

SENATE JUDICIARY COMMITTEE PUBLIC HEARING ON  
MERIT SELECTION: SENATE BILLS 1324 AND 1325  
September 16, 2008

**Our Constitutional Right to Vote**

**Professor Marina Angel  
Temple University School of Law**

1. The Right to Vote

It took the Civil War and a Constitutional Amendment (the Fifteenth Amendment, 1870) to get men of color the right to vote. It took another 50 years and another Constitutional Amendment (the Nineteenth Amendment, 1920) to get women, including women of color, the right to vote. The franchise has steadily expanded beyond wealthy property owners since the United States became independent. Most recently, eighteen year olds were given the right to vote (Twenty-sixth Amendment, 1971).

Pennsylvania switched from an appointive process for judges to an elective process in the mid Nineteenth Century, because the appointive process proved too corrupt.

The bills you are considering are not “merit selection” bills. They are selection by a small, elite group bills. The bills do not define “merit.” Those nominated must be licensed lawyers who have practiced law, served as a judge or engaged in a law-related occupation for 10 years. They must demonstrate “integrity, judicial temperament, professional competence and experience and commitment to the community.” None of these terms is defined.

Is the Governor's good friend – who's contributed substantial time and money to the Governor's political career, who is the head of a law firm that represents large corporations, and who is active in the Chamber of Commerce and the Pennsylvania Bar Association (PBA) – meritorious?

Is the solo practitioner – who does a great job representing poor people in a rural area for minimal fees and is active in the local community, but doesn't make enough money to contribute to politicians or join bar associations – less meritorious?

So called "merit selection" is no such thing. It takes away my right to vote and gives my power to select judges to a committee of appointees selected by a small group of Harrisburg politicians and special interest groups, which committee will operate in secret behind closed doors and without accountability.

## 2. Who is Marina Angel

I grew up in the racially, ethnically, and economically diverse neighborhood of 145 Street in Manhattan in the 1940s and 50s. The first politician I ever saw as a young child was Congress Member Adam Clayton Powell, Jr. I later saw others in Warren, Pennsylvania, where I was sent to live with cousins during my early summer years. As a college intern in 1964, I had the privilege of seeing Representative Powell preside over a closed session of the House Labor and Education Committee. I witnessed the struggle to pass the 1964 Civil Rights Act. I later dropped out of Columbia Law School for a year and worked for the NAACP Legal Defense Fund. In 1966-67, I traveled alone throughout two southern states surveying and gathering statistics for the legal fight to eliminate the death

sentence for sex offenses, a death sentence that disproportionately affected Black men accused of raping white women. I saw the power of good mass surveys and statistics when the U.S. Supreme Court declared unconstitutional the death sentence for anything other than the taking of life.

Most of my teaching, writing, and speaking is on discrimination against women and people of color. I have been honored with the highest awards a woman lawyer can receive for my work on behalf of women and people of color. I received the Philadelphia Bar Association's Sandra Day O'Connor Award, the Pennsylvania Bar Association's Anne X. Alpern Award, and the American Bar Association's Margaret Brent Award. For my efforts, I have been honored by multiple organizations, most recently, with the Visiting Chair of Law and Democracy at Albany Law School.

### 3. Demographics

Why after 150 years is Pennsylvanians for Modern Courts (PMC), a nice sounding name, trying to take away our constitutional right to vote and return to an appointed process controlled by the elite?

Is it that the voting power of women, people of color, and just regular folks, is finally making itself felt? Has it escaped someone's notice that the Presidential candidate of the Democratic Party is a man of color and the Vice Presidential candidate of the Republican Party is a woman?

The demographics of the United States are changing even more quickly than expected. Many of our cities and some of our states are majority "minority." The Court of Common Pleas in Philadelphia is almost 40% judges of color and 48% women

judges. The Superior Court of Pennsylvania is 62% women, and the Commonwealth Court is 63% women. In the last appellate court elections, women won three of four seats. One of them is a woman of color who ran well state-wide.

#### 4. Pennsylvanians for Modern Courts (PMC)

Pennsylvanians for Modern Courts (PMC) and its lobbying arm (PMCAction) have as their main objective taking away our Constitutional right to vote and substituting so-called "Merit Selection." The group was founded for that purpose in 1988 and Lynn Marks, its Executive Director, has been lobbying to amend the PA Constitution to take away our right to vote since 1990. Shira Goodman is PMC's Deputy Director. Lynn Marks' and Shira Goodman's jobs are to join organizations, bar associations and others, and push their agenda to take away the right to vote.

PMC is part of a nationwide coalition financed by large law firms and corporations. If you don't believe me, check out PMC's website.

PMC's website states <http://www.pmconline.org/>

**PMC was founded [in 1988] to work to reform Pennsylvania's courts, focusing on transforming the method of judicial selection....**

PMCAction, PMC's lobbying arm, states as its primary purpose: **"Merit Selection of Judges."** <http://pmcaction.org/>

For twenty years, PMC has been laying the groundwork to take away the right to vote. PMC's 2006-2007 Annual Report, p.12, states:

We thank Cliff Haines for his years of service and dedication as PMC's chair. We congratulate Cliff on having been elected Vice President of the Pennsylvania Bar Association. His presidency will run from 2009-10, a time we hope will coincide with the successful culmination of our merit selection campaign.

