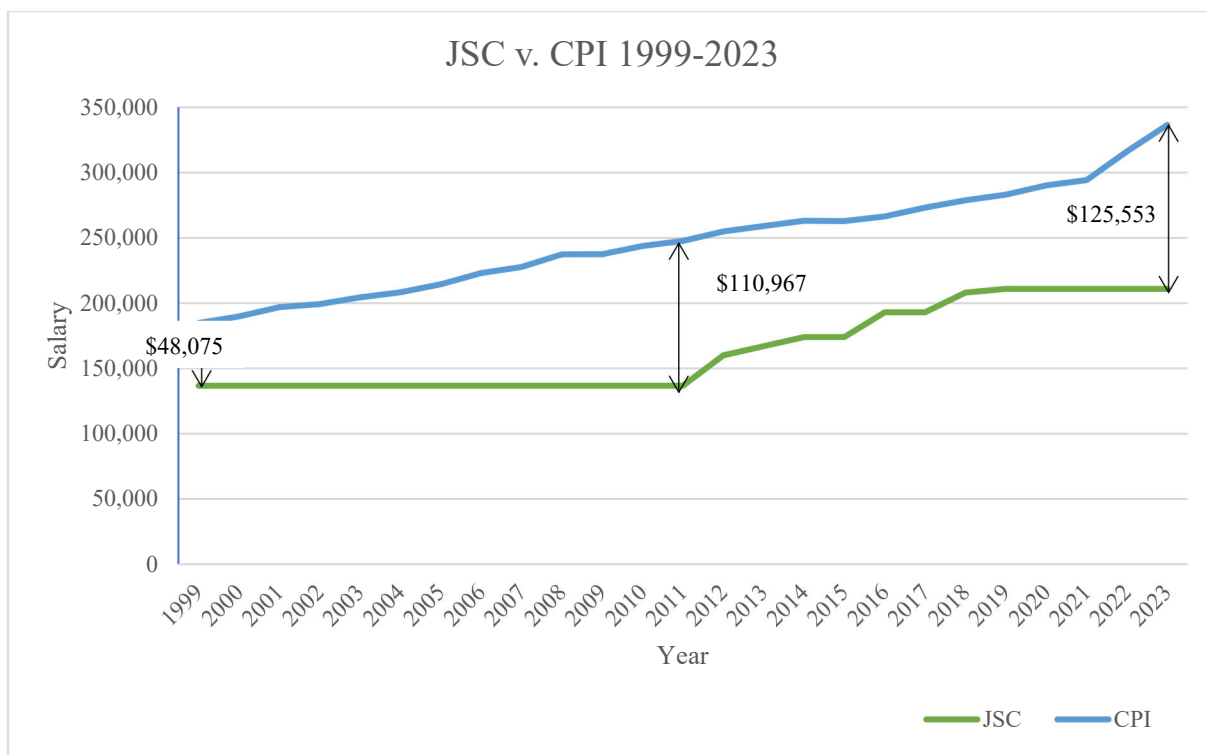
A basic comparison between actual New York Supreme Court Justices' salaries and the consumer price index ("CPI") demonstrates how far Judges have fallen from the purchasing power and position they once possessed.²³ Had Supreme Court Justices' salaries continued to increase with the CPI, they would be earning \$337,090.86 today.



Despite sporadic increases, the gap continues to widen. Even in recent years, including raises that Judges received following the 2011 and 2015 Salary Commissions, the difference is substantial:²⁴

²³ The chart shows the salaries of Supreme Court Justices as compared to CPI-adjusted salaries from 1967-2023. The CPI adjustment reflects what 1967's \$37,000 salary would be worth today if it had increased with the cost of living, i.e., if Judges had maintained their 1967 purchase power. See Analysis, annexed hereto as Exs. A and B.). Adjusted CPI salary was found using the Bureau of Labor Statistics' CPI Inflation calculator available at: https://www.bls.gov/data/inflation_calculator.htm, *supra* note 15.

²⁴ See *id.*



These figures do not even account for the increased costs of non-salary benefits. Judges have seen the cost of their state-provided health benefits rise by 21.78% since 2019. In 2019, the Family coverage cost was \$225 bi-weekly and now it is \$280 bi-weekly.

Given the impact of living increases and inflation along with Legislators' own many years of frozen salaries, Gov. Hochul signed a bill recognizing the need to raise Legislators' salaries by 29% in 2022.²⁵ The Senate Majority Leader commented that because the Legislators worked hard, year round, they deserved a raise "to cover the increased cost of living." *Id.* The Judges, too, work hard year round, and should receive increased pay like their legislative colleagues.²⁶

²⁵ New York legislators pass bill raising their salary by 29%, making them nation's best-paid, CBS NEWS (Dec. 23, 2022), <https://www.cbsnews.com/news/new-york-legislature-salary-raise-outside-income-limit/>.

²⁶ This is especially true because Judges cannot earn outside income like their legislative counterparts.

III. THE INCREASINGLY COMPLEX AND VITAL ROLE OF THE JUDICIARY

New York State Judges provide on a daily basis a public service to resolve disputes between and among people, companies, and governmental entities by application of legal criteria, creating the order necessary for a civilized society. But that is just part of a Judge's role. The Judge is, for most people, the face of the law. The Judge "takes [the] law out of dry and dusty law books, and make[s] it part of the living fabric of our lives."²⁷

On an operational level, Judges listen to arguments from parties and attorneys, take evidence from witnesses, direct jurors, and assist litigants in finding justice. This requires the integration of vast quantities of information and both well-settled and ever changing jurisprudence. Moreover, Judges must engage in this activity on a broad range of issues from contract issues involving large corporations to complex issues involving multiple parties, torts and criminal charges, just to identify a few.

In a broader sense, the Judges and courts play a vital role in upholding American democracy. As former Supreme Court Justice Sandra Day O'Connor observed, "[t]he court is not the post office. It is the common thread that holds the social fabric of this country together."²⁸ Before resolving conflicts, Judges must first determine the state of the law—a particularly crucial role in a society such as ours "where laws are made by popularly elected representatives who are required to express the will of the majority while at the same time

²⁷ How Courts Work, Courts and Legal Procedure, The Role and Structure of Courts, AM. BAR ASS'N (Sept. 9, 2019) ("How Courts Work"), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/court_role/.

²⁸ Hon. Linda Palmieri, How Courts Work, The Human Side of Being a Judge, AM. BAR ASS'N (Sept. 9, 2019), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/humanelement/.

respecting the rights of the minority.”²⁹ In so doing, the Judge protects against abuses by all branches of government and protects those who cannot protect themselves: “The courts and the protections of the law are open to everybody.”³⁰

To ensure that court decisions are fair and that all individuals are treated equally, a Judge must also embody notions of equal treatment and fair play. Judges must be able to assure that matters will be decided according to the law and the facts—not the vagaries of shifting political currents or special interests. This requires an independent judiciary consisting of Judges who are not only people of integrity committed to the rule of law but also “strong-minded and tolerant of criticism . . . [and] resistant to intimidation.”³¹

In addition to the requisite legal training, experience and communication skills—which, for New York Supreme Court Justices includes a requirement of having been admitted to practice law for ten years (N.Y. CONST., art. 6, § 20(a); N.Y. JUD. LAW § 140-a)—Judges must also possess the intellectual ability to determine the applicable law in the matters before them, matters that are becoming increasingly complex, both in subject matter and scope. Unlike the lawyers appearing in their courtrooms who tend to specialize in certain areas of the law, Judges are required to be facile with multiple areas of the law. Finally, as discussed below, Judges who possess these well-rounded competencies could find successful and lucrative employment in private practice, where salaries are much higher. When judicial pay stagnates, as it has the past four years, it becomes harder to attract high caliber lawyers to the bench. See infra Part VII.

