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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
SUBCOMMITTEE ON COURTS

IRVIS OFFICE BUILDING  
ROOM G-50  
HARRISBURG, PENNSYLVANIA

PUBLIC HEARING ON  
HOUSE BILL 1619

MONDAY, DECEMBER 7, 2009  
10:05 A.M.

BEFORE:

- HONORABLE JOSH SHAPIRO, HEARING CHAIRMAN
- HONORABLE DEBERAH KULA
- HONORABLE JOSEPH PETRARCA
- HONORABLE KEN SMITH
- HONORABLE TOM C. CREIGHTON
- HONORABLE KATE HARPER
- HONORABLE MIKE VEREB
- HONORABLE KATHY MANDERINO
- HONORABLE GLEN R. GRELL

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ALSO PRESENT:

HONORABLE MATT SMITH, BILL SPONSOR

WENDELL HANNAFORD, COMMITTEE SECRETARY AND  
LEGISLATIVE ASSISTANT FOR  
REP. CALTAGIRONE

BRENDA J. PARDUN, RPR  
REPORTER - NOTARY PUBLIC

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## P R O C E E D I N G S

1  
2 CHAIRMAN SHAPIRO: Good morning,  
3 everyone. If everyone could please take their  
4 seats so we could call to order the House  
5 Judicial Subcommittee on Courts for this  
6 important hearing on House Bill 1619.

7 My name's Representative Josh Shapiro  
8 from Montgomery County. I'm pleased to be  
9 able to chair the hearing today, and before we  
10 get started, I'd like to ask the members, from  
11 my left to right, just to identify themselves  
12 and if they have any brief opening comments  
13 they'd like to offer.

14 Representative Kula.

15 REPRESENTATIVE KULA: Thank you. I'm  
16 Deberah Kula from Fayette, Westmoreland  
17 County, 52nd District.

18 I look forward to the testimony here  
19 today as a member of the Judiciary for a  
20 number of years. I am interested to hear all  
21 sides of this issue.

22 REPRESENTATIVE CREIGHTON: Tom  
23 Creighton from Lancaster County. I'm the sub  
24 chairman -- minority chairman on this  
25 committee.

1                   Looking forward to vigorous  
2 discussion on this issue. I think it's very  
3 important, and we need to move forward with  
4 it. Thank you.

5                   REPRESENTATIVE GRELL: Good morning.  
6 Glen Grell, 87th District, Cumberland County.  
7 I'm not even sure I'm a member of the  
8 subcommittee, but I am on the Judiciary  
9 Committee and glad to be here.

10                  CHAIRMAN SHAPIRO: Thank you. And to  
11 my left is Representative Matt Smith, who is  
12 not a member of this committee but is the  
13 prime sponsor of House Bill 1619. I'd like to  
14 give him a few moment to offer some opening  
15 comments and join us here on the dais with the  
16 other members of the Judiciary Committee.

17                  Representative Smith.

18                  REPRESENTATIVE SMITH: Thank you,  
19 Mr. Chairman. I particularly want to thank  
20 you for agreeing to chair this hearing. I  
21 want to thank Subcommittee on Courts Chairman  
22 Don Walko for convening this hearing as well  
23 on this very important issue.

24                  The system we have now for electing  
25 appellate court judges in the state of

1 Pennsylvania is broken. The system is too  
2 frequently dependent on fund raising, negative  
3 television ads, push/pulls, and negative  
4 mailers to Pennsylvania voters.

5 The result of this election process  
6 is a slow and persistent decrease in the  
7 public's stake in our judicial system. While  
8 it is vitally important that the public have a  
9 belief that the judicial system is completely  
10 removed from partisan politics of the worst  
11 kind and devoid of any inherent conflicts,  
12 this is simply not the belief that most  
13 Pennsylvanians hold right now.

14 The public is also disengaged from  
15 the process of voting for appellate court  
16 judges. This is perhaps best demonstrated by  
17 the low voter turnout in the most recent  
18 election in November. Even among those voters  
19 who did turn out in November, the percentage  
20 who were actually aware of the specific  
21 candidates to any level of depth was very  
22 low. Too frequently, voters base their  
23 decision on ballot position, on the last  
24 negative television ad or the last negative  
25 direct-mail piece they happen to see.

1                   This legislation addresses this  
2                   problem by combining the best feature of the  
3                   appointed judicial process with the elected  
4                   judicial process. It further adds a vital  
5                   component, an independent and nonpartisan  
6                   commission charged with screening and  
7                   evaluating potential nominees for the various  
8                   courts.

9                   Let me provide a brief overview of  
10                  the process. First, potential jurists are  
11                  screened and evaluated by the aforementioned  
12                  commission. The commission then recommends a  
13                  slate of individuals to the governor. The  
14                  governor then nominates one of the individuals  
15                  from that list or a few individuals from that  
16                  list and submits the names to the state  
17                  senate. The state senate then confirms or  
18                  does not confirm the individual, and  
19                  importantly, the judge submits to a yes-or-no  
20                  retention election four years after that  
21                  appointment.

22                  As stated, this new proposal combines  
23                  the key features of a coherent appointment  
24                  judicial selection process while retaining the  
25                  ability of the public to express an opinion on



1 a judge four years after that judge is  
2 confirmed to the bench.

3           Instead of relying on millions of  
4 dollars of campaign contributions in the  
5 partisanship campaign, this new system would  
6 rely on the evaluation of a respected group of  
7 individuals on the nominating commission, the  
8 governor selection, as well as senate input  
9 via the confirmation process.

10           I personally believe that we must  
11 continue to push for reforms in all of  
12 Pennsylvania's state government. In many  
13 ways, these reforms are linked together, from  
14 general campaign finance reform to remove the  
15 corrosive effect of money in our elections to  
16 merit selection of judges to ensure that money  
17 is not playing any role in judicial decisions  
18 that affect millions of citizens and  
19 businesses in Pennsylvania.

20           I, again, want to thank the chair for  
21 convening this hearing, and I look forward to  
22 all the testimony we're going to hear today.  
23 Thank you very much.

24           CHAIRMAN SHAPIRO: Thank you,  
25 Representative Smith.

1           And without further ado, I'd like to  
2 begin. We have a very, very lengthy and, I  
3 think, very informative agenda here. And I'd  
4 like to invite Tom Foley from Pennsylvania  
5 Association for Justice to come up.

6           We have allotted to each of the  
7 testifiers today about ten minutes, and I'd  
8 like to ask you to limit your remarks to  
9 somewhere under ten minutes so that we can  
10 allow the members of this committee to ask  
11 questions after you've concluded your  
12 remarks. Certainly, we will be flexible.

13           I think the important aspect of this  
14 hearing is to provide information. So we're  
15 not going to have a timer up here, but we  
16 would like to ask you to respect those who  
17 come after you on the agenda.

18           Mr. Foley, thank you for being with  
19 us this morning.

20           MR. FOLEY: Thank you, Chairman  
21 Shapiro and members of the committee.

22           As you heard, my name is Tom Foley of  
23 Scranton. I'm appearing here today on behalf  
24 of the Pennsylvania Association for Justice,  
25 formerly the Pennsylvania Trail Lawyers

1 Association. With me today is our legislative  
2 counsel, Tom Previc.

3 The board of governors of our  
4 organization has not had an opportunity to  
5 meet since the date this hearing was  
6 scheduled, so the remarks I'm giving today  
7 reflect the historical position taken by our  
8 board in 1994 and subsequently, as well as my  
9 own personal views.

10 Our association has long opposed the  
11 political appointment of judges. The board of  
12 governors of the Pennsylvania Trial Lawyers  
13 Association voted unanimously in January of  
14 1993 to oppose the political appointment of  
15 judges. Also, my father, Tom Foley, Jr., the  
16 past president of PaTLA, testified before the  
17 house judiciary committee on November 28th,  
18 1994, stating our opposition to that concept.

19 Since then, my brother, Mike Foley,  
20 who is the immediate past president of the  
21 PaTLA, testified before the senate judiciary  
22 committee on September 16, 2008, regarding our  
23 association's historical opposition to the  
24 political appointment of our appellate judges.

25 Among other things, we are extremely

1 concerned about the lottery system being  
2 proposed to determine which groups are  
3 represented on the proposed commission and  
4 would be able to participate directly in the  
5 judicial selection process. Lotteries may be  
6 great ways to generate tax revenues, but we do  
7 not believe they are appropriate or legitimate  
8 means to determine who participates in the  
9 process of selecting our appellate judges.

10 My grandfather, the late Michael J.  
11 Eagen of Lackawanna County, was elected to the  
12 Pennsylvania Supreme Court in the election of  
13 1959 and was sworn into office on January 2nd  
14 of 1960 and served this commonwealth for over  
15 twenty-one years. I think that my grandfather  
16 would find it ironic that at a time when more  
17 than four thousand young men and women of our  
18 arms services have fought and died in Iraq and  
19 Afghanistan in the name of democracy and in  
20 furtherance of the right to vote, that it is  
21 now being considered here at home whether to  
22 take away the Pennsylvania electorates' right  
23 to vote directly for their appellate judges.

24 The people of Pennsylvania, in the  
25 primary election of 1969, have previously

1 rejected the option of having their judiciary  
2 appointed for them, which option was offered  
3 to them through a proposed amendment to the  
4 Pennsylvania Constitution.

5           During the primary election of 1978,  
6 the voters again opted for election, rather  
7 than appointment by the governor, of another  
8 statewide official, the Attorney General of  
9 Pennsylvania. That year, 1978, Pennsylvania  
10 voters approved a constitutional amendment  
11 providing for the election of our attorney  
12 general, and in the general election of 1980,  
13 the citizens of this commonwealth, for the  
14 first time, elected their own attorney  
15 general.

16           The Pennsylvania Association for  
17 Justice continues to believe that there is  
18 certainly no empiric evidence establishing  
19 that appointed judges would dispense better  
20 justice for all who appear before them than do  
21 elected judges. Certainly, there is no such  
22 alarming disarray in our appellate court  
23 system today that would mandate depriving the  
24 citizens of Pennsylvania of their right to  
25 vote for the holders of judicial offices.

1                   While supports of the concept of  
2                   appointing judges have long derided the  
3                   corrosive impact of money in judicial  
4                   elections, both systems are clearly  
5                   political. The process of appointing judges  
6                   is, we submit, no less political but is  
7                   certainly less public than electing them. As  
8                   United States Secretary of State Hillary  
9                   Clinton recently said, speaking at a forum in  
10                  Africa: The solution starts with  
11                  transparency. A famous judge in my country  
12                  once said that sunlight is the best  
13                  disinfectant. It is important that we  
14                  recognize that progress has been made when  
15                  elections are held.

16                         That's an excerpt from the August  
17                         2009 speech by Secretary of State Clinton in  
18                         Africa.

19                         The Pennsylvania Association for  
20                         Justice has long advocated changes to the  
21                         elective system to address many of the  
22                         concerns which are advanced today in favor of  
23                         political appointment. We have publicly  
24                         supported public financing of judicial  
25                         campaigns, the rotation of ballot positions,

1 and allowing judicial candidates to explain  
2 their general philosophy without prejudging a  
3 particular issue or matter.

4           However, our association has been  
5 steadfast in support of maintaining this  
6 commonwealth's citizens' right to vote on  
7 judicial candidates.

8           Throughout the world, people are  
9 fighting for democracy, striving to have the  
10 same freedom and right to elect the officials  
11 who will govern that we citizens of this great  
12 commonwealth do now. Why should any  
13 consideration be given to reversing this form  
14 of democracy?

15           What is it about the concept of  
16 appointing judges as opposed to electing them  
17 that's so appealing? Would better qualified  
18 judges be guaranteed to serve the appellate  
19 courts? Will politics be eliminated in the  
20 appointive process of appellate judges? We  
21 think not. We respectfully submitted that  
22 there is no less and probably will be more  
23 politics in an appointive system.

24           If there is no clear and convincing  
25 proof of the advantage of appointing rather

1 than electing judges, then the issue should be  
2 resolved in favor of maintaining the people's  
3 right to vote.

4 Appointment would also deny  
5 aspirations to high judicial office by those  
6 who are not partners in large metropolitan law  
7 firms, high government officials, people of  
8 wealth and the like. It would deny ambitious  
9 outsiders an opportunity to participate  
10 because the contender would not be able to get  
11 on the playing field unless he or she has  
12 already connections with the powers that be.  
13 The small-town lawyer would be hard pressed to  
14 make his or her credentials as a prospective  
15 appellate court judge known when his only  
16 access is by written application.

17 Would an appointive process have  
18 produced as many female appellate judges as a  
19 we presently have in our Pennsylvania  
20 appellate courts? In this past election, one  
21 women justice was elected to a supreme court,  
22 four women judges to the superior court, and  
23 one women to the commonwealth court. Only a  
24 single white male was elected.

25 Our existing elective process, not an



1 appointive process, also produced the first  
2 African-American chief justice of any state's  
3 highest court, the late Robert N. C. Nix, Jr.,  
4 of the Pennsylvania Supreme Court, as well as  
5 a number of other minority members of our  
6 appellate judiciary, including Judge Justin  
7 Johnson, now retired from the Pennsylvania  
8 Superior Court, who is also presenting  
9 testimony here today.

10 Can anyone here honestly say that in  
11 an appointive process would have so reflected  
12 the will of the electorate in increasing the  
13 geographic, gender, and ethnic diversity on  
14 our appellate courts.

15 Do we really want to see far reaching  
16 decisions on civil rights, abortion, criminal  
17 procedure equal rights for women, et cetera,  
18 made by individuals who are the product of an  
19 appointive process rather than an elective  
20 process? Would such decisions have the  
21 respect of the voters? Can we afford to find  
22 out?

23 CHAIRMAN SHAPIRO: Thank you. Thank  
24 you for your testimony.

25 Before I ask members of the committee

1 if they have any questions, I want to welcome  
2 Representative Mike Vereb from Montgomery  
3 County and Representative Kathy Manderino from  
4 Philadelphia and Montgomery Counties.

5 Are there any members who have  
6 questions for Mr. Foley at this time?

7 Representative Smith.

8 REPRESENTATIVE SMITH: Thank you for  
9 your testimony today, Mr. Foley.

10 I just had one question about a  
11 specific statement in your testimony. You  
12 sort of stated that the appointive process  
13 would deny outsiders the opportunity to  
14 participate in the system because of their  
15 lack of connection. I'm just wondering, do  
16 you have any thoughts as to whether the  
17 current system is preventing sort of the  
18 small-town lawyer from participating, from  
19 running for statewide elective office, due to  
20 the fact that they have to raise such a  
21 significant amount of money to get, quote,  
22 unquote, get on the playing field? Would you  
23 just give me your thoughts?

24 MR. FOLEY: As I indicated, we're in  
25 favor of public financing for judicial

1 campaigns. I don't believe that present  
2 process excludes small-town lawyers from  
3 running for statewide office. I gave an  
4 example, my grandfather, Michael J. Eagen, who  
5 actually ran twice for the Pennsylvania  
6 Supreme Court. He won the second time. And,  
7 of course, we've had both Governor Bob Casey  
8 win from Scranton and Senator Bob Casey win  
9 from Scranton.

10 So I don't think the present elective  
11 process necessarily excludes small-town  
12 individuals from running for statewide  
13 office.

14 On the other hand, if you look at the  
15 history of political appointments of our  
16 appellate judges over the last two decades,  
17 not a single one of the political appointments  
18 has been from northeastern Pennsylvania. All  
19 of them have been from the larger population  
20 areas.

21 REPRESENTATIVE SMITH: Thank you.

22 CHAIRMAN SHAPIRO: Seeing no further  
23 questions, I have one.

24 You talked about your support of the  
25 public financing system, sort of suggesting a

1           nod for the fact that money does at least have  
2           the appearance of politicizing the process,  
3           that I think most Pennsylvanians would like to  
4           see taken out of the politics, per se, whether  
5           you're for elections or against elections.

6                        You talked also about the lack of  
7           empirical data on the appointment process,  
8           suggesting that you have a better outcome in  
9           cases, or a better, more diverse selection of  
10          judges. Do you have any empirical data to  
11          suggest based on the practices of other states  
12          that the public financing system works and  
13          create diversity, limits the sort of  
14          perception of money corrupting the process?  
15          Is there any data available on that that you  
16          can share with the committee?

