



THE LEAGUE
OF WOMEN VOTERS
P E N N S Y L V A N I A

TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON THE COURTS

JULY 14, 1994

Thank you for inviting the League of Women Voters of Pennsylvania to participate in this hearing on court reform proposals. My name is Winifred Peirce, and I speak on behalf of all our members in local Leagues across the state.

I would like to comment briefly on some of the court reform proposals listed for consideration; however, the main thrust of the League's testimony will concern our support for changing the way Pennsylvania's judges are selected.

Regarding judicial administration, the League's position statement reads, in part:

The League of Women Voters supports a unified court system.....and the Chief Justice of the Supreme Court, supported by an adequately staffed administrative office, should be responsible for its administration.

We have no comment on the specific proposals regarding administration of the Supreme Court.

Our support of suggested improvements to administration of the lower courts, such as the establishment of minimum standards for local court systems, is based on the League's historical concern for equal justice under the law for all people. For this reason, we also support state funding of all courts in the unified system. To quote from the Beck Commission report, page 120, "The quality of justice a person receives should not depend on residence. Yet in many Pennsylvania courts services are dependent on the funds available to those courts and are, therefore, neither equal nor uniformly adequate."

The first step toward implementation of state funding should be a codification of exactly what is included in the unified court system. Also, in regard to administration of the lower courts and of support agencies and staff, the League recommends the following:

- clearly defined areas of responsibility assigned to the Administrative Office of Pennsylvania Courts (AOPC), the president judge and the court administrator;
- increased administrative support by the AOPC, including regular and timely procedural audits and corrective action where necessary; and
- mandatory instruction by the Commonwealth for court administrators.

Regarding financial accountability, the League believes Pennsylvania deserves a judiciary that abides by a code of ethics and is accountable to the public for disclosure of personal finances and conflicts of interest. Based on that position, we have repeatedly stated our support for financial disclosure requirements for judges that are at least as stringent as those for other government employees.

The League cannot comment specifically on suggestions regarding supreme court practice and procedure, such as the allocatur process. However, one of our basic concepts is that government should be open and accountable to the public; that citizens have a right to know about the actions of all its branches. When the U.S. Supreme Court is in session, in addition to covering decisions that are made, the media report frequently on cases that have been appealed to the court and on whether or not those cases have been accepted for review. Our own supreme court would do well to follow that example by reporting frequently on appeals proposed, pending, and accepted or rejected. Recent events, including the report of a special grand jury, have given the public an impression of a state supreme court that operates in an

atmosphere of secrecy. Openness about the court's activities could be very helpful in restoring public trust in our highest court.

We come now to the final section, Judicial Selection and Retention. I will comment on some of the specific proposals, but first must say that the League of Women Voters continues to support merit selection of judges, as it has done since 1948. Merit selection was proposed by both the Pomeroy and Beck Commissions and, over the years, has gained the support not only of the League and other public interest groups, but a long, long list of individuals, organizations and companies that have come to believe that judges should be removed from partisan politics. The testimony that follows paraphrases statements made to other committees of the General Assembly, to individual legislators of both houses, to the Governor - and to the general public through the media.

THE LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA
REGARDING SELECTION OF APPELLATE COURT JUDGES

The League was founded almost 75 years ago, after passage of the nineteenth amendment, to educate newly-enfranchised women on the issues of the day so that they could cast an informed vote. And that has been our mission ever since -- the informed participation of citizens in government. The point is stressed as an answer to some who have criticized the League's long-standing support of merit selection because it would "take away the power of the people to choose their judges." Our position is that, under the present system, it is virtually impossible for voters to have sufficient data about judicial candidates - particularly those running for the appellate courts - to be able to cast an informed vote.

The process of choosing judges by partisan election presents many problems. Meaningless and uninformative campaigns, conducted solely for maximum name exposure, are not much help to the voter faced with a long list of candidates about whom he or she knows little or nothing. A judge, by the very nature of the job, should be someone who, in reality and appearance, is independent from partisan and political considerations. This is difficult to achieve when judicial candidates must seek partisan endorsements, support from special interests, and political contributions to fund the enormous costs of a statewide campaign.

