Submission to the

2019 Commission on Legislative, Judicial and Executive Compensation

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CONTENTS

EXECUTIVE SUMMARY

On behalf of the New York State Judiciary, Chief Administrative Judge Lawrence K. Marks presents this Submission to the 2019 Commission on Legislative, Judicial and Executive Compensation to assist it in fulfilling its mandate pursuant to chapter 60 of the Laws of 2015, as amended[1] (the "Commission statute"), to establish appropriate levels of compensation for State-paid judges and justices of New York's Unified Court System for the four-year period commencing April 1, 2020. The Commission's charge is to evaluate prevailing levels of compensation and, by December thirty-first of the year in which it sits, to make recommendations for adjustment of these levels as appropriate effective April first of each of the following four State fiscal years. The Legislature may then modify or abrogate any of the Commission's recommendations, except that, if it fails to do so by the effective date of any adjustment, that adjustment will take effect and have the force of law.

The Commission statute is the successor to a statute enacted in late 2010 (see L. 2010, c. 567) that established a quadrennial salary commission to provide the State with a fair, independent, and rational means by which to determine the compensation of State-paid judges. The 2015 statute expanded the Commission's authority to include the compensation of senior officials in the Executive and Legislative branches. Previous commissions sat in 2011 and 2015.

For as long as the quadrennial compensation commission system has been in effect, the Judiciary has recommended that its work be guided by four widely accepted fundamental principles:

Fairness Senior government officials should receive fair compensation, determined in an equitable manner, that maintains its economic value over time.

Objectivity Compensation of senior State officials should be based on criteria that are objective and easily evaluated by the public.

Regularity A regular and predictable process must ensure that salaries are adjusted at recurring intervals so that they do not become inadequate over time due to increases in the cost of living.

Institutional Integrity The compensation structure for senior State public officials should promote public confidence in the excellence and diversity of each of our branches of government, and promote the effective management of public personnel and resources.

The Judiciary presents the following facts for the Commission's consideration in applying these four core principles:

A STRONG JUDICIARY IS VITAL TO NEW YORK STATE.

A strong Judiciary is vital to every aspect of civil society, protecting civic freedoms and the rights of children, families, and the most vulnerable members of the community while assuring swift resolution of civil and commercial disputes, and the fair and timely redress of criminal complaints. Adequate judicial salaries contribute to a strong Judiciary by attracting and helping to ensure the

1. The Commission statute as it was recently amended (see L. 2019, c. 59, Part VVV) is reproduced in Appendix A. The public officials affected by this statute include all State-paid judges and justices, State legislators, the Attorney General, the State Comptroller, and agency heads listed in section 169 of the Executive Law. The statute does not apply to the Governor or Lieutenant Governor, whose salaries are fixed, pursuant to section six of Article IV of the State Constitution, by joint resolution of the Senate and Assembly.

retention of the best-qualified lawyers to serve on the bench, and preserving the institutional and decisional independence of the courts.

JUDICIAL SALARIES IN NEW YORK SHOULD KEEP PACE WITH THOSE OF THE FEDERAL JUDICIARY.

The 2011 and 2015 Commissions found that the appropriate salary benchmark for the New York State Judiciary was the compensation level of the Federal Judiciary.[2] Both tailored their salary recommendations in accordance with this finding, the 2011 Commission recommending that New York State Supreme Court Justices reach parity with the 2011 pay of a Federal District Court Judge over three years, and the 2015 commission recommending that Supreme Court Justices reach full parity with the 2018 pay of a Federal District Court Judge in 2018 and then maintain that parity in 2019.

THROUGH THE STRONG WORK OF THE PAST TWO COMMISSIONS, JUDICIAL SALARIES IN NEW YORK HAVE KEPT PACE WITH INFLATION.

A crucial element to a sound judicial salary structure is its commitment to maintaining pace with inflation. When the Judiciary went over 13 years without a pay adjustment between 1999 and 2012, the salary of a New York State Supreme Court Justice lost about one-quarter of its value.[3] With the adjustments recommended by the past two commissions, the 1999 value of that salary has been essentially restored.

THROUGH THE STRONG WORK OF THE PAST TWO COMMISSIONS, JUDICIAL SALARIES IN NEW YORK HAVE IMPROVED THEIR STANDING WHEN COMPARED WITH SALARIES OF JUDGES IN OTHER STATES.

In early 2016, before the recommendation of the 2015 Commission took effect, the salary of a Supreme Court Justice in New York ranked 47th among the trial court judges of general jurisdiction of other states when adjusted for cost of living, a consequence rooted in New York's comparatively high cost of living. Today, following implementation of the 2015 Commission's recommendations for Supreme Court pay parity with Federal District Court Judges, New York has improved its ranking among judges of other states – with the salary of State Supreme Court Justices now ranked 29th across the country when adjusted for cost of living.

INTER- AND INTRA-COURT PAY DISPARITIES HAVE BEEN ADDRESSED.

As recommended by the 2015 Commission, longstanding inter- and intra-court pay disparities, vestiges of the State's 1977 assumption of responsibility for paying the salaries of county and city-level judges, were largely redressed. Several proportional salary relationships were thereby established – a minimum salary for county-level judges at 95% of that of a Supreme Court Justice; a salary of 93% of a Supreme Court Justice for New York City Civil and Criminal Court Judges and District Court Judges; and 90% of a Supreme Court Justice for upstate City Court Judges – that reflect a generally accepted community sense of the respective responsibilities of the affected judicial offices.

Elimination of those disparities has brought an equitable restoration to a decades-old problem that, across the years, had given rise to substantial acrimony and dozens of lawsuits.

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2. *See* 2011 Final Report of the Special Commission on Judicial Compensation, p. 8; 2015 Commission on Legislative, Judicial and Executive Compensation: Final Report on Judicial Compensation, p. 9.

3. As found by the 2011 Commission on Judicial Compensation, the cost of living during the 12-year period ending 2011, as measured by the Consumer Price Index—Northeast Urban Region, increased by approximately 41%. *See* 2011 Final Report of the Special Commission on Judicial Compensation, p. 7.

NEW YORK STATE'S ECONOMY REMAINS STRONG, AND IT RETAINS THE ABILITY TO FUND A MODEST JUDICIAL SALARY ADJUSTMENT TO KEEP SALARIES ON PACE WITH INFLATION.

Since 2011, when it confronted an "unprecedented budget crisis," the State has, by all measures, regained a solid economic footing. No aspect of the State's current or projected fiscal condition should prevent this Commission from recommending the modest adjustment in judicial salaries needed to keep pace with inflation.

RECOMMENDATIONS

MAINTAIN PAY PARITY WITH FEDERAL DISTRICT COURT JUDGES.

The Judiciary requests that the present Commission follow the lead of its predecessors and preserve pay parity between State Supreme Court Justices and Federal District Court Judges throughout the period April 1, 2020 through March 31, 2024.

MAINTAIN PRESENT PAY RELATIONSHIPS BETWEEN SUPREME COURT JUSTICES AND OTHER STATE-PAID JUDGES OF THE UNIFIED COURT SYSTEM.

The Judiciary further urges that the present Commission maintain the pay relationships between Supreme Court Justices and other judges that exist under current law as a result of the recommendation of the 2015 Commission.

I. THE MANDATE OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

A. 2019 COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

MANDATE

Part E of chapter 60 of the Laws of 2015 provides for appointment of a quadrennial commission to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits" for judges, members of the Legislature, certain statewide elected officials, commissioners and certain other high-ranking Executive Branch officials. The Commission is charged with issuing two separate reports setting forth its "findings, conclusions, determinations and recommendations" to the Governor, the Legislature, and the Chief Judge. One report is to address judicial compensation and the other legislative and executive compensation.

The Commission's report addressing judicial compensation is due by December 31st of the year in which the Commission is established – in the present instance, by December 31, 2019. The Commission may recommend up to four adjustments in judicial salary levels, commencing on April 1st of each of the four years following the Commission's creation, *i.e.,* in the case of the present commission, on April 1st in each of 2020-2023.

As to legislative and executive compensation, the Commission's report is due by November 15th of the year following the Commission's establishment. Accordingly, the next such report is due by November 15, 2020. In that report, the Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January 1st following a November general election of members of the Legislature, *i.e.,* in the case of the present commission, on January 1st in 2021 and in 2023.

The Commission's recommendations for salary adjustments for all of these public officials shall carry the force of law and take effect on the indicated dates, unless sooner modified or abrogated by statute. The present Commission will be deemed dissolved following issuance of its second report on November 15, 2020.

FACTORS TO GUIDE THE COMMISSION'S WORK

Chapter 60 provides that, in discharging its responsibilities, the Commission shall take into account all appropriate factors including, but not limited to:

- the overall economic climate
- rates of inflation
- changes in public sector spending
- levels of compensation and non-salary benefits received by Executive Branch officials and legislators of other states and the Federal government
- levels of compensation and non-salary benefits received by professionals in government, academia, and private and non-profit enterprise
- the State's ability to fund increases in compensation and non-salary benefits.

COMMISSION MEMBERSHIP AND VOTING

The Commission consists of seven members, appointed as follows: three by the Governor; two by the Chief Judge of the State; and one each by the Temporary President of the Senate and the Speaker of the Assembly.

The Commission's findings and recommendations must be supported by majority vote and, in addition, must be supported "by at least one member appointed by each appointing authority."[4] With regard to matters addressing judicial compensation, the chair of the Commission shall vote; with regard to matters addressing legislative or executive compensation, the chair presides but does not vote.[5]

B. WORK OF PAST COMMISSIONS

2011 COMMISSION ON JUDICIAL COMPENSATION

This Commission was established following enactment of chapter 567 of the Laws of 2010. It sat at a time of particular distress in the State Judiciary: by 2011, State-paid judges had gone 12 years without any pay raises, with the result that the pay of State Supreme Court Justices then ranked last among the country's state trial judges of general jurisdiction when adjusted for regional cost of living. Following a public hearing and three public meetings, the Commission, chaired by Hon. William C. Thompson, issued its report and recommendations on August 29, 2011. Mindful of New York's then prevailing fiscal distress, the Commission recommended that New York judges should receive a salary increase phased in over three years starting on April 1, 2012. This increase was designed to equate the salaries of New York's Supreme Court Justices in 2014 with those of Federal District Court Judges in 2011. The Commission explained its recommendations as follows:

> *"The Commission has determined that the appropriate benchmark at this time for the New York State Judiciary is the compensation level of the Federal Judiciary. The Commission recognizes the importance of the New York State Judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is valued and respected. The Federal Judiciary sets a benchmark of both quality and compensation – New York should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990's and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State's current financial challenges.*[6]

See Appendix B for the 2011 Commission's final report.

2015 COMMISSION ON JUDICIAL COMPENSATION

Four years after the first Commission sat, a second Commission was established. As noted, this Commission had a broader mandate than the first Commission, it being charged to consider not

4. The requirement that the Commission's findings and recommendations in relation to pay levels for the Judiciary be supported "by at least one member appointed by each appointing authority" is new, having been added by amendment to the Commission statute during the 2019 legislative session. *See* L. 2019, c. 59, Part VVV. Prior to this year, this requirement applied only to findings and recommendations in relation to pay levels for legislators and Executive Branch officials.
5. *See* Appendix A, L. 2015, c. 60, § 3(i) Part E (as amended).
6. 2011 Final Report of the Special Commission on Judicial Compensation.

just the adequacy of judicial salaries but also the adequacy of legislative and Executive Branch salaries. Sitting in 2015, the Commission devoted its attention to judicial salaries.

Chaired by Sheila Birnbaum, Esq., the 2015 Commission also held a public hearing, while conducting several public meetings. The Commission found that, in 2015, New York State judges were underpaid relative to the compensation of many lawyers working in private practice and the public sector, executives in the non-profit sector, professionals in academia and public education, and government officials in New York City. The Commission also found that the salary of a State Supreme Court Justice then ranked near the bottom when considered in comparison with salaries of judges of courts of general jurisdiction in the other 49 states when adjusted for cost of living; and that the salary structure for other New York State judges was one unsupported by logic or reason and beset by various anomalies.[7] Finally, the Commission found that

> *"[c]ompetitive 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".*[8]

On the basis of these findings, the Commission recommended that the salary of a State Supreme Court Justice be set at 95% of that of a Federal District Judge, effective April 1, 2016 and maintained in that relationship, effective April 1, 2017; that a Justice's salary be set at 100% of that of a Federal District Court Judge, effective April 1, 2018 and maintained in that relationship, effective April 1, 2019. Thus, over the four-year period for which the 2015 Commission enjoyed authority to make salary recommendations for judges, Supreme Court Justices were to achieve full pay parity with Federal District Court Judges and to retain that parity in a subsequent annual pay cycle.

Also, the 2015 Commission recommended an end to anachronistic pay disparities among judges of the courts other than Supreme Court and adoption of a rational pay structure for those judges that included: (i) a minimum salary of 95% of that of a Supreme Court Justice for County, Family, and Surrogate's Court Judges, (ii) a salary equaling 93% of that of a Supreme Court Justice for New York City Civil and Criminal Court Judges and District Court Judges, and (iii) a salary equaling 90% of that of a Supreme Court Justice for full-time City Court Judges in City Courts outside New York City.

See Appendix C for the 2015 Commission's final report.

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7. Appendix C, Final Report of the 2015 Commission on Legislative, Executive and Judicial Compensation, pp. 6-8.

8. *Id.,* p. 7. The Commission found that "[t]here is a generally accepted connection between a strong, well-qualified judiciary and a healthy state economy." In doing so, it was responding to the urging of the State's business community that competitive judicial salaries are essential to attracting well-qualified judges and that, to this end, Federal judicial salaries be used as a benchmark.

II. THE NEW YORK STATE JUDICIARY

A. STATE-PAID JUDGES OF THE NEW YORK STATE UNIFIED COURT SYSTEM

New York's Unified Court System consists of 12 State-funded courts. There are three courts of appellate jurisdiction: the Court of Appeals, the Appellate Division of the Supreme Court, and the Appellate Terms of Supreme Court. There are nine trial courts: Supreme Court, Court of Claims, County Court, Family Court, Surrogate's Court, the Civil and Criminal Courts of New York City, District Courts on Long Island, and City Courts outside New York City.[9]

The judges of all of these courts must be lawyers and, in most instances, must have been admitted to practice law in New York for at least ten years.[10] With very limited exception, service in the New York Judiciary is a full-time occupation.[11] Judges are barred generally from engaging in outside employment or earning outside income, and must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities.[12] Appendix D provides a summary of the qualifications, terms of office, and jurisdiction of New York's State-paid trial judges.

Current salary levels for New York's State-paid judges, established in April 2019, are as follows:

- Court of Appeals, Chief Judge $240,800
- Court of Appeals, Associate Judge $233,400
- Appellate Division, Presiding Justice $227,800
- Appellate Division, Associate Justice $222,200
- Appellate Term, Presiding Justice $220,300
- Appellate Term, Associate Justice $215,700
- Supreme Court $210,900
- Court of Claims $210,900
- County, Family or Surrogate's Court Judge ..... $200,400–$210,900
- NYC Civil & Criminal Court Judge $196,200
- NYC Housing Court Judge $189,900
- District Court Judge $196,200
- City Court Judge (full-time) ..... $189,900[13]

Appendix E provides a court-by-court summary of judicial salary levels.

9. The Unified Court System also has two additional trial courts: the Town and Village Justice Courts. NY Const., Art. VI, §1. These courts are, with limited exception, locally-funded, and the compensation of their justices is fixed and paid for by municipal boards.
10. NY Const., Art. VI, §20(a).
11. *See* NY Const., Art. VI, §20(b). The sole exception applies to certain judges of the City Courts outside New York City, who have been designated by the Legislature as part-time. See Uniform City Court Act, §2104. There are fewer than 50 of such judges among a total of more than 1,300 State-paid judges in New York.
12. NY Const., Art. VI, §20(b), (c).
13. The salaries of part-time City Court judges are fixed at one-quarter, one-half, and three-quarters of that of a full-time City Court Judge, or $47,500, $95,000, and $142,400, respectively.

B. THE WORK OF THE STATE-PAID JUDGES OF THE NEW YORK STATE UNIFIED COURT SYSTEM

In 2018, the last full year for which comprehensive data are available, 1.47 million civil cases were commenced in New York's Supreme Court, County Court, and the other State-paid courts of lesser civil jurisdiction; just over one million criminal cases were commenced in the State's superior and lower criminal courts (including the Justice Courts); and there were one-half million new filings in Family Court.[14] In the aggregate, these figures represent nearly three times the number of filings for the entire Federal Judiciary.[15] Due to differences in jurisdiction, it is difficult to draw precise comparisons between the workloads of State and Federal Judges. There can be little doubt, however, that the New York State court system is one of the busiest in the western world or that its judges handle challenging, complex, and significant cases. New Yorkers turn to their courts by the tens of thousands each day to secure fundamental freedoms, enforce rights and obligations, resolve civil and commercial disputes, protect the vulnerable, and fairly adjudicate charges of crime. Each day, New York's judges handle major commercial and real estate disputes, home foreclosures and evictions, divorces, and consumer credit defaults in our civil courts; high-stakes murder and felony trials, organized crime and gang violence, and drug-related crime and recidivism in our high-volume criminal courts; domestic violence, juvenile delinquency, child custody and support, and critical child abuse and neglect cases in our Family Courts; as well as probate of wills, administration of decedents' estates, adoptions, and guardianship of incapacitated persons in the Surrogate's Courts.

Most recently, since 2016 and over the course of Chief Judge Janet DiFiore's tenure, the Judiciary has committed itself to a program, denominated the "Excellence Initiative," of systematic ongoing, self-critical analysis of the efficiency of New York's courts. Through this analysis, judges are continually troubleshooting case backlogs and delays, and seeking to determine whether the case management processes in place in each court are working well or in need of revision. Throughout, the aim has been to improve court operations and case management, increase promptness and productivity, eliminate backlogs and delays, and provide high-quality justice services that support fairness and excellence in judicial decision-making. This all-hands-on-deck approach has been enormously successful. It has produced significant reductions in the number of long-pending cases in the courts, including, most notably, reduction in the number of civil cases pending in Supreme Court over Standards and Goals[16] by a third in New York City, and by 60% outside the City; reduction in the number of misdemeanor cases pending for more than a year by 85% across New York City; and reduction in the number of felony cases pending in New York City for more than two years by 54%. None of this would have been possible without the added dedication and energy of all of the State's judges who, in 2019, are working harder than ever to deliver timely justice to the people of New York.

As was recognized by the 2015 Commission in its final report, a strong Judiciary is essential to a healthy State economy, and to attracting and retaining businesses that generate jobs and tax revenues and contribute to economic prosperity. Businesses rely on the courts to resolve their disputes, and the quality and efficiency of the courts are significant factors in deciding where to locate and do business. The New York State courts, including the Commercial Division of Supreme Court, have played a crucial role in maintaining New York's longstanding national and international prominence in law and commerce, and have earned the praise of many leading business and commercial law

14. This data was obtained from the New York State Unified Court System's Office of Court Research.

15. Federal Court filings include civil and criminal filings and bankruptcy petitions. *See* www.uscourts.gov [Federal Judicial Caseload Statistics reported for 2018 by the Administrative Office of the United States Courts] [accessed 10/26/2019]. Such filings in 2018 totaled 1,138,391. This compares with an aggregate of 3.02 million cases commenced/filed in the New York courts during the same year.

16. "Standards and Goals" refer to time frames that have been identified by court administrators as targets to ensure that different classes of cases are being decided in prompt fashion.

groups, including the Business Council of New York State; American Corporate Counsel Association; American Bar Association Business Law Section; New York State Bar Association Commercial and Federal Litigation Section; and the Partnership for New York City.

C. A BRIEF HISTORY OF JUDICIAL COMPENSATION IN NEW YORK STATE

Until April 1977, the State bore only limited responsibility for the funding of the Unified Court System. This responsibility included the obligation to pay the costs of operating the Court of Appeals, the Court of Claims, and much of the Supreme Court, including the Appellate Divisions and Appellate Terms. On April 1, 1977, however, the Unified Court Budget Act ("UCBA") took effect.[17] The UCBA clothed the State with full responsibility for funding the operational costs[18] of all of the courts of the Unified Court System other than the Town and Village Justice Courts, and transferred formerly locally-paid judges of all of the affected courts to the State payroll. Since 1977, judicial salaries have been adjusted as follows:

The first judicial pay increase following enactment of the UCBA took effect in April 1979, and was coupled with pay raises for legislators and Executive Branch officials. For judges, the increase consisted of a series of percentage adjustments that had been recommended by an ad hoc advisory panel established by then-Governor Carey. They included: a 7% increase retroactive to October 1978; a 7% increase effective October 1979; and a 3.39% increase in October 1980.[19]

This increase was enacted during a special session of the Legislature in late 1980 and was again coupled with increases for legislators and Executive Branch officials. For judges, the increase consisted of another series of percentage adjustments, which included a 5% increase effective January 1981, followed by a 7% increase effective January 1982.[20]

In December 1984, the Legislature enacted an increase for judges, legislators, and Executive Branch officials, effective January 1985 and retroactive to July 1, 1984. Most trial judges received pay increases ranging from 24% to 27%.[21]

In the summer of 1987, the Legislature increased salaries for judges, legislators, and Executive Branch officials, with the judges receiving a single increase, effective October 1, 1987, as follows: 24% for Associate Judges of the Court of Appeals; 15.9% for Supreme Court Justices; up to 20.6% for county-level judges; 21% for NYC Civil and Criminal Court Judges; and 18.3% for full-time City Court Judges.[22]

In 1993, following what had been, until then, the longest period in the post-UCBA era in which judges did not receive a pay adjustment, the Legislature, on the recommendations of a report issued by a special *ad hoc* advisory commission appointed by then-Governor Mario Cuomo, enacted a new pay schedule for judges. The increases provided by this schedule varied widely: 8.7% for Associate Judges of the Court of Appeals; 18.9% for Supreme Court Justices; up to 20.7% for county-level

17. The Unified Court Budget Act was enacted by the Legislature in the summer of 1976 (*see* L. 1976, c. 966), partly in response to the fiscal exigencies caused by a national and State economic crisis in the mid-1970s.
18. Excluded from this transfer was responsibility for providing and maintaining court facilities. That responsibility remained, as it does to this day, the obligation of local governments.
19. L. 1979, c. 55.
20. L. 1980, c. 881.
21. L. 1984, c. 986.
22. L. 1987, c. 263.

judges; and 15.4% for full-time City Court Judges and NYC Housing Court Judges. These increases took effect in four stages over an 18-month period beginning April 1993.[23]

In December 1998, the Legislature increased salaries for judges, legislators, and Executive Branch officials, with the judges receiving a single pay adjustment, effective January 1, 1999, pursuant to which Supreme Court Justices achieved pay parity with Federal District Court Judges (at $136,700). All other judges received proportionate pay adjustments.[24]

In August 2011, pursuant to chapter 567 of the Laws of 2010, the first quadrennial commission on judicial compensation recommended salary adjustments for judges intended to achieve pay parity between Supreme Court Justices and Federal District Judges over a three-year period. That parity, established in 1999, had been lost over the ensuing 13 years during which Federal District Court Judges had received numerous cost-of-living increases while New York State judges had endured a total salary freeze. The effect of the Commission's recommended adjustments gave Supreme Court Justices a form of belated parity – the adjustment recommended for them, at $174,000 annually, gave them parity in 2014 with the salary of a Federal District Court Judge as it stood in 2011. All other judges received proportionate pay adjustments.[25] The Legislature did not subsequently modify or abrogate the commission's recommendations, and they became law.

In December 2015, pursuant to chapter 60 of the Laws of 2015, the second quadrennial commission on judicial compensation (now formally renamed the "Commission on Legislative, Judicial and Executive Compensation" to reflect its added responsibility to study the pay received by members of the Legislature and senior Executive Branch officials) recommended salary adjustments for judges intended to achieve pay parity between Supreme Court Justices and Federal District Court Judges by April 1, 2018 and to maintain such parity by a further pay adjustment on April 1, 2019. Also, the commission recommended that the salaries of many lower court judges be adjusted to substantially diminish inter- and intra-court pay disparities. Once again, as the Legislature did not subsequently modify or abrogate the commission's recommendations, and they became law.

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This brief history reveals the troubling pattern that has long been associated with judicial compensation in New York: at least until the 2010 Legislature established the salary commission system pursuant to which the present Commission sits, there were repeated extended periods of salary stagnation interrupted by *ad hoc* "catch-up" pay increases. The timing and amounts of these increases lacked any regularity or predictability. There was no deliberate effort made to keep judicial salaries in line with inflation. After 1984, no pay adjustment contained a retroactive component to make up for prior years of earnings lost to inflation. These pratices, especially during the 13-year salary freeze between 1999 and 2012, resulted in significant salary compression pursuant to which the salaries of many nonjudicial employees of the courts approached and even eclipsed those of the judges for whom they worked.

Equally troubling is the fact that the pay increases of 1980, 1984, and 1999 were all enacted shortly after legislative elections, during lame-duck legislative sessions, with minimal public debate or disclosure. This history is inconsistent with the principles of fairness, objectivity, regularity, and institutional integrity – the hallmarks of how government should conduct itself in fixing the compen-

23. L. 1993, c. 60. Following criticism of the smaller pay increase awarded City Court Judges under this statute (and a similarly small pay increase for Housing Court Judges in New York City), the Legislature, in 1994, enacted a chapter amendment that, retroactively, awarded these judges a pay increase commensurate with that provided for judges of other trial courts under chapter 60. L. 1994, c. 518.

24. L. 1998, c. 630.

25. *See* Appendix B.

sation of highly qualified and experienced public servants entrusted with the weighty responsibility of delivering justice and adjudicating the rights of their fellow citizens.

As we have said many times, we are gratified that the Legislature has responded to these concerns by creating the permanent quadrennial commission process. It is our hope and expectation that this process will continue to ensure open and regular review and adjustment of judicial compensation to meet the financial exigencies of the times and ensure that the judicial profession in New York remains an attractive career choice for capable people of all backgrounds.

III. GUIDING PRINCIPLES

*In the general course of human nature, a power over a man's subsistence amounts to a power over his will. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. * * * It will be readily understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of [judicial] compensation in the Constitution inadmissible. * * * It was therefore necessary to leave it to the discretion of the [L]egislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse.*

–ALEXANDER HAMILTON
Federalist 79

Since the founding of our Republic, it has been universally understood that there can be neither liberty, justice, nor public security without an independent and strong judicial branch. Maintaining equitable judicial salaries over time is vital to judicial independence, to ensuring that judges are never made to be – in reality or perception – subordinate to the other branches of government or to outside forces. Fair compensation strengthens the judicial branch by attracting and retaining well-qualified attorneys in judicial services, avoiding compromise of ethical duties, and eliminating personal wealth as a qualification for judicial office.

Consistent with the Judiciary's constitutional status as a separate, non-partisan, and apolitical branch of government, commentators have recognized several core principles as fundamental to the determination of appropriate compensation for judges – fairness, objectivity, regularity, and preservation of institutional integrity.[26] While we believe these principles are equally applicable to the task of setting appropriate salary levels for all three branches of government, the remainder of this submission will focus exclusively on the application of these principles to the compensation of New York State judges.

A. FAIRNESS

Careers in public serve entail financial sacrifice. While most judges would agree that the satisfaction that comes with public service outweighs the financial sacrifices involved, they also expect to be compensated fairly. Judicial salaries should be broadly comparable to the remuneration received by attorneys taking similar career paths and by other public servants having comparable responsibility, training, and experience.

B. OBJECTIVITY

Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the public. The process also should be transparent to the public. Fortunately, the process and factors that the Legislature has directed the commission to consider and employ (e.g., rates of inflation, compensation of professionals in government, academia, and private and non-profit enterprise) reflect a State commitment to objectivity and transparency. Objectivity serves several purposes: it helps achieve wise, consistent results; it demystifies the sala-

26. *See* e.g., National Center for State Courts, Judicial Compensation in New York (2007), at pp. 5-6.

ry-setting process and avoids the appearance of arbitrariness or irrationality; it allows the considered factors to be candidly assessed and debated; and it promotes public confidence in the ultimate result.

C. REGULARITY

As a corollary to fairness in fixing judicial salaries, there must be a predictable mechanism to ensure that salaries, once adjusted, do not lose ground to inflation. The real value of judicial compensation should be maintained through regular review and adjustments that respond to changes in the cost of living so that the salary judges acccept upon joining the bench is not thereafter eroded to the detriment of their family. The statutorily created quadrennial commission process sets the stage for regularity by authorizing this Commission to provide for prospective and automatic pay adjustments gauged to economic forces that otherwise could erode judicial pay and render compensation unpredictable for judges and their families in the future.

D. INSTITUTIONAL INTEGRITY

The proper adjustment of salaries has implications far beyond fairness to individual judges. As the New York Court of Appeals has recognized, the adequacy of salaries has an important impact on the diversity and quality of judges. If salaries are too low, "only those with means will be financially able to assume a judicial post, negatively impacting the diversity 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."[27]

In any large public institution, successful long-term governance also requires rational pay distinctions commensurate with the relative authority and responsibility of officeholders. Salary systems must calibrate appropriately between judicial and staff salaries in ways that recognize distinctions in seniority, experience, authority, and responsibility. This is particularly important for the court system, where constitutionally derived powers are exercised exclusively by elected and appointed judicial officers.

27. Maron v. Silver, 14 N.Y.3d 230, 263 (2009).

IV. EVALUATION OF FACTORS RELEVANT TO JUDICIAL SALARY LEVELS FOR NEW YORK STATE JUDGES

The quadrennial commission process permanently enshrines the fundamental principles of fairness, objectivity, regularity, and institutional integrity as the prism through which adjustments in judicial compensation are to be made. In creating this process, the Legislature has filled a conspicuous, longstanding void in New York, a void evidenced most dramatically by the pay freeze of 1999-2012, when State judges failed to receive a single pay increase or cost-of-living adjustment despite steady inflation that seriously eroded the real value of their compensation.

The salary increase recommended by the 2011 salary commission for 2012-2014 was greatly needed and welcomed. Nonetheless, it only partially restored the value of State judicial salaries. Even after that increase was fully implemented, New York's judicial salaries — which once ranked highest in the nation[28] — lagged behind those paid to judges in many other states, as well as those paid members of the Federal Judiciary. In fact, as of 2014, the $174,000 salary of a Supreme Court Justice, which was identical to the 2011 salary of a Federal District Court Judge, ranked only 47th in the nation according to the National Center for State Courts, which has published a biennial Survey of Judicial Salaries for decades.[29]

Recognizing this and a clear imperative to establish the salary of Federal District Court Judges as the benchmark for the salary of a New York Supreme Court Justice, the 2015 Commission recommended that Supreme Court Justices be given contemporaneous pay parity with Federal District Court Judges by 2018, and that that parity should be preserved going into the future. This recommendation improved the salary standing of New York's Supreme Court Justices – they rank 29th among the states in adjusted salary today – and had the clear virtue of indirectly pegging Supreme Court pay to the nuanced annual inflation escalator applied to the Federal Judiciary.[30]

For the reasons set forth below, the Judiciary respectfully submits that the inflation-adjusted salary of a Federal District Court Judge remains the appropriate benchmark salary level for a

28. As recently as 1994, New York State Supreme Court Justices were the highest paid trial court judges in the nation at $108,500. See National Center for State Courts, Annual Survey of Judicial Salaries, July 1994.

29. *See* National Ranking of Judicial Salaries, at page 16 of this Submission. The National Center for State Courts Survey of Judicial Salaries rankings is based on the Council for Community and Economic Research (C2ER) Cost-of-Living-Index, the most widely accepted U.S. source for measuring regional differences in living costs. While this Submission relies on the C2ER Index to show the comparative real value of New York's judicial salaries nationwide, we note that the C2ER is not weighted for population density and therefore does not fully account for the reality that living costs in New York's urban communities, where the great preponderance of New York's judges live and work, are considerably higher than in the State's rural communities. If weighted for population density, New York's judicial salaries would actually have ranked even worse than 29th. To be sure, a New York Supreme Court Justice's salary today is nominally the highest among state court judges in the nation. *See* National Ranking of Judicial Salaries, at page 16 of this Submission. But, given dramatic differences in the cost of living in the 50 states, that fact is of only cosmetic significance.

30. As summarized by the Federal Circuit Court of Appeals in its 2012 decision in *Beer v. U.S.* (696 F. 3d 1174), the 1989 Federal Ethics Reform Act "provides that whenever a COLA for General Schedule [F]ederal employees takes effect under 5 USC §5303, the salary of [Federal] Judges 'shall be adjusted' based on 'the most recent percentage change in the [Employment Cost Index]… as determined under section 704(a)(1) of the Ethics Reform Act of 1989.' Pub. L. No. 101-194, §704(a)(2)(A), 103 Stat. 1716, 1769 (Nov. 30, 1989). The Employment Cost Index ('ECI') is an index of wages and salaries for private industry workers published quarterly by the Bureau of Labor statistics. Section 704(a)(1) of the 1989 Act calculates COLAs by first determining the percentage change in the ECI over the previous year. *Id.*, at §704(a)(1)(B). Next, the statutory formula reduces the ECI percentage change by 'one-half of 1 percent…rounded to the nearest one-tenth of 1 percent.' Id. However, no percentage change determined under Section 704(a)(1) shall be 'less than zero' or 'greater than 5 percent.' *Id.*" *See* Appendix F for the full text of the Beer decision.

Supreme Court Justice. Indeed, most of the metrics and factors relevant to the calculus of judicial compensation — the consumer price index; judicial salaries in other states and the Federal courts; compensation of government officials and professionals of comparable experience and education — point to salary levels that are consistent with the Judiciary's recommendation of pay parity between Supreme Court Justices and Federal District Court Judges.

The following addresses in greater detail the factors delineated in the statute to guide the commission in carrying out its responsibilities.

A. PARITY SHOULD BE CONTINUED BETWEEN THE SALARY OF A SUPREME COURT JUSTICE AND THAT OF A FEDERAL DISTRICT COURT JUDGE

As was recognized by both predecessors to this Commission, the inflation-adjusted salary of a Federal District Court Judge provides the appropriate benchmark for the New York State Judiciary.[31] Both the 2011 and 2015 commissions found that pay parity between New York's judges and those of the Federal Judiciary was supported by history and by any fair understanding of the comparative size and importance of the caseloads faced by these judges. Accordingly, both commissions built their salary recommendations around this premise. The present Commission should do likewise: it should continue reliance upon this benchmark for New York in 2020 and going forward into the future.

B. MAINTAINING PARITY BETWEEN THE SALARY OF A SUPREME COURT JUSTICE AND THAT OF A FEDERAL DISTRICT COURT JUDGE WILL PROTECT NEW YORK'S JUDICIAL SALARIES AGAINST INFLATION

Analysis of the impact of inflation on judicial compensation in New York supports continued reliance upon the salary of a Federal District Judge as an appropriate benchmark. Federal judicial salaries have been calibrated to ensure that they remain in line with changes in inflation since 1989.[32] Using 1987 as a base year to measure the impact of inflation on New York judicial pay – a year when the salaries of Supreme Court Justices were raised from $82,000 to $95,000 – and compounding the CPI-U inflation from that point forward, results in an inflation-adjusted salary of approximately $216,000 in 2019 dollars, a salary only marginally higher than the present $210,900 salary of a Federal District Court Judge and a State Supreme Court Justice.[33] Consequently, parity between Federal and State judicial salaries has assured, and will continue to ensure, that the salaries of New York's Judiciary keep pace with inflation.

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31. *See* Final Report of the 2011 Special Commission on Judicial Compensation, p. 8; Final Report of the 2015 Commission on Legislative, Executive and Judicial Compensation, p. 9.

32. *See* footnote 30, *supra*.

33. Source: U.S. Department of Labor, Bureau of Labor Statics, CPI-U Inflation Calculator.

C. NEW YORK STATE JUDICIAL COMPENSATION, WHILE SUBSTANTIALLY IMPROVED BY PRIOR COMMISSIONS, LAGS BEHIND OTHER STATES WHEN ADJUSTED FOR COST OF LIVING

Comparison of New York's judicial compensation to compensation in other states strongly suggests that pay parity between State Supreme Court Justices and Federal District Court Judges is fair and appropriate.

According to the nonpartisan National Center for State Courts, the current $210,900 salary of a New York State Supreme Court Justice, when adjusted for cost of living, ranks 29th in the nation among state trial courts of general jurisdiction; and it is low as well when compared on this basis with the salaries of judges in high population states to which New York typically compares for policy purposes.[34]

NATIONAL RANKING OF JUDICIAL SALARIES
Trial Courts of General Jurisdiction As of 2019 – 10 Largest States

Nominal Salary			Salary Adjusted for Cost-of-Living Index		
Rank	State	Current Salary	Rank	State	2019 Adjusted Salary*
1	New York	$210,900	1	Illinois	$183,658
2	California	$207,424	2	Georgia	$179,405
3	Illinois	$207,291	3	Pennsylvania	$171,061
4	Pennsylvania	$183,184	4	Michigan	$156,771
5	Georgia	$173,714	5	Ohio	$155,485
6	Florida	$160,688	6	Florida	$154,135
7	Texas	$149,000	7	Texas	$149,680
8	Ohio	$147,600	8	New York	$143,583
9	Michigan	$146,721	9	California	$143,143
10	North Carolina	$135,236	10	North Carolina	$141,000

*The salaries in this column were adjusted to reflect local cost of living, based on data from the Council for Community and Economic Research. Source: https://www.ncsc.org/salarytracker.

34. While the cost of living is not the same in all areas of New York, it is consistently high in the State's major metropolitan areas, which far and away have the greatest number of resident judges. While some observers, in the past, have suggested that differences in the cost of living across the State should be grounds for setting different salaries based on where high-ranking State officials -- legislators, statewide elected Executive Branch officials, and State commissioners -- happen to live and work, the State historically has declined to adopt such a policy and pay geographic differentials to such officials. In this submission, we do not urge an approach that relies on such geographic differentials.

NATIONAL RANKING OF JUDICIAL SALARIES

Trial Courts of General Jurisdiction As of 2019 – 50 States and DC

Nominal Salary			Salary Adjusted for Cost-of-Living Index		
Rank	State	Current Salary	Rank	State	2019 Adjusted Salary*
1	District of Columbia	$210,900	1	South Carolina	$191,349
1	New York	$210,900	2	Tennessee	$189,888
3	California	$207,424	3	Arkansas	$186,433
4	Illinois	$207,291	4	Illinois	$183,658
5	Hawaii	$207,084	5	Georgia	$179,405
6	South Carolina	$191,954	6	Pennsylvania	$171,061
7	Washington	$190,985	7	Delaware	$167,381
8	Alaska	$189,720	8	Missouri	$165,760
9	Massachusetts	$184,694	9	Nebraska	$165,631
10	Delaware	$184,444	10	Virginia	$165,095
11	Pennsylvania	$183,184	11	Utah	$163,495
12	New Jersey	$181,000	12	Washington	$160,125
13	Tennessee	$180,600	13	Indiana	$157,658
14	Virginia	$175,826	14	Louisiana	$157,578
15	Georgia	$173,714	15	Michigan	$156,771
16	Colorado	$173,248	16	Iowa	$155,743
17	Connecticut	$172,663	17	Ohio	$155,485
18	Utah	$170,450	18	Colorado	$155,242
19	Rhode Island	$168,856	19	Florida	$154,135
20	Arkansas	$168,096	20	Hawaii	$153,373
21	New Hampshire	$164,911	21	Minnesota	$153,274
22	Maryland	$164,433	22	Wyoming	$153,223
23	Nebraska	$163,077	23	Mississippi	$152,077
24	Minnesota	$161,108	24	Texas	$149,680
25	Florida	$160,688	25	Oklahoma	$148,378
26	Nevada	$160,000	26	Alaska	$146,900
26	Wyoming	$160,000	27	Nevada	$145,468
28	Vermont	$158,635	28	New Jersey	$145,146
29	Louisiana	$156,972	29	New York	$143,583
30	Missouri	$153,957	30	California	$143,143
31	Indiana	$151,137	31	Idaho	$142,870
32	Iowa	$150,444	32	Alabama	$141,971
33	Arizona	$149,383	33	North Carolina	$141,000
34	Texas	$149,000	34	Massachusetts	$140,463
35	Ohio	$147,600	35	North Dakota	$140,195
36	North Dakota	$146,746	36	Wisconsin	$140,194

*The salaries in this column were adjusted to reflect local cost of living, based on data from the Council for Community and Economic Research.

