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Good morning! My name is Paul Stevens, and I am the president of the 28,000 member Pennsylvania Bar Association. With me are Art Piccone, our president-elect, and our vice president, Jim Mundy. I am pleased and honored to provide testimony on behalf of the bar association to this distinguished committee of the House of Representatives.

My testimony this morning will focus on House Bills 10 and 838. Those bills, as you know, provide for a major restructuring of the judicial branch of our government. The bills jointly provide for four major provisions: the elimination of the Supreme Court's King's Bench power, the creation of a new Judicial Council, the selection of the chief justice by the governor and the requirement that the seat of the court be placed in Harrisburg. Additionally, there are other constitutional amendments regarding financial affairs and budgets contained in those proposals.

The Pennsylvania Bar Association has been at the forefront of establishing policies and positions which would provide the citizens of Pennsylvania with an efficient judiciary. For example, our 235-plus member House of Delegates has considered proposals to change the manner in which the chief justice is selected, to centralize court functions and to implement the Judicial Council's advisory role under the Constitution. Although we agree that these areas are worthy of review and consideration, we emphasize that they should be tackled only after careful and thoughtful study.

Before I discuss the specific proposals before us, I wish to reemphasize the consistent policy of the PBA since 1947 that the primary measure of court reform needed in Pennsylvania is to change the way we select our appellate judges. Our judges should not be selected by partisan elections.

I would next like to comment on each of the major issues provided for in this legislation and provide you with the position of the Pennsylvania Bar Association.

In addressing judicial reform, we believe that the Legislature should keep foremost in mind the traditional constitutional balance of power between the branches of government. As I stated to this committee's subcommittee on courts last fall, there is a fine line between "fixing" the perceived ills of the judiciary and usurping its constitutional role. I also stated then that quick fixes--developed to address the specifics surrounding a particular situation, are not recommended because of the unforeseen or unknown problems which they may create. Rather, the Pennsylvania Bar Association urges careful study of the recommendations of the Pomeroy and Beck reports, with which you are undoubtedly familiar. Those recommendations were objectively developed some years ago after careful, objective study by

knowledgeable panelists, without reference to a specific perception of need. Only with this type of understanding and after that type of consideration should the issue of judicial reform be addressed.

Now I would like to turn to the specific provisions contained within the legislation at hand, House Bills 10 and 838. The Pennsylvania Bar Association has no official position regarding the elimination of King's Bench power, because, to the best of our knowledge, this has never been proposed before. We therefore caution this committee to consider if this may be an example of "throwing the baby out with the bath water."

We assume that this provision is a reaction to a specific recent utilization of the King's Bench power by the Supreme Court in a manner that some legislators felt was inappropriate. While we could take issue with that perception, it will be more productive to cite recent instances in which we believe legislators would agree that utilization of the King's Bench power was both necessary and very appropriate. For example, the Supreme Court recently took the unusual step of exercising its King's Bench power in ordering a Butler County Common Pleas Court to open its proceedings to the public and news media. In that particular case, a Butler County judge had closed a pre-trial suppression hearing in an attempted murder case. The judge had conducted no hearing and made no factual findings regarding the need for closure. The media sought relief, but was denied any sort of relief until the Supreme Court properly granted a request for emergency extraordinary relief and directed the Butler County court to open its proceedings to the public.

Had there been no bench power, this situation would have had no remedy. You can see by this example that you cannot view the King's Bench power only in the context of one instance of its use. We can provide statistics which will demonstrate to you how infrequently this power has been used.

Indeed, every power that is granted to courts under the doctrine of separation of powers will always be subject to criticism, indeed, anger, by the legislative or executive branches of government when the use of that power conflicts with the other branch's goals. However, that is the essence of checks and balances, not a valid reason for the elimination of the power.

To strip the court system of its ability to grant extraordinary remedies when needed is to expose citizens to irreparable harm. There are situations where justice delayed is truly justice denied. Allow me to cite a few examples:

a) a challenge to a newly enacted taxation statute which would force a taxpayer to pay what may prove to be an unlawful tax for three or four years before a final determination is made;

b) newly discovered evidence which tends to show an individual scheduled to be executed is innocent; and

c) what could happen to the constitutionally mandated reapportionment if the Legislature can't agree and an election deadline must be met.