²⁹ Susan Sullivan Lagon, The Role of the Independent Judiciary, Freedom Paper No. 4 (Inst. for Contemp. Studies 1993), <https://usa.usembassy.de/etexts/gov/freedpap4.htm#:~:text=Before%20resolving%20conflicts%2C%20courts%20must,the%20rights%20of%20the%20minority.>

³⁰ How Courts Work, *supra* note 27.

³¹ Justice in Jeopardy, AM. BAR ASS’N.COMM’N ON THE 21ST CENT. JUD., at 12 (June 2023), (“Justice in Jeopardy”), <https://static.prisonpolicy.org/scans/aba/justiceinjeopardy.pdf>.

IV. NEW YORK STATE JUDGES' COMPENSATION IS STAGNATING COMPARED TO FEDERAL COURT JUDGES, OTHER STATE COURT JUDGES, AND GOVERNMENT AND PRIVATE SECTOR LAWYERS

One of the key factors for the Commission's consideration is the difference between New York State Judges' pay compared with other judges and professionals. The comparisons to other Federal District Court Judges, State Court Judges, and other professionals all demonstrate that raising New York State Judges' salaries to \$232,600 is more than reasonable.

A. New York State Judicial Pay Compared to Federal District Courts

Both the 2011 and the 2015 Salary Commissions³² found that the federal judiciary set a reasonable benchmark in terms of judiciary compensation that New York State should seek to match.³³ The Federal District Court Judges have continued to receive regular, annual raises despite the financial pressures occasioned by COVID-19—where the federal government expended \$4.7 trillion³⁴ to support governmental, private sector and individuals' needs.³⁵

New York Supreme Court Justice salaries for many years matched those of their Federal District Court colleagues.³⁶ From 1967 to about 1990³⁷, New York Judges were generally paid comparably with Federal District Court Judges. That began to change in 1990 when Supreme Court Justices failed to achieve yearly pay parity with their federal colleagues, resulting in

³² See *Final Report of the Special Commission on Judicial Compensation*, COMM'N ON LEGIS., JUD. & EXEC. COMP., at 10 (Aug. 29, 2011) ("2011 Final Report"), <https://www.judgewatch.org/compensation/cja-v-governor/3-30-12-complaint-tro/8-29-11-final-report-special-commission.pdf>; 2015 Final Report, *supra* note 6 at 10.

³³ Some of the Commissioners during the 2019 Salary Commission suggested that aligning New York State Judges' salaries to state contracts would be "a more prudent model for judicial compensation." *Final Report on Legislative, Judicial & Executive Compensation*, COMM'N ON LEGIS., JUD. & EXEC. COMP., at 10 (2020) ("2020 Final Report"), <http://www.nyscommissiononcompensation.org/2019/pdf/NYS-Salary-Commission-FinalReport-Nov2020.pdf>. However, unlike the State's unionized labor force which can successfully negotiate contracts inclusive of retroactivity, New York's Judges cannot receive backpay for the years they lagged behind Federal District Court Judges as this Commission can only set prospective increases. Moreover, the Associations believe that the appropriate comparators for assessing judicial compensation start with fellow judges, not employees with far different educational qualifications and needed skill sets.

³⁴ *The Federal Response to COVID-19*, USASPENDING.GOV (2023), <https://www.usaspending.gov/disaster/covid-19>.

³⁵ See *Judicial Compensation*, U.S. COURTS, <https://www.uscourts.gov/judges-judgeships/judicial-compensation>.

³⁶ See *id.*

³⁷ New York State Supreme Court Justices' salaries were traditionally higher than Federal District Court Judges from 1967 to 1976, but Federal District Court Judges' salaries began to surpass their state colleagues in 1976.

decades where New York’s Judges have been seeking comparable pay. From 1999 until 2012, New York’s Judges experienced “a pay freeze unprecedented in the modern history of any court system in the nation.”³⁸ Several judges in New York sued state officials in three separate challenges alleging violations of the New York State Constitution’s Compensation Clause and the Separation of Powers Doctrine. Maron, 14 N.Y.3d at 244. The Court of Appeals held that the judiciary was entitled to a compensation adjustment and expected “appropriate and expeditious legislative consideration.” Id. at 263.

The 2011 Salary Commission implemented a plan to remedy the federal and state pay differentials, with the intent to use a “phase-in” method that would eventually make the salaries of New York’s judiciary commensurate with their federal counterparts.³⁹ By the time pay parity was implemented in 2014, federal pay had already increased from \$174,000 to \$199,100, placing Federal District Court Judges \$25,100 ahead.⁴⁰ New York State Judges did not again reach parity with the Federal Judges until 2018, once the 2015 Salary Commission’s plan for phased pay increases was implemented. See 2015 Final Report at 9. Equal pay was again fleeting because the most recent Salary Commission declined to increase judicial salaries in 2020.⁴¹ A graph demonstrating these trends is set forth below⁴²:

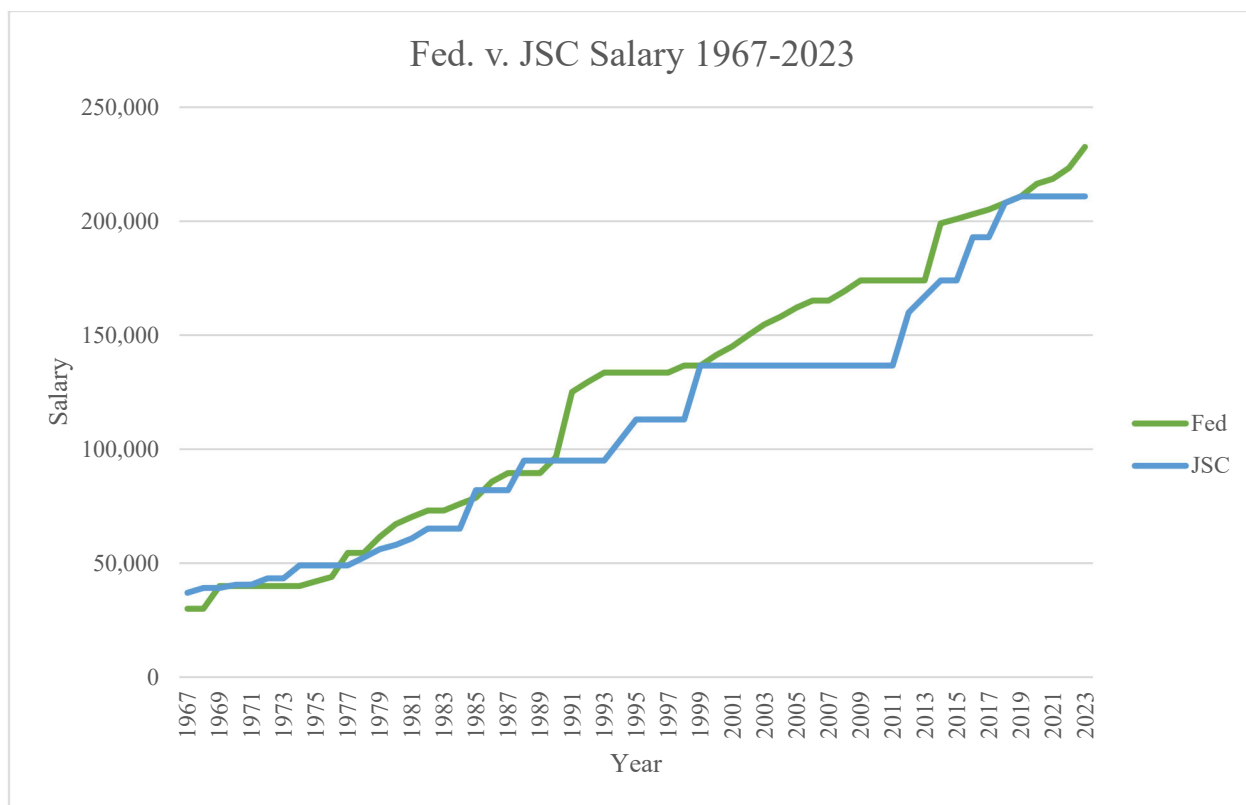
³⁸ Ann Pfau, Chief Admin. Judge of the State of New York, Submission to the 2011 Commission on Judicial Compensation, at 3 (2011), <https://ww2.nycourts.gov/sites/default/files/document/files/2018-06/JudicialCompSub7.11.11SmallFile.pdf>.