17                      MR. FOLEY: I don't personally have  
18          that. With me, perhaps Mr. Previc does,  
19          but --

20                      CHAIRMAN SHAPIRO: He's got  
21          everything up here.

22                      MR. FOLEY: But I can say that,  
23          again, just looking at the results of the last  
24          election, I don't think any one of us sitting  
25          here could imagine that such a high proportion

1 of our elected judges would have been female,  
2 and only one white male elected to the  
3 Pennsylvania appellate court.

4 I think that any appointive process  
5 in anyone's imagination would have come out  
6 with a different result. And I think that  
7 just goes to show that the voters felt that  
8 there was some inequity in the current  
9 proportion of male versus female on the  
10 appellate courts and decided to remedy that.

11 CHAIRMAN SHAPIRO: Thank you for your  
12 testimony.

13 I'd like to welcome Representative  
14 Joe Petrarca here, member of the committee,  
15 and invite -- I don't see Jerry Mondesire, but  
16 is there a representative of the Philadelphia  
17 NAACP -- or the NAACP?

18 Seeing none, we'll move them to the  
19 end of the agenda, should they arrive later,  
20 and I'd invite up Lynn Marks, Bob Heim, Shira  
21 Goodman, from Pennsylvania for Modern Courts  
22 and PMCAction.

23 Before you begin, if you'd just  
24 identify yourselves for the committee  
25 members. There should be three mics up there,

1 so feel free to sit wherever you'd like.

2 And to the members, their testimony appears in  
3 the packet that was given out earlier.

4 MR. HEIM: Good morning. My name is  
5 Bob Heim. I'm the chairman of Pennsylvanians  
6 for Modern Courts. I'm a lawyer from  
7 Philadelphia, a trial lawyer as well.

8 To my right is Lynn Marks, who's the  
9 executive director of Pennsylvanians for  
10 Modern Courts, and to her right is Shira  
11 Goodman, who is the assistant or vice  
12 executive director or however we're doing  
13 titles these days.

14 So Lynn and I are going to share our  
15 time, if that's okay with the chairman.

16 CHAIRMAN SHAPIRO: Absolutely.

17 MR. HEIM: And I will begin, and then  
18 I'll turn it over to Lynn.

19 As I believe all of you probably  
20 know, Pennsylvania is one of only six states  
21 in the United States that elects all of its  
22 judges in partisan contested elections. We  
23 share that distinction with Alabama,  
24 Louisiana, Texas, and a couple of others that  
25 slip my mind at the moment, but the other

1       forty-four states have other systems,  
2       including straight merit selection systems for  
3       all their judges, and including merit  
4       selection systems for the appointment of  
5       appellate judges and other variations along  
6       those lines.

7               So one would at least want to inquire  
8       at the outset, I would think, as to whether  
9       those forty-four states have a better idea.  
10       And I would urge the members to consider that  
11       there is a better idea than electing judges  
12       for lots of reasons.

13               The cost of being in that company, of  
14       being in the company of the six states that  
15       elect all of their judges in partisan  
16       contested elections, the cost is very high,  
17       and I don't just mean the cost in terms of  
18       money. That cost is high. But the cost in  
19       terms of public perception is even higher.

20               If you're -- if all of you  
21       representatives were to consider just the last  
22       judicial election for the supreme court, we  
23       know as of this moment, that over three  
24       million dollars, three million dollars, was  
25       spent in that election, and that does not

1 include the amount of money that the political  
2 parties spent. This is money that went  
3 directly to the candidates, over three million  
4 dollars. In election for the supreme court,  
5 the prior election, where there were two  
6 vacancies, somewhere in the neighborhood of  
7 eight million dollars was spent in those  
8 elections.

9 Raising money, and of course, it's no  
10 surprise where that money came from. Most of  
11 it came from lawyers. A lot of it came from  
12 special interest groups of various kinds,  
13 could be any kind of special interest group,  
14 but most of it came from lawyers, lawyers who  
15 are going to have their matters entertained  
16 and judged by the people to whom they were  
17 contributing money.

18 Now, if you don't think that breeds  
19 cynicism, I would suggest, you know, ask your  
20 father, because most of us understand that  
21 people think that when you put that amount of  
22 money into elections, it's there for a  
23 reason. It's there because people think they  
24 will, the contributors, will have influence,  
25 and the perception of influence in the courts



1 is high.

2 Poll after poll after poll will  
3 reveal that the people in Pennsylvania believe  
4 that when you put millions of dollars of money  
5 into campaigns for judicial elections, that  
6 it's a play for -- pay-for-play system and  
7 that it has an effect. In fact, you know, I  
8 had a lawyer tell me a story about sitting in  
9 the courtroom when a judge came out on the  
10 bench to hear the matter, and he turned to his  
11 client and said, oh, my God, my opponent was  
12 chair of that judge's campaign and probably  
13 gave a lot of money to that campaign, and his  
14 client thought for a minute and looked to him  
15 and said, Why didn't you give money?

16 And that's the idea here. Why didn't  
17 you give him money? Why didn't we have a  
18 level playing field? And that's not what you  
19 want for Pennsylvania.

20 The idea that judges even have to  
21 campaign statewide is troubling. Put the  
22 money aside. One of our great appeal judges  
23 who declined to run for reelection told me  
24 that when he was running for election, he  
25 would go to meetings in various counties

1 throughout the state, and people would come up  
2 to him and say, Judge, how would you vote in  
3 this kind of a situation? And he would say  
4 what a good judge, what all of you would want  
5 a good judge to say, Well, it depends a lot on  
6 the actual facts. It depends on what the law  
7 is in that area, because my job is to apply  
8 the law to the facts.

9 And people would nod and wait and  
10 say, Yes, yes, we understand. And then they  
11 would wink and say, But, really, how would you  
12 vote? And that's the kind of thing that you  
13 get.

14 Judges are different. Judge are not  
15 like representatives, they're not like  
16 senators. They're not there to do the will of  
17 their constituents. If anything, they're  
18 there to protect these interests of the  
19 minorities. They're to protect the interest  
20 of the citizen who isn't popular. To not go  
21 with the flow because she or he is worried  
22 about being reelected, but to do what is right  
23 based on the application of the law to the  
24 facts. It's a different role in our society  
25 than being a senator or being a representative

1 or being a governor, and that's why we need to  
2 take money out of this system.

3 Now, I've heard for years and years  
4 the argument that you're going to take away  
5 the right to vote, and I'm sure the other  
6 forty-four states heard that too when they  
7 considered and decided on the best system for  
8 selecting their judges. But I ask all of you  
9 to think of it this way. We are asking you to  
10 give the people of Pennsylvania the right to  
11 vote.

12 In order to change our system, we  
13 have to have a constitutional amendment. In  
14 order to have a constitutional amendment, the  
15 citizens of Pennsylvania have to vote to  
16 change the system. So those who say you're  
17 taking away the right to vote have it  
18 backwards.

19 The opponents of changing this system  
20 don't want the people of Pennsylvania to have  
21 the right to vote because they're concerned  
22 that the people will say, We're tired of this  
23 money. We're tired of the special interest  
24 groups. We want to take it back, and we want  
25 to select our judges in a different way.

1                   Give them the right to vote. And I  
2 think if you do that, you will see -- we do  
3 have some very fine judges. And I'll be the  
4 first to say. I practice in front of a lot of  
5 them. But it's in spite of the system not  
6 because of it.

7                   You'll have a lot more people from  
8 small towns, from all parts of the state who  
9 will be able to be appellate judges because  
10 they won't have to raise a million dollars to  
11 run.

12                  So I encourage all of you to support  
13 House Bill 1619 and 1621, because it's time  
14 that Pennsylvania move away from a system that  
15 breeds cynicism and breeds disrespect and give  
16 us the kind of selection process we'll -- that  
17 we can all admire and support.

18                  Thank you, Mr. Chairman.

19                  CHAIRMAN SHAPIRO: Thank you, Bob.  
20 Before we hear from Lynn, I just want to  
21 welcome Representative Kate Harper from  
22 Montgomery County, a member -- distinguished  
23 member of the judiciary committee.

24                  Lynn Marks.

25                  MS. MARKS: Thank you for holding

1 this hearing and for including us. And thank  
2 you to the sponsors for introducing the bill.

3 As you heard, I'm Lynn Marks. I'm  
4 the executive director of Pennsylvanians for  
5 Modern Court and PMCAction. Bob didn't  
6 mention, but for those of you who don't know,  
7 Pennsylvanians for Modern Courts is a  
8 statewide, nonpartisan, nonprofit organization  
9 advocating that Pennsylvanians have the most  
10 fair and impartial courts as we can. And to  
11 that end, we've been working to make the jury  
12 system a better system for citizens,  
13 encouraging jury service, increasing gender,  
14 racial, and ethnic fairness in the courts, a  
15 stronger discipline -- judicial discipline  
16 system.

17 We help people navigate the courts,  
18 and we work to change the way that appellate  
19 judges are chosen.

20 I'm also with PMCAction, and PMC is  
21 our educational organization. And PMCAction  
22 is an organization through which we lobby for  
23 various court initiatives.

24 Bob Heim mentioned some of the  
25 problems with money and judicial elections,

1 and we and many others have been decrying for  
2 years the increased amounts of money in  
3 judicial elections, which has been fueled by  
4 lawyers and potential litigants. But this  
5 year, not only we were complaining but even  
6 the supreme court candidates were decrying the  
7 problems with money.

8 And that is why we made this large  
9 chart, because we -- and I'm going highlight  
10 just a few quotes that the candidates made in  
11 a debate that we co-sponsored with the League  
12 of Women Voters and with Temple University  
13 Beasley School of Law.

14 One candidate, Judge Joan Orie  
15 Melvin, quote, We have special interests who  
16 are participating in these elections. The  
17 public perceives these huge amounts of  
18 contributions as justice for sale, pay to  
19 play.

20 The other candidate, Judge Jack  
21 Panella: People still do not understand the  
22 judge's qualifications and even the role of  
23 the judiciary, so regrettably, this raising of  
24 money is necessary. But politics corrupts the  
25 judiciary, and politics has no place in the

1 Pennsylvania Supreme Court.

2 As you know, this -- these bills  
3 apply only to the appellate level, the  
4 supreme, superior, and the commonwealth  
5 courts. Let me just tell you a little bit of  
6 the nitty-gritty of this bill.

7 Representative Smith walked us  
8 through this process, the four-step process of  
9 the nominating commission which evaluates  
10 candidates according to criteria which would  
11 be written right into the constitution. Right  
12 now the only criteria to be a judge would be  
13 to be a lawyer and a resident.

14 The commission recommends a small  
15 number of candidates to the governor, and the  
16 governor selects from that list and only from  
17 that list, not who the governor might want.  
18 Then it goes to senate confirmation. And  
19 after a four-year initial term and then ten  
20 years thereafter, there'll be a nonpartisan  
21 retention vote, so the people will ultimately  
22 decide whether a judge will continue to an  
23 judge.

24 The most special part of this system  
25 is the -- is the nominating commission. And

1       it is different from nominating commissions in  
2       prior -- in prior bills. And it is different  
3       from what you'll see at the federal level for  
4       picking judges, and it's very different from  
5       how interim judges are chosen for vacancies.

6               The commission is supposed to  
7       represent the broad diversity of Pennsylvania  
8       lawyers, non-lawyers, men, women, people from  
9       various occupational background and from  
10       different racial, ethnic backgrounds. There  
11       would be, in this bill, fourteen members. Six  
12       would be what's called public members, and  
13       they would be chosen by non-governmental  
14       organizations. And four would be selected by  
15       the governor, and four by the legislature.

16               No public officials or party  
17       officials would be able to -- or families of  
18       public officials would be able to sit on the  
19       commission.

20               The public members would be chosen  
21       from these categories. Civic groups, someone  
22       from the civic would be nominate by a civic  
23       group. Business organization, union,  
24       non-lawyer professional organization, public  
25       safety organization, and a law dean, and those



1 would rotate. And, obviously, we look forward  
2 to a dialogue here and afterwards about  
3 whether that's the best way to do or it or  
4 not. We thought this was an excellent way of  
5 really capturing the diversity of the state.

6 The public would still be involved in  
7 selecting judges but just in a different  
8 way than we have now. The public would  
9 participate on the nominating commission,  
10 would be able to communicate with the  
11 governor, because the names would be public  
12 when they go to the governor for his or her,  
13 hopefully some day, selection, and  
14 communication with the senate during public  
15 senate hearings, and then, of course, in the  
16 retention election, when they ultimately  
17 decide.

18 We suggest that the bill be revised  
19 to allow the merit selection process to have  
20 some more transparency and more citizen input  
21 earlier in the process. Some states allow the  
22 public to -- to present testimony on the  
23 candidates. Some have public interviews. If  
24 the committee's interested, we would be glad  
25 to provide you with information from some of

1 these states.

2 We also believe that the nominating  
3 committee should present five names of the  
4 highest qualified to the governor, rather than  
5 the two to five names that are in the current  
6 bill.

7 Is merit selection devoid of  
8 politics? Of course not. We know that. But  
9 it is not the same as the current system,  
10 which is specifically through the parties, and  
11 you know that it's the system.

12 And is the merit selection plan  
13 perfect? Of course not. We know that as  
14 well. But we believe, as do many others, that  
15 it is a better way to choose judges. It is a  
16 system that's designed to choose those that  
17 are most qualified and not according to the  
18 random factors like ballot position or where's  
19 the biggest voter turnout.

20 It gets judges out of the fund  
21 raising business so that the public doesn't  
22 think that campaign contributors have a leg up  
23 when they go to court. And as Bob was saying,  
24 poll after poll shows that the public believes  
25 that judges make decisions according to

1 campaign contributions.

2 I'm not saying that they do, but that  
3 is the perception. People need to believe  
4 that they're going to get a fair shake when  
5 they go to court. And that's what we care the  
6 most about.

7 Judges are different from legislators  
8 and executives, and that is why it makes sense  
9 to select them differently.

10 CHAIRMAN SHAPIRO: Thank you, Lynn.

11 Shira, do you have any comments? I  
12 know there are questions from the members.

13 MS. GOODMAN: I was just hoping I  
14 could answer one of the questions that was  
15 asked earlier about data from other states.

16 CHAIRMAN SHAPIRO: Please.

17 MS. GOODMAN: Mr. Foley is correct  
18 that women have done well in recent elections  
19 in Pennsylvania.

20 I just want to point out that of  
21 three hundred forty judges on the nation's  
22 highest state courts, currently a hundred and  
23 three are women and thirty-one, perhaps now if  
24 we count Judge Orie Melvin, with Judge Orie  
25 Melvin, thirty-two were elected and seventy-

1 two reached the bench through some sort of an  
2 appointive system, including merit selection.

3 The numbers are even starker when you  
4 talk about people of color. Of the three  
5 hundred forty judges on the highest state  
6 courts of the nation, we have thirty-five  
7 people of color. Five were elected. And  
8 thirty reached the bench through some other  
9 political appointive system.

10 In Pennsylvania, we currently have, I  
11 believe, two judges of color on our appellate  
12 courts, one on the superior court, who was  
13 elected, one on the commonwealth court, who  
14 was appointed through the interim process.  
15 Our most recent justice of color, Justice  
16 Baldwin, was just also appointed through the  
17 interim process.

18 And as to the -- I can't answer about  
19 whether public finances has lead to a greater  
20 diversity. I do know that some of the states  
21 that are doing it -- and there are very few at  
22 the moment, and although it certainly does  
23 reduce the amounts of money, there are still  
24 requirements that the candidates need to raise  
25 a minimum amount of money from many, many more

1 contributors, which is still a concern to us  
2 about the number of contributors that there  
3 are and people going into court who have  
4 contributed.

5           Some of these systems are being  
6 challenged both by the bodies that are being  
7 asked to fund them. In some states, only  
8 lawyers have been asked for them. And  
9 Wisconsin has just enacted a public financing  
10 system, and there are already threatened  
11 lawsuits about that.

12           CHAIRMAN SHAPIRO: Thank you, Shira  
13 and Lynn and Bob.

14           Representative Manderino.

15           REPRESENTATIVE MANDERINO: Thank  
16 you. And thanks for your testimony.

17           Two questions. The current bill  
18 provision for senate confirmation is kind of a  
19 new feature from prior versions of merit  
20 selection that have been introduced in  
21 Pennsylvania. I'm interested in the thought  
22 process that went behind why that's a new  
23 component and what the thinking was for the  
24 senate confirmation, if anybody can answer  
25 that.

