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TESTIMONY: Concerning Pennsylvania Supreme Court's plenary jurisdiction over cases "of immediate public importance" under the Constitution and laws of the Commonwealth of Pennsylvania

TO: The Judiciary Committee of the House of Representatives of the Commonwealth of Pennsylvania

BY: David W. Craig
Former President Judge of the Commonwealth Court of Pa.

QUALIFICATION OF WITNESS

Experience Relevant to the Committee's Issue

Chairman Piccola and members of the Committee, I am David W. Craig. Until August 1994, I was President Judge of the Commonwealth Court, and, before then, a judge of that court by appointment in 1978 and election in 1979, pursuant to nomination by both major political parties.

My long-term close involvement with the issue before you today includes experience as:

1. Party litigant in two cases taken directly by the Supreme Court because of (a) public importance to the state's voters in one case, and (b) in the other case, a key question involving the seniority status of judges;
2. Lawyer for a public agency in an issue involving an important public project;
3. Commonwealth Court judge designated as factfinder in two cases taken directly by the Supreme Court, involving (a) reapportionment of Congressional election districts, and (b) trial courts suing for additional county funds for court operation; and
4. Chair of nationwide Seminars for Intermediate Appellate Judges, under the Institute for Judicial Administration.

Objectivity of Position

My sole concern with this issue is the public interest involved. I am retired from judicial service. I am not seeking to be designated for senior judge service by any court. I have no present plans to resume the practice of law, being currently involved in work as a writer.

SUMMARY OF CONCLUSIONS

If the Supreme Court did not have its constitutional plenary jurisdiction power, the public interest would suffer. For example:

1. The voting rights of Pennsylvania citizens would be frustrated in election matters where a time squeeze is faced; and
2. Public projects could be killed by litigation times, or costs greatly increased, or federal subsidies lost.

Your Judicial Code well reflects our constitution by acknowledging the Supreme Court's power to take "plenary jurisdiction" of cases in the judicial system "involving an issue of immediate public importance" in order to "cause right and justice to be done."¹

ACTUAL CASE EXAMPLES

Within my personal experience as judge and lawyer, two cases illustrate how the Supreme Court's plenary power has benefited the public.

Timely Congressional Elections After Reapportionment

The 1990 U.S. Census reduced Pennsylvania's congressional seats from 23 to 21, requiring statewide reshaping of all congressional districts. In February of 1992, with the period for circulating nominating petitions already begun, the Commonwealth Court received the reapportionment suit.

In the usual course, there would have been a trial in the Commonwealth Court, post-trial motions, briefing, argument and decision in that court, and then an appeal to the Supreme Court, with a new briefing period and argument, making a timely congressional primary impossible.

The Supreme Court saved the day for Pennsylvania voters by taking immediate jurisdiction on February 13 and designating me to act as their hearing master, to receive evidence and recommend the 21 new districts. After I filed a redistricting plan on February 24, the Supreme Court received briefs and argument directly and adopted my decision by March 20, in time to let the primary election proceed in almost normal fashion.²

¹Judicial Code, 42 Pa.C.S. § 726

² Mellow v. Mitchell, 530 Pa. 44, 607 A2d 204 (1992), cert. denied by U. S. Supreme Court, 113 S. Ct 88 (1992)

Federal Subsidy in Transit Project

In the early 1970's, a dissident group sued to enjoin the Early Action Program of the Allegheny County Port Authority, involving proposed express busways and a rapid transit system called "Skybus." After the longest preliminary injunction hearing in our state's history, in which I represented the Authority, a trial judge negatived the entire Early Action Program.

Faced with the prospect of losing the proffered federal subsidy to other states, we requested Supreme Court jurisdiction, which was granted, thus omitting the Commonwealth Court step, and the Supreme Court vacated the injunction within a few months.³ Although the "Skybus" lost its state subsidy, the express busways in the Early Action Program were ultimately built.

SOUND CRITERIA FOR USING PLENARY JURISDICTION

The Supreme Court has expressed a conservative and careful approach to using its plenary jurisdiction, by stating:

"The presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief."⁴

The definitive treatise, Pennsylvania Appellate Practice 2d, has identified, from the Supreme Court's decisions, these criteria:⁵

1. Need for a prompt final decision, or
2. Impact on the unified judicial system, or
3. Presence of an important constitutional question, or
4. Significant criminal law issue, often constitutional.

1. Expedited Final Decision Required

Election cases have most often presented the need for emergency speed, to prevent the electorate's franchise from being lost or delayed.

