

**TESTIMONY BY COMMON CAUSE/PENNSYLVANIA  
IN SUPPORT OF JUDICIAL ELECTION REFORMS  
RECOMMENDED BY THE SUPREME COURT'S  
REPORT OF THE SPECIAL COMMISSION  
TO LIMIT CAMPAIGN EXPENDITURES**

**August 31, 1998  
Harrisburg, PA**

Chairman Gannon, and members of the House Judiciary Committee, I thank you for this opportunity to present the views of Common Cause/Pennsylvania (CC/PA) on the need to dramatically reform our Commonwealth's judicial selection process. My name is Barry Kauffman. I serve as the Executive Director of Common Cause/PA, a public interest advocacy organization representing nearly 12,000 Pennsylvanians who are committed to promoting open, accountable, and honorable government.

Since its inception in 1974, CC/PA has worked incessantly to improve the integrity of Pennsylvania's election systems. For most of that time, we also have been strong advocates for upgrading our judicial selection system.

CC/PA currently has a two-pronged approach to dealing with the problems posed by the judicial elections of our state. First, the ultimate goal is to establish a genuine apolitical system of merit selection. Second, until we achieve merit selection, we have an obligation to ensure Pennsylvania's citizens that our judicial elections are open and honest, and that they will produce jurists respected for their temperament, their legal scholarship, and their sound judgement - - rather than for their abilities to raise campaign money, often from sources with interests before the courts, or to manipulate political power brokers.

CC/PA has, from time to time, conducted studies on the financing of Pennsylvania judicial elections, and we have been troubled by the explosive growth in the cost to run for these offices, as well as the high levels of campaigns' financial resources coming from those who will



### A. Judicial Campaign Contribution Limits

Establishing contribution limits is the most obvious place to start. The landmark *Buckley v. Valeo* case clearly recognizes that the act of a campaign contributor giving money, goods or services to a candidate/public official opens the doors to at least the perception of corruption, and to protect the public's confidence in government, the state has a compelling interest in eliminating even the perception of corruption.

The recommendations, and contribution thresholds, suggested by the Special Commission with regard to contribution limits are responsible and should be adopted into law -- and they must have tight loophole-free provisions that deter circumvention.

### B. Judicial Campaign Expenditure Limits

As the Special Commission's report suggests, this area of reform faces some substantial obstacles. The *Buckley* decision, unfortunately, has equated the spending of money by candidates with free speech. This controversial portion of the *Buckley* decision has been under attack from the moment it was announced, and the attacks have been increasing with each passing year.

Clearly spending money is not the same as speech. Expenditure limits, in reality, deal with the *volume* of speech and have nothing to do with the *freedom* of speech. Spending money does effect the volume of speech a candidate can produce. Regulating expenditures at levels that permit all candidates in the political arena to present their positions in relatively equitable volumes, so that the public can better cut through the campaign cacophony and make informed decisions, is a reasonable goal for governments. The courts, over the years, have readily limited the volume of speech to protect the public's health and welfare. You can not blast a message from a sound truck in residential neighborhoods in the middle of the night. You can not even do so over certain decibel levels in day time. You can place political flyers on doorknobs, but you can not dump tons of them on a town from an airplane. Even in that quintessential forum of political free speech, the Town Meeting, the *amount* of speech allowed to each citizen may be limited to permit all citizens a fair opportunity to be heard. Mr. Chairman, I suspect you would tolerate whispering discussion in the gallery behind me, even a fairly noisy demonstration in the hallway. But, I doubt you would allow someone to use a bull-horn to drown out the proceedings

#### D. Recusal

The Special Commission's call for recusal by a judge who is confronted with a case in which a litigant is a campaign contributor, or a known contributor to a political adversary, is obvious and essential. No judge should participate in a case where such potential for bias and conflicts-of-interest are apparent. The very existence of such a recusal rule may deter contributions that would be made with hopes of securing favorable future treatment. CC/PA encourages the Court to move forward immediately to implement this recommendation.

#### E. Public Education

Helping the public to make informed decisions about whom to elect to judgeships is a laudatory undertaking. From time to time CC/PA has attempted to assist with such efforts. We encourage the Court to move ahead to implement this recommendation to get more useful information into the hands of the voters. We also challenge the media and other public interest organizations to dig in and provide the public with useful information that will help voters to better grasp which candidates have the best judicial temperament, training, expertise and hopefully wisdom.

#### F. Enforcement and Sanctions

One of the biggest flaws with the election laws already on the books in Pennsylvania is the lack of enforcement. Remember that former Attorney General Ernie Preate's major offenses were violations of the state's elections and ethics laws, for which he never has been prosecuted. It was relatively minor federal mail fraud violations which in the end removed this corrupt official from power. As the Special Commission's report warns, <sup>quote</sup> "(w)ithout resolute enforcement, these recommendations will become virtually meaningless – empty promises prompting further disillusionment."

The obvious purpose of these proposed reforms is to promote public confidence in the judiciary, not further disillusionment. Unfortunately the actions the court can take to enforce these standards are limited to judges and attorneys. That is why it is essential for the General Assembly to move forward to establish contribution and expenditure limits, tied to public