1 MS. GOODMAN: Are you referring to  
2 the provision that if the senate rejects or  
3 does not confirm the first two -- the first  
4 two nominees that then there would be a  
5 different appointment process? First three  
6 nominees --

7 REPRESENTATIVE MANDERINO: Both. My  
8 recollection is that earlier versions of the  
9 bill, after the selection panel gave names to  
10 the governor, the governor chose and the  
11 governor's decision was final. There wasn't a  
12 senate confirmation. So maybe I'm --

13 MS. GOODMAN: In the last two  
14 sessions.

15 REPRESENTATIVE MANDERINO: Let me ask  
16 the question differently. Why a senate  
17 confirmation? And why -- because other  
18 appointive processes don't necessarily have  
19 that. And kind of just walk me through your  
20 thinking of the value of that.

21 MS. MARKS: Most -- the various  
22 states that have some kind of a merit  
23 selection system, most do have some form of  
24 senate confirmation. I think the reason that  
25 all the bills that I've seen in Pennsylvania

1 have included it is that is how -- that's been  
2 the tradition here for so many years, that I  
3 think there was never really a serious thought  
4 about changing that. It kind of involved yet  
5 another -- other branches of government.

6 I think the thing that's different  
7 here is that it has some kind of provision,  
8 some kind of mechanism that if the senate  
9 doesn't confirm in a certain number of days  
10 what will happen, and then if the senate  
11 confirms three out of the five candidates,  
12 then it has the provision. So the whole thing  
13 was to just make sure that we don't go, and  
14 there is not a situation in which either the  
15 governor drags his or her feet and the senate  
16 doesn't as well, or that they just say no to  
17 everybody.

18 The idea was that all five names  
19 coming out of the nominating committee would  
20 be well qualified to sit on the court. And it  
21 was question of which one. It was -- the  
22 mechanism was to really deal with not having  
23 kind of any gamesmanship by the senate.

24 REPRESENTATIVE MANDERINO: Whenever I  
25 talk to folks who have run for statewide

1        appellate office, even those who don't believe  
2        that elective process is the best way to  
3        choose judges at that level, they went through  
4        it because that's the system that we have.  
5        One of the things that they do always say that  
6        they found of great value was traveling the  
7        state and getting to know how diverse  
8        Pennsylvania is.

9                From any of the other models that you  
10        have looked at -- I mean some states are very  
11        small and somewhat homogeneous and other  
12        states are very large and very diverse,  
13        probably a lot more like Pennsylvania. Are  
14        there any lessons from other ones that would  
15        somehow incorporate that -- a way of getting  
16        to know all of Pennsylvania as you go through  
17        a process that isn't an elective process?

18                MS. GOODMAN: I think that's a very  
19        good question. I also have heard candidates  
20        say that. I've always, myself, found that a  
21        little more convincing coming from the trial-  
22        level judges who talk about, you know, in  
23        Philadelphia or Allegheny or even in their own  
24        smaller counties seeing the folks from all  
25        around, because those are people who come in



1 the courtrooms as jurors, as witnesses and  
2 litigant and they get to know them and maybe  
3 appreciate a different part of their city or  
4 county that they didn't know about.

5           And I have worked for both trial  
6 judges and appellate judges. And it seems to  
7 me that knowing the people in the neighborhood  
8 was much more relevant to a trial judge's job  
9 than an appellate judge's job. And really,  
10 it's a very isolated back room with briefing  
11 papers and isn't really getting to know  
12 witnesses and litigants as much as legal  
13 arguments.

14           Having said that, however, I think  
15 that although I don't know that there are  
16 other states that kind of have a speaking tour  
17 or do that, I think that there are two ways to  
18 incorporate that. Even -- you're right.  
19 People do find that of value, and I think it's  
20 even more valuable for those few voters who do  
21 get to meet the candidates, that it does help  
22 them.

23           So I think that the things that you  
24 could do are, one, is making sure of the role  
25 of the public on the nominating commission and

1 making sure that it is a diverse kind of  
2 commission, and that brings some of that. I  
3 think also opening up the nominating  
4 commission process somewhat, as Lynn Marks  
5 talked about, so that there is more broader  
6 access to the candidate.

7 But I also think possibly holding  
8 hearing in different parts of the state so  
9 that the candidates do get to hear the  
10 concerns that other people throughout the  
11 state have about their judges, and so that the  
12 people throughout the state can see the  
13 different people who are hoping to become  
14 judges would be important. Excuse me.

15 I think we're seeing that in the  
16 various hearings at the interbranch commission  
17 in Luzerne we're seeing now and the great  
18 desire and the lines of people who are coming  
19 to testify.

20 So I think that something like that  
21 could be in the process and that there is some  
22 requirement that people do go -- not a  
23 campaign tour throughout the state and not  
24 having spent the kind of money that are spent  
25 now, but maybe hearings throughout the state

1 would be useful.

2 CHAIRMAN SHAPIRO: Thank you.

3 Representative Vereb.

4 REPRESENTATIVE VEREB: Thank you.

5 Mr. Heim, not being an attorney,  
6 I have a great deal of respect for my  
7 colleagues and we'll certain be talking about  
8 this in the future. I think this is an  
9 interesting topic for us to be talking about,  
10 but I think the three of you need to  
11 understand the volatility in this building of  
12 all branches of government. It's not amenable  
13 to an open discussion in terms of trust.

14 In my own mind, speaking for myself,  
15 to allow such a huge responsibility of our  
16 appellate courts to have groups, no matter how  
17 we number them or how we break them up,  
18 whatever governor it would be, so you bring  
19 up -- this is an interesting side that you  
20 bring up.

21 And I'd asked Representative Shapiro,  
22 both of us from Montgomery County, both of us  
23 have witnessed the large amount of money spent  
24 on common pleas races, and obviously the  
25 results are favored, you know, republican this

1 time, but we did put a number of women on the  
2 bench. We put a minority back on the bench.

3 And I even noticed in the appellate  
4 court bill, I think that access dollar wise to  
5 judges, you bring up Luzerne County, so I  
6 tell, that would be a bigger concern with more  
7 cases come before common pleas judges,  
8 although I can't say that myself and Josh  
9 necessarily or Representative Manderino or  
10 Representative Harper from Montgo.

11 But you brought up several times --  
12 you're sort of like me, you, like, find a way  
13 to drive the issue home -- on partisan  
14 contested elections. How do you define that?

15 MR. HEIM: Well, partisan is the  
16 political parties, you know. So you have a  
17 candidate from the democratic party and  
18 candidate from the republican party, and the  
19 parties back their particular candidates. And  
20 contested, of course, is that they're going to  
21 run against each other in -- just as these two  
22 justices ran against -- potential justices ran  
23 against each other in those elections.

24 I have to say that I think your  
25 comment is right on point. I mean, when we

1 started this years and years ago, we started  
2 Pennsylvanians for Modern Courts in 1987. And  
3 somebody said to fight the battle for merit  
4 selection is not for the short winded, and I  
5 guess it favors us. But -- and the League of  
6 Women Voters said they've been doing this for  
7 sixty years, but when we started it, we wanted  
8 the trial courts included in it.

9           But we were impressed by the argument  
10 that was made that while the trial courts in  
11 Philadelphia, for example, present one kind of  
12 problem, that for most of the counties and  
13 most of the states -- throughout most of the  
14 state, the trial courts' members are people  
15 from the community that people know and they  
16 respect and they understand. And so, for  
17 them, money isn't as big a factor and not  
18 knowing the candidate isn't a big a factor.

19           And, in Philadelphia, for example,  
20 you know, we'd an election recently or couple  
21 years back where the number one vote-getter --  
22 this was a trial court election -- the number  
23 one vote-getter was the one person who was  
24 rated unqualified by everyone, by -- every  
25 association, every group rated him

1 unqualified, but he drew the number one ballot  
2 position in a big -- in a long ballot, and had  
3 a name was that was well recognized, had a  
4 name that people new and understood, and that  
5 was enough. He was the number one vote-  
6 getter. He didn't just win, he won in a big  
7 way.

8           But despite that -- and I know there  
9 was a bill introduced by -- I think it was  
10 Hardy Williams recently that said, Let's have  
11 merit selection in Philadelphia for the  
12 Philadelphia trial court. But we decided,  
13 partially because of ours view that if you go  
14 to all of the counties throughout the  
15 commonwealth, the trial courts aren't really,  
16 for the most part, the problem in terms of  
17 money or in terms of people knowing who  
18 they're voting for. It is the appellate  
19 courts that are the problem. And so we  
20 decided to put all our emphasis there.

21           And that's kind of where -- why we're  
22 with this bill.

23           REPRESENTATIVE VEREB: Just one  
24 follow up. In terms of this group that's  
25 formed, this merit group, and I know you're

1 open to suggestions, as you stated.

2 MR. HEIM: Yes.

3 REPRESENTATIVE VEREB: What do you do  
4 to remove people? What we do to stop the  
5 culture of corruption amongst that group? Not  
6 taking a shot at any particular group or  
7 entity or government level in that group. But  
8 we all hear -- I'm up here. Appointments are  
9 being questioned all the time, whether it's by  
10 me or some of the same groups, the other end  
11 of the building, the governor's office. I  
12 don't think we do any appointments except for  
13 our leaders, who are individual appointments  
14 with different groups. But you're not going  
15 to answer now, I know we're trying move it  
16 along, but in consideration for future  
17 conversations. What do you do to remove  
18 portions of that group? What happens when  
19 that group becomes corrupted?

20 You know, you're saying partisan.  
21 I'm sure when founding fathers established the  
22 electoral process in the upper the courts,  
23 they never thought we'd be dealing with  
24 million-dollar races, three-million-dollar  
25 races.

1                   And just to comment about the judges'  
2 quotes, now you know what we go through. I  
3 have no sympathy for them.

4                   CHAIRMAN SHAPIRO: Bob

5                   MR. HEIM: I do have sympathy,  
6 believe me.

7                   CHAIRMAN SHAPIRO: Thank you,  
8 Representative Vereb.

9                   Representative Smith.

10                  REPRESENTATIVE SMITH: Thank you,  
11 Mr. Chairman.

12                  And this is really a question or  
13 comment directed to any of the three  
14 witnesses. And thank you for your testimony  
15 today. I think one of the things that is  
16 important to recognize is that -- I think  
17 these quotes recognize this fact -- that the  
18 changer of statewide -- the nature of  
19 statewide appellate elections has changed  
20 maybe as recently as four, six, eight years  
21 ago in terms of the money, the negativity, the  
22 access that, as we said before, the small-town  
23 lawyer may have to run statewide.

24                  And can you just go into a little bit  
25 of detail on that as to how these statewide



1 campaigns have changed? As I said before, the  
2 money, the negativity, the access that someone  
3 would have to just sort of jump into the race  
4 without having the ability to necessarily,  
5 right off the bat, raise six figures. And  
6 touching on Representative Vereb's comment, I  
7 certainly understand what they -- I feel their  
8 pain when they make these comments.

9 So can you go into a little bit of  
10 detail about how this statewide elections have  
11 changed over the last, you know, four, six,  
12 eight years?

13 MS. GOODMAN: The elections have  
14 become much more expensive. When you look at  
15 things leading up to kind of 2000 or so, you  
16 were talking in the hundred of thousands, not  
17 -- not insignificant money, especially in this  
18 economy, but not the kind of numbers we are  
19 seeing. Throughout the nation in the last  
20 decade, we have seen these races become more  
21 important as special interests are putting  
22 more money into it.

23 It's kind of the new -- the new area  
24 of, you know, controlling the state courts.  
25 We haven't seen it as much in Pennsylvania as

1 it being a war between businesses and unions,  
2 but particular interests would target a race  
3 and think that a judge seat was very  
4 important. And that's become -- well, we're  
5 seeing that across the nation. Our numbers  
6 are not out of line. We are an off cycle  
7 because we elect our judges in odd numbered  
8 years, so we often can compare what's happened  
9 in the nation in the two year cycle before and  
10 then the two year after, so when we were with  
11 our national partner, we look at the numbers  
12 again, and as our numbers are going up, so  
13 they are across the nation.

14 Also, as the United States Supreme  
15 Court has loosened some of the restrictions,  
16 some of the judiciary candidates can say  
17 you're hearing the races get nastier. You're  
18 seeing more special interest groups give  
19 questionnaires, press for those answers. Like  
20 Bob said, wink, wink, we know you can't tell  
21 us what you're going to rule, but how are you  
22 going to rule.

23 We know people want information about  
24 candidates, but we also know that people do  
25 not want -- when they go into court, they want

1 a judge who has not prejudged their case who's  
2 not said stuff in the media that makes them  
3 nervous that that's judge is sitting out  
4 there. They want a fair shot to get their  
5 story out.

6 MR. HEIM: The experience of Texas  
7 might be interesting to this group, because  
8 Texas is one of those states that elects, just  
9 like Pennsylvania. Texas, some years ago, was  
10 viewed as having a million, many millions of  
11 dollars were put in to elect the Texas supreme  
12 court by what was viewed as -- I don't know  
13 whether fairly or unfairly -- by the mass tort  
14 and personal injury bar, and so what happened  
15 was, the business community in Texas decided  
16 that they would match dollar for dollar or  
17 maybe double what they would put up.

18 So it's well known in the circles, in  
19 the literature or, at least, it's just well  
20 known that the business community, as some  
21 people put it -- and I think this would be  
22 pejorative and unfair -- bought the Texas  
23 supreme court. They had an election where I  
24 think four justices were up, and the business  
25 community put up tens of millions of dollars

1 in that election. And right now you have the  
2 most conservative -- probably the most  
3 conservative supreme court of anywhere in the  
4 state of Texas.

5 We don't want that to happen in  
6 Pennsylvania. I don't think that has happened  
7 in Pennsylvania. But the potential's there.  
8 The business community got together and they  
9 said, we're going to -- you know, we can  
10 afford it. We can do it. We'll put up the  
11 money. We're not -- and that's the kind of  
12 situation where, you know, as the millions go  
13 from one million to three million to five  
14 million, you know, we have to stop it.

15 MS. MARKS: I just want to point  
16 out. I didn't want to make -- I hope there  
17 was not any misconceptions that when Bob was  
18 favoring either, you know, the business  
19 community taking over or plaintiff's bar or  
20 defense bar or labor, it's just really an  
21 example of how one particular interest group  
22 gets enough involved and raises enough, it can  
23 have an enormous effect on not just one judge  
24 but on the entire judiciary.

25 REPRESENTATIVE SMITH: Thank you.



1 commonwealth court and the supreme court.

2           They are, as all of you know, the  
3 superior court is frequently the court of last  
4 resort, because the supreme court of  
5 Pennsylvania is what we lawyers call a  
6 certiorari jurisdiction, that is, they only  
7 take the cases that they want to take. The  
8 superior has to take everything. So most  
9 litigants in Pennsylvania never get passed the  
10 superior court. And so that makes it an  
11 incredibly important court. They're also very  
12 overworked, I think, but that's besides the  
13 point.

14           CHAIRMAN SHAPIRO: Thank you.

15           Representative Harper.

16           REPRESENTATIVE HARPER: Yes. What  
17 would you see as the role of the bar  
18 associations if we went to a merit selection  
19 system? Right now they do recommendations and  
20 things like that, meet and greets also  
21 sometimes. What would you see as the role of  
22 the bar associations if, say, this bill would  
23 pass?

24           MR. HEIM: I know the Pennsylvania  
25 Bar Association, in particular, since it

1 represents the sixty thousand lawyers  
2 throughout the state of Pennsylvania, has --  
3 has thought that it would be appropriate for  
4 it to be represented on the commission.  
5 Whether, you know -- you know, the problem is  
6 not everybody can be represented on a  
7 commission. And I think we're -- we're  
8 committed to having the public participation,  
9 the law enforcement community, the unions,  
10 some management, at least one dean of a law  
11 school, a respected law school in the state.

12 So whether or not the bar association  
13 was to participate or not, it would still be  
14 important for the Pennsylvania Bar Association  
15 and the Allegheny County Bar and all the bar  
16 associations to weigh in with their views, but  
17 I don't think they -- those views ought to be  
18 weighed more heavily necessarily than anybody  
19 else's.

20 REPRESENTATIVE HARPER: So the bill  
21 in front of us basically would classify the  
22 bar association as a professional association,  
23 but that could also be the society of  
24 engineers or the medical society or -- they  
25 would compete equally for that one public

1 spot.

