

TESTIMONY
BEFORE THE HOUSE JUDICIARY TASK FORCE
AUGUST 31, 1998
ON
JUDICIAL CAMPAIGN FINANCING
PRESENTED BY
STEWART J. EISENBERG
PRESIDENT
PENNSYLVANIA TRIAL LAWYERS
ASSOCIATION

GOOD MORNING. MY NAME IS STEWART EISENBERG, AND I CURRENTLY SERVE AS PRESIDENT OF THE PENNSYLVANIA TRIAL LAWYERS ASSOCIATION. THANK YOU FOR GIVING ME THE OPPORTUNITY TO PARTICIPATE AND TESTIFY BEFORE THE HOUSE JUDICIARY COMMITTEE'S TASK FORCE ON JUDICIAL CAMPAIGN FINANCING. WITH ME TODAY IS MARK PHENICIE, PATLA'S LEGISLATIVE COUNSEL.

AS YOU KNOW, MUCH CONTROVERSY CONTINUES TO SURROUND THE FACT OF WHY AND HOW JUDICIAL CAMPAIGNS ARE CONDUCTED IN PENNSYLVANIA. SPECIFICALLY, THIS ISSUE HAS BEEN REFOCUSED DUE TO THE SUPREME COURT'S "REPORT OF THE SPECIAL COMMISSION TO LIMIT CAMPAIGN EXPENDITURES." AS YOU MAY KNOW, THIS ASSOCIATION AS LATE AS 1993 UNANIMOUSLY ADOPTED A BOARD RESOLUTION INDICATING THAT WE CONTINUE TO SUPPORT THE CONCEPT OF JUDICIAL ELECTIONS, FEELING THAT IN SPITE OF CONTROVERSY AND PROBLEMS POPULAR ELECTION BY THE PEOPLE IS PREFERABLE TO THE POLITICAL APPOINTMENT AND CONFIRMATION OF OUR APPELLATE JUDGES.

IN THAT SPIRIT, WE HAVE MADE SOME SPECIFIC SUGGESTIONS IN THE PAST THAT WE FEEL WOULD IMPROVE THE ELECTION PROCESS, ALTHOUGH WE HAVE NEVER TAKEN ANY FORMAL POSITION SPECIFICALLY ON LIMITING CAMPAIGN EXPENDITURES. THESE ELECTION LAW CHANGES WE HAVE LONG SUPPORTED INCLUDE: (1) A ROTATION OF THE BALLOT POSITION OF CANDIDATES BY SENATE OR HOUSE DISTRICT, THEREBY ELIMINATING THE PERCEIVED ADVANTAGE OF DRAWING FIRST BALLOT POSITION IN SUCH LOW - VISIBILITY RACES; (2) DELETING THE COUNTY NAME OF THE CANDIDATE, THEREBY ELIMINATING THE ADVANTAGE OR DISADVANTAGE FROM COMING FROM A CERTAIN COUNTY;

(3) ALLOWING CANDIDATES FOR JUDICIAL OFFICE TO ADDRESS BASIC POLICY ISSUES, WITHOUT PREJUDGING INDIVIDUAL CONTROVERSIES AND LEGAL ISSUES THAT MAY PRESENT THEMSELVES IN FUTURE CASES.

ADDITIONALLY, PATLA HAS ALSO PASSED A BOARD RESOLUTION WHERE WE SUPPORTED PUBLIC FINANCING FOR APPELLATE JUDICIAL CAMPAIGNS. TO DATE THE LEGISLATURE HAS NOT ACTED UPON SUCH A PROPOSAL.

DURING THE TESTIMONY BEFORE THE SUPREME COURT'S SPECIAL COMMITTEE TO STUDY CAMPAIGN EXPENDITURES, MANY SUGGESTIONS WERE OFFERED. ONE SUGGESTION WAS THAT DUE TO THE OBVIOUS FACT THAT ATTORNEYS DISPROPORTIONALLY CONTRIBUTE TO JUDICIAL CAMPAIGNS, THAT THERE SHOULD BE SOME LIMIT OR CAP ON CONTRIBUTIONS THAT ATTORNEYS CAN MAKE TO JUDICIAL CANDIDATES. WE WHOLEHEARTEDLY OPPOSE SUCH A PLAN FOR TWO SPECIFIC REASONS: (1) A CONSTITUTIONAL PROBLEM OF EQUAL PROTECTION WOULD INEVITABLY ARISE, SINCE ATTORNEYS, BY VIRTUE OF THEIR PROFESSION, WOULD HAVE FEWER FIRST AMENDMENT RIGHTS OF FREE SPEECH IN NOT BEING ABLE TO CONTRIBUTE TO THE SAME DEGREE WHILE NON - ATTORNEYS WOULD NOT HAVE SUCH A LIMITATION; AND (2) A MORE PRAGMATIC POLITICAL REASON, IS THAT ATTORNEYS WOULD HAVE A POTENTIAL DISADVANTAGE RELATIVE TO CORPORATE AND INDUSTRIAL PACS, WHO WOULD HAVE NO SUCH RESTRICTIONS OR LIMITS.

