

**TESTIMONY BEFORE THE
JOINT COMMITTEE ON WAYS & MEANS**

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Springfield Technical Community College
Springfield, MA



Mark V. Green
Chief Justice
The Appeals Court
Commonwealth of Massachusetts

Senator Gomez, Representative Williams, and members of the Joint Committee, I thank you for the opportunity to provide testimony on behalf of the Appeals Court. I would also like to thank your legislative colleagues, particularly Senator Rodrigues and Representative Michlewitz, for their assistance to the Appeals Court over the years. The past year was a special one for the Court, as we marked the 50th anniversary of the Court's creation. And while the ceremony presented a wonderful opportunity to connect with colleagues -- past and present -- to celebrate the countless individual contributions that have been the heartbeat of the Court for 50 years, it also provided an opportunity to reflect broadly on the Court's record throughout its existence of innovation and evolution to our present-day operations. Your financial support over the years has enabled the Appeals Court to lead the nation in end-to-end digital content management, and to fulfill our obligations to the Commonwealth by producing timely appellate opinions of the very highest quality, while enhancing administrative operations, implementing education and training initiatives, improving case processing, and making technology improvements throughout the court.

Never has the value of our investment in technology equipment, systems and training been more apparent than during the pandemic that has dominated the past three years. Based on our largely paperless operations leading into the pandemic we at the Appeals Court were able to transition our entire workforce to remote operations in three days' time, from March 16-19, 2020, and thereafter to continue full operations, with hearings on a virtual Zoom platform with real time and archived public access through a YouTube channel for fifteen months until we resumed in-person oral arguments in September 2021, and then again for January and February of last year during the height of the Omicron surge. Emerging from the pandemic, we have built on capabilities developed in response to the pandemic, including the ability to livestream video of

in-court oral arguments for viewing by the public on our YouTube channel. I particularly want to take this opportunity to thank you again for your support, and passage, of the Judiciary IT Capital Bond Bill last summer. Though, strictly speaking, it is not a part of what we are here to talk about today, your support of our continuing investment in information technology is critically important in assisting our continued progress and is greatly appreciated.

As you know, the Appeals Court expanded in 2001 from fourteen (14) to twenty-five (25) justices, in order to resolve a terrible backlog. With the expansion, we were able to clear the backlog and keep pace with our caseload. But the expansion of the court in 2001 did not include a corresponding increase to our support staff. In 2001, full time court support personnel (excluding judges and law clerks) numbered 70. As we entered the pandemic that number was down to 58, but it has since been reduced even further to 49 through retirements and attrition. Now, as we continue to emerge from the pandemic and our caseload begins to return to pre-pandemic levels, we are gradually filling critical staff positions necessary to fulfill our mission. We currently are in the process of filling four vacant staff positions in the Clerk's Office, and we will continue to evaluate staffing needs as our caseloads increase in the coming months.

It is important to note that, like the Trial Court, the Appeals Court has no control over its incoming caseload. The appeals that we hear come from every department of the Trial Court, as well as state agencies such as the Appellate Tax Board, the Industrial Accident Review Board and the Employment Relations Board. As a result of the limitations on Trial Court operations during the pandemic, particularly during the earliest stages, the Appeals Court saw a significant decline in our caseloads, even as we were able to continue our operations at full pace, albeit remotely. In the most recent period, we have seen a gradual increase in our caseload, as Trial Court operations returned to pre-pandemic levels. As the Trial Court continues to emerge from

the pandemic and more cases go to judgment, we anticipate a continuing steady increase in the number of appeals coming to us. For about 98% of those cases, other than those taken for direct review by the SJC, we are the court of last resort providing the final appellate decision for the parties. Consequently, the quality and speed of our decision-making are central to the entire judicial system and important to state government and the residents of the Commonwealth as a whole.

During calendar year 2022, just over 95% of all 2,695 briefs were filed electronically (97% in criminal cases, 94% in civil cases). In 2019 the Appeals Court adopted a standing order making electronic filing mandatory for most documents with limited exceptions, including for any impounded document or document filed by a self-represented litigant, and today substantially all our documents are filed electronically. As I noted in my introductory remarks, our transition to paperless operations before the pandemic enabled us to continue full operations despite moving our entire workforce to remote operations at the start of the pandemic and continuing completely remote operations until July 6, 2021. Once filed, Appeals Court judges and staff are working with those materials largely without resort to hard copy and moving the content from one point to another across our network systems, connected through a VPN when working remotely. Judges prepare for and participate at oral argument utilizing iPads, and opinion drafts are circulated for review and edited electronically. The digital platform offers more convenient access to the content, better utilizes staffing resources and has proven to be a cost-effective initiative for our court, even before the pandemic; during the pandemic it has allowed us to continue full operations without skipping a beat.

Of notable importance is that 90% of our annual budget is attributed to payroll alone. As a result, the opportunities to achieve further savings are extremely limited. However, that has not

stopped us from continuing to seek greater efficiencies in our operations. Over the past few fiscal years – in-part catalyzed by the pandemic’s upheaval of our historical workflows – the Appeals Court has conducted a thorough review of our practices and has implemented a number of critical operational changes, including, but not limited to:

- Executing a comprehensive operations assessment with assistance from the National Center for State Courts;
- Re-organizing our Clerk's Office with a re-classification of staff to handle a broader and more flexible set of responsibilities;
- Creating and expanding an Administrative Office to consolidate the administrative functions of the Appeals Court;
- Posting audio and video of all oral arguments to our YouTube channel for public access;
- Completely digitizing all case and administrative records;
- Implementing a hybrid work policy and formalizing hybrid workflows; and
- Preparing for a new Case Management System to modernize our docketing process, using funds from the Judiciary Capital Bond Bill passed last summer.

Thanks to a combination of these re-imagined systems and the strong work ethic of our colleagues, we have continued to keep pace with cases and avoid backlogs, despite our reduced headcount. Importantly, all of these initiatives have been accomplished within our annual budget and we anticipate they will generate even further savings for the Commonwealth in the future.

Our operations have undergone significant changes, and indeed, that has been reflected in our budget as well. The Appeals Court has in recent years been able to revert significant portions of our appropriation at the end of each fiscal year; proof, in our mind, that more thoughtful systems do, in fact, lead to significant cost savings. And while we are proud to have created these

savings, we recognize that the financial resources of the Commonwealth are scarce; every dollar allocated by the Legislature makes a difference.

To that end, the Appeals Court is requesting for FY24 an appropriation level with our FY23 appropriation. The FY24 figure of \$15,406,987 proposed in House 1 meets our maintenance request (actually – to be precise – increases our appropriation by \$1), which we are grateful for. By submitting a request for level funding, we are prepared to absorb all increased costs – inflationary or otherwise – within our current level of funding.

The requested appropriation for this fiscal year does not contemplate any great expansion of personnel or facilities, other than the filling of vacancies that we have determined necessary. It does, however, presume that the Chief Justice and all associate justice positions are filled along with sufficient law clerk positions to provide the requisite support. Respectfully, the requested appropriation is simply a maintenance budget, designed to preserve staffing and operations at essential levels, even after taking into account inflation, required COLA adjustments, mandatory step increases, and projected retirement buybacks.

I appreciate the enormous challenges that the Commonwealth will face during the next fiscal year. With that in mind, the Appeals Court is asking for no more than the amount the court requires to perform its critical responsibilities. We respectfully submit a budget request that is level with our current appropriation. We commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

I would again like to thank the Joint Committee for your consideration of the Appeals Court's request and answer any questions that you may have.