2 MS. GOODMAN: Actually, no. That  
3 seat would be for non-lawyer professional  
4 associations. The feeling at the time of the  
5 drafting -- let me just step back for one  
6 second.

7 Many states do have designated  
8 seats.

9 REPRESENTATIVE HARPER: Right.

10 MS. GOODMAN: Especially for the bar  
11 association. Because, in Pennsylvania, we do  
12 not have what's called a unitary bar. When  
13 you pass the bar here, you have to become a  
14 member of the bar of the supreme court. You  
15 pay an attorney licensing fee. That is  
16 constitutional. That's statutory. You do not  
17 have to join to Pennsylvania Bar Association.  
18 They are an independent organization, although  
19 recognized by the supreme court as the largest  
20 organization representing lawyers. They are  
21 not a constitutional entity.

22 So we did not, in recommending and  
23 talking about the bills and learning what  
24 other states do, think that you could  
25 designate specific entities that were not



1 constitutionally recognized. For example,  
2 North Carolina has a unitary bar. When you  
3 pass the bar in North Carolina, you are a  
4 member of the North Carolina Bar Association.  
5 That's not the case here.

6           So that's step one is to why there's  
7 no one specifically named, no specific civic  
8 organization, no specific bar association,  
9 nothing like that in the bill. But the group  
10 of professional associations is for non-lawyer  
11 professional associations. It was felt -- and  
12 I think it might have some union  
13 representatives that lawyers had a lot of  
14 different opportunities to get appointed to  
15 the nominating commission because of the  
16 governor's appointments and the legislative  
17 appointments, and that many of the  
18 organizations that would be appointed through  
19 the public lottery system might appoint their  
20 own lawyers, and there didn't need to be  
21 necessarily another seat for bar  
22 associations.

23           Of course, that's subject to change  
24 as the committee and the house and the senate  
25 debate it, and we think there are lots of

1 different ways to do it. But that would be  
2 the explanation. I would agree with Mr. Heim  
3 that I think bar associations would still  
4 continue to provide valuable background  
5 information about the candidates.

6 REPRESENTATIVE HARPER: Writing oral  
7 recommendations.

8 MS. GOODMAN: I think they would  
9 probably still evaluate and at least provide  
10 testimony and information to the nominating  
11 commission. They already have well  
12 established evaluation procedures and they are  
13 very helpful to the public.

14 REPRESENTATIVE HARPER: Thank you.

15 CHAIRMAN SHAPIRO: Thank you. I see  
16 no further questions. I have one quick one.

17 Lynn, I believe you said only six  
18 states elect judges as we do in Pennsylvania.  
19 The other forty-four have an appointment  
20 process or some other process not resembling  
21 Pennsylvania's. How many of those forty-four  
22 began with an elective system, as we have here  
23 in Pennsylvania, and migrated to either  
24 appointment system or public financing or  
25 what-have-you?

1 MS. MARKS: The numbers -- there are  
2 so many different ways to look at the  
3 numbers. When we say we're only six states,  
4 it's got to be clear that that's all level of  
5 judges at -- in partisan election, where  
6 people run on a party line. There's states  
7 that have non -- some have nonpartisan  
8 elections, some have what is often called a  
9 merit selection process, which is an  
10 appointment with a nominating commission. And  
11 a few of them have just straight gubernatorial  
12 appointment.

13 I think they all started -- I guess  
14 they were all appointed, and then during the  
15 Jacksonian democracy era in 1850, a lot,  
16 including the Pennsylvania, went to election.  
17 And that's when most of them were election,  
18 but that is when -- since then, most have gone  
19 back to some form of merit selection process.  
20 There are about -- around thirty-three states  
21 and the District of Columbia that have some  
22 form of merit selection.

23 CHAIRMAN SHAPIRO: Thank you.

24 Thank you all for your testimony.

25 MS. MARKS: You know, it's

1 often called -- somebody once said that merit  
2 selection plans are like snowflakes because  
3 each one is different. And so, with the plan  
4 before you does kind of take into account the  
5 unique culture and political history of  
6 Pennsylvania.

7 Thanks.

8 MR. HEIM: Thanks very much.

9 CHAIRMAN SHAPIRO: We will next hear  
10 from Professor Michael Dimino from Widener  
11 University.

12 I know we're, I think, behind, but I  
13 think it's been a very good discussion. I  
14 would remind the professor to kind of keep  
15 your remarks to under ten minutes to allow the  
16 members of the committee to ask questions.  
17 Thank you.

18 PROFESSOR DIMINO: I certainly  
19 appreciate the reminder, as a law professor,  
20 to keep his remarks short.

21 CHAIRMAN SHAPIRO: You're also not  
22 permitted to just call on us at random.

23 REPRESENTATIVE MANDERINO: Pass.

24 PROFESSOR DIMINO: Thank you,  
25 Mr. Chairman and members of the committee.

1                   Thank you for the opportunity to  
2                   testify this morning concerning these two  
3                   bills. In the last several years, I've  
4                   written articles and essays concerning  
5                   judicial selection, including the advantages  
6                   and disadvantages of the various selection  
7                   models and the First Amendment's applicability  
8                   to judicial campaigns.

9                   I'm currently an associate professor  
10                  at the Widener University School of Law, but I  
11                  appear here not as any representative the  
12                  school itself but solely on my own behalf.

13                 For reason I'll explain, I support  
14                 the amendment insofar as it applies to the  
15                 superior and commonwealth courts, and indeed,  
16                 I think the Missouri-plan style of initial  
17                 selection would be even more appropriate for  
18                 the commonwealth's trial courts.

19                 I'm less sanguine, however, about  
20                 applying a Missouri-plan model to the supreme  
21                 court because it is that court which is most  
22                 involved in crafting public policy. And,  
23                 therefore, it is the court that most depends  
24                 on the legitimacy conferred by public popular  
25                 election.

1                   We all know the advantages of the  
2                   judicial independence. Judges are charged  
3                   with the obligation to limit the authority of  
4                   the popular majority through judicial review  
5                   and most also apply the law impartially, even  
6                   when doing so benefits unpopular causes.  
7                   Therefore, it is appears virtually axiomatic  
8                   that judges will be unable to exercise that  
9                   counter-majoritarian power if they must  
10                  appease the majority in order to reach or to  
11                  stay on the bench.

12                  But to focus on judicial independence  
13                  is to miss half the story. Judges' decisions  
14                  make policy. And judges, particularly  
15                  appellate judges, exercise discretion in  
16                  making their policy decisions. Independence,  
17                  in other words, has a downside. An  
18                  independent judge exercises policy-making  
19                  discretion without accountability to the  
20                  people. And it is the people whose consent is  
21                  the basis for government in a free republic.

22                  State supreme courts decide  
23                  constitutional, statutory, and common-law  
24                  questions, each of which provides judges with  
25                  the power to shape the law. A very brief list

1 of issues will suffice to illustrate the  
2 degree to which judges with different  
3 philosophies can affect the lives of each  
4 person in the state.

5 Judges can and do disagree about such  
6 constitutional issues as abortion, capital  
7 punishment, search and seizures, confessions,  
8 and the right to assisted suicide.

9 Statutes always contain ambiguities  
10 that require judicial clarification, and  
11 judges can shape the substance of those  
12 statutes by their interpretations, whether the  
13 statutes deal with civil rights, commercial  
14 transactions, health care, education, or any  
15 other subject. And judges' power over the  
16 common law of contracts, property, and torts  
17 invites judges to act based on their own view  
18 of such questions as whether certain types of  
19 contracts are unconscionable, whether a person  
20 has a property right in his genetic material,  
21 and whether waivers of tort liability should  
22 be enforced.

23 To their credit, the proposed  
24 constitutional amendments appear to recognize  
25 the needs for input into judicial selection,

1 as they preserve a role for the people's  
2 elected representative both in staffing the  
3 commission and in the confirmation process.

4 I note, however, that the pervasive  
5 role of politicians in the proposed process,  
6 belies some supporters overblown claim that  
7 such a system will remove politics from  
8 judicial selection. And because interest  
9 groups will continue to lobby the appointing  
10 authority, they and their money will continue  
11 to have influence.

12 No appointments process, however, can  
13 provide the same opportunity for public input  
14 and debate as can an election. And in  
15 practice, an appointments process would give  
16 the governor great power to name judges to the  
17 bench, to be sure the governor is elected, but  
18 the people rarely choose a governor based on  
19 his likely judicial appointments. And an  
20 election focused on the judiciary would allow  
21 the people to focus on the courts and the  
22 judicial policy in a way not possible when  
23 electing members of the executive or  
24 legislative branches.

25 I do not suggest that judges act only



1 as policy makers, however. As I said at the  
2 outset, they apply law as well, and in that  
3 part of their jobs, it is essential that  
4 judges be able to resist public pressure when  
5 the law's commands are unpopular. But judges  
6 do engage in policy making as well, and in  
7 that part of the job, it is essential that  
8 judges be attuned to public opinion. For the  
9 same reason, it is essential that legislators  
10 be attuned to public opinion when they make  
11 policy.

12 Judges dual function of law  
13 application and law making produces the  
14 essential dilemma that brings us here today.

15 While all the judges engage in both  
16 law application and law making, different  
17 courts engage in those different functions to  
18 different extents. State supreme courts  
19 engage in much more policy making than do  
20 trial courts, and trial court are bound to  
21 apply the law without the interpretive  
22 discretion enjoyed by appellate courts.

23 Accordingly, if we are to choose a  
24 selection method based on the proper amount of  
25 public influence on judicial policy, I suggest

1 that we should calibrate the selection method  
2 to each court's proportion of policy making  
3 responsibility. The result would be to  
4 involve the public far more in elections to  
5 appellate courts and to insulate the trial  
6 courts from voters.

7 This advantage of elections is most  
8 important for those courts that do the most  
9 policy making, specifically, the state supreme  
10 court. The infrequency of supreme court  
11 elections permits judges to focus -- sorry --  
12 permits voters to focus attention on a small  
13 number of candidates with the result that the  
14 election results may be meaningful reflections  
15 of the public's view of judicial issues, a  
16 result simply impossible when the ballot  
17 contains scores of judicial candidates unknown  
18 to voters.

19 The contrast between these different  
20 levels of courts suggests that an appointive  
21 method along the lines of the one suggested in  
22 these proposed amendments could be quite  
23 beneficial for selecting trial courts judges.  
24 Few voter in election for such judgeships are  
25 likely to be informed about the candidates or

1 even about the issues that such judges face.

2 Furthermore, because trial courts  
3 enjoy relatively little discretion, there is  
4 less need for public input into trial court  
5 judicial selection. If the chief interest in  
6 electing judges is to allow people to oversee  
7 judicially made policy, trial courts simply  
8 make less of it than do other courts. Thus,  
9 elections are their most valuable at the top  
10 of the judicial hierarchy and their most  
11 pernicious at the bottom.

12 Debates concerning judicial selection  
13 are often framed in terms of judicial  
14 independence, but judicial independence is  
15 hardly affected at all by an alternation in  
16 the mode of initial selection. The benefits  
17 of judicial independence come from the freedom  
18 that sitting judges enjoy to decide cases  
19 according to the law without risking their  
20 jobs. Nothing in these proposal would alter  
21 that decisional independence, because the  
22 proposals retain the system of retention  
23 election for evaluating sitting judges.

24 In my view, this is unfortunate.  
25 Pennsylvania has seen that negative

1 consequences of retention elections as  
2 recently as Justice Nigro's failed bid at  
3 retention in 2005. Retention elections do  
4 little to ease the fears incumbent judges face  
5 that an unpopular decision close to election  
6 day will end their career. And the  
7 uncontested and nonpartisan nature of the  
8 elections ensures that the public will be  
9 unable to use those elections as a way of  
10 focusing on legal issues except as a knee-jerk  
11 reaction to a recent controversial decision,  
12 the very sort of decision we should want  
13 judges to make without fearing public  
14 reaction.

15           If judicial independence in  
16 Pennsylvania is to be strengthened then, the  
17 appropriate way to do so is to give judges  
18 longer terms or to eliminate retention  
19 elections entirely and not to insulate the  
20 initial appointment of judges from public  
21 scrutiny.

22           Again, thank you for the opportunity  
23 to testify. My views concerning this method  
24 are more fully set forth in an essay the  
25 citation to which I believe you have. I hope

1 that both the essay and the testimony and the  
2 answers that I give to these questions will  
3 help in you considering these questions.

4 CHAIRMAN SHAPIRO: Thank you,  
5 Professor.

6 Any questions from committee  
7 members?

8 Seeing none, thank you very much for  
9 your time today, Professor.

10 PROFESSOR DIMINO: Thank you,  
11 Mr. Chairman.

12 CHAIRMAN SHAPIRO: I'd like that  
13 welcome Dave Taylor from the Pennsylvania  
14 Manufacturers' Association.

15 Welcome, Mr. Taylor.

16 MR. TAYLOR: Thank you very much.  
17 And good morning and welcome to the  
18 committee.

19 I am David N. Taylor, executive  
20 director of the Pennsylvania Manufacturers'  
21 Association. On behalf of our president and  
22 CEO, Fred Anton, I thank you for the  
23 opportunity to express our support for the  
24 efforts of the Pennsylvanians for modern  
25 courts.

1           Before I begin, I just want to take a  
2 moment to note this anniversary date of  
3 December 7th, which is Pearl Harbor Day, when  
4 in 1941 the Imperial Japanese military  
5 attacked Hawaii, killing twenty-four hundred  
6 U.S. Servicemen and wounding thirteen hundred  
7 more. May we always honor the valor and  
8 commitment of America's uniformed military  
9 personnel, who protect us, our nation, and our  
10 liberties across the generations.

11           For over a century, PMA has  
12 represented the interests of the manufacturing  
13 sector in the commonwealth's public policy  
14 process. Manufacturing is the largest sector  
15 in Pennsylvania's economy, generating seventy-  
16 five billion dollars in wealth annually, which  
17 represents 15 percent of the commonwealth's  
18 gross state product.

19           Manufacturing directly employs over  
20 five hundred seventy-five thousand  
21 Pennsylvanians and supports many additional  
22 jobs, all the way down the supply chain, all  
23 the way out the distribution network.

24           Over the years, our association has  
25 supported the idea of merit selection,

1 properly designed, in order to improve the  
2 professionalism, integrity, and independence  
3 of the judicial branch of government. Unlike  
4 the executive and legislative branches, which  
5 are and should be openly political, we believe  
6 the integrity of the statewide appellate  
7 courts would be strengthened by a merit  
8 selection process like the one envisioned in  
9 House Bill 1619.

10 By combining elements of the elective  
11 and appointive system for nominating our  
12 appellate court judges, Pennsylvania can both  
13 uphold the professionalism of the courts and  
14 protect our jurists from the conflicts of an  
15 interest that inevitably arise from political  
16 fundraising and campaigning.

17 PMA believes that using a nomination  
18 process followed by a retention election  
19 strikes the proper balance, especially when an  
20 independent nominating commission has  
21 evaluated candidates and recommended the most  
22 qualified for possible nomination.

23 Pennsylvanians have every reason to  
24 expect our statewide appellate courts will be  
25 populated with highly respected jurists who

1 are learned in the law, hold a judicial  
2 temperament, and demonstrate personal  
3 integrity and good judgement. These qualities  
4 should determine who serves on our highest  
5 courts, not a candidate's ballot position or  
6 political party or county of origin, or gender  
7 or the familiarity or ethnicity of a  
8 candidate's last name.

9 Our system of representative self-  
10 government is sustained by citizens expressing  
11 an informed choice at the ballot box. We  
12 believe Pennsylvania's current system of party  
13 nomination and direct election of statewide  
14 judicial candidates fails to serve the public  
15 interest well, because only a small fraction  
16 of the voting public is making a truly  
17 informed choice.

18 Furthermore, an important public good  
19 would be gained by insulating Pennsylvania's  
20 jurists from the inescapable appearance of  
21 impropriety that results from accepting  
22 campaign contributions from attorneys who will  
23 appear before them in court.

24 During the recently concluded  
25 statewide judicial race, both major party



1 nominees for supreme court lamented the  
2 undignified process of soliciting campaign  
3 contributions and engaging in electioneering.  
4 As one of the many Pennsylvanians who saw  
5 their television commercials attacking one  
6 another, I cannot describe the experience as  
7 beneficial to the esteem of the high court.

