

Memorandum

To: House Judiciary Committee

From: John Tobin

Re: CACR 10

Date: February 2, 2021

Thank you for the opportunity to speak to you today about this bill. And thank you for your service to the people of our state in the midst of the pandemic and on the day of a winter storm.

I am a retired legal aid lawyer and former volunteer court mediator. Since retiring, I have been active in a multi-year grass-roots effort to encourage reform of our state's school funding system and in particular to address the grossly uneven and disproportionate property tax burden that harms homeowners, businesses, and the economies of many local communities.

I oppose this proposed constitutional amendment because it would disrupt and damage our constitutional system of checks and balances and separation of powers. It would also turn the Legislature into an appeals court, which would likely become burdensome and unmanageable.

Both our federal and state constitutions created a system of government involving three separate branches of government: executive, legislative, and judicial. Each branch has a distinct role to play in preserving and enhancing our democracy and the rule of law. The three branches are independent and separate, but they must interact regularly and, as a result, tension between these three branches of government is inevitable, frequent, and healthy. Our country's founders created this system because, above all else, they feared that if one branch of the government became all-powerful and unrestrained, tyranny would follow.

Throughout our history, disagreements between and among the three branches of government have arisen, but none has provoked a reaction that led to the destruction of the balance among them. CACR 10, however, would give the Legislature the power to completely usurp the role of the judiciary. The role of the Legislature is to pass laws and set policy that govern daily life in our state and

determine the funding and administrative structure of state agencies. The role of the courts, in contrast, is to adjudicate specific legal disputes between parties, including individuals, business organizations, and agencies of government.

If CACR 10 were to be adopted, any party who is unhappy with the outcome of a court case would be able to appeal to the Legislature, as if the Legislature was the ultimate appeals court. So, a person who did not like the regular court's ruling in their divorce, business dispute, or boundary case, could hire a lobbyist and try to persuade the Legislature to undo the court ruling. In all likelihood, only well-off individuals, large businesses or powerful government agencies would have the resources to pursue such an end-run around the court system. This would aggravate the imbalance between the wealthy and ordinary people that already exists in our justice system. And the disruption and distraction that such cases would create for the Legislature's calendar would impede your ability to do the work that the people of our state sent you here to do: make complicated and numerous policy and budgetary decisions.

The Legislature already possesses the power and authority to respond to particular court rulings it does not like by using its legislative powers, instead of turning itself into an appeals court. If the Legislature is unhappy with a particular court decision's interpretation of a specific statute, the Legislature has a simple remedy: it can amend or repeal the statute. If the Legislature is unhappy with a court ruling on a constitutional question, it can propose an amendment to the Constitution.

For all of these reasons, I respectfully urge you to reject this proposal.

Thank you.

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