³⁹ 2011 Final Report, *supra* note 32 at 8.

⁴⁰ Id. at 8.

⁴¹ 2020 Final Report, *supra* note 33 at 13.

⁴² The chart shows the salaries of Federal District Court Judges as compared to New York Supreme Court Justices from 1967-2023. See Exhibit C.



The foregoing comparison between the salaries of New York Supreme Court Justices and Federal District Court Judges demonstrates that in recent times New York State Judges are for the most part chasing, for a brief period catching, but not staying with that of their federal colleagues. The federal bench now makes \$232,600 per year while New York State Judges' salaries remain at their 2019 level of \$210,900, a significant gap of \$21,700. This means that since 2019, Federal District Court Judges made \$47,400 more than New York State Judges.⁴³ Since 1990, Federal Judges have made more than \$655,200 compared to New York State Judges.⁴⁴

⁴³ Federal District Court Judges have made approximately \$1,101,900 since 2019. New York State Judges have made approximately \$1,054,500 since 2019. See *Judicial Compensation*, *supra* note 35.

⁴⁴ Federal District Court Judges have made approximately \$5,691,900 since 1990. New York State Judges have made approximately \$5,036,600 since 1990. See *id.*

The salary discrepancies are staggering when considering the differences in caseloads between New York State Supreme Court Justices and Federal District Court Judges. In New York State, there are 374 Supreme Court Justices sitting on the Supreme Court bench. They managed 314,427 civil filings and 29,681 criminal filings in 2022.⁴⁵ That means over 840 new filings per Judge (assuming cases are divided evenly). By contrast, the 677 judges in the United States District Courts saw 374,943 filings from April 2022 to March 2023.⁴⁶ If divided evenly among all Federal District Court Judges, each Judge would have had just over 550 new filings that year. Of course, cases are not divided up or created equally among judges. The 52 Federal Judges who sit in New York’s four federal districts saw a total of 27,649 filings from April 2022-March 2023.⁴⁷ This means that each Judge oversaw around 531 new filings during the year, paling in comparison to the state bench’s caseload. The New York State Judges handle almost double the number of filings than the District Court Judges in New York, while continuing to earn significantly less, year after year. The Commission should decline to continue condoning this trend.

B. New York State Judicial Pay Compared To Other States

New York Judges do not fare any better when their salaries are compared to judges in other states—states that by and large do not benefit from the United States financial industry’s headquarters on Wall Street, technology center on Silicon Alley, or well-established manufacturing, real estate, and media sectors. In 2011, when the first Commission considered the vital issue of judicial wage stagnation in New York, New York ranked nearly last, 46th, for

⁴⁵ 2022 Annual Report, NYS UNIFIED CT. SYS., at 62-64 (“2022 Annual Report”), https://www.nycourts.gov/legacyPDFS/22_UCS-Annual_Report.pdf.

⁴⁶ See National Judicial Caseload Profile, United States District Courts, 1 (2023), available at: https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2023.pdf.

⁴⁷ *Id.*

compensation adjusted for cost of living. Though the 2011 and 2015 Commissions effectuated some progress, it has not been enough to bring New York's real compensation in line with judges in other states.

According to the National Center for State Courts, New York ranks 9th for judicial compensation in absolute terms, ignoring cost of living.⁴⁸ When adjusted for cost of living, New York actually ranks 12th, with an adjusted salary of \$187,863. Illinois, Rhode Island, Washington, and Pennsylvania all pay their judges more than New York, even though their cost of living is far below New York's. Illinois ranked 16th for lowest cost of living in the country in the Second Quarter of 2023, but ranks first in judicial pay, with a salary for trial court judges totaling \$234,380.⁴⁹ Rhode Island ranks 4th for judicial pay, paying their judges \$223,031.⁵⁰ Washington is 5th, paying their judges \$217,391.⁵¹

Looking beyond size and cost of living to substantive expertise reveals a telling disparity. In the field of commercial law, New York is generally viewed as rivaled only by Delaware for the sophistication of business activity in the state courts. Yet, New York is an outlier among all states with respect to their frozen compensation. The National Center for State Courts reports that 47 states provided their judges with pay increases in 2022 or 2023.⁵² New York lags far behind with its last pay increase in 2019.

C. New York State Judicial Pay Compared To Non-Judicial Public and Private Positions

Many New York Judges come to the bench from government agencies where salaries for attorneys with commensurate experience exceed judicial compensation.

⁴⁸ See Survey of Judicial Salaries, *supra* note 11.

⁴⁹ Cost of Living Data Series, *supra* note 12.

⁵⁰ See Survey of Judicial Salaries, *supra* note 11.

⁵¹ See *id.*

⁵² *Id.*

New York City's five District Attorneys each made \$212,800 per year in 2022, out-earning the New York Judges.⁵³ Other senior non-judicial court staff also earn salaries close to or more than those earned by the Judges. Chief Counsel to the Mayor of New York and Corporation Counsel in the New York City Law Department (a position currently held by a former Supreme Court justice) both significantly out-earn Judges at \$251,982 and \$243,272, respectively.⁵⁴ Additionally, the deans at both of New York's public law schools significantly out-earn the Judges: CUNY School of Law's dean earns \$295,000 per year in 2021⁵⁵ and Albany Law School's president and dean earns \$417,499.⁵⁶

Directors of New York City's various public defender branches and other legal nonprofits also significantly out-earn the New York Judges based on figures from 2021 and 2022:⁵⁷

⁵³ See Through NY, EMPIRE CENTER, <https://seethroughny.net/payrolls> and NYC Open Data, CITY OF NEW YORK, <https://data.cityofnewyork.us/City-Government/Citywide-Payroll-Data-Fiscal-Year-/k397-673e/data>.

⁵⁴ Data available at: NYC Open Data, *supra* note 53.

⁵⁵ Cuny School of Law Employee Salaries, OPENPAYROLLS.COM., <https://openpayrolls.com/university-college/cuny-school-of-law>.