8           You have already heard from a number  
9 of experts on the matter, so I will not tax  
10 your patience further. Please note that the  
11 Pennsylvania Manufacturers' Association as an  
12 organization, on behalf of the manufacturing  
13 sector and as member of the larger business  
14 community, supports the efforts of the authors  
15 of House Bill 1619 in bringing the merit  
16 selection process to Pennsylvania's appellate  
17 court system.

18           Thank you very much.

19           CHAIRMAN SHAPIRO: Thank you,  
20 Mr. Taylor.

21           Are there any questions from the  
22 committee members?

23           Seeing none, thank you very much.  
24 Appreciate that.

25           MR. TAYLOR: Thank you very much.

1                   CHAIRMAN SHAPIRO: Like to recognize  
2 and welcome Charlotte Glauser from the League  
3 of Women Voters. Appreciate you being here,  
4 Ms. Glauser, and look forward to your  
5 testimony.

6                   MS. GLAUSER: Hi. I'm Charlotte  
7 Glauser. I represent the state League of  
8 Women Voters.

9                   I feel like I'm getting old in this  
10 issue. The legal has -- the league as  
11 supported merit selection of judges since  
12 1948. These positions by the league, by the  
13 way, are reached by consensus of league  
14 members around the state, and they decided  
15 back in 1948 that this was the proper thing to  
16 do as far as judges are concerned.

17                   Okay. Sixty-one years, since the  
18 League adopted that position. There are  
19 compelling recent events as well as past  
20 history to believe that this time the general  
21 assembly and the voters will support the issue  
22 that is recommended by the American Judicature  
23 Society and many state legislatures around the  
24 country.

25                   In a recent statewide judicial

1 election, candidates were forced to raise  
2 millions of dollars to support their election.  
3 Most of these funds came from law firms, and  
4 usually the bigger law firms.

5 The candidates -- some of the  
6 candidates this past election were funded by  
7 the casino owners, whose cases might come  
8 before the courts. The immediate -- this  
9 immediate brings up the issue of conflict of  
10 interest for judges who might be seen as  
11 favoring financial supporters, as other people  
12 have mentioned in their testimonies.

13 And if these judges were to recuse  
14 themselves on this basis, it might result in  
15 tied decision which wouldn't serve the public  
16 interest.

17 A notable case came before the United  
18 States Supreme Court in which a state judge  
19 was cited for refusing to step aside in a case  
20 involving a large political contribution to  
21 his election campaign. The case involved the  
22 industrial corporation as a campaign  
23 contributor. These are among the serious  
24 hazards of elected statewide judges.

25 Partisan elections involve particular

1 problems of their own. Because Pennsylvanians  
2 vote for judges on a partisan basis, there is  
3 the further situation of their allegiance to  
4 their party, and to the general assembly  
5 members, to their own party, again calling  
6 into question the bias that naturally occurs  
7 to support the laws passed by members of their  
8 own party.

9           Since the general assembly determines  
10 the level of the financial support given to  
11 the judges for the administration -- excuse  
12 me -- of justice, the courts' independence and  
13 oversight of legislation can be at risk,  
14 because the statewide courts determine  
15 compliance with the Pennsylvania constitution  
16 just as the supreme court does with  
17 legislation passed in Washington, it is  
18 especially important for the public to have  
19 confidence in the impartiality of our state  
20 judiciary.

21           The statewide courts directly oversee  
22 the operations of the local courts, whose  
23 judges are, again, elected on a partisan  
24 basis. It's incumbent that these overseers  
25 are not perceived as partisan in any way.

1           I -- I will cut my testimony down to  
2           the fact that, in general, we support the  
3           legislation. The only concern we have is to  
4           whether -- whether the commission that will be  
5           doing the nominating might include some  
6           lobbyists, because I didn't see that they were  
7           specifically restricted from serving on the  
8           panels.

9           Passage of the bill will do much to  
10          restore the public image of independence of  
11          Pennsylvania's appellate court. The League of  
12          Women Voters looks forward to amending the  
13          Pennsylvania Constitution as a major step in  
14          the administration of justice.

15          Any questions?

16          CHAIRMAN SHAPIRO: We do.  
17          Representative Smith.

18          REPRESENTATIVE SMITH: Thank you for  
19          your testimony.

20          I thank you, Mr. Chairman.

21          Just one quick question. Why  
22          specifically does the league not view it as a  
23          problem that this is going to disenfranchise  
24          voters? Why is it not a concern that this is  
25          actually taking away the rights of voters to

1 elect appellate court judges?

2 MS. GLAUSER: Well, I don't -- first  
3 of all, we really would like to have informed  
4 voters. This is very difficult in a judicial  
5 election because there is no way that  
6 statewide -- that people voting statewide can  
7 really get to understand what their positions  
8 are or the qualifications of judges are.

9 The other piece of it is that the  
10 public is not removed from the voting. They  
11 will -- they will have a chance, first of all,  
12 to vote on the amendment to the constitution,  
13 and, of course, that takes some time because  
14 it takes two sessions of the legislature and  
15 then it goes on the ballot.

16 The other piece is that they are not  
17 restricted in voting for retention, and after  
18 the appointed judges serve for I think it's  
19 four years, then they come up for retention.  
20 And at that point, they will have a little bit  
21 of a record to present to the public.

22 So we're not actually removing votes  
23 from the public, but what we're trying to do  
24 is to get informed voting. As a matter of  
25 fact, the -- the only way that, at this

1 point -- the league does have judicial  
2 debates, and they did in Philadelphia. The  
3 only one that we had in Philadelphia was for  
4 the supreme court. I don't know that it made  
5 any difference in the -- in the voting  
6 process, but there's -- there's just too many  
7 places around the state for the league to be  
8 able to do this and to take care of the other  
9 judicial elections.

10 The only -- the only resort we have  
11 now is the recommendations of the bar  
12 association, Pennsylvania Bar, Philadelphia  
13 Bar, because I'm from Philadelphia, and this  
14 is not sufficient information for the voting  
15 public.

16 As a matter of fact, unfortunately,  
17 because the elections come up on the off  
18 years, they are the -- they have the least  
19 turnout of voters. You know, the percentage  
20 of voters in the judicial elections is  
21 minuscule, so that their -- their impact is  
22 minimal. People don't go to the polls  
23 during -- during the judicial election  
24 because they don't know who they are. And to  
25 go by ballot position, I mean, that's really a

1 lottery.

2 Any other questions?

3 CHAIRMAN SHAPIRO: Representative  
4 Vereb.

5 REPRESENTATIVE VEREB: Thank you.  
6 Thank you for your testimony.

7 And a couple people brought it up,  
8 but I'm not sure what we do about voter  
9 apathy.

10 MS. GLAUSER: I wish we knew.

11 REPRESENTATIVE VEREB: You mentioned  
12 retention.

13 MS. GLAUSER: Yeah.

14 REPRESENTATIVE VEREB: I'm not  
15 familiar, maybe you could educate me, with  
16 your history at the league. Has any judge  
17 been removed under retention?

18 MS. GLAUSER: As a matter of fact,  
19 yes, they have, in fairly recent times. In  
20 general, no. In general, retention elections  
21 are sort of automatic, because the public  
22 doesn't really pay that much attention. The  
23 elections come up and at times when there is  
24 minimal turnout anyhow.

25 It is -- it's usually a sort of a



1 done deal, shall we say, that retention  
2 elections are kind of automatic. That has not  
3 been the case just the last couple of  
4 elections. So I don't know how significant  
5 that is. In general, I would say not.

6 REPRESENTATIVE VEREB: The reason why  
7 I ask and actually Representative Shapiro  
8 pointed out is -- should have known that one.  
9 I forgot. But in Montgomery County, there was  
10 big "vote no" signs put up the last minute in  
11 the judicial election, and I don't think  
12 retention-to-judge questions are a way of  
13 people's voice, because I think just as much  
14 as we say they don't know who the judges are,  
15 they don't even know what retention or not  
16 retention means.

17 MS. GLAUSER: It's unfortunately  
18 true.

19 REPRESENTATIVE VEREB: That also  
20 takes special interest money to take a judge  
21 off the bench. So I agree with a lot of what  
22 you said. I do disagree with retention as an  
23 opportunity for voters to voice, because I  
24 think we have the same challenges that you  
25 bring up on the other side of the argument. I

1 just don't think that people are  
2 necessarily -- first of all, it takes a lot of  
3 money to go up against a sitting judge to  
4 essentially remove them, unless, of course,  
5 the press gets on a particular issue, as was  
6 done in '05-'06.

7 MS. GLAUSER: Right. The retention  
8 election, because of the -- because of the  
9 recent one of just a few years ago, there  
10 were -- there were judges who were raising  
11 money to support the retention. And I don't  
12 like that either, but I think that the -- in  
13 general, the merit selection process helps a  
14 lot, because at least the panels are able to  
15 interview potential candidate. So they  
16 have -- they have more information, certainly,  
17 than the ordinary voter does.

18 REPRESENTATIVE VEREB: Thank you.

19 CHAIRMAN SHAPIRO: Thank you,  
20 Ms. Glauser. And thank you for the league for  
21 of their outstanding work. We appreciate you  
22 being here.

23 MS. GLAUSER: We appreciate your  
24 appreciation.

25 CHAIRMAN SHAPIRO: Like to welcome

1 Rick Bloomingdale, secretary-treasurer from  
2 Pennsylvania AFL-CIO, and, Rick, we appreciate  
3 you being here and look forward to your  
4 testimony.

5 MR. BLOOMINGDALE: Thank you. I'll  
6 read through this as quickly as possible. And  
7 then try to answer whatever questions I can.

8 Good morning, acting chair,  
9 whether -- Chairman Shapiro, Chairman  
10 Creighton, and members of the Judiciary  
11 Committee Subcommittee on Courts.

12 Thank you for inviting me here today  
13 to discuss House Bill 1619, the issue of merit  
14 selection and the addition of the appellate  
15 court nominating commission.

16 My name is Rick Bloomingdale, and I'm  
17 secretary-treasurer of the Pennsylvania  
18 AFL-CIO. I'm here today representing over  
19 nine hundred fifty thousand hardworking  
20 Pennsylvanians, many of whom take pride in  
21 educating themselves about candidates and  
22 voting for the candidate whom they believe is  
23 the most qualified.

24 Historically, it has been the belief  
25 of the Pennsylvania AFL-CIO that the only fair

1 and correct method to appoint statewide  
2 appellate judges is through the election  
3 process. In recognizing that our current  
4 system is not perfect, we believe that  
5 election reform for judicial candidates would  
6 be a better step, rather than removing the  
7 process -- election process all together.

8 For this reason, the Pennsylvania  
9 AFL-CIO respectfully opposes House Bill 1619,  
10 the use of an appellate court nominating  
11 commission and the practice of merit  
12 selection. However, I should include that  
13 with thorough consideration of the issue, we  
14 may consider a version of this bill, should it  
15 be revised to include several updates and  
16 adjustments.

17 The power of the judiciary over the  
18 lives of working men and women is quite  
19 substantial. It is, of course, one-third of  
20 our state government. The judiciary sets  
21 rules on issues important to working men and  
22 women across the commonwealth. Issues such as  
23 unemployment compensation, workers'  
24 compensation, workplace safety, and labor  
25 relations. Because of this, it's vital that

1 we continue to allow each man and woman in  
2 this commonwealth to vote for a judge whom  
3 they believe will bring quality, integrity,  
4 accountability, and fairness to our democracy.

5 Our first and foremost issues with  
6 merit selection is simple. Merit selection  
7 takes away the voice from the voting public  
8 and bestows the most important decision in a  
9 select few of political elites. By doing so,  
10 you discredit the knowledge and abilities of  
11 voting Pennsylvanians all across the  
12 commonwealth.

13 Union members make up a  
14 substantial -- substantial portion of the  
15 voting public in Pennsylvania. Our members  
16 who vote have accounted for as much as 33  
17 percent of the total vote in the statewide  
18 election. Our affiliates want a voice when it  
19 comes to selecting our next judges -- judge or  
20 justice.

21 Furthermore, the election process is  
22 a public process, which allows for general  
23 public participation and also provides for  
24 public scrutiny of candidate and their  
25 records. Such participation and scrutiny

1 ensure that the candidate who is elected will  
2 bring quality and fairness to the bench.

3 This leads me to heart of our  
4 discussion today: the appellate nominating  
5 commission. The commission lacks true  
6 representation of the public. In fact, I may  
7 argue that the public would be  
8 underrepresented.

9 Slightly more than a quarter of the  
10 appointees, four, come from the governor, and  
11 the same holds true for the four legislative  
12 appointees. These eight commission members  
13 are likely to be connected politically to the  
14 state parties, the governor, and the  
15 legislature. The remaining six appointees are  
16 most closely related to our public; however,  
17 the remaining six represent a minority on the  
18 commission.

19 One classification is assured at  
20 least 50 percent of the commission and that's  
21 the lawyers. Lawyers will have a minimum of  
22 seven of the fourteen seats and could at any  
23 time have more, depending on who else has been  
24 appointed. Just as lawyers are not the  
25 majority of the voters on election day, they

1 should not be the majority in the nominating  
2 commission.

3 A question cannot help but be asked:  
4 Whose interest will be represented in the  
5 commission? The governor's? The  
6 legislature's? The lawyer's? Or the public?  
7 Perhaps all of the interests will be  
8 represented, but how do we know whose interest  
9 will be first or most considered? The public  
10 interest should always be first and foremost.  
11 But how would we ensure that the public  
12 interest is first when the public would have  
13 essentially no voice in the matter? All of a  
14 sudden the merit selection process quickly  
15 becomes more complex, partisan, and  
16 political.

17 Partisan and political, these are the  
18 two words that best describe merits  
19 selection. Selecting judges and justices  
20 through a commission, then by a governor, and  
21 final approval by the senate is not less  
22 partisan and political; it's less public.

23 Before closing, I would like to  
24 briefly mention one alternation to House Bill  
25 1619 which I believe would strengthen the bill

1 and would perhaps lead us to reconsider our  
2 position on merit selection. We propose that  
3 a second advisory board be created which would  
4 consist of all lawyers. These lawyers should  
5 preferably be professors of law at credited  
6 Pennsylvania law schools. In conjunction with  
7 this new advisory board, we would suggest that  
8 all lawyers then be removed from the  
9 nominating commission.

10 The purpose of this advisory board  
11 would be to counsel the commission in regards  
12 to the judges being considered for selection.  
13 It would be the responsibility of the advisory  
14 board to provide information on the judges'  
15 record, decision, history, and prudence.

16 As for the nominating commission,  
17 it's important that these people truly be  
18 representative of the voting public of the  
19 commonwealth.

20 To close, the Pennsylvania AFL-CIO  
21 believes that the election process for judges  
22 is working, perhaps not perfect, but it is  
23 working well. Our judges have done an  
24 honorable job in maintaining equity and  
25 fairness.



1                   Furthermore, it's our belief that in  
2                   order to improve our selection process,  
3                   judicial election reform would be the first  
4                   and best answer. Public financing,  
5                   revaluating ethical guidelines, campaign  
6                   finance reporting are just some of the ways to  
7                   consider reforming judicial elections and  
8                   perhaps moving to a nominating commission  
9                   incorporated with merit selection process is  
10                  one of the ways to improve on some of these  
11                  issues, but removing the public from the  
12                  process should not be our first option, it  
13                  should be our last.

14                  To close, I would like to state that  
15                  while we do not always like the outcome of the  
16                  elections, we trust the people, as voters, to  
17                  make good decisions overall.

18                  Thank you for the opportunity, and  
19                  I'd be glad to answer any questions that you  
20                  may have.

21                  CHAIRMAN SHAPIRO: Thank you.

22                  Representative Manderino.

23                  REPRESENTATIVE MANDERINO: Thanks.

24                  And thanks, Mr. Bloomingdale, for  
25                  your testimony.

1                   Not so much a question, but -- and I  
2 do appreciate where your testimony is coming  
3 from, but as a lawyer, I just have to defend  
4 my class by pointing out the fact that the  
5 lawyers are doing their job for their  
6 clients. And their clients are from every  
7 walk of life, from the most economically to  
8 the least economically advantaged or  
9 disadvantaged and every one in between.

