

VETO MESSAGE:

VETO MESSAGE - No. 153

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 11715, entitled:

"AN ACT to amend the civil practice law and rules and the judiciary law, in relation to jury selection"

NOT APPROVED

This bill would: (1) require jury selection in civil cases to be conducted in accordance with rules to be promulgated by the Chief Administrator of the Courts; (2) require the Chief Administrator to appoint a supervising judge for voir dire in each judicial district, who would have the authority to immediately review determinations relating to jury selection in any action being tried in Supreme or County Court; and (3) allow a party to bring an Article 78 petition in the Appellate Division to challenge the supervising judge's failure to correct an alleged violation of the jury selection rules.

The stated purpose of this bill is to provide a mechanism to ensure that all civil jury selection is conducted pursuant to the Uniform Rules for Trial Courts. The problem with the bill is that the proposed mechanisms contravene well-settled legal principles governing review of trial court determinations and would create logistical burdens that could unnecessarily delay trials and seriously inconvenience citizens performing their civic duties by appearing as jurors to hear civil cases. Because of these concerns, a number of bar associations and other groups strenuously oppose this bill.

The following specific concerns have been raised about this bill:

* The provision allowing a supervising judge to review and overturn a legal determination by a trial judge would be unprecedented. In New York, there is a long-standing and fundamental principle prohibiting a judge from reviewing and overturning a decision of a judge of coordinate jurisdiction. A law that contravenes this well-established principal should only be enacted when the consequences of and need for such a law are clear. This bill does not meet that test.

* Allowing administrative review of jury selection procedures could cause delays in the completion of jury selection in particular cases, which would inconvenience jurors by increasing the time they are required to serve. This would undermine many of the jury reform measures that have been adopted in recent years to streamline the jury selection process and improve the experiences of citizens called for jury service. It also could exacerbate existing backlogs of cases pending in the civil courts.

* Allowing aggrieved parties to bring Article 78 proceedings in the appellate courts to remedy an alleged failure to correct a deviation from authorized jury selection procedures would create further delays. Because of the time that it takes for Article 78 proceedings to be

resolved, this review process would likely result in: (1) substantial delays in resolving individuals cases; (2) greater inconveniences to potential jurors; (3) a waste of judicial resources in the event that a trial judge would be unable to commence any new trial proceedings while awaiting the resolution of the Article 78 proceeding; and (4) increased backlogs of pending cases in the civil courts.

* Expanding the historically limited scope of Article 78 review to include judicial error, rather than acts in excess of a judge's jurisdiction, is a step that should only be taken when there is a compelling need for such an expansion.

* If this bill were to result in delayed trials and longer juror service, there could be pressure to create more trial parts to alleviate case backlogs, as well as increased costs related to jury service and jury service administration.

If there were some overwhelming need for this legislation, then perhaps these burdens would be acceptable. It should be noted, however, that a party aggrieved by an error in the jury selection process can raise the issue on an appeal from an adverse judgment. More significantly, I have not heard any urgent or compelling justification for the enactment of such controversial legislation that was introduced and passed at the end of the legislative session without a sufficient opportunity for public comment.

The bill is disapproved.

(signed) DAVID A. PATERSON