During my 1979 election process, I was one of the parties in a case involving the previous method of electing Commonwealth Court judges when there were three vacancies. Because of the need for speed, and to avoid putting the case before the court directly

³ Flaherty v. Allegheny County Port Authority, 450 Pa 509, 299 A2d 613 (1973)

⁴ Phila. Newspapers v. Jerome, 478 Pa. 484, 387 A2d 425, 430 n. 11, appeal dismissed by U.S. Supreme Court, 443 US 913 (1979)

⁵ Darlington, McKeon, Schuckers & Brown, PENNSYLVANIA APPELLATE PRACTICE 2d, § 10:22

affected, the Supreme Court granted plenary jurisdiction.⁶ Four years later, the Supreme Court again took direct jurisdiction of the same issue, overruling the previous case.⁷ In both cases, the Court's actions eliminated election-day delay and confusion.

2. Impact on the Judicial System

Pennsylvania's Constitution, Art. V, §1, vests "the judicial power of the Commonwealth in a unified judicial system" And it reposes "the supreme judicial power" in the Supreme Court. Art. V, § 2.

Each branch of government must have a responsible head. Therefore, the Supreme Court has rightly taken direct jurisdiction of questions impacting the court system, questions which could not be left to the lower courts. I found myself, along with other judges of the Superior and Commonwealth Courts, in the case where the Supreme Court had to decide whether appointive service should be counted in determining seniority among elected judges.⁸

When trial courts have had funding disputes with county governments, the litigation cannot be left to the trial courts themselves, or to the intermediate courts. In a case taken directly by the Supreme Court from Bucks County, I was designated to conduct the trial for the Supreme Court, but that court made the final decision.⁹ Several similar cases also have been taken by the Supreme Court directly and soundly resolved.¹⁰

3.4. Constitutional and Criminal Issues

Cases involving conflict between freedom of the press and an accused's trial rights,¹¹ multiple litigation on the Sunset Act,¹²

⁶ Thiemann v Allen, 485 Pa 431, 402 A2d 1348 (1979)

⁷ Mezvinsky v Davis, 500 Pa 564, 459 A2d 307(1983)

⁸ Determination of Priority of Commission Among Judges, 493 Pa 555, 427 A2d 153 (1981)

⁹ Beckert v Warren, 497 Pa 137, 439 A2d 638 (1981)

¹⁰ Snyder v Snyder, 533 Pa 203, 620 A2d 1133 (1993); Lavelle v Koch, 532 Pa 631, 617 A2d 319 (1992); Carroll v Tate, 442 Pa 45, 274 A2d 193 (1971)

¹¹ Commonwealth v Hayes, 489 Pa 419, 414 A2d 318 (1980), cert. denied by U.S. Supreme Court, 449 US 992 (1980)

¹² Blackwell v State Ethics Comm., 524 Pa 403, 573 A2d 536 (1990)

and cruel and unusual punishment¹³ have gone directly to the Supreme Court for prompt and final resolutions. Simply stated, where the constitutional question is so momentous that it is bound to go all the way to the Supreme Court, there is no point in going through intermediate reviews. Indeed, in those American states which do not have any intermediate appellate court, all cases are reviewed directly and solely by the highest court.

PENNSYLVANIA'S SYSTEM PREFERABLE TO OTHER STATES

From the nationwide view, which I have acquired in my teaching of appellate judges from all the states, Pennsylvania makes the best use of Supreme Court discretion in routing appeals.

In contrast to Pennsylvania, in ten of the other states which have intermediate appeal courts, the highest state court exercises unconstrained control over every appeal taken from a trial court or agency. In six of those states, all appeals must be filed in the supreme court,¹⁴ which may keep whichever cases it chooses, and then "trickle down" the remainder of the cases to the intermediate court. In the remaining four states,¹⁵ cases are filed in the middle court as a matter of form, but the result is the same; the high court may pick and choose among all the cases.¹⁶

Our Pennsylvania system and our Supreme Court's criteria thus provide greater clarity and consistency in treating extraordinary cases than any of the other states that either have no intermediate court at all, or give the high court untrammelled discretion to trickle down whichever cases it chooses to hand off.

BOTTOMLINE RECOMMENDATION

The wisdom, fairness and usefulness of our Pennsylvania Supreme Court's plenary jurisdiction power, to take an appeal directly when the public interest is at stake, have been so apparent that requests for direct appeals have seldom been opposed by either party. In my experience, both sides often tended to welcome the opportunity to get a final decision promptly by the highest court, which would have the final word in the case anyway, if it went the full route.

Earnestly and respectfully, I urge you not to impair a 200-year-old system by "fixing" it when it is not broken at all.

¹³ Jackson v Hendrick, 509 Pa 456, 503 A2d 400 (1986)

¹⁴ Hawaii, Idaho, Iowa, Mississippi, S. Carolina, Utah

¹⁵ Connecticut, Kansas, Mass., Nebraska

¹⁶ 78 JOUR. AMER. JUD. SOC. 292 (1995)