NATIONAL RANKING OF JUDICIAL SALARIES CONT'D Trial Courts of General Jurisdiction As of 2019 – 50 States and DC					
Nominal Salary			Salary Adjusted for Cost-of-Living Index		
37	Michigan	$146,721	37	Rhode Island	$138,653
38	Oregon	$142,136	38	Arizona	$138,174
39	Wisconsin	$141,733	39	Kentucky	$137,288
40	Oklahoma	$139,298	40	Montana	$136,714
41	Idaho	$139,200	41	District of Columbia	$133,053
42	Montana	$136,896	42	Kansas	$133,009
43	Mississippi	$136,000	43	New Hampshire	$132,172
44	North Carolina	$135,236	44	Connecticut	$131,975
45	Alabama	$133,901	45	New Mexico	$131,520
46	New Mexico	$133,757	46	South Dakota	$130,501
47	Maine	$133,286	47	West Virginia	$129,535
48	South Dakota	$131,059	48	Vermont	$128,983
49	Kentucky	$130,926	49	Maryland	$125,405
50	Kansas	$128,636	50	Oregon	$122,926
51	West Virginia	$126,000	51	Maine	$112,088

*The salaries in this column were adjusted to reflect local cost of living, based on data from the Council for Community and Economic Research.

Consequently, even were State Supreme Court Justices to maintain salary parity with the benchmark salary level of a Federal District Court Judge, as is urged in this submission, those adjusted salaries will remain in the bottom half of states nationwide in real terms.

Judicial salaries ultimately reflect the strength of our community commitment to attract the very best and brightest legal minds to service in responsible roles of civic governance, coloring public perceptions of the importance we attach to the rule of law. They measure our understanding, relative to that of other states, that exceptional judges are not a luxury but a necessity in a state of national and international prominence that seeks to maintain the constitutional checks and balances of vibrant government; assure continued excellence in adjudication of commercial disputes to help promote a strong job-producing economy; ensure the swift, fair resolution of criminal complaints; preserve the civil rights of our citizens; and bring about the swift and wise resolution of the myriad of private and public disputes that are the Judiciary's primary task.

We do not ask the Commission to elevate New York's judicial salaries above those of Judges of the Federal District Courts or even to boost the State's ranking among its sister states. We well recognize the limitations to which the public fisc is properly held. However, we do urge that the Commission remain faithful to the commitment of its predecessors to rely upon pay parity with the Federal Judiciary and to an annual cost-of-living adjustment mechanism so that, with the passage of time, the current value of New York judicial salaries does not diminish either in relation to those of other states or to the overall economy.

D. NEW YORK STATE JUDICIAL COMPENSATION LAGS BEHIND THAT OF MANY PROFESSIONALS IN GOVERNMENT, ACADEMIA, AND THE PRIVATE AND NON-PROFIT SECTORS

Chapter 60 of the Laws of 2015 directs the Commission to consider, among other factors, the levels of compensation and non-salary benefits received by professionals in government, academia, and private and non-profit enterprise. To facilitate this review, Appendix G provides data relating to the compensation of State and local government officials and comparable professionals in the private, public, academic, and non-profit sectors.

NEW YORK CITY[35]

- Administrative Law Judge (Chief), Office of Administrative Trials and Hearings..... $221,151
- Corporation Counsel $236,088
- Director, Mayor's Office of Criminal Justice $236,088
- Counsel to the Mayor..... $214,225
- Director, Mayor's Office to Combat Domestic Violence $221,151
- District Attorneys, within New York City..... $212,800
- New York City Commissioners $236,088
- Chancellor, NYC Department of Education $352,763
- Chancellor, City University of New York $670,000
- General Counsel, City University of New York $258,954

ACADEMIA AND PUBLIC EDUCATION

Deans of law schools nationwide typically earn salaries ranging from $253,677 to $340,601. The average law school dean earns $291,477. In New York, these numbers are higher: the salary range typically falls between $306,950 and $412,128 with the average salary across the State equaling $352, 687.[36]

Many public school administrators across the State earn more than judges:

- Garden City Superintendent of Schools..... $260,000
- Glen Cove Superintendent of Schools $253,134
- Hempstead Superintendent of Schools $265,000
- Levittown Superintendent of Schools..... $281,235
- Utica Superintendent of Schools..... $212,637

PRIVATE LAW PRACTICE

According to a 2018 survey of over 2,000 partners at the nation's 350 largest law firms, the average compensation of law firm partners was $885,000, with median compensation of $575,000. In New York City, the average compensation of large law firm partners was $1.4 million.[37]

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35. https://data.cityofnewyork.us/City-Government/Citywide-Payroll-Data-Fiscal-Year-/k397-673e [accessed 9/30/2019].
36. Source: salary.com [accessed 10/29/2019].
37. Major, Lindsey & Africa, 2018 Partner Compensation Survey, http://www.mlaglobal.com/partner-compensation-survey/2018

According to a 2020 study of salaries of legal professionals, lawyers in private practice with 10+ years of experience (not necessarily partners) earn salaries within the following ranges:[38]

- New York City, large firm (75 + lawyers): ..... $219,180 to $327,365
  New York City, midsize firm (35-75 lawyers): ..... $155,604 to $188,973
- Long Island, large firm (75 + lawyers):..... $195,000 to $291,250
  Long Island, midsize firm (35-75 lawyers):..... $138,438 to $168,125
- Albany, large firm (75 + lawyers): ..... $149,760 to $223,680
  Albany, midsize firm (35-75 lawyers):..... $106,320 to $129,120
- Buffalo, large firm (75 + lawyers):..... $145,860 to $217,855
  Buffalo, midsize firm (35-75 lawyers):..... $103,551 to $125,758

PRIVATE ARBITRATION

The average hourly rate for private arbitrators at the American Arbitration Association has remained stable over the past four years, ranging from $250 to $350. An arbitrator paid $250 an hour while averaging 30 hours a week over the course of 48 weeks would earn a salary of $360,000 annually. Other private arbitrators can charge significantly more.

AAA arbitrators receive an average of $850 a day for fast-track and expedited cases involving disputes of less than $75,000. Such an arbitrator would earn $204,000 over the course of 48 weeks.

NON-PROFIT SECTOR

The average salary for a CEO of a not-for-profit in New York State is around $230,000.[39]

E. THE STATE'S FISCAL CONDITION SUPPORTS CONTINUING PAY PARITY BETWEEN SUPREME COURT JUSTICES AND FEDERAL DISTRICT COURT JUDGES AND KEEPS STATE JUDICIAL PAY GROWTH IN LINE WITH GROWTH IN THE COST OF LIVING

Chapter 60 of the Laws of 2015 requires that the Commission, in undertaking its work, consider "the state's ability to fund increases in compensation and non-salary benefits" for judges, legislators and Executive Branch officials. As the Legislature clearly recognized, no responsible analysis of the need for judicial salary adjustment can be complete without an assessment of the State's fiscal condition and its ability to meet the costs of any such adjustment. In 2019 and for the immediate future, that condition appears generally healthy enough to meet the very modest cost of the recommendation we now urge upon the Commission.

The current year cost to the State for paying the salaries of judges of the Unified Court System is $265.7 million. Each one percent increase in those salaries would cost the State an additional $2.7 million, which is approximately .115 percent (or less than one-eighth of one percent) of the Judiciary's 2019-20 $2.338 billion All Funds spending plan, or just slightly more than 15 ten thousandths of one percent of the State's $177 billion FY 2019-20 All Funds spending plan.

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38. Robert Half, 2020 Salary Guide for the Legal Field, http://www.roberthalf.com/workplace-research/salary-guides.

39. *See* charity Navigator sector analyzer at https://www.charitynavigator.org/index.cfm?bay=tools.sector.

In this submission, we ask that the Commission recommend a series of four very modest cost-of-living adjustments for New York's State-paid judges over the four fiscal years beginning April 1, 2020. The cost of these adjustments in each fiscal year, and the aggregate cost over the full four years is almost certain to be de minimis. Over the past four fiscal years, during which Federal District Court Judges have received annual cost-of-living adjustments, and during which New York State judges, by virtue of parity with the Federal Judiciary as recommended by the 2015 commission, have received the same adjustments, those adjustments have averaged 1.28% per year. Applying the same cost-of-living adjustments to New York State judges over the next four years would cost the State $13.9 million, or an average of $3.46 million annually.

By any measure, as shown in the State Economic Timeline (Appendix H), this is a cost that the State, given its present economic wherewithal, is well able to absorb.

V. PROVIDING FOR COST OF LIVING ADJUSTMENTS FOR 2021, 2022 AND 2023

In addition to recommending a salary increase for New York State Judges in 2020, premised on pay parity between State Supreme Court Justices and Federal District Court Judges, this Commission also should recommend that Supreme Court Justices remain in such parity, effective April 1st in each of 2021, 2022, and 2023. This would ensure that all Supreme Court Justices (and all other State-paid judges whose salaries are fixed as a fraction of the salary of these Justices) receive annual pay adjustments each April 1st equal to the cost-of-living adjustments provided by the Federal government to the Federal Judiciary effective each preceding January 1st.

As noted above, until the quadrennial judicial salary commission process was instituted in 2011, judicial compensation in New York followed a familiar, decades-long cyclical pattern: after years of frozen pay, judges typically received large catch-up adjustments that restored the value of salaries in part but failed to compensate judges for the significant economic losses incurred on account of inflation during the frequently long periods between these adjustments. Particularly hard hit were those judges who, whether for reasons of the mandatory retirement age or end of term or health, were unable to remain in service long enough to benefit from the next salary adjustment and then to serve long enough so that thereafter to take full advantage of it via augmentation of their pension benefits. The Commission's immediate predecessor, in 2015, recognized this pattern and the hardship it had created for judges, and sought to change the State's practice accordingly. The 2015 Commission, following the lead of its 2011 predecessor, identified Federal judicial pay as the benchmark for New York State judicial salaries and recommended that State judges enjoy parity with the Federal Judiciary. Inasmuch as Federal judicial pay had built-in annual cost-of-living adjustments, the prior Commission ensured that State judges would begin to receive the same annual cost-of-living adjustments,

We urge that present Commission continue this equitable practice over the next four years. A commitment by this Commission to provide for future cost-of-living adjustments continues to be the simplest means of promoting equity in the compensation of judges and of assuring public confidence that the Judiciary will remain able to attract the able and experienced lawyers it needs to meet the demands of operating a modern court system. We believe that sitting judges and those who aspire to the bench – as well as other public officials within the Commission's jurisdiction – should be able reasonably to anticipate future compensation levels and to plan appropriately for the financial needs of their families, and that it is unfair to require such officials and their families to endure long periods of salary stagnation.[40] Failure to provide for the periodic adjustment of compensation harms the State institutionally because it discourages recruitment and retention of many able individuals who otherwise would make fine judges and other public officers. We believe that this principle, firmly established by the work of the First and Second Commissions, remains indelible.

40. Of particular note here is the attrition rate for New York judges – the number who leave service each year through retirement, removal, electoral defeat, or death – reveals that 87 judges left office in 2018-19. This compares 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.

VI. CONCLUSION

The Judiciary respectfully requests that the Commission recommend continuation, throughout the 2020-2021 period, of pay parity between New York's Supreme Court Justices and Federal District Court Judges now in effect as the result of the recommendation of earlier commissions. The State's current fiscal condition remains robust and provides no obstacle to implementation of this recommendation. Further, the 2015 Commission's unequivocal commitment to ongoing pay parity with the Federal Judiciary through annual cost-of-living adjustments advances important policy interests, including preventing harm to a significant number of judges who may be compelled by age or other circumstances to retire from the bench during what otherwise could be potentially long gaps between pay adjustments.

In addition to the foregoing, the Judiciary urges that the Commission recommend that:

1. The salaries of judges of the appellate courts (*i.e.,* the Court of Appeals, the Appellate Divisions, and the Appellate Terms) be adjusted to reflect their present proportion to the salary of a Supreme Court Justice.

2. In accordance with longstanding practice, the salaries of Judges of the Court of Claims be maintained in parity with those of Supreme Court Justices.

3. The salaries of judges of the trial courts of lesser jurisdiction (County Court, Family Court, Surrogate's Court, NYC Civil and Criminal Courts, District Court, and City Court), and of all Administrative Judges, be preserved as the same fractions of a Supreme Court Justice's salary as were recommended by the 2015 salary commission and as are now in effect.

This Commission has a vital mission. It builds upon the work of the 2011 and 2015 Commissions which ended a decades-long period in which the process for fixing judicial compensation often lacked fairness, regularity, and objectivity. As the result of that work, and for the first time in State history, rational and transparent principles have governed the determination of judicial salary adjustments – producing parity between the compensation of State Supreme Court Justices and Federal District Court Judges. This Commission now has the opportunity to extend and strengthen this principle of parity, and all that it represents. We urge the Commission to take this important step for the sake of protecting and preserving a strong and independent State Judiciary committed to operational and decisional excellence.

APPENDIX

APPENDIX A

L. 2019, CH. 59, PART VVV
L. 2015, CH. 66, PART E

L. 2019, CH. 59, PART VVV

(Brackets and strike through indicate deletions)

Section 1. Subdivision 7 of section 3 of part E of chapter 60 of the laws of 2015, establishing a commission on legislative, judicial and executive compensation, and providing for the powers and duties of the commission and for the dissolution of the commission, is amended to read as follows:

7. The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than the thirty-first of December of the year in which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation. Any findings, conclusions determinations and recommendations in the report must be adopted by a majority vote of the commission and [~~findings, conclusions, determinations and recommendations with respect to executive and legislative compensation~~] shall also be supported by at least one member appointed by each appointing authority. Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation and January first of the year as to which such determination applies to legislative and executive compensation.

§ 2. This act shall take effect immediately.

L. 2015, CH. 60, PART E.

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PART E

Section 1. Chapter 567 of the laws of 2010 relating to establishing a special commission on compensation, and providing for their powers and duties; and to provide periodic salary increases to state officers is REPEALED.

§ 2. 1. On the first of June of every fourth year, commencing June 1, 2015, there shall be established a commission on legislative, judicial and executive compensation to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for members of the legislature, judges and justices of the state-paid courts of the unified court system, statewide elected officials, and those state officers referred to in section 169 of the executive law.

2. (a) In accordance with the provisions of this section, the commission shall examine: (1) the prevailing adequacy of pay levels and other non-salary benefits received by members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law; and

(2) the prevailing adequacy of pay levels and non-salary benefits received by the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York and determine whether any of such pay levels warrant adjustment; and

(b) The commission shall determine whether: (1) for any of the four years commencing on the first of April of such years, following the year in which the commission is established, the annual salaries for the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York warrant an increase; and

(2) on the first of January after the November general election at which members of the state legislature are elected following the year in which the commission is established, and on the first of January following the next such election, the like annual salaries and allowances of members of the legislature, and salaries of statewide elected officials and state officers referred to in section 169 of the executive law warrant an increase.

3. In discharging its responsibilities under subdivision two of this section, the commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.

§ 3. 1. The commission shall consist of seven members to be appointed as follows: three shall be appointed by the governor; one shall be appointed by the temporary president of the senate; one shall be appointed by the speaker of the assembly; and two shall be appointed by the chief judge of the state, one of whom shall serve as chair of the commission. With regard to any matters regarding legislative or executive compensation, the chair shall preside but not vote. Vacancies in the commission shall be filled in the same manner as original appointments. To the extent practicable, members of the commission shall have

experience in one or more of the following: determination of executive compensation, human resource administration or financial management.

2. The commission shall only meet within the state, may hold public hearings, at least one of which shall be open for the public to provide comments and shall have all the powers of a legislative committee pursuant to the legislative law. It shall be governed by articles 6, 6-A and 7 of the public officers law.

3. The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

4. No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

5. To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

6. The commission may request, and shall receive, reasonable assistance from state agency personnel as necessary for the performance of its function.

7. The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than the thirty-first of December of the year in which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation. Any findings, conclusions, determinations and recommendations in the report must be adopted by a majority vote of the commission and findings, conclusions, determinations and recommendations with respect to executive and legislative compensation shall also be supported by at least one member appointed by each appointing authority. Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation and January first of the year as to which such determination applies to legislative and executive compensation.

8. Upon the making of its report as provided in subdivision seven of this section, each commission established pursuant to this section shall be deemed dissolved.

§ 4. Date of entitlement to salary increase. Notwithstanding the provisions of this act or of any other law, each increase in salary or compensation of any officer or employee provided by this act shall be added to the salary or compensation of such officer or employee at the beginning of that payroll period the first day of which is nearest to the effective date of such increase as provided in this act, or at the beginning of the earlier of two payroll periods the first days of which are nearest but equally near to the effective date of such increase as provided in this act; provided, however, the payment of such salary increase pursuant to this section on a date prior thereto instead of on

such effective date, shall not operate to confer any additional salary rights or benefits on such officer or employee. The annual salaries as prescribed pursuant to this act whenever adjusted pursuant to the provisions of this act, shall be rounded up to the nearest multiple of one hundred dollars.

§ 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

PART F

Section 1. This act shall be known and may be cited as the "Infrastructure investment act".

§ 2. For the purposes of this act:

(a) "authorized state entity" shall mean the New York state thruway authority, the department of transportation, the office of parks, recreation and historic preservation, the department of environmental conservation and the New York state bridge authority.

(b) "best value" shall mean the basis for awarding contracts for services to the offerer that optimize quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:

1. The quality of the contractor's performance on previous projects;

2. The timeliness of the contractor's performance on previous projects;

3. The level of customer satisfaction with the contractor's performance on previous projects;

4. The contractor's record of performing previous projects on budget and ability to minimize cost overruns;

5. The contractor's ability to limit change orders;

6. The contractor's ability to prepare appropriate project plans;

7. The contractor's technical capacities;

8. The individual qualifications of the contractor's key personnel;

9. The contractor's ability to assess and manage risk and minimize risk impact; and

10. The contractor's past record of compliance with article 15-A of the executive law.

Such basis shall reflect, wherever possible, objective and quantifiable analysis.

(c) "capital project" shall have the same meaning as such term is defined by subdivision 2-a of section 2 of the state finance law.

(d) "cost plus" shall mean compensating a contractor for the cost to complete a contract by reimbursing actual costs for labor, equipment and materials plus an additional amount for overhead and profit.

(e) "design-build contract" shall mean a contract for the design and construction of a capital project with a single entity, which may be a team comprised of separate entities.

(f) "procurement record" means documentation of the decisions made and the approach taken in the procurement process.

§ 3. Notwithstanding the provisions of section 38 of the highway law, section 136-a of the state finance law, section 359 of the public authorities law, section 7210 of the education law, and the provisions of any other law to the contrary, and in conformity with the requirements of this act, an authorized state entity may utilize the alternative delivery method referred to as design-build contracts, in consultation with relevant local labor organizations and construction industry, for capital projects related to the state's physical infrastructure,

APPENDIX B

FINAL REPORT OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION (AUGUST 29, 2011)

FINAL REPORT
OF THE
SPECIAL COMMISSION
ON JUDICIAL
COMPENSATION

AUGUST 29, 2011

SPECIAL COMMISSION ON JUDICIAL COMPENSATION

P.O. BOX 7342 - ALBANY, NEW YORK 12224

August 29, 2011

The Honorable Andrew M. Cuomo
Governor of the State of New York
State Capital
Albany, New York 12224

The Honorable Dean Skelos
President Pro Tempore of the New York State Senate
Legislative Office Building, Room 909
Albany, New York 12247

The Honorable Sheldon Silver
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Jonathan Lippman
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Cuomo, Temporary President Skelos, Speaker Silver and Judge Lippman:

I am pleased to submit this report on behalf of the Special Commission on Judicial Compensation (the "Commission"). This report outlines the Commission's recommendations with respect to setting compensation for judges and justices of the State-paid courts of the Unified Court System.

The Commission has considered various factors in setting what we believe are appropriate judicial compensation levels in light of the State's current fiscal situation. The Commission received and considered many comments and letters, many of which are attached to and referenced in this report. All of the comments and submissions that have been received by the Commission may be found on the Commission's website: www.judicialcompensation.ny.gov.

I believe the Commission has come to a reasoned and fair result to address the inequity that currently exists in judicial pay for the next four years. I would also like to highlight that judicial salary levels will be reviewed again in 2015 by another statutorily-created Commission.

I would like to commend the members of the Commission for their hard work, ideas, thoughtful discussion, and partnership while undertaking this important task. I am honored to have had the opportunity to work with each member of this Commission.

Respectfully submitted,

William C. Thompson, Jr.
Chair

TABLE OF CONTENTS

Members of the Special Commission on Judicial Compensation

William C. Thompson, Jr. is the Chair of the Judicial Compensation Commission. Currently, Mr. Thompson is the Chief Administrative Officer/Senior Managing Director at Siebert Brandford Shank & Co. In addition, he is the Chair of the Battery Park City Authority. From 2002 to 2009, Mr. Thompson served as Comptroller of New York City. Before being elected to public office, he was appointed to be Brooklyn's representative to the New York City Board of Education, where he later became President for five terms. In 1993, he was the Senior Vice President at an investment firm. From 1983-1992, Mr. Thompson was the Deputy Borough President of Brooklyn. He is a graduate of New York City Public Schools and Tufts University.

Richard Cotton is the Executive Vice President and General Counsel of NBC-Universal and Chairman of the U.S. Chamber of Commerce Coalition against Counterfeiting and Piracy. Mr. Cotton has been at NBC for more than 20 years, serving as General Counsel except for his service as president and Managing Director of CNBC Europe from 2000 to 2004. Prior to NBC, during the 1980's, he practiced law in Washington, DC, and then served as the President and CEO of HCX, Inc., a Washington-based management company. During the late 1970's, Mr. Cotton held several high-level positions in the U.S. Departments of Health, Education, and Welfare and Energy. In the early 1970's, he served as law clerk to Judge J. Skelly Wright on the US Court of Appeals for the DC Circuit and then to Justice William J. Brennan, Jr. on the US Supreme Court.

William Mulrow is a Senior Managing Director at Blackstone. He has also been Chairman of Sterling Suffolk Racecourse LLC since August 2007. He was a Director of the Federal Home Loan Bank in New York City, the Municipal Assistance Corporation and the United Nations Development Corporation. In addition, Mr. Mulrow has served on the Boards of several academic institutions including the State and Local Government Center at the Kennedy School of Government at Harvard University, the Maxwell School for Public Affairs at Syracuse University and the Fordham Preparatory School in the Bronx. Mr. Mulrow earned his BA from Yale University and his MPA from Harvard University's John F. Kennedy School of Government.

James Tallon, Jr. is President of the United Hospital Fund of New York. Prior to joining the Fund in 1993, he represented Binghamton and parts of Broome County in the New York State Assembly for nineteen years. Mr. Tallon is currently chair of The Commonwealth Fund, and he chairs the Kaiser Commission on Medicaid and the Uninsured. Mr. Tallon serves as Secretary/Treasurer of the Alliance for Health Reform and also serves on the boards of the Institute on Medicine as a Profession and the New York eHealth Collaborative. In addition, Mr. Tallon is a member of the advisory board for the Jonas Center for Nursing Excellence and the New York State Board of Regents. He headed the Health Care Policy Advisory Committee during the transition period in 2006 and led the 1998-99 planning process which established the National Quality Forum. Mr. Tallon is a former member of the boards of the Joint Commission on Accreditation of Healthcare Organizations and the Center for Health Policy Development.

****Robert B. Fiske, Jr.** is Senior Counsel at Davis Polk & Wardwell LLP, the firm he joined upon graduation from law school. He graduated from Yale University in 1952 and the University of Michigan Law School in 1955. Mr. Fiske was an Assistant United States Attorney in the Southern District of New York from 1957 to 1961. He was appointed United States Attorney for the Southern District of New York by President Gerald Ford in 1976 and served in that position until 1980. While United States Attorney, he served as Chairman of the Attorney General's Advisory Committee of the United States Attorneys. He also served as Independent Counsel in the Whitewater investigation from January to October 1994. He has served as Chairman of a Judicial Commission on Drugs and the Courts appointed by former New York State Chief Judge Judith S. Kaye and as a member of the Commission for the Review of FBI Security Programs (Webster Commission). Mr. Fiske is a past President of the American College of Trial Lawyers and of the Federal Bar Council. He has served as Chairman of the Standing Committee on Federal Judiciary of the American Bar Association and as Chairman of the Planning and Program Committee of the Second Circuit Judicial Conference.

****Kathryn S. Wylde** is President and CEO of the nonprofit Partnership for New York City. She joined the Partnership in 1982, serving as President and CEO of both the New York City Investment Fund and the Housing Partnership Development Corporation. Ms. Wylde is also the Deputy Chair of the Board of the Federal Reserve Bank of New York, and serves on a number of boards and advisory groups, including the Mayor's Sustainability Advisory Board, NYC Economic Development Corporation, NYC Leadership Academy, the Research Alliance for NYC Public Schools, the Manhattan Institute, the Lutheran Medical Center, the Sila Calderon Foundation and the Independent Judicial Election Qualification Commission for the First Judicial District.

****Mark S. Mulholland** is Managing Partner at Ruskin Moscou Faltischek and a senior member of the firm's Litigation Department. Prior to joining the firm in 1991, Mr. Mulholland was at Willkie Farr & Gallagher in their commercial litigation department. He also served as a Captain in the U.S. Army Judge Advocate General's Corps and was the Senior Defense Counsel at the National Training Center at Ft. Irwin, California. In addition, he has served as Special Assistant to the U.S. Attorney for the Central District of California. Mr. Mulholland was elected as a Board Member of Brookhaven Memorial Hospital Medical Center in 2008. He served as a Trustee and Vice President of the Board of Education in his home village in the Town of Babylon, was selected to serve as a Board Member of the Long Island Aquarium and was appointed a Public Member of the New York Mercantile Exchange Adjudication Committee. He is a member of the New York State Bar Association, the Nassau County Bar Association and the Suffolk County Bar Association. Mr. Mulholland is a frequent contributor to the *New York Law Journal* and serves as a Mediator in the Eastern District of New York's Federal Court Mediation Program. Mr. Mulholland earned his BA, cum laude, from the University of Notre Dame and his JD, cum laude, from the State University of New York at Buffalo.

**** Denotes members of the Commission that opposed the final recommendations of the Commission and did not join in this report. Each dissenting member has submitted dissenting statements, which are attached to this report as Part Two.**

PART ONE
FINAL REPORT OF THE COMMISSION

I. Introduction

A diverse and thriving judiciary is central to every aspect of society. New York State is home to some of the most celebrated jurists and we must ensure that it continues to attract top talent to the bench. One way to ensure this is by adequately paying our judges. However, 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. At the same time, the economy is faltering and the State is facing an unprecedented budget crisis, both of which have affected every citizen of the State. Therefore, the mandate of this Commission must be to balance these facts, objectively review current judicial salaries and bring them to a level that is fair and reasonable in light of the current economic climate.

II. Statutory Mandate

Chapter 567 of the Laws of 2010 created the Special Commission on Judicial Compensation ("Commission") to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system."[1] The Commission consists of seven members: three members are appointed by the Governor, including the Chair; two members are appointed by the Chief Judge of the Court of Appeals; one member is appointed by the Temporary President of the Senate; and one member is appointed by the Speaker of the Assembly.

[1] *See* Chapter 567 of the Laws of 2010. (Appendix A).

The Commission must make its final, binding recommendations to the Governor, Legislature and Chief Judge of the State within 150 days of establishment.[2] After issuing its final report, the Commission will dissolve. However, a new commission will be established every four years to review and make recommendations with respect to State judicial compensation.

Pursuant to its statutory authority, the Commission must take a variety of factors into consideration in making its final recommendations, including, but not limited to:

- The overall economic climate;
- Rates of inflation;
- Changes in public-sector spending;
- The levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and
- The State's ability to fund increases in compensation and non-salary benefits.

III. Findings & Recommendations of the Commission

In furtherance of its statutory mission, the Commission held meetings in New York City on July 11, August 8, and August 26, 2011 and a public hearing in Albany on July 20, 2011. The Commission received a number of written submissions, comments and testimony, which, in addition to the Commission members' independent research and thought, provided information relevant to the required statutory considerations and greatly informed these final

[2] The recommendations are deemed binding unless superseded by legislative action.

recommendations. The following sets forth the findings of the Commission with regard to setting judicial compensation levels for New York State and reflects the final vote of the Commission held on August 26, 2011.

a. *Most Recent Judicial Salary Increase*

The State became responsible for paying all judicial salaries pursuant to the Unified Court Budget Act, enacted in 1977.[3] Since 1977, the State has increased judicial salaries only six times, with the last increase taking effect in 1999.[4]

In 1997, prior to the most recent judicial salary increase, then-Chief Judge Judith Kaye established a special Commission to review the Compensation of New York State Judges. In 1999, the New York State Legislature enacted the recommendations of that judicial commission, with the salaries of State Supreme Court justices set to the United States District Court level of $136,700.[5] However, while District Court Judges have received several raises since 1999, and are currently paid an annual salary of $174,000, judges in New York State have received no salary increase since 1999. Current judicial salary levels for the Court of Appeals, Intermediate Appellate Courts, Court of Claims, Supreme Court and various countywide and citywide courts are set forth below:[6]

[3] *See* Chapter 966 of the Laws of 1976.
[4] A comprehensive history of judicial salary adjustments since 1977 may be found in the Office of Court Administration's "Submission to the 2011 Commission on Judicial Compensation," (the "OCA Submission"), Supplemental Appendix at 23-43. (Appendix C).
[5] *See* Chapter 630 of the Laws of 1998.
[6] *See* N.Y. Judiciary Law Article 7-B. Salaries for judges in countywide & citywide courts vary by jurisdiction. A comprehensive listing of those salaries may be found in the OCA Submission, Supplemental Appendix at 12-21. (Appendix C).

Statewide Courts	Salary
Court of Appeals	
Chief Judge:	$156,000
Associate Judge:	$151,200
Appellate Division	
Presiding Justice:	$142,700
Associate Justice:	$139,700
Appellate Term	
Presiding Justice:	$142,700
Associate Justice:	$139,700
Supreme Court	
Justice:	$136,700
Court of Claims	
Presiding Judge:	$144,000
Judge:	$136,700
Countywide and Citywide Courts	
Judge (various):	$27,200 - $136,700

b. *Salary Comparisons*

The Commission has considered the salary levels of other New York State officials and employees as well as judicial salaries in other states.[7] For example, annual salaries of other top New York State officials are as follows: the Governor ($179,000); the Attorney General ($151,500);[8] State Comptroller ($151,500);[9] Members of the Legislature ($79,500 plus a per diem);[10] and Executive Commissioners (maximum of $136,000).[11]

[7] A salary list of various New York State employees can be found in the Coalition of New York State Judicial Associations' "Presentation to the New York State Judicial Compensation Commission," June 10, 2011 (the "Coalition Submission") at 102-115. A salary list of salaries of New York City lawyers in private practice and physicians can be found in the Coalition Submission, at 133-137. (Appendix D).
[8] *See* N.Y. Exec. Law Section 60.
[9] *See* N.Y. Exec. Law Section 40.
[10] *See* N.Y. Exec. Law Section 5. Note that members of the Legislature work on a part-time basis.
[11] *See* N.Y. Exec. Law Section 169.

Annual salaries of the judges at the trial court level in the northeast are as follows: New Jersey ($165,000); Pennsylvania ($164,602); Connecticut ($146,780); and Massachusetts ($129,624). [12] The current annual salary of a U.S. District Court judge is $174,000.

c. *Other Factors*

Many of the submissions received by the Commission detail the economic harm that has befallen New York's judges as a result of the stagnated pay and highlighted the State's need for a fairly compensated judiciary.[13] For example, as a result of the lack of salary increases for the past twelve years, pay for New York's Supreme Court justices currently ranks twenty-first in the nation and last in the nation when salary is adjusted for cost of living.[14] Cost of living, as determined by the Consumer Price Index – Northeast Urban Region ("CPI-U")[15] has increased by approximately 41 percent since 1999.[16] Over the same period, caseloads for State judges have also steadily increased.[17]

However, notwithstanding the above, the Commission must also be mindful of the current economic climate of the State. The State has and will continue to face multi-billion dollar budget gaps, with a projected deficit of $2.5 billion next year.[18] In determining an appropriate judicial salary increase, the Commission must take into account how that increase will affect the State's financial situation.

[12] *See* OCA Submission, Supplemental Appendix at 64-66. (Appendix C).
[13] *See* Commission website for all submissions received: www.judicialcompensation.ny.gov.
[14] *See* OCA Submission at 16. (Appendix B).
[15] U.S. Department of Labor, Bureau of Labor Statistics.
[16] *See* OCA Submission at 13. (Appendix B).
[17] *See* Coalition Submission at 16. (Appendix D).
[18] See Testimony of Robert Megna, Director of the Division of the Budget, July 20, 2011 (the "Budget Submission"), at 2-3. (Appendix E).

It is also important to note that the Commission's enacting statute provides for review of judicial salaries every four years, ensuring that judicial salaries will be reevaluated for adequacy on a regular basis going forward.

d. *Recommendations*

The Commission has determined that the appropriate benchmark at this time for the New York State judiciary is the compensation level of the Federal judiciary. The Commission recognizes the importance of the New York State judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is

valued and respected. The Federal judiciary sets a benchmark of both quality and compensation – New York State should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990's and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State's current financial challenges.

For the foregoing reasons, the Commission has determined that all New York State judges shall receive phased-in salary increases over the next three fiscal years, starting on April 1, 2012, with no increase in fiscal year 2015-16. State Supreme Court Justices will achieve parity with current Federal District Court judge salaries by the third fiscal year and will be paid an annual salary of $160,000 in fiscal year 2012-13, $167,000 in 2013-14 and $174,000 in 2014-15. All other judges will receive proportional salary increases. Increases for each judicial salary level in each fiscal year will be as follows:[19]

[19] Salary chart prepared by the Office of Court Administration.

Court	April 1, 2012	April 1, 2013	April 1, 2014
Court of Appeals			
Chief Judge:	$182,600	$190,600	$198,600
Associate Judge:	$177,000	$184,800	$192,500
Appellate Division			
Presiding Justice:	$172,800	$180,400	$187,900
Associate Justice:	$168,600	$176,000	$183,300
Appellate Term			
Presiding Justice:	$167,100	$174,400	$181,700
Associate Justice:	$163,600	$170,700	$177,900
Administrative Judges			
Dep. CAJ (NYC):	$168,600	$176,000	$183,300
Dep. CAJ (outside NYC):	$168,600	$176,000	$183,300
AJ (in NYC; Jud. Dist.; county):	$165,700	$172,900	$180,200
Supreme Court			
Justice:	$160,000	$167,000	$174,000
Court of Claims			
Presiding Judge:	$168,600	$176,000	$183,300
Judge:	$160,000	$167,000	$174,000
County Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $131,400 on 3/31/12:	$153,800	$160,600	$167,300
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $122,700 on 3/31/12:	$143,700	$149,900	$156,200
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Family Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Surrogate's Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $135,800 on 3/31/12:	$159,000	$166,000	$172,900
Earning $129,900 on 3/31/12:	$152,100	$158,700	$165,400
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Civil Court of NYC and Criminal Court of NYC			
Judge of the Civil Court:	$147,100	$153,500	$159,900
Housing Judge of the Civil Court:	$135,100	$141,000	$146,900
Judge of the Criminal Court:	$147,100	$153,500	$159,900

District Court			
Pres., Bd. Of Judges (Nassau):	$148,600	$155,100	$161,600
Judge (Nassau):	$143,700	$149,900	$156,200
Pres., Bd. Of Judges (Suffolk):	$148,600	$155,100	$161,600
Judge (Suffolk):	$143,700	$149,900	$156,200
City Courts outside NYC			
Earning $119,500 on 3/31/12:	$139,900	$146,000	$152,200
Earning $118,300 on 3/31/12:	$138,500	$144,600	$150,600
Earning $116,800 on 3/31/12:	$136,800	$142,700	$148,700
Earning $115,100 on 3/31/12:	$134,800	$140,700	$146,600
Earning $113,900 on 3/31/12:	$133,400	$139,200	$145,000
Earning $108,800 on 3/31/12:	$127,400	$133,000	$138,500
Earning $81,600 on 3/31/12:	$95,600	$99,700	$103,900
Earning $54,400 on 3/31/12:	$63,700	$66,500	$69,300
Earning $27,200 on 3/31/12:	$31,900	$33,300	$34,700

PART TWO

DISSENTING STATEMENTS

I. Dissenting Statement of Robert B. Fiske, Jr.

Taking all of the statutory factors into account, I have said that the sensible and fair solution would be to increase salaries, as of April 1, 2012 to $195,754 – the level that judges would be at if they had received a cost-of-living increase every year since 1999 – with annual cost-of-living increases over the next three years. Mindful of the Legislature's instruction to consider rates of inflation and the state's economic condition, an increase to $195,754 would do no more than restore to judges the purchasing power that they had in 1999. It would not compensate for the $330,000 that a judge on the bench since 1999 has lost as a result of the salary freeze, it would not amount to any sort of a raise, as that term is commonly understood, and it would still leave New York in the bottom half of all states in judicial compensation when adjusted for cost-of-living.

Nonetheless, I cannot say that the views of the majority of the Commission that the state judges should be restored to parity with the federal judges are unreasonable. I could accept parity with federal judges, but not the phase-in proposed by the majority. The phase-in only compounds the financial injury that state judges have experienced over the last twelve years, and particularly hurts judges approaching retirement, most of whom have served on the bench for the entire length of the salary freeze. And I concur with the statement of Commissioner Kathryn Wylde concerning the symbolic importance of an immediate increase to the federal level.

No discussion of the state's ability to fund increased judicial compensation can be complete without noting what the state has saved by failing to adjust judicial salaries for twelve

years. Since 1999, by not giving judges appropriate cost-of-living increases, the state has saved approximately $515 million to spend in other areas. Increasing judicial salaries to $195,754 would cost a fraction of that amount – $75 million (less than 15%) – and immediately restoring parity with federal judges would cost even less. I also believe that judges should have received a cost-of-living increase in 2015 to ensure that judicial salaries maintain their spending power.

New York's judges have been underpaid for more than a decade. While salaries have remained stagnant, caseloads have climbed, leading to a significant increase in the number of judges leaving the bench. I regret that the Commission's recommendation does not go far enough in compensating the state's judiciary or in remedying a constitutional violation twelve years in the making.

II. Dissenting Statement of Kathryn S. Wylde

The report of the Judicial Compensation Commission presents a reasonable and fair recommendation for judicial salary increases, taking account of the difficult fiscal and economic conditions facing New York State. The decision to bring state judges into parity with their federal counterparts over three years, however, does not provide the immediate redress that New York's judiciary hoped for and, I believe, deserve. For twelve years, judicial salaries were held hostage to tangential considerations, exposing judicial leadership to public humiliation and diminishing their status. Ultimately, the judiciary was forced to sue the state in order to enforce its constitutional position as an independent, co-equal branch of government. In public testimony, letters and reports, the judiciary made clear to the Commission that the long struggle for fair compensation was not just about money, but equally about the extent to which the judiciary is valued and respected by the citizens of New York State. I voted no on the recommendation of the Commission because I believe that immediate action to restore state judges to the compensation level of their federal counterparts would have made a more powerful statement about the critical importance to the state of a strong, highly qualified and independent judiciary.

III. Dissenting Statement of Mark S. Mulholland

New York's trial judges should be paid $192,000 annually. While I of course welcome any reasonable salary increase for New York's judiciary, I oppose the Commission's Report because it falls short of the mark. Slowly creeping judicial salaries up until 2014, only to reach an already outdated federal benchmark of $174,000, is insufficient.

This Commission was created to ensure the economic independence of New York's judiciary. Despite being a co-equal branch of our tripartite government, New York's judiciary is powerless to set its own pay. Judges have suffered powerlessly for twelve years while the Executive and Legislative branches have failed to agree to mete out even basic cost of living adjustments. Had they done so, New York's judges today would fairly be paid over $192,000 annually. The Commission fails its essential purpose by declining to propose an immediate adjustment to this level. Restoration would have signaled soundly that at last New York's judges are free from the shackles of politics.

The Commission ought to have recommended an annual trial-level salary of $192,000 for 2012, with consistent cost of living adjustments to follow. None of this would be a "raise" as the term is commonly used. The adjustment would simply have returned New York's judges to 1999 levels. But it would have ended an embarrassing era during which our judges have earned less than any other judges nationwide on a cost-adjusted basis, less than countless professionals within and without government, less than first-year law associates, and less even than the senior clerks who work for them.

