



PENNSYLVANIANS  
FOR MODERN COURTS

**PMCAction**

**Testimony of Pennsylvanians for Modern Courts and PMCAction**

**Before the House Judiciary Committee on Judicial Selection**

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**(H.B. 1815, P.N. 2325 and H.B. 1816, P.N. 2326)**

**Philadelphia**

**March 1, 2012**

**Testimony of Pennsylvanians for Modern Courts and PMCAction  
House Judiciary Committee  
Merit Selection of Appellate Judges  
(House Bills 1815, P.N. 2325 and 1816, P.N. 2326)  
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**I. Introduction**

Pennsylvanians for Modern Courts (PMC)<sup>1</sup> and PMCAction<sup>2</sup> thank the House Judiciary Committee for holding this public hearing on the issue of Merit Selection for the appellate courts and for the opportunity to submit this written testimony.

We are experiencing a crisis of confidence in our courts and judges, in part as a result of the recent, unfortunate scandals that have been plaguing our judiciary. The last few years have brought too many stories of Pennsylvania judges violating the Judicial Code and even criminal laws.

But just as damaging – or even more so – is the system we use for selecting judges: electing them in partisan elections in which they must raise funds and campaign. Studies demonstrate that the electoral process, in which campaign funds generally are contributed by lawyers, law firms and entities that frequently litigate in the state courts, leads the public to believe that “justice is for sale.” This belief is wholly antithetical to the ideals on which our system of justice was founded. The courts are supposed to be bastions of independence, to which all can come to be judged fairly and without regard to popular opinion, political expediency, personal bias, gender, race, ethnicity, or social or economic status. But when judges preside over cases involving lawyers or parties that contributed financially to their campaigns – helping them reach their current positions – the other litigants and the broader public cannot help but be concerned that a judge’s impartiality might be affected.

PMC and PMCAction lead a Coalition focused on bringing Merit Selection to the appellate courts of Pennsylvania. The current electoral system – with its emphasis on fundraising and campaign prowess – is broken. The solution that is best designed to get the most qualified, fair and impartial judges on the appellate bench, and to get those judges out of the fundraising business is Merit Selection.

Pennsylvania is one of only a handful of states that elects all of its judges in contested partisan elections. These elections have become increasingly divisive and expensive, and it is very difficult for voters to get relevant information about the candidates. In short, judicial elections have become more like elections for other public officials.

<sup>1</sup> **Pennsylvanians for Modern Courts** is a statewide nonprofit, nonpartisan organization founded to improve and strengthen the justice system in Pennsylvania by reforming the judicial selection process; improving the jury system, court administration and court financing; increasing fairness in the courts; and assisting citizens in navigating the courts and the justice system, whether as litigants, jurors, or witnesses. <http://www.pmconline.org>.

<sup>2</sup> **PMCAction** is an affiliated nonprofit that lobbies for court reform initiatives. For more information, please visit <http://www.pmcaction.org> and our blog at <http://JudgesOnMerit.org>.

This is problematic because **judges are different from other public officials**. Unlike legislators and executives who represent particular constituencies and are elected based on their positions on controversial issues, judges are not supposed to be responsive to their communities, popular will or political pressure. Instead, judges owe their fidelity to the law alone and must impartially resolve disputes based on the law and evidence. Campaign support should have no influence on decisions in the courtroom.

Electing judges is antithetical to the principles underlying our justice system. As elections become more partisan, expensive, and contentious, our courts are damaged. If the public perceives justice to be “for sale” to the highest contributor or to be predetermined for those who share opinions similar to those espoused by the judge on the campaign trail, the ideal of impartial justice is undermined. Public trust in the courts is imperative; without it, the court system cannot conduct its vital work. Judicial elections erode public trust and confidence. It is time to restore that trust and confidence in the courts.

## **II. Selection of Appellate Court Judges**

### **A. Decreasing Public Confidence is Tied to the Belief that Justice is For Sale through the Electoral Process**

It is clear that decreasing public confidence in our courts is tied to the belief that campaign fundraising for judicial elections affect what happens in the courtroom. That is, there is a widespread and growing public perception that judicial decision-making is affected by the campaign contributions.

In 1987, Governor Bob Casey commissioned the Pennsylvania Judicial Reform Commission, a respected panel of civic leaders, public officials, legal professionals and members of the judiciary, and chaired by then-Superior Court Judge Phyllis W. Beck. In January of 1988, the Commission issued a report finding that confidence in Pennsylvania’s judiciary was appallingly low, in large part due to the system of electing judges and the fundraising that went along with it. Among the Beck Commission’s recommendations was implementing an appointive method of selecting appellate judges.

