

Mundy

## RECOMMENDATIONS TO THE GENERAL ASSEMBLY OF PENNSYLVANIA

During testimony before the Commission in Wilkes-Barre, Senator Charles Lemmond, the Chairman of the Senate State Government Committee and Vice-Chairman of the Judiciary Committee, stated that he and others in the General Assembly would welcome the opportunity to work cooperatively with the Court in improving the process of judicial selection. The Commission has heard suggestions for reform that can only be addressed by the Pennsylvania legislature, including public financing, appointive selection, ballot rotation, removal of geographical designation and cross filing. We would like to take this opportunity to suggest that the General Assembly be approached on these issues and to encourage an open dialogue between all branches of government on proposals to strengthen the foundations of our democracy.

### **A. PUBLIC FINANCING**

**The Commission recommends that the Pennsylvania General Assembly enact a plan which would provide public funding for candidates seeking judicial office.**

Many of the witnesses who came forward favored the enactment of public financing directed solely toward judicial elections. This reform also has substantial popular support, a finding that came as a complete surprise to the pollsters. This was unexpected because similar polls taken by the same pollsters reflect much less support for the concept, as applied to elections in general. Equally impressive to the pollsters was that this strong support for public financing seemed to cross all demographic, geographic and partisan lines, with support being equally

distributed amongst all groups.

To quote Senator Vincent Fumo, the Minority Chairman of the Senate Appropriations and Judiciary Committees, it seems that public financing of campaigns “is an idea whose time has come. It is taxpayer money that is well spent because of the fact that you do in the end level the playing field and take these offices . . . off the auction block.” Appendix F, 127. In his testimony, Senator Vincent Hughes, a member of the Senate State Government Committee, concurred with the perspective offered by Senator Fumo, namely that running for a judgeship takes a lot of dollars. Id. at 212-5. Senator Hughes remarked that the current state budget surplus would lend itself to creating a fund to put public financing of campaigns into effect. Id. at 217.

The taxpayers appear to agree with both Senators on providing public financing for judicial elections. In fact, Pennsylvanians’ support of public financing is surprisingly high when compared to figures in other states; in our Commonwealth, seventy-seven percent of those polled support (and 46% of that 77% strongly support) providing a limited amount of public financing to those judicial candidates who agree not to accept private campaign contributions.<sup>1</sup> Even more remarkable is the fact that the support for a public financing scheme remains solid across party lines, especially with the Republican voters who are eighty percent in favor of this reform.

According to the public, the consequences of this type of reform, along with the others that the Commission has recommended, are both plausible and positive. The most beneficial results for voters focus on leveling the political playing field and making it more accessible to everyone. The Commission, therefore, unanimously recommends that the General Assembly take the steps necessary to adopt a public financing scheme for judicial elections.

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<sup>1</sup> LSSP/Deardourff Exec. Summ., Appendix A, 18.

## **B. APPOINTIVE SELECTION OF JUDGES**

**The Commission recommends that the Pennsylvania General Assembly allow the electors of Pennsylvania to determine whether or not to adopt an appointive method of selection of statewide judges by placing a constitutional amendment on the ballot.**

Many of those who testified before the Commission, including many respected scholars, expressed the belief that the only cure for the problems that beset judicial elections is for Pennsylvania to scrap the present method of electing statewide judges and adopt, instead, a form of appointed judges. While most spoke on behalf of a system of appointive judges commonly known as “merit selection,” it is clear that the main thought process of these advocates was that an appointive process was superior to an elective process.

Each of the advocates of an appointive system for judges readily conceded that a change in process is beyond the power of the Supreme Court of Pennsylvania. Such a change would clearly require a constitutional amendment.

Some of the advocates of such change urged the Commission not to adopt any of the other contemplated changes on the theory that improvements in the present system would only be akin to putting a band-aid on a cancer and might delay the time when “real reform” can be accomplished because of the false hope that these changes will make real improvements in the system.

The Commission declined to follow this course of reasoning and has, therefore, made recommendations to improve the present system. The Commission adopted the view expressed

most prominently by Professor Burbank, which is that effort should be made to improve the present system while those supporting a fundamental change should continue to work in that direction.

The Commission also discussed the fact that if an appointive system were promptly pushed to a vote that it is possible that that could sound the death knell for an appointive system. This was the experience in Ohio. Appointive selection there was defeated by an almost 4-1 margin. In Pennsylvania, efforts to get this concept on the ballot, which requires legislative approval in two consecutive sessions, have repeatedly failed. However, there has been no test in modern times in Pennsylvania of what the voters would do if the Legislature would permit the issue to be aired by public debate and election.

The Commission is of the belief that the public ought to be given the opportunity to decide whether or not it wishes to give up its prerogative to elect judges and to turn the system over to an appointive process. We make no recommendation as to any particular form of appointive system. However, it would appear that the chances of obtaining public support for such a system would be enhanced if an appointive system could be devised that included public participation.

## CONCLUSION

Public funding and appointive selection were by far the most discussed issues which require legislation to accomplish. There are, however, other potential reforms, which likewise would require legislation and were mentioned chiefly by the Honorable Allen Kukovich of the 39th Senatorial District, that the Commission believes are deserving of legislative scrutiny.

These include:

- Rotation of the ballot position of the judicial candidate
- Removal of the candidate's home county from the ballot
- Permitting candidates for statewide judicial office to cross-file

The Commission did not take a position on these issues because there simply was not enough testimony on these subjects to justify a recommendation. We suggest simply that these subjects be examined as part of what we hope will be a thorough and cooperative effort to improve judicial selection in order to restore public confidence in Pennsylvania's judicial system.