Phyllis Beck

TESTIMONY
BEFORE HOUSE JUDICIARY COMMITTEE'S
SUBCOMMITTEE ON COURTS
Philadelphia
October 6, 1994

I am an elected appellate court judge who serves on the Superior Court.

I chaired Governor Robert Casey's Judicial Reform Commission. Selection of judges was one of the four topics that the Commission addressed. The cornerstone of the report was the Commission's recommendation that Pennsylvania adopt merit selection for statewide appellate judges. The reason being that nothing mattered more to the system than the quality of the judiciary: judges who were learned, independent, conscientious and honest. The Commission reasoned that the likelihood of a quality bench would increase substantially through merit selection.

Although the Commission was unanimous in recognizing that Pennsylvania's judicial system was in trouble and needed to be reformed, a minority of the Commissioners thought the route was

to continue electing appellate judges and to adopt certain electoral reforms.

As you are aware, constitutional amendments enacting merit selection have been introduced into the General Assembly, but none has passed both houses.

Lately, legislation has been introduced that would skirt the merit selection issue altogether and engraft onto the elective system certain reforms.

I am against such proposals. Although labeled as reform, they provide marginal rather than meaningful change and, most importantly, sidetrack efforts to achieve merit selection

Among the citizens who favor electoral reform are people who sincerely think it is undemocratic to appoint judges because it means taking the vote away from the people. Far more numerous and powerful are supporters representing special interests who seem to believe that they can control the elective system more tightly than they could an appointive system.

Let me address some of the current proposals to improve the elective system and tell you why I think they would not improve the judicial system and indeed in some cases would even damage it.

First, there appears to be sentiment to junk the gag rule. Under Canon 7 of the Code of Judicial Conduct, a judicial candidate is prohibited from speaking out on legal or political issues that may come before the court. While lifting the gag rule might make the electorate marginally more familiar with the candidates, the opportunity for mischief is boundless. Let me give you an example of a judicial candidate who violated the gag rule. If the gag rule is lifted the following scenario will be replayed in many different forms.

In a Supreme Court race one candidate -- a Common Pleas Court judge -- was in a primary fight with a judge from the Superior Court. The Common Pleas Court judge researched her opponent's prior written decisions and found one in which he decided that a father was not obligated to support his child. The candidate then ran a series of TV ads citing the case and blasting my colleague

on the Superior Court because he did not believe in child support. What utter nonsense! I know my colleague well. He's as firm about child support as anyone I know. It may be that my colleague decided the case the way he did because the child had reached his majority, had become emancipated or any number of reasons. All the TV viewers learned was that a Superior Court judge who sought higher office didn't believe fathers should support their children. What a travesty!

Without the gag rule, candidates will fill the airwaves with inappropriate information about themselves and their positions on such hot button items as crime, abortion, and tort reform.

Knowing the candidates' views on these and other issues is really not important. What is important is that the individual seeking a judicial position have character and integrity, that she be learned in the law, impartial, independent and sensible.

Under merit selection, an applicant usually is required to complete a comprehensive questionnaire about her legal experience, legal competence, community participation and her physical and

mental health. Furthermore, the nominating commission usually thoroughly investigates each applicant. Qualities of character, reputation in the community, and competence are fair subject for the nominating commission's scrutiny. An elective system can not and will not reveal this kind of information.

Another reform is rotating the candidates' ballot position. As you know prior to the election, each candidate draws a ballot position and her name appears in the same position in the 67 counties. Research shows that being on top of the ballot is worth a substantial number of votes.

A current proposal is for rotation based on county; for example, Candidate Smith would be number one in let's say 10 counties and number five in 10 other counties. That doesn't make sense. To achieve equity, the number of counties is not significant, the number of electors is. So Candidate Smith has to be number one before as many electors as each of her opponents. Given the fact that the structure of our electoral system is based on the county, I am led to believe that there is no equitable way

to rotate ballot positions while maintaining the integrity of the county electoral system.

Under the proposed reform, if I were a candidate for judicial office, give me first position in Philadelphia and Allegheny counties and I don't care where I am on the ballot in the other 65 counties.

Another popular electoral reform is placing caps on the amount of money that a judicial candidate can raise and spend.

One bill authorizes caps only for lawyers and law firms. This proposal singling out lawyers is clearly unconstitutional and is not worthy of a lengthy discussion.

A variant of caps is public financing. This proposal supposedly responds to the true evil of the elective system, i.e., judicial candidates raising most of their money from lawyers who appear before them. A lot of money is being spent on judicial campaigns. Justice Ralph Cappy reports his winning a Supreme Court seat cost $1.4 million. Judge Russell Nigro reports his losing a Supreme Court seat cost $1.5 million.

The proposal for public financing would require each candidate to raise a threshhold amount. The state would then provide candidates public money for their campaigns. The state's money would come from taxpayers check-offs. The proposal contemplates caps on the total amount a candidate can spend and caps on individual and PAC contributions. A candidate, however, could opt out of public financing.

I must admit that the proposal for public financing has a facial appeal. However, I worry. Constitutionally, a candidate who spends her own money can spend as much as she likes and can't be subject to caps under state law. Such a candidate would opt out of public financing. Do we want candidates who are rich to sweep into office on the basis of personal fortunes?

On the other hand, a candidate who is supported by special interests may confine herself to the spending limits under public financing. However, she may have an indirect, independent campaign waged on her behalf by the special interest. There is nothing in public financing preventing a special interest group

from running TV ads with a message of direct or indirect support for the candidate. The laudable object of public finance will be defeated. And we may have appellate judges who are overly indebted to a special interest. What happens to the public perception of an independent and fair judiciary?

In closing let me say that last weekend I attended a meeting of the National Association of Women Judges in Arizona. One session was devoted to high profile sensitive cases in California: Rodney King, Reginald Denny, the Menendez Brothers, and now O.J. Simpson. I was reminded that if our judicial system - indeed our democracy - is to survive the perception of an independent judiciary is essential. I am a passionate advocate for a independent judiciary. None of these remedial measures proposed will produce the product. Let's get on with it - and enact merit selection.