



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

**TESTIMONY FOR HOUSE JUDICIARY COMMITTEE HEARING
AUGUST 30, 1995**

Good morning. My name is Winifred Peirce and I'm here on behalf of the League of Women Voters of Pennsylvania and its members in fifty-one chapters throughout the state. We appreciate the opportunity to present — once again — the League's position on how best to select justices and judges for our appellate courts.

The League of Women Voters is 75 years old this year. In fact, it came into being in August of 1920, when the 19th Amendment became law and the Suffragist League changed its name to reflect its new mission. One of the first items on the agenda of the *Pennsylvania* League was to call for a constitutional convention. It was a long time coming (48 years), but when it was finally held — and when it resulted in an amendment calling for merit selection of judges being placed on the ballot — League members were out in force around the state urging a YES vote. As you know, the amendment failed by a narrow margin. . . but the League is *very* persistent. It is our hope that a merit selection amendment will be on the ballot again in 1997 — almost thirty years after that first time.

Since those early days, we have presented testimony many, many times, and our message has not varied much. We endorsed the findings of the Beck Commission, and the Pomeroy Commission before it, and we continue to believe that gubernatorial appointment from a list of nominees submitted by a representative commission, followed by Senate confirmation, is the best way to select appellate court justices and judges.

Rather than repeat our earlier statements, I have enclosed with this testimony a League position paper entitled *Where We Stand on Judicial Selection* that summarizes our reasons for believing that merit appointment would be much better for Pennsylvania than the present system of partisan election, with all its inherent problems. Recent examples of the corrupting effects of massive fundraising for state and national election campaigns only serve to highlight the need for judges — whose only obligation must be to the law and the Constitution — to be freed from the necessity of raising large amounts of money, often from parties who may have a stake in the outcome of court decisions.

It is very encouraging to know that merit selection is under serious consideration, and we are happy to contribute our comments on House Bill 1320, which seeks to ensure diversity on the appellate courts by dividing the state into three regions, with a Judicial Nominating Commission for each region.

Certainly, diversity is desirable and important in the makeup of our statewide courts, and *geographical* diversity — or the lack of it — is one aspect that is most recognizable to voters. Judicial candidates are the only statewide candidates whose county of origin is listed on the ballot, and almost everyone knows that all the sitting Supreme Court justices come from either Philadelphia or Allegheny County.

They are all men, also, and only one is African American. Obviously, diversity means much more than what part of the state a justice or judge comes from. House Bill 1320 addresses diversity in all its particulars, both in the makeup of the nominating commissions and in the standards for judicial selection. But in calling for three districts and three commissions, it seems to stress geographical diversity ~~over all the rest.~~

above all else.

Evidently, the lines have been drawn so that all three districts are approximately equal in population — but what about the distribution of the *lawyer* population? Surely there are highly qualified people all over the state that a diligent nominating commission would seek out, but it may be that stressing geographical diversity could make it more difficult, at the time a vacancy occurs, to ensure that nominees are the best available among both men and women and those who come from racially and ethnically diverse backgrounds.

A hypothetical case might be that of a lawyer with outstanding credentials, experience and reputation who comes from a rural county and could bring a new perspective to the court, but whose name cannot even come up at the time of the vacancy because she or he lives just outside the district line. Trying to match exactly the racial and gender makeup of the courts to that of the general population would be described — and decried — as a quota system. Are geographical quotas ~~any~~ different?
that

The League also questions the need for separate commissions, as called for in the bill. It takes time for any commission or board to meld into an effective working group, and we would suggest that setting up three — and having one or more remain idle for long periods — is somewhat inefficient. It seems possible that staggered terms ~~for initially appointed members~~ might result in having someone go off a commission before ever participating in a search for proposed nominees. A single commission, meeting periodically, could be aware of upcoming vacancies on the courts and cover the whole state in its search for the best candidates. The bill's requirements for diversity of the members could apply to one commission as well as to three.

The details of merit appointment systems vary ~~somewhat~~ among the many states that choose their judges by this method, and a few of them select ~~appellate court judges~~ by districts.

It's our understanding that the American Judicature Society has been invited to provide testimony on these other state systems.

The League is very encouraged by the House's interest in improving the way judges are chosen. We congratulate this committee for seeking input from so many sources, and it is our hope that all of our comments and suggestions will aid you in your search for a judicial selection system that will make Pennsylvania's appellate courts the best in the country.

I would like to add just a few words about the fall elections. Because Pennsylvania still has partisan election for all its judges, because one of the principal flaws in that system is that it is extremely difficult for voters to learn anything about the candidates, and because the League's mission is to promote "the *informed* participation of citizens in government, " we are pleased to announce that the League is sponsoring three forums for Supreme Court candidates, to be held on October 8 in Philadelphia, October 21 in Pittsburgh, and October 27 in the Lancaster/Harrisburg area. All three will be televised statewide.

Thank you.

Attachment: *Where We Stand on Judicial Selection*, League of Women Voters of Pennsylvania

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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