But rather than seize the moment, the Commission is recommending an adjustment that will pay our judges in 2014 the same salary paid to federal judges in 2007. This, despite that the

federal level has been heavily criticized as out-of-date for three years already – and will be even more seriously stale come 2014. Our mission was to end the neglect – not perpetuate it.

I discount the comments submitted to the Commission by the Governor's Budget Director, Robert Megna. He stated incorrectly that our judges should be paid and treated as other State officers and employees, without regard to their judicial status. He thus ignored or failed to understand that the Commission's job was to ensure the economic independence of the Judiciary as a co-equal branch of government. We were required specifically to consider the judiciary's unique status – not ignore it. The Budget Director's analysis was wrong too as regards New York's ability to pay a fair salary, with a legitimate increase equaling less than 58 one thousandths of one percent of the total state budget. Mr. Megna admitted New York could cover the cost if need be. Our judges have already paid over $500 million toward the cost, through their salary forfeitures suffered since 1999. Judges would pay for the small increase going forward, too, without doubt, based on evidence that the Commission received regarding the role judge's play in attracting corporate activity to New York. The budget issue is a red herring, and does not excuse the Commission's failure to cure the problem it was created to correct.

APPENDIX C

FINAL REPORT OF THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION (DECEMBER 24, 2015)

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

FINAL REPORT ON JUDICIAL COMPENSATION

December 24, 2015

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

P.O. BOX 454, NEW YORK, NEW YORK 12224

December 24, 2015

The Honorable Andrew M. Cuomo
Governor of the State of New York
State Capitol
Albany, New York 12224

The Honorable John J. Flanagan
Temporary President and Majority Leader
State Capitol Building, Room 330
Albany, New York 12247

The Honorable Carl E. Heastie
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Jonathan Lippman
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Cuomo, Temporary President Flanagan, Speaker Heastie and Chief Judge Lippman:

I am pleased to submit this report on behalf of the Commission on Legislative, Judicial and Executive Compensation. Pursuant to chapter 60 of the Laws of 2015, this report sets forth the Commission's recommendations with respect to the compensation levels of judges and justices of the State-paid courts of the Unified Court System over the next four fiscal years.

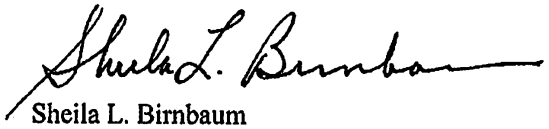
In furtherance of its statutory mandate, the Commission considered a broad range of pertinent data, beginning with the factors delineated in Part E of chapter 60. The Commission held a day-long public hearing and public meetings that were broadcast live over the Internet. The Commission carefully reviewed the public testimony and extensive written submissions received in connection with the question of appropriate compensation for New York State

judges. Witness lists, written submissions and other information about the Commission's work, including transcripts and videos of the Commission's public hearing and meetings, are available on our website at: www.nyscommissiononcompensation.org/index.shtml.

In recommending the restoration by 2018 of parity between the salary of a New York State Supreme Court Justice and that of a Federal District Court Judge, I believe the Commission has come to a fair and reasoned conclusion that is well supported by the factual record and historical precedent. Each of the last two adjustments to judicial compensation – by the Legislature in 1999 and by the Commission in 2012 – were premised on the principle of pay parity between Supreme Court Justices and Federal District Court Judges. I believe that implementation of the Commission's recommendations will result in equitable, appropriate and competitive judicial salary levels that will attract highly-qualified lawyers to the New York State bench, retain those judges and ensure the strong and independent judicial system that all New Yorkers need and deserve.

I would like to commend the members of the Commission for the hard work and expertise they have contributed to this initial phase of our statutory mission. I look forward to working closely and productively with them as we move forward with the next phase of our important mission – determining appropriate levels of legislative and executive compensation.

Respectfully submitted,



Sheila L. Birnbaum
Chair

TABLE OF CONTENTS

Members of the Commission on Legislative, Judicial and Executive Compensation

Sheila L. Birnbaum, the co-Head of the Global Products Liability and Mass Torts practice at Quinn Emanuel Urquhart & Sullivan, has been national counsel or lead defense counsel for numerous Fortune 500 companies in some of the largest and most complicated tort cases in the country. She was chosen as the leading products liability lawyer in the world by *The International Who's Who of Product Liability*, one of the 10 most admired product liability attorneys in 2010 by *Law 360,* and one of the 25 most influential women in New York by *Crain's New York Business*. As a court-appointed mediator in federal court, she mediated a $500 million settlement for 92 families of victims of the 2001 terrorist attack on the World Trade Center. In 2011, Attorney General Eric Holder appointed Ms. Birnbaum to serve as Special Master of the reactivated September 11th Victim Compensation Fund program. She oversees the administration of the $2.7 billion fund created under the James Zadroga 9/11 Health and Compensation Act. Ms. Birnbaum is an appointee of the Chief Judge.

Barry A. Cozier is Senior Counsel in the litigation practice of LeClairRyan, where he represents institutions and individuals in complex business and commercial litigation, real estate litigation, estates litigation, federal and state appeals, arbitration and mediation. He also serves as a Special Master in state and federal court discovery proceedings. From 2006 to 2011, Mr. Cozier was a member of Epstein Becker & Green, P.C., in the firm's national litigation and labor and employment practice groups. He was formerly an Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department (2001-2006), Justice of the New York Supreme Court (1993-2001), Deputy Chief Administrative Judge for the NYS Courts (1994-1998), and a Judge of the Family Court (1986-1992). From 1998 to 2007, he also was an Adjunct Professor at Fordham University School of Law. Prior to his judicial service, Mr. Cozier was in private practice with a concentration in civil litigation, and served in various public sector legal positions. Mr. Cozier is an appointee of the Chief Judge.

Roman B. Hedges was Deputy Secretary of the New York State Assembly Committee on Ways and Means where he managed legislative operations, supervised research, and directed the budget, fiscal, and economic activities of the committee. He also served in a number of other positions in the Assembly. He was an Associate Professor of Political Science and Public Policy at the State University of New York at Albany where he taught graduate and undergraduate courses in American politics, research methodology, and public policy and conducted a research program in government, politics, and policy which resulted in numerous scholarly publications, professional papers, and reports. He is a member of the Board of the Dormitory Authority of the State of New York. He holds a Doctor of Philosophy and a Master of Arts degree from the University of Rochester, and a Bachelor of Arts degree from Knox College. Mr. Hedges is the appointee of the Speaker of the New York State Assembly.

Mitra Hormozi is General Counsel & Chief Compliance Officer for Revlon. Ms. Hormozi has significant experience in corporate law, compliance and complex litigation. Prior to Revlon, she was a partner at Zuckerman Spaeder LLP. Ms. Hormozi is a former Assistant U.S. Attorney,

who worked on high profile cases in the Eastern District of New York, and who also worked as a Special Deputy Chief of Staff to Governor Andrew Cuomo when he served as New York State Attorney General. She has a bachelor's degree from the University of Michigan and a J.D. degree from New York University School of Law. Ms. Hormozi is an appointee of the Governor.

Gary Johnson serves as Executive Legal Counsel at Medgar Evers College in Brooklyn, New York. He was Director of the New York State Governor's Office of Employee Relations (GOER) from 2007 to 2013. Admitted to the practice of law in 1986, he also served as an assistant counsel at GOER, and as an associate counsel at the New York State Office of Court Administration and the New York State United Teachers. Mr. Johnson served for 10 years as director of litigation at the NYS Public Employment Relations Board. Mr. Johnson is an appointee of the Governor.

James J. Lack was elected 12 times to the New York State Senate, beginning in 1978. He served successively as Chair of the Senate Elections, Labor and Judiciary Committees, retiring in 2002. Subsequently, he was appointed a Judge of the New York Court of Claims, where he served from 2003 to 2011. While in the Senate, Mr. Lack was elected Vice-President, President-Elect and President of the National Conference of State Legislatures (NCSL), and thereafter, as President of the Foundation of State Legislatures. He currently serves as a member of the New York State Advisory Committee on Judicial Ethics. Mr. Lack is a graduate of the University of Pennsylvania and the Fordham University School of Law. Mr. Lack is the appointee of the Temporary President and Majority Leader of the New York State Senate.

Fran Reiter is a partner with The Reiter Giuliani Group. Ms. Reiter served as Executive Deputy Director for State Operations under Governor Andrew Cuomo, and as both the Deputy Mayor for Economic Development and Planning and the Deputy Mayor for Planning and Community Relations in the administration of Mayor Giuliani. She has held several positions in the not-for-profit community, including Executive Director of the New York Shakespeare Festival/Joseph Papp Public Theater, and the President and CEO of the NY Convention & Visitors Bureau. In addition, Ms. Reiter has taught at Baruch College and New York University, and has served on the boards of many organizations, including the New York Public Library and the Weissman Center for International Business at Baruch College. Ms. Reiter is an appointee of the Governor.

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

New York State has long had one of the largest, busiest, and most distinguished court systems in the world. In 2014 alone, over 3.7 million new cases were filed in our state courts. These cases reflect every conceivable legal conflict arising in our complex society. New York State judges routinely face sophisticated commercial, banking and contract issues; cutting-edge constitutional questions of government powers and individual rights; high-stakes criminal prosecution and defense; difficult questions of family dissolution and violence; protection of vulnerable children and adults; issues involving tort injuries, and many more. Such cases, and such a court system, require judicial service of the highest quality and commitment. New York's Judiciary over the generations has produced many of the leaders of the American legal system, including John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, Charles Breitel and countless others who have contributed decisively to the State's stature as a world center of business, law, communications and culture. To sustain and enhance that stature, New York must maintain and strengthen its ability to attract the best and brightest legal minds to its Judiciary and retain them.

In recognition of this necessity, a Commission on Legislative, Judicial and Executive Compensation was established by statute in April 2015 with the charge of, inter alia, examining, evaluating and recommending appropriate levels of compensation for New York's judges over the next four fiscal years. Pursuant to its enabling act (L. 2015, c. 60), the Commission must issue its recommendations on judicial salaries by December 31, 2015; and each of these recommendations shall thereafter take effect and have the force of law on April 1 of the year to which it applies, unless sooner modified or abrogated by statute. In formulating its recommendations and fulfilling this mandate, the Commission has studied a broad range of pertinent data, held public meetings and a day-long public hearing, and engaged in extensive discussion and reflection. Its recommendations are as follows:

Recommendations

This Commission has determined that the salary of a New York State Supreme Court Justice shall be adjusted as follows. Effective April 1, 2016, the salary of such a Supreme Court Justice shall be fixed at 95% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2017, the salary of a Supreme Court Justice shall be adjusted to remain at 95% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2018, the salary of a Supreme Court Justice shall be fixed at 100% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2019, the salary of a Supreme Court Justice shall be adjusted to remain at 100% of the salary of a Federal District Court Judge in effect at that time. All other state judges shall receive proportionate adjustments, except that certain judges identified in section IV(B) of this Report shall receive adjustments intended to address longstanding inter- and intra-court pay disparities among judges of countywide and citywide courts.

Three members of the Commission dissented from the Commission's recommendation in section IV(A) relating to the benchmark salary of a New York State Supreme Court Justice.[1] The Commission voted unanimously in favor of the recommendation in section IV(B) relating to amelioration of pay disparities among judges of countywide and citywide courts.

This Commission believes that implementation of these recommendations 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.

[1] Commission members Mitra Hormozi, Gary Johnson and Fran Reiter dissent from the recommendations set forth in Section IV(A). A Dissenting Statement is set forth in Section V of this Report.

II. STATUTORY MANDATE

In March 2015, Part E of chapter 60 of the Laws of 2015 was enacted, providing for a quadrennial commission to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits" for judges, members of the Legislature, and certain Statewide elected officials and Executive Branch officers named in Executive Law § 169. The Commission is charged, first, with issuing "findings, conclusions, determinations and recommendations" to the Governor, the Legislature and the Chief Judge with regard to judicial compensation, by December 31, 2015. A separate report, relating to legislative and executive compensation, is due by November 15, 2016.

Chapter 60 sets forth a number of factors to guide the Commission's work of determining appropriate judicial salary levels, including, but not limited to, the overall economic climate in New York; rates of inflation; changes in public-sector spending; levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation.

The Commission is authorized to recommend adjustments in judicial salary levels during the four state fiscal years commencing on April 1, 2016.[2] Pursuant to chapter 60, each recommendation of the Commission for a salary adjustment carries the force of law as of April 1st of the year for which the adjustment has been recommended, unless sooner modified or abrogated by statute.

As prescribed in chapter 60, the Commission consists of seven members appointed by the leaders of all three branches of New York State government. Three members are appointed by

[2] The Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January 1 following a November general election of members of the Legislature (January 1, 2017 and January 1, 2019). The Commission is deemed dissolved following issuance of its report on November 15, 2016.

the Governor; two (including the Chair) by the Chief Judge; and one each by the Temporary President of the Senate and the Speaker of the Assembly. The Commission's findings and recommendations must be supported by majority vote.[3]

In furtherance of its statutory mission, the Commission held public meetings in New York City on November 2, December 7, and December 14. It also held a day-long public hearing in New York City on November 30, at which witnesses for 15 organizations and one individual testified. The public hearing and meetings were televised live on the Internet. In addition, the Commission invited written commentary and established post office and email addresses (nyscompensation@gmail.com) through which it received 23 written submissions from judicial associations, bar associations, corporate and business groups, good government groups, institutional litigants and other interested individuals and organizations. The written submissions, totaling many hundreds of pages, contributed greatly to the Commission members' independent research. The witness lists, written submissions, and other information about the work of the Commission, including transcripts and videos of the Commission's public hearing and meetings, are all available on its website at: www.nyscommissiononcompensation.org/index.shtml.

[3] The findings and recommendations concerning executive and legislative compensation likewise require a majority vote but they must also be supported "by at least one member appointed by each appointing authority." The Commission's Chair shall preside but not vote on matters relating to legislative and executive compensation.

III. FINDINGS

Based upon the public testimony and extensive written submissions, and upon its own research and deliberations, the Commission's findings are as follows:

(1) With brief exceptions, the compensation of New York's Judicial Branch has failed to keep pace with the rate of inflation since the 1970s. Since 1977, when the State assumed responsibility for paying judicial salaries, New York's judges have received seven pay adjustments, with the two most recent adjustments taking effect in 1999 and 2012. On January 1, 1999, pursuant to legislative enactment, the salaries of State Supreme Court Justices were equalized with the salaries of Federal District Judges, at $136,700. No further adjustment in State judicial compensation was made for a 13-year period until April 1, 2012. In the interim, inflation, as measured by the Consumer Price Index, increased by over 40%.[4]

(2) In December 2010, the Legislature enacted chapter 567 of the Laws of 2010, establishing a Commission on Judicial Compensation. That Commission's report and recommendations, issued in August 2011, following public meetings and a public hearing, recommended a judicial salary increase restoring pay parity between Supreme Court Justices and Federal District Court Judges at $174,000 by April 2014. Noting that State judicial pay had been on par with the federal judiciary in the late 1990's and at various times throughout the history of the court system, the 2011 Commission determined 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."[5] In response to the serious fiscal challenges then facing the state, the Commission determined that parity would be phased-in over a three-year period.

(3) Before such parity could be achieved, the salary of a Federal District Court Judge was reset to $197,100 in 2013, as a result of Beer v. United States, wherein the U.S. Court of Appeals for the Federal Circuit determined that Congress had improperly withheld six cost-of-living salary adjustments ("COLAs") authorized by the Ethics Reform Act of 1989.[6] With the COLAs

[4] See Submission of the Chief Administrative Judge to the 2015 Commission on Legislative, Judicial and Executive Compensation, at 17.

[5] Final Report of the Special Commission on Judicial Compensation, August 29, 2011, at 8.

[6] 696 F.3d 1174, 1185-86 (Fed. Cir. 2012), cert. denied, 133 S. Ct. 1997. In December 2013, the

provided to the federal judiciary in January of 2014 and 2015, the salary of a Federal District Court Judge is now $201,100, and is expected to be reset to $203,100 on January 1, 2016, based on a scheduled 1.0% COLA for civilian federal employees.[7]

(4) New York State is in a strong fiscal condition at the present time, as evidenced by recent statements of the Governor, the State Comptroller and the Division of the Budget declaring that the state is enjoying a period of sustained economic growth and has moved from a period of budget deficits to projected budget surpluses. By all indications, New York State expects to experience continued economic growth for the foreseeable future.[8] The projected additional cost to the state for the first phase of the Commission's recommendations is approximately $26.5 million for the next fiscal year, representing 19 one-thousandths of one percent (0.019%) of the overall state budget.

(5) Salary data for Legislators and high-ranking State government officials are not a reliable guide for judicial compensation, inasmuch as those public officers – whose salaries this Commission will address in 2016 – have not received pay adjustments since 1999. The Commission analyzed salary data for, among others, lawyers, including lawyers working in private practice and the public sector throughout New York State, executives in the non-profit sector, professionals in academia and public education, and government officials in New York City. New York State judges are underpaid relative to the compensation of the various categories of lawyers and professionals reviewed.

(6) The salary of a New York State Supreme Court Justice ranks 47th nationally among trial courts of general jurisdiction when adjusted for cost of living.[9] In terms of actual salary, New York ranks behind other jurisdictions such as the District of Columbia ($201,100), Hawaii ($193,248), Illinois ($190,758),

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holding in Beer was made applicable to all Article III federal judges by virtue of Barker v. United States, (No. 12-826 [Fed. Cl. Filed Nov. 30, 2012]).

[7] See Letter from the President – Alternative Pay Plan for Federal Civilian Employees, at https://www.whitehouse.gov/the-press-office/2015/08/28/letter-president-alternative-pay-plan-federal-civilian-employees. The expected Executive Order of the President giving effect to a COLA of 1.0% for 2016 has not yet been issued as of this writing.

[8] See Submission of the Associations of Justices of the Supreme Court of the State of New York and of the City of New York, at 31-34.

[9] Submission of the Chief Administrative Judge, at 19.

California ($189,041) and Alaska ($185,088). In terms of adjusted salary, New York ranks well behind every high-population state to which it is typically compared.[10]

(7) There is a generally accepted connection between a strong, well-qualified judiciary and a healthy state economy. 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. Representatives of the business community urged the Commission to recommend competitive judicial salaries capable of attracting and retaining highly qualified and experienced judges on the state bench, and expressed support for federal judicial pay as a benchmark.

(8) 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. The New York State court system is among the busiest and most complex in the world, with over 3.7 million new cases filed in 2014 alone, more than two and a half times the number of filings for the entire Federal Judiciary.[11] Most New York State Judges come to the bench after practicing law for a minimum of 10 years.[12] Judges are highly trained and experienced lawyers who often must accept a pay cut in order to serve the public.[13] Upon joining the bench, judges generally are barred from engaging in any other occupation or from earning outside income, and must abide by a strict ethical code that limits the ambit of their professional and personal activities.

(9) Current judicial salaries in New York reflect a number of anachronistic internal pay disparities. When the state assumed responsibility for paying the salaries of county- and city-level judges in 1977, it inherited a judicial salary

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[10] Id. at 18-19. For example, judicial compensation in Delaware ($180,733), a state known for its sophisticated commercial courts, ranks third nationally when adjusted for cost of living.

[11] Id. at 9-10.

[12] Exceptions are Judges of the County Courts, District Courts on Long Island, City Courts outside New York City, and Housing Judges of the New York City Civil Court, who must be members of the bar for at least 5 years.

[13] In many instances, they come to the Judiciary only after having served in other high public office or in prominent legal or business positions in the private sector – service that is essential to their later effectiveness on the bench.

structure that lacked consistency or logic. As a result, there are presently seven different salary levels for County Court judges; four salary levels for Family Court Judges; six salary levels for Surrogates; and six salary levels for City Court Judges. The state's judicial salary structure is beset by various anomalies, including county-level judges who earn different salaries even within the same county.

8

IV. RECOMMENDATIONS

A. Restoring Salary Parity Between Supreme Court Justices and Federal District Court Judges

In light of these findings, the Commission has determined that the appropriate benchmark for the New York State Judiciary remains the salary of a Federal District Court Judge, and that pay parity between Supreme Court Justices and Federal District Court Judges shall be restored in two phases.

- **Effective April 1, 2016, the salary of a New York State Supreme Court Justice shall be fixed at 95% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2017, the salary of a Supreme Court Justice shall be adjusted to remain at 95% of the salary of a Federal District Court Judge in effect at that time.**

- **Effective April 1, 2018, the salary of a Supreme Court Justice shall be fixed at 100% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2019, the salary of a Supreme Court Justice shall be adjusted to remain at 100% of the salary of a Federal District Court Judge in effect at that time.**

- **The salaries of all other state judges (including appellate and administrative judges) shall be adjusted on April 1, 2016, and April 1, 2018, to reflect their present proportion to the salary of a Supreme Court Justice, except that:**

  - **No County Court Judge, Family Court Judge or Surrogate's Court Judge shall earn less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% shall continue to be paid at that same percentage;**

  - **Judges of the New York City Civil Court, the New York City Criminal Court, and the District Court, shall earn 93% of a Supreme Court Justice's salary;**

  - **Full-time City Court Judges of courts outside New York City shall earn 90% of a Supreme Court Justice's salary (part-time City Court Judges shall earn the same proportion of the salaries of full-time City Court Judges that they**

now earn); and

- **Housing Judges of the New York City Civil Court shall earn 90% of a Supreme Court Justice's salary.**

Equalizing the salary levels of State Supreme Court Justices and Federal District Court Judges is a reasonable, appropriate step well supported by historical precedent. As the prior Commission on Judicial Compensation stated four years ago:

> The Commission recognizes the importance of the New York State Judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is valued and respected. The Federal Judiciary sets a benchmark of both quality and compensation – New York should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990's and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State's current financial challenges.

In 1999, the last time the Legislature adjusted state judicial compensation, it fixed the salary of a Supreme Court Justice at $136,700 – identical to the pay of a Federal District Court Judge at that time. At other times, including in 1978 and for the period 1985-1990, Supreme Court Justices earned salaries that were in close proximity with, or even higher than, those of their federal counterparts.

Moreover, given that the salary of a Federal District Court Judge has been indexed to annual COLAs received by federal employees since enactment of the Ethics Reform Act of 1989, restoring parity with the federal judiciary has the added virtue of bringing state judicial compensation in line with historic changes in the cost of living. Put simply, reestablishing parity with the federal judiciary means that state judicial salary levels will finally catch up to inflation. Given the history of judicial pay stagnation in New York, the size of that catch-up increase is not insignificant, but it is a fair and appropriate one that restores the purchasing power of their salaries by April 2018. Between the judicial pay adjustment of January 1, 1999, and the next

raise that took effect on April 1, 2012, New York's judges did not receive a single COLA. It has been estimated that a sitting Supreme Court Justice lost over $350,000 to inflation over that time period, while the same Justice serving from January 1999 through 2015 lost over $460,000 in salary dollars.[14] Unlike New York's judges, the vast majority of lawyers, comparable professionals, state employees and judges of other jurisdictions continued to receive fairly regular pay adjustments throughout this long time period.

Restoring parity with the federal judiciary reflects the importance that New York State attaches to providing competitive judicial salaries designed to attract and retain the best possible judges. Representatives of the state's business and legal communities expressed strong support for this principle. New York is a world center of business and finance, and its judiciary regularly faces some of the most complex banking, contract and commercial real estate issues in the nation. New York is home to a large and sophisticated legal community that includes many of the world's leading law firms and legal practitioners. New York is a center of journalism, education, entertainment, art, culture and communications, and its judges address cutting edge constitutional questions of freedom of expression and protection of intellectual property rights. New Yorkers are extraordinarily diverse in terms of income, ethnicity, religion, language and culture, and its judges are challenged to provide justice to persons who are impoverished, vulnerable, victimized and often unrepresented. Competitive judicial salaries are critical to the state's ability to attract and retain highly qualified, diverse and experienced judges who are capable of handling these challenging caseloads.

What constitutes a competitive judicial salary in a state as large, diverse and unique as New York is a difficult, complex question. For example, the average salary of a large law firm partner in New York City in 2014 was $1.1 million. Clearly, this is not an appropriate salary for a public servant. On the other hand, the mid-range salary level for lawyers in private practice with 10-plus years of experience (not necessarily partners) at mid-sized law firms (35-75 lawyers) in the Albany and Buffalo areas is approximately $200,000. The Commission's

[14] Submission of Chief Administrative Judge, at 17.

recommendation to implement pay parity with federal judges over three years, beginning at approximately $193,000 in 2016 and rising to a projected salary of at least $203,100 in 2018 (and possibly higher if the federal judiciary receives COLAs in 2017 and 2018), attempts to strike a reasonable balance between the financial sacrifices that rightly come with public service and the need to adequately compete for highly-qualified and experienced lawyers in New York's highly competitive marketplace for legal talent.[15]

Reestablishing pay parity between state and federal judges has the added benefit of ensuring that judicial salaries in New York do not fall too far behind those paid to judges of other states. At the present time, the $174,000 salary of a Supreme Court Justice ranks 47th in the nation when adjusted for New York's high cost of living.[16] The first phase of this Commission's recommendations will fix the pay of Supreme Court Justices at 95% of the pay of a Federal District Judge – or $193,000 – on April 1, 2016. As of this writing, this salary level would be among the highest nationally in terms of nominal dollars, but New York's judicial pay would still rank no higher than 36th nationally when appropriate adjustments are made for our state's high cost of living. On April 1, 2016, Supreme Court Justices are expected to earn less in nominal dollars than their counterparts in the District of Columbia ($201,100) and Hawaii ($193,248), and slightly more than those in Illinois ($190,758) and California ($189,041). However, even then, New York would lag well behind all those states when salaries are adjusted for cost of living.[17] These national rankings are not trivial statistics. They measure the extent of

[15] On December 14, 2015, the New York City Quadrennial Advisory Commission recommended that District Attorneys in New York City receive a base salary increase of 12%, resulting in a raise of $22,800, from $190,000 to $212,800, effective January 1, 2016. See http://www1.nyc.gov/assets/quadrennial/downloads/pdf/2015-Quadrennial-Commission-Report.pdf. The Advisory Commission's recommendations do not have the force of law.

[16] Submission of the Associations of Justices of the Supreme Court of the State of New York and of the City of New York, at 19-20.

[17] Judicial salaries in Illinois, Hawaii and California rank 2nd, 15th and 20th, respectively, when adjusted for cost of living. See Submission of Chief Administrative Judge, at 19.

New York's understanding, relative to that of other states, that attracting and retaining highly qualified judges is a necessity in a state that wishes to maintain its national and international prominence.

While the Judiciary and many bar and judicial associations have urged immediate restoration of parity with Federal District Court Judges on April 1, 2016, the Commission has determined that parity should be implemented in two stages. All available evidence suggests that the state is in a strong fiscal condition and could fund the entirety of the recommended increase in the next fiscal year. Nonetheless, the Commission understands that a commitment to conservative budgeting and spending has contributed greatly to the state's present economic health. The Commission therefore recommends that restoration of full parity with the federal judiciary take place in two phases in order to stagger the budgetary impact on the state and ease its ability to fund the recommended salary increases.

B. Redressing Pay Disparities Among Comparable Judges

In addition to the recommendation to reestablish pay parity between Supreme Court Justices and Federal District Judges, with proportionate increases for all other state judges, the Commission recommends adoption of the Judiciary's proposal to implement a revised judicial pay schedule that eliminates many longstanding, inappropriate pay anomalies among judges other than Supreme Court Justices. Accordingly, the Commission has determined that the following pay relationships shall be adopted for non-Supreme Court Justices, effective April 1, 2016.

- County, Family and Surrogate's Court Judges shall not be paid less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% thereof shall continue to be paid that same percentage.
- New York City Civil Court, New York City Criminal Court Judges, and District Court Judges shall be paid 93% of a Supreme Court Justice's salary.
- Full-time City Court Judges outside New York City and New York City Housing Court

Judges shall be paid 90% of a Supreme Court Justice's salary. Each part-time City Court Judge shall continue to maintain the same pay relationship with full-time City Court Judges as heretofore.

These salary relationships embody a far more equitable and rational judicial salary structure for New York State.

14

V. DISSENTING STATEMENT

We dissent from that part of the Commission's Final Report that fixes the salary of a New York State Supreme Court Justice at 95 percent of the salary of a federal District Court Judge, effective April 1, 2016, and 100 percent of that salary, effective April 1, 2018. By pegging the salary of a State Supreme Court Justice to a percentage of the salary of a federal District Court Judge, the Commission's Final Report fails to satisfy its statutory charge to examine "the prevailing adequacy" of the pay levels of the judges and justices of the state-paid courts, taking into account the overall economic climate, rates of inflation, changes in public sector spending, levels of compensation received by professionals in government, academia and private and nonprofit enterprise, and the State's ability to pay.

We agree that New York needs to "attract well-qualified lawyers to the New York State bench and ensure a strong and independent judicial system into the future,"[18] and we recognize "the need to adequately compete for highly-qualified and experienced lawyers in New York's highly competitive marketplace for legal talent."[19] But we dissent from finding that simply benchmarking state judicial salaries to federal judicial salaries discharges our duty to recommend adequate compensation based on the statutory criteria.

The Final Report recommends implementing pay parity with federal judges over three years, by raising a Supreme Court Justice's salary from $174,000 to $193,000 in 2016, and raising it again to at least $203,100 in 2018—"possibly higher if the federal judiciary receives

[18] Final Report, p. 2

[19] Final Report, p. 12

[cost-of-living adjustments] in 2017 and 2018."[20] This constitutes almost an 11 percent salary increase in 2016, followed by at least a five percent increase in 2018.

As to the overall economic climate, rates of inflation, and changes in public sector spending, increases of such proportions are far out of alignment with the fiscal restraint that has contributed to the State's improved economic outlook. Five straight state budgets have held spending growth below two percent, and inflation for the past two years has been about one and a half percent.[21]

As to the duty to consider levels of compensation received by professionals in government, academia and private and nonprofit enterprise, the Final Report's analysis focuses on state judicial salaries, adjusted for cost of living, in comparison to: lawyers in private practice and the public sector in New York; executives in the non-profit sector; professionals in academia and public education; government officials in New York City; and judges in courts of general jurisdiction in other high-population states, and finds that New York's judicial salaries do not favorably compare. While the judiciary is an independent branch of state government, the Final Report fails to consider the appropriateness of judicial salaries in the totality of the State's salary plan, and ignores the inflationary impact of the Commission's recommendations on determining the salaries of other state employees in all three branches, by collective bargaining or otherwise. In addition, simply tying State judicial salaries to federal judicial salaries fails to recognize differences in fiscal resources, history, and statutory authority that should apply to determining pay for those two groups. Such benchmarking effectively defers the Commission's statutory duty to recommend State judicial salaries to a remote federal process, and adds an unnecessary element of uncertainty to budgeting each year.

For these reasons, we dissent as stated here.

[20] Id.

[21] U.S. Department of Labor, Bureau of Labor Statistics, Nov. 6, 2015.

16

APPENDIX D

SUMMARY OF QUALIFICATIONS, TERMS OF OFFICE AND JURISDICTION OF NEW YORK'S STATE-PAID TRIAL COURT JUDGES AND JUSTICES

Qualifications, Terms and Jurisdiction of New York's State-paid Trial Court Judges and Justices

Supreme Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected Judicial District-wide for 14 year terms.

Jurisdiction: General original jurisdiction in law and equity.

Court of Claims

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Appointed by the Governor, with the advice and consent of the State Senate, for nine-year terms.

Jurisdiction: Jurisdiction to hear and determine claims against the State or by the State against the claimant or between conflicting claimants as the Legislature may provide.

Note: A majority of the State's Court of Claims Judges do not actually sit in the Court of Claims. Instead, they are temporarily assigned as Acting Supreme Court Justices, in which role they preside over cases in Supreme Court.

County Court

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Elected county-wide in counties outside New York City for ten-year terms.

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $25,000 and over all crimes and other violations of law. Also, jurisdiction over landlord-tenant proceedings.

Note: There are no County Courts in New York City. In most counties outside the City, the County Court is the primary criminal court, presiding over felonies. This is in contrast with practice in New York City, which has no County Court and in which Supreme Court hears all felony cases.

Family Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected county-wide in counties outside New York City for ten-year terms; appointed by the New York City Mayor city-wide in the City for ten-year terms.

Jurisdiction: Jurisdiction over an array of proceedings regarding juveniles, custody of children, adoption, support of dependents, paternity, and domestic violence proceedings; and over certain proceedings upon a Supreme Court referral, including *habeas corpus* proceedings re: child custody, and applications to fix or modify support/custody, or to enforce judgments and orders of support/custody.

Surrogate's Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected county-wide in counties outside New York City for ten-year terms; elected county-wide in counties in New York City for 14-year terms.

Jurisdiction: Jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills and administration of estates, guardianship of minors' property and other proceedings as provided by law.

New York City Civil Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected from districts in New York City fixed by statute for ten-year terms.

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $25,000. Also, jurisdiction over landlord-tenant proceedings.

Note: As with the State's Court of Claims Judges, many Civil Court Judges do not actually sit in the Court in which they were chosen to serve. Instead, they are temporarily assigned as Acting Supreme Court Justices, in which role they preside over cases in Supreme Court.

New York City Civil Court (Housing Part Judges)

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Appointed by the Chief Administrative Judge from a list of persons selected as qualified by the Advisory Council for the Housing Part for five-year terms.

Jurisdiction: Jurisdiction over landlord-tenant proceedings.

New York City Criminal Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Appointed by the New York City Mayor city-wide in the City for ten-year terms.

Jurisdiction: Jurisdiction over misdemeanors and other offenses.

Note: As with the State's Court of Claims Judges and Civil Court Judges, many Criminal Court Judges do not actually sit in the Court in which they were chosen to serve. Instead, they are temporarily assigned as Acting Supreme Court Justices, in which role they preside over cases in Supreme Court.

District Court

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Elected district-wide in districts established by the Legislature for six-year terms.

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $15,000. Also, jurisdiction over misdemeanors and other offenses.

City Courts Outside New York City

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Elected or appointed (by mayor or council) city-wide for ten-year terms (six-year terms, if part-time).

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $15,000. Also, jurisdiction over misdemeanors and other offenses.

Note: City Court judges may either be full-time or part-time. Of the 170 such judges, 118 are full-time and 52 are part-time. There are 61 City Courts across the State and the 52 part-time judges serve in the Courts established for the smallest of these cities.

APPENDIX E

CHART OF JUDICIAL SALARIES BY COURT, 2016-2019

CHART OF JUDICIAL SALARIES BY COURT, 2016-2019

Court	2016 Salary	2017 Salary	2018 Salary	2019 Salary
Federal District Judge	$203,100	$205,100	$208,000	$210,900
Court of Appeals				
• Chief Judge	$220,300	$222,500	$237,500	$240,800
• Associate Judge	$213,600	$215,700	$230,200	$233,400
Appellate Division				
• Presiding Justice	$208,500	$210,500	$224,700	$227,800
• Associate Justice	$203,400	$205,400	$219,200	$222,200
Appellate Term				
• Presiding Justice	$208,500	$210,500	$224,700	$227,800
• Associate Justice	$203,400	$205,400	$219,200	$222,200
Administrative Judges				
• Chief Administrative Judge	$208,500	$210,500	$224,700	$227,800
• DCAJ (NYC)	$203,400	$205,400	$219,200	$222,200
• DCAJ (outside NYC)	$203,400	$205,400	$219,200	$222,200
• AJ (in NYC; Judicial District; County)	$199,900	$201,900	$215,500	$218,500
Supreme Court Justice	$193,000	$194,900	$208,000	$210,900
Court of Claims				
• Presiding Judge	$203,400	$205,400	$219,200	$222,200
• Judge	$193,000	$194,900	$208,000	$210,900
County Court				
	$193,000	$194,900	$208,000	$210,900
	$185,600	$187,400	$200,000	$202,800
	$183,400	$185,200	$197,600	$200,400
Family Court				
	$193,000	$194,900	$208,000	$210,900
	$183,400	$185,200	$197,600	$200,400

Court	2016 Salary	2017 Salary	2018 Salary	2019 Salary
Surrogate's Court				
	$193,000	$194,900	$208,000	$210,900
	$191,800	$193,700	$206,700	$209,600
	$183,500	$185,300	$197,800	$200,500
	$183,400	$185,200	$197,600	$200,400
Civil Court and Criminal Court of NYC				
• Judge of the Civil Court	$179,500	$181,300	$193,500	$196,200
• Housing Judge of the Civil Court	$173,700	$175,500	$187,200	$189,900
• Judge of the Criminal Court	$179,500	$181,300	$193,500	$196,200
District Court				
• Pres., Board of Judge (Nassau)	$179,500	$181,300	$193,500	$196,200
• Judge (Nassau)	$179,500	$181,300	$193,500	$196,200
• Pres., Board of Judge (Suffolk)	$179,500	$181,300	$193,500	$196,200
• Judge (Suffolk)	$179,500	$181,300	$193,500	$196,200
City Courts outside NYC - FT	$173,700	$175,500	$187,200	$189,900
City Courts outside NYC - PT				
	$130,300	$131,600	$140,400	$142,400
	$86,900	$87,800	$93,600	$95,000

APPENDIX F

***BEER V. UNITED STATES*, 696 F.3D 1174 (FED. CIR. 2010).**

U.S.A., Inc. v. Standard Register Co., 229 F.3d 1091 (Fed.Cir.2000), for the proposition that the spread from 85% to 90% is too great to be an equivalent. Pozen appreciates the force of those cases, but argues they are inapplicable here because the District Court did not answer the numeric equivalence question but instead turned the infringement decision on a flawed layer equivalence notion.

In my view, the District Court erred by not asking itself if under claim 2 a layer, viewed from the outside or from the inside, can be equivalent if is numerically nonequivalent. It cannot. The majority states that "a reasonable person could determine that a tablet layer with 85% of the agent is within the scope of the doctrine of equivalents." Respectfully, I disagree.

Peter H. BEER, Terry J. Hatter, Jr., Richard A. Paez, Laurence H. Silberman, A. Wallace Tashima and U.W. Clemon, Plaintiffs–Appellants,

v.

UNITED STATES, Defendant–Appellee.

No. 2010–5012.

United States Court of Appeals, Federal Circuit.

Oct. 5, 2012.

Background: Federal judges filed suit against United States, seeking backpay and declaratory relief from legislation that blocked five years of cost-of-living adjustments (COLAs), established by Ethics Reform Act (ERA), as allegedly unconstitutional deprivation of judicial compensation in violation of Compensation Clause. The United States Court of Federal Claims, Robert H. Hodges, Senior Judge, dismissed the complaint. On appeal, United States Court of Appeals for the Federal Circuit, 361 Fed.Appx. 150, summarily affirmed the judgment. Thereafter, the United States Supreme Court, —— U.S. ——, 131 S.Ct. 2865, 180 L.Ed.2d 909, granted a subsequent petition for certiorari, vacated the judgment, remanded the case. Upon remand, the Court of Appeals, 671 F.3d 1299, unanimously concluded that judges were not precluded from bringing their Compensation Clause claims.

Holdings: After granting judges' petition for rehearing en banc, 468 Fed.Appx. 995, the Court of Appeals, Rader, Chief Judge, held that:

(1) legislation that blocked five years of COLAs for judges constituted an unconstitutional deprivation of judicial compensation in violation of Compensation Clause; overruling *Williams v. United States*, 240 F.3d 1019, and

(2) a 2001 amendment to part of an appropriations act passed in 1981, which barred judges from receiving additional compensation except as Congress specifically authorized in legislation postdating appropriations bill, did not override the provisions of 1989 ERA promising judges COLAs.

Overruled-in-part, vacated-in-part, and remanded.

Dyk, Circuit Judge, filed dissenting opinion in which Bryson, Circuit Judge, joined.

O'Malley, Circuit Judge, filed concurring opinion in which Mayer and Linn, Circuit Judges, joined.

Wallach, Circuit Judge, filed concurring opinion.

1. Federal Courts ⇨763.1

Court of Appeals reviews Court of Federal Claims' dismissal of complaint

without deference. 28 U.S.C.A. § 1295(a)(3).

2. Judges ⇦42, 49(1)

Judges should disqualify themselves when their impartiality might reasonably be questioned or when they have a potential financial stake in the outcome of a decision. 28 U.S.C.A. § 455(a).

