

- [Log In](#)
- [Register Now](#)
  
- [Home Page](#)
- [Today's Paper](#)
- [Video](#)
- [Most Popular](#)
- [Times Topics](#)

ING DIRECT

Search All NYTimes.com

**The New York Times**

Tuesday, July 26, 2011

## **N.Y. / Region**

- [World](#)
- [U.S.](#)
- [N.Y. / Region](#)
- [Business](#)
- [Technology](#)
- [Science](#)
- [Health](#)
- [Sports](#)
- [Opinion](#)
- [Arts](#)
- [Style](#)
- [Travel](#)
- [Jobs](#)
- [Real Estate](#)
- [Autos](#)

---

## **City Room**

February 23, 2010, 10:31 am

# **Lawmakers Erred on Raises for Judges, Court Finds**

By *NICHOLAS CONFESSORE*

ALBANY — The state's highest court ruled on Tuesday that New York's governors and legislators had violated

the State Constitution by refusing to authorize pay raises for state judges for more than a decade.

In a 5-to-1 decision, the Court of Appeals found that the legislative and executive branches had undermined the independence of the judicial branch by tying judges' pay raises to unrelated legislation, including bills to raise lawmakers' own salaries, thereby violating the separation of powers doctrine.

"The state defendants assert that it is within their legislative rights to consider judicial compensation not on the merits but relative to unrelated policy initiatives," the court found, in an opinion written by Judge Eugene F. Pigott Jr.

"But they overlook the fact that they are treating judicial compensation — which falls within the scope of their constitutional duties — as if it were merely another government program appropriation as opposed to compensation for members of a co-equal branch."

The ruling, which addresses three separate lawsuits filed by current and former state judges, stops short of ordering the Legislature to grant a pay raise to judges, though the language of the opinion leaves open the possibility that the court may attempt to do so in the future.

"We do not believe that it is necessary here to order specific injunctive relief," Judge Pigott wrote. "When this court articulates the constitutional standards governing state action, we presume that the state will act accordingly."

In a dissenting opinion, Judge Robert S. Smith argued that the salary logjam had not yet created a crisis for the court system or deprived it of able judges. The court's chief judge, Jonathan Lippman, recused himself from deliberations because he was a plaintiff in one of the cases that the ruling addresses.

The ruling follows years of steadily rising caseloads for the state's 1,300 judges, whose salaries cannot be reduced while they are serving but cannot be raised without an act of the Legislature.

Judges' pay was last raised in 1998. Since then, the court found, inflation has drained as much as a third of the value of judges' salaries. During the same period, the court found, the judges' workload has risen to 4.5 million cases each year, from 3.5 million.

Twice in recent years, once under former Gov. George E. Pataki and once under Gov. David A. Paterson, the state budget has included a so-called "dry appropriation" for judicial pay raises, setting aside money but preventing it from being spent without further legislation authorization.

That authorization never arrived, as legislative pay raises became a classic Albany political football. The Legislature has refused to pass legislation that will raise judges salaries unless it will also raise lawmakers' own salaries.

Governors have played the game, too: When the Senate passed a bill in 2007 that would have created a commission to review salary increases for both the Legislature and the judicial branch, the governor at the time, Eliot Spitzer, refused to agree to a deal unless the bill included ethics and campaign finance measures.

- [E-mail This](#)
- [Print](#)
- [Share](#)

Twitter

## Recommend

[Albany, Courts and Law, Government & Politics, Highlights, David A. Paterson, Eliot Spitzer, Eugene F. Pigott Jr., George E. Pataki, Jonathan Lippman, New York Court of Appeals, Robert S. Smith, state legislature](#)

## Related Posts

### From City Room

- [Turning to Albany to Preserve a Smoke-Filled Room](#)
- [Bruno Finds a Budget Culprit: Spitzer](#)
- [No Budget Yet, Paterson Says, and No Specifics, Either](#)
- [‘It’s Just a Tragedy,’ Pataki Says](#)
- [Paterson, Spitzer and Pataki Weigh In on Paladino](#)

- [Previous Post M.T.A. to Lay Off Hundreds](#) **12 Comments**
- [Next Post Fifty-Seven Trombones?](#)

1. 1. February 23, 2010 10:58 am [Link](#)

Should judges’ salaries be determined by a COURT? Conflict of interest is the name of the game in New York politics. I’d agree to salary increases if:

judges would police themselves, especially regarding some of the corrupt justices in rural New York state, who rule in favor of revenue and xenophobia, not merit;

fire some of the clerks, who, to put it mildly, are condescending and discourteous to petitioners, i.e., the taxpayers who pay their salaries and whom they are hired to serve, not insult and berate.

— *edwcorey*

2. 2. February 23, 2010 11:54 am [Link](#)

Finally, total constitutional respect for the judiciary.

When Mario Cuomo was governor, and Sol Wachtler was chief judge, a constitutional crisis was settled with the governor agreeing not to chop up the judiciary budget, as it was not his agency, but a co-equal branch of gov’t, and the governor was free to issue a memo announcing his displeasure or preference.

I was delighted to attend the argument in Manhattan Supreme, and then again in the Court of Appeals and knew that these three cases would enhance constitutional respect for the judiciary, which “linkage” was denuding.

Now, exactly as I have stated from the beginning, this constitutional crisis, despite a laudable job by all of the lawyers, now the legislature must vote up or down the judiciary budget, without linking it with other bills, be they good or “poison-pills.”

Independence of the judiciary is not just in how much they get paid, but how they get treated by their co-equal branches; real respect means to be treated as a “stand alone.”

This is a decision everyone can be proud of!