10                   MR. BLOOMINGDALE: And, you know, as  
11 I was writing this and rewriting it with Mike  
12 Stefan, who's here from our staff, you know, I  
13 looked at that and thought it was little  
14 harsh, but, you know, the idea of an advisory  
15 committee to the commission would be doing  
16 exactly what you said, lawyers being clients  
17 to the commission, who would be representative  
18 of the public. That's what a lawyer's job is,  
19 is to advise their clients, and whether the  
20 clients take the advice or not is up to them.

21                   But I certainly -- and, clearly,  
22 judges are lawyers, as they have to be, and  
23 make great decision and policy decisions, and,  
24 again, you look at our bench, and, you know,  
25 for the most part -- we've had lots of

1 election money involved, but for the most  
2 part, our justices and judges have done a  
3 remarkable job of not letting that interfere  
4 with a decision.

5           Once they're elected, they sort of  
6 put that aside and say, you know, we were  
7 elected by a majority of the people of  
8 Pennsylvania, unfortunately only about a  
9 million of them voted, but that's a million  
10 people who voted as opposed to, you know, a  
11 few thousand campaign contributors. Our  
12 judges and justices have done a terrific job  
13 of putting aside who gave them money to do,  
14 first and foremost, what they were elected to  
15 do, and that's be the judges for all of the  
16 people of Pennsylvania.

17           CHAIRMAN SHAPIRO: Thank you.

18           Representative Smith.

19           REPRESENTATIVE SMITH: Thank you for  
20 your testimony today, Mr. Bloomingdale.

21           I just have two quick questions. You  
22 had mentioned at the outset of your testimony  
23 that there may be adjustments and  
24 modifications to this legislation that would  
25 possibly lead you to reconsider your position

1 or to at least give it some second  
2 consideration. And I guess my first question  
3 is, are there any other adjustments or  
4 modifications that you could propose to us, or  
5 certainly propose at a later date, I would  
6 certainly welcome them, to make this  
7 legislation better and to lead to your  
8 reconsideration. That's my first question.

9 Then my second question is on the  
10 removal of lawyers from the nominating  
11 commission. And my question there is, is your  
12 concern -- is AFL-CIO's concern the fact that  
13 there are lawyers as members of the fourteen-  
14 person nominating commission or -- is your  
15 concern the individuals or groups identified  
16 as appointed members of the nominating  
17 commission? In other words, are you okay with  
18 a current structure of appointments to the  
19 nominating commission if there are no  
20 attorneys being appointed.

21 MR. BLOOMINGDALE: That's a hard  
22 question. Let me answer your first one first  
23 about whether or not we would reconsider our  
24 position. And just, to give you a little  
25 history, up until -- I think it was about our

1 2004 convention, the AFL-CIO had been  
2 absolutely opposed to any kind of merit  
3 selection.

4 In 2004, at our convention, which is  
5 our governing body, we passed a resolution  
6 that said that we would consider merit  
7 selection if there were a way to make sure  
8 that the public was absolutely involved and  
9 covered by this -- you know, by some kind of  
10 merit selection process.

11 So the actual mechanics of how that  
12 would work -- and I probably shouldn't say,  
13 because lawyers are certainly a class of  
14 people who have -- as Representative  
15 Manderino --

16 REPRESENTATIVE MANDERINO: Classy  
17 people.

18 MR. BLOOMINGDALE: Classy people,  
19 that's right.

20 CHAIRMAN SHAPIRO: Let the record  
21 reflect he's saying --

22 MR. BLOOMINGDALE: But they vote as  
23 well, so, you know, my problem is that they  
24 would become the majority of this commission  
25 when they're not a majority of the

1 electorate.

2           So, with that, I think we could look  
3 at some ways and mechanisms to best get a  
4 commission that represents the public so that  
5 we could have true and honest merit  
6 selection.

7           The second part of, you know, why we  
8 have -- you know, the same reason a perception  
9 about special interest money controlling  
10 election, who's to say that, you know, if you  
11 have eight, nine lawyers on there, who --  
12 there's nothing in here that prohibits those  
13 lawyers from appearing before judges, which  
14 then hinders their ability to make money.  
15 But, you know -- so you're still going to have  
16 that appearance of impropriety. If you have a  
17 person on the commission who has voted to send  
18 Justice X to the governor, and the governor  
19 sends it to the senate, and the senate  
20 confirms, there's always going to be some  
21 cynic out there who says: How do I know that  
22 judge is being fair?

23           I mean we're all people, and we all  
24 make those kind of assumptions, but, for the  
25 most part -- and I haven't seen the polls that

1 other folks mention, but I think for the most  
2 part our Pennsylvania judiciary probably has  
3 a -- if people know about it, which they  
4 don't, and that's a big problem as well --  
5 that they have a pretty good deal of respect  
6 for the men and women who are serving on  
7 that.

8           People do turn out and vote for  
9 them. They do educate themselves on the  
10 judges. Not as many as we would like, but  
11 they certainly have done that.

12           One other way -- one other reform may  
13 be to move the other judicial elections to a  
14 even-numbered year, so that you get higher  
15 turnout, with people paying more attention to  
16 what they regularly see as an election. So,  
17 you know, the odd-number years not only  
18 reflect the judicial election, but our county  
19 commissions, mayors. We get all of kinds of  
20 reduced turnout because we just have elections  
21 every year and people sometimes get tired of  
22 doing elections.

23           So, you know, maybe one answer is  
24 move the election to, you know, an even-  
25 numbered year, when you have an increased

1 turnout and increased interest in elections.

2 But that's -- the whole issue of --  
3 you know, because lawyers have to appear  
4 before judges for the most part, if they're on  
5 the nominating commission, do you raise the  
6 same kind of perception? Not really, because  
7 I don't think there's any real impropriety  
8 that's taking place on our supreme court in  
9 terms of justices ruling in favor of  
10 contributors like they had in West Virginia.

11 But, you know, the concern was not  
12 actual impropriety but the appearance of  
13 impropriety. And if you have a nominating  
14 commission of lawyers, you're still going to  
15 have, like I said, some cynic who would say  
16 there's an appearance of impropriety.

17 I happen to have great faith in the  
18 people of Pennsylvania and who they elect.  
19 Don't always agree, but I have, overall -- you  
20 know, our country's done a -- we have been a  
21 great position. Our state's done great  
22 things. And, you know, the elections have  
23 served our people well.

24 Was an answer like ten minutes.

25 Sorry.



1                   CHAIRMAN SHAPIRO: Just one final  
2 question. I was interested in hearing your  
3 comment about increased campaign finance  
4 reporting. Can you go a little bit more into  
5 that? My sense was you were just saying have  
6 additional disclosure as to who the donors are  
7 and how much, how frequently, is that what --

8                   MR. BLOOMINGDALE: Yes. And  
9 transparency always helps. It helps people  
10 make decisions who are the folks underwriting  
11 these elections. It helps to have a more  
12 informed voter and the more information that  
13 voter has.

14                  CHAIRMAN SHAPIRO: Reminds me of -- I  
15 guess it was not this most recent supreme  
16 court election but the one prior when Justice  
17 or Judge Lally-Green was on the ballot, and  
18 there was an outside group from Virginia that  
19 was lobbying a significant amount of money  
20 into our state on ads. She said she hadn't  
21 asked for it. She didn't want those ads to be  
22 on there. Nevertheless, they did, many would  
23 say, had an impact on the race. I've  
24 introduced campaign finance reform that would  
25 require those so-called 527s to have greater

1 disclosure in terms of the expenditures they  
2 make if they come to our state.

3 It is a federal tax structure which  
4 allows them to establish these 527s, but we  
5 need to have more reporting here in  
6 Pennsylvania, so we certainly welcome the  
7 AFL's support for that type of initiative and  
8 appreciate your constructive feedback to  
9 Representative Smith, the prime sponsor of  
10 this bill.

11 MR. BLOOMINGDALE: Sure, my pleasure.

12 CHAIRMAN SHAPIRO: Thank you very  
13 much, and thank you to all of the testifiers.  
14 I think this has been an incredibly  
15 informative hearing. Certainly we have our  
16 work to do, and Representative Smith will  
17 continue to take your comments and move them  
18 forward in a very constructive way.

19 And thank you, committee members, for  
20 being here today.

21 11:45 p.m.

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WRITTEN REMARKS SUBMITTED

(The following statement letter was submitted  
by Justin M. Johnson, Esquire)

STATEMENT TO HOUSE JUDICIARY COMMITTEE

PUBLIC HEARING ON MERIT SELECTION

DECEMBER 7, 2009 - HARRISBURG

JUSTIN M. JOHNSON, ESQUIRE

I REGRET THAT IT IS IMPRACTICABLE TO  
TRAVEL TO HARRISBURG FOR THE PUBLIC HEARINGS  
ON DECEMBER 7TH. I THANK THE COMMITTEE FOR  
PERMITTING WRITTEN SUBMISSIONS.

I AM THE BENEFICIARY OF THE MERIT PROCESS  
EMPLOYED BY THEN-GOVERNOR DICK THORNBURGH WHEN  
FACED WITH THE DUTY OF NOMINATING EIGHT  
CANDIDATES FOR ASCENSION TO THE SUPERIOR COURT  
OF PENNSYLVANIA IN 1980. THE LEGISLATURE HAD  
ENACTED A BILL EXPANDING THE COURT FROM SEVEN  
TO 15 COMMISSIONED MEMBERS. GOVERNOR  
THORNBURGH SELECTED EIGHT LAWYERS FROM A FIELD  
OF AT LEAST 85 APPLICANTS TO BE CONSIDERED BY  
THE PENNSYLVANIA SENATE FOR APPOINTMENT TO THE  
COURT. WITHIN THOSE EIGHT, FOUR WERE

1           REPUBLICANS AND FOUR WERE DEMOCRATS, AS  
2           REQUIRED BY THE ENABLING LEGISLATION. IN  
3           ADDITION, GOVERNOR THORNBURGH INCLUDED ONE  
4           FEMALE AND ONE AFRICAN-AMERICAN AMONG THE  
5           EIGHT. THE CATHOLIC, PROTESTANT AND JEWISH  
6           RELIGIONS WERE ALL REPRESENTED IN THOSE FIRST,  
7           EIGHT NOMINEES.

8                         SIX OF THE ORIGINAL EIGHT SERVED A MINIMUM  
9           OF TWELVE MONTHS ON THE COURT. ALL EIGHT  
10          DEMONSTRATED THEIR STRONG LEGAL ABILITY,  
11          APPROPRIATE TEMPERAMENT AND DEDICATION TO THE  
12          RULE OF LAW WHILE WORKING ON THE COURT.

13                        THE PROCESS EMPLOYED BY GOVERNOR  
14          THORNBURGH DID NOT CONTAIN ALL OF THE  
15          PROCEDURAL PROTECTIONS CONTAINED IN HOUSE  
16          BILLS 1621 AND 1619. NEVERTHELESS I SUBMIT  
17          THAT THE RESULTS OF THE GOVERNOR'S SELECTIONS  
18          DEMONSTRATE THE BENEFITS THAT ARE ACHIEVABLE  
19          THROUGH MERIT SELECTION. HAVING SERVED WITH  
20          MY COLLEAGUES OVER A PERIOD OF 27 YEARS, I AM  
21          SATISFIED THAT THE MANNER IN WHICH THE MEMBERS  
22          OF THE COURT SO SELECTED HAVE DISCHARGED THE  
23          DUTIES PLACED UPON THEM REFLECT HIGH CREDIT  
24          UPON THE JUDGES THEMSELVES, THE GOVERNOR WHO  
25          APPOINTED THEM AND, INDEED, THE COMMONWEALTH

1 OF PENNSYLVANIA.

2 I PRACTICED LAW IN ALLEGHENY COUNTY FOR 18  
3 YEARS, FIRST WITH MY FATHER AND BROTHER, AND  
4 THEN AS A PARTNER WITH THE FIRM OF BERKMAN,  
5 RUSLANDER, POHL, LIEBER & ENGEL. I THEN  
6 SERVED AS A JUDGE OF THE SUPERIOR COURT FOR  
7 ANOTHER 27 YEARS. I HAVE HAD BOTH THE  
8 PRIVILEGE AND THE OPPORTUNITY TO ENGAGE IN THE  
9 PRACTICE OF LAW AND THE DISPENSATION OF  
10 JUSTICE. I BELIEVE STRONGLY THAT THE TIMELY  
11 PASSAGE OF HOUSE BILLS 1621 AND 1619 IS  
12 CRITICAL TO THE STRENGTHENING OF OUR APPELLATE  
13 COURT SYSTEM HERE IN THIS COMMONWEALTH, IF WE  
14 ARE TO HAVE A JUDICIAL SYSTEM OF WHICH ALL  
15 PENNSYLVANIANS CAN BE PROUD.

16 REASONABLE PEOPLE WILL DISAGREE ABOUT THE  
17 BEST WAY TO SELECT APPELLATE COURT JUDGES.  
18 CERTAINLY, OPEN DIALOGUE WILL BE IMPORTANT IF  
19 WE ARE TO CHANGE HOW WE PICK OUR APPELLATE  
20 JUDGES. IN THE CASE OF THE SUPERIOR COURT,  
21 ONE MIGHT SPECULATE WHETHER THE PERIOD OF MORE  
22 THAT THIRTY-FIVE YEARS BETWEEN THE ELECTION OF  
23 THEODORE SPAULDING AND THE ELECTION OF CHERYL  
24 ALLEN TO THE COURT, A PERIOD DURING WHICH  
25 THERE WERE NO MINORITIES ON THAT COURT, MIGHT

1 NOT HAVE BEEN AN ARGUABLY EMBARRASSING HIATUS  
2 HAD NOT GOVERNOR THORNBURGH EXERCISED HIS  
3 APPOINTIVE POWER IN 1980 TO SUBMIT THE NAMES  
4 OF PHYLLIS BECK, PERRY SCHERTZ AND JUSTIN  
5 JOHNSON TO THE SENATE FOR YOUR CONSTITUTIONAL  
6 ADVICE AND CONSENT.

7 LAST YEAR, WHILE BEING INTERVIEWED ON  
8 PITTSBURGH TELEVISION STATION WTAE, OUR CHIEF  
9 JUSTICE, RONALD CASTILLE, INDICATED SUPPORT  
10 FOR A MERIT SELECTION SYSTEM. HIS REASON  
11 SEEMED TO CENTER AROUND THE LARGE AMOUNTS OF  
12 MONEY NOW BEING SPENT DURING JUDICIAL ELECTION  
13 CAMPAIGNS --- BOTH PRIMARY AND GENERAL --- AND  
14 THE PERCEIVED DISENCHANTMENT OF THE ELECTORATE  
15 RESULTING FROM SUCH SPENDING. I AGREE THAT  
16 THIS REPRESENTS ONE REASON FOR REPLACING THE  
17 ELECTION PROCESS WHICH NOW EXISTS. I PREFER,  
18 HOWEVER, TO EMPHASIZE WHAT I BELIEVE TO BE  
19 POSITIVE REASONS FOR MOVING TO MERIT  
20 SELECTION.

21 THE PROPOSED LEGISLATION PROVIDES FOR  
22 A BALANCED APPELLATE COURT NOMINATING  
23 COMMISSION WHICH WILL HAVE THE DUTY TO SUBMIT  
24 FIVE POTENTIAL NOMINEES TO THE GOVERNOR. THE  
25 MAKEUP OF THE COMMISSION IS SUFFICIENTLY BROAD

1 TO INSURE THAT DIVERSE VIEWS AND KNOWLEDGE  
2 WILL BE BROUGHT TO BEAR ON THE SELECTION  
3 PROCESS. THE GOVERNOR REMAINS FREE TO SELECT  
4 ANY ONE OF THE FIVE RECOMMENDED PERSONS. THAT  
5 SELECTION REMAINS SUBJECT TO THE ADVICE AND  
6 CONSENT OF THE SENATE, CONTINUING THE PRESENT  
7 PRACTICE. A PROCEDURE IS INCLUDED IN THE  
8 PROPOSED LEGISLATION PROVIDING FOR A SITUATION  
9 WHERE THE SENATE DETERMINES, AS IS ITS RIGHT  
10 AND OBLIGATION, THAT CONSENT MUST BE WITHHELD.