3. Judges ⇦39

Under rule of necessity, Court of Appeals would rule on federal judges' appeal from dismissal of their suit against United States, seeking backpay and declaratory relief from legislation that blocked five years of cost-of-living adjustments (COLAs), established by Ethics Reform Act (ERA), as allegedly unconstitutional deprivation of judicial compensation in violation of Compensation Clause. U.S.C.A. Const. Art. 3, § 1 et seq.; 5 U.S.C.A. § 5303(b).

4. Judges ⇦22(7)

Cost-of-living adjustments (COLAs) established by Ethics Reform Act (ERA) triggered Article III Compensation Clause's basic expectations and protections, thereby preventing Congress from abrogating ERA's precise and definite commitment to automatic yearly cost of living adjustments for sitting members of the judiciary; thus, legislation that blocked five years of COLAs for Article III judges constituted an unconstitutional deprivation of judicial compensation in violation of Compensation Clause; overruling *Williams v. United States*, 240 F.3d 1019. U.S.C.A. Const. Art. 3, § 1 et seq.; 5 U.S.C.A. § 5303(b).

5. Judges ⇦22(7)

Dual purpose of the Compensation Clause of Article III protects not only judicial compensation that has already taken effect but also reasonable expectations of maintenance of that compensation level. U.S.C.A. Const. Art. 3, § 1 et seq.

6. Judges ⇦22(7)

A 2001 amendment to part of an appropriations act passed in 1981, which barred judges from receiving additional compensation except as Congress specifically authorized in legislation postdating appropriations bill, did not override the provisions of 1989 Ethics Reform Act (ERA) promising judges cost-of-living adjustments (COLAs); appropriations act expired by its terms in 1982, and the later-enacted 1989 ERA "specifically authorized" 2007 and 2010 COLAs which occurred under its precise terms, and thus controlled over 1981 act. 5 U.S.C.A. § 5301.

7. Federal Courts ⇦1107

Statute of limitations did not bar federal judges' claims to recover cost-of-living adjustments (COLAs) established by Ethics Reform Act (ERA), but diminished by Congress in 1995, 1996, 1997, and 1999, and withheld in 2007 and 2010 based on an erroneous statutory interpretation; claims were "continuing claims" to monetary damages for the diminished amounts they would have been paid if Congress had not withheld the salary adjustments mandated by the Act. 28 U.S.C.A. § 2501.

Christopher Landau, Kirkland & Ellis, LLP, of Washington, DC, argued for plaintiffs-appellants. With him on the brief were John C. O'Quinn and K. Winn Allen.

Brian M. Simkin, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for defendant-appellee. With him on the brief were Stuart F. Delery, Acting Assistant Attorney General, Jeanne E. Davidson, Di-

rector, and Michael S. Macko, Trial Attorney.

Jeffrey A. Lamken, MoloLamken LLP, of Washington, DC, for amicus curiae, The Federal Judges Association. With him on the brief were Martin V. Totaro and Lucas M. Walker.

Aaron M. Panner, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., of Washington, DC, for amicus curiae, International Municipal Lawyers Association.

William P. Atkins, Pillsbury Winthrop Shaw Pittman, LLP, of McLean, VA, for amicus curiae, Bar Association of the District of Columbia. Of counsel was Erin M. Dunston, Buchanan Ingersoll & Rooney P.C., of Alexandria, VA.

Lawrence D. Rosenberg, Jones Day, of Washington, DC, for amicus curiae, American Bar Association.

Carter G. Phillips, Sidley Austin, LLP, of Washington, DC, for amicus curiae, Federal Circuit Bar Association. With him on the brief was Rebecca K. Wood.

Lawrence M. Friedman, Barnes, Richardson & Colburn, Of Chicago, Illinois, for amicus curiae, Customs and International Trade Bar Association.

Before RADER, Chief Judge, NEWMAN, MAYER [1], LOURIE, BRYSON, LINN, DYK, PROST, MOORE, O'MALLEY, REYNA, and WALLACH, Circuit Judges.

Opinion for the court filed by Chief Judge RADER, in which Circuit Judges NEWMAN, MAYER, LOURIE, LINN, PROST, MOORE, O'MALLEY, REYNA and WALLACH join.

Dissenting opinion filed by Circuit Judge DYK, in which Circuit Judge BRYSON joins.

Concurring opinion filed by Circuit Judge O'MALLEY, in which Circuit Judges MAYER and LINN join.

Concurring opinion filed by Circuit Judge WALLACH.

RADER, Chief Judge.

The Constitution erects our government on three foundational corner stones—one of which is an independent judiciary. The foundation of that judicial independence is, in turn, a constitutional protection for judicial compensation. The framers of the Constitution protected judicial compensation from political processes because "a power over a man's subsistence amounts to a power over his will." The Federalist No. 79, p. 472 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Thus, the Constitution provides that "Compensation" for federal judges "shall not be diminished during their Continuance in Office." U.S. Const. art. III, § 1 ("Compensation Clause").

This case presents this court with two issues involving judicial independence and constitutional compensation protections—one old and one new. First, the old question: does the Compensation Clause of Article III of the Constitution prohibit Congress from withholding the cost of living adjustments for Article III judges provided for in the Ethics Reform Act of 1989 ("1989 Act")? To answer this question, this court revisits the Supreme Court's decision in *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980). Over a decade ago in *Williams v. United States*, 240 F.3d 1019 (Fed.Cir.2001) (filed with dissenting opinion by Plager, J.), a divided panel of this court found that *Will* applied to the 1989 Act and concluded that Congress could withdraw the promised 1989 cost of living adjustments. This court en banc now overrules *Williams* and

1. Judge Mayer participated in the decision on panel rehearing.

instead determines that the 1989 Act triggered the Compensation Clause's basic expectations and protections. In the unique context of the 1989 Act, the Constitution prevents Congress from abrogating that statute's precise and definite commitment to automatic yearly cost of living adjustments for sitting members of the judiciary.

The new issue involves pure statutory interpretation, namely, whether the 2001 amendment to Section 140 of Pub. L. No. 97–92 overrides the provisions of the 1989 Act. This court concludes the 1989 Act was enacted after Section 140, and as such, the 1989 Act's automatic cost of living adjustments control.

I.

The 1989 Act overhauled compensation and ethics rules for all three branches of government. With respect to the judiciary, it contained two reciprocal provisions. On the one hand, the 1989 Act limited a federal judge's ability to earn outside income and restricted the receipt of honoraria. On the other hand, the 1989 Act provided for self-executing and non-discretionary cost of living adjustments ("COLA") to protect and maintain a judge's real salary.

The 1989 Act provides that whenever a COLA for General Schedule federal employees takes effect under 5 U.S.C. § 5303, the salary of judges "shall be adjusted" based on "the most recent percentage change in the [Employment Cost Index] . . . as determined under section 704(a)(1) of the Ethics Reform Act of 1989." Pub. L. No. 101–194, § 704(a)(2)(A), 103 Stat. 1716, 1769 (Nov. 30, 1989). The Employment Cost Index ("ECI") is an index of wages and salaries for private industry workers published quarterly by the Bureau of Labor Statistics. Section 704(a)(1) of the 1989 Act calculates COLAs by first determining the percent change in the ECI over the previous year. *Id.* at § 704(a)(1)(B). Next, the statutory formula reduces the ECI percentage change by "one-half of 1 percent . . . rounded to the nearest one-tenth of 1 percent." *Id.* However, no percentage change determined under Section 704(a)(1) shall be "less than zero" or "greater than 5 percent." *Id.*

While the 1989 Act states that judicial salary maintenance would only occur in concert with COLAs for General Schedule federal employees under 5 U.S.C. § 5303, these General Schedule COLAs are automatic, i.e., they do not require any further congressional action. *See* 5 U.S.C. § 5303(a). The only limitation on General Schedule COLAs is a presidential declaration of a "national emergency or serious economic conditions affecting the general welfare" making pay adjustments "inappropriate." 5 U.S.C. § 5303(b).

Notwithstanding the precise, automatic formula in the 1989 Act, the Legislative branch withheld from the Judicial branch those promised salary adjustments in fiscal years 1995, 1996, 1997, and 1999. During these years, General Schedule federal employees received the adjustments under Section 5303(a), but Congress blocked the adjustments for federal judges. *See* Pub. L. No. 103–329, § 630(a)(2), 108 Stat. 2382, 2424 (Sept. 30, 1994) (FY 1995); Pub. L. No. 104–52, § 633, 109 Stat. 468, 507 (Nov. 19, 1995) (FY 1996); Pub. L. No. 104–208, § 637, 110 Stat. 3009, 3009–364 (Sept. 30, 1996) (FY 1997); Pub. L. No. 105–277, § 621, 112 Stat. 2681, 2681–518 (Oct. 21, 1998) (FY 1999).

In response to these missed adjustments, several federal judges filed a class action alleging these acts diminished their compensation in violation of Article III. After certifying a class of all federal judges serving at the time (including appellants) and without providing notice or

opt-out rights, the district court held that Congress violated the Compensation Clause by blocking the salary adjustments. *See Beer v. United States,* 671 F.3d 1299, 1308–09 (Fed.Cir.2012); *Williams v. United States,* 48 F.Supp.2d 52 (D.D.C.1999).

On appeal, this court reversed the district court's judgment. *See Williams,* 240 F.3d at 1019. This court opined that the Supreme Court's decision in *Will* foreclosed the judges' claim as a matter of law. *Id.* at 1033, 1035, 1040. According to this court, *Will* ruled that promised future salary adjustments do not qualify as "Compensation" protected under the Constitution until they are "due and payable." *Id.* at 1032 (quoting *Will,* 449 U.S. at 228, 101 S.Ct. 471). Thus, Congress enjoyed full discretion to revoke any future judicial COLAs previously established by law, no matter how precise or definite, as long as the adjustments had not yet taken effect. *Id.* at 1039. This court declined to hear the case en banc over the dissent of three judges. *See* 264 F.3d 1089, 1090–93 (Fed. Cir.2001) (Mayer, C.J., joined by Newman and Rader, JJ.); *id.* at 1093–94 (Newman, J., joined by Mayer, C.J. and Rader, J.). The Supreme Court denied certiorari over the dissent of three Justices. *See* 535 U.S. 911, 122 S.Ct. 1221, 152 L.Ed.2d 153 (2002) (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari).

Following this court's decision in *Williams,* Congress amended a 1981 appropriations rider commonly known as Section 140. Section 140 originally read:

> Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress *hereafter enacted:* Provided, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court.

Pub. L. No. 97–92, § 140, 95 Stat. 1183, 1200 (1981) (codified at 28 U.S.C. § 461 note) (emphasis added). While Section 140 originally expired in 1982, *see Williams,* 240 F.3d at 1026–27, it was revived by a 2001 amendment that added: "This section shall apply to fiscal year 1981 and each fiscal year thereafter." Pub. L. No. 107–77, § 625, 115 Stat. 748, 803 (Nov. 28, 2001).

Following the Section 140 amendment, Congress enacted legislation specifically allowing federal judges to receive the salary adjustments mandated by the 1989 Act in fiscal years 2002, 2003, 2004, 2005, 2006, 2008, and 2009. *See* Barbara L. Schwemle, Congressional Research Service, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries* 2–4 (Feb. 9, 2011). For fiscal years 2007 and 2010, all General Schedule and Executive level federal employees received COLAs under 5 U.S.C. § 5303(a), but federal judges received no adjustments. Congress did not affirmatively authorize judicial COLAs in those years and took the position that, because of the requirements of Section 140, judicial COLAs could not be funded."

The current case results from the combination of the blocking legislation of the 1990s and the amendment to Section 140. Appellants are six current and former Article III judges, all of whom entered into federal judicial service before 2001. In January 2009, they filed a complaint in the United States Court of Federal Claims

claiming that Congress violated the Compensation Clause by withholding the salary adjustments established by the 1989 Act. They claimed a deficit resulted not only from the withholding of COLAs in 2007 and 2010, but also the calculation of adjustments due in other years by reference to base compensation that did not include the amounts withheld in 1995, 1996, 1997, and 1999. For relief, they sought back pay for the additional amounts they allegedly should have received during the period covered by the applicable six-year statute of limitations.

The Court of Federal Claims dismissed the complaint based on the *Williams* precedent. On appeal, this court summarily affirmed the judgment, stating that "*Williams* controls the disposition of this matter." *Beer v. United States,* 361 Fed. Appx. 150, 151–52 (Fed.Cir.2010).

The Supreme Court granted the subsequent petition for certiorari, vacated the judgment, remanded the case for "consideration of the question of preclusion," and stated that "further proceedings ... are for the Court of Appeals to determine." *Beer v. United States,* —— U.S. ——, 131 S.Ct. 2865, 180 L.Ed.2d 909 (2011). Specifically, in opposing the petition for certiorari, the Government had argued that Appellants could not litigate anew the issue resolved in *Williams* because they had been absent members of the class action in *Williams.*

Upon remand, this court unanimously concluded that Appellants were not precluded from bringing their Compensation Clause claims in the present case. *Beer v. United States,* 671 F.3d 1299, 1309 (Fed. Cir.2012). The district court in *Williams* had not provided Appellants with notice of the class certification. Thus they were not bound by the result of that earlier litigation. *See id.* at 1305–09. This court nonetheless continued to feel constrained by the ultimate conclusion in *Williams* and affirmed the Court of Federal Claims' dismissal of the complaint. *Id.* at 1309. Subsequently, this court granted Appellants' petition for rehearing en banc. 468 Fed. Appx. 995 (Fed.Cir.2012).

II.

[1] This court has jurisdiction over the Court of Federal Claims' dismissal of the Appellants' complaint under 28 U.S.C. § 1295(a)(3). This court reviews the decision to dismiss the complaint without deference. *Hearts Bluff Game Ranch, Inc. v. United States,* 669 F.3d 1326, 1328 (Fed. Cir.2012); *Frazer v. United States,* 288 F.3d 1347, 1351 (Fed.Cir.2002).

[2, 3] This court en banc now turns its attention to two preliminary issues before addressing the merits of the appeal. First, judicial review of laws affecting judicial compensation is not done lightly as these cases implicate a conflict of interest. *Will,* 449 U.S. at 211–17, 101 S.Ct. 471. After all, judges should disqualify themselves when their impartiality might reasonably be questioned or when they have a potential financial stake in the outcome of a decision. *See* 28 U.S.C. § 455(a). In *Will,* the Supreme Court applied the time-honored "Rule of Necessity" because if every potentially conflicted judge were disqualified, then plaintiffs would be left without a tribunal to address their claims. *See Will,* 449 U.S. at 213–17, 101 S.Ct. 471. The Rule of Necessity states that "although a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but *must* do so if the case cannot be heard otherwise." *Id.* at 213, 101 S.Ct. 471 (quoting F. Pollack, A First Book of Jurisprudence 270 (6th ed. 1929)) (emphasis added). This court relies on the Supreme Court's complete analysis of the Rule of Necessity and concludes that this

en banc court may, indeed must, hear the case. *See id.* at 211–18, 101 S.Ct. 471.

On the other preliminary procedural question, this court deliberately limits the questions under review. To be specific, this court en banc does not overrule the *Williams* panel's analysis of Section 140. *See* 240 F.3d at 1026–27. Furthermore, it does not overrule the *Beer* panel's analysis of preclusion. *See* 671 F.3d 1299. This court adopts the prior panel's analysis of the preclusion issue *in toto.* Now the court en banc proceeds to the old and new questions previously set forth.

III.

At the outset, this court must honor and address the Supreme Court's decision in *Will.* As the *Williams* panel correctly noted, if *Will* resolves the validity of Congress' decision to block the COLAs promised in the 1989 Act, then any remedy for salary diminution in this case lies not in this court but in the Supreme Court. *See Williams,* 240 F.3d at 1035. However, if *Will* is inapplicable to the statutory scheme at play in this case, then this court has an obligation to resolve the issue.

United States v. Will, supra, tested the validity of congressional blocking acts preventing COLAs provided for under the 1975 Adjustment Act ("1975 Act"). The 1975 Act purported to protect judicial salaries with adjustments calculated under an opaque and indefinite process. Section 5305, as in effect in 1975, directed the President to "carry out the policy stated in section 5301" when giving COLAs to General Schedule federal employees. 5 U.S.C. § 5305(a) (1976). Section 5301 in turn articulated a four-fold policy for setting federal pay: (1) equal pay for equal work; (2) pay distinction based on work and performance distinctions; (3) comparable pay with private sector jobs for comparable work; and (4) interrelated statutory pay levels. 5 U.S.C. § 5301(a) (1976).

In furtherance of this policy, the President appointed an agent to prepare an annual report on federal salaries. 5 U.S.C. § 5305(a)(1) (1976). This annual report relied on statistics from the Bureau of Labor Statistics on private sector pay, views of the "Federal Employees Pay Council" about the comparability of private and public sector pay systems, and the views of employee organizations not represented in the Council. 5 U.S.C. § 5305(a)(1) (1976). This report did not and could not mandate the award of COLAs.

The President also received a report from "The Advisory Committee on Federal Pay." 5 U.S.C. § 5305(a)(2) (1976). This committee reviewed the report issued by the President's agent under section 5305(a)(1) and considered further views and recommendations provided by "employee organizations, the President's agent, other officials of the Government of the United States, and such experts as it may consult." 5 U.S.C. § 5306(a)-(b) (1976).

Based on these reports, the President could provide COLAs to General Schedule federal employees. 5 U.S.C. § 5305(a)(2). If the President decided to recommend an adjustment, he would transmit to Congress the overall adjustment percentage. 5 U.S.C. § 5305(a)(3). Any judicial COLAs were pegged to the "overall percentage" in the President's report to Congress under section 5305. 28 U.S.C. § 461 (1976).

Despite the 1975 Act, Congress allowed several COLAs for General Schedule federal employees but denied the increases to judges and other senior officials. The Supreme Court discussed the details of the legislation that blocked these increases. *See Will,* 449 U.S. at 205–09, 101 S.Ct. 471. In 1978, a group of federal judges filed suit

alleging this blocking legislation was an unconstitutional diminution in salary contrary to Article III. Once the case made its way to the Supreme Court, the Court considered "when, if ever, ... the Compensation Clause prohibit[s] the Congress from repealing salary increases that otherwise take effect automatically pursuant to a formula previously enacted." *Id.* at 221, 101 S.Ct. 471. The Court concluded that Congress could block COLAs due to judges so long as the blocking legislation took effect in the fiscal year prior to the year in which the increase would have become payable. *Id.* at 228–29, 101 S.Ct. 471. According to the Court, "a salary increase 'vests' ... only when it takes effect as part of the compensation due and payable to Article III judges." *Id.* at 229, 101 S.Ct. 471.

[4] The 1989 Act, informed by the failures of the 1975 Act's procedure, adopted a different purpose, used a different structure, and created different expectations than the 1975 Act. The 1975 Act "involved a set of interlocking statutes which, in respect to future cost-of-living adjustments, were neither definite nor precise." *Williams,* 535 U.S. at 917, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). Instead of being tied to the percent change in a known, published metric of inflation such as the Employment Cost Index, the adjustments under the 1975 Act depended on the discretionary decisions of the President's agent and the Advisory Committee on Federal Pay. Furthermore, the President was not obligated to award adjustments to General Schedule employees on a specific timeline or even pursuant to the suggestions from the agent and the committee. Rather, he only did so if it furthered the policies underpinning federal pay articulated in 5 U.S.C. § 5301. Thus, the method for calculating COLAs under the 1975 Act was "imprecise as to amount and uncertain as to effect." *Id.*

By contrast, the 1989 Act promised a mechanical implementation of COLAs for judges under the following equation:

$$Adjustment\ Year\ N = \left(\frac{(ECI\ Year\ N_{-1}) - (ECI\ Year\ N_{-2})}{ECI\ Year\ N_{-2}} \right) \times (100) \times (0.995)$$

See Pub. L. No. 101–194, § 704(a)(1)(B), 103 Stat. 1716, 1769 (Nov. 30, 1989). The Act contained only two limits: a presidential prohibition (due to national emergency or extreme economic circumstances) and a ceiling (of no more than five percent). *Id.*

In essence, the statutes reviewed in *Will* required judicial divination to predict a COLA and prevented the creation of firm expectations that judges would in fact receive any inflation-compensating adjustment. In that context, as the Supreme Court noted, no adjustment vested until formally enacted and received. However, the statutes reviewed in *Williams* and in this case provide COLAs according to a mechanical, automatic process that creates expectation and reliance when read in light of the Compensation Clause. Indeed a prospective judicial nominee in 1989 might well have decided to forego a lucrative legal career, based, in part, on the promise that the new adjustment scheme would preserve the real value of judicial compensation.

Aside from their respective differences in methods for calculating COLAs, the 1989 Act's overall scope and legislative history distinguishes it from the statutory scheme addressed in *Will.* In fact, the automaticity of the 1989 Act's COLAs takes on heightened significance in light of

the broader statutory scheme because the 1989 Act also banned judges from earning outside income and honoraria. *See Brown v. Gardner*, 513 U.S. 115, 118, 115 S.Ct. 552, 130 L.Ed.2d 462 (1994) ("The meaning of statutory language, plain or not, depends on its context."). In sum, the salary protections in the 1989 Act are only part of a comprehensive codification of ethical rules, Pub. L. No. 101–194 §§ 301–03, financial reporting requirements, *id.* at § 202, work rules for senior judges, *id.* at § 705, and—perhaps most important—prohibitions on outside income and honoraria, *id.* at § 601.

Of the 935 active and senior judges in 1987, four hundred reported earning outside income from teaching law, speaking fees, and other sources. 135 Cong. Rec. S29,693 (daily ed. Nov. 17, 1989). More than half reported extra earnings from $16,624 to $39,500. *Id.* The Report by The Bipartisan Task Force on Ethics, which became the basis for the Ethics Reform Act of 1989, noted that the repeated failure to provide recommended salary increases for judges and other executive employees meant increased reliance on "earning honoraria as a supplement to their official salaries." 135 Cong. Rec. H30,744 (daily ed. Nov. 21, 1989) (Task Force Report). During consideration of the 1989 Act, Congress acknowledged that denying access to outside income would amount to a "pay cut." 135 Cong. Rec. S29,662 (daily ed. Nov. 17, 1989) (statement of Sen. Dole that removing outside income is a "pay cut"); *see also* 135 Cong. Rec. H29,488 (daily ed. Nov. 16, 1989) (statement of Rep. Fazio), H29,492 (daily ed. Nov. 16, 1989) (statement of Rep. Ford). In that context, reliance on the 1989 Act's compensation maintenance formula took on added significance. *See* 135 Cong. Rec. H29,503 (daily ed. Nov. 16, 1989) (statement of Rep. Wolpe) ("[The] pay adjustment provision [is] tied directly to the elimination of all honoraria or speaking fees."). Indeed, the Task Force Report emphasized that the restrictions and limitations on outside earned income, honoraria, and employment made by the Act are conditional on the enactment of the increased pay provisions. 135 Cong. Rec. H30,745 (daily ed. Nov. 21, 1989) (Task Force Report).

The dependable COLA system became "a final important part" of the package designed to remove salaries "from their current vulnerability for political demagoguery." 135 Cong. Rec. H29,483 (Nov. 16, 1989) (statement of Rep. Fazio); H30,753 (Nov. 21, 1989) (Task Force Report). In sum, the 1989 Act reduced judges' income by banning outside income but promised in exchange automatic maintenance of compensation—a classic legislative *quid pro quo.* 135 Cong. Rec. H29,484 (Nov. 16, 1989) (statement of Rep. Martin stating that the Ethics Reform Act of 1989 is a comprehensive and interrelated package); *cf.* 135 Cong. Rec. H29,499 (Nov. 16, 1989) (statement of Rep. Crane objecting to the interrelated nature of the package and advocating separate bills for ethics and pay).

Thus, the 1989 statutory scheme was a precise legislative bargain which gave judges "an employment expectation" at a certain salary level. *Cf. United States v. Hatter*, 532 U.S. 557, 585, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001) (Scalia, J., concurring in part and dissenting in part) (arguing that the repeal of judges' exception from Medicare tax constituted a diminishment in compensation because judges had an expectation of an exemption from this tax). Moreover, the 1989 Act COLA provisions were not an increase in judicial pay. If so, the connection with the vesting rule for pay increases articulated in *Will* might be a closer issue. Rather, the statute ensured that real judicial salary would

not be reduced in the face of the elimination of outside income and the operation of inflation. *See Williams*, 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari).

The vesting rules considered in *Will* are not expressly limited to the 1975 Act. However, the Supreme Court had no occasion to draw a distinction between a discretionary COLA scheme and a self-executing, non-discretionary adjustment for inflation coupled with a reduction in judicial compensation via elimination of outside income. For this reason, therefore, this court must examine further the actual differences in the two statutory schemes.

The Supreme Court described the adjustments under the 1975 Act as "automatic." *See Will*, 449 U.S. at 203, 223–24, 101 S.Ct. 471. An examination of the 1975 Act, however, shows that the adjustments at issue in *Will* were automatically operative only "*once the Executive had determined the amount.*" *Id.* at 203, 101 S.Ct. 471 (emphasis added). The ways that the Executive determined the amounts under the 1975 Act and the 1989 Act are very different. The former was an uncertain, discretionary process. The latter is precise and definite.

While the Supreme Court described the COLAs in *Will* as "automatic," the only aspect that was truly automatic was the link between judicial and General Schedule employee salaries. Whether General Schedule employees (and judges) would receive COLAs in any given year or whether those COLAs would maintain earning levels was anything but certain under the 1975 Act. Consequently, the only line the Supreme Court could draw in *Will* was between before and after the COLAs at issue were funded. The 1989 Act's scheme presents a much different landscape than the Court confronted in *Will*. For these reasons, *Will* does not foreclose the relief that the judges seek.

Although this court determines that *Williams* incorrectly applied *Will* and other aspects of the law, this determination does not end the inquiry. The court must now examine whether Congress' decisions to deny the promised COLAs actually violated the Compensation Clause in Article III of the Constitution.

The Compensation Clause has two basic purposes. First, it promotes judicial independence by protecting judges from diminishment in their salary by the other branches of Government. The founders of this nation understood the connections amongst protections for Life, Liberty, and the Pursuit of Happiness, protections for judicial independence, and protections for judicial compensation. Listed among the colonists' grievances with the English Crown was that the King "ha[d] made Judges dependent on his Will alone for the Tenure of their Offices, and the amount and payment of their salaries." Decl. of Independence para. 11 (U.S. 1776). As explained in The Federalist Papers, "[n]ext to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support." The Federalist No. 79, p. 472 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

During the Constitutional Convention in 1787, the inspired draftsmen set out to protect against abuses such as those enumerated in the Declaration of Independence. James Madison of Virginia proposed prohibiting both enhancement and reduction of salary lest judges defer unduly to Congress when that body considered pay increases. *Will*, 449 U.S. at 219–20, 101 S.Ct. 471. Madison urged that variations in the value of money could be "guarded agst. by taking for a standard wheat or some other thing of permanent

value." *Id.* at 220, 101 S.Ct. 471 (quoting 2 M. Farrand, The Records of the Federal Convention of 1787, p. 45 (1911)). The Convention rejected Madison's proposal because any commodity chosen as a standard for judicial compensation could also lose value due to inflationary forces, i.e., the value of wheat could also fluctuate. *Id.* Thus, the Compensation Clause did not tie judicial salaries to any commodity. The framers instead acknowledged that "fluctuations in the value of money, and in the state of society, rendered a fixed rate of compensation [for judges] in the Constitution inadmissible." The Federalist No. 79, *supra.* The Convention adopted the clause in its current form while voicing, at length, concerns to protect judicial compensation against economic fluctuation and reprisal.

The Compensation Clause, as well as promoting judicial independence, "ensures a prospective judge that, in abandoning private practice—more often than not more lucrative than the bench—the compensation of the new post will not diminish." *Will,* 449 U.S. at 221, 101 S.Ct. 471. This expectancy interest attracts able lawyers to the bench and enhances the quality of justice. *Id.* This expectancy interest does not encompass increases in future salary but contemplates maintenance of that real salary level. *Williams,* 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J. joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari); The Federalist No. 79, *supra,* (noting that an Article III judge is assured "of the ground upon which he stands" and that he should "never be deterred from his duty by the apprehension of being placed in a less eligible situation").

[5] The dual purpose of the Compensation Clause protects not only judicial compensation that has already taken effect but also reasonable expectations of maintenance of that compensation level. *See Williams,* 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J. joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). The 1989 Act promised, in precise and definite terms, salary maintenance in exchange for prohibitions on a judge's ability to earn outside income. The 1989 Act set a clear formula for calculation and implementation of those maintaining adjustments. Thus, all sitting federal judges are entitled to expect that their real salary will not diminish due to inflation or the action or inaction of the other branches of Government. The judicial officer should enjoy the freedom to render decisions—sometimes unpopular decisions—without fear that his or her livelihood will be subject to political forces or reprisal from other branches of government.

Prospective judges should likewise enjoy the same expectation of independence and protection. A lawyer making a decision to leave private practice to accept a nomination to the federal bench should be entitled to rely on the promise in the Constitution and the 1989 Act that the real value of judicial pay will not be diminished. *Will,* 449 U.S. at 220–21, 101 S.Ct. 471; *cf. United States v. Winstar Corp.,* 518 U.S. 839, 872, 116 S.Ct. 2432, 135 L.Ed.2d 964 (1996) (recognizing that government promises may give rise to reasonable expectations).

To be sure, the Compensation Clause does not require periodic increases in judicial salaries to offset inflation or any other economic forces. As noted before, the Constitutional Convention did not tie judicial salaries to a commodity or other standard of measurement. *Will,* 449 U.S. at 220, 101 S.Ct. 471. However, when Congress promised protection against diminishment in real pay in a definite manner and prohibited judges from earning outside income and honoraria to supplement

their compensation, that Act triggered the expectation-related protections of the Compensation Clause for all sitting judges. A later Congress could not renege on that commitment without diminishing judicial compensation. That those compensation adjustments would happen in the future does not eliminate the reasonableness of the expectations created by the protections in the 1989 Act. Expectancy is, by its very nature, concerned with future events.

Congress committed to providing sitting and prospective judges with annual COLAs in exchange for limiting their ability to seek outside income and to offset the effects of inflation. This decision furthered the Founders' intention of protecting judges against future changes in the economy. Instead of fixing compensation relative to a commodity subject to inflationary pressure, Congress pegged the adjustment to a known measure of change to the economy as a whole, thus protecting the real salary of judges from both inflation and from fickle political will. By enacting blocking legislation in 1995, 1996, 1997, and 1999, Congress broke this commitment and effected a diminution in judicial compensation.

Congress is not precluded from amending the 1989 Act. Congress may set up a scheme promising judges a certain pay scale or yearly cost of living increases. However, the Constitution limits those changes. If a future Congress wishes to undo those promises, it may, but only prospectively. Any restructuring of compensation maintenance promises cannot affect currently-sitting Article III judges.

IV.

[6] Turning now to the second question, this court determines that the 2001 amendment to Section 140 of Pub. L. 97–92 has no effect on the compensation due to judges. Unlike the preceding discussion of the Compensation Clause, this is a question of statutory interpretation. Without a statutory basis for withholding the COLAs, federal judges should have received the adjustments in 2007 and 2010. These adjustments are payable to the judges regardless of constitutional protections. Congress simply had no statutory authority to deny them.

As noted above, Section 140 was part of an appropriations bill passed in 1981. It barred judges from receiving additional compensation except as Congress specifically authorized in legislation postdating Section 140. *See* Pub. L. No. 97–92, § 140, 95 Stat. 1183, 1200 (Dec. 15, 1981). The appropriations act containing Section 140 expired by its terms on September 30, 1982. *See Williams,* 240 F.3d at 1026. Thus, the rule that judicial pay adjustments had to be "specifically authorized by Act of Congress hereafter enacted" expired in 1982.

Of course, in 2001, Congress amended Section 140, purporting to apply it "to fiscal year 1981 and each fiscal year thereafter." Pub. L. No. 107–77, Title VI, § 625, 115 Stat. 748, 803 (2001). Notably, Congress chose 1981 as the effective date for this extension of Section 140. As shown above, Congress did not explicitly authorize judicial compensation adjustments in 2007 and 2010. If Section 140 applied to bar those 2007 and 2010 adjustments, the absence of that additional Act of Congress would block—solely on the basis of this statute—any adjustments in those years.

Section 140, however, by its own terms, did not block the 2007 and 2010 adjustments. Section 140 is straightforward: it bars judicial salary increases unless (1) "specifically authorized by Act of Congress" and (2) "hereafter enacted." Pub. L. No. 97–92, § 140. The 1989 Act's pre-

cise and definite promise of COLAs clearly satisfies the first requirement to avoid a Section 140 bar. *Williams,* 240 F.3d at 1027. The 1989 Act "specifically authorized" the 2007 and 2010 adjustments which occurred under its precise terms.

Section 140 was enacted in 1981 and the 1989 Act occurred eight years later. Thus, the 1989 Act was "hereafter enacted" within Section 140's meaning. When Congress amended Section 140 in 2001, it did not wipe the slate clean and set a new benchmark for the "hereafter enacted" requirement. The 2001 amendment makes no reference to its own November 28, 2001, enactment date. Instead, the amendment reiterates the 1981 baseline found elsewhere in the original Section 140, making the provision applicable to " 'fiscal year 1981 and each fiscal year thereafter.' " Pub. L. No. 107–77. An amendment referring only to fiscal year 1981 cannot redefine "hereafter" to refer to an entirely different date two decades later. Thus, the "hereafter enacted" requirement remained unchanged setting the "hereafter enacted" trigger date as 1981. In other words, Congress amended the existing Section 140 in 2001, but Section 140 remained a part of the Public Law 97–92 enacted in 1981.

Furthermore, the amendment did not change Section 140's enactment date. Indeed the Government agreed at oral argument before this court en banc that the 2001 amendment did not change the "hereafter enacted" clause of Section 140. The 2001 amendment merely erased Section 140's expiration date, making permanent whatever effect the provision had when originally enacted. Congress thus expunged this court's holding in *Williams* that Section 140 expired in 1982. The 2001 amendment, however, did not change Section 140's substantive scope.

The 1989 Act's precise, automatic COLAs satisfy the requirements of Section 140 because it was enacted after Section 140. The Government withheld COLAs from judges in 2007 and 2010 solely because the government misinterpreted Section 140 as requiring a separate and additional authorizing enactment to put those adjustments into effect. By its own terms, Section 140 did not require that further authorizing legislation because it permitted COLAs under the "hereafter enacted" 1989 Act.

V.

In this case, Congress' acts in 1995, 1996, 1997, and 1999 constitute unconstitutional diminishments of judicial compensation. Additionally, statutorily promised cost of living adjustments were withheld in 2007 and 2010 based on an erroneous statutory interpretation. Appellants' motion to amend their complaint to include a challenge to the 2010 withholdings is granted. *See Mills v. Maine,* 118 F.3d 37, 53 (1st Cir.1997) ("[A]ppellate courts have authority to allow amendments to complaints because '[t]here is in the nature of appellate jurisdiction, nothing which forbids the granting of amendments.' ") (quoting *Newman–Green, Inc. v. Alfonzo–Larrain,* 490 U.S. 826, 834, 109 S.Ct. 2218, 104 L.Ed.2d 893 (1989) (alterations omitted)).

[7] The statute of limitations does not bar these claims because, as established in *Friedman v. United States,* 159 Ct.Cl. 1, 7, 310 F.2d 381 (1962) and *Hatter v. United States,* 203 F.3d 795, 799–800 (Fed.Cir. 2000), *aff'd in part, rev'd in part on other grounds,* 532 U.S. 557, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001), the claims are "continuing claims." As relief, appellants are entitled to monetary damages for the diminished amounts they would have been paid if Congress had not withheld the salary adjustments mandated by the Act. On

remand, the Court of Federal Claims shall calculate these damages as the additional compensation to which appellants were entitled since January 13, 2003—the maximum period for which they can seek relief under the applicable statute of limitations. In making this calculation, the Court of Federal Claims shall incorporate the base salary increases which should have occurred in prior years had all the adjustments mandated by the 1989 Act had actually been made. *See Hatter*, 203 F.3d 795 (applying the "continuing claim" doctrine to calculating wrongful withholding of judicial pay).

VI.

This court has an "obligation of zealous preservation of the fundamentals of the nation. The question is not how much strain the system can tolerate; our obligation is to deter potential inroads at their inception, for history shows the vulnerability of democratic institutions." *Beer v. United States*, 592 F.3d 1326, 1329 (Fed. Cir.2010) (Newman, J., dissenting from the denial of petition for hearing en banc). The judiciary, weakest of the three branches of government, must protect its independence and not place its will within the reach of political whim. The precise and definite promise of COLAs in the 1989 Act triggered the expectation-related protections of the Compensation Clause. As such, Congress could not block these adjustments once promised. The Court of Federal Claims' dismissal of Appellants' complaint is hereby reversed, and the case is remanded for further consideration in accordance with this opinion.

OVERRULED–IN–PART, VACATED–IN–PART, AND REMANDED

DYK, Circuit Judge, with whom BRYSON, Circuit Judge, joins, dissenting.

The majority opinion brings to mind an exchange between Learned Hand and Justice Holmes. Judge Hand enjoined Justice Holmes to "[d]o justice" on the bench, but the Justice demurred: "That is not my job. My job is to play the game according to the rules." Learned Hand, A Personal Confession, in *The Spirit of Liberty* 302, 306–07 (Irving Dilliard ed., 3d ed. 1960). If the Supreme Court must play by the rules, that duty must be doubly binding on subordinate federal courts. Fidelity to this principle mandates adherence to the Supreme Court's opinion in *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980).

I

While the majority's approach has much to recommend it as a matter of justice to the nation's underpaid Article III judges, it has nothing to recommend it in terms of the rules governing adjudication. "The criterion of constitutionality is not whether we believe the law to be for the public good," *Adkins v. Children's Hosp.*, 261 U.S. 525, 570, 43 S.Ct. 394, 67 L.Ed. 785 (1923) (Holmes, J., dissenting), but whether the law comports with the Supreme Court's authoritative construction of the Constitution. Here, the issue is the scope of the Supreme Court's 1980 decision in *Will*. *Will*'s holding is squarely on point. The Supreme Court's framing of the issue was unmistakably clear: "when, if ever, does the Compensation Clause prohibit the Congress from repealing salary increases that otherwise take effect automatically pursuant to a formula previously enacted?" 449 U.S. at 221, 101 S.Ct. 471. The answer was that a future salary increase "becomes irreversible under the Compensation Clause" when it "vests," *id.*, and that it "'vests' for purposes of the Compensation Clause only when it takes effect as part of the compensation due and payable to Article III judges," *id.* at 228–29,

101 S.Ct. 471. The Court's opinion in *Will* is unambiguous that the Court adopted what it has characterized as a "categorical" rule. *See, e.g., Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239–40, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995).

The Court in *Will* explained that for two of the years,

> the statute was passed before the Adjustment Act increases had taken effect—before they had become a part of the compensation due Article III judges. Thus, the departure from the Adjustment Act policy in no sense diminished the compensation Article III judges were receiving; it refused only to apply a previously enacted formula.
>
> A paramount—indeed, an indispensable—ingredient of the concept of powers delegated to coequal branches is that each branch must recognize and respect the limits on its own authority and the boundaries of the authority delegated to the other branches. To say that the Congress could not alter a method of calculating salaries before it was executed would mean the Judicial Branch could command Congress to carry out an announced future intent as to a decision the Constitution vests exclusively in the Congress. We therefore conclude that a salary increase "vests" for purposes of the Compensation Clause only when it takes effect as part of the compensation due and payable to Article III judges.

449 U.S. at 228–29, 101 S.Ct. 471 (footnotes omitted).

Under *Will*'s bright-line vesting rule, Congress was free to "abandon" a statutory formula and revoke a planned cost-of-living adjustment ("COLA"), as long as the revoking legislation was enacted into law before the COLA "took effect," that is, became "due and payable" (i.e., before October 1, the first day of the next fiscal year). *Id.* at 227–29, 101 S.Ct. 471. In *Will* Years 1 and 4, Congress missed that deadline, and the Court held that the belated withdrawal of judges' COLAs violated the Compensation Clause. *Id.* at 226, 230, 101 S.Ct. 471. But in *Will* Years 2 and 3, COLA-blocking statutes signed before October 1 were upheld, even though one of those statutes eliminated the promised COLA just a day before it would have taken effect. *Id.* at 229, 101 S.Ct. 471.