In early 1993, nominating petitions were filed by 24 candidates planning to run for election to Pennsylvania's three statewide courts. In addition, five judges and one supreme court justice filed for retention on the appellate courts. After adding those names to the list of candidates for the courts of common pleas, district justice and traffic courts, voters were faced with a long list of potential jurists, about most of whom they knew little or nothing.

The parties decided which candidates they would endorse, giving guidance of a sort to voters, but telling them virtually

nothing about the candidates' qualifications to hold judicial office. Members of special interest groups favored one candidate or another based on a perceived bias toward one side of an issue or issues, but this was guesswork at best, since judicial candidates are quite rightly prohibited from discussing matters that might come before them. Certainly, if it could always be determined ahead of time how a judge would rule on a particular case, our judicial system would be in serious trouble.

Other voters may have made their picks by starting at the top of the list (why else do we have a "lottery" for ballot position?), or by not starting at the top, or by choosing women candidates over men, or vice versa. Some always vote for (or against) any candidate who hails from Pittsburgh or Philadelphia. What most cannot do, even if they wish to, is cast a truly informed vote based on the qualifications of the candidates for judicial office, particularly at the appellate level.

Merit selection of judges was recommended in the forties by a national bar commission and has been adopted by a majority of states since that time. None of these states has reverted to partisan election of all their judges. The American Judicature Society has endorsed the principle of judicial selection and has found that, overall, the quality of judges has improved and the number of minorities and women serving as judges has increased where the system is in place.

The League believes that merit selection would be more democratic than partisan election of judges by voters with insufficient information to make informed choices. We sincerely hope that legislation very similar to that introduced in the 1993-94 session will be passed by the General Assembly as soon as possible. It is past time for Pennsylvania voters to be given a choice as to how their judges should be selected. The League of Women Voters asks that legislators vote to let the people decide.

Until a merit selection referendum reaches the ballot - and that date has been set back once again by the General Assembly's failure to act on the legislation - some of the proposals for improving the present system of judicial selection deserve consideration.

- Requiring voters to vote for judicial candidates by name, and not by voting for a straight party ticket. This should, as stated in the Beck report, underscore the significance of the judicial election in the minds of voters - particularly since judicial candidates, including those for the statewide courts, appear on the ballot in municipal election years.
- Requiring all candidates to reveal publicly information about contributors is part of campaign finance reform legislation strongly supported by the League. The requirement should certainly apply to judicial candidates as well, for as long as they must compete in partisan elections.
- The suggestion that each registered voter should receive a written pamphlet containing information about judicial candidates is certainly one the League could support as part of our mission to promote the informed participation of citizens in government. At present, the League does publish Voter Guides, which I hope you are all familiar with. The Guides include biographical information and a statement of qualifications submitted by each candidate, as well as his or her answer to a question posed by the League. (In 1993, that question was, "What specific suggestion[s] do you have for improving the administration of justice in Pennsylvania.") In the interest of fairness and because of newspaper space limitations, we impose a strict word limit on the candidates' replies. A pamphlet mailed to voters might allow them more space for stating their qualifications. If this suggestion were implemented, the League would be pleased to help in any way possible, if requested.

- All appellate court justices and judges should be selected on the basis of merit. The League wholeheartedly agrees.

The last proposal on the list, that supreme court justices be selected by region, is the only one that does not site Pomeroy, Beck, or the Grand Jury as a source. The League believes that regional selection is a bad and unworkable idea. To begin with, judges should not represent particular voters or groups of voters, and an impartial statewide judiciary should not include judges representing different regions of the Commonwealth.

It is basic to our system that voters elect legislators whom they believe will represent their interests when making laws or setting policy, but judges must be accountable only to the law and the Constitution. If by regional "selection" the proposal means regional "election," there are even more problems, the principal one being compliance with the Voting Rights Act. Dividing the state into roughly equal geographical districts would almost certainly trigger a challenge based on the "one person, one vote" principle.

Finally, regional selection would address only the lack of geographic diversity on the supreme court. States that have instituted merit selection of judges report that, over time, the system has resulted in greater diversity on the bench and greater opportunity for women and minorities. And none of the states that have instituted merit selection of judges has returned to a partisan election system. Certainly, most of Pennsylvania's judges are well qualified, trustworthy, and committed to the law. But there have been exceptions - and the League believes that a good merit selection system would lessen even the possibility for wrongdoing or lack of impartiality by reducing the influence of politics and money on the process.