I THINK IT IS IMPORTANT TO NOTE, HOWEVER, FOR THE RECORD, THAT THE PENNSYLVANIA TRIAL LAWYERS ASSOCIATION'S POLITICAL ACTION COMMITTEE KNOWN AS LAW PAC, CONTAINS A SPECIFIC PROHIBITION IN THE DEED OF TRUST FORBIDDING LAW PAC TO MAKE CONTRIBUTIONS TO JUDICIAL CANDIDATES AT ALL LEVELS.

A SECOND SUGGESTION OFFERED DURING THE TESTIMONY INDICATED THAT THERE SHOULD BE SOME LIMIT, PERHAPS SET AT WHAT IS ALLOWED TO BE CONTRIBUTED BY INDIVIDUALS AND POLITICAL ACTION COMMITTEES IN CONGRESSIONAL RACES. THAT LIMIT, OF COURSE, IS ONE THOUSAND DOLLARS (\$1,000) PER PERSON FOR BOTH THE PRIMARY AND GENERAL ELECTIONS, AND FIVE THOUSAND DOLLARS (\$5,000) PER POLITICAL ACTION COMMITTEE. WHILE INDEED THAT WOULD BE PREFERABLE TO WHAT WE HAVE DISCUSSED EARLIER ON SINGLING OUT AND UNIQUELY DISQUALIFYING ATTORNEYS, WE FEEL SUCH A SUGGESTION WOULD ALSO SIGNIFICANTLY REDUCE OPPORTUNITIES FOR CANDIDATES FROM LESS POPULOUS AREAS OF THE STATE, IN THE EVENT THAT OUR ELECTION REFORMS OF ROTATION OF BALLOT AND COUNTY NAMES WERE NOT ADDRESSED. ADDITIONALLY, ANY LIMITS ON INDIVIDUAL PARTICIPATION WOULD GIVE A UNIQUE ADVANTAGE TO A WEALTHY ATTORNEY, WHO COULD ESSENTIALLY FINANCE HIS OR HER OWN CAMPAIGN. INDEED, IF THERE IS A PERCEPTION THAT "JUSTICE IS FOR SALE" AS SOME HAVE INDICATED, THE FACT THAT A WEALTHY INDIVIDUAL COULD SPEND MORE ON A RACE THAN AN OPPONENT COULD RAISE BY LIMITED CONTRIBUTIONS, WOULD SEEM TO US TO APPEAR EQUALLY UNFAIR TO THE GENERAL PUBLIC.

INDEED, THE FACT THAT MULTIMILLIONAIRE STEVE FORBES REFUSED PUBLIC FINANCING FOR HIS PRESIDENTIAL RACE, PROVED TO BE UNPOPULAR AND VIEWED AS UNFAIR BY A MAJORITY OF VOTING CITIZENS, WHO QUESTIONED THE BASIC FAIRNESS THAT BY ACCIDENT OF BIRTH, AN INDIVIDUAL SUCH AS HE WOULD HAVE AN ENORMOUS ADVANTAGE OVER OTHER LESS WEALTHY CANDIDATES OF BOTH POLITICAL PARTIES.

IN CONCLUSION, THEREFORE, WE URGE THIS TASK FORCE AND THE LEGISLATURE TO ADOPT OUR RECOMMENDATIONS TO IMPROVE THE ELECTORAL PROCESS BEFORE ADOPTING ANY SPECIFIC LIMITS OR CAPS ON SPENDING FOR THESE IMPORTANT ELECTIONS.

MARK AND I WOULD BE HAPPY TO ADDRESS ANY QUESTIONS YOU MAY HAVE.