Will thus made clear that a future salary increase only becomes protected by the Compensation Clause when it becomes "due and payable"; an increase which is merely anticipated or expected has not vested, and is not protected. By declining to follow *Will*'s clear vesting rule here, the majority also rejects the carefully crafted panel opinion in *Williams v. United States*, 240 F.3d 1019, 1039 (Fed.Cir.2001), *reh'g denied*, 240 F.3d 1366 (Fed.Cir.2001) (en banc), whose view of *Will* was supported at the time by a clear majority of the en banc court. *See Williams*, 240 F.3d at 1366 (eight judges concurring in the denial of rehearing en banc because "we are duty-bound to enforce [*Will*'s] rule. If we have incorrectly read the *Will* opinion, the Supreme Court will have the opportunity to correct the error.").

II

The majority attempts to redefine the constitutional test as turning not on "vesting," but on "reasonable expectations," a concept that appears nowhere in the *Will* opinion. To justify this shift, the majority seeks to distinguish *Will* on its facts, namely on the dubious ground that the "automatic" salary adjustment scheme in *Will* was different from the "automatic" salary adjustment scheme in place in *Williams* and here. But even if factual differences were pertinent (which, as we discuss below, could not support a depar-

ture from *Will*'s holding), there is no material difference between the statutes in *Will* and those in the *Williams* years (1995, 1996, 1997, and 1999). The *Will* statutes and the *Williams* statutes were not different insofar as they tied judicial compensation to General Schedule ("GS") compensation, nor were they materially different as far as the definiteness of the GS COLA was concerned. Contrary to the majority's suggestion, under both schemes, the COLA was "required" unless the President altered the COLA in response to "national emergency" or "economic conditions." *Compare* 5 U.S.C. § 5305(c)(1) (1976) *with* 5 U.S.C. at § 5303(b)(1) (2006). As the House Report to the 1990 Act stated, "[t]he President would have discretion [under the 1990 Comparability Act] to alter this adjustment.... This discretion is substantially similar to current law," i.e., the 1975 Act. H.R.Rep. No. 101–906, at 88 (1990).[1] And under both statutory schemes, the GS COLA, once established, would "take effect automatically." *Will*, 449 U.S. at 221, 101 S.Ct. 471.[2] Thus, the statutory schemes appear "strikingly similar" for all practical purposes. *Williams*, 240 F.3d at 1027.

Nevertheless, the majority asserts that the expectation of a COLA created by the *Williams* statutes was significantly more "precise and definite," Majority Op. 1183, because under *Will's* more complex scheme, there was greater discretion over the COLA—an assertion which is accurate only insofar as the President's agent and Advisory Committee had greater discretion in setting the *initial amount* of the GS COLA. Under each statutory scheme, the President's discretion was the same.[3]

But whatever the discretion, if the test were "reasonable expectations," then the key question would not be how the statutory scheme initially determined a COLA, but whether the amount of the COLA had become "precise and definite" at the time the blocking statute thwarted the judges' expectations. In this respect, *Will* cannot be distinguished from *Williams*. For *Will* Year 3, no "judicial divination," Majority Op. 1181, would have been required: a GS COLA of 5.5% had already been specified in the President's Alternative Plan, 14 Weekly Comp. Pres. Docs. 1480 (Aug. 31, 1978), which was adopted and transmitted to Congress by the President a month before the Year 3 blocking statute was enacted. *Will*, 449 U.S. at 229, 101 S.Ct. 471. The President had no further discretion to change the amount of the COLA. As the majority notes, "once the Executive had determined the amount," the adjustments in *Will* were automatically opera-

1. Plainly Congress saw the references in the 1975 Act to ''economic conditions'' and in the 1990 Act to ''serious economic conditions'' as functionally the same, since the President's discretion was to remain ''substantially similar'' under the 1990 Act as before.

2. Judge O'Malley's concurrence misreads the dissent in suggesting that we view the COLAs in *Will* as ''automatic'' only because ''the statutory scheme had run its course'' in the disputed years. Concur. Op. 1193.

3. *Will*'s statutory scheme

> required the President to appoint an adjustment agent [who] was to compare salaries in the civil service with those in the private sector and then recommend an adjustment to an Advisory Committee. Subsequently, the Committee would make its own recommendation to the President, accepting, rejecting, or modifying the agent's recommendation as the Committee thought desirable. The President would have to accept the Committee's recommendation—unless he determined that national emergency or special economic conditions warranted its rejection.

Williams v. United States, 535 U.S. 911, 917, 122 S.Ct. 1221, 152 L.Ed.2d 153 (2002) (Breyer, J., joined by Scalia & Kennedy, JJ., dissenting).

tive. Majority Op. 1183 (quoting *Will*, 449 U.S. at 203, 101 S.Ct. 471) (internal quotation marks omitted). In the *Williams* years, at the time the blocking statutes were enacted, the prospective amount of the GS COLA could be calculated based on the Employment Cost Index figures released by the Bureau of Labor Statistics, although the President generally did not announce a final amount until after the blocking statutes were enacted.[4] Thus, the COLA in *Will* Year 3 was just as "precise and definite" as the COLAs in the *Williams* years.

Of course, the COLAs remained uncertain in another respect: in both *Will* and *Williams*, the presumptive GS COLA could still be overridden by Congressional action, and in fact it was overridden for one of the *Williams* years.[5] Again, there is no meaningful difference between the situations in *Will* and *Williams*.[6] To summarize: in both *Will* Year 3 and in each of the *Williams* years, at the time the judges' COLA was blocked, the amount of the GS COLA had been established, the President retained no discretion to change the GS COLA, and the COLA would have taken effect automatically, absent Congressional intervention. The Supreme Court upheld the blocking statute in *Will* Year 3. 449 U.S. at 229, 101 S.Ct. 471. Yet the majority maintains that the blocking statutes in *Williams* offend the Constitution. This distinction is baffling.

Finally, the majority here suggests that *Will* is distinguishable because the statutes here (unlike the statutes in *Will*) imposed limits on the judges' outside income, without "an increase in judicial pay." Majority Op. 1182. But the majority can hardly make a credible claim that judges' outside compensation is protected by the Compensation Clause, and it follows that the reduction of outside compensation cannot create a Compensation Clause issue where none would otherwise exist.[7]

4. For all the *Williams* years, GS salary adjustment tables were promulgated by Executive Order in the preceding December. Exec. Order 12944, 60 Fed. Reg. 309 (Dec. 28, 1994); Exec. Order 12984, 61 Fed. Reg. 237 (Dec. 28, 1995); Exec. Order No. 13033, 61 Fed. Reg. 68987 (Dec. 27, 1996); Exec. Order No. 13106, 63 Fed. Reg. 68151 (Dec. 7, 1998). In each year, the judges' COLAs had been blocked several weeks to months earlier. *See* Pub. L. 103–329, Title VI, § 630(a)(2), 108 Stat. 2382, 2424 (1994); Pub. L. 104–52, Title VI, § 633, 109 Stat. 468, 507 (1995); Pub. L. 104–208, Title VI, § 637, 110 Stat. 3009–364 (1996); Pub. L. 105–277, Title VI, § 621, 112 Stat. 2681–518 (1998). For one of the *Williams* years, 1996, the President transmitted an Alternative Plan to Congress setting a 2% GS COLA before the blocking statute was passed. 31 Weekly Comp. Pres. Docs. 1466, 1466–67 (1995).

5. For 1995, Congress reduced the GS COLA to 2%. Pub. L. 103–329, Title VI, § 630(a)(1), 108 Stat. 2382, 2424 (1994). The projected GS COLA had been 2.6%. *See* Sharon S. Gressle, Cong. Research Serv., Order No. RS20278, Judicial Salary–Setting Policy 6 (March 6, 2003).

6. Under the *Will* scheme, in addition to enacting separate legislation, Congress could have disapproved the Alternative Plan by a one-house legislative veto. *Will*, 449 U.S. at 204, 101 S.Ct. 471. But a legislative veto would not have zeroed out the GS COLA; it would have reinstated the amount recommended to the President, *id.*, which was *higher* than the President's figure in *Will* Year 3. *See* 14 Weekly Comp. Pres. Docs. 1480 (Aug. 31, 1978). It is unclear how Congressional action to *increase* the GS COLA could have made the judges' expectations of a COLA in *Will* Year 3 less "precise and definite." The legislative veto was held unconstitutional after *Will* and before the *Williams* years. *INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983).

7. In fact, the 1989 Act did increase judicial pay by 25%, thus offsetting the limitations on outside income. Pub. L. 101–194 § 703(a)(3), 103 Stat. 1716, 1768 (1989).

III

Even if the two statutory schemes were meaningfully different, and the *Williams* scheme created "reasonable judicial expectation[s] of future compensation" that did not exist in *Will*, Appellants' Br. 29–31, that would be quite beside the point. Neither counsel for the appellants nor the majority is able to explain how that difference authorizes this court to disregard *Will*'s clear vesting rule. The majority concedes that "the vesting rules considered in *Will* are not expressly limited to the 1975 Act." Majority Op. 1183. There is no basis for concluding that a "reasonable expectations" test has supplanted the *Will* vesting rule as the governing test. Certainly no decision of the Supreme Court has shifted the governing principle from vesting to reasonable expectations. There is not even a claim that subsequent decisions of the Court have somehow "undermine[d] the reasoning" of *Will*. *United States v. Hatter*, 532 U.S. 557, 571, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001) (quoting *Will*, 449 U.S. at 227 n. 31, 101 S.Ct. 471) (internal quotation marks omitted). And even if *Will* had been undermined, it would not be *this* court's prerogative to overrule it. *See id.* at 567, 121 S.Ct. 1782 (noting that because *Evans* had been undermined but not yet "expressly overrule[d]," the Federal Circuit "was correct in applying *Evans*" and thereby "invit[ing] us to reconsider" it).

So too our job is to follow the holding of *Will*, not to confine it to its facts. Numerous Supreme Court decisions, and our own decisions, have made this clear. As the Supreme Court held in *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, a Court of Appeals must not "confus[e] the factual contours of [Supreme Court precedent] for its unmistakable holding" in an effort to reach a "novel interpretation" of that precedent. 460 U.S. 533, 534–35, 103 S.Ct. 1343, 75 L.Ed.2d 260 (1983) (per curiam). *See also, e.g., Marmet Health Care Ctr., Inc. v. Brown*, —— U.S. ——, 132 S.Ct. 1201, 1202, 182 L.Ed.2d 42 (2012) (per curiam) (a state court "misread[ ] and disregard[ed] the precedents of this Court" when it held the Federal Arbitration Act's scope to be "more limited than mandated by this Court's previous cases"); *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1347 (Fed.Cir.2010) (en banc) ("As a subordinate federal court, we may not so easily dismiss [the Supreme Court's] statements as dicta but are bound to follow them.").

The fact that three Justices of the Court, dissenting from a denial of certiorari, opined that *Will* might be distinguished from *Williams* is not authoritative. *See Williams*, 535 U.S. at 917, 122 S.Ct. 1221 (Breyer, J., joined by Scalia & Kennedy, JJ., dissenting). A dissent from a denial of certiorari cannot "destroy[ ] the precedential effect" of a prior opinion. *Teague v. Lane*, 489 U.S. 288, 296, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). This court has recognized that neither the agreement of three dissenting Justices, nor the approval of their reasoning by concurring Justices in later cases, can "transform a dissent into controlling law." *Prometheus Labs., Inc. v. Mayo Collaborative Servs.*, 628 F.3d 1347, 1356 n. 2 (Fed.Cir.2010), *rev'd on other grounds, Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, —— U.S. ——, 132 S.Ct. 1289, 182 L.Ed.2d 321 (2012).

In short, neither the dissent from denial of certiorari in *Williams* nor the Supreme Court's remand in this case can be read as an invitation for this court to perform reconstructive surgery on *Will*. The Supreme Court may distinguish its own opinions by limiting them to their facts, *see, e.g., Williams v. Illinois*, —— U.S. ——, 132 S.Ct. 2221, 2242 n. 13, 183 L.Ed.2d 89

(2012), or choose to overrule them, *see, e.g., Hatter,* 532 U.S. at 567, 121 S.Ct. 1782, but that is not an option for this court. We respectfully dissent.[8]

O'MALLEY, Circuit Judge, with whom MAYER and LINN, Circuit Judges, join, concurring.

I join the majority, both in the judgment it reaches and in its reasoning. I write separately to address two issues.

First, I write to explain why I believe that, if *United States v. Will,* 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980), must be read as broadly as the dissent and the *Williams v. United States,* 240 F.3d 1019 (Fed.Cir.2001) majority believes it must, then *Will* was wrong and the Supreme Court should say so. Second, I write because I believe that, whatever its current statutory reach, Section 140 is unconstitutional and Congress can no longer rely on it to stagnate judicial compensation.

I

I first turn to *Will.* I agree with the majority that *Will* did not reach the issue presented here and, thus, does not dictate the result we may reach today. The position taken by the dissent, and by the *Williams* majority before it, is not without some force, however. One cannot deny that the adjudicatory principles upon which they rely are important ones, even if the majority concludes they are not determinative here. If the dissent is correct that we are forced to glean sweeping Compensation Clause principles from *Will* governing all forms of statutory enactments designed to increase judicial pay, we must also be forced to conclude that *Will*'s analysis is flawed, both jurisprudentially and constitutionally.

A. Jurisprudentially

I find several aspects of the *Will* decision problematic. First, a close look at the facts and reasoning in *Will* reveals its internal inconsistency; neither its analysis nor its ultimate conclusion matches the facts presented. Specifically, while the Court in *Will* initially characterized the statutory scheme at issue there as "automatic," 449 U.S. at 223, 101 S.Ct. 471, it later justified its Compensation Clause holding by characterizing congressional action blocking salary increases under the scheme as merely modifying "the formula" by which "future" increases were to be calculated. *Id.* at 227–28, 101 S.Ct. 471. Next, if the language employed in *Will* is meant to set down a "vesting" principle applicable in all Compensation Clause challenges, I believe the Court both: (1) violated the long-standing principle that courts are to decide only the cases before them and must only reach constitutional issues if and to the extent necessary; and (2) landed upon a holding that, taken to its logical extreme, creates absurd results.

1. Use of the Term "Automatic"

As the majority notes, the statutory scheme at issue in *Will*—the Executive Salary Cost–of–Living Adjustment Act of 1975, Pub. L. 94–82, 89 Stat. 419 (Aug. 9, 1975) ("the Adjustment Act")—was a complex scheme, fraught with discretion and uncertainty. Despite this, *Will* characterized the Adjustment Act as a pay adjust-

8. Appellants also argue that the 2007 and 2010 COLAs were improperly withheld because no blocking legislation was enacted in those years, and Section 140, as amended in 2001, was either inapplicable or unconstitutionally discriminated against federal judges under the Supreme Court's decision in *Hatter.* While we agree that this issue is not resolved by *Will,* these statutory and constitutional arguments were not properly raised below, and we decline to address them here.

ment scheme which contemplated "automatic" pay increases. At issue in *Will* was the constitutionality of Congress's decision to enact statutes preventing high-level Executive, Legislative, and Judicial officials, including Article III judges, from receiving COLAs in four consecutive years where General Schedule federal employees received increases. The Court noted that these blocking statutes were designed to "stop or to reduce previously authorized cost-of-living increases initially intended to be *automatically* operative" under the Adjustment Act. *Will*, 449 U.S. at 203, 101 S.Ct. 471 (emphasis added). The Court then phrased the question presented in *Will* as: "when, if ever, does the Compensation Clause prohibit the Congress from repealing salary increases that otherwise take effect *automatically* pursuant to a formula previously enacted?" *Id.* at 221, 101 S.Ct. 471 (emphasis added).

As the majority notes, it is hard to understand the Court's use of the term automatic in the context of the Adjustment Act. Normally, to say something is "automatic" is to say it occurs involuntarily or without further debate. *See* Oxford English Dictionary def. A(1); A(7)(a) (3d ed. June 2011; online version June 2012); *see also* American Heritage Dictionary 121 (5th ed. 2011) (def. 2a: defining "automatic" as "[a]cting or done without volition or conscious control; involuntary"). Nothing about the judicial salary adjustments at issue in *Will* was "automatic," however.

To the contrary, the adjustments at issue in *Will* were based on civil service salary adjustments that were entirely discretionary. As explained by the majority, whether federal employees would receive a COLA, and in what amount, depended on the initial recommendations of an adjustment agent which were then subject to review by an Advisory Committee, the President, and Congress. This procedure hardly can be described as one that occurs involuntarily. In addition, the statutes setting forth future COLAs were "neither definite nor precise," and nothing provided that adjustments would be calculated "in a mechanical way." *Williams v. United States*, 535 U.S. 911, 917, 122 S.Ct. 1221, 152 L.Ed.2d 153 (2002) (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). Because the statutory scheme under the Adjustment Act "was imprecise as to amount and uncertain as to effect," the Court's characterization of the increases under the Adjustment Act as "automatic" is difficult to follow. *See id.*

The dissent explains the Court's mischaracterization of the Adjustment Act's pay scheme by noting that, for the years in question in *Will*, the statutory scheme had run its course and resulted in a recommended salary increase by the time Congress acted to block those increases. This, the dissent seems to suggest, explains why the Supreme Court used the term "automatic" to describe what was before it. While that argument has a certain logic to it, it does not explain why the Court's constitutional analysis focused on the *absence* of a guarantee under the Adjustment Act.

According to the Supreme Court, the Adjustment Act did not "alter the *compensation* of judges; it modified only the *formula* for determining that compensation." *Will*, 449 U.S. at 227, 101 S.Ct. 471 (emphases in original). And, the Court said that the blocking statutes merely represented a decision to "abandon" that "formula." It then admonished that, "[t]o say that the Congress could not alter a method of calculating salaries before it was executed would mean the Judicial Branch could command Congress to carry out an announced *future intent* as to a decision the Constitution vests exclusively in the Con-

gress." *Id.* at 228, 101 S.Ct. 471 (emphasis added). It was on this reasoning that the Court concluded that a salary increase does not "vest" for Compensation Clause purposes until it becomes part of a judge's compensation that is due and payable and that Congress had not violated the Compensation Clause when it did not allow certain increases under the Adjustment Act to "vest."

Thus, the Court explained its Compensation Clause decision in *Will* by saying it was only dealing with a formula regarding an expressed "future intent" to provide increases; the Court did not say at that point that it was addressing increases that had already been decided upon. More importantly, it did not say it was addressing definite increases that had been promised by operation of law; in explaining its assessment of the Act vis-à-vis the Compensation Clause, the Court spoke of the scheme under the Adjustment Act as one that promised no more than potential adjustments. And, in discussing the concept of vesting, the Court seemed to back away from the notion that it was dealing with anything one could consider "automatic" in the common sense of that word. How can an increase occur "automatically" if a right to it had not yet "vested"?

While I understand why the dissent believes we must assume the Supreme Court meant what it said when it described the Adjustment Act increases as "automatic" ones, that assumption would mean that the Court's description of the facts presented had little correlation with its reasoning for why those facts did not run afoul of the Compensation Clause.

2. Constitutional Avoidance

Next, if we read *Will* as broadly as *Williams* did, and the dissent now does, we must assume that, in *Will*, the Supreme Court violated its own well-established principle of constitutional avoidance. The Supreme Court has long-recognized that "[j]udging the constitutionality of an Act of Congress is 'the gravest and most delicate duty that this Court is called upon to perform.' " *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S.Ct. 876, 917–18, 175 L.Ed.2d 753 (2010) (Roberts, C.J., concurring) (quoting *Blodgett v. Holden*, 275 U.S. 142, 147–48, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring)). The Court's standard practice, therefore, has been to "refrain from addressing constitutional questions except when necessary to rule on particular claims before [it]." *Id.* at 918 (citing *Ashwander v. TVA*, 297 U.S. 288, 346–48, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring)). In furtherance of this practice, it has long been the rule that courts should "not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' " *Ashwander*, 297 U.S. at 347, 56 S.Ct. 466 (quoting *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S.Ct. 352, 28 L.Ed. 899 (1885)); *see also United States v. Raines*, 362 U.S. 17, 21, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) (same).

Applying this principle in *Citizens United*, Chief Justice Roberts explained that the Court's "standard practice of avoiding broad constitutional questions except when necessary" gives rise to an "order of operations," whereby the Court considers the narrowest claim first before proceeding, if necessary, to any broader claims. 130 S.Ct. at 918. Only if there is no valid narrow constitutional ground available, should the court resolve any broader constitutional question. *See id.*

If we assume that *Will* is to be read so broadly as to control the result under the very different set of facts presented here, we must also assume the Court spoke to a

question not before it. The constitutional question properly raised in *Will* was whether, under the specific statutory scheme set out in the Adjustment Act, the four blocking statutes at issue diminished judicial pay in violation of the Compensation Clause. A fair reading of *Will* based on "the precise facts to which it [was] applied," requires limiting the holding to the statutory scheme that was before the Court. *See Ashwander*, 297 U.S. at 347, 56 S.Ct. 466 (Brandeis, J., concurring) (citation omitted); *see also Raines*, 362 U.S. at 21, 80 S.Ct. 519. If *Will* is read to address a question broader than that presented—one that would govern a host of different congressional efforts to protect judicial pay from diminution in value—then we must conclude that, in *Will*, the Supreme Court ignored its own governing jurisprudential principles.

In its briefing, the government concedes that there was a narrower approach the Court could have taken. Specifically, the government argues that, "even if the Supreme Court in *Will* could have based its decision upon the 'discretionary' character of the then-applicable statutory scheme, the Court did not decide the case upon that ground. The Court drew no such distinction." Appellee's Br. 26–27. If the government is right on this point, it is the very reason why *Will* was wrong to make the pronouncements upon which the government now relies. If the Court in *Will* consciously chose not to draw a distinction between a discretionary COLA scheme and a self-executing, non-discretionary one, it: (1) formulated a rule of constitutional law broader than required by the facts presented; and (2) ignored the fundamental precept that judges decide only the cases before them. *See Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 615, 127 S.Ct. 2553, 168 L.Ed.2d 424 (2007) ("Relying on the provision of the Constitution that limits our role to resolving the 'Cases' and 'Controversies' before us, we decide only the case at hand.")

3. Absurd Results

Finally, the definition of "vesting" *Williams* gleaned from *Will* cannot be right. If it were: (1) Congress could do away with judicial retirement benefits for all sitting judges; (2) it would be inconsistent with the way the concept of vesting has been applied to similar pay increases for Members of Congress; and (3) it would run afoul of the common law understanding of the way in which future interests "vest" for all other purposes. It necessarily would lead to absurd results.

First, if the definition of "vesting" *Williams* felt bound to under *Will* is correct, then Congress could eliminate judicial retirement pay for all sitting Article III judges without violating the Compensation Clause. By statute, Article III judges can retire with full pay once they reach a certain combination of age plus years of judicial service. *See* 28 U.S.C. § 371. Under this system, the Supreme Court has said that the right to receive retirement pay "d[oes] not vest until retirement" and the "system provide[s] nothing for a judge who le[aves] office before age 65." *United States v. Hatter*, 532 U.S. 557, 575, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001). In other words, the Supreme Court has specifically held that retirement benefits do not vest until a judge retires and certain prerequisites are met.

In *Will*, the Court concluded that vesting occurs when a salary increase "takes effect as part of the compensation due and payable to Article III judges." 449 U.S. at 229, 101 S.Ct. 471. As such, for those years where the COLAs at issue in *Will* had not yet become "due and payable," the Court held that the blocking statutes did not violate the Compensation Clause's pro-

hibition against diminishing judicial pay. *See id.* If we accept *Will*'s holding that Congress can abolish judicial salary adjustments at any time before they take effect, it logically follows that Congress would also be free to abolish judicial retirement pay at any time. The practical consequences of *Will* would place judicial retirement benefits at risk, despite the fact that the Supreme Court itself previously has characterized such benefits as "compensation" under Article III. *See Hatter,* 532 U.S. at 574, 121 S.Ct. 1782 ("the noncontributory pension salary benefits [are] themselves part of the judge's compensation").

Second, *Will*'s definition of vesting conflicts with the way in which that concept has been applied in the context of the Twenty–Seventh Amendment. In *Boehner v. Anderson,* 30 F.3d 156 (D.C.Cir.1994), the court addressed whether the 1989 Act (which also applies to Members of Congress) was inconsistent with the Twenty–Seventh Amendment which provides that: "No law, varying the compensation for services of the Senators and Representatives, shall take effect until an election of Representatives shall have intervened." *Id.* at 159. The court held that the phrase "shall take effect" in the Amendment referred to the date the Ethics Reform Act first became operative—*i.e.,* 1991—rather than any earlier or later point in time. *See id.* at 161–62. Because the COLA provision of the Ethics Reform Act took effect in January 1991, after an intervening election in 1990, that provision did not violate the Twenty–Seventh Amendment. *Id.* at 162. The court also held that: (1) Congress is free to specify a formula for future and continuing salary increases; and (2) the COLAs under the 1989 Act were designated to occur automatically each year after 1991, with no additional law necessary. *Id.* at 162–63. All yearly COLAs beyond 1990 thus became operative and "vested" for Members of Congress when the law was first effective in 1991.[1]

In *Williams,* the appellee-judges relied on the holding in *Boehner* to contend that the COLA increases for judicial officers took effect, or vested, when the law was effective, not when the yearly COLAs became *due and payable*. *Williams,* 240 F.3d at 1036. This court recognized the holding in *Boehner,* but distinguished it on grounds that it dealt with a different question limited to Members of Congress. Specifically, the court found that *Boehner* "has no relevance ... to the question of whether the judicial pay aspects of the 1989 Act could, consistent with Article III, be revised or abrogated by later Acts of Congress." *Id.* at 1037. That question, the *Williams* court held, was already answered in the affirmative in *Will's* holding that "vesting, for federal judges under Article III, occurs only when compensation begins to accrue to the judges, not when a particular adjustment formula is enacted." *Id.* at 1036–37. By simply relying on *Will* to distinguish *Boehner,* the court in *Williams* avoided the more difficult task of trying to reconcile two contradictory approaches to what vesting means under the Constitution.

We are now faced with two distinct definitions of the constitutionally effective date of congressionally enacted COLAs. While *Will* provides that, for Article III purposes, a COLA is effective when it becomes "due and payable," regardless of

1. In the alternative, the appellant in *Boehner* argued that, if the court found the COLA provision vested and constitutional, then a later-enacted statute that cancelled a planned COLA absent an intervening election violated the Twenty–Seventh Amendment. 30 F.3d at 162. Although the answer to that question would be of interest to us now, the court declined to address it. *See id.* at 162–63.

when the law establishing that COLA was enacted or when it took effect, *Boehner* states that, for Article I and the Twenty–Seventh Amendment, a COLA vests when the law is first effective, even if not due and payable for years to come. Common sense and basic principles of interpretation counsel against drawing this distinction.

While it is certainly true that the operative date of congressionally designated salary increases is not prescribed in the Constitution, both the Compensation Clause and the Twenty–Seventh Amendment address the Framers' concerns with in-term salary changes for the respective branches of government—one with decreases in-term and the other with increases in-term. I see no reason why the concept of vesting should be employed in a way to expand Congress's ability to *decrease* judicial salaries under the Compensation Clause and be reframed under the Twenty–Seventh Amendment so as to expand Congress's ability to *increase* its own.

Finally, the vesting rule articulated in *Will* is an outlier. As this court in *Williams* correctly noted, "[t]ypically, 'vesting' of future interests only requires two components: an identification of the future owner, and certainty that the property would transfer." 240 F.3d at 1032 (citing 2 Blackstone Commentaries 168; Simes & Smith, *The Law of Future Interests,* § 65, pp. 54–55 (2nd ed. 1956)). This view of vesting of future interests is "more consistent with black-letter [law]." *See id.* at 1038. The Supreme Court, nevertheless, "departed from traditional vesting rules" for future interests and announced a peculiar "actual possession" rule for Article III. *Id.* at 1032. *Will* ignored the standard rule for vesting of future interests and created a unique rule solely for judicial compensation. *See id.* at 1038. Despite recognition of its illogic, the *Williams* panel felt compelled to reject the use of traditional vesting rules for Compensation Clause purposes because it found those rules to be "simply contrary to the rule established by the Supreme Court in *Will.*" *Id.* at 1033.[2]

If we are to believe that *Will* advanced such an extreme vesting rule—one applicable only to the Compensation Clause—then the Court should reexamine that rule and correct its mistake. Had the Supreme Court in *Will* applied the generally-accepted rule for vesting of future interests to the Adjustment Act, the same one the *Boehner* court applied to congressional pay increases, then a COLA whose formula was codified by law would vest, at an absolute minimum, once the amount of the COLA was established for a particular year. This approach is grounded in "sound equitable principle[s]" and, as we recognized in *Williams,* has deep common-law roots. *See id.* at 1032–33.

For the reasons explained in further detail below, as the majority has noted, a more reasonable, consistent, and logical definition of "vesting" under Article III should be governed by the "reasonable expectations" of sitting judicial officers.

2. Indeed, despite awareness of *Will,* various state courts interpreting analogous provisions of their own constitutions have held that the failure to provide statutorily promised COLAs unconstitutionally diminishes judicial compensation. *See e.g., Jorgensen v. Blagojevich,* 211 Ill.2d 286, 285 Ill.Dec. 165, 811 N.E.2d 652, 664 (2004) (noting that the standards for conferring and calculating COLAs, which ''were formulated following the United States Supreme Court's decision in *Will,* expressly provided that COLAs were to be given on July 1, 1991, and on July 1 of each year thereafter and that such COLAs were to be considered a component of salary fully vested at the time the Compensation Review Board's report became law''). *Will*'s ''vesting'' rule for Compensation Clause challenges—if that is really what it is—stands alone.

Put simply, if we are to read *Will* as broadly as *Williams* did, and the dissent now does, the Court should revisit *Will*'s unique vesting rule.

B. Constitutionally

If *Will* truly established an "actual possession" vesting rule for Compensation Clause purposes, that holding seems indefensible under the Constitution. The Framers formulated the Compensation Clause for the express purpose of maintaining judicial independence, in part by providing judges with reasonable expectations about their pay and the inability of Congress to reduce it. As interpreted in *Williams,* the *Will* rule defeats the Framers' intent and threatens the governmental structure around which the Constitution was formulated.

1. Historical Perspective and the Framers' Intent

The Compensation Clause "has its roots in the longstanding Anglo–American tradition of an independent Judiciary." *Will,* 449 U.S. at 217, 101 S.Ct. 471. As the Supreme Court has recognized, the "colonists had been subjected to judicial abuses at the hand of the Crown, and the Framers knew the main reasons why: because the King of Great Britain 'made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.' " *Stern v. Marshall,* —— U.S. ——, 131 S.Ct. 2594, 2609, 180 L.Ed.2d 475 (2011) (quoting the Declaration of Independence, para. 11). Against this backdrop, the Framers designed Article III to protect the public "from a repeat of those abuses." *Id.* By giving judges life tenure and preventing the other branches from reducing judicial compensation, the Framers sought to "preserve the integrity of judicial decisionmaking." *Id.*

As the majority notes, in Federalist 79, Alexander Hamilton emphasized the importance of protecting judicial compensation. Specifically, he argued that, "[n]ext to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support." The Federalist No. 79 at 385 (Alexander Hamilton) (Lawrence Goldman ed., 2008). Hamilton observed that, "[i]n the general course of human nature, *a power over a man's subsistence amounts to a power over his will.*" *Id.* at 386 (emphasis in original). For this reason, the legislative branch must not "change the condition[s] of the [judiciary] for the worse" so that "[a] man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation." *Id.*

Hamilton's concerns, and those of many other Framers, were not merely academic. Indeed, throughout the former colonies, legislatures took retributive actions against judges with whom they disagreed, including attempts to remove judges who declared particular laws unconstitutional and to call judges before the legislature to answer for specific rulings. *See* Julius Goebel, Jr., *Antecedents and Beginnings to 1801, in* 1 History of the Supreme Court of the United States, 133–42 (Paul A. Freund ed., 1971). These events further supported the founders' desire to insulate judges from the influence and control of the other branches of government.

The Supreme Court has recognized that the primary purpose of the prohibition against reducing judicial salaries is "not to benefit the judges, but . . . to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations, and pervading principles of the Constitution." *Evans v. Gore,* 253 U.S. 245, 253, 40 S.Ct. 550, 64

L.Ed. 887 (1920), *overruled on other grounds by Hatter,* 532 U.S. at 571, 121 S.Ct. 1782. The Compensation Clause should be "construed, not as a private grant, but as a limitation imposed in the public interest." *Id.* It is the public that benefits from a strong, independent judiciary that is free to issue decisions without fear of repercussion.

The Framers' desire to insulate judicial pay from the political process was the subject of much debate and angst. While, given the long tenure judges would be asked to serve, there was no doubt some provision should be made for salary increases, the Framers also feared that, if salary decisions were left entirely to Congress, the judiciary might be forced to curry favor with Congress to secure reasonable compensation increases. *See* Jonathan L. Entin & Erik M. Jensen, *Taxation, Compensation, and Judicial Independence,* 56 Case W. Res. L. Rev. 965, 972 (2006). To address this concern, James Madison suggested indexing judicial pay to the price of wheat or another stable value. The Framers rejected that idea, however, for fear fluctuations in commodity prices, like inflation, might leave judges undercompensated. *See* 2 *The Records of the Federal Convention of 1787* 44–45 (Max Farrand ed., 1911).

Thus, while the Framers foresaw a need for in-term increases in judicial salaries and were concerned with leaving the task of providing those increases to Congress, they saw no alternative; no self-executing system they could devise seemed adequate to ensure that, given the dual effects of inflation and rising standards of living, judges would not be left undercompensated. So trust Congress they did, leaving to it the responsibility to guard against real decreases in judicial salary by future legislative enactments.

In sum, the Framers intended to provide judges reasonable expectations about their pay. The Framers, to be sure, did not contemplate that a judges' reasonable expectation would mean that he or she would become wealthy by taking the bench, or that Congress necessarily would increase judicial salaries. They believed, however, that Congress would assess fairly and periodically the need for increases in judicial compensation, would provide increases when appropriate, and that, once it did so, judicial officers thereafter could rely on the fact that Congress could not take such increases away.

2. The Expectations Approach in Practice

Courts have long-endorsed this expectations-based approach to the Compensation Clause. Indeed, as Justice Breyer has noted, protecting "a judge's reasonable expectations" is the "basic purposive focus" of the Compensation Clause. *Williams,* 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). Likewise, Justice Scalia has argued that, when Congress takes away a previously-established component of the federal judicial "employment package," it reduces compensation and thereby thwarts judicial expectations. *See Hatter,* 532 U.S. at 585, 121 S.Ct. 1782 (Scalia, J., dissenting) (arguing that repeal of federal judges' exemption from the Medicare tax was a reduction of compensation because those judges "had an employment expectation of a preferential exemption from taxation"). Consistent with this expectations-related focus, the Supreme Court has held that the Compensation Clause forbids laws "which by their necessary operation and effect withhold or take from the judge a part of that which has been promised by law for his services." *O'Donoghue v. United States,* 289 U.S. 516, 533, 53 S.Ct. 740, 77 L.Ed. 1356 (1933)

(quoting *Evans v. Gore*, 253 U.S. 245, 254, 40 S.Ct. 550, 64 L.Ed. 887 (1920)).

Other courts likewise have emphasized judicial expectations in their approach to the Compensation Clause. For example, in the early nineteenth century, the Circuit Court for the District of Columbia held that, "if [a judge's] compensation has once been fixed by law, a subsequent law for diminishing that compensation . . . cannot affect [a sitting judge]." *United States v. More*, 7 U.S. (3 Cranch) 159, 160 n. 2, 2 L.Ed. 397 (1805), *writ of error dism'd for want of jurisdiction.* In *More*, Congress had enacted and later abolished a system of fees for compensating justices of the peace in the District of Columbia. *Id.* One of the justices of the peace continued to charge fees under the abolished structure, and the government brought an indictment against him. *Id.* On appeal, the Circuit Court held that: (1) the compensation of justices of the peace was subject to the Compensation Clause; and (2) where a fee structure is set by law, a later-enacted statute diminishing or abolishing that structure violated the Constitution. *Id.* at 161. Because sitting justices had an expectation that they would receive compensation consistent with the then-existing fee structure, Congress could not take that structure away.

In *Will*, the Supreme Court discarded the longstanding expectations-based approach to the Compensation Clause in favor of its "due and payable" vesting rule, without clear explanation for doing so. In a terse footnote, the Court distinguished *More*. *See Will*, 449 U.S. at 228, n. 32, 101 S.Ct. 471. Specifically, the Court claimed that, in *More*, "the fee system was already in place as part of the justices' compensation when Congress repealed it" whereas "the increase [via the Adjustment Act] in Year 2 had not yet become part of the compensation of Article III judges" when it was repealed. *Id.* Careful consideration of the facts in *More* reveal that this is a distinction without a difference. The justices under the fee system in *More* were not entitled to compensation until they actually rendered services. *See More*, 7 U.S. at 160 n. 2 ("This compensation is given in the form of fees, payable when the services are rendered."). At all times, the justices knew the precise amount they *could* charge for a particular service, but they never knew how much their total compensation would be, for example, in a particular week. In other words, the fee system in *More* merely set out a structure for calculating the compensation, which was not "due and payable"—to use the Court's terminology in *Will*—until the justices performed the affirmative act of rendering services.

The Adjustment Act formula was no different. In the same way that the justices under the fee system in *More* did not know how much they would work in a particular year, under the Adjustment Act, Article III judges did not know how much their salary would increase in a particular year, if at all. But they did know that, once the formula was enacted for the year, it became part of the compensation due. For example, looking at Year 3 in *Will*, if we accept the dissent's proposition that the COLA of 5.5% became automatic once the President's alternative plan was adopted and transmitted to Congress—which was one month before the Year 3 blocking statute was enacted—then there is no doubt that, as was the case in *More*, the COLA "was already in place as part of the [judges'] compensation when Congress repealed it." *See Will*, 449 U.S. at 228, n. 32, 101 S.Ct. 471 (citing *More*, 3 Cranch at 161). In the same way that Congress was prohibited from abolishing the fee structure in *More* because it was part of the justices' compensation, so too should Con-

gress have been prohibited from blocking the COLA for Year 3 in *Will*.

Given these similarities, *Will*'s dismissal of *More* is unconvincing. The two opinions are irreconcilable. Either *Will* is incorrect, or the Court should have said that *More* was wrong. The Supreme Court should return to the well-established expectations-based approach to the Compensation Clause.

3. The Consequences of Abandoning the Expectations Approach

Assuming *Will*'s vesting rule allows Congress to bar "automatic" COLAs promised by definitive and precise legislative enactment, that rule is contrary to the constitutional balance the Framers carefully calibrated—one which, of necessity, delegated control over judicial salaries to the legislature, but did so in a way to guard against congressional retribution for unpopular judicial decisions. So understood, *Will*'s vesting rule puts at risk the principles the Framers struggled so hard to foster; it threatens to make the judiciary beholden to Congress in ways which undermine its independence. The Supreme Court should rethink such a rule. *See e.g., Mistretta v. United States,* 488 U.S. 361, 383, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989) (encouraging vigilance against a "provision of law" that "impermissibly threatens the institutional integrity of the Judicial Branch") (quoting *Commodity Futures Trading Comm'n v. Schor,* 478 U.S. 833, 851, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986)).

The Framers' concerns were prescient. Statistics demonstrate that the erosion of judicial pay "has reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary." Chief Justice John G. Roberts, Jr., *2006 Year–End Report on the Federal Judiciary,* 39 The Third Branch 1, 1 (2007). Not only is this not the world the Framers contemplated, it is approaching one they most feared. As Hamilton explained, if judicial independence is "destroyed, the constitution is gone, it is a dead letter; it is vapor which the breath of faction in a moment may dissipate." *Commercial Advertiser* (Feb. 26, 1802) (reprinted in *The Papers of Alexander Hamilton,* Volume XXV 525 (Columbia University Press 1977)).

III

I finally turn to Section 140 of Pub. L. No. 97–92, 95 Stat. 1183, 1200 (1981), and its role in our assessment of the legality of the congressional action challenged here. I agree with the majority that the existence of Section 140 does not change the conclusion that the failure to provide COLAs mandated by the 1989 Act is unconstitutional, whether the withholding occurred before or after Congress amended that section in 2001. As the majority explains, by its own terms, Section 140 is not applicable to the salary adjustments contemplated by the 1989 Act. If it were, however, as the government contends it is, we could not enforce it because Section 140 is unconstitutional.