⁵⁶ Albany Law School, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/141338309>.

⁵⁷ Information available from ProPublica. Please see: New York County Defender Services Inc., PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/113361008>; The Bronx Defenders, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/133931074>; Brooklyn Defender Services, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/113305406>; Queens Law Associates Not For Profit Corporation, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/270364845>; Legal Aid Society, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/135562265>; American Civil Liberties Union, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/135628799>.

Agency/Position	Salary
New York County Defenders/Executive Director	\$213,620
New York County Defenders/President	\$213,620
Bronx Defenders/Executive Director	\$296,175
Bronx Defenders/General Counsel	\$227,971
Brooklyn Defenders/Executive Director	\$349,962
Brooklyn Defenders/Managing Director	\$248,400
Queens Defenders/Executive Director	\$392,656
Queens Defenders/Managing Director	\$320,367
Legal Aid Society/Attorney-in-Chief	\$248,670
Legal Aid Society/Attorney-in-Chief (Civil)	\$232,579
Legal Aid Society/General Counsel	\$229,734
Legal Aid Society/Attorney-in-Chief (JRP)	\$229,641
Legal Aid Society/Attorney-in-Chief (CDP)	\$226,179
ACLU of New York/Executive Director	\$286,712

When compared to other non-legal but comparable public offices, the disparity is consistent:⁵⁸

Position	Salary
First Deputy Mayor NYC	\$291,139
Deputy Mayor NYC	\$251,982
Community College President	\$260,000+
Special Assistant to the Mayor	\$247,577
Police Commissioner	\$243,171
Commissioner of various departments	\$243,171

These comparisons are just those contained within the sphere of public service. While there are reasons beyond compensation for someone to become a judge or join public service, it cannot be ignored that private industry competes with public service for qualified candidates. Furthermore, beyond making a living, pay matters as a proxy for the value our society places on the respective roles performed. Just as wage inversion internal to the Court system can have an adverse impact on operation and administration of the Courts, so does the perverse scenario

⁵⁸ Data gathered from: [NYC Open Data](#), *supra* note 53 and [Administrator Salary Disclosure](#), NYS EDUC. MGMT. SERVS., <https://www.p12.nysed.gov/mgtserv/admincomp/>.

where a junior law firm associate, barely admitted to the bar, earns more than the experienced Judge before whom she or he is appearing.

Junior associates in “big law” firms in major markets like New York City quickly make more than Judges currently earn, and that is before bonuses are considered. First-year associates at New York City firms can earn \$215,000 annually, excluding bonuses. Fifth-year associates make over \$300,000 in base salary.

These disparities are particularly striking given that judicial candidates must have at least 10 years of experience. N.Y. CONST., art. 6, § 20(a); N.Y. JUD. LAW § 140-a. This places most new Judges well into the arena of partner compensation, not junior associate compensation. According to the 2022 Partner Compensation Survey, pay for law firm partners averages \$1.12 million per year.⁵⁹

V. JUDGES’ CRITICAL ROLE DISPENSING JUSTICE

Exacerbating the cost of stagnating judicial pay is that with mounting caseloads there is, if anything, a need for additional judges—a goal undermined by current pay levels. A recent report by the New York City Bar Association, Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs, examines the “dire need” for more judges given New York’s growing population. The report argues that New York State’s Legislature should provide the State of New York with a sufficient number of judges to dispense justice.⁶⁰ The report highlights that: “Unanimously, the participants in the courts—judges, litigants, and practitioners—have long voiced concerns with the ever-increasing and crushing dockets in the Supreme Court and the lower and other courts, and the resulting

⁵⁹ 2022 Partner Compensation Survey, MAJOR, LINDSEY & AFRICA (2022), <https://www.mlaglobal.com/en/insights/research/2022-partner-compensation-survey>.

⁶⁰ 2023 NYC Bar Report, *supra* note 9 at 1.

impact on the pace at which cases move through the judicial system.”⁶¹ “Judges have been stretched thin, backlogs have grown and justice has become more difficult to obtain as a result.”⁶²

New York State Judges have also been forced to do more with less, continuing to dispense justice amidst severe backlogs and increasing caseloads. Indeed, New York is one of the “largest, busiest, and most complex court systems in the world,” with judges as its backbone.⁶³ The New York Unified Court System serves nearly 20 million people, the fourth largest state by population in the United States.⁶⁴ Not only is New York in many areas densely populated, but it is uniquely positioned as a state where there is an overwhelming number of business corporations, not-for-profit corporations, limited liability companies, general partnerships, limited partnerships, and sole proprietorships registered in the state, making New York State Courts the destination for related litigations.⁶⁵ Indeed, the success of the specialized Commercial Division parts has made the New York Supreme Court the designated venue for contract disputes where the parties are not resident in New York.⁶⁶ The number of filings in New York per year proves the point. On average, 2-3 million cases are filed each year in New York’s trial courts.⁶⁷ In June 2022, “[t]he New York Unified Court System ha[d] an active

⁶¹ *Id.* at 4.

⁶² Jacob Kaye, *State has ‘dire need’ for more judges, city bar says*, QUEENS DAILY EAGLE (Sept. 26, 2023), <https://queenseagle.com/all/2023/9/26/state-has-dire-need-for-more-judges-city-bar-says>.

⁶³ 2022 Annual Report, *supra* note 45 at 1.

⁶⁴ *Problem-Solving Courts*, NYS UNIFIED CT. SYS., https://ww2.nycourts.gov/COURTS/problem_solving/index.shtml#:~:text=Our%201%2C200%20state%20judges%2C%202%2C400,districts%20and%20hear%203%2C500%2C000%20filings.

⁶⁵ 2023 NYC Bar Report, *supra* note 9 at 35.

⁶⁶ § 39:1. Scope note, 4 N.Y. Prac., Com. Litig. in *New York State Courts* § 39:1 (4th ed.) (“Founded on the premise that New York has long been the epicenter of the commercial world, the Commercial Division strives to serve the business community by offering litigants high quality judicial resources and expertise with predictable applications of commercial law and basic business principles to complicated facts, all in an expedited process.”)

⁶⁷ 2021 Annual Report, NYS UNIFIED CT. SYS., at 59, https://www.nycourts.gov/legacyPDFS/21_UCS-Annual_Report.pdf. Criminal cases accounted for 31%. Civil cases accounted for 43%. Nineteen and a half percent of the cases were in Family Court and 6.5% were in Surrogate’s Court.

caseload of more than 453,000 pending civil, criminal felony and Family Court cases, a 15% increase compared to the end of February 2020.”⁶⁸ In 2022, the Supreme Court handled 314,427 civil filings (including 152,484 new cases), 29,681 criminal filings, 126,112 *ex parte* applications, and 35,831 uncontested matrimonial cases.⁶⁹ 318,282 matters reached disposition.⁷⁰

Although Federal District Court Judges have consistently received pay increases, unlike their New York State counterparts, the Federal District Court caseload *nationwide* pales in comparison to New York’s. In 2022, 329,702 cases were filed, 365,044 cases were terminated, and 688,528 cases were pending in U.S. District Courts *nationwide*.⁷¹ Those numbers are in the same range as case filings in New York State *alone*, where there are over 300 fewer judges. See supra Part IV, A.

