

**TESTIMONY
OF
SENATOR JEFFREY E. PICCOLA
BEFORE
HOUSE JUDICIARY COMMITTEE
OCTOBER 30, 1997**

Mr. Chairman and members of the Committee. It is indeed a personal pleasure and privilege to appear before this committee. I know first hand of the good work that you have done on so many issues, and I am particularly pleased that the Chairman has seen fit to schedule this series of hearings on the Pennsylvania Supreme Court's rule-making authority.

This can be a somewhat dry and scholarly subject. If it is not addressed, however, we may as well hand the keys of the Capitol over to the Judiciary, because in this regard, as in some other areas, the Pennsylvania Supreme Court is out of control.

The Court's legitimate power in rule-making is found embedded in our state constitution, specifically Article V, Section 1, where it says that, "The judicial power of the Commonwealth shall be vested in a unified judicial system..." , Section 2 which states that, "The Supreme shall be the highest court of the Commonwealth and in this court shall repose the

supreme judicial power of the Commonwealth.” and Section 10 (c) which states that, “The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees...All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.”

There are at least four recent examples of the Court using the cover of this authority to nullify or threaten to nullify Acts of the General Assembly. The first took place near the end of the 1993-94 session when we were working on a Code of Evidence. I am sure that many of you on this committee will remember the hard work of former Chairman Caltigirone, his staff, my staff at the time and many interested members of the committee as well as Senator Craig Lewis and the Senate Judiciary Committee. After working almost two years during an entire session to compile a bill that trial judges and litigants, both criminal and civil, and both plaintiff bar and defense bar were anxious to have enacted, the Pennsylvania Supreme Court near the very end of the session notified us that if we enacted it they would suspend it since it was in their view procedural. They appointed a committee to study the issue and report back to us. It is now 1997 and we still do not have a complete Code of Evidence.

The second occurred last session when we enacted a bill to allow for wages to be garnished by landlords who suffer damage to rental property at the hands of tenants. Again, the Court suspended the statute without a case or controversy claiming that garnishment is procedural.

At the end of last session, we passed a bill on medical malpractice reform. Large portions of that bill were suspended for the very same reason.

Finally, and most outrageously, the Court recently suspended a statute passed during the Special Session on Crime requiring certain appeals in death penalty cases to be consolidated. One of the biggest frustrations in the criminal justice system is the fact that in first degree murder cases where the death penalty is imposed the appeals process takes such a long period of time. One of the reasons is that at the state level the convicted individual takes different issues up on appeal separately, thereby significantly lengthening the process. The legislation in question simply said that these state appeals would be consolidated in one appeal. Again, our Supreme Court said that this is procedural and suspended the statute.

The Pennsylvania appellate courts, and particularly the Pennsylvania Supreme Court, are out of control. Simply by declaring something procedural in whole or in part, they have, and apparently will continue to, nullify even without litigation before them, Acts of the General Assembly. These are men and women elected

for ten year terms in elections where they are forbidden to speak about their views on the important issues they might face. These are men and women who stand only for retention after ten years in office nullifying acts of the General Assembly whose members are elected every two and four years in which the issues are hotly and closely debated. These are men and women who deliberate behind closed doors and who are virtually unaccountable to anyone while they make or nullify the public policy of this State.

What should we do about this? When a child is out of control you discipline it. The Court needs to be disciplined. There are two ways to do that in our constitutional scheme. The first is through the appropriations process. We need to look very carefully at the appropriations of the Courts during the next budget cycle. The second is the impeachment process. I must speak carefully on this subject since, as a member of the Senate, I would have to sit in judgment on any Article of Impeachment the House of Representatives might send over. However, as a former member of the House intimately familiar with the impeachment process, I would suggest that you look very carefully at whether a Judge or a Justice of the Court in his or her Court ruling violated the Constitution by suspending any or all of these statutes. At the very least, the debate should take place in the House or in this committee on that subject, and for that reason I am so glad that these hearings are being held. An impeachable offense is not necessarily a criminal offense. It can be a political

offense such as severely and intentionally violating the Constitution of Pennsylvania by depriving a sister branch of government of its constitutional prerogative to enact public policy. The Judiciary is supposed to interpret and apply the law, not write new law, and impeachment is a legitimate tool of the Legislative branch to ensure the Court adheres to its rightful function.

Finally, I would recommend to you a Constitutional amendment as embodied in S.B. 1045. This would delete that section giving the Court the power to suspend statutes and explicitly forbid them from doing so. You must remember that we are not suggesting infringing on the Court's power to declare a statute unconstitutional. That must remain part of our constitutional framework.

Our appellate Courts are out of control and it is our duty under the Constitution to rein them in.

Thank you for allowing me to testify. I would be happy to answer any questions you may have.