Section 140 provides as follows:

> Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted. . . .

Pub. L. No. 97–92, § 140, 95 Stat. 1183, 1200 (1981). Section 140 was a rider to a Joint Resolution providing continuing appropriations for fiscal year 1982. In *Williams,* we held that the government

could not rely on Section 140 as justification for the blocking statutes passed in 1995, 1996, 1997, and 1999 because Section 140 expired by its own terms on September 30, 1982. *Williams*, 240 F.3d at 1026 (citing Pub. L. No. 97–161, 96 Stat. 22 (1982) (extending life of provisions from March 31, 1982 to September 30, 1982); Pub. L. No. 97–92, § 102(c), 95 Stat. 1183 (1981)).

After *Williams*, Congress enacted legislation that amended Section 140 to provide that it "shall apply to fiscal year 1981 and each fiscal year thereafter." Act of Nov. 28, 2001, Pub. L. No. 107–77, § 625, 115 Stat. 803 ("2001 amendment"). Today, the majority assumes that the 2001 amendment supersedes *Williams*'s holding that Section 140 expired, but agrees with the alternative holding in *Williams* that, even if not expired, the 1989 Act provides the additional authorization required by Section 140.

Were the majority's conclusion on that point not correct, then we would be forced to conclude that Section 140 violates the Compensation Clause, both because it singles out Article III judges for disadvantageous treatment and because it violates the principle of separation of powers.

A. Section 140's Discriminatory Effect

The Supreme Court has held that a law violates the Compensation Clause when it "effectively single[s] out . . . federal judges for unfavorable treatment" in their compensation. *Hatter*, 532 U.S. at 559, 121 S.Ct. 1782. In *Hatter*, the Court struck down a statutory scheme that required sitting federal judges to pay into the Social Security system while other high-level government officials potentially were exempt from making such payments. *Id.* at 564, 572–73, 121 S.Ct. 1782. In finding the denial of the exemption to judges unconstitutional, the Court explained that the "practical upshot" of the statutory scheme was to disadvantage judges relative to "nearly every current federal employee." *Id.* at 573, 121 S.Ct. 1782.[3]

Section 140 is no different. It only overrides the automatic annual COLAs promised in the 1989 Act for judicial officers. All other federal employees—including high ranking Executive Branch appointees and Members of Congress—remain entitled to those "automatic" adjustments. Only judicial officers are beholden to Congress for an additional affirmative legislative enactment before they may receive the 1989 Act's COLAs. Thus, post–2001, Section 140 turns the 1989 Act into a law that provides a financial benefit to all federal employees other than judges and puts the judiciary in the position of annually needing to "curry favor" with the legislature for compensation increases, just as the Framers feared. That clearly violates the Compensation Clause. *See Hatter*, 532 U.S. at 576, 121 S.Ct. 1782; *Williams*, 535 U.S. at 911, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari) ("[Section 140] refers specifically to federal judges, and it imposes a special legislative burden upon their salaries alone. The singling out of judges must throw the constitutionality of the provision into doubt.") (citing *Hatter*, 532 U.S. at 564, 121 S.Ct. 1782).

3. Justice Scalia did not join in this portion of the Court's opinion, concurring on grounds that the Compensation Clause was violated because the congressional action violated the judicial officers' reasonable expectations about their future income package. *Hatter*, 532 U.S. at 586, 121 S.Ct. 1782 (Scalia, J., concurring in part and dissenting in part) ("I disagree with the Court's grounding of this holding on the discriminatory manner in which the extension occurred."). The "discrimination" theory, however, received the votes of a majority of the Justices and, therefore, is binding precedent.

"Judges 'should be removed from the most distant apprehension of being affected in their judicial character and capacity, by anything, except their own behavior and its consequences.' " *Hatter,* 532 U.S. at 577, 121 S.Ct. 1782 (quoting James Wilson, Lectures on Law (1791), in 1 Works of James Wilson 364 (J. Andrews ed. 1896)).

The fear of disadvantageous treatment of judges under Section 140, as amended, is not hypothetical. Until recently, annual adjustments for federal judges remained in step with those for Executive Branch appointees and Members of Congress. When those groups received automatic adjustments under the 1989 Act, Congress also enacted the necessary special legislation to authorize an adjustment for judges. In fiscal year 2007, however, both General Schedule employees and Executive Branch appointees received an automatic adjustment under the 1989 Act, but Congress did not enact special legislation to adjust judicial salaries. The same thing happened in fiscal year 2010. Thus, the link between judicial salary adjustments and those for Executive Branch appointees was severed such that all nonelected federal employees other than Article III judges received COLAs in those years.[4] This is the very sort of individualized treatment of the judiciary that the Supreme Court has characterized as a "disguised legislative effort to influence the judicial will." *See Hatter,* 532 U.S. at 571, 121 S.Ct. 1782. Little could be more inconsistent with the Framers' purpose and construct under the Compensation Clause.

B. Section 140 and the Separation of Powers

Section 140 separately poses a separation of powers problem because it conditions the award of COLAs to judges on the receipt of salary adjustments by Members of Congress. The government argues that, in enacting the 1989 Act, "Congress made clear its intent to maintain a system of salary parity among Federal judges, members of Congress, and high-level Executive branch officers." Appellee's Br. 17 (citing Report of the Bipartisan Task Force on Ethics on H.R. 3660, Government Ethics Reform Act of 1989, 135 Cong. Rec. 30,756 (Nov. 21, 1989)). As noted above, any "parity" objective vis-à-vis Executive Branch officers has been abandoned. And, it is precisely because Congress has continued to use Section 140 to force a parity between judicial salaries and its own that Section 140 violates the principle of separation of powers.

The concern with the independence of the judiciary is one which flows directly from the tripartite form of government on which the Constitution is structured. In establishing the system of divided powers in the Constitution, the Framers believed it was essential that "the judiciary remain[ ] truly distinct from both the legislature and the executive." *Stern,* 131 S.Ct. at 2608 (quoting The Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton)). Accordingly, as the Supreme Court has noted, the Framers built into the Constitution "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Mistretta,* 488 U.S. at 382, 109 S.Ct. 647 (quoting *Buckley v. Valeo,* 424 U.S. 1, 122, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)). Although the three branches "are not hermetically sealed from one another," Article III was designed to impose certain "basic limitations that the other branches may not transgress." *Stern,* 131 S.Ct. at 2609

4. Members of Congress did not receive salary adjustments in 2007 or 2010 because they affirmatively chose to opt out of their right to receive them under the 1989 Act. That choice was theirs, however, and not one otherwise mandated by preexisting legislation.

(citing *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 443, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977)).

As noted earlier, the compromise the Framers struck under the Compensation Clause was one which would entrust to Congress the power *and* obligation to ensure reasonable salary adjustments for the judiciary over time. This was a compromise born of necessity, however; this mechanism for judicial salary adjustments was not meant to tie those adjustments to legislative salary changes, or to make them dependent on prevailing political winds. The Framers certainly did not mean to use the Compensation Clause to blur the lines between the legislative and judicial branches. That is precisely what Section 140 does, however.

Congress has used Section 140 to link judicial pay to its own, affirmatively authorizing judicial compensation increases thereunder only in years where Congress finds it politically palatable to allow increases in its own. By using Section 140 in this way, Congress has ignored its constitutional duty to assess independently the adequacy of judicial compensation. And, it has ignored the obligation entrusted to it by the Framers to jealously guard the independence of the judiciary. "[W]hether the Judiciary is entitled to a compensation increase must be based upon an objective assessment of the Judiciary's needs if it is to retain its functional and structural independence." *Maron v. Silver*, 14 N.Y.3d 230, 899 N.Y.S.2d 97, 925 N.E.2d 899, 914 (2010) (finding link between legislative and judicial pay increases unconstitutional under New York state constitution).

Because Section 140 skirts Congress's obligations under the Compensation Clause and undermines the independence of the judiciary, it is unconstitutional. The Supreme Court repeatedly has made clear that it is the laws that "threaten[ ] the institutional integrity of the Judicial Branch" that violate the principle of separation of powers. *Mistretta*, 488 U.S. at 383, 109 S.Ct. 647 (quoting *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986)). Under these well-established guideposts, Section 140 must fail.

IV

I agree with the majority that the failure to provide COLAs promised by the 1989 Act to the judiciary violates the Compensation Clause. I also agree that *Will* does not dictate a contrary result. "General propositions do not decide concrete cases." *Lochner v. New York*, 198 U.S. 45, 76, 25 S.Ct. 539, 49 L.Ed. 937 (1905) (Holmes, J., dissenting). The general concepts espoused in *Will* simply do not address the very concrete and different set of facts before us. If the Supreme Court concludes *Will* must be read as broadly as this Court felt forced to read it in *Williams*, however, *Will* must be overruled. To the extent Section 140 plays any role in the Court's analysis of the issues presented here, moreover, the Supreme Court should address its constitutionality and put its use to rest.

WALLACH, Circuit Judge, concurring.

I concur in the results, and in the reasoning of the decision, including the necessity of making this important determination that Congress may not exceed constitutional bounds in its relationship with the judiciary. I write separately only to clarify that this decision does not mean that any particular federal judge other than plaintiffs will necessarily accept accrued back pay.

APPENDIX G

COMPILATION OF SALARY DATA FOR PUBLIC OFFICIALS IN NEW YORK AND OTHER STATES

2019 Salaries of Commissioners of Selected Executive Branch Agencies

Agency	2019 Salary
Executive Chamber	
• Governor	$200,000
• Lt. Governor	$190,000
Attorney General	$190,000
Comptroller	$190,000
Department of Financial Services-Banks & Insurance	
• Commissioner	$190,000
Child & Family Services	
• Commissioner	$190,000
Corrections and Community Supervision	
• Commissioner	$190,000
Criminal Justice Services	
• Commissioner	$175,000
Education	
• Commissioner	$190,000
Environmental Conservation	
• Commissioner	$190,000
Health	
• Commissioner	$190,000
Homeland Security & Emergency Services	
• Commissioner	$190,000
Labor	
• Commissioner	$175,000
Office of Mental Health	
• Commissioner	$190,000
Office for People with Developmental Disabilities	
• Commissioner	$190,000
New York State Police	
• Superintendent	$190,000
Office of General Services	
• Commissioner	$190,000
Office of Parks, Recreation & Historic Preservation	
• Commissioner	$175,000
Office of Temporary & Disability Assistance	
• Commissioner	$190,000
Public Services Commission	
• Chair	$175,000
SUNY	
• Commissioner	$190,000
Taxation & Finance	
• Commissioner	$175,000
SUNY	
• Transportation	$190,000
Source: osc.state.ny.us/agencies/pbull/agencies/2019_2010/1710att.pdg [State Comptrollers Website]	

2019 Salaries of New York Legislative Members

Annual part-time salary of $110,000 ($120,000 in 2020 and $130,000 in 2021) with 15 leaders from each body receiving stipends ranging from a high of $41,500 (Temporary President of the Senate, Speaker of the Assembly) to a low of $11,000 for the Ranking Minority Member of Assembly Ways and Means Committee.

Senate Member	Position	Rate of Pay	Stipend	Current Total Pay
Andrea Stewart-Cousins	Member/Temp Pres of Senate	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$41,500	$151,500
John Flanagan	Member/Min Ldr of Senate	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$34,500	$144,500
Liz Kruger	Member/Chrmn Senate Finance Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$34,000	$144,000
Michael Gianaris	Member/Dept Maj Ldr	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$34,000	$144,000
James Seward	Member/Ranking Min Member Senate Finance Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$20,500	$130,500
Joe Griffo	Member/Deputy Min Ldr	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$20,500	$130,500
Brad Hoylman	Member/Chair Senate Judiciary Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$0	$110,000
Jamaal Bailey	Member/Chrmn Senate Codes Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$0	$110,000
Michael Ranzenhofer	Member/Ranking Min Member Senate Judiciary Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$0	$110,000
Andrew Lanza	Member/Ranking Min Member Senate Codes Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$0	$110,000

Assembly Member	Position	Rate of Pay	Stipend	Total Pay
Carl Heastie	Member/Speaker of the Assembly	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$41,500	$151,500
Crystal Peoples-Stokes	Member/Maj Ldr of Assembly	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$34,500	$144,500
Brian Kolb	Member/Min Ldr of Assembly	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$34,500	$144,500
Jeffion L. Aubry	Member/Maj Speaker Pro Tempore	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$25,000	$135,000
Andy Goodell	Member/ Min Speaker Pro Tempore	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$20,500	$130,500
Helene Weinstein	Member/Chrman Assembly Ways & Means Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$34,000	$144,000
William Barclay	Member/Ranking Min Member of Assembly Ways & Means Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$20,500	$130,500
Jeffery Dinowitz	Member/Chrmn Assembly Judiciary Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$0	$110,000
Joseph Lentol	Member/Chrmn Assembly Codes Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$18,000	$128,000
Anthony Palumbo	Member/Ranking Min Member of Assembly Judiciary Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$0	$110,000
Ed Ra	Member/Ranking Min Member of Assembly Codes Com	Eff Jan 2019: $110,000 Eff Jan 2020; $120,000 Eff Jan 2021: $130,000	$11,000	$121,000

In addition to their $110,000 salary, New York legislators receive a per diem of $175/full day (including overnight) or $61/partial day (no overnight. They also receive 58 cents per mile, which is tied to the federal rate.

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries

State or other jurisdiction	Governor	Lieutenant governor (a-1)	Secretary of state (a-2)	Attorney general (a-3)	Treasurer (a-4)	Adjutant general (a-5)	Admin. (a-6)	Agriculture (a-7)	Auditor (a-8)	Banking (a-9)
Alabama	$120,395	$60,830	$85,248	$168,002	$85,248	$91,014	N/A	$84,655	$85,248	$157,380
Alaska	145,000	115,000	(a-1)	141,156	159,001	141,156	141,156	110,304	158,757	122,988
Arizona	95,000	(a-2)	70,000	90,000	70,000	146,000	N/A	132,000	141,986	130,000
Arkansas	148,134	43,584	94,554	136,578	89,300	179,892	157,182	122,953	89,300	152,859
California	201,680	151,260	151,260	175,182	161,342	190,101	N.O.	209,944	209,944	191,109
Colorado	90,000	93,360	93,260	107,676	93,360	163,644	158,556	155,004	183,312	118,956
Connecticut	150,000 (d)	110,000	119,625	119,625	119,625	165,000	175,000	140,000	(c)	149,625
Delaware	171,000	81,239	131,011	148,893	116,582	125,126	(c)	122,333	111,667	114,595
Florida	130, 273	124,851	141,000	128,972	(a-24)	170,352	141,000	128,972	140,004	(a-24)
Georgia	175,000	91,609	123,637	139,169	165,000	160,000	153,000	121,557	152,160	148,358
Hawaii	158,700	154,812	N.O.	154,812	154,812	222,441	(c)	147,444	147,444	119,664
Idaho	138,302	42,909	105,771	124,000	104,207	145,121	95,201	130,936	N.O.	(a-24)
Illinois	177,412 (d)	135,669	156,541	156,541	135,669	115,613	142,339	133,273	157,212	135,081
Indiana	121,331	95,162	82,640	99,418	82,640	139,869	142,041	148,000	82,640	126,072
Iowa	130,000	103,212	103,212	123,669	103,212	175,106	142,938	103,212	103,212	117,832
Kansas	99,636	54,000	86,003	98,901	86,003	106,392	120,000	110,000	N/A	120,000
Kentucky	148,781	126,485	126,485	126,485	126,485	137,000	N.O.	126,485	126,485	128,553
Louisiana	130,000	117,303	115,000	115,000	115,000	200,262	237,500	115,000	132,620	145,000
Maine	70,000	(e)	104,104	105,914	79,518	139,734	139,734	139,734	111,134	115,274
Maryland	170,000	141,500	99,500	141,500	141,500	144,052 (b)	146,743 (b)	143,488 (b)	N.O.	101,463 (b)
Massachusetts	185,000	122,058	136,402	136,402	133,277	171,392	161,522	136,000	140,607	130,000
Michigan	159,300	111,510	112,410	112,410	174,204	180,269	(a-10)	165,000	176,636	165,000
Minnesota	127,629	82,959	95,722	121,248	(a-24)	184,579	144,991	144,991	108,485	126,491
Mississippi	122,160	60,000	90,000	108,960	90,000	141,105	150,000	90,000	90,000	156,900
Missouri	133,821	86,484	107,746	116,437	107,746	111,116	129,509	125,381	107,746	116,150
Montana	115,505	86,990	95,695	137,008	(a-6)	122,621	111,895	110,787	92,236	110,787
Nebraska	105,000	75,000	85,000	95,000	85,000	111,236	160,001	116,727	85,000	107,338
Nevada	149,573 (d)	63,648	102,898	141,086	102,898	118,200	128,998	118,200	N.O.	98,880
New Hampshire	134,581	(e)	105,930	128,260	105,930	105,930	117,913	100,171	N.O.	105,929
New Jersey	175,000	141,000	(a-1)	140,000	141,000	141,000	N.O.	141,000	144,629	141,000
New Mexico	110,000	85,000	85,000	95,000	85,000	202,552	128,000	79,788	85,000	90,000
New York	200,000	151,500	120,800	151,500	N/A	120,800	183,040	120,800	151,500	127,000
North Carolina	144,349	127,561	127,561	127,561	127,561	107,490	145,218	127,561	127,561	127,561
North Dakota	129,096 (d)	103,221	105,770	157,009	99,881	200,160	N.O.	108,656	105,770	140,004
Ohio	153,650	176,426	113,506	113,506	113,506	140,005	1,550,002	140,005	113,506	125,299
Oklahoma	147,000	114,713	140,000	132,825	114,713	184,568	110,750	126,508	114,713	196,721
Oregon	98,600	(a-2)	77,000	82,220	72,000	185,508	204,058	152,652	136,488	N.O.
Pennsylvania	194,850	163,672	140,291	162,115	162,115	140,291	155,874	140,291	162,115	140,291
Rhode Island (g)	145,755	122,740	122,740	132,521	122,740	141,259	136,510	(a-23)	159,248	135,000
South Carolina	106,078	46,545	92,007	92,007	92,007	92,007	201,297	92,007	147,052	135,273
South Dakota	113,961	(h)	89,700	112,096	89,700	119,675	102,811	118,000	89,700	109,313
Tennessee	194,112	72,948 (e)	209,520	188,952	209,520	161,904	209,520	161,904	(a-14)	161,904
Texas	153,750	7,200	197,415	153,750	(a-14)	178,196	N.O.	137,500	181,128	242,925
Utah	150,000	135,000	(a-1)	104,405	104,405	131,997	140,004	125,008	104,405	130,000
Vermont	178,274	70,470	113,042	131,019	109,449	121,056	136,448	136,448	109,449	118,726
Virginia	175,000	36,321	172,000	150,000	172,430	139,614	172,000	165,000	178,950	175,100
Washington	183,072	103,937	124,108	162,599	144,679	184,568	168,792	161,268	124,108	140,724
West Virginia	150,000	20,000 (e)	95,000	95,000	95,000	125,000	95,000	95,000	95,000	75,000
Wisconsin	152,756	80,684	72,551	148,242	72,551	135,512	152,755	130,000	132,142	135,013
Wyoming	105,000	(a-2)	92,000	175,000	92,000	142,816	112,012	124,378	92,000	107,184
Guam	130,000	85,000	N.O.	105,286	52,492	68,152	88,915	60,850	100,000	88,915
CNMI*	70,000	65,000	N.O.	80,000	40,800 (b)	N.O.	54,000	40,800 (b)	80,000	40,800 (b)
Puerto Rico	70,000	N.O.	125,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	150,000	75,000	(a-1)	76,500	76,500	85,000	76,500	76,500	76,500	75,000

See footnotes at end of table

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Budget (a-10)	Civil rights (a-11)	Commerce (a-12)	Community affairs (a-13)	Comptroller (a-14)	Consumer affairs (a-15)	Corrections (a-16)	Economic development (a-17)	Education (a-18)	Election admin. (a-19)
Alabama	$177,266	N.O.	$162,232	$164,419	$138,305	$72,686	$71,712	(a-12)	$250,000	$72,686
Alaska	195,000	110,304	141,156	(a-12)	137,664	(a-12)	141,156	(a-12)	141,156	145,008
Arizona	130,000	145,000	250,000	N/A	140,000	133,729	185,000	(a-12)	85,000	142,518
Arkansas	136,309	N.O.	N.O.	N/A	142,470	N.O.	155,052	149,861	235,823	71,171
California	(a-24)	N.O.	N.O.	158,738	161,342	191,109	265,920	N.O.	175,182	149,244
Colorado	173,616	126,960	N.O.	155,000	147,672	158,712	170,004	155,000	262,656	139,260
Connecticut	161,922	136,269	11,146	(a-12)	119,625	142,800	167,500	(a-12)	192,500	116,537
Delaware	151,088	81,950	(a-2)	N.O	151,088	125,102	151,088	(c)	164,055	91,173
Florida	145,000	99,500	N/A	110,000	128,972	100,000	160,000	141,000	276,000	97,250
Georgia	175,615	105,202	132,600	164,800	N/A	124,836	160,000	169,500	123,270	97,850
Hawaii	154,812	113,616	147,444	N.O.	147,444	118,776	147,444	147,444	240,000	119,664
Idaho	122,990	67,787	130,000	N.O.	104,207	(a-3)	139,984	(a-12)	104,207	(a-2)
Illinois	150,000	115,613	142,339	(a-12)	135,669	(a-3)	150,228	(a-12)	225,000	130,008
Indiana	137,700	115,400	(a-17)	122,400	(a-8)	105,500	154,400	195,850	98,418	(c)
Iowa	141,960	87,000	N.O.	98,592	N.O	128,890	142,500	154,300	140,000	106,309
Kansas	130,000	76,476	125,000	N/A	115,000	95,000	135,000	72,050	175,000	(a-2)
Kentucky	137,000	126,200	137,000	115,000	108,286	86,940	115,000	250,000	200,000	73,500
Louisiana	148,865	86,715	237,500	162,198	(a-6)	108,139	136,719	237,500	275,000	112,195
Maine	104,645	95,098	(a-17)	(a-17)	118,934	130,811	139,734	139,734	139,734	110,219
Maryland	174,417 (b)	114,865 (b)	172,021 (b)	N.O	141,500	134,749 (b)	159,072 (b)	172,021 (b)	153,532 (b)	130,059 (b)
Massachusetts	134,589	137,382	161,522	145,000	176,624	145,000	150,000	161,522	161,522	136,402
Michigan	165,000	159,800	(a-32)	N.O.	150,420	N.O.	175,000	N/A	216,240	(c)
Minnesota	(a-24)	144,991	144,991	(a-17)	(a-24)	128,036	150,002	150,002	1,500,002	(a-2)
Mississippi	(a-6)	N.O.	90,000	130,000	(a-6)	108,960	132,761	183,000	300,000	80,000
Missouri	118,473	83,761	129,526	108,004	99,668	116,437	125,381	129,526	193,464	62,712
Montana	122,412	85,451	110,781	74,940	115,495	79,524	111,904	105,857	107,127	88,880
Nebraska	164,303	79,170	134,172	101,653	140,000	95,000	188,957	143,998	227,390	97,562
Nevada	(a-6)	88,651	128,998	N.O.	102,898	75,111	128,998	N/A	128,998	(c)
New Hampshire	105,930	80,971	114,554	N.O.	106,575	100,171	117,913	87,423	114,553	(a-2)
New Jersey	132,000	120,000	(a-17)	141,000	141,000	136,000	141,000	225,000	141,000	125,000
New Mexico	92,032	N.O.	128,000	N.O.	120,359	91,398	N/A	(a-12)	128,000	85,000
New York	199,547	109,800	120,800	120,800	151,500	127,000	136,000	1 (d)	250,000	(i)
North Carolina	(a-24)	N/A	152,944	N.O.	158,501	N/A	N/A	N/A	127,561	107,590
North Dakota	(a-24)	(a-12)	208,000	N.O.	N.O.	141,384	150,000	126,504	120,410	53,640
Ohio	177,008	117,104	150,010	155,002	177,008	109,990	155,002	155,002	189,571	113,506
Oklahoma	110,000	N.O.	141,000	N.O.	120,000	132,833	185,000	N.O.	124,373	117,885
Oregon	157,884	112,428	168,276	156,773	N.O.	185,508	185,104	(a-13)	157,581	150,336
Pennsylvania	168,490	144,157	135,179	135,179	154,015	145,976	155,879	148,085	155,879	84,930
Rhode Island (g)	185,739	86,342	205,706	N/A	140,645	(a-3)	145,644	185,000 (j)	212,106	145,993
South Carolina	123,730	115,000	175,980	N/A	92,007	115,836	168,043	(a-12)	92,007	103,264
South Dakota	75,656	51,072	(a-44)	(a-48)	(a-40)	61,138	124,462	138,823	123,864	74,427
Tennessee	163,248	116,964	(a-17)	(a-17)	209,520	82,236	161,904	169,392	200,004	144,612
Texas	205,000	123,769	N.O.	180,084	153,750	155,224	266,500	164,701	220,375	(c)
Utah	158,995	98,176	144,997	70,554	(a-24)	(a-12)	131,997	145,995	230,069	83,200
Vermont	127,088	107,806	136,177	109,907	127,088	107,806	121,056	112,756	136,448	109,449
Virginia	172,699	97,850	172,000	137,296	172,567	115,682	184,051	350,200	235,000	111,000
Washington	N.O.	120,432	168,792	N.O.	N.O.	(a-3)	181,440	(a-12)	134,212	(a-2)
West Virginia	93,000	55,000	95,000	81,548	(a-8)	(a-3)	90,504	(a-13)	230,000	(a-2)
Wisconsin	130,000	107,016	N.O.	N.O.	108,243	103,625	150,009	N.O.	127,047	122,013
Wyoming	134,358	(a-37)	142,943	N.O.	(a-8)	134,260	148,628	(a-12)	92,000	98,133
Guam	88,915	N.O.	88,915	N.O.	83,400	55,341	67,150	82,025	82,025	61,939
CNMI*	54,000	49,000	52,000	52,000	40,800 (b)	52,000	40,800 (b)	45,000	80,000	53,000
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	76,500	60,000	76,500	(c)	76,500	76,500	76,500	85,000	76,500	135,000

See footnotes at end of table

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Emergency management (a-20)	Employment services (a-21)	Energy (a-22)	Environmental protection (a-23)	Finance (a-24)	Fish & wildlife (a-25)	General services (a-26)	Health (a-27)	Higher education (a-28)	Highways (a-29)
Alabama	$124,200	$88,543	$97,766	$152,618	$177,266	$113,479	$97,766	$282,446	$206,184	$169,000
Alaska	114,420	124,452	160,000	141,156	142,140	141,156	(a-43)	141,156	325,000	133,620
Arizona	112,500	135,000	N/A	175,000	(a-14)	160,000	120,000	205,505	120,000	145,000
Arkansas	110,272	151,913	N.O.	137,094	(a-6)	135,383	138,918	221,976	170,437	218,998
California	209,944	192,325	158,573	209,944	209,944	189,091	191,109	(c)	311,928	(a-49)
Colorado	158,424	133,848	155,000	162,864	139,368	153,216	117,420	207,778	155,000	160,920
Connecticut	183,340	157,000	139,050	139,050	209,439	(c)	175,000	190,000	335,000	190,749
Delaware	93,583	99,014	99,108	(a-35)	151,088	101,525	116,355	174,040	113,602	(a-49)
Florida	141,000	141,000	91,960	150,000	128,972	140,737	141,000	N/A	200,000	150,000
Georgia	105,000	108,150	116,452	170,000	155,400	135,000	162,761	175,000	500,500	124,409
Hawaii	128,268	106,572(b)	106,572(b)	N/A	(c)	106,572 (b)	(a-14)	147,444	395,004	106,572 (b)
Idaho	122,532	126,152	86,174	115,960	106,890	136,572	N.O.	157,185	126,048	(a-49)
Illinois	128,920	142,339	(a-42)	133,273	(a-10)	(a-35)	(a-6)	150,228	200,004	(a-49)
Indiana	133,110	168,500	81,159	134,415	159,878	88,997	(a-6)	175,000	192,560	(a-49)
Iowa	112,070	135,000	(a-17)	134,472	140,629	102,690	118,019	135,387	N.O.	163,634
Kansas	(c)	113,400	85,010	105,019	115,000	84,000	114,000	190,000	200,000	(a-49)
Kentucky	84,349	90,000	137,000	105,000	137,000	140,000	N.O.	157,500	275,000	120,000
Louisiana	130,000	102,149	113,464	137,197	(a-6)	123,614	(a-6)	236,001	350,000	176,900
Maine	91,270	(a-32)	(a-38)	139,734	(a-6)	139,734	115,586	170,477	N/A	(a-49)
Maryland	150,000 (b)	161,975 (b)	138,631 (b)	104,235 (b)	174,417 (b)	116,185 (b)	(a-6)	170,997 (b)	157,558 (b)	160,742
Massachusetts	143,000	161,522	135,000	139,050	161,522	129,000	158,000	140,000	220,763	153,536
Michigan	(a-47)	143,517	N/A	165,000	(a-10)	(c)	N.O.	175,000	N.O.	(a-49)
Minnesota	154,992	N.O.	140,000	150,002	154,992	137,599	(a-6)	150,002	390,000	154,992
Mississippi	120,000	135,315	90,000	129,347	(a-6)	147,216	N.O.	215,000	300,000	157,000
Missouri	101,458	108,004	103,020	111,100	118,473	(c)	99,668	143,420	176,750	179,256
Montana	95,100	105,820	131,427	111,895	115,495	111,904	102,515	111,895	320,122	(a-49)
Nebraska	88,549	134,172	152,249	152,249	(c)	117,260	160,001	153,772	187,180	151,840
Nevada	118,200	128,998	107,973	125,021	(a-14)	118,200	N.O.	(c)	N/A	(a-49)
New Hampshire	105,930	105,930	80,971	114,554	(a-10)	100,171	(a-6)	100,171	79,664	(a-49)
New Jersey	132,300	N/A	100,000	141,000	133,507	105,783	(c)	141,000	141,000	123,500
New Mexico	128,000	128,000	128,000	128,000	110,000	115,003	128,000	128,000	128,000	128,000
New York	136,000	127,000	120,800	136,000	151,500	136,000	136,000	136,000	250,000	136,000
North Carolina	109,068	122,815	104,000	145,129	195,352	141,382	N/A	192,500	775,000	164,511
North Dakota	98,916	187,500	208,000	136,116	170,000	128,136	170,000	170,004	372,000	(a-49)
Ohio	116,106	169,998	155,002	152,006	(c)	107,557	100,922	230,006	190,008	155,002
Oklahoma	135,000	115,110	140,000	136,913	170,000	140,000	110,750	189,000	412,031	(a-49)
Oregon	129,936	168,276	145,476	152,652	(a-4)	152,652	(a-6)	185,508	186,084	184,724
Pennsylvania	142,964	135,003	140,187	155,879	168,490	(c)	148,085	155,879	142,553	148,128
Rhode Island (g)	136,489	135,000	140,513	135,000	(a-44)	(a-23)	(a-6)	134,975	265,000 (c)	(a-49)
South Carolina	102,155	161,507	113,609	(c)	180,189	135,072	136,874	(c)	166,280	162,313
South Dakota	89,904	67,902	(a-42)	(a-35)	119,675	124,462	(a-6)	128,598	378,813	109,791
Tennessee	127,932	161,904	165,000	168,708	209,520	168,708	161,904	176,880	179,904	161,904
Texas	198,164	182,500	N.O.	211,415	(a-14)	200,643	177,982	242,353	212,135	(a-49)
Utah	98,945	147,992	124,176	140,004	139,672	114,004	104,000	202,425	N.O.	(a-49)
Vermont	81,660	121,056	118,726	118,726	127,088	101,920	121,056	148,262	N.O.	118,227
Virginia	148,860	161,679	99,419	190,188	175,980	N/A	167,214	225,000	199,479	212,661
Washington	N.O.	168,792	N.O.	168,792	(a-14)	168,300	(a-6)	168,792	N.O.	N.O
West Virginia	80,000	75,000	82,404	95,000	75,902	75,000	82,668	150,000	289,388	120,000
Wisconsin	109,075	114,130	92,477	113,027	130,000	113,027	(a-7)	150,010	525,000	(a-49)
Wyoming	100,147	142,000	100,000	130,577	N.O.	148,593	116,552	180,000	165,000	156,000
Guam	68,152	73,020	55,303	60,850	88,915	60,850	60,528	74,096	195,000	88,915
CNMI*	45,000	40,800 (b)	45,000	58,000	54,000	40,800 (b)	54,000	80,000	80,000	40,800 (b)
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	71,250	76,500	69,350	76,500	76,500	76,500	76,500	76,500	76,500	65,000

See footnotes at end of table

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Information systems (a-30)	Insurance (a-31)	Labor (a-32)	Licensing (a-33)	Mental health & developmental disabilities (a-34)	Natural resources (a-35)	Parks & recreation (a-36)	Personnel (a-37)	Planning (a-38)	Post audit (a-39)
Alabama	$177,266	$164,419	$139,859	N.O.	$152,618	$141,000	$100,198	$168,622	(a-12)	$241,695
Alaska	137,976	131,112	141,156	124,452	106,452	141,156	110,304	137,664	N.O.	(a-8)
Arizona	180,000	120,000	150,000	N.O.	120,058	175,000	175,000	130,000	(a-10)	N.O.
Arkansas	152,859	137,094	134,068	N.O.	134,406 (b)	116,160	134,405	125,665	N.O.	189,293
California	191,109	161,342	209,944	180,086	(c)	209,944	180,086	191,109	N.O.	N.O.
Colorado	165,000	159,996	170,000	145,704	153,996	170,004	161,952	N/A	160,584	(a-8)
Connecticut	176,960	175,000	157,000	118,362	(c)	151,223	155,767	140,000	150,000	(a-8)
Delaware	164,055	111,667	122,333	109,098	(c)	131,011	101,525	131,011	98,093	(a-8)
Florida	130,000	134,158	141,000	71,400	N/A	150,000	114,000	111,000	100,000	(a-24)
Georgia	160,000	120,394	122,786	89,309	175,000	175,000	119,882	140,000	(a-10)	(a-8)
Hawaii	200,004	122,052	147,444	101,508 (b)	131,952	147,444	106,572 (b)	147,444	106,572	106,572 (b)
Idaho	(a-6)	102,273	(a-21)	83,116	N.O.	129,771	91,561	99,548	N.O.	(a-14)
Illinois	(a-6)	135,081	124,090	(a-9)	(a-45)	133,273	(a-35)	(a-6)	N.O.	(a-8)
Indiana	131,402	115,895	115,895	110,376	119,195	125,700	92,302	114,400	N.O.	125,044
Iowa	140,400	128,890	112,070	N.O	128,066	128,890	(a-25)	127,317	N.O.	N.O.
Kansas	185,000	86,003	113,400	63,000	69,000	111,490	111,490	95,000	N.O.	115,296
Kentucky	375,000	103,000	137,000	N.O.	116,500	105,000	116,802	137,000	137,000	126,485
Louisiana	150,000	115,000	137,000	N.O.	130,000	129,210	117,300	145,704	124,946	N/A
Maine	130,811	115,274	139,734	139,734	(a-45)	139,734	(a-35)	118,934	N/A	N/A
Maryland	167,433 (b)	157,386 (b)	161,975 (b)	105,000 (b)	(b)(c)	159,312 (b)	116,053 (b)	141,365 (b)	135.048 (b)	73,361 (b)
Massachusetts	(a-44)	130,000	119,060	115,000	(c)	161,522	130,000	158,000	161,522	(a-8)
Michigan	165,000	(a-9)	165,000	(a-32)	289,193	165,000	135,907	181,927	N.O.	(a-8)
Minnesota	150,002	N/A	144,991	N.O.	154,992	154,992	137,599	(a-24)	N/A	(a-8)
Mississippi	173,209	90,000	N.O.	N.O.	170,180	129,347	147,216	145,000	86,407	(a-8)
Missouri	161,600	125,380	129,280	113,322	142,521	125,381	111,100	110,000	118,473	107,746
Montana	128,482	95,695	111,895	103,008	105,636	111,895	97,818	107,373	105,857	118,037
Nebraska	195,821	130,307	134,172	81,321	141,718	151,919	149,751	160,001	144,352	85,000
Nevada	118,200	118,200	98,880	N.O.	(c)	128,998	108,540	108,540	N.O.	N.O.
New Hampshire	117,913	105,930	105,930	105,930	105,930	114,554	91,965	88,933	N.O.	(a-14)
New Jersey	140,000	130,000	141,000	N.O.	(c)	125,000	110,000	141,000	95,000	N.O.
New Mexico	128,000	116,280	128,000	128,000	N.O.	128,000	91,799	128,000	77,721	85,000
New York	170,000	127,000	127,000	(c)	(c)	136,000	127,000	120,800	1 (d)	151,500
North Carolina	184,206	127,561	127,561	N.O.	N/A	152,944	120,597	142,100	N/A	(a-8)
North Dakota	190,000	105,770	208,000	N.O.	114,000	N.O.	112,000	120,000	N.O.	120,000
Ohio	144,997	150,571	N/A	(k)	(c)	169,998	114,816	119,662	155,002	(a-8)
Oklahoma	160,750	126,713	105,053	N.O.	173,318	126,508	141,000	110,750	N.O.	N.O.
Oregon	211,440	129,936	77,000	N.O.	136,488	N.O.	152,652	157,884	N.O.	(a-8)
Pennsylvania	150,006	140,291	155,879	119,433	148,128	148,085	140,715	146,211	148,069	(a-8)
Rhode Island (g)	205,706	(a-9)	(a-21)	(l)	135,000	(a-23)	(a-23)	146,994	102,860	N/A
South Carolina	173,400	143,420	127,950	127,950	(c)	135,072	132,806	136,290	N/A	109,976
South Dakota	129,268	99,619	112,805	N.O.	113,692	119,675	92,212	119,675	N.O.	(a-8)
Tennessee	207,420	161,904	161,904	125,364	161,904	168,708	119,676	161,904	N.O.	(a-14)
Texas	184,792	202,383	182,500	179,375	227,000	211,415	200,643	N.O.	205,000	(a-8)
Utah	131,996	125,008	130,000	119,850	112,736	140,004	113,235	125,590	(a-10)	(a-8)
Vermont	136,448	118,726	121,056	95,097	120,827	136,448	105,476	121,056	N.O.	(a-8)
Virginia	189,263	170,000	139,647	N/A	212,661	172,000	151,577	158,738	(a-10)	(a-8)
Washington	182,076	126,555	168,792	168,792	(a-45)	138,225	156,258	(a-14)	(a-14)	N.O.
West Virginia	127,500	92,500	70,000	N.O.	(a-27)	(a-25)	(a-25)	70,000	(a-17)	105,664
Wisconsin	126,901	130,000	140,005	130,000	133,474	147,000	113,027	N/A	N.O.	(a-8)
Wyoming	153,300	122,900	96,804	69,783	(c)	123,257	108,433	94,351	175,000	100,000
Guam	88,915	88,915	73,020	88,915	75,208	60,850	60,850	88,915	88,915	100,000
CNMI*	45, 000	40,800 (b)	45,000	45,360	40,800 (b)	52,000	40,800 (b)	60,000	45,000	80,000
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	71,250	75,000	76,500	76,500	70,000	76,500	76,500	76,500	76,500	55,000