11 I ALSO BELIEVE THAT THE PROVISION IS  
12 A GOOD ONE THAT REQUIRES A JUDGE WHO HAS BEEN  
13 APPOINTED AND SEATED THROUGH THIS PROCESS TO  
14 STAND FOR RETENTION AT THE EXPIRATION OF FOUR  
15 YEARS IN OFFICE. THE NEED FOR FOUR OF  
16 GOVERNOR THORNBURGH'S 1980 APPOINTEES TO STAND  
17 FOR ELECTION IN 1981 RESULTED IN THE DEFEAT OF  
18 TWO OF THE APPOINTEES (ONE REPUBLICAN AND ONE  
19 DEMOCRAT), BOTH OF WHOM I HAD COME TO BELIEVE  
20 WERE WELL QUALIFIED TO CONTINUE IN OFFICE.

21 I BELIEVE THAT BOTH THE PROPOSED  
22 LEGISLATION AND CONSTITUTIONAL AMENDMENT  
23 REPRESENT A REASONABLE APPROACH TO  
24 ESTABLISHING THE MERIT SELECTION OF APPELLATE  
25 COURT JUDGES IN PENNSYLVANIA. WHILE IT MAY BE

1 EXPECTED THAT AMENDMENTS MAY BE OFFERED DURING  
2 THE LEGISLATIVE PROCESS, I HAVE DISCERNED  
3 NOTHING IN THE LEGISLATION REQUIRING MATERIAL  
4 REVISION OR CORRECTION. I WOULD URGE YOUR  
5 COMMITTEE, MOVING AS PROMPTLY AS PRUDENCE AND  
6 GOOD JUDGMENT MIGHT PERMIT, TO ADVANCE THIS  
7 LEGISLATION THROUGH THE NECESSARY PROCESS WITH  
8 A DESIRE THAT IT MIGHT SURVIVE INSPECTION AND  
9 BE SUBMITTED TO THE GOVERNOR FOR APPROVAL.

10  
11 JUSTIN MORRIS JOHNSON  
12 FORMER JUDGE,  
13 SUPERIOR COURT OF PENNSYLVANIA  
14

15 (This concludes the letter submitted by Justin  
16 M. Johnson, Esquire. The content was not  
17 altered to correct any errors in spelling,  
18 grammar, or punctuation.)  
19

20 \* \* \* \* \*

21  
22 (The following letter was submitted by the  
23 Association of Corporate Counsel, Delaware  
24 Valley Chapter.)  
25





1 qualified appellate judges sitting on the  
2 bench. Judges must be able to provide a fair  
3 and impartial interpretation of the law. The  
4 current judicial election system, in all  
5 practicality, requires judicial candidates to  
6 raise significant sums of money, too often  
7 from special interest groups and from lawyers  
8 who practice regularly in state court. When  
9 judges rely on campaign contributions in order  
10 to get elected, this creates the appearance of  
11 bias, if not an actual conflict of interest.  
12 On a national level, the U.S. Supreme Court's  
13 June 8, 2009 decision in Caperton v. A.T.  
14 Massey Coal Co., Inc. (129 S.Ct. 2252), most  
15 recently recognized the threat to impartial  
16 justice posed by state judges who are  
17 recipients of campaign funds. In that case,  
18 the Court required a West Virginia state court  
19 judge who had received large campaign  
20 donations to step aside from deciding a case  
21 involving a political contributor. The  
22 Court's ruling in this case, shows the  
23 importance of the issue of merit selection.

24 DELVACCA is uniquely qualified to  
25 speak on this important issue. Our

1 organization is based in Pennsylvania and  
2 represents the interest of in-house attorneys  
3 in Southeastern Pennsylvania, Southern New  
4 Jersey and Delaware. The organization has 965  
5 individual members and a vast majority of our  
6 members either live or work in Southeastern  
7 Pennsylvania. Our membership represents  
8 in-house attorneys from over 400 companies in  
9 the region. DELVACCA is a chapter of the  
10 Association of Corporate Counsel, which serves  
11 the professional needs of over 25,000  
12 attorneys who practice as employees in legal  
13 departments of corporations and other private  
14 sector organizations worldwide. As in-house  
15 counsels, our members work in both the legal  
16 and business community. On a daily basis, our  
17 members see the impact that the judicial  
18 system can have on the operation of their  
19 employers. DELVACCA members are also often  
20 asked to support would-be judges through  
21 political endorsements and financial  
22 contributions. As an organization we believe  
23 that the current selection system of public  
24 voting for judicial candidates has the  
25 potential to lead to an outcome where the most

1 qualified judges are not able to reach the  
2 appellate bench. We believe that the citizens  
3 of Pennsylvania would be best served by the  
4 implementation of a method of judicial  
5 selection that emphasizes judicial  
6 qualifications and one that enables appellate  
7 judges to get out of the fundraising business  
8 so that they can focus on the task of  
9 providing impartial judicial review.

10 It is worth noting that Pennsylvania  
11 is one of only six states, along with:  
12 Alabama, Illinois, Louisiana, Texas and West  
13 Virginia, that selects all judges through  
14 contested, partisan elections. It is  
15 imperative for Pennsylvania to join the  
16 majority of states which have at least some  
17 form of merit selection as part of their  
18 judicial process. Judicial elections reward  
19 fundraising ability and campaign skills for a  
20 position that requires impartial decision-  
21 making. Too often, appellate judges are  
22 elected based on ballot position, expensive  
23 television or newspaper advertisements, or  
24 based on factors such as their hometown or  
25 where the largest turnout is. Diversity

1 issues such as gender, race and ethnicity are  
2 important factors to be considered in order  
3 for the proposed appellate court nominating  
4 commission to be able to put forth a diverse  
5 field of candidates. However, those factors  
6 should not be the sole reasons that judges are  
7 elected and in the current partisan election  
8 system, a judge may receive a vote solely  
9 based on their gender, race or ethnicity.

10 Both of the aforementioned House bills  
11 effectively address the diversity issue with a  
12 process that will ensure that a list of  
13 qualified, diverse candidates are presented to  
14 the Governor for nomination.

15 As an organization, we hope that  
16 Pennsylvania legislature will take full  
17 consideration of our view on this issue, which  
18 is that now is the time to give Pennsylvanians  
19 the opportunity to change the way that we  
20 select appellate judges. Pennsylvania needs  
21 to create a system that ensures that the most  
22 qualified judges are members of our appellate  
23 courts.

24 Thank you for giving me the  
25 opportunity to testify on this important

1 matter on behalf of DELVACCA.

2

3 (This concludes the letter submitted by  
4 DELVACCA. The content was not altered to  
5 correct any errors in spelling, grammar, or  
6 punctuation.)

7

8 \* \* \* \* \*

9

10 (The following letter was submitted by the  
11 American Judicature Society.)

12

13 Testimony of the American Judicature  
14 Society, In Support of HB 1619 and HB  
15 1621

16

17 The American Judicature Society (AJS)  
18 is a national nonpartisan organization of  
19 judges, lawyers, and other citizens dedicated  
20 to maintaining the independence and integrity  
21 of the courts. Consistent with this mission,  
22 AJS since its inception has promoted a  
23 commission-based appointment system for  
24 selecting judges - a process that has come to  
25 be known as "merit selection." AJS believes

1 that merit selection benefits the judiciary in  
2 four essential ways:

3           Selecting highly qualified judges.  
4           The independent nominating commission  
5           nominates individuals for appointment on the  
6           basis of their professional qualifications  
7           rather than their political credentials. It  
8           evaluates applicants on criteria relevant to a  
9           judge's role, such as impartiality, integrity,  
10          judicial temperament, collegiality, industry,  
11          and communication skills. At the same time,  
12          the commission screens out unqualified  
13          applicants. Similar screening and evaluative  
14          mechanisms do not exist in elective systems.  
15          After an initial term of office, voters assess  
16          each appointee's performance in a nonpartisan  
17          retention election and remove from office  
18          those who have not fulfilled their judicial  
19          responsibilities.

20                 Bringing greater diversity to the  
21                 bench. In addition to placing the best  
22                 qualified judges on the bench, merit selection  
23                 also brings greater diversity to the courts.  
24                 The merit selection process may be structured  
25                 so that opportunities for seating judges who

1 represent the diversity of the state are  
2 enhanced. In 2008, 44% of the minority judges  
3 and 33% of the women judges serving on state  
4 appellate courts were chosen through merit  
5 selection. Only 22% of minorities and 27% of  
6 women were chosen in partisan elections.

7           Limiting politics in the selection  
8 process. For the past decade, judicial  
9 elections have seen unprecedented campaign  
10 fundraising and spending, increased special  
11 interest group involvement, and relaxed  
12 ethical standards for candidate speech. Merit  
13 selection minimizes political and special-  
14 interest influences in the selection process  
15 by eliminating the need for candidates to  
16 raise funds, advertise, and make campaign  
17 promises. And, judges chosen through merit  
18 selection do not find themselves hearing cases  
19 brought by attorneys and litigants who  
20 supported their election campaigns. A 2009  
21 decision by the U.S. Supreme Court highlighted  
22 this potential problem. The Court was  
23 reviewing a state supreme court decision that  
24 overturned a \$50 million verdict against an  
25 energy company. The CEO of the energy company



1 had spent \$3 million to help elect one of the  
2 justices who voted with the 3-2 majority, but  
3 the justice did not recuse himself from  
4 participating in the case. In *Caperton v.*  
5 *Massey*, the U.S. Supreme Court ruled that,  
6 because of the "serious, objective risk of  
7 actual bias," due process required the  
8 justice's recusal from the case.

9 Promoting public confidence in the  
10 judiciary. Merit selection systems enhance  
11 public trust and confidence in the courts.  
12 Recent national polls show that citizens are  
13 concerned about the role of parties, special  
14 interests, and money in judicial elections.  
15 According to a 2007 poll by the Annenberg  
16 Public Policy Center, between two thirds and  
17 three fourths of Americans believe that the  
18 need to raise money to conduct their campaigns  
19 influences judges' decisions. A 2004 Zogby  
20 poll revealed that nine in ten Americans fear  
21 that special interests are trying to use the  
22 courts to shape economic and social policy.  
23 The public seems to view judicial merit  
24 selection and retention as the solution to  
25 these concerns, with 71% supporting such

1 systems in a 2001 survey.

2           Judicial merit selection has stood  
3 the test of time. It was first adopted in  
4 1940 in Missouri. During the 1960s and 1970s,  
5 twenty-three other jurisdictions adopted merit  
6 selection. Today, thirty-two states and the  
7 District of Columbia use merit selection to  
8 choose at least some of their judges. In the  
9 2008 elections, voters in three counties opted  
10 to move to merit selection, and voters in  
11 another county rejected a switch from merit  
12 selection to partisan elections. It is  
13 noteworthy that no state that adopted merit  
14 selection since 1940 has returned to judicial  
15 elections. Governors, legislators, and voters  
16 in these states appreciate the benefits of  
17 merit selection in identifying the best  
18 qualified judges and ensuring that those  
19 judges are politically independent and  
20 publicly accountable.

21  
22           (This concludes the letter submitted by the  
23 American Judicature Society. The content was  
24 not altered to correct any errors in spelling,  
25 grammar, or punctuation.)

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(The following letter was submitted by the  
Urban League of Philadelphia.)

The Urban League of Philadelphia  
wishes to thank Chairman Walko and other  
members of the House Judiciary Committee  
Subcommittee on Courts for allowing us to  
submit the following testimony to the record  
of the hearing scheduled for December 7, 2009.

Since 1917, the Urban League of  
Philadelphia, as part of this national  
network, provides direct services, research  
and policy advocacy to help individuals and  
communities. The mission of the Urban League  
is to empower African-Americans to secure  
economic self-reliance, parity, power and  
civil rights.

In our State's history, only once in  
158 years of judicial elections has an African  
American been elected to Pennsylvania's  
Supreme Court.

Equally disturbing is that currently

1           only two out of 31 statewide appellate court  
2           judges are African American. Not a single  
3           minority sits on the state's highest court and  
4           neither an Asian or Hispanic judge has ever  
5           been elected to any of the appellate courts.

6                     I believe the system we use to elect  
7           appellate judges is to blame. Pennsylvania is  
8           one of only six states that still choose all  
9           of its judges through partisan elections.

10                    To succeed in these elections you  
11           must raise a lot of money. In this year's  
12           Supreme Court race two candidates raised more  
13           than \$3 million at the time of the election.  
14           This number will only rise when third party  
15           donations, such as political party  
16           expenditures, are included. Since partisan  
17           elections put a premium on fundraising and  
18           political connections - not on qualifications  
19           or diversity - the system doesn't provide many  
20           opportunities for qualified lawyers from  
21           different races, ethnicities or backgrounds to  
22           reach the bench.

23                    Moreover, campaign money is often  
24           donated by lawyers and law firms that can  
25           later argue cases before the same judges they

1           helped get elected - a phenomenon that  
2           drastically hurts the public's perception of  
3           the impartiality of our justice system.

4                        But there is a solution: HB1619 and  
5           1621 would fix many of these serious problems  
6           inherent in our current judicial selection  
7           problems.

8                        Merit selection would create a  
9           citizen-based, independent nominating  
10          commission of 14 people who would evaluate *all*  
11          applicants for judicial vacancies, based on  
12          their skills, experience, and qualifications.  
13          A list of nominees would then be given to the  
14          governor. The governor would select a  
15          candidate who would then need Senate  
16          confirmation. The judge would stand before  
17          the public in a retention election after four  
18          years, and every ten years thereafter.

19                        Research by the American Judicature  
20          Society shows that racial minorities have  
21          greater success reaching appellate benches  
22          through merit selection. Nobody is excluded  
23          from the process due to a lack of resources or  
24          political connections. Merit selection  
25          emphasizes qualifications and values racial

1 and ethnic diversity - as well as gender,  
2 geographic and professional diversity.

3 For a recent example the problems  
4 with electing appellate judges, consider  
5 Philadelphian C. Darnell Jones, who ran for  
6 Supreme Court in 2007. It is difficult to  
7 find someone more qualified for this position  
8 than Jones. He had served as judge for 20  
9 years, taught at the University of Penn law  
10 school, was endorsed by every major newspaper  
11 in the state, and received the highest rating  
12 from the Pennsylvania Bar Association.

13 Jones still lost badly in the  
14 Democratic primary.

15 Like many well-qualified minorities  
16 seeking the bench, having the political  
17 connections or the financial resources to run  
18 a winning campaign are critical to one's  
19 success. When first visiting state party  
20 leaders, Jones was told they had already  
21 chosen candidates to endorse and that he  
22 should drop out of the race. When he didn't,  
23 local party leaders wouldn't allow him to  
24 campaign in certain counties.

25 Jones also unluckily received the

1 fourth ballot position - yet another reason we  
2 need a new system. Since voters often do not  
3 have a lot of information on judicial  
4 candidates' qualifications, random factors  
5 such as ballot position, name recognition and  
6 regional voter turnout often determine who  
7 wins. Merit selection completely eliminates  
8 the influence of these factors.

9           Opponents of merit selection claim it  
10 takes away voters' rights. This simply is not  
11 true. A change in the way we select judges  
12 requires a constitutional amendment, meaning  
13 voters have the final say through a referendum  
14 on whether they want a new system.

15           Last year, Rep. Thaddeus Kirkland,  
16 chairman of the Pennsylvania Legislative Black  
17 Caucus said, "This state needs to have a more  
18 diverse group of judges named to its high  
19 courts... All of the people of Pennsylvania need  
20 to be fairly represented in our state courts."  
21 Although Rep. Kirkland was talking about the  
22 governor's interim judge appointments - a  
23 process very different from merit selection -  
24 he could not have been more correct. Having  
25 judges that reflect the diversity of

1 Pennsylvania leads to greater confidence in  
2 the courts and is just one reason we believe  
3 Kirkland and his fellow state legislators  
4 should support the change to merit selection.

5 Patricia A. Coulter  
6 President & CEO, Urban League of  
7 Philadelphia

8  
9 (This concludes the letter submitted  
10 by the Urban League of Philadelphia. The  
11 content was not altered to correct any errors  
12 in spelling, grammar, or punctuation.)

13

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16 (The following letter was submitted  
17 by Pennsylvania Council of Churches.)

18

19 RE: House Judiciary Committee  
20 Subcommittee on Courts Public Hearing on  
21 Merit Selection (HB1619 and 1621) -  
22 Written Testimony from the Pennsylvania  
23 Council of Churches

24

25 Dear Representative Walko:



1                   The Pennsylvania Council of Churches  
2 wishes to thank Chairman Walko and the members  
3 of the Pennsylvania House Judiciary Committee  
4 Subcommittee on Courts for allowing our  
5 organization to submit the following written  
6 testimony on HB 1619 and 1621.

