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## **Albany Erred by Tying Up Judges' Raises, Court Rules**

By NICHOLAS CONFESSORE

ALBANY -- New York's highest court ruled on Tuesday that governors and legislators had violated the State Constitution by trying to tie pay raises for state judges to unrelated legislation, including bills to raise lawmakers' own salaries.

In a 5-to-1 decision, the Court of Appeals found that by refusing to consider a judicial pay raise on its own merits, the legislative and executive branches had created a "judicial pay crisis," undermining the independence of the judicial branch and 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 said in its decision, 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 opinion did leave 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 court's judges themselves would be entitled to any pay raise that lawmakers adopted.

In a video message on Tuesday to judges of the state court system, Judge Lippman said that while the decision did not order a specific salary increase for judges or even lay out a precise

time frame for the Legislature to act, lawmakers were under an obligation to act "in good faith and expeditiously" to resolve the conflict.

"I am calling upon the other branches, publicly and privately," he said, "to comply with the court's decision and honor their constitutional obligations and the respective functions of the different branches of government."

But legislative leaders -- and the governor -- appeared in no hurry to act.

Morgan Hook, a spokesman for Gov. David A. Paterson, said that the governor believed judges had gone too long without raises and that it had "the potential to do great harm to our very accomplished judicial branch."

"Governor Paterson is once again urging the Legislature to enact his proposal to establish a Quadrennial Commission that periodically would review and adjust judicial compensation and make a recommendation to the Legislature to be determined on a nay or yea basis without linkage to any extraneous notions," Mr. Hook said. "The judiciary deserves such a straightforward analytical approach."

But, he added, "a full pay raise at this time would be a large burden as we try and close a \$8.2 billion deficit."

In a statement, Sheldon Silver, the Assembly speaker, said that while he believed that judicial salaries should be raised, the Assembly would consider doing so only "when economic conditions improve."

John L. Sampson, the Democratic conference leader in the State Senate, echoed that comment. "Encouraging our best and brightest to become and remain judges in New York is essential to protecting the peoples' right to a sound system of justice," Mr. Sampson said in a statement. "However, during the worst fiscal crisis in decades, it is difficult to justify pay raises for anyone in public service."

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

Judges' pay was last raised in 1998. Currently, salaries range from \$156,000, the annual pay of the Court of Appeals' chief judge, to \$5,800, the amount earned for some part-time state judges in cities like Albany, Buffalo and Yonkers.

Since then, the court found, inflation has drained as much as one-third of the value of judges' salaries. During the same period, the court found, the judges' workload had 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 Mr. 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 legislative authorization.

That authorization never arrived, as legislative pay raises became a classic Albany political football.

For its part, the Legislature has refused to pass legislation increasing judges' salaries unless it will also increase lawmakers' salaries. Members of the Assembly and Senate currently earn a base salary of \$79,500, though many earn tens of thousands of dollars more in leadership bonuses known as lulus. Unlike all but the part-time judges, moreover, lawmakers can and usually do hold outside employment.

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.