I have asked both PMC's Executive Director, Lynn Marks, and PMC's Deputy Executive Director, Shira Goodman, to publicly state they are paid employees and lobbyists for PMC and PMCAction every time they advocate taking away our right to vote. They have not done so.

PMC is not a local do-gooder organization. PMC's most recent 990 shows income of \$339,764.00, almost all of it from large law firms and corporations and their employees. It is part of a nationwide, well funded network of organizations with similar nice sounding names like Justice at Stake, whose primary purpose is replacing citizens' right to vote with appointees of select, senior, high ranking government officials and special interest groups. This nationwide effort was started in the 1980s by the Soros Foundation.

PMC wants everything their way. PMC's 2000-2001 Annual Report emphatically rejects any attempts to "improve" the selection system. They flat out reject campaign finance reform while complaining about the cost of judicial elections.

##### 5. Expense – Follow the Money

Statewide elections can be expensive, but it is naïve or disingenuous to argue that it would cost less to influence the Governor and the majority and minority leaders of the

Pennsylvania Senate and House. Right now, all these politicians are white males. The heads of the Senate and House will continue to be white males even as the demographics change, because General Assembly leadership positions are largely decided on the basis of seniority.

It will take a great deal of time and money to build up a reputation with these senior politicians who appoint a majority of each nominating committee and the special interest groups that appoint the rest of the members of each nominating committee. Those desiring appellate office will have to put up their own money or have friends put up money for political influence. And let's not forget that the leading proponent in the Senate of so called "merit selection" is Senator Vince Fumo, on trial on a multi-count indictment for influence peddling.

To curry favor with special interest groups will also take time and money. Large firms and the wealthy can subsidize their candidates over an extended period of time. Few women or lawyers of color have the time or money to engage in such a long term process.

## 6. Politics Without Accountability

So-called "Merit Selection" under the current bills is no such thing. It is a totally political process. 14 member nominating committees will decide on short lists. Whoever is the Governor, and Pennsylvania is a swing state, will pick from that list. The PA Senate must confirm.

Guess who "picks the pickers," the members of each nominating committee! The Governor appoints 4, the majority and minority heads of the PA Senate and House pick 4. All these politicians are currently white males and will remain so

for a long period of time, since the leaders of the General Assembly are chosen on the basis of seniority. Leadership diversity will lag far, far behind voter diversity.

It will take 8 members of each nominating committee to approve the short list that goes to the same Governor who appointed 4 of the 8 members. The heads of the Senate and House appoint 4. That completes the 8 member majority needed to put candidates on the list that will go to the Governor. The other 6 members of each nominating committee will be appointed by special interest groups and probably will be just window dressing. It is unlikely that there will be more than token representation of people of color on a nominating committee, a majority of which is appointed by all white male political leaders.

By the way, PMC's 2000-2001 Annual Report, p.4, rejects the notion that nominating committee members should be selected by anyone other than politicians.

It was agreed upon by most of the summit participants that those who select members to the nominating commission should be elected officials rather than non-governmental individuals or entities, such as a bar association, law school deans, labor or business leaders. Likewise, there should not be "designated" seats on the nominating commission to be filled by representatives of particular constituencies such as, for example, the business, labor, civic and/or legal communities.

But then, "consistency is the hobgoblin of little minds," and PMC will do anything to take away our right to vote.

This Governor, who is supposedly a great supporter of diversity, nominated four old white men for interim appointments to the PA appellate courts. There are a number of senior lawyers and judges of color and women for whom an interim appointment to the PA Supreme Court could have been the capstone to a distinguished career. There are many young attorneys and judges of color and women for whom an interim appointment could have been a boost to a future Supreme Court run. Governor Rendell's nominees were rejected by the Senate. PA is a swing state which will not always have a Governor sympathetic to diversity. The current proposal urges diversity on the bench but cannot guarantee it. Voting can!

## 7. A Secret Process

Under the current so-called "Merit Selection" legislation to amend the PA Constitution, the nominating committees set their own procedures--not subject to the new PA Sunshine Law. Committees could decide to not even make public the names of its members! Several years ago, I wanted to write a letter of support for someone being considered for a federal judgeship. I, a law professor, could not even find out the Chair of Senator Specter's Federal Judicial Nominating Committee. Under the proposed legislation, there will be a very short period of time for members of the public or groups to analyze and comment after the list of nominees is made public and before the Governor picks the finalist and the Senate confirms.

By the way, at last week's meeting of the PBA Minority Bar Committee, Lynn Marks said she would rewrite the legislation to address secrecy issues. I, perhaps naively, thought legislation was written by the members of the Senate.



Why go from a totally open right to vote process to a back room, secret process?

8. “Democracy is the Worst Form of Government, Except for All the Others”

Surveys consistently show that many voters do not know candidates for political office, even major office, or their state or federal representatives.

The issue of election versus selection is not one of rich vs. poor, Republicans vs. Democrats, educated vs. uneducated. It is one pitting those who believe in democracy vs. those who don't. It's the majority vs. the elitists.

We don't know what's good for us, so we should vote to amend Pennsylvania's Constitution to let a fourteen member committee decide what's good for us.

Why stop at taking away the right to vote for appellate judges? The same arguments can be made by a group to be called “Pennsylvanians or Modern Democracy” for all elections.

Voters don't know who they are voting for and elections are too expensive, so let's have the state and the country run by an elite group of the “merit-selected.”