7                   If passed, HB 1619 and 1621 would be  
8 the first steps to a much-needed  
9 constitutional amendment to reform the way  
10 Pennsylvania selects appellate court judges.  
11 The proposed merit selection legislation would  
12 create a system to ensure that the most  
13 qualified and experienced judges reach the  
14 bench, while also eliminating many of the  
15 serious problems that are now inherent in our  
16 state's partisan judicial races.

17                   Our interest in the proposed system  
18 comes from our concern about the biblical  
19 principle of justice. Among the more  
20 important changes, merit selection will  
21 completely remove fundraising and the  
22 influence of campaign money from the selection  
23 process. By doing so it creates a system  
24 where all qualified Pennsylvanian lawyers who  
25 aspire to be on the appellate courts have a

1 fair chance to reach the bench.

2           The 2007 race for Supreme Court  
3 highlights the need to remove increasingly  
4 expensive and political campaigns from the  
5 judicial selection process. Four candidates  
6 running for two open seats raised almost \$8  
7 million, setting a new state record. Much of  
8 this money was contributed by lawyers, law  
9 firms and other entities that frequently have  
10 cases before the appellate courts. This  
11 severely hurts the public's perception of the  
12 fairness and impartiality of our judiciary.

13           Also, since the elections place this  
14 importance on fundraising, many qualified  
15 citizens who aspire to be appellate judges  
16 often do not have a chance to be successful,  
17 due to lack of political connections or  
18 financial resources. Under the current  
19 system, the only written requirements for  
20 someone to run for judge are that they have a  
21 license to practice law in our state, have  
22 lived in Pennsylvania for at least one year,  
23 and are 21 years of age. Therefore, someone  
24 could run for our appellate courts that has  
25 never been a judge or even practiced law

1 before, much less for a minimum number of  
2 years.

3 Merit selection sets up an  
4 independent nominating commission that will  
5 evaluate all applicants based on new criteria,  
6 which emphasized candidates' qualifications,  
7 experience, integrity, and reputation for  
8 fairness. Most importantly, nobody will be  
9 excluded from the process based on his or her  
10 gender, race, political connections or  
11 abilities to raise money, as is now sometimes  
12 the case.

13 It's also important to note that  
14 while opponents of this reform will argue that  
15 merit selection takes away voters' right -  
16 this is simply not true. For merit selection  
17 to even occur, voters must first choose to  
18 make the change to the state's constitution  
19 through a public referendum.

20 Once merit selection is enacted,  
21 voters will be involved in the process in many  
22 ways. Firstly, the list of chosen candidates  
23 the nomination commission gives to the  
24 governor will be made public. Citizens are  
25 encouraged to submit any information they may

1 know about the candidates to the nominating  
2 commission, the governor, and the Senate. The  
3 public is also encouraged to learn about the  
4 candidates and supply input to the governor or  
5 their Senators about who they prefer.

6 Secondly, after a judge is elected the voters  
7 will have the final say on whether he/she  
8 stays on the bench through a retention  
9 election. Retention votes occur after the  
10 judges first four years and then every ten  
11 years thereafter.

12 For these reasons, the Pennsylvania  
13 Council of Churches believes merit selection  
14 is the best way to get the most qualified and  
15 fair judges on our appellate court benches and  
16 supports the current legislation.

17 Sincerely, The Rev. Sandra L.  
18 Strauss, Director of Public Advocacy

19  
20 (This concludes the letter submitted  
21 by Pennsylvania Council of Churches. The  
22 content was not altered to correct any errors  
23 in spelling, grammar, or punctuation.)

24  
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1                   (The following letter was submitted  
2 by Justice at Stake Campaign.)

3  
4                   Judicial Campaign Fundraising and  
5 Public Confidence in the Courts, Written  
6 Testimony Submitted Dec. 3, 2009 Regarding  
7 House Bills 1621 and 1619

8  
9                   The Justice at Stake Campaign is  
10 pleased to provide written testimony for the  
11 scheduled hearing on merit selection, by the  
12 Courts Subcommittee of the Pennsylvania House  
13 Judiciary Committee. Justice at Stake is a  
14 national partnership of more than 50  
15 organizations working to keep courts fair and  
16 impartial. Our partners include leading  
17 national advocates, legal and business groups,  
18 and civic reform organizations. Our board of  
19 directors and partners include Republicans and  
20 Democrats, liberals and conservatives, along  
21 with business and civic leaders, defense,  
22 corporate and trial attorneys, and judges.  
23 Although we don't support any one system for  
24 selecting judges in every state, Justice at  
25 Stake works with partners on behalf of reform

1 measures, including merit selection, designed  
2 to reduce special interest pressure on courts.  
3 We are pleased that the Committee is studying  
4 a potential remedy to the troubling rise of  
5 political and special interest pressure in  
6 judicial contests.

7           Across America, attorneys, partisans,  
8 and special interests with cases in court are  
9 pouring millions into judicial contests,  
10 mostly for high-court but increasingly for  
11 appellate- and even district-court contests.  
12 From 2000-2008, candidates for America's state  
13 high courts raised \$200.8 million, more than  
14 double the amount in the previous four cycles.  
15 Fund-raising records in 19 of 21 states with  
16 competitive Supreme Court elections were  
17 broken in that period, including in  
18 Pennsylvania. Most of this money comes from  
19 attorneys and political interests who view  
20 campaign spending as a litigation investment.  
21 Once independent expenditures are factored in,  
22 these dollar figures climb much higher.  
23 Broadcast television ads are seeking to push  
24 wedge-issue politics into our courts of law,  
25 and aggressive questionnaires from special

1 interest groups are pressuring judges to take  
2 stands on controversial issues. As Justice  
3 Sandra Day O'Connor recently warned, "In too  
4 many states, judicial elections are becoming  
5 political prizefights where partisans and  
6 special interests seek to install judges who  
7 will answer to them instead of the law and the  
8 Constitution."

9 The trend of skyrocketing spending on  
10 state Supreme Court elections has, of course,  
11 touched Pennsylvania. In the 1999-2008  
12 decade, Pennsylvania ranked fifth nationally  
13 in Supreme Court fundraising, with \$16.1  
14 million. This includes the nation's most  
15 expensive race of the 2007-08 election cycle,  
16 when candidates raised \$9.5 million, including  
17 the primary and Justice Thomas Saylor's  
18 retention election. In addition, based on  
19 conservative estimates, two non-candidate  
20 groups (the Center for Individual Freedom and  
21 the state Republican Party) spent a total of  
22 \$1 million more on election-related  
23 advertising, bringing the cost of  
24 Pennsylvania's 2007 election to at least \$10.5  
25 million.

1                   The changing politics of judicial  
2 elections has had a corrosive effect on public  
3 confidence in the courts. Public opinion  
4 surveys from 2001-04 find that more than 70  
5 percent of Americans believe that campaign  
6 contributions influence judges' decisions;  
7 only 5 percent believe that contributions have  
8 no influence. Little has changed since then.  
9 In 2008, 78 percent of voters in Wisconsin  
10 said they believed that campaign contributions  
11 influence outcomes in the courtroom.

12                   Many judges feel trapped in a bad  
13 system, forced to raise money from the parties  
14 appearing before them and looking over their  
15 shoulders at interest group demands. In 2002,  
16 46 percent of state court judges surveyed said  
17 they believe that campaign contributions have  
18 at least "a little influence" on courtroom  
19 decisions. In 2004, after two Illinois  
20 candidates raised \$9.3 million, the winner,  
21 Justice Lloyd Karmeier, called it "obscene" on  
22 election night. "How can people have faith in  
23 the system?" he asked.

24                   Ohio Supreme Court Justice Paul  
25 Pfeifer was even blunter in his assessment of



1 runaway spending on judicial elections: "I  
2 never felt so much like a hooker down by the  
3 bus station... as I did in a judicial race," he  
4 told the New York Times in 2006. "Everyone  
5 interested in contributing has very  
6 specific interests. They mean to be buying a  
7 vote."

8           Since September 2008, when  
9 Pennsylvania's Senate Judiciary Committee held  
10 a hearing on merit selection, a widely  
11 publicized U.S. Supreme Court case, *Caperton*  
12 *v. Massey*, brought home the damaging effect of  
13 special interest money on public trust in the  
14 courts. As the Supreme Court noted in its  
15 ruling, which forced a West Virginia justice  
16 to recuse himself from a case involving a coal  
17 executive who spent \$3 million to help elect  
18 him: "Just as no man is allowed to be a judge  
19 in his own cause, similar fears of bias can  
20 arise when - without the others parties'  
21 consent - a man chooses the judge in his own  
22 cause."

23           In a brief in that case, the  
24 Conference of Chief Justices, which represents  
25 the top jurist in every state and U.S.

1 territory, wrote: "As judicial election  
2 campaigns become costlier and more  
3 politicized, public confidence in the fairness  
4 and integrity of the nation's elected judges  
5 may be imperiled... The quaint notion that  
6 'judicial campaigns must focus their  
7 solicitations for funds on members of the  
8 bar'... has given way to high-dollar free-for-  
9 alls marked by dueling campaign salvos by  
10 organized interest groups, often located  
11 outside the State of the election."

12           Heavy judicial fundraising was seen  
13 again in Pennsylvania this past year.  
14 Pennsylvanians for Modern Courts has estimated  
15 Judge Jack Panella's fundraising at \$2.3  
16 million, with more reports yet to be filed,  
17 and Justice-elect Joan Orié Melvin's at  
18 \$734,000. In addition, a significant number  
19 of TV ads were aired on Melvin's behalf by the  
20 state Republican Party.

21           Moreover, the question of whether  
22 this flood of campaign money is affecting  
23 judicial impartiality was raised by a  
24 candidate for Pennsylvania's Supreme Court,  
25 when Justice-elect Melvin argued that heavy

1 donations from trial lawyers to Judge  
2 Panella's campaign raised questions about  
3 whether he could deliver impartial justice.

4 In an October campaign forum,  
5 Justice-elect Melvin said: "Is it pay-to-  
6 play? Is it justice for sale? I don't know,  
7 but it sure sounds suspect." When the state  
8 Supreme Court's newest member voices concerns  
9 about runaway campaign spending, and its  
10 potential to create ethical conflicts, it is  
11 understandable that the public might harbor  
12 similar doubts Pennsylvania's current election  
13 process, and the pressures it is exerting on  
14 judges and justices.

15 There is evidence that such concerns  
16 are renewing public interest in, and support  
17 for, merit selection as one of several  
18 strategies gaining consideration to protect  
19 the integrity and reputation of state courts.  
20 After a long period in which voters had not  
21 been presented with any ballot measures  
22 concerning merit selection, voters in two  
23 conservative Midwest counties supported merit  
24 selection last November. In Greene County,  
25 Mo., voters repealed the existing system of

1 electing local trial judges, instituting a  
2 merit selection system in its place, while in  
3 Johnson County, Kan., voters soundly defeated  
4 an attempt to end merit selection for local  
5 trial judges. And legislative efforts to undo  
6 or weaken merit selection have failed in  
7 several states.

8           “Why should state legislators  
9 consider a reform such as merit selection?  
10 Briefly, every American deserves a fair day in  
11 court, without fear that the other side can  
12 “buy” favorable treatment by spending freely  
13 to elect the judge.

14           The 24 states that use nonpartisan  
15 commissions and periodic retention elections  
16 experience vastly lower levels of election  
17 spending than the 21 states that choose  
18 Supreme Court justices through competitive  
19 elections. Of the \$200.8 million raised by  
20 Supreme Court candidates in 1999-2008,  
21 retention elections accounted for just \$2.2  
22 million - a little more than 1 percent of the  
23 total. Nonpartisan elections, used by 13  
24 states, accounted for \$50.6 million, or 25  
25 percent. Partisan elections, which are used

1 by nine states including Pennsylvania,  
2 accounted for almost \$148 million, or 73  
3 percent.

4 While many Pennsylvania newspapers  
5 already have editorialized in favor of merit  
6 selection, such support also has been voiced  
7 by some of the nation's biggest papers. On  
8 March 3, 2009, the same day the U.S. Supreme  
9 Court heard oral arguments in Caperton v.  
10 Massey, the Washington Post said, "States  
11 should consider abolishing judicial elections  
12 in favor of an appointment system that  
13 distances jurists from politics and  
14 fundraising."

15 The same day, a USA Today editorial  
16 also said merit selection was one of several  
17 reforms that would protect state courts from  
18 a special-interest takeover. The editorial  
19 concluded: "Every system has drawbacks.  
20 But nothing could be worse than putting 'for  
21 sale' signs on the doors of the nation's  
22 courts."

23  
24 (This concludes the letter submitted  
25 by Justice at Stake Campaign. The content was

1 not altered to correct any errors in spelling,  
2 grammar, or punctuation.)

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6 (The following letter was submitted  
7 by ACLU of Pennsylvania.)

8

9 Dear Chairman Caltagirone and  
10 Chairman Walko, Thank you for taking the time  
11 to hold a public hearing on House Bill 1619.  
12 HB 1619 would create a process for an  
13 independent commission to recommend candidates  
14 for appointment by the governor to the state  
15 appeals courts. In order to protect civil  
16 liberties, civil rights, and the rule of law,  
17 the American Civil Liberties Union of  
18 Pennsylvania supports HB 1619. On behalf of  
19 the 16,000 members of the ACLU of  
20 Pennsylvania, I encourage you to support the  
21 bill and to bring it before the House  
22 Judiciary Committee for consideration.

23

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As you know, in the commonwealth's  
current system, all judges for the state  
appeals courts are elected in partisan

1 elections. Choosing judges through elections  
2 leaves the rule of law vulnerable to the  
3 excesses of money politics and the whims of  
4 the majority.

5           When considering this issue, I'm  
6 reminded of the Dover intelligent design case.  
7 In 2005, the ACLU of Pennsylvania represented  
8 a group of parents from the Dover Area School  
9 District in York County in challenging the  
10 district's policy to inform 9th grade biology  
11 students of a creationism-like idea called  
12 "intelligent design." The parents were  
13 successful at the federal district court in  
14 Harrisburg when Judge John E. Jones III ruled  
15 in their favor. Judge Jones cited precedent  
16 that outlaws the teaching of creationism in  
17 public schools because it is a violation of  
18 the establishment clause of the U.S.  
19 Constitution.

20           In the aftermath of the decision,  
21 Judge Jones gave many interviews and public  
22 speeches, and one of his overriding themes was  
23 the necessity of an independent judiciary. In  
24 a 2006 speech before the Anti-Defamation  
25 League, Judge Jones stated: Polls show that

1 many Americans believe that it is acceptable  
2 to teach creationism in public schools. And  
3 early last year polls found that a great many  
4 Americans thought that Terri Schiavo should be  
5 kept alive. But I submit to you that as  
6 citizens, we do not want and in fact we cannot  
7 possibly have a judiciary which operates  
8 according to the polls, or one which rules  
9 based on who appointed us or according to the  
10 popular will of the country at any given  
11 moment in time.

12 In a 2007 interview with the  
13 St. Louis Jewish Light, Jones praised  
14 Missouri's Non-Partisan Court Plan, which was  
15 implemented in 1940 and is similar to the  
16 merit selection proposal in HB 1619, and urged  
17 Missourians to maintain it.

18 The ACLU of Pennsylvania takes on  
19 difficult cases that often aid marginalized  
20 people whose rights must be protected,  
21 regardless of public opinion. The beauty of  
22 the American system of jurisprudence is that  
23 the rights of the minority are protected from  
24 the tyranny of the majority.

25 HB 1619 provides a buffer between the



1 courts and public opinion, freeing judges to  
2 rule without an eye on the next election. It  
3 also ensures that judges do not need to take  
4 campaign donations from parties who could come  
5 before them at some point in the future.

6 Please support HB 1619 and move it  
7 through the committee process. I look forward  
8 to continuing to work with you on this and  
9 other issues.

10 Sincerely, Andy Hoover, Legislative  
11 Director.

12  
13 (This concludes the letter  
14 submitted by ACLU of Pennsylvania. The  
15 content was not altered to correct any errors  
16 in spelling, grammar, or punctuation.)

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END OF WRITTEN SUBMISSIONS

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## REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct transcript of my said stenographic notes.

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BRENDA J. PARDUN, RPR  
Court Reporter  
Notary Public