

## Testimony on to H 8045--An Act Relating to Courts and Civil Procedure--Courts--Family Court

### Position: Amend

Common Cause Rhode Island asks the Judiciary Committee to amend H 8045, which would require judicial magistrates in the Family Court be chosen by the Chief Judge of the court from a list provided by the Judicial Nominating Commission.

In 1994 more than 70% of Rhode Island voters chose to amend our state constitution to create a merit selection process for the appointment of all state court judges. It was the most comprehensive change to merit selection of any state in our country's history. As a result of that amendment, the General Assembly created a nine (9) member Judicial Nominating Commission (JNC) that solicits applications for vacancies, screens the applicants and then conducts public interviews of the finalists and takes public testimony.

After conducting a public vote the JNC submits a list of three (3) to five (5) finalists from which the governor chooses. That nominee is then subject to the advice and consent of the Senate, and in cases of vacancies on the Supreme Court, to the House as well.

In 1994 there were no magistrates in the Rhode Island judicial system. In the quarter century since, the General Assembly has created more than twenty (20) magistrates in all courts other than the Supreme Court. They are chosen by the presiding judge of the respective court with advice and consent of the Senate, except those in the Traffic Tribunal who are selected by the Chief Justice of the Supreme Court.

The powers of those magistrates are set by statute, but they historically included many of the powers exercised by judges, short of conducting trials. The Code of Judicial Conduct in the "Terminology" section, says:

"Judge" or "Judicial officer" means anyone who is authorized to perform judicial functions, including a judicial officer appointed or a term and confirmed by the

Senate, a justice of the peace, magistrate, court commissioner, special master, municipal, probate or housing judge or referee.<sup>1</sup>

On January 25, 2024 the Rhode Island Supreme Court issued a decision in a contested divorce proceeding. The appellant had argued that the decision of the Family Court magistrate should be overturned because the magistrate is not authorized under the statute to conduct trials, as they had in their case. The Rhode Island Supreme Court did not side with the appellant and sidestepped the issue because it had not been raised during the initial appeal.<sup>2</sup>

On January 26, 2024 identical bills were introduced at the request of the Family Court, granting Family Court magistrates the right to conduct trials in contested divorces, retroactively. Those bills became law.

Common Cause Rhode Island has long argued that magistrates are for all intents and purposes judges and therefore should be selected through the merit selection system outlined in Article X, Section 4 of our state's constitution.

For decades we have supported bills, including one sponsored by then-Senate President Joseph Montalbano that passed that body in 2006, that would require all magistrates to be chosen in the same manner as judges. H 8045 would continue to allow Family Court magistrates to be selected by the presiding judge, but only from a list created by the JNC. We believe the governor should make the selection, consistent with our constitution.

Furthermore, we believe all magistrates in all courts should be selected by the governor from lists provided by the JNC. We have several reasons why we believe the JNC process is not only the legally correct process for selecting magistrates, it's also the superior process. The current magistrate selection process is opaque. By contrast the Judicial Nominating Commission widely advertises vacancies. The finalists are named publicly and the public is allowed to weigh in through testimony. Research shows that a lack of diversity on the bench lessens public trust in the judiciary. The magistrate selection process has no mandate for creating a more diverse bench, while the JNC has an explicit mandate, given to it by the General Assembly in the enabling statute.

We urge the committee to amend H 8045.

---

<sup>1</sup> See: <https://www.courts.ri.gov/Courts/SupremeCourt/Documents/Supreme-Rules-Article6.pdf>

<sup>2</sup> See: <https://www.courts.ri.gov/Courts/SupremeCourt/SupremeOpinions/22-219.pdf>