Common Cause *Pennsylvania*

Working for Open, Accountable and Responsive Government

**TESTIMONY BY COMMON CAUSE/PENNSYLVANIA
ON THE NEED FOR REFORMING
THE LEVELS OF AUTHORITY AND STRUCTURE
OF THE PENNSYLVANIA JUDICIARY**

**Presented to the House Judiciary Committee
March 2, 1995
Harrisburg, PA**

Chairman Piccola and distinguished members of the House Judiciary Committee, I thank you for this opportunity to share some of the views of Common Cause/PA on the need to reform this state's judicial system. My name is Barry Kauffman. I serve as the Executive Director of Common Cause/PA, a public interest advocacy organization representing 12,000 Pennsylvanians who are committed to promoting open, accountable, and responsive government.

For over 15 years Common Cause has been actively pursuing major reforms in Pennsylvania's judicial system. For the most part, our efforts have focused on improving the way we select and discipline judges. Only recently has Common Cause turned its attention to some of the other critical elements of judicial reform, such as those before us today (~~and therefore we may wish to supplement our comments at a later~~ date).

During the last session of the General Assembly our constitution was amended to provide some extremely modest changes in the state's judicial discipline system. Perhaps we got the cart before the horse in this case. If we make major improvements in the way we select our judges, the need for other reforms probably diminishes. For that

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reason Common Cause urges you to make merit selection of judges a priority issue, and move with determination to achieve its passage.

Nevertheless, the reforms proposed in HB-10 and HB-838 are important on their own terms. Some of the components of these measures address concerns and recommendations which have surfaced in similar forms over the past 20 years, including those by the Committee of 70, the Pomeroy Commission, the Special Senate Committee on Judicial Conduct and Administration, the Beck Commission, and recently the Grand Jury in the Larsen affair. Since the proposals in HB-838 appear to be dependent on the passage of a constitutional amendment, such as HB-10, I will first address those constitutional changes.

Common Cause strongly supports three of the major components of HB-10, and hopes the citizens will have the opportunity vote on them at the earliest possible date. These reforms are the elimination of the Supreme Court's King's Bench powers, elimination of the Court's power to suspend laws which conflict with its own rules, and changes in the methodology for selecting the Chief Justice of the Supreme Court of Pennsylvania.

There has been a trail of abuses of the Kings Bench powers by the PA Supreme Court over the years. One certainly needs to look no further than the records of the Larsen impeachment matters to find ample reason to support the immediate termination of King's Bench authority. We encourage you to proceed aggressively with this amendment.

Rarely has there been a more ill-conceived constitutional provision than the one which gives the state Supreme Court the power to suspend laws it perceives to be in conflict with its own rules. If the court determines a law to be unconstitutional and permanently strikes down its application for all, so be it. But to have the authority to suspend a law, duly passed by the General Assembly and signed by the Governor, merely for the convenience of pursuing rules which this tiny body agreed upon for itself is nothing less than an abomination. The sooner this sordid practice is terminated the better.

Thirdly, a change in the methodology for selecting the Chief Justice must be enacted as well. The ability to simply hang around the longest certainly should not be the determining qualification for selecting a Chief Justice. The individual who ascends to this important position must be a person characterized by vision, energy, intellectual prowess, and unquestioned integrity. The current seniority system fails to meet any of these tests.

In the past Common Cause has supported the Beck Commission proposal to have the Chief Justice elected by his or her peers on the Supreme Court. However, we are revisiting this matter, and certainly find the alternative of having the Chief Justice selected by the Governor superior to the current system. Both options have strong and weak points. While campaigning among one's peers could cause dissension and serious problems in court morale, purely political selection by the Governor could lead to accusations of cronyism. Under an appointment system which requires a Chief Justice to be selected from the minuscule group of sitting elected judges, a governor may find it

difficult to find a truly qualified candidate. This lends additional support to the need for merit selection of all judges. Therefore, if the Commonwealth is to move to a system in which the Governor appoints the Chief Justice, we strongly recommend permitting the Governor, with the aid of a merit selection commission, to search a talent pool much broader and richer than one restricted to the incumbent members of the Court.

The General Assembly should consider applying a uniform selection process for the president judges of all other courts as well. You also should strongly consider changing the confirmation requirement in the Senate from a two-thirds majority to simple majority.

In Section 10 (d) (Page 4 line 7) it appears that if the person serving as Chief Justice resigns from that post, he or she would then also be removed from the Court. Perhaps that specific intent should be clarified.

I now would like to present some comments about the key element of HB-10 and HB-838, the creation of a Judicial Council. While this concept is not new, in-fact it was employed to some degree in the 1970s, it is one on which Common Cause has just recently begun to focus.