Justice Edward H. Lehner has added a jewel to his nearly 30 years of exceptional judicial service to our state as a Manhattan Supreme. His prior service as an assemblyman from 1972 to 1980 served him well in knowing the contact patch between the wonderful separation of powers regime.

The timing is great, for now, in the budget season, the judiciary's budget gets to be voted up or down all by itself. That is constitutional respect: a place of honor in the sausage factory.

Great day to be a citizen and a lawyer; the decision is the zenith of judicial restraint, exemplified by Judges Pigott, writing for the majority, after all the serious "fun" he had during argument, and Judge Smith, who seeks to take the Third branch of government to the highest level of integrity—to love those who hurt you. This decision alone sets our Court of Appeals above all those in the other 49 states, under the stewardship of Chief Judge Jonathan Lippman and his principled colleagues.

Dated: 2/23/10

/s/

Ravi Batra

— *Ravi Batra*

3. 3. February 23, 2010 12:00 pm [Link](#)

Funny, when you take a job that pays a fixed annual salary of \$150,000 for 10 or 14 years, you can later claim that the salary is unconstitutional because the cost of living has increased. Curious indeed.

— *Court Observer, Albany*

4. 4. February 23, 2010 12:02 pm [Link](#)

You have to be kidding me. The BRIAN DEAD taxpayer gets screwed again. The Court Of Appeals makes this determination..... Its just like the police policing themselves What a Total Farce !!! The people of this state have to awaken from this self induced coma ASAP. Vote these bums out of office.

— *Jeff Baird*

5. 5. February 23, 2010 12:03 pm [Link](#)

You have to be kidding me. The BRAIN DEAD taxpayer gets screwed again. The Court Of Appeals makes this determination..... Its just like the police policing themselves What a Total Farce !!! The people of this state have to awaken from this self induced coma ASAP. Vote these bums out of office.

— *Jeff Baird*

6. 6. February 23, 2010 2:52 pm [Link](#)

Sounds like #1, edwcorey had a little run-in at a court, apparently while acting as his own attorney.

Probably the actions of the clerk had something to do with the fact the court's workload has increased by about 30% while the court employees' real wages have been shrinking.

Those screaming that the Court of Appeals made the decision which touches on the salaries of the judges might try thinking for a little bit. How else it would work in a constitutional democracy?

Also, the "rural justices" who are often not even lawyers are indeed a disgrace, one the Judiciary has been trying to get cleaned up for years. The local bosses (many of whom are the justices) just won't let that piece of pork go.

I suggest people like edwcorey spend a couple of days at a place like Bronx Family Court, where judges routinely are holding court open for 10 to 12 hours a day and where the backup is so bad that cases that could be settled in weeks take months, even years, to work out, putting even more strain on those clerks he wants to fire, not to mention everybody else.

— *Brian*

7. 7. February 23, 2010 3:04 pm [Link](#)

Who do we want for judges? Why those who work cheap of course. And who do we cant for teachers? Those who work cheap of course.

— *Scottilla*

8. 8. February 23, 2010 6:19 pm [Link](#)

Any judge who feels his/her salary is not sufficient has the right – and indeed the obligation if he/she has a family- to seek a job in the private sector. If they can find one.

— *Anthony N*

9. 9. February 24, 2010 8:51 am [Link](#)

Judges make about 30% less than first year BigLaw associates, yet have to practice for at least 10 years to even be eligible for the position. And given what the actual cost of living is in New York, neglecting judicial pay only serves to limit the pool of potential applicants to those with an independent source of income; whether a trust fund or a wealthy spouse. In fact, New York State has the second lowest-paid judges in the entire nation.

— *Serendipitous*

10. 10. February 24, 2010 12:43 pm [Link](#)

It's nonsense to say that judges should receive a raise because they make less than first-year Big Law associates. Big Law associates are the top graduates of the top law schools. Judges come from the ranks of assistant district attorneys and private practitioners and are mediocre graduates of inferior law schools. They attain their positions not through merit but through party connections. Working on their own, most of these people would never be able to earn as much as they do as judges.

— *Mark*

11. 11. February 24, 2010 9:24 pm [Link](#)

New York State Judges are the Most corrupt in pur nation if not the world. I watchee as a Police Officer as they openly court dirty lawyers and accept bribes in "Forlini's" behind 100 centre street in manhattan. The worst of the worst is New York Supremem court justice Emilly Goodmen who is a puppet Of the N.Y.C. Police Department. Article 78 appeals are "steered" her way....Just to deny them justice. She is also handpicked to handle any case that may cause the city a lot of money so that she can "Deep six" it. The entire judicial process is a scam in New York and none of them deserve half of what they are getting....much less a raise.

— *Michael Gourdine*

12. 12. February 26, 2010 2:29 pm [Link](#)

I just watched a program form Deutsche Welle, Germany, were they were reporting that wind, solar and hydropower will form a network of power that will be totally sustainable and not require nuclear, oil, coal to deliver to the grid in the near future. .

Now that kind of grid will be essentially free- run by the sun, the wind and waterfalls.

So not a lot of money can be made from this type of economy?

Will we need to have a new way of looking at greed?

Could the judges give an example of saying we have an honored profession, we are getting \$150,000 and we think this is ENOUGH.

That will be a great day.

— *Hello*

**Add your comments...**

Your Name  Required

Your E-mail  Required, will not be published

**Your Comment**

Comments are moderated and generally will be posted if they are on-topic and not abusive. For more

information, please see our [Comments FAQ](#).

**Search This Blog**

Search

• Previous Post [M.T.A. to Lay Off Hundreds](#) • [Follow This Blog](#)

• Next Post [Fifty-Seven Trombones?](#)

- [Facebook](#)
- [Twitter](#)
- [RSS](#)

GOTHAM EXTRA