

the retired or temporary judges, the entire court, so that's the reason you will see that no panel of the court of appeals can contain a majority of the retired judges so assigned. This is for temporary purposes. This is for vacancies and, really, I guess, it's a sort of a mechanism that would provide some workable mechanism is about the best way I can explain it, if you have vacancies that occur in the court to keep the court up and running and you can't afford to have long period of time without them.

SENATOR SCHMIT: Thank you, Senator Kristensen. Is there a chance, Senator Kristensen, that what it amounts to is a bonus plan for retirement plans for members of the judiciary?

SENATOR KRISTENSEN: No, I don't think so. And the reason I don't think so is that judges retire for a purpose and that's that they're tired of being on the bench. Retirement is just that. There are certainly times where a judge who has retired can be very helpful to our system and I don't think we ought to disallow those people's short term, temporary service to the state. But, no, I mean this is not a backdoor plan. It hasn't been abused in the past by the court and it's been in our statutes for a number of years. The court has never done it. You know, if the court was going to abuse this, they would have taken all the retired judges and just made an appellate court with them and not even gone through the hassle of a constitutional amendment or taking it through the Legislature. They won't abuse that. They haven't abused it in the past and I don't see this as any sort of plan like that at all.

SENATOR SCHMIT: Well, Senator, I have defended the system many, many times on this floor. I will have to say this, from time to time I find it difficult to continue that defense based upon some of the present performance I have seen and I want to be certain that we are not, by this mechanism, allowing a judge who hasn't got the courage to sit on the panel to opt out and allow some retired judge to come forward and take over that responsibility. I've seen what I call the fade-out system where a judge refuses himself and then another judge comes on the bench and, as a result, the individual who we had expected would make the decision is not in a position to do so. I do not want to see that happening on the appellate court. I want those judges whose responsibility it is to serve, to serve. I do not want them taking a powder, so to speak. And if this is in any way used in that way, it is a disservice to the appellate court