Broadening input and responsibility for the rule-making and administrative authority of Pennsylvania's judiciary beyond the Supreme Court appears to make a lot of sense, and should improve the quality of both functions. As for the Judicial Council components of HB-10 we do have some suggestions.

We are troubled that the composition of the Judicial Council is not contained in the constitutional amendment, but instead is left to statutory authority such as proposed

in HB-838. We believe the composition of the Judicial Council must be included in the constitution.

The requirement of constitutionally mandated audits of a unified judicial system by the Auditor General also is an important step forward. We applaud this provision.

If the constitutional amendment proposed by HB-10 is implemented then provisions such as those proposed in HB-838 become essential. The comments which we made pertaining to HB-10 obviously carry over to their companion components in this bill. We have some additional suggestions for your consideration on this measure.

With regard to the composition of the Judicial Council [Section 343 (a)], nine of the thirteen members sit on the benches of various state courts. Three of the remaining four are attorneys, and the fourth is the Court Administrator. We would suggest that at least one member of the Judicial Council be an individual which is in no way under the professional jurisdiction of the judiciary. It could be an important safety valve to have at least Council member who is not in a position to be professionally intimidated. Perhaps this could be a gubernatorially appointed lay person, or gubernatorially appointed dean of a law school. If such a person is added or substituted, that person should have a restricted number of terms to help guarantee his or her independence [Section 343 (b)].

In Section 343 (c) on "Compensation" we see a train wreck waiting to happen. Subsection (a)(9) gives the Chief Justice authority to appoint the non-judge members of the bar, and then subsection (c) permits the Chief Justice to prescribe their compensation. Lets head off a scandal before it happens by establishing limits on the compensation in this section, perhaps at a level not exceeding a rate equivalent to the

daily compensation for a member of the General Assembly. Furthermore, this subsection should limit expense reimbursements (again perhaps at a rate not to exceed that permitted for members of the General Assembly) and require all reimbursements to be paid only after the submission of receipts.

Under Section 344 (d), which addresses "Proceedings" of Judicial Council meetings, we request inclusion of a specification requiring all minutes of meetings be made available for public inspection and copying, and that all meetings be subject to the provisions of the state Sunshine law (as is later stated in Section 1703).

In Section 345 (a) we are concerned about the purpose and propriety of language which states in part "Either house of the General Assembly may, by resolution, enter any question or matter which could be regulated by statute.... upon the agenda of the Judicial Council..." We have difficulty understanding the purpose of this provision, because it seems to be wholly inconsistent with the role of the Judicial Council.

Under Section 346 we believe it may be prudent to require the Judicial Council to have a public comment period when proposing or revising rules, similar to that required for executive branch agencies. In certain circumstances public hearings also may be beneficial.

We concur with the bill's proposals in Sections 504 and 543 which centralize the Court's operations in Harrisburg. This make sense from operational, administrative and economic standpoints.

We believe there may have been a drafting oversight in Section 1722, subsections (a)(3) and (a)(4). Our understanding is that these provisions would give the Judicial

Council authority to modify or prescribe rules for the recently created Judicial Conduct Board and Court of Judicial Discipline. These new bodies were supposedly developed in an effort to provide a more independent judicial discipline system. Since the Judicial Council is heavily dominated by members of the bench, such provisions could have the dangerous impact of diminishing the independence of these disciplinary bodies, and potentially reverse any modest gains the public achieved in passing the 1993 amendments. Providing such authority to the Council should be reconsidered.

Other parts of this bill, and HB-10, rescind law permitting the courts to suspend statutes which conflict with Court rules. To solidify this effort, you may want to correct what appears to be a drafting oversight by placing a period after the word "absolutely" on page 17, line 30, and delete the remaining language in subsection (b).

Finally, you should strongly consider requiring financial disclosure for members of the judicial branch equal to that in place for the legislative and executive branches. Such a requirement can only enhance the courts' integrity.

In closing, Common Cause wants to commend the sponsors of HB-10 and HB-838 for their efforts to improve the unified judicial system, and urges this panel to move forward as aggressively as possible on the issues of Judicial Reform. The general goals of this legislation are extremely laudable. However, we must reiterate our strong recommendation that the General Assembly act decisively on Merit Selection as well, so the voters can have the opportunity to approve this important reform in 1997. The legislature also must take decisive action on campaign finance reforms which will

improve the integrity of judicial elections until we achieve a responsible merit selection system.

The quality of justice is unavoidably influenced by the quality of Justices. We have recently witnessed some painful, faith-destroying disclosures about our courts. We have absolute and irrefutable proof that our current judicial system does not inspire public confidence. We have evidence beyond a reasonable doubt that major reforms such as those before us today are long overdue. This is a time for legislative courage, for legislative responsibility, and for taking a stand in support of the best interests of the public. We hope the efforts for real judicial reform will move ahead swiftly and with sincerity.

Thank you.