Judges were forced to be flexible and creative with moving dockets along during the pandemic, even as the resources available to them were severely curtailed. Due to asserted budgetary concerns, the Administrative Board declined to certificate 46 judges *en masse*, forcing other judges to handle additional caseloads, all while other personnel resources were being cut.⁷² New York’s court system faced unprecedented circumstances during the pandemic, forced to do more with less.

Backlogs also increased during the pandemic, but judges made “significant progress [in 2022] reducing these pandemic backlogs. . . .”⁷³ Judges endeavored to address these backlogs,

⁶⁸ Brian Lee, New York’s Pending Court Caseload Has Increased 15% From Pre-Pandemic Numbers, LAW.COM (July 21, 2022), <https://www.law.com/newyorklawjournal/2022/07/21/new-yorks-pending-court-caseload-has-increased-15-from-pre-pandemic-numbers/#:~:text=The%20New%20York%20State%20Unified,shy%20of%20393%2C000%20pending%20cases>.

⁶⁹ 2022 Annual Report, supra note 45 at 61-62.

⁷⁰ Id. at 62.

⁷¹ Data Table 6.1, U.S. STATES COURTS (2022), https://www.uscourts.gov/sites/default/files/data_tables/jff_6.1_0930.2022.pdf.

⁷² 2023 NYC Bar Report, supra note 9 at 5.

⁷³ 2022 Annual Report, supra note 45 at 1.

resolving “more than 2.1 million cases across the State, delivering justice services to millions of New Yorkers in 2022.”⁷⁴ A 2022 Annual Report from the Office of Court Administration speaks to Judges’ efforts to quickly and efficiently dispense justice for New Yorkers:

New York’s criminal courts conducted over 430,000 arraignments and over 2,100 trials in 2022 with more than half involving felony matters. This represents a 68% increase in trials from the prior year. Overall, dispositions in local criminal courts surpassed 745,000 cases, a 57% increase from 2020. With a concerted effort by our judges and court personnel, we have also made significant progress in resolving older criminal cases. Courts outside of New York City significantly reduced pending misdemeanor caseloads by over 5,500 cases from the prior year. Meanwhile, in 2022, New York City Criminal Court achieved a notable reduction of over 600 misdemeanor cases pending for more than one year — with over 2,700 resolved since the height of the pandemic. With respect to our felony dockets, almost 1,500 fewer cases across the state were over standards and goals at the end of 2022 than were pending at the end of 2021. . . . On the civil side, disposition of pending matters has increased by 34% since 2020 and by 6% since 2021, with over 877,000 dispositions throughout the state.⁷⁵

The metrics outside New York City support the point as well. Civil filings through Term 9 (ending September 10, 2023) are up 12% from last year, dispositions are up 5% from last year, and case management (which was significantly impacted by forced trial backlogs during the pandemic) is almost returned to 2018 levels.⁷⁶ Filings are also up in the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10S Judicial Districts, ranging from 8% (Judicial District 8) to 24% (Judicial District 7).⁷⁷ Foreclosures were also significantly impacted in 2020 and 2021 by initial mandatory stays through the Court’s conferencing procedures. In the Fourth Judicial District, there has been a 4% increase in non-foreclosure civil matters since 2019.⁷⁸

⁷⁴ Id. at 3.

⁷⁵ Id. at 3-4.

⁷⁶ New York State Unified Court System, Division of Technology and the Office Court Research Caseload Management Project, Supreme Civil Trends by Case Type – Year-to-Date Through Term 9.

⁷⁷ See id.

⁷⁸ See id.

Judges worked hard to adjust their methods and procedures and to ensure the safety of the judiciary and court users.⁷⁹ In 2020, the Court transitioned to fully virtual systems for most proceedings.⁸⁰ In 2021, the Court again had to transition, this time into a hybrid system with gradually increasing in-person proceedings.⁸¹ In 2022, the Court resumed the standard in-person system for most proceedings.⁸² In sum, the Judges, like others during the pandemic, struggled to adjust to the ever-changing circumstances brought by COVID-19. The Judges continue to have heavy caseloads as courts return to normal, yet they move their cases along in an effort to dispense justice for all New Yorkers.

Finally, new laws in New York have imposed additional burdens on judges, requiring them to be flexible at all hours, seven days per week. Amendments to Red Flag Laws require an assigned judge to be on-call year-round, 24/7, to determine whether to issue a Temporary Extreme Risk Protection Order.⁸³ The Judges may be called upon at any time of night or very early in the morning, seven days per week, to adjudicate these orders. Judges must quickly schedule a live, in-person hearing within three to six days from the issuance of the order.⁸⁴ Temporary Extreme Risk Protection Orders are commonplace, exceeding 1,000 per month statewide.

VI. CIRCUMSTANCES HAVE CHANGED SINCE THE PREVIOUS COMMISSION

By statute, among the factors the Commission are to consider are the state's (1) ability to fund increases in compensation and non-salary benefits; and (2) overall economic climate. See L. 2015, ch. 60, Part E. As set forth below, the State has the ability to bring New York Supreme

⁷⁹ 2022 Annual Report, supra note 45 at 1.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ N.Y. CPLR, art. 63-A.

⁸⁴ See id.

Court Justices’ salaries commensurate with Federal District Court levels. Moreover, the overall economic and budgetary climate in New York is stronger than it was in 2020 when New York’s leaders believed an impending financial cliff was looming. The 2019 Report cited a potential \$6 billion deficit (based on the Division of Budget’s midyear report) as the basis for its decision that it would be “imprudent” to raise judicial salaries. The 2020 Commission similarly cited precarious budgetary conditions. Yet, by September 2020, the State was already reporting a General Fund operating surplus of \$355 million, increasing the State’s general fund balance to \$3.7 billion. The outyear projected difficulties in 2020 did not come to fruition either. As of September 1, 2022, the State reported a General Fund operating surplus of \$11.3 billion, increasing the fund balance to \$31.7 billion. The economic crises feared by the 2019 and 2020 Commissions did not come to pass, and the State can now afford to achieve federal salary parity for State Court Judges.

A. The State Has The Ability To Pay

The Commission should consider the proper analytical framework to be employed in determining whether the State has the ability to pay. The Taylor Law provides an appropriate construct because its statutory text mirrors the Commission statute’s “ability to pay” language. There, it is clear that a governmental unit cannot mask its “unwillingness” to pay with argument of an “inability to pay.”⁸⁵ The operative word is not desire; it is ability. In some circumstances, paying more than the State desires may require a reordering of budget priorities, or tapping into unallocated reserves, but that does not mean that the State does not have the ability to properly compensate its judiciary.

⁸⁵ Arnold M. Zack, *Ability to Pay in Public Sector Bargaining*, pp. 403-426 in T.G.S. Christensen and A.S. Christensen (eds.) *Proceedings of the New York University Twenty-Third Annual Conference on Labor*. New York: New York University, at 419 (1970).

Raising Judges' salaries to be commensurate with that of Federal Judges does not in reality require difficult budgetary choices or governmental belt-tightening. To put the requested raises in perspective, Judges number less than 1% of all State-paid personnel (approximately 1,320 of 188,455) and less than 8% of Court employees. The total State funds operating budget for FY 2024 is approximately \$125.3 billion out of the total State spending budget of \$229 billion.⁸⁶ The total cost of achieving federal parity after a four-year freeze (together with proportionate increases for other judges and fringe benefits) is \$34.5 million, and an additional \$4.6 million for the cost-of-living-adjustments in subsequent years. This sum constitutes but a small fraction of 1% of the judiciary budget, and .028% of the total State budget for fiscal year 2024.