See footnotes at end of table

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Pre-audit (a-40)	Public library development (a-41)	Public utility regulation (a-42)	Purchasing (a-43)	Revenue (a-44)	Social services (a-45)	Solid waste mgmt. (a-46)	State police (a-47)	Tourism (a-48)	Transportation (a-49)	Welfare (a-50)
Alabama	(a-14)	$95,000	$103,490	$95,359	$164,419	$140,000	$105,403	$149,000	$91,014	(a-29)	(a-45)
Alaska	N.O.	137,664	133,332	120,144	141,156	(a-27)	110,304	141,156	122,988	141,156	142,140
Arizona	(a-14)	73,000	154,320	95,176	175,000	215,250	121,992	197,000	175,000	150,000	(a-45)
Arkansas	N/A	114,158	137,094	125,665	142,470	282,800	137,094	152,859	111,136	(a-29)	(a-45)
California	(a-14)	N.O.	158,573	(a-26)	205,816	244,274	180,086	274,300	N.O.	197,947	(a-45)
Colorado	(a-14)	145,500	140,928	121,248	166,812	N/A	150,000	94,932	126,708	170,000	171,444
Connecticut	(a-14)	150,797	N/A	149,423	190,400	190,400	144,021	183,340	155,000	190,750	190,400
Delaware	(a-8)	86,572	109,733	(a-26)	127,980	(c)	184,000	172,157	66,000	141,572	118,255
Florida	(a-24)	83,000	131,036	110,000	150,000	140,000	113,000	140,100	N.O.	141,000	N/A
Georgia	(a-8)	N/A	116,452	143,595	158,000	166,860	112,931	170,000	132,600	250,000	137,940
Hawaii	106,572 (b)	120,000	128,280	120,864	147,444	147,444	N/A	N.O.	270,000	147,444	101,508(b)
Idaho	(a-14)	96,636	95,899	(a-6)	88,908	(a-27)	N.O.	117,707	(a-12)	184,849	125,195
Illinois	(a-14)	102,252	130,008	(a-6)	142,339	150,228	(a-23)	132,566	(a-12)	150,228	142,339
Indiana	82,640	113,622	127,500	96,900	139,256	190,550	101,999	147,070	112,200	171,600	(a-45)
Iowa	111,259	117,832	128,890	110,302	154,300	154,300	(a-23)	110,240	102,066	147,014	128,066
Kansas	80,460	85,000	N/A	88,000	125,000	105,000	86,965	110,000	84,000	110,000	N.O.
Kentucky	N.O.	82,500	110,000	86,205	117,265	120,750	90,000	125,000	113,558	137,000	(a-45)
Louisiana	126,880	113,506	137,000	122,554	250,000	129,995	102,000	177,436	117,000	176,900	110,411
Maine	(a-14)	104,104	135,179	N/A	130,811	170,477	85,301	136,781	(a-17)	139,734	(a-45)
Maryland	114,752 (b)	123,236 (b)	165,565	(b)	132,569 (b)	167,488 (b)	140,489 (b)	167,661 (b)	113,763 (b)	174,419 (b)	(a-45)
Massachusetts	(a-8)	121,142	129,000	158,000	N/A	140,000	139,050	251,922	121,800	161,522	150,000
Michigan	N.O.	N.O.	140,000	150,420	134,077	175,000	130,082	165,000	N.O.	165,000	175,000
Minnesota	(a-8)	N/A	(c)	132,859	154,992	154,992	150,002	137,599	137,599	154,992	(a-34)
Mississippi	(a-8)	94,000	120,745	75,501	134,935	130,000	88,184	138,116	120,000	157,000	130,000
Missouri	99,668	80,808	109,847	99,668	129,526	143,420	78,864	N/A	80,800	179,256	101,772
Montana	(a-39)	102,335	108,282	91,855	111,895	(a-27)	93,400	110,620	89,473	111,895	(a-27)
Nebraska	140,000	109,051	137,025	120,001	163,781	220,001	100,630	152,249	104,449	151,840	220,001
Nevada	N.O.	(c)	125,021	98,880	128,998	128,998	(a-23)	128,998	118,200	128,998	(c)
New Hampshire	(a-14)	91,965	111,687	75,410	117,913	121,896	100,171	105,930	91,965	117,913	100,171
New Jersey	N.O.	N.O.	125,301	130,000	128,000	(c)	108,128	132,300	92,490	141,000	127,200
New Mexico	92,032	N/A	90,000	101,001	128,000	128,000	91,480	128,000	128,000	128,000	128,000
New York	151,500	250,000	127,000	136,000	N/A	136,000	136,000	136,000	1 (d)	136,000	136,000
North Carolina	(a-8)	110,704	141,947	N/A	145,218	138,290	108,605	125,260	82,066	195,352	N/A
North Dakota	N/A	N/A	108,656	103,272	114,791	182,004	84,000	125,004	126,864	170,000	182,004
Ohio	(a-10)	110,552	N/A	107,952	155,002	(c)	98,218	155,002	107,910	155,002	169,998
Oklahoma	(a-14)	96,000	(c)	105,750	162,500	185,000	112,806	136,471	141,000	150,000	185,000
Oregon	(a-10)	138,504	160,285	123,828	168,276	185,508	N.O.	168,276	N.O.	185,103	(a-45)
Pennsylvania	(a-4)	142,553	150,585	140,715	148,085	155,879	140,187	154,248	140,715	155,879	155,879
Rhode Island (g)	(a-14)	113,146	117,412	125,874	130,100	(c)	(m)	148,937	(a-17)	135,000	(a-45)
South Carolina	(a-14)	108,207	169,820	124,773	174,966	168,043	146,618	162,313	132,806	187,200	(a-45)
South Dakota	76,694	84,513	104,611	62,897	113,692	124,462	N/A	109,791	112,676	124,462	(a-45)
Tennessee	163,248	139,944	164,688	162,408	163,800	161,904	137,760	161,904	161,904	161,904	161,904
Texas	(a-14)	143,500	159,782	168,000	(a-14)	220,000	N.O.	232,969	164,701	299,812	275,000
Utah	(a-24)	117,520	101,836	(a-26)	84,032	131,081	122,928	121,534	123,905	163,425	(a-45)
Vermont	127,088	98,176	150,737	121,056	121,056	136,448	118,726	136,448	99,195	136,448	121,056
Virginia	(a-14)	153,585	(c)	135,000	164,651	209,000	190,188	184,705	183,890	212,661	209,000
Washington	(a-4)	(a-2)	142,596	N.O.	168,792	190,392	N.O.	192,888	N.O.	194,136	(a-45)
West Virginia	(a-8)	72,000	90,000	90,160	95,000	(a-27)	82,364	85,000	87,160	92,160	(a-27)
Wisconsin	(a-8)	126,006	128,502	103,646	144,997	135,013	113,027	115,794	130,000	145,018	119,018
Wyoming	(a-8)	105,600	121,692	84,960	126,994	(a-27)	115,620	124,152	139,000	(a-29)	(a-45)
Guam	88,915	55,303	1,200	88,915	88,915	74,096	88,915	74,096	88,591	N.O.	74,096
CNMI*	54,000	45,000	80,000	40,800 (b)	45,000	40,800 (b)	54,000	54,000	70,000	40,800 (b)	52,000
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	108,000	N/A	N/A	N/A
U.S. Virgin Islands	76,500	53,350	54,500	76,500	76,500	76,500	76,500	76,500	76,500	65,000	76,500

See footnotes at end of table

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

Source: The Council of State Governments' survey of state personnel agencies and state websites, May 2019.
*Commonwealth of Northern Mariana Islands
Key:
N/A–Not available.
N.O.–No specific chief administrative official or agency in charge of function.
(a) Chief administrative official or agency in charge of function:
(a-1) Lieutenant governor.
(a-2) Secretary of state.
(a-3) Attorney general.
(a-4) Treasurer.
(a-5) Adjutant general.
(a-6) Administration.
(a-7) Agriculture.
(a-8) Auditor.
(a-9) Banking.
(a-10) Budget.
(a-11) Civil rights.
(a-12) Commerce.
(a-13) Community affairs.
(a-14) Comptroller.
(a-15) Consumer affairs.
(a-16) Corrections.
(a-17) Economic development.
(a-18) Education (chief state school officer).
(a-19) Election administration.
(a-20) Emergency administration.
(a-21) Employment Services.
(a-22) Energy.
(a-23) Environmental protection.
(a-24) Finance.
(a-25) Fish and wildlife.
(a-26) General services.
(a-27) Health.
(a-28) Higher education.
(a-29) Highways.
(a-30) Information systems.
(a-31) Insurance.
(a-32) Labor.
(a-33) Licensing.
(a-34) Mental Health.
(a-35) Natural resources.
(a-36) Parks and recreation.
(a-37) Personnel.
(a-38) Planning.
(a-39) Post audit.
(a-40) Pre-audit.
(a-41) Public library development.
(a-42) Public utility regulation.
(a-43) Purchasing.
(a-44) Revenue.
(a-45) Social services.
(a-46) Solid waste management.
(a-47) State police.
(a-48) Tourism.
(a-49) Transportation.
(a-50) Welfare.
(b) Salary ranges, top figure in ranges follow:
Arkansas: Mental Health and Developmental Disabilities, $167,000.
Hawaii: Employment Services, $177,408; Energy, $177,408; Fish and Wildlife, $177,408; Highway, $177,408; Licensing, $168,936; Parks and Recreation, $177,408; Planning, $177,408; Post-Audit, $177,408; Pre-Audit, $177,408; Welfare, $168,936.
Maryland: For these positions the salary in the chart is the actual salary and the following are the salary ranges: Adjutant General, $114,874–$153,532; Administration, $114,874–$153,532; Agriculture, $114,874–$153,532; Banking, $73,612–$118,197; Budget, $133,069–$177,977; Civil Rights, $92,333–$123,236; Commerce, $133,069–$177,977; Consumer Affairs, $83,836–$134,749; Corrections, $133,069–$177,977; Economic Development, $133,069–$177,977; Elections Administration, $99,275–$132,569; Emergency Management, $114,784–$153,532; Workforce Development, $123,618–$165,281; Energy, $99,275–$132,569; Environmental Protection, $123,618–$165,281; Finance, $133,069–177,977; Fish and Wildlife, $92,333–$123,236; Health, $133,069–$177,977; Higher Education, $123,618–$165,281; Information Services, $133,069–$177,977; Insurance, $133,069–$177,977; Labor, $123,618–$165,281; Licensing, $92,333–$123,236; Mental Health shared duties, $154,064–$254,576 (vacant at press time) and $114,874–$153,532 (actual, $140,526); Natural Resources, $123,618–$165,281; Parks and Recreation, $78,596–$126,186; Personnel, $106,773–$142,646; Planning, $114,874–$153,532; Post-Audit, $53,193–$85,401; Pre-Audit, $99,275–$132,569; Public Library, $92,333–$123,236; Public Utility Regulation, $153,027–$256,866, Purchasing, $85,902–114,600 (vacant at press time); Revenue, $99,275–$132,569; Social Services, $133,069–$177,977; Solid Waste Management, $106,773–$142,646; State Police, $133,069–$177,977; Tourism, $106,773–$142,646; Transportation, $133,069–$177,977; Welfare, $92,333–$123,236.
Northern Mariana Islands: $49,266 top of range applies to the following positions: Treasurer, Banking, Comptroller, Corrections, Employment Services, Fish and Wildlife, Highways, Insurance, Mental Health and Retardation, Parks and Recreation, Purchasing, Social/Human Services, Transportation.
(c) Responsibilities shared between:
California–Health–Responsibilities shared between Director Jennifer Kent of Health Care Services, $207,850 and Director Karen L. Smith, Department of Public Health, $266,329.
California–Mental health & developmental disabilities–Responsibilities shared between Director of State Hospitals, $207,844 and Director Nancy A. Baumann of Developmental Services, $207,850.
Connecticut–Auditor–Responsibilities shared between John C. Geragosian, $178,590 and Robert J. Kane, $150,263.
Connecticut–Fish and Wildlife–Responsibilities shared between Chief Richard Jacobson of Wildlife, $151,223 and Director Peter Aarrestad of Inland and Marine Fisheries, $128,962.
Connecticut–Mental Health & Developmental Disabilities–Responsibilities shared between Commissioner Miriam Delphin-Rittmon

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

Mental Health: $160,000 and Commissioner Jordan Scheff, Dept. of Developmental Services: $168,000.

Delaware–The Dept. of Administration was abolished in 2005. Responsibilities are now shared between the Office of Management and Budget, General Services and Dept. of State.

Delaware–The Delaware Economic Development Office was abolished in FY 2019; most responsibilities assigned to a new public-private partnership.

Delaware–Mental Health–Responsibilities shared between Director, Division of Substance Abuse and Mental Health, Department of Health and Social Services, $147,376 and Director, Division of Developmental Disabilities Service, same department, $118,150.

Delaware–Social Services–Function split between two cabinet positions: Secretary, Dept. of Health and Social Services: $151,088 and Secretary, Dept. of Svcs. for Children, Youth and their Families, $136,240.

Hawaii–Administration–There is no single agency for Administration. The functions are divided among the Director of Budget and Finance, Director of Human Resources Development and the Comptroller.

Hawaii–Finance–Responsibilities shared between Director Roderick K. Becker of Budget and Finance, $154,812 and Comptroller Curt T. Otaguro, $147,444.

Indiana–Elections Administration–Responsibilities shared between Co-Directors Brad King, $79,129 and Angela Nussmeyer, $78,555.

Kansas–Emergency Management–Responsibilities shared between Adjutant General, $106,392 and deputy director, $75,608.

Maryland–Mental Health–Responsibilities shared between Executive Director of Mental Hygiene Administration, salary range $154,064–$254,576 (position vacant at press time) and Secretary, Dept. of Disabilities ,$140,525, salary range $114,874–$153,532.

Massachusetts–Mental Health–Responsibilities shared between Commissioners Joan Mikula, $157,982 and Elin M. Howe, $153,511.

Michigan–Elections Administration–Responsibilities shared between Secretary of State, $112,410 and Director of Elections, $136,058.

Michigan–Fish and Wildlife–Responsibilities shared between Chief of Fisheries, Jim Dexter, $136,058 and Chief of Wildlife, James Russ Mason, $132,874.

Minnesota–Public Utility Regulation–Responsibilities shared between four commissioners with salaries of $140,000 for each.

Missouri–Fish and Wildlife–Responsibilities shared between Administrator, Division of Fisheries, Department of Conservation, position vacant; Administrator, Division of Wildlife, same department, $86,724.

Nebraska–Finance–Responsibilities shared between, Auditor of Public Accounts, Charlie Janssen–$85,000; Director of Administration, Gerry Oligmueller–$164,303 and State Tax Commissioner, Tony Fulton–$163,781.

Nevada–Elections Administration–Responsibilities shared between Secretary of State, $102,898; Deputy Secretary of State for Elections, $108,540 and Chief Deputy, Secretary of State, $118,200.

Nevada–Health–Responsibilities shared between Richard Whitley, Director, Health and Human Services, $128,998 and Cody Phinney, Division Administrator, DPBH, $125,021.

Nevada–Mental Health–Responsibilities shared between Director, Health and Human Services, $128,998 and Division Administrator, $125,021.

Nevada–Public Library Development–Responsibilities shared between Director, Department of Tourism and Cultural Affairs, $118,200 and Division Administrator, Library and Archives, $98,880.

Nevada–Welfare–Responsibilities shared between Richard Whitley, Director, Health and Human Services, $128,998 and Steve Fisher, Division Administrator, Welfare and Support Services, $118,200.

New Jersey–General Services–Responsibilities shared between Jignasa Desai Director, Division of Purchase and Property, Dept. of the Treasury, $130,000 and Steven Sutkin, Director, Division of Property Management and Construction, Dept. of the Treasury, $130,000.

New Jersey–Mental Health–Responsibilities shared between Assistant Commissioner Lynn Kovich, Division of Mental Health Services, Dept. of Human Services, $128,000 and position of Assistant Commissioner Elizabeth Shea, Division of Developmental Disabilities, Dept. of Human Services, $128,000.

New Jersey–Social Services–Responsibilities shared between Jennifer Velez, Commissioner, Department of Human Services, $141,000 and Allison Blake, Commissioner, Department of Children and Families, $141,000.

New York–Licensing–Responsibilities shared between Commissioner, State Education Department, $250,000; Secretary of State, Department of State, $120,800.

New York–Mental Health–Responsibilities shared between Commissioner of Office for People with Developmental Disabilities, $136,000 and Commissioner of Office of Mental Health, $136,000.

Ohio–Finance–Responsibilities shared between, Assistant Director of Budget and Management,$153,005 and Deputy Director, Office of Budget and Management, $119,538.

Ohio–Mental Health–Responsibilities shared between Director of Dept. of Developmental Disabilities, $150,010 and Director, Dept. of Mental Health and Addiction Services, $165,006.

Ohio–Social Services–Responsibilities shared between Director, Dept. of Job and Family Services, $169,998; Superintendent of Public Instruction Dept. of Education, $189,571; Executive Director Opportunities for Ohioans with Disabilities, $130,000 and Director of Dept. of Aging, $137,072.

Oklahoma–Public Utility Regulation–Responsibilities shared between three Commissioners, Commissioner Bob Anthony, $114,713, Commissioner Dana Murphy, $116,713 and Commissioner Jimmie Hiett, $116,713 and Timothy Rhodes, Director of Administration Div., $142,000.

Pennsylvania–Fish and Wildlife–Responsibilities shared between Executive Director (Fish), $144,157 and Executive Director (Game), $132,010.

Rhode Island–Higher Education–Serves a dual role as Commissioner of Higher Education and as the President of the Community College of Rhode Island.

Rhode Island–Social Services–Responsibilities shared between Commissioner, Office of Health and Human Services,$141,828 and Director of the Dept. of Human Services, $135,000, and reports to the Commissioner, Office of Health and Human Services.

South Carolina–Environmental Protection–Responsibilities shared

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

between Acting Director David Wilson, $146,618 (BS) and Director Alvin Taylor $135,072 (B).

South Carolina–Health–Responsibilities shared between Director of Health and Human Services Joshua Baker, $168,043 and Director of Health and Environmental Control David Wilson, $146,618.

South Carolina–Mental Health–Responsibilities shared between Interim Director for Disabilities and Special Needs, Patrick Maley, $106,000 and Director of Mental Health, John Magill $214,901.

Texas–Elections Administration–Responsibilities shared between Secretary of State, $197,415; and Division Director, $132,600.

U.S. Virgin Islands–Community Affairs–Responsibilities for St. Thomas, $74,400; St. Croix, $76,500; St. John, $74,400.

Virginia–Public Utility Regulation–Functions shared between William F. "Bill" Stephens; Energy Regulation, $175,100; Utility and Railroad Safety, Stephen C. Bradley, $164,181.

Wyoming–Mental Health–Responsibilities shared between State Hospital, Heather Babbitt, $116,527 and Life Resource Center, William Rein, $150,000.

(d) These individuals have voluntarily taken no salary or a reduced salary:

Connecticut–Governor Ned Lamont will forego his salary of $150,000.

Illinois–Governor Pritzker will not take his salary of $177,412.

Nevada–Governor Sisolak pledged to donate his salary to K–12 schools all four years of his term.

New York–Howard A. Zemsky–takes $1 of his salary of $120,800. He is the chair and Commissioner of Empire State Development, which oversees Commerce, Economic Development, Planning and Tourism.

North Dakota–Governor Doug Burgum has declined his salary of $129,096.

(e) In Maine, New Hampshire, Tennessee and West Virginia, the presidents (or speakers) of the Senate are next in line of succession to the governorship. In Tennessee and West Virginia, the speaker of the Senate bears the statutory title of lieutenant governor.

(g) A number of the employees receive a stipend for their length of service to the State (known as a longevity payment). This amount can vary significantly among employees and, depending on state turnover, can show dramatic changes in actual salaries from year to year.

(h) $68,680 part-time.

(i) The statutory salary for each of the four members of the Board of Elections is $25,000, including the two co-chairs, Douglas A. Kellner and Peter S. Kosinski.

(j) The Rhode Island Economic Development Corporation is a quasi-public agency. The salary shown is for the previous director.

(k) Numerous licensing boards, too many to list.

(l) Varies by department.

(m) Solid waste is managed by the Rhode Island Resource Recovery Corporation (RIRRC). Although not a department of the state government, RIRRC is a public corporation and a component of the State of Rhode Island for financial reporting purposes. To be financially self-sufficient, the agency earns revenue through the sale of recyclable products, methane gas royalties and fees for it services.

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries

State or other jurisdiction	Governor	Lieutenant governor (a-1)	Secretary of state (a-2)	Attorney general (a-3)	Treasurer (a-4)	Adjutant general (a-5)	Admin. (a-6)	Agriculture (a-7)	Auditor (a-8)	Banking (a-9)
Alabama	$120,395	$60,830	$85,248	$168,002	$85,248	$91,014	N/A	$84,655	$85,248	$157,380
Alaska	145,000	115,000	(a-1)	141,156	159,001	141,156	141,156	110,304	158,757	122,988
Arizona	95,000	(a-2)	70,000	90,000	70,000	146,000	N/A	132,000	141,986	130,000
Arkansas	148,134	43,584	94,554	136,578	89,300	179,892	157,182	122,953	89,300	152,859
California	201,680	151,260	151,260	175,182	161,342	190,101	N.O.	209,944	209,944	191,109
Colorado	90,000	93,360	93,260	107,676	93,360	163,644	158,556	155,004	183,312	118,956
Connecticut	150,000 (d)	110,000	119,625	119,625	119,625	165,000	175,000	140,000	(c)	149,625
Delaware	171,000	81,239	131,011	148,893	116,582	125,126	(c)	122,333	111,667	114,595
Florida	130, 273	124,851	141,000	128,972	(a-24)	170,352	141,000	128,972	140,004	(a-24)
Georgia	175,000	91,609	123,637	139,169	165,000	160,000	153,000	121,557	152,160	148,358
Hawaii	158,700	154,812	N.O.	154,812	154,812	222,441	(c)	147,444	147,444	119,664
Idaho	138,302	42,909	105,771	124,000	104,207	145,121	95,201	130,936	N.O.	(a-24)
Illinois	177,412 (d)	135,669	156,541	156,541	135,669	115,613	142,339	133,273	157,212	135,081
Indiana	121,331	95,162	82,640	99,418	82,640	139,869	142,041	148,000	82,640	126,072
Iowa	130,000	103,212	103,212	123,669	103,212	175,106	142,938	103,212	103,212	117,832
Kansas	99,636	54,000	86,003	98,901	86,003	106,392	120,000	110,000	N/A	120,000
Kentucky	148,781	126,485	126,485	126,485	126,485	137,000	N.O.	126,485	126,485	128,553
Louisiana	130,000	117,303	115,000	115,000	115,000	200,262	237,500	115,000	132,620	145,000
Maine	70,000	(e)	104,104	105,914	79,518	139,734	139,734	139,734	111,134	115,274
Maryland	170,000	141,500	99,500	141,500	141,500	144,052 (b)	146,743 (b)	143,488 (b)	N.O.	101,463 (b)
Massachusetts	185,000	122,058	136,402	136,402	133,277	171,392	161,522	136,000	140,607	130,000
Michigan	159,300	111,510	112,410	112,410	174,204	180,269	(a-10)	165,000	176,636	165,000
Minnesota	127,629	82,959	95,722	121,248	(a-24)	184,579	144,991	144,991	108,485	126,491
Mississippi	122,160	60,000	90,000	108,960	90,000	141,105	150,000	90,000	90,000	156,900
Missouri	133,821	86,484	107,746	116,437	107,746	111,116	129,509	125,381	107,746	116,150
Montana	115,505	86,990	95,695	137,008	(a-6)	122,621	111,895	110,787	92,236	110,787
Nebraska	105,000	75,000	85,000	95,000	85,000	111,236	160,001	116,727	85,000	107,338
Nevada	149,573 (d)	63,648	102,898	141,086	102,898	118,200	128,998	118,200	N.O.	98,880
New Hampshire	134,581	(e)	105,930	128,260	105,930	105,930	117,913	100,171	N.O.	105,929
New Jersey	175,000	141,000	(a-1)	140,000	141,000	141,000	N.O.	141,000	144,629	141,000
New Mexico	110,000	85,000	85,000	95,000	85,000	202,552	128,000	79,788	85,000	90,000
New York	200,000	151,500	120,800	151,500	N/A	120,800	183,040	120,800	151,500	127,000
North Carolina	144,349	127,561	127,561	127,561	127,561	107,490	145,218	127,561	127,561	127,561
North Dakota	129,096 (d)	103,221	105,770	157,009	99,881	200,160	N.O.	108,656	105,770	140,004
Ohio	153,650	176,426	113,506	113,506	113,506	140,005	1,550,002	140,005	113,506	125,299
Oklahoma	147,000	114,713	140,000	132,825	114,713	184,568	110,750	126,508	114,713	196,721
Oregon	98,600	(a-2)	77,000	82,220	72,000	185,508	204,058	152,652	136,488	N.O.
Pennsylvania	194,850	163,672	140,291	162,115	162,115	140,291	155,874	140,291	162,115	140,291
Rhode Island (g)	145,755	122,740	122,740	132,521	122,740	141,259	136,510	(a-23)	159,248	135,000
South Carolina	106,078	46,545	92,007	92,007	92,007	92,007	201,297	92,007	147,052	135,273
South Dakota	113,961	(h)	89,700	112,096	89,700	119,675	102,811	118,000	89,700	109,313
Tennessee	194,112	72,948 (e)	209,520	188,952	209,520	161,904	209,520	161,904	(a-14)	161,904
Texas	153,750	7,200	197,415	153,750	(a-14)	178,196	N.O.	137,500	181,128	242,925
Utah	150,000	135,000	(a-1)	104,405	104,405	131,997	140,004	125,008	104,405	130,000
Vermont	178,274	70,470	113,042	131,019	109,449	121,056	136,448	136,448	109,449	118,726
Virginia	175,000	36,321	172,000	150,000	172,430	139,614	172,000	165,000	178,950	175,100
Washington	183,072	103,937	124,108	162,599	144,679	184,568	168,792	161,268	124,108	140,724
West Virginia	150,000	20,000 (e)	95,000	95,000	95,000	125,000	95,000	95,000	95,000	75,000
Wisconsin	152,756	80,684	72,551	148,242	72,551	135,512	152,755	130,000	132,142	135,013
Wyoming	105,000	(a-2)	92,000	175,000	92,000	142,816	112,012	124,378	92,000	107,184
Guam	130,000	85,000	N.O.	105,286	52,492	68,152	88,915	60,850	100,000	88,915
CNMI*	70,000	65,000	N.O.	80,000	40,800 (b)	N.O.	54,000	40,800 (b)	80,000	40,800 (b)
Puerto Rico	70,000	N.O.	125,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	150,000	75,000	(a-1)	76,500	76,500	85,000	76,500	76,500	76,500	75,000

See footnotes at end of table

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Budget (a-10)	Civil rights (a-11)	Commerce (a-12)	Community affairs (a-13)	Comptroller (a-14)	Consumer affairs (a-15)	Corrections (a-16)	Economic development (a-17)	Education (a-18)	Election admin. (a-19)
Alabama	$177,266	N.O.	$162,232	$164,419	$138,305	$72,686	$71,712	(a-12)	$250,000	$72,686
Alaska	195,000	110,304	141,156	(a-12)	137,664	(a-12)	141,156	(a-12)	141,156	145,008
Arizona	130,000	145,000	250,000	N/A	140,000	133,729	185,000	(a-12)	85,000	142,518
Arkansas	136,309	N.O.	N.O.	N/A	142,470	N.O.	155,052	149,861	235,823	71,171
California	(a-24)	N.O.	N.O.	158,738	161,342	191,109	265,920	N.O.	175,182	149,244
Colorado	173,616	126,960	N.O.	155,000	147,672	158,712	170,004	155,000	262,656	139,260
Connecticut	161,922	136,269	11,146	(a-12)	119,625	142,800	167,500	(a-12)	192,500	116,537
Delaware	151,088	81,950	(a-2)	N.O	151,088	125,102	151,088	(c)	164,055	91,173
Florida	145,000	99,500	N/A	110,000	128,972	100,000	160,000	141,000	276,000	97,250
Georgia	175,615	105,202	132,600	164,800	N/A	124,836	160,000	169,500	123,270	97,850
Hawaii	154,812	113,616	147,444	N.O.	147,444	118,776	147,444	147,444	240,000	119,664
Idaho	122,990	67,787	130,000	N.O.	104,207	(a-3)	139,984	(a-12)	104,207	(a-2)
Illinois	150,000	115,613	142,339	(a-12)	135,669	(a-3)	150,228	(a-12)	225,000	130,008
Indiana	137,700	115,400	(a-17)	122,400	(a-8)	105,500	154,400	195,850	98,418	(c)
Iowa	141,960	87,000	N.O.	98,592	N.O	128,890	142,500	154,300	140,000	106,309
Kansas	130,000	76,476	125,000	N/A	115,000	95,000	135,000	72,050	175,000	(a-2)
Kentucky	137,000	126,200	137,000	115,000	108,286	86,940	115,000	250,000	200,000	73,500
Louisiana	148,865	86,715	237,500	162,198	(a-6)	108,139	136,719	237,500	275,000	112,195
Maine	104,645	95,098	(a-17)	(a-17)	118,934	130,811	139,734	139,734	139,734	110,219
Maryland	174,417 (b)	114,865 (b)	172,021 (b)	N.O	141,500	134,749 (b)	159,072 (b)	172,021 (b)	153,532 (b)	130,059 (b)
Massachusetts	134,589	137,382	161,522	145,000	176,624	145,000	150,000	161,522	161,522	136,402
Michigan	165,000	159,800	(a-32)	N.O.	150,420	N.O.	175,000	N/A	216,240	(c)
Minnesota	(a-24)	144,991	144,991	(a-17)	(a-24)	128,036	150,002	150,002	1,500,002	(a-2)
Mississippi	(a-6)	N.O.	90,000	130,000	(a-6)	108,960	132,761	183,000	300,000	80,000
Missouri	118,473	83,761	129,526	108,004	99,668	116,437	125,381	129,526	193,464	62,712
Montana	122,412	85,451	110,781	74,940	115,495	79,524	111,904	105,857	107,127	88,880
Nebraska	164,303	79,170	134,172	101,653	140,000	95,000	188,957	143,998	227,390	97,562
Nevada	(a-6)	88,651	128,998	N.O.	102,898	75,111	128,998	N/A	128,998	(c)
New Hampshire	105,930	80,971	114,554	N.O.	106,575	100,171	117,913	87,423	114,553	(a-2)
New Jersey	132,000	120,000	(a-17)	141,000	141,000	136,000	141,000	225,000	141,000	125,000
New Mexico	92,032	N.O.	128,000	N.O.	120,359	91,398	N/A	(a-12)	128,000	85,000
New York	199,547	109,800	120,800	120,800	151,500	127,000	136,000	1 (d)	250,000	(i)
North Carolina	(a-24)	N/A	152,944	N.O.	158,501	N/A	N/A	N/A	127,561	107,590
North Dakota	(a-24)	(a-12)	208,000	N.O.	N.O.	141,384	150,000	126,504	120,410	53,640
Ohio	177,008	117,104	150,010	155,002	177,008	109,990	155,002	155,002	189,571	113,506
Oklahoma	110,000	N.O.	141,000	N.O.	120,000	132,833	185,000	N.O.	124,373	117,885
Oregon	157,884	112,428	168,276	156,773	N.O.	185,508	185,104	(a-13)	157,581	150,336
Pennsylvania	168,490	144,157	135,179	135,179	154,015	145,976	155,879	148,085	155,879	84,930
Rhode Island (g)	185,739	86,342	205,706	N/A	140,645	(a-3)	145,644	185,000 (j)	212,106	145,993
South Carolina	123,730	115,000	175,980	N/A	92,007	115,836	168,043	(a-12)	92,007	103,264
South Dakota	75,656	51,072	(a-44)	(a-48)	(a-40)	61,138	124,462	138,823	123,864	74,427
Tennessee	163,248	116,964	(a-17)	(a-17)	209,520	82,236	161,904	169,392	200,004	144,612
Texas	205,000	123,769	N.O.	180,084	153,750	155,224	266,500	164,701	220,375	(c)
Utah	158,995	98,176	144,997	70,554	(a-24)	(a-12)	131,997	145,995	230,069	83,200
Vermont	127,088	107,806	136,177	109,907	127,088	107,806	121,056	112,756	136,448	109,449
Virginia	172,699	97,850	172,000	137,296	172,567	115,682	184,051	350,200	235,000	111,000
Washington	N.O.	120,432	168,792	N.O.	N.O.	(a-3)	181,440	(a-12)	134,212	(a-2)
West Virginia	93,000	55,000	95,000	81,548	(a-8)	(a-3)	90,504	(a-13)	230,000	(a-2)
Wisconsin	130,000	107,016	N.O.	N.O.	108,243	103,625	150,009	N.O.	127,047	122,013
Wyoming	134,358	(a-37)	142,943	N.O.	(a-8)	134,260	148,628	(a-12)	92,000	98,133
Guam	88,915	N.O.	88,915	N.O.	83,400	55,341	67,150	82,025	82,025	61,939
CNMI*	54,000	49,000	52,000	52,000	40,800 (b)	52,000	40,800 (b)	45,000	80,000	53,000
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	76,500	60,000	76,500	(c)	76,500	76,500	76,500	85,000	76,500	135,000

See footnotes at end of table

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Emergency management (a-20)	Employment services (a-21)	Energy (a-22)	Environmental protection (a-23)	Finance (a-24)	Fish & wildlife (a-25)	General services (a-26)	Health (a-27)	Higher education (a-28)	Highways (a-29)
Alabama	$124,200	$88,543	$97,766	$152,618	$177,266	$113,479	$97,766	$282,446	$206,184	$169,000
Alaska	114,420	124,452	160,000	141,156	142,140	141,156	(a-43)	141,156	325,000	133,620
Arizona	112,500	135,000	N/A	175,000	(a-14)	160,000	120,000	205,505	120,000	145,000
Arkansas	110,272	151,913	N.O.	137,094	(a-6)	135,383	138,918	221,976	170,437	218,998
California	209,944	192,325	158,573	209,944	209,944	189,091	191,109	(c)	311,928	(a-49)
Colorado	158,424	133,848	155,000	162,864	139,368	153,216	117,420	207,778	155,000	160,920
Connecticut	183,340	157,000	139,050	139,050	209,439	(c)	175,000	190,000	335,000	190,749
Delaware	93,583	99,014	99,108	(a-35)	151,088	101,525	116,355	174,040	113,602	(a-49)
Florida	141,000	141,000	91,960	150,000	128,972	140,737	141,000	N/A	200,000	150,000
Georgia	105,000	108,150	116,452	170,000	155,400	135,000	162,761	175,000	500,500	124,409
Hawaii	128,268	106,572(b)	106,572(b)	N/A	(c)	106,572 (b)	(a-14)	147,444	395,004	106,572 (b)
Idaho	122,532	126,152	86,174	115,960	106,890	136,572	N.O.	157,185	126,048	(a-49)
Illinois	128,920	142,339	(a-42)	133,273	(a-10)	(a-35)	(a-6)	150,228	200,004	(a-49)
Indiana	133,110	168,500	81,159	134,415	159,878	88,997	(a-6)	175,000	192,560	(a-49)
Iowa	112,070	135,000	(a-17)	134,472	140,629	102,690	118,019	135,387	N.O.	163,634
Kansas	(c)	113,400	85,010	105,019	115,000	84,000	114,000	190,000	200,000	(a-49)
Kentucky	84,349	90,000	137,000	105,000	137,000	140,000	N.O.	157,500	275,000	120,000
Louisiana	130,000	102,149	113,464	137,197	(a-6)	123,614	(a-6)	236,001	350,000	176,900
Maine	91,270	(a-32)	(a-38)	139,734	(a-6)	139,734	115,586	170,477	N/A	(a-49)
Maryland	150,000 (b)	161,975 (b)	138,631 (b)	104,235 (b)	174,417 (b)	116,185 (b)	(a-6)	170,997 (b)	157,558 (b)	160,742
Massachusetts	143,000	161,522	135,000	139,050	161,522	129,000	158,000	140,000	220,763	153,536
Michigan	(a-47)	143,517	N/A	165,000	(a-10)	(c)	N.O.	175,000	N.O.	(a-49)
Minnesota	154,992	N.O.	140,000	150,002	154,992	137,599	(a-6)	150,002	390,000	154,992
Mississippi	120,000	135,315	90,000	129,347	(a-6)	147,216	N.O.	215,000	300,000	157,000
Missouri	101,458	108,004	103,020	111,100	118,473	(c)	99,668	143,420	176,750	179,256
Montana	95,100	105,820	131,427	111,895	115,495	111,904	102,515	111,895	320,122	(a-49)
Nebraska	88,549	134,172	152,249	152,249	(c)	117,260	160,001	153,772	187,180	151,840
Nevada	118,200	128,998	107,973	125,021	(a-14)	118,200	N.O.	(c)	N/A	(a-49)
New Hampshire	105,930	105,930	80,971	114,554	(a-10)	100,171	(a-6)	100,171	79,664	(a-49)
New Jersey	132,300	N/A	100,000	141,000	133,507	105,783	(c)	141,000	141,000	123,500
New Mexico	128,000	128,000	128,000	128,000	110,000	115,003	128,000	128,000	128,000	128,000
New York	136,000	127,000	120,800	136,000	151,500	136,000	136,000	136,000	250,000	136,000
North Carolina	109,068	122,815	104,000	145,129	195,352	141,382	N/A	192,500	775,000	164,511
North Dakota	98,916	187,500	208,000	136,116	170,000	128,136	170,000	170,004	372,000	(a-49)
Ohio	116,106	169,998	155,002	152,006	(c)	107,557	100,922	230,006	190,008	155,002
Oklahoma	135,000	115,110	140,000	136,913	170,000	140,000	110,750	189,000	412,031	(a-49)
Oregon	129,936	168,276	145,476	152,652	(a-4)	152,652	(a-6)	185,508	186,084	184,724
Pennsylvania	142,964	135,003	140,187	155,879	168,490	(c)	148,085	155,879	142,553	148,128
Rhode Island (g)	136,489	135,000	140,513	135,000	(a-44)	(a-23)	(a-6)	134,975	265,000 (c)	(a-49)
South Carolina	102,155	161,507	113,609	(c)	180,189	135,072	136,874	(c)	166,280	162,313
South Dakota	89,904	67,902	(a-42)	(a-35)	119,675	124,462	(a-6)	128,598	378,813	109,791
Tennessee	127,932	161,904	165,000	168,708	209,520	168,708	161,904	176,880	179,904	161,904
Texas	198,164	182,500	N.O.	211,415	(a-14)	200,643	177,982	242,353	212,135	(a-49)
Utah	98,945	147,992	124,176	140,004	139,672	114,004	104,000	202,425	N.O.	(a-49)
Vermont	81,660	121,056	118,726	118,726	127,088	101,920	121,056	148,262	N.O.	118,227
Virginia	148,860	161,679	99,419	190,188	175,980	N/A	167,214	225,000	199,479	212,661
Washington	N.O.	168,792	N.O.	168,792	(a-14)	168,300	(a-6)	168,792	N.O.	N.O
West Virginia	80,000	75,000	82,404	95,000	75,902	75,000	82,668	150,000	289,388	120,000
Wisconsin	109,075	114,130	92,477	113,027	130,000	113,027	(a-7)	150,010	525,000	(a-49)
Wyoming	100,147	142,000	100,000	130,577	N.O.	148,593	116,552	180,000	165,000	156,000
Guam	68,152	73,020	55,303	60,850	88,915	60,850	60,528	74,096	195,000	88,915
CNMI*	45,000	40,800 (b)	45,000	58,000	54,000	40,800 (b)	54,000	80,000	80,000	40,800 (b)
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	71,250	76,500	69,350	76,500	76,500	76,500	76,500	76,500	76,500	65,000

