

Testimony on H 7271—An Act Relating to Courts and Civil Procedure—Court—Family Court

In 1994 Rhode Island began to pick all our state's judges, from Traffic Tribunal to the Supreme Court, using the so-called Merit Selection system. The new system, put into our state's constitution by voters following numerous scandals in our state's judiciary, creates a Judicial Nominating Commission that screens applicants for judicial vacancies and then submits a list of three to five nominees to the governor for their appointment.

Prior to the creation of the Merit Selection system the General Assembly chose members of the Supreme Court in Grand Committee and other judges were chosen by the governor with advice and consent of the Senate. As soon as the Merit Selection system was enacted the General Assembly began to exploit a loophole in the system--magistrates. Prior to the 1994 changes there were a handful of magistrates in our judicial branch, and they served largely administrative functions. The General Assembly quickly created dozens of magistrate positions and vested their appointments not with the governor, but with the courts themselves.

Supporters of the Merit Selection system, including Common Cause Rhode Island, pointed out that magistrates are judges in all but name and therefore should be subject to the same selection process as all other judges. We point to the Rhode Island Code of Judicial Conduct which defines a "Judge" or "Judicial officer" means anyone who is authorized to perform judicial functions, including a judicial officer appointed for a term and confirmed by the Senate, a justice of the peace, magistrate, court commissioner, special master, municipal, probate or housing judge or referee."¹

Yet supporters were told time and again that magistrates are not judges because they do not conduct trials. H 7271 would give magistrates in the Family Court the power to conduct contested divorce trials. This is a practice that the Family Court has already engaged in and was subject to recent litigation and is only now seeking statutory authorization for.

If Family Court magistrates are allowed to conduct trials, they should be chosen in the same manner that Family Court judges are selected--through the Merit Selection process. The Court cannot have it both ways--arguing that magistrates should be selected in a different manner from judges but granting those magistrates the same powers as judges.

Common Cause Rhode Island believes that H 7271 should be amended to require that Family Court magistrates be selected according to Chapter 16.1 of Title 8.

¹ See: <https://www.courts.ri.gov/Courts/SupremeCourt/Supreme%20Court%20Rules/Supreme-Rules-Article6.pdf>