With respect to the cost of COLA adjustments mirroring Federal District Court Judges, the last two increases for federal judges were 2.2% in 2022, and 4.6% in 2023, for an average of 3.4%. To put that in the proper State budgetary context, in 2019, OCA calculated that every one percent increase in salaries for judges costs the State an additional *\$2.7 million*, which was then approximately .115% of the judiciary's \$2.399 billion All Funds spending plan portion of the State budget and slightly more than *15 ten thousandths of one percent* of the State's \$177 billion All Funds spending plan. Using the State's 2019 \$2.7 million figure per percentage increase, a 3.4% increase in salary would cost \$9.18 million, which represents some .38% (.0038) of this year's judiciary budget request of \$2.39 billion for the State Operating Funds portion of the judiciary budget and some .004% of the \$229 billion enacted State budget. A 2.6% increase in salary would cost approximately \$7.02 million, which represents about .29% of the judiciary

⁸⁶ Fiscal Year 2024 Enacted Budget Financial Plan, STATE OF NY (June 2023), <https://www.budget.ny.gov/pubs/archive/fy24/en/fy24en-fp.pdf>.

budget request and about .003% of the enacted State budget. The State can readily cover the cost of the increases without impacting other priorities or reserves.

In fact, the State has already increased pay for Human Service Workers and Family Court attorneys in the FY 2024 budget.⁸⁷ The State has therefore already prioritized millions of dollars in this year's budget for other State employee raises. In the context of the overall budget and expenditures, the Judges' requested increases are miniscule. Given the overwhelming importance of a well-functioning judiciary to providing justice for all New Yorkers and continuing the economic vitality of New York State, along with a promising economic outlook (as shown below) and the clear budgetary capacity to fund the increases, the Commission ought to recommend pay increases commensurate with the federal judiciary plus COLA, the benchmark previously determined as appropriate by the 2011 and 2015 Commissions.

B. The State's Economic Outlook Is Far Better Than It Was When The Commission Last Convened in 2020

The last time this Commission met, the State of New York was in a far more precarious position than it is today, managing the economic, political, and societal impact from the COVID-19 pandemic. The 2020 Commission's Final Report cited New York State's "bleak" economic outlook and "extremely precarious fiscal condition" when declining to recommend salary increases for the Judges.⁸⁸ The Commission therefore determined that it would be "imprudent" to recommend raises due to the "unprecedented challenges of the COVID-19 pandemic" which required "emergency actions . . . to be taken."⁸⁹ The COVID-19 pandemic has undoubtedly had

⁸⁷ Adilia Watson, et al., *New York Attorneys and Human Service Workers Get Pay Increase in \$229 Billion Budget*, THE IMPRINT (May 17, 2023), <https://imprintnews.org/top-stories/new-york-attorneys-and-human-service-workers-get-pay-increase-in-229-billion-budget/241376>.

⁸⁸ 2020 Final Report, *supra* note 33 at 11, 13.

⁸⁹ *Id.* at 9, 10, 12.

profound ramifications on the country's societal norms and government, but the dire economic crisis cited as the basis for declining judicial pay increases was not realized.

The United States' economy is significantly stronger and more stable than it was in 2020. The National Bureau of Economic Research determined that the recession, though deep, lasted only two months, making it the shortest U.S. recession on record.⁹⁰ The U.S. economy has largely recovered and is in a much better position in 2023 than it was in 2020. The size of the U.S. economy is now over 5% above its 2019 level and the U.S. labor market had a strong recovery from pandemic-related unemployment.⁹¹

The New York State economy is also in a far stronger fiscal condition than it was during the pandemic. In 2020, COVID-19 was predicted to cost the State of New York a \$60.5 billion loss and cause a recession "deeper and longer than any in recent memory."⁹² In response, the Governor adjusted the State's Financial Plan for the 2020-2021 Fiscal Year to reduce state spending by ten percent.⁹³ The FY 2024 Enacted Budget contains no such goal.⁹⁴ In fact, "[t]he State ended FY 2023 in a stronger overall position in comparison to the estimates in both the initial FY 2023 Enacted Budget Plan and the FY 2024 Executive Budget Financial Plan."⁹⁵ The 2023-2024 budget evidences as much. Governor Hochul described her first term's \$227 billion

⁹⁰ See Determination of the April 2020 Trough in US Economic Activity, NBER (July 19, 2021), <https://www.nber.org/news/business-cycle-dating-committee-announcement-july-19-2021#:~:text=The%20committee%20has%20determined%20that,shortest%20US%20recession%20on%20record;Chart Book: Tracking the Recovery From the Pandemic Recession>, CTR. ON BUDGET AND POL'Y PRIORITIES (updated Sept. 15, 2023), https://www.cbpp.org/research/economy/tracking-the-recovery-from-the-pandemic-recession#pandemic_recession_deeper.

⁹¹ See Benjamin Harris & Tara Sinclair, The U.S. Economic Recovery in International Context, U.S. DEP'T OF TREASURY (June 5, 2023), <https://home.treasury.gov/news/featured-stories/the-us-economic-recovery-in-international-context-2023#:~:text=The%20size%20of%20the%20U.S.recovery%20has%20been%20exceptionally%20strong>.

⁹² 2020 Final Report, *supra* note 33 at 11.

⁹³ See FY 2021 Enacted Budget Financial Plan, STATE OF N.Y., <https://www.budget.ny.gov/pubs/archive/fy21/enac/fy21-enacted-fp.pdf>.

⁹⁴ Fiscal Year 2024 Enacted Budget Financial Plan, *supra* note 86.

⁹⁵ *Id.* at 9.

budget proposal as an “economic revival” for New York “thanks to a budget surplus.”⁹⁶ Reports from February 2023 showed that New York has a budget surplus of more than \$8 billion, and the State took in \$3 billion more in tax revenue than initially projected.⁹⁷ New York State’s Comptroller issued a report in March 2023 stating that “State Fiscal Year (SFY) 2022-2023 reflected continuing recovery from COVID-19 and economic growth.”⁹⁸

Nor are increased costs to the State due to the migrant situation a reason to extend the judicial wage freeze to eight years. The migrant situation is undoubtably of concern, but there will always be economic, social, financial, political, public health, and environmental uncertainties that affect New York’s economy. New York State Judges kept our vital court system moving through its most recent crisis, waiting their turn for fair and just compensation. They should not be deprived of much-needed raises for another four years.

VII. PAY RAISES INCENTIVIZE GREATER PARTICIPATION IN THE NEW YORK STATE JUDICIARY

The foregoing evidence demonstrates that New York State Judges’ salaries are not adequately meeting the moment. The unfortunate risk of delaying judicial pay raises another four years is diminished interest amongst the public in becoming a judge, hindering the diversity and quality of individuals serving on the bench. The Commission should change that trajectory. In Maron, the Court of Appeals recognized that decreased salaries would mean that “only those with means will be financially able to assume a judicial post, negatively impacting the diversity

⁹⁶ Anna Gronewold, New York’s massive budget surplus gives Hochul money to spend, POLITICO (Feb. 1, 2023), <https://www.politico.com/news/2023/02/01/new-yorks-massive-budget-surplus-gives-hochul-money-to-spend-00080724>.