See footnotes at end of table

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Information systems (a-30)	Insurance (a-31)	Labor (a-32)	Licensing (a-33)	Mental health & developmental disabilities (a-34)	Natural resources (a-35)	Parks & recreation (a-36)	Personnel (a-37)	Planning (a-38)	Post audit (a-39)
Alabama	$177,266	$164,419	$139,859	N.O.	$152,618	$141,000	$100,198	$168,622	(a-12)	$241,695
Alaska	137,976	131,112	141,156	124,452	106,452	141,156	110,304	137,664	N.O.	(a-8)
Arizona	180,000	120,000	150,000	N.O.	120,058	175,000	175,000	130,000	(a-10)	N.O.
Arkansas	152,859	137,094	134,068	N.O.	134,406 (b)	116,160	134,405	125,665	N.O.	189,293
California	191,109	161,342	209,944	180,086	(c)	209,944	180,086	191,109	N.O.	N.O.
Colorado	165,000	159,996	170,000	145,704	153,996	170,004	161,952	N/A	160,584	(a-8)
Connecticut	176,960	175,000	157,000	118,362	(c)	151,223	155,767	140,000	150,000	(a-8)
Delaware	164,055	111,667	122,333	109,098	(c)	131,011	101,525	131,011	98,093	(a-8)
Florida	130,000	134,158	141,000	71,400	N/A	150,000	114,000	111,000	100,000	(a-24)
Georgia	160,000	120,394	122,786	89,309	175,000	175,000	119,882	140,000	(a-10)	(a-8)
Hawaii	200,004	122,052	147,444	101,508 (b)	131,952	147,444	106,572 (b)	147,444	106,572	106,572 (b)
Idaho	(a-6)	102,273	(a-21)	83,116	N.O.	129,771	91,561	99,548	N.O.	(a-14)
Illinois	(a-6)	135,081	124,090	(a-9)	(a-45)	133,273	(a-35)	(a-6)	N.O.	(a-8)
Indiana	131,402	115,895	115,895	110,376	119,195	125,700	92,302	114,400	N.O.	125,044
Iowa	140,400	128,890	112,070	N.O	128,066	128,890	(a-25)	127,317	N.O.	N.O.
Kansas	185,000	86,003	113,400	63,000	69,000	111,490	111,490	95,000	N.O.	115,296
Kentucky	375,000	103,000	137,000	N.O.	116,500	105,000	116,802	137,000	137,000	126,485
Louisiana	150,000	115,000	137,000	N.O.	130,000	129,210	117,300	145,704	124,946	N/A
Maine	130,811	115,274	139,734	139,734	(a-45)	139,734	(a-35)	118,934	N/A	N/A
Maryland	167,433 (b)	157,386 (b)	161,975 (b)	105,000 (b)	(b)(c)	159,312 (b)	116,053 (b)	141,365 (b)	135.048 (b)	73,361 (b)
Massachusetts	(a-44)	130,000	119,060	115,000	(c)	161,522	130,000	158,000	161,522	(a-8)
Michigan	165,000	(a-9)	165,000	(a-32)	289,193	165,000	135,907	181,927	N.O.	(a-8)
Minnesota	150,002	N/A	144,991	N.O.	154,992	154,992	137,599	(a-24)	N/A	(a-8)
Mississippi	173,209	90,000	N.O.	N.O.	170,180	129,347	147,216	145,000	86,407	(a-8)
Missouri	161,600	125,380	129,280	113,322	142,521	125,381	111,100	110,000	118,473	107,746
Montana	128,482	95,695	111,895	103,008	105,636	111,895	97,818	107,373	105,857	118,037
Nebraska	195,821	130,307	134,172	81,321	141,718	151,919	149,751	160,001	144,352	85,000
Nevada	118,200	118,200	98,880	N.O.	(c)	128,998	108,540	108,540	N.O.	N.O.
New Hampshire	117,913	105,930	105,930	105,930	105,930	114,554	91,965	88,933	N.O.	(a-14)
New Jersey	140,000	130,000	141,000	N.O.	(c)	125,000	110,000	141,000	95,000	N.O.
New Mexico	128,000	116,280	128,000	128,000	N.O.	128,000	91,799	128,000	77,721	85,000
New York	170,000	127,000	127,000	(c)	(c)	136,000	127,000	120,800	1 (d)	151,500
North Carolina	184,206	127,561	127,561	N.O.	N/A	152,944	120,597	142,100	N/A	(a-8)
North Dakota	190,000	105,770	208,000	N.O.	114,000	N.O.	112,000	120,000	N.O.	120,000
Ohio	144,997	150,571	N/A	(k)	(c)	169,998	114,816	119,662	155,002	(a-8)
Oklahoma	160,750	126,713	105,053	N.O.	173,318	126,508	141,000	110,750	N.O.	N.O.
Oregon	211,440	129,936	77,000	N.O.	136,488	N.O.	152,652	157,884	N.O.	(a-8)
Pennsylvania	150,006	140,291	155,879	119,433	148,128	148,085	140,715	146,211	148,069	(a-8)
Rhode Island (g)	205,706	(a-9)	(a-21)	(l)	135,000	(a-23)	(a-23)	146,994	102,860	N/A
South Carolina	173,400	143,420	127,950	127,950	(c)	135,072	132,806	136,290	N/A	109,976
South Dakota	129,268	99,619	112,805	N.O.	113,692	119,675	92,212	119,675	N.O.	(a-8)
Tennessee	207,420	161,904	161,904	125,364	161,904	168,708	119,676	161,904	N.O.	(a-14)
Texas	184,792	202,383	182,500	179,375	227,000	211,415	200,643	N.O.	205,000	(a-8)
Utah	131,996	125,008	130,000	119,850	112,736	140,004	113,235	125,590	(a-10)	(a-8)
Vermont	136,448	118,726	121,056	95,097	120,827	136,448	105,476	121,056	N.O.	(a-8)
Virginia	189,263	170,000	139,647	N/A	212,661	172,000	151,577	158,738	(a-10)	(a-8)
Washington	182,076	126,555	168,792	168,792	(a-45)	138,225	156,258	(a-14)	(a-14)	N.O.
West Virginia	127,500	92,500	70,000	N.O.	(a-27)	(a-25)	(a-25)	70,000	(a-17)	105,664
Wisconsin	126,901	130,000	140,005	130,000	133,474	147,000	113,027	N/A	N.O.	(a-8)
Wyoming	153,300	122,900	96,804	69,783	(c)	123,257	108,433	94,351	175,000	100,000
Guam	88,915	88,915	73,020	88,915	75,208	60,850	60,850	88,915	88,915	100,000
CNMI*	45, 000	40,800 (b)	45,000	45,360	40,800 (b)	52,000	40,800 (b)	60,000	45,000	80,000
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
U.S. Virgin Islands	71,250	75,000	76,500	76,500	70,000	76,500	76,500	76,500	76,500	55,000

See footnotes at end of table

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

State or other jurisdiction	Pre-audit (a-40)	Public library development (a-41)	Public utility regulation (a-42)	Purchasing (a-43)	Revenue (a-44)	Social services (a-45)	Solid waste mgmt. (a-46)	State police (a-47)	Tourism (a-48)	Transportation (a-49)	Welfare (a-50)
Alabama	(a-14)	$95,000	$103,490	$95,359	$164,419	$140,000	$105,403	$149,000	$91,014	(a-29)	(a-45)
Alaska	N.O.	137,664	133,332	120,144	141,156	(a-27)	110,304	141,156	122,988	141,156	142,140
Arizona	(a-14)	73,000	154,320	95,176	175,000	215,250	121,992	197,000	175,000	150,000	(a-45)
Arkansas	N/A	114,158	137,094	125,665	142,470	282,800	137,094	152,859	111,136	(a-29)	(a-45)
California	(a-14)	N.O.	158,573	(a-26)	205,816	244,274	180,086	274,300	N.O.	197,947	(a-45)
Colorado	(a-14)	145,500	140,928	121,248	166,812	N/A	150,000	94,932	126,708	170,000	171,444
Connecticut	(a-14)	150,797	N/A	149,423	190,400	190,400	144,021	183,340	155,000	190,750	190,400
Delaware	(a-8)	86,572	109,733	(a-26)	127,980	(c)	184,000	172,157	66,000	141,572	118,255
Florida	(a-24)	83,000	131,036	110,000	150,000	140,000	113,000	140,100	N.O.	141,000	N/A
Georgia	(a-8)	N/A	116,452	143,595	158,000	166,860	112,931	170,000	132,600	250,000	137,940
Hawaii	106,572 (b)	120,000	128,280	120,864	147,444	147,444	N/A	N.O.	270,000	147,444	101,508(b)
Idaho	(a-14)	96,636	95,899	(a-6)	88,908	(a-27)	N.O.	117,707	(a-12)	184,849	125,195
Illinois	(a-14)	102,252	130,008	(a-6)	142,339	150,228	(a-23)	132,566	(a-12)	150,228	142,339
Indiana	82,640	113,622	127,500	96,900	139,256	190,550	101,999	147,070	112,200	171,600	(a-45)
Iowa	111,259	117,832	128,890	110,302	154,300	154,300	(a-23)	110,240	102,066	147,014	128,066
Kansas	80,460	85,000	N/A	88,000	125,000	105,000	86,965	110,000	84,000	110,000	N.O.
Kentucky	N.O.	82,500	110,000	86,205	117,265	120,750	90,000	125,000	113,558	137,000	(a-45)
Louisiana	126,880	113,506	137,000	122,554	250,000	129,995	102,000	177,436	117,000	176,900	110,411
Maine	(a-14)	104,104	135,179	N/A	130,811	170,477	85,301	136,781	(a-17)	139,734	(a-45)
Maryland	114,752 (b)	123,236 (b)	165,565	(b)	132,569 (b)	167,488 (b)	140,489 (b)	167,661 (b)	113,763 (b)	174,419 (b)	(a-45)
Massachusetts	(a-8)	121,142	129,000	158,000	N/A	140,000	139,050	251,922	121,800	161,522	150,000
Michigan	N.O.	N.O.	140,000	150,420	134,077	175,000	130,082	165,000	N.O.	165,000	175,000
Minnesota	(a-8)	N/A	(c)	132,859	154,992	154,992	150,002	137,599	137,599	154,992	(a-34)
Mississippi	(a-8)	94,000	120,745	75,501	134,935	130,000	88,184	138,116	120,000	157,000	130,000
Missouri	99,668	80,808	109,847	99,668	129,526	143,420	78,864	N/A	80,800	179,256	101,772
Montana	(a-39)	102,335	108,282	91,855	111,895	(a-27)	93,400	110,620	89,473	111,895	(a-27)
Nebraska	140,000	109,051	137,025	120,001	163,781	220,001	100,630	152,249	104,449	151,840	220,001
Nevada	N.O.	(c)	125,021	98,880	128,998	128,998	(a-23)	128,998	118,200	128,998	(c)
New Hampshire	(a-14)	91,965	111,687	75,410	117,913	121,896	100,171	105,930	91,965	117,913	100,171
New Jersey	N.O.	N.O.	125,301	130,000	128,000	(c)	108,128	132,300	92,490	141,000	127,200
New Mexico	92,032	N/A	90,000	101,001	128,000	128,000	91,480	128,000	128,000	128,000	128,000
New York	151,500	250,000	127,000	136,000	N/A	136,000	136,000	136,000	1 (d)	136,000	136,000
North Carolina	(a-8)	110,704	141,947	N/A	145,218	138,290	108,605	125,260	82,066	195,352	N/A
North Dakota	N/A	N/A	108,656	103,272	114,791	182,004	84,000	125,004	126,864	170,000	182,004
Ohio	(a-10)	110,552	N/A	107,952	155,002	(c)	98,218	155,002	107,910	155,002	169,998
Oklahoma	(a-14)	96,000	(c)	105,750	162,500	185,000	112,806	136,471	141,000	150,000	185,000
Oregon	(a-10)	138,504	160,285	123,828	168,276	185,508	N.O.	168,276	N.O.	185,103	(a-45)
Pennsylvania	(a-4)	142,553	150,585	140,715	148,085	155,879	140,187	154,248	140,715	155,879	155,879
Rhode Island (g)	(a-14)	113,146	117,412	125,874	130,100	(c)	(m)	148,937	(a-17)	135,000	(a-45)
South Carolina	(a-14)	108,207	169,820	124,773	174,966	168,043	146,618	162,313	132,806	187,200	(a-45)
South Dakota	76,694	84,513	104,611	62,897	113,692	124,462	N/A	109,791	112,676	124,462	(a-45)
Tennessee	163,248	139,944	164,688	162,408	163,800	161,904	137,760	161,904	161,904	161,904	161,904
Texas	(a-14)	143,500	159,782	168,000	(a-14)	220,000	N.O.	232,969	164,701	299,812	275,000
Utah	(a-24)	117,520	101,836	(a-26)	84,032	131,081	122,928	121,534	123,905	163,425	(a-45)
Vermont	127,088	98,176	150,737	121,056	121,056	136,448	118,726	136,448	99,195	136,448	121,056
Virginia	(a-14)	153,585	(c)	135,000	164,651	209,000	190,188	184,705	183,890	212,661	209,000
Washington	(a-4)	(a-2)	142,596	N.O.	168,792	190,392	N.O.	192,888	N.O.	194,136	(a-45)
West Virginia	(a-8)	72,000	90,000	90,160	95,000	(a-27)	82,364	85,000	87,160	92,160	(a-27)
Wisconsin	(a-8)	126,006	128,502	103,646	144,997	135,013	113,027	115,794	130,000	145,018	119,018
Wyoming	(a-8)	105,600	121,692	84,960	126,994	(a-27)	115,620	124,152	139,000	(a-29)	(a-45)
Guam	88,915	55,303	1,200	88,915	88,915	74,096	88,915	74,096	88,591	N.O.	74,096
CNMI*	54,000	45,000	80,000	40,800 (b)	45,000	40,800 (b)	54,000	54,000	70,000	40,800 (b)	52,000
Puerto Rico	N/A	N/A	N/A	N/A	N/A	N/A	N/A	108,000	N/A	N/A	N/A
U.S. Virgin Islands	76,500	53,350	54,500	76,500	76,500	76,500	76,500	76,500	76,500	65,000	76,500

See footnotes at end of table

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

Source: The Council of State Governments' survey of state personnel agencies and state websites, May 2019.
*Commonwealth of Northern Mariana Islands
Key:
N/A–Not available.
N.O.–No specific chief administrative official or agency in charge of function.
(a) Chief administrative official or agency in charge of function:
(a-1) Lieutenant governor.
(a-2) Secretary of state.
(a-3) Attorney general.
(a-4) Treasurer.
(a-5) Adjutant general.
(a-6) Administration.
(a-7) Agriculture.
(a-8) Auditor.
(a-9) Banking.
(a-10) Budget.
(a-11) Civil rights.
(a-12) Commerce.
(a-13) Community affairs.
(a-14) Comptroller.
(a-15) Consumer affairs.
(a-16) Corrections.
(a-17) Economic development.
(a-18) Education (chief state school officer).
(a-19) Election administration.
(a-20) Emergency administration.
(a-21) Employment Services.
(a-22) Energy.
(a-23) Environmental protection.
(a-24) Finance.
(a-25) Fish and wildlife.
(a-26) General services.
(a-27) Health.
(a-28) Higher education.
(a-29) Highways.
(a-30) Information systems.
(a-31) Insurance.
(a-32) Labor.
(a-33) Licensing.
(a-34) Mental Health.
(a-35) Natural resources.
(a-36) Parks and recreation.
(a-37) Personnel.
(a-38) Planning.
(a-39) Post audit.
(a-40) Pre-audit.
(a-41) Public library development.
(a-42) Public utility regulation.
(a-43) Purchasing.
(a-44) Revenue.
(a-45) Social services.
(a-46) Solid waste management.
(a-47) State police.
(a-48) Tourism.
(a-49) Transportation.
(a-50) Welfare.
(b) Salary ranges, top figure in ranges follow:
Arkansas: Mental Health and Developmental Disabilities, $167,000.
Hawaii: Employment Services, $177,408; Energy, $177,408; Fish and Wildlife, $177,408; Highway, $177,408; Licensing, $168,936; Parks and Recreation, $177,408; Planning, $177,408; Post-Audit, $177,408; Pre-Audit, $177,408; Welfare, $168,936.
Maryland: For these positions the salary in the chart is the actual salary and the following are the salary ranges: Adjutant General, $114,874–$153,532; Administration, $114,874–$153,532; Agriculture, $114,874–$153,532; Banking, $73,612–$118,197; Budget, $133,069–$177,977; Civil Rights, $92,333–$123,236; Commerce, $133,069–$177,977; Consumer Affairs, $83,836–$134,749; Corrections, $133,069–$177,977; Economic Development, $133,069–$177,977; Elections Administration, $99,275–$132,569; Emergency Management, $114,784–$153,532; Workforce Development, $123,618–$165,281; Energy, $99,275–$132,569; Environmental Protection, $123,618–$165,281; Finance, $133,069–177,977; Fish and Wildlife, $92,333–$123,236; Health, $133,069–$177,977; Higher Education, $123,618–$165,281; Information Services, $133,069–$177,977; Insurance, $133,069–$177,977; Labor, $123,618–$165,281; Licensing, $92,333–$123,236; Mental Health shared duties, $154,064–$254,576 (vacant at press time) and $114,874–$153,532 (actual, $140,526); Natural Resources, $123,618–$165,281; Parks and Recreation, $78,596–$126,186; Personnel, $106,773–$142,646; Planning, $114,874–$153,532; Post-Audit, $53,193–$85,401; Pre-Audit, $99,275–$132,569; Public Library, $92,333–$123,236; Public Utility Regulation, $153,027–$256,866, Purchasing, $85,902–114,600 (vacant at press time); Revenue, $99,275–$132,569; Social Services, $133,069–$177,977; Solid Waste Management, $106,773–$142,646; State Police, $133,069–$177,977; Tourism, $106,773–$142,646; Transportation, $133,069–$177,977; Welfare, $92,333–$123,236.
Northern Mariana Islands: $49,266 top of range applies to the following positions: Treasurer, Banking, Comptroller, Corrections, Employment Services, Fish and Wildlife, Highways, Insurance, Mental Health and Retardation, Parks and Recreation, Purchasing, Social/Human Services, Transportation.
(c) Responsibilities shared between:
California–Health–Responsibilities shared between Director Jennifer Kent of Health Care Services, $207,850 and Director Karen L. Smith, Department of Public Health, $266,329.
California–Mental health & developmental disabilities–Responsibilities shared between Director of State Hospitals, $207,844 and Director Nancy A. Baumann of Developmental Services, $207,850.
Connecticut–Auditor–Responsibilities shared between John C. Geragosian, $178,590 and Robert J. Kane, $150,263.
Connecticut–Fish and Wildlife–Responsibilities shared between Chief Richard Jacobson of Wildlife, $151,223 and Director Peter Aarrestad of Inland and Marine Fisheries, $128,962.
Connecticut–Mental Health & Developmental Disabilities–Responsibilities shared between Commissioner Miriam Delphin-Rittmon

EXECUTIVE BRANCH

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

Mental Health: $160,000 and Commissioner Jordan Scheff, Dept. of Developmental Services: $168,000.

Delaware–The Dept. of Administration was abolished in 2005. Responsibilities are now shared between the Office of Management and Budget, General Services and Dept. of State.

Delaware–The Delaware Economic Development Office was abolished in FY 2019; most responsibilities assigned to a new public-private partnership.

Delaware–Mental Health–Responsibilities shared between Director, Division of Substance Abuse and Mental Health, Department of Health and Social Services, $147,376 and Director, Division of Developmental Disabilities Service, same department, $118,150.

Delaware–Social Services–Function split between two cabinet positions: Secretary, Dept. of Health and Social Services: $151,088 and Secretary, Dept. of Svcs. for Children, Youth and their Families, $136,240.

Hawaii–Administration–There is no single agency for Administration. The functions are divided among the Director of Budget and Finance, Director of Human Resources Development and the Comptroller.

Hawaii–Finance–Responsibilities shared between Director Roderick K. Becker of Budget and Finance, $154,812 and Comptroller Curt T. Otaguro, $147,444.

Indiana–Elections Administration–Responsibilities shared between Co-Directors Brad King, $79,129 and Angela Nussmeyer, $78,555.

Kansas–Emergency Management–Responsibilities shared between Adjutant General, $106,392 and deputy director, $75,608.

Maryland–Mental Health–Responsibilities shared between Executive Director of Mental Hygiene Administration, salary range $154,064–$254,576 (position vacant at press time) and Secretary, Dept. of Disabilities ,$140,525, salary range $114,874–$153,532.

Massachusetts–Mental Health–Responsibilities shared between Commissioners Joan Mikula, $157,982 and Elin M. Howe, $153,511.

Michigan–Elections Administration–Responsibilities shared between Secretary of State, $112,410 and Director of Elections, $136,058.

Michigan–Fish and Wildlife–Responsibilities shared between Chief of Fisheries, Jim Dexter, $136,058 and Chief of Wildlife, James Russ Mason, $132,874.

Minnesota–Public Utility Regulation–Responsibilities shared between four commissioners with salaries of $140,000 for each.

Missouri–Fish and Wildlife–Responsibilities shared between Administrator, Division of Fisheries, Department of Conservation, position vacant; Administrator, Division of Wildlife, same department, $86,724.

Nebraska–Finance–Responsibilities shared between, Auditor of Public Accounts, Charlie Janssen–$85,000; Director of Administration, Gerry Oligmueller–$164,303 and State Tax Commissioner, Tony Fulton–$163,781.

Nevada–Elections Administration–Responsibilities shared between Secretary of State, $102,898; Deputy Secretary of State for Elections, $108,540 and Chief Deputy, Secretary of State, $118,200.

Nevada–Health–Responsibilities shared between Richard Whitley, Director, Health and Human Services, $128,998 and Cody Phinney, Division Administrator, DPBH, $125,021.

Nevada–Mental Health–Responsibilities shared between Director, Health and Human Services, $128,998 and Division Administrator, $125,021.

Nevada–Public Library Development–Responsibilities shared between Director, Department of Tourism and Cultural Affairs, $118,200 and Division Administrator, Library and Archives, $98,880.

Nevada–Welfare–Responsibilities shared between Richard Whitley, Director, Health and Human Services, $128,998 and Steve Fisher, Division Administrator, Welfare and Support Services, $118,200.

New Jersey–General Services–Responsibilities shared between Jignasa Desai Director, Division of Purchase and Property, Dept. of the Treasury, $130,000 and Steven Sutkin, Director, Division of Property Management and Construction, Dept. of the Treasury, $130,000.

New Jersey–Mental Health–Responsibilities shared between Assistant Commissioner Lynn Kovich, Division of Mental Health Services, Dept. of Human Services, $128,000 and position of Assistant Commissioner Elizabeth Shea, Division of Developmental Disabilities, Dept. of Human Services, $128,000.

New Jersey–Social Services–Responsibilities shared between Jennifer Velez, Commissioner, Department of Human Services, $141,000 and Allison Blake, Commissioner, Department of Children and Families, $141,000.

New York–Licensing–Responsibilities shared between Commissioner, State Education Department, $250,000; Secretary of State, Department of State, $120,800.

New York–Mental Health–Responsibilities shared between Commissioner of Office for People with Developmental Disabilities, $136,000 and Commissioner of Office of Mental Health, $136,000.

Ohio–Finance–Responsibilities shared between, Assistant Director of Budget and Management,$153,005 and Deputy Director, Office of Budget and Management, $119,538.

Ohio–Mental Health–Responsibilities shared between Director of Dept. of Developmental Disabilities, $150,010 and Director, Dept. of Mental Health and Addiction Services, $165,006.

Ohio–Social Services–Responsibilities shared between Director, Dept. of Job and Family Services, $169,998; Superintendent of Public Instruction Dept. of Education, $189,571; Executive Director Opportunities for Ohioans with Disabilities, $130,000 and Director of Dept. of Aging, $137,072.

Oklahoma–Public Utility Regulation–Responsibilities shared between three Commissioners, Commissioner Bob Anthony, $114,713, Commissioner Dana Murphy, $116,713 and Commissioner Jimmie Hiett, $116,713 and Timothy Rhodes, Director of Administration Div., $142,000.

Pennsylvania–Fish and Wildlife–Responsibilities shared between Executive Director (Fish), $144,157 and Executive Director (Game), $132,010.

Rhode Island–Higher Education–Serves a dual role as Commissioner of Higher Education and as the President of the Community College of Rhode Island.

Rhode Island–Social Services–Responsibilities shared between Commissioner, Office of Health and Human Services,$141,828 and Director of the Dept. of Human Services, $135,000, and reports to the Commissioner, Office of Health and Human Services.

South Carolina–Environmental Protection–Responsibilities shared

TABLE 4.11

Selected State Administrative Officials: Annual Salaries (continued)

between Acting Director David Wilson, $146,618 (BS) and Director Alvin Taylor $135,072 (B).

South Carolina–Health–Responsibilities shared between Director of Health and Human Services Joshua Baker, $168,043 and Director of Health and Environmental Control David Wilson, $146,618.

South Carolina–Mental Health–Responsibilities shared between Interim Director for Disabilities and Special Needs, Patrick Maley, $106,000 and Director of Mental Health, John Magill $214,901.

Texas–Elections Administration–Responsibilities shared between Secretary of State, $197,415; and Division Director, $132,600.

U.S. Virgin Islands–Community Affairs–Responsibilities for St. Thomas, $74,400; St. Croix, $76,500; St. John, $74,400.

Virginia–Public Utility Regulation–Functions shared between William F. "Bill" Stephens; Energy Regulation, $175,100; Utility and Railroad Safety, Stephen C. Bradley, $164,181.

Wyoming–Mental Health–Responsibilities shared between State Hospital, Heather Babbitt, $116,527 and Life Resource Center, William Rein, $150,000.

(d) These individuals have voluntarily taken no salary or a reduced salary:

Connecticut–Governor Ned Lamont will forego his salary of $150,000.

Illinois–Governor Pritzker will not take his salary of $177,412.

Nevada–Governor Sisolak pledged to donate his salary to K–12 schools all four years of his term.

New York–Howard A. Zemsky–takes $1 of his salary of $120,800. He is the chair and Commissioner of Empire State Development, which oversees Commerce, Economic Development, Planning and Tourism.

North Dakota–Governor Doug Burgum has declined his salary of $129,096.

(e) In Maine, New Hampshire, Tennessee and West Virginia, the presidents (or speakers) of the Senate are next in line of succession to the governorship. In Tennessee and West Virginia, the speaker of the Senate bears the statutory title of lieutenant governor.

(g) A number of the employees receive a stipend for their length of service to the State (known as a longevity payment). This amount can vary significantly among employees and, depending on state turnover, can show dramatic changes in actual salaries from year to year.

(h) $68,680 part-time.

(i) The statutory salary for each of the four members of the Board of Elections is $25,000, including the two co-chairs, Douglas A. Kellner and Peter S. Kosinski.

(j) The Rhode Island Economic Development Corporation is a quasi-public agency. The salary shown is for the previous director.

(k) Numerous licensing boards, too many to list.

(l) Varies by department.

(m) Solid waste is managed by the Rhode Island Resource Recovery Corporation (RIRRC). Although not a department of the state government, RIRRC is a public corporation and a component of the State of Rhode Island for financial reporting purposes. To be financially self-sufficient, the agency earns revenue through the sale of recyclable products, methane gas royalties and fees for it services.

APPENDIX H

STATE ECONOMIC TIMELINE 2008-2019

2008

April 9, 2008. Governor Paterson announces budget agreement with Legislature for FY2008-09. The enacted budget spends less than was proposed in the Executive Budget. Additionally, State agency operations spending growth will be limited to just 1 percent.

April 24, 2008. Governor Paterson asks the Legislature, Attorney General, Comptroller and Chief Judge to reduce their agency's operating costs by 3.35% over the course of 2008-09 fiscal year, similar to what he has requested of his executive agencies.

May 12, 2008. Division of Budget estimates projected General Fund deficits of $5.0B in 2009-10, $7.7B in 2010-11, and $8.8B in 2011-12.

July 29, 2008. Governor Paterson announces that the out-year projected deficits have increased to $6.4B in 2009-10, $9.3B in 2010-11, and $10.5B in 2011-12. He calls the Legislature to Albany for a special economic session.

July 30, 2008. Governor Paterson implements a 7% reduction in executive agency spending on top of the already-announced 3.35% reduction from April. Asks the Legislature to cut an additional $600M, which should close the current year deficit.

August 20, 2008. Governor and Legislature agree to a $1B savings package that eliminates the current year deficit and reduces the projected 2009-10 deficit to $5.4B.

September 5, 2008. Governor's budget call letter directs executive agencies to submit zero-growth budgets for 2009-10 fiscal year.

October 28, 2008. Division of Budget projects a current year deficit of $1.5B, with out-year deficits of $12.5B in 2009-10, $15.8B in 2010-11, and $17.2B in 2011-12.

December 16, 2008. Governor submits his executive budget for 2009-10, which eliminates current year deficit and projected 2009-10 deficit of $13.7B. Budget contains $9.5B in recurring spending cuts, $3.1B in recurring revenue, and $1.1B in one-shot revenue and spending actions. This reduces the out-year projections to a deficit of $1.8B in 2010-11 and $4.0B in 2011-12.

2009

January 29, 2009. Division of Budget announces projected out-year deficits of $2.0B in 2010-11, $4.2B in 2011-12, and $5.6B in 2012-13, based on the Governor's 30-day budget amendments for the 2009-10 executive budget.

March 29, 2009. Governor and Legislature agree to a balanced 2009-10 state budget that includes $6B in recurring spending cuts and General Fund spending growth of less than 1%.

May 15, 2009. Division of Budget projects out-year deficits, based on the current year enacted budget, of $2.2B in 2010-11, $8.8B in 2011-12, and $13.7B in 2012-13.

July 30, 2009. Division of Budget projects out-year deficits, based on the current year enacted budget, of $4.6B in 2010-11, $13.3B in 2011-12, and $18.2B in 2012-13.

September 14, 2009. Details of state workforce reduction initiative are announced: 1,089 people have voluntary left the state executive branch payroll in exchange for one-time lump sum severance payment. Vacated positions are not to be refilled, and an additional 2,263 positions are subject to attrition and/or defunded.

November 3, 2009. Division of Budget projects out-year deficits, based on the current year enacted budget, of $6.4B in 2010-11, $14.3B in 2011-12, and $19.1B in 2012-13.

November 5, 2009. Governor Paterson calls special session of Legislature to address current-year budget deficit of $3.2B and to reduce next year's projected deficit by $2B.

2010

January 19, 2010. Governor Paterson submits executive budget that closes projected $7.4B deficit for 2010-11, $5.5B of which comes from recurring spending reductions. General Fund state spending projected to increase by 0.9%. Out-year projected deficits are $6.3B in 2011-12, $10.5B in 2012-13, and $12.2B in 2013-14.

February 9, 2010. Governor submits his 30-day amendments to the 2010-11 executive budget proposal, which identify an additional $750M budget deficit, bringing the total projected deficit to $8.2B for 2010-11.

April 27, 2010. Governor announces furlough plan for executive branch employees.

May 28, 2010. Legislature passes early retirement incentive for state employees.

August 11, 2010. Budget passed by Legislature. Out-year deficits now projected as $8.2B in 2011-12, $13.5B 2012-13 and $15.6B in 2013-14. State operating expenditures projected to increase by 0.1% for the 2010-11 fiscal year.

November 9, 2010. Division of Budget projects out-year deficits of $9.0B in 2011-12, $14.6B in 2012-13, and $17.2B in 2013-14.

2011

February 1, 2011. Governor Cuomo's executive budget proposal. Closes projected $10B deficit in part with $8.9B in recurring spending reductions. All Funds spending to be reduced by $2.7B, General Fund spending to increase by less than 1.0%. In addition to recurring revenue and expenditure changes, out-year assumptions are changed with regard to spending growth, with reduces projected deficits to $2.3B in 2012-13, $2.5B in 2013-14, and $4.4B in 2014-15.

March 27, 2011. Governor and Legislature reach budget agreement. The Unified Court System absorbs a $170M budget reduction. State Operating Funds budget to grow by 2.9%, All Funds spending to decrease by 2.1%. Projected out-year deficits of $2.4B in 2012-13, $2.8B in 2013-14, and $4.6B in 2014-15.

June 22, 2011. Governor announces new five-year collective bargaining agreement with CSEA to cover April 1, 2011 through March 31, 2016. Annual salary increases of 0%, 0%, 0%, 2%, and 2%. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

October 17, 2011. After an initial contract agreement was voted down by the PEF membership, Governor announces new four-year collective bargaining agreement with PEF to cover April 1, 2011 through March 31, 2015. Annual salary increases of 0%, 0%, 0%, and 2%. Contract contains nine Deficit Reduction Leave days (i.e., furlough days) to be used in FY2011-12 and FY2012-13. These furlough days will be repaid over a 39-pay period time frame beginning in March 2015. Some protection from layoffs for represented employees are included.

November 22, 2011. Division of Budget delivers updated projection of out-year budget deficits of $3.2B in 2012-13, $3.3B in 2013-14, and $4.8B in 2014-15.

2012

January 17, 2012. Governor Cuomo's FY2012-13 executive budget proposal includes zero growth in total state agency spending. Education & health spending to increase by 4%, offset by flat or reduced budgets in other program areas. State Operating Funds expenditures to increase by 1.9%; All Funds spending to remain flat. Out-year deficits projected as $0.7B in FY2013-14, $3.0B in FY14-15, and $3.7B in FY2015-16.

January 31, 2012. Governor announces ratified collective bargaining agreement with Police Benevolent Association of NYS to cover April 1, 2005 through March 31, 2015. In addition to significant retroactive salary increases covering April 1, 2005 through March 31, 2010 , annual salary increases of 0%, 0%, 0%, and 2% for the period April 1, 2011 through March 31, 2015. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

March 27, 2012. Governor and Legislature agree on FY2012-13 enacted budget. Total state agency spending to remain flat. General Fund spending to increase by 2.3%. All Funds expenditures to remain flat. Tier VI pension reform enacted. Out-year deficits projected to be $1.0B in FY2013-14; $3.4B in 2014-15, and $4.1B in 2015-16.

June 18, 2012. Governor announces collective bargaining agreement with NYS Correction Officers and Police Benevolent Association of NYS to cover April 1, 2009 through March 31, 2016. In addition to significant retroactive salary increases covering April 1, 2009 through March 31, 2011, annual salary increases of 0%, 0%, 0%, 2%, and 2% for the period April 1, 2011 through March 31, 2016. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

August 10, 2012. Division of Budget updates FY2012-13 financial plan: Out-year deficits projected to be $1.0B in FY2013-14, $3.6B in 2014-15, and $4.4B in 2015-16.

2013

January 22, 2013. Governor's 2013-14 executive budget proposal. Closes larger-than-expected deficit of $1.4B due to the effects of Hurricane Sandy in fall 2012. General Fund expenditures to remain flat; All Funds expenditures to increase by 0.6%, much of this increases is federal disaster assistance for Hurricane Sandy. Education spending to increase by 4.4%. Out-year budget gaps are projected as $2.0B in FY2014-15, $3.7B in FY2015-16, and $4.2B in FY2016-17.

June 4, 2013. Governor announces ratified collective bargaining agreement with United University Professionals to cover April 1, 2011 through March 31, 2016. Annual salary increases of 0%, 0%, 0%, 2%, and 2%. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

March 21, 2013. Governor and Legislature agree on FY2013-14 enacted budget.

July 30, 2013. Comptroller's report on enacted budget and financial plan: "There's no doubt New York is in a better budget position now than it was a short time ago. New York State has made strides toward achieving equilibrium between recurring revenues and ongoing expenditures. The State Fiscal Year (SFY) 2013-14 Enacted Budget continues such steps and reduces out-year gaps, relative to earlier projections.…"

June 19, 2013. Division of Budget projects FY2013-14 General Fund expenditures to increase by 3.7%; All Funds expenditures to increase by 5.6%.

November 25, 2013. Division of Budget releases updated financial plan. Projected out-year budget deficits of $1.7B in FY2014-15 and $2.9B in both FY2015-16 and FY2016-17.

2014

January 9, 2014. Governor Cuomo delivers State of the State speech. "When we were here three years ago, we were looking at a $10 billion deficit, it was historic. And it made us all quake in our boots. I know it did for me. **We have gone from a $10 billion deficit to a $2 billion surplus** in just three short years."

January 21, 2014. Governor releases proposed FY2014-15 executive budget. "…we have held spending below 2% for three years. We brought down the level of State debt at the same time. And **we have gone from a $10 billion deficit to a $2 billion surplus.**… Three years a $10 billion deficit turned to a surplus, jobs are up, spending is down; unemployment is down in every region of the state of New York."

February 24, 2014. Division of Budget releases updated financial plan for FY2014-15. General Fund spending projected to grow 3.4%; All Funds expenditures to grow by 1.0%. Out-year budget surplus projections are: $0.2B in FY2015-16, $0.2B in FY2016-17, and $0.2B in FY2017-18.

March 29, 2014. Governor and Legislature agree to FY2014-15 enacted budget.

April 17, 2014. Governor announces collective bargaining agreement between the MTA and the Transit Workers Union to cover April 1, 2012 through March 31, 2016. Annual salary increases of 1%, 1%, 2%, 2%, and 2%.

June 16, 2014. Moody's Investor Service upgrades New York's credit rating on general obligation debt and personal income tax revenue bonds to Aa1, highest rating since 1964.

June 20, 2014. Fitch upgrades New York's credit rating to AA+ with stable outlook.

July 14, 2014. Comptroller's report on 14-15 enacted budget and financial plan: "New York has made significant budgetary improvements since the Great Recession to put it on solid financial footing, and the result is that the state's fiscal condition is the best it

has been in years…New York State ended State Fiscal Year (SFY) 2013-14 in its strongest financial condition since the Great Recession… A broad-based, wealthy State economy; a long history of closing annual budget gaps, recently with more structurally balanced solutions; and the well-funded State pension system were identified as strengths that contributed to the [credit rating agency] upgrades."

July 17, 2014. Governor announces collective bargaining agreement between the LIRR and the United Transportation Union to cover April 1, 2010 through March 31, 2016. Total salary increase of 17% over 6.5 years. Includes some union concessions on employee health care and pension contributions.

July 23, 2014. Standard & Poor's upgrades New York's credit rating to AA+ with stable outlook.

November 24, 2014: Division of Budget releases mid-year financial plan update. Current year surplus of $4.8B, to be deposited in an "undesignated reserve." FY2015-16 projected deficit of $0.04B, surpluses of $0.3B in FY2016-17 and $0.6B in FY2017-18.

2015

January 1, 2015. Governor Cuomo inaugurated for a second term. "We restored the economy; we created 500,000 private sector jobs. This state today has 7.6 million jobs, more than have ever existed in the history of the State of New York. That is what we have today. **We turned a $10 billion deficit into a $5 billion surplus.**"

January 21, 2015. Governor releases executive budget proposal for FY2015-16 simultaneously with his State of the State address.

March 29, 2015. Governor and Legislature agree to FY2015-16 budget. General Fund expenditures projected to grow by 6.6%; All Funds to grow by 3.1%. Out-year budget surpluses projected as $0.3B in FY2016-17; $1.7B in FY2017-18 and $1.6B in FY2018-19.

April 28, 2015. Comptroller's report on enacted budget: "In the sixth year of national economic recovery, New York State's short-term financial condition continues to improve. After closing deep projected budget gaps just a few years ago, the State now faces the unusual and more welcome challenge of how best to capitalize on an extraordinary inflow of one-time resources from monetary settlements – more than $6 billion in unforeseen receipts….The broad and vague statutory language creating the new Dedicated Infrastructure Investment Fund (DIIF) leaves open the possibility that the fund will be neither dedicated nor used primarily for infrastructure investment. Instead, the DIIF could effectively become an undesignated reserve fund to be used largely at the discretion of the Executive. Much of the settlement money could be spent with no required public reporting. In addition, the new fund does not incorporate all of the settlement resources, capturing $4.55 billion of the $6.29 billion in settlements received or expected to be received in SFY 2014-15 and beyond."

August 19, 2015. Moody's Investor Service maintains its credit rating on New York State's general obligation debt and personal income tax revenue bonds at Aa1, with a stable outlook.

2016

September 1, 2016. Comptroller's Financial Condition Report for FY2015-16: "After closing deep projected budget gaps just a few years ago, New York State's short-term financial condition has improved. The State's General Fund ended SFY 2015-16 with an exceptionally large balance, which enhances budgetary flexibility in the near term and is expected to support increased capital investment and other purposes over multiple years."

October 19, 2016. Governor announces collective bargaining agreement between the state and the Public Employees Federation to cover April 1, 2016 through March 31, 2019. Total salary increase of 6.1% over 3 years.

December 12, 2016. Moody's Investor Service maintains its credit rating on New York State's general obligation debt and personal income tax revenue bonds at Aa1, with a stable outlook.

2017

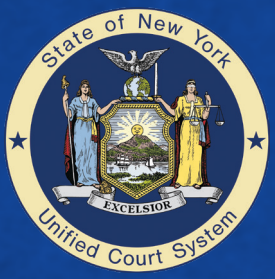
June 20, 2017. Governor announces collective bargaining agreement between the state and the Civil Service Employee Association to cover April 1, 2016 through March 31, 2021. Total salary increase of 10.4% over 5 years.

2018

September 1, 2018. Comptroller's Financial Condition Report for FY2017-18. "Under generally accepted accounting principles, the state reported a General Fund operating surplus of $2.4 billion as of March 31, 2018."

2019

March 11, 2019. Moody's Investor Service maintains its credit rating on New York State's general obligation debt and personal income tax revenue bonds at Aa1, with a stable outlook.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