A copy of the League's position paper, Where We Stand on Judicial Selection, is included with this testimony.

WHERE WE STAND....

... ON JUDICIAL SELECTION

A Position Paper LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA

The League of Women Voters supports the unified court system and a responsible, ethical judiciary that is free from political influence. As a step toward reducing such influence, the League supports a change from partisan election to merit appointment of judges.

At present, all of Pennsylvania's judges campaign for office and win election as political party candidates. The League believes that justices and judges of the three appellate courts - Supreme Court, Superior Court and Commonwealth Court - should be appointed by the Governor from a list of qualified candidates submitted by a broad-based nominating committee, with appointees subject to confirmation by the state Senate.

This method for appointment of statewide judges, usually referred to as merit selection, has been repeatedly recommended for Pennsylvania, most recently by the Governor's Judicial Reform Commission (Beck Commission) of 1992. League support for an appointive system has been consistent throughout. Pennsylvania is one of only a few states that have partisan election of all judges, and no state that has adopted merit selection has chosen to return to a partisan election system.

HOW MERIT SELECTION WOULD WORK

Judicial selection bills supported by the League have included certain components recommended over the years by judicial reform groups:

- Establishment of a broad-based, representative nominating commission to seek out qualified applicants and recommend a list of prospective appointees to the Governor.
- Selection by the Governor of judicial appointees from the nominating panel's list, and submission of the selected names to the Senate.
- Confirmation of appointees by the Senate, preferably by a simple majority.
- A time schedule for judicial appointment to resolve an impasse or inaction by the Governor or the Senate.
- Nonpartisan retention election after an initial term, to allow voters to express approval or disapproval of a judge's performance in office.

Some proposals have also included local option for appointment of Common Pleas Court judges. This would permit voters in a judicial district to determine by ballot referendum the question of whether or not their Common Pleas judges should be appointed, rather than elected. The League believes that local option is appropriate, particularly in large districts where the list of judicial candidates is often long, for the same reasons listed in connection with the appellate courts.

WHY WE SHOULD CHANGE FROM PARTISAN ELECTION TO MERIT APPOINTMENT

• Under the present system, it is very difficult for citizens to cast an informed vote for appellate court judges. Whereas voters are able to choose legislators based on their positions on the issues, the Code of Judicial Conduct quite properly restricts judicial candidates from expressing opinions on matters which may come before them. And — especially in the case of the statewide courts — the general public has little access to relevant information about the candidates' qualifications for office.

• The necessity for partisan political activity and fundraising inevitably undermines the presumption of impartiality that is essential to public confidence in Pennsylvania's judiciary. Expensive statewide campaigns, conducted solely for maximum name exposure, are funded primarily by large law firms.

• Party affiliation and geography may have more to do with who is slated for a judgeship than how good a judge the candidate will be.

A judicial nominating commission would solicit information about the qualifications of potential appointees and make recommendations to the Governor based on such criteria as competence, integrity, experience and temperament. Citizens could submit names to the commission, and the required Senate confirmation would preserve the democratic system of checks and balances between branches of government.

Many well-qualified lawyers, unwilling to seek judicial office under the present system of political patronage, might wish to serve in a judiciary removed from party pressures and extensive fundraising. A judge's accountability for his or her decision-making must be to the Constitution and the law, and candidates for the courts should not have to depend on the support of political parties or special interest groups.

Under merit selection, the Governor could select potential judges and justices from a list of highly qualified candidates reflective of the geographic, ethnic and gender diversity of Pennsylvania's population.

HOW DO WE GET MERIT SELECTION?

To change the way judges are selected requires an amendment to Article V of the Pennsylvania Constitution. Legislation proposing such an amendment must be passed by two consecutive sessions of the General Assembly before being presented to the voters in a ballot referendum. Such legislation has been introduced regularly, but never approved by both houses in any two-year session.

It is time for the General Assembly to act on this important issue. Pennsylvania voters should be given the opportunity to decide how their judges are chosen.

The League of Women Voters encourages citizen participation in government through attendance at public meetings and individual and collective advocacy on public policy. Membership is open to men and women who support this goal. For membership information, call (717) 234-1576.



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