⁹⁷ Nick Reisman, New York budget stuck in neutral, and so is tax talk, SPECTRUM NEWS (Apr. 19, 2023), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2023/04/19/budget-stuck-in-neutral--and-so-is-tax-talk#:~:text=New%20York%20has%20a%20budget,billion%20in%20the%20last%20year>.

⁹⁸ State of New York Financial Condition Report for Fiscal Year Ended March 31, 2023, NYS COMPTROLLER, <https://www.osc.state.ny.us/files/reports/finance/pdf/2023-financial-condition-report.pdfnce/pdf/2023-financial-condition-report.pdf>.

of the Judiciary and discriminating against those who are well qualified and interested in serving, but nonetheless unable to aspire to a career in the Judiciary because of financial hardship that results from stagnant compensation over the years.”⁹⁹ The 2015 Commission also understood the importance of increased judicial pay to “sustain and enhance [New York’s] stature” and “maintain and strengthen its ability to attract the best and brightest legal minds to its Judiciary and retain them.”¹⁰⁰

Giving Judges much-needed pay raises therefore fosters “[g]reater participation by individuals,” which will in turn “brings transparency to the process and promote[] public confidence in our courts.”¹⁰¹ The 2015 Salary Commission reiterated the importance of attracting the “best and brightest” legal minds, stating that: “Competitive judicial salaries are essential to attracting well-qualified lawyers to the bench, retaining the skilled and experienced judges now serving, and maintaining a high quality judicial system commensurate with New York’s status as a world leader.”¹⁰² To maintain both actual and perceived independence, particularly in light of the increasing complexity of judicial dockets, it is critical that the pool of Judges be diverse in personal and professional experience, including attorneys with experience in governmental relations, criminal matters, general civil practice and complex corporate litigation, and adequately compensated in an absolute and comparative sense.

The need for pay raises is also evident when taking into account the cost of joining the legal profession. Law school tuition expenses average \$245,700, resulting in the average debt

⁹⁹ Maron, 14 N.Y.3d at 263.

¹⁰⁰ 2015 Final Report, *supra* note 6 at 1.

¹⁰¹ Judicial Selection Methods in the State of New York: A Guide to Understanding and Getting Involved in the Selection Process, NYC BAR ASS’N, at 4 (March 2014), <https://www2.nycbar.org/pdf/report/uploads/20072672-GuidetoJudicialSelectionMethodsInNewYork.pdf>.

¹⁰² 2015 Final Report, *supra* note 6 at 7.

for law school graduates totaling almost \$111,000.¹⁰³ Declining to increase judicial salaries will only attract those who are debt-free and do not continue to face the burden of paying back their student loans.

Allowing another four years to go by without a pay raise threatens the competitiveness of the judiciary. The public service provided by Judges, both functionally and as a coequal part of the three-branch government, with their role to check the power of government to protect individuals, is worth at the very least the \$232,600 pay level the Judges seek here. Judges should not be forced to give up the substantially better financial security offered by the private sector to keep New York's inundated court system moving.

In addition to achieving diversity on the bench, the 2015 Salary Commission found that “[t]here is a generally accepted connection between a strong, well-qualified judiciary and a healthy state economy.”¹⁰⁴ In the Commission's view: “The New York business community relies on the state courts to resolve complex disputes, and the quality and efficiency of the state judiciary is a significant factor in deciding whether or not to do business in a particular state.”¹⁰⁵

The importance of giving judges in New York higher wages is more apparent now than ever when eight years of stagnating salaries could threaten to place New York State's judiciary in the same precarious situation it faced in 2011, after 13 years of pay stagnation. The 2011 Commission stated that “for several years, the State has failed to increase judicial pay and as a result, the State has started to lose some of its judicial talent.”¹⁰⁶ OCA previously testified about

¹⁰³ Paul Hodkinson, *The Cost of Becoming a Lawyer: How Countries Compare*, LAW.COM (Nov. 15, 2022), <https://www.law.com/international-edition/2022/11/15/the-cost-of-becoming-a-lawyer-how-countries-compare/>; Ilana Kowarski & Cole Claybourn, *How to Minimize Law School Debt*, U.S. NEWS & WORLD REPORT (July 3, 2023), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/how-to-minimize-law-school-debt>.

¹⁰⁴ 2015 Final Report, *supra* note 6 at 7.

¹⁰⁵ *Id.*

¹⁰⁶ 2011 Final Report, *supra* note 32 at 3.

this reality before the 2019 Salary Commission, stating that “through retirement, removal, electoral defeat, or death – reveals that 87 judges left office in 2018-2019,” as compared with “295 judges who left office in 2011-12 – at the tail end of the long judicial pay freeze that marred the first decade of the 2000s.”¹⁰⁷ Our Associations’ members recall this difficult time when they felt disrespected and dissatisfied by the absence of a pay raise for 13 years, contributing to their decision to leave the court system. Depriving Judges of salary increases for eight years will return New York to a time where the State lost judicial talent due to its prolonged wage freeze.¹⁰⁸

In sum, to maintain an appropriate pool of potential jurists and retain those currently in office, this Commission should establish a compensation structure that will continue to attract the best, brightest and most honorable to the bench to meet the dire need for judges in New York’s court system.

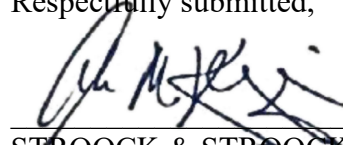
¹⁰⁷ Hon. Lawrence K. Marks, Chief Administrative Judge of the State of New York, Submission to the 2019 Commission on Legislative, Judicial and Executive Compensation, at 22 n.40 (2019), <http://www.nyscommissiononcompensation.org/2019/pdf/Nov4Testimony-Hon.LarryMarks.pdf>.

¹⁰⁸ Id. at 3.

VIII. CONCLUSION

For the foregoing reasons, the Associations support *the request of the Office of Court Administration that Supreme Court Justices' pay be increased to 2024 Federal District Court levels*, with proportional increases for other Judges, and that a mechanism be established for continued parity with the federal courts, and thereby, provision for COLA adjustments.

Respectfully submitted,



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Counsel for the Associations

EXHIBIT A

Year	JSC	CPI
1967	37,000	\$37,000
1968	39,100	\$38,350
1969	39,100	\$40,036
1970	40,583	\$42,511
1971	40,583	\$44,760
1972	43,317	\$46,222
1973	43,317	\$47,909
1974	48,998	\$52,407
1975	48,998	\$58,593
1976	48,998	\$62,529
1977	48,998	\$65,790
1978	52,428	\$70,289
1979	56,098	\$76,812
1980	58,000	\$87,495
1981	60,900	\$97,842
1982	65,163	\$106,052
1983	65,163	\$109,988
1984	65,163	\$114,599
1985	82,000	\$118,647
1986	82,000	\$123,258
1987	82,000	\$125,058
1988	95,000	\$130,119
1989	95,000	\$136,191
1990	95,000	\$143,277
1991	95,000	\$151,374
1992	95,000	\$155,310
1993	95,000	\$160,371
1994	104,000	\$164,419
1995	113,000	\$169,030
1996	113,000	\$173,641
1997	113,000	\$178,927
1998	113,000	\$181,739
1999	136,700	\$184,775
2000	136,700	\$189,836
2001	136,700	\$196,921
2002	136,700	\$199,170
2003	136,700	\$204,343
2004	136,700	\$208,280
2005	136,700	\$214,465
2006	136,700	\$223,012
2007	136,700	\$227,641
2008	136,700	\$237,385
2009	136,700	\$237,456
2010	136,700	\$243,691
2011	136,700	\$247,667
2012	160,000	\$254,912
2013	167,000	\$258,978
2014	174,000	\$263,067
2015	174,000	\$262,832
2016	193,000	\$266,440
2017	193,000	\$273,102
2018	208,000	\$278,756
2019	210,900	\$283,080
2020	210,900	\$290,119
2021	210,900	\$294,180
2022	210,900	\$316,185
2023	210,900	\$336,453