It is not unusual for the other branches of government to attempt to limit the equitable power of the courts. Historically, as long ago as 1258, the lords in England, in the province of Oxford, sought to forbid the chancellor from framing new writs without the consent of the king and council -- yet the power of equity has survived to this day.

The history of the King's Bench power dates back to the English Common Law tradition in equity of the 1300's. It provided that the second highest court in all of England was vested with the authority to summon before it any proceedings stemming from any lower court.

For years and years, Pennsylvania has seen fit to preserve this historical King's Bench jurisdiction in our highest court.

King's bench and plenary jurisdiction in Pennsylvania are preserved and codified in 42 Pa.C.S.A. Sections 510 and 726. These were codified as early as 1936; they were retained in the Constitutional Convention of 1968.

We urge that, before reversing three or four hundred years of history, you undertake a very careful examination of that history and the dangerous impact of its elimination.

The second issue that I would like to address is the creation of a new Judicial Council. Both the Pomeroy and Beck reports recommend proposals for reform that provide for the delegation of responsibility for handling routine management of the unified judicial system to the chief justice. This was to be accomplished with the aid of a state court administrator. The chief justice, and not the entire Supreme Court, was to be recognized as the administrative head of the court system. The chief justice was to have responsibility and authority for management of the court system in accordance with the policies and decisions of the court. The Pennsylvania Bar Association has supported policies and positions consistent with those proposals of both the Pomeroy and Beck reports.

We favor a centralized administrative office for our courts. We favor the creation of a Judicial Council as an advisor to the courts. I stress the word "advisor" as envisioned by the 1982 report of the Pomeroy Commission. We believe that the administration of the court should be in the hands of professional administrators, and that they should have the advice of a Judicial Council comprised of jurists, legislators, lawyers and laypersons. We strongly believe that the Supreme Court should make the rules for the administration of justice and oversee the administrators within this scope, not some outside body. The very make-up of the Council as proposed provides for a body which may in itself be politically motivated in an environment where politics should have no place.

In summary, the Pomeroy Commission recommended that there should be a stronger, more independent Judicial Council. The Pennsylvania Bar Association policy strongly supports that aspect of the Pomeroy Commission's report. Neither the Pomeroy nor the Beck reports recommended usurping the constitutional power of the judicial branch of government. We cannot favor a proposal that would do so. Clearly there must be a balance between judicial and legislative rule-making power, which is now assured by the Constitution and a plethora of statutory provisions.

Third, I wish to address the issue of the selection of the chief justice. This concept, as drafted, could lead to an infringement upon the separation of powers and could clearly politicize the judicial branch of government. We do favor changing the method of selecting the chief justice. The Beck Commission recommended that the chief justice should be selected by the court from their number and should serve for renewable terms of five years, a concept that we have endorsed.

The fourth issue which I would like to address is the creation of a central location for the seat of the Supreme Court. The Pennsylvania Bar Association has consistently endorsed the concept of an Appellate Court Center, which would contain the court's business offices, its committees and boards and the administrative office of Pennsylvania courts. The court center should also serve as the headquarters of the Superior and Commonwealth Courts. We support the concept that the Supreme Court should generally sit at the Appellate Court Center, but that the Superior Court should sit in panels and continue to divide its session among the three main areas of the Commonwealth. To provide otherwise, would create unnecessary hardships for litigants.

Please understand that this subject is not without serious financial ramifications. We caution that the development of an Appellate Court Center, while a good idea, could be extremely expensive. It might well need to be the subject of a financial impact study and we suggest that you seek estimates of the costs of this from the office of the court administrator. We suggest that priority of resources should be first directed to funding computerization of the courts, and then to funding the unified system that was constitutionally mandated many years ago.

We, therefore, believe that the subject of these bills is worthy of careful deliberation and development of thoughtful proposals. We favor centralizing the administration of the court system, new means of selecting the chief justice and the concept of an advisory Judicial Council. We are opposed to measures that might upset balance of power between branches, and we would not favor elimination of the court's King's Bench and plenary powers. We therefore urge that the Legislature, in looking at issues relating to improvement of the efficiency of the judicial system, look carefully at both history and the well-reasoned Pomeroy and Beck reports.