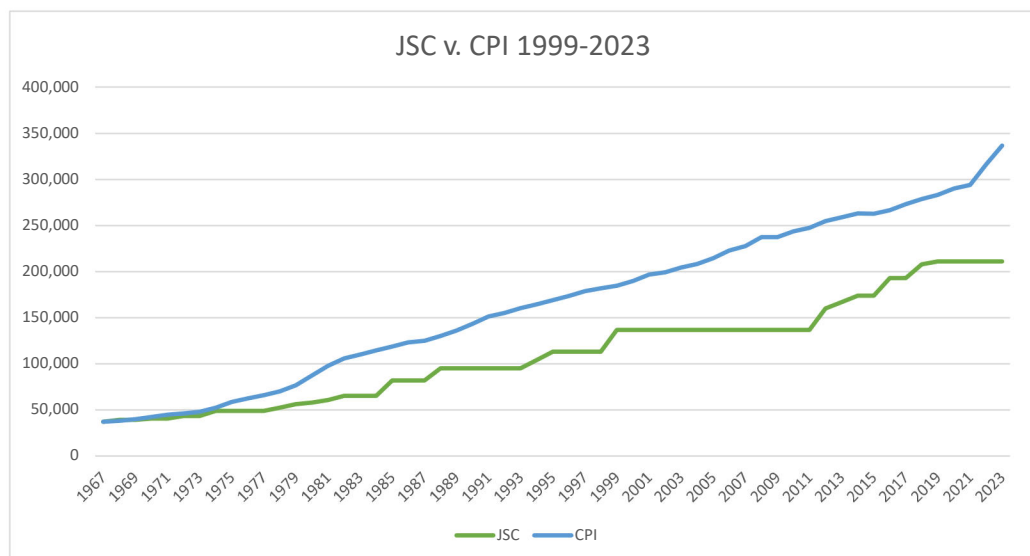


EXHIBIT B

Year	JSC	CPI	
1999	136,700	\$184,775	\$48,075
2000	136,700	\$189,836	\$53,136
2001	136,700	\$196,921	\$60,221
2002	136,700	\$199,170	\$62,470
2003	136,700	\$204,343	\$67,643
2004	136,700	\$208,280	\$71,580
2005	136,700	\$214,465	\$77,765
2006	136,700	\$223,012	\$86,312
2007	136,700	\$227,641	\$90,941
2008	136,700	\$237,385	\$100,685
2009	136,700	\$237,456	\$100,756
2010	136,700	\$243,691	\$106,991
2011	136,700	\$247,667	\$110,967
2012	160,000	\$254,912	\$94,912
2013	167,000	\$258,978	\$91,978
2014	174,000	\$263,067	\$89,067
2015	174,000	\$262,832	\$88,832
2016	193,000	\$266,440	\$73,440
2017	193,000	\$273,102	\$80,102
2018	208,000	\$278,756	\$70,756
2019	210,900	\$283,080	\$72,180
2020	210,900	\$290,119	\$79,219
2021	210,900	\$294,180	\$83,280
2022	210,900	\$316,185	\$105,285
2023	210,900	\$336,453	\$125,553

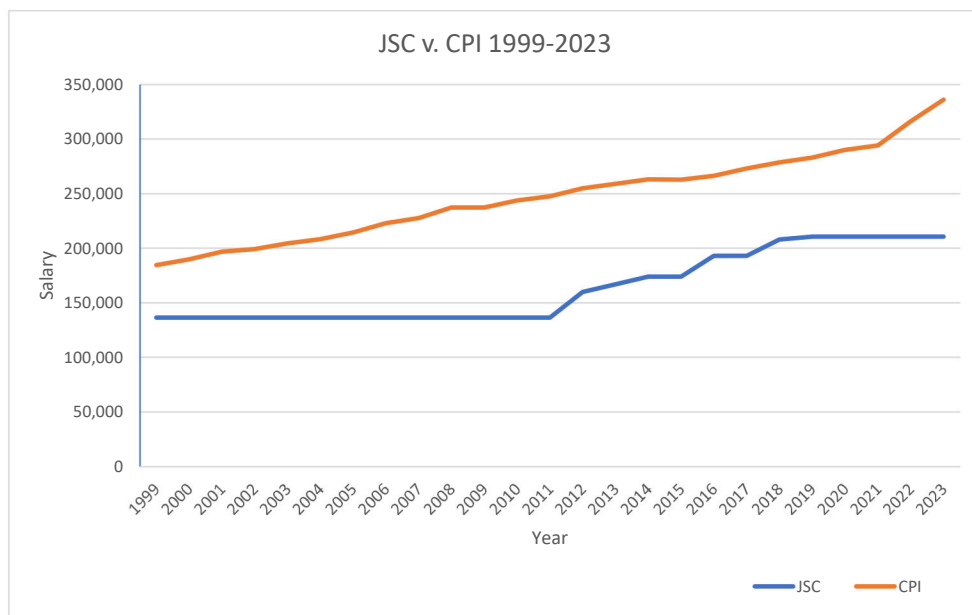


EXHIBIT C

Year	Federal Court	NYS
1967	30,000	37,000
1968	30,000	39,100
1969	40,000	39,100
1970	40,000	40,538
1971	40,000	40,583
1972	40,000	43,317
1973	40,000	43,317
1974	40,000	48,998
1975	42,000	48,998
1976	44,000	48,998
1977	54,500	48,998
1978	54,500	52,428
1979	61,500	56,098
1980	67,100	58,000
1981	70,300	60,900
1982	73,100	65,163
1983	73,111	65,163
1984	76,000	65,163
1985	78,700	82,000
1986	85,700	82,000
1987	89,500	82,000
1988	89,500	95,000
1989	89,500	95,000
1990	96,600	95,000
1991	125,100	95,000
1992	129,500	95,000
1993	133,600	95,000
1994	133,600	104,000
1995	133,600	113,000
1996	133,600	113,000
1997	133,600	113,000
1998	136,700	113,000
1999	136,700	136,700
2000	141,300	136,700
2001	145,100	136,700
2002	150,000	136,700
2003	154,700	136,700
2004	158,100	136,700
2005	162,100	136,700
2006	165,200	136,700
2007	165,200	136,700
2008	169,300	136,700
2009	174,000	136,700
2010	174,000	136,700
2011	174,000	136,700
2012	174,000	160,000
2013	174,000	167,000
2014	199,100	174,000
2015	201,000	174,000
2016	203,100	193,000
2017	205,100	193,000
2018	208,000	208,000
2019	210,900	210,900
2020	216,400	210,900
2021	218,600	210,900
2022	223,400	210,900
2023	232,600	210,900