Sadly, in the more than twenty years since the Beck Commission issued its report, public confidence in the courts has only deteriorated. Polls in Pennsylvania and elsewhere reveal that voters are increasingly dissatisfied with the elective process. This general dissatisfaction stems in part from the role fundraising plays in judicial elections.

In June 2010, a statewide poll was conducted by PMC, PMCAction, Justice at Stake, the American Judicature Society and the Committee for Economic Development to assess Pennsylvanians’ attitudes about the courts, judicial elections, and judicial selection reform.<sup>3</sup> The poll revealed a dissatisfaction with our system of electing appellate judges:

<sup>3</sup> Public Opinion Strategies Poll for PMC, PMCAction, Justice at Stake, American Judicature Society and the Committee for Economic Development, 2010.

- 73 percent said that the most qualified candidates do not win judicial elections; and
- 76 percent believed campaign contributions influence judicial decision-making.

These results echoed earlier statewide and national polls.<sup>4</sup> These numbers are staggering and confirm what has long been known: money and judicial selection should not mix. Clearly, the pressure individuals and groups feel to donate, combined with the concern that their adversaries in court may have donated to the judge's campaign, contribute to a widespread perception that "justice is for sale."

The magnitude of the problem becomes clear when one realizes how often campaign contributors actually appear before the judges they supported. In 2010, the American Judicature Society studied the 82 civil cases decided by the PA Supreme Court during the 2008 and 2009 sessions. In 60% of those cases, at least one of the litigants, lawyers or law firms had contributed to the election campaign of at least one of the justices. In nearly one third of the cases, a single litigant, lawyer or law firm had contributed to at least four of the six elected justices' election campaigns.<sup>5</sup>

We asked AJS to conduct that study in order to learn whether there was a significant overlap between campaign contribution lists and those who frequently appear in court. We believe the data likely understates the true overlap because it only counted contributions from lawyers and law firm political action committees, but did not account for contributions to the justices from other PACs which might have been funded by lawyers, law firms and litigants.

That study did not seek to link decisions in those cases to whether the winner was a contributor, though there have been studies that have found such a link in other states. We only sought to learn whether the facts supported public suspicion about judicial campaign contributions. The data demonstrates that Pennsylvania has set up a system where those who fund judicial campaigns are appearing regularly before the very judges they helped to elect.

Finally, and perhaps most tellingly, judges themselves express concern about the need to raise funds from parties and lawyers who appear before them. And even worse, national polling has revealed that nearly half of state court judges believe campaign cash influences judicial decisions.<sup>6</sup>

The electoral systems is not the best way to select judges. We need a system that focuses on qualifications and that removes the influence of money from the judicial selection process.

<sup>4</sup> A February 2009 USA TODAY/Gallup Poll found that 89% of those surveyed believe the influence of campaign contributions on judges' rulings is a problem, and 52% deem it a "major" problem. In addition, a 1988 poll commissioned by a Special Commission of the Pennsylvania Supreme Court revealed that almost 90% of Pennsylvanians surveyed believed that decisions made by judges are, at least sometimes, influenced by campaign contributions. (Lake Sosin Snell Perry & Associates and Deardourff/The Media Company poll).

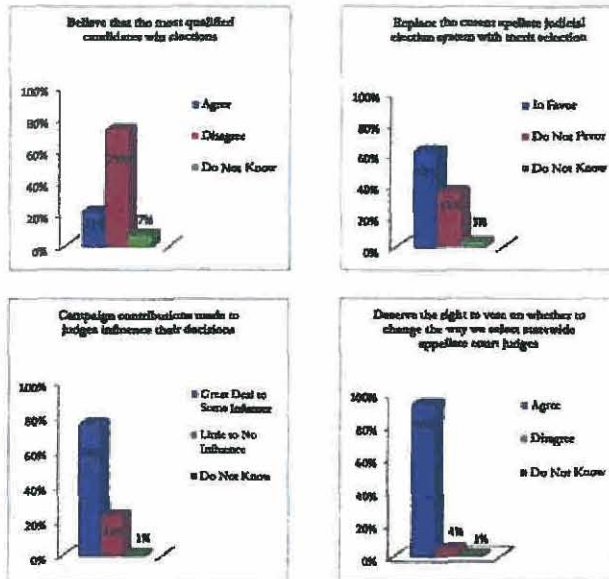
<sup>5</sup> During 2008 and 2009, six of the justices were elected and one was appointed to fill an interim vacancy.

<sup>6</sup> Greenberg Quinlan Rosner Research Inc. poll conducted for Justice at Stake 2001.

### Poll Shows Pennsylvanians Favor Merit Selection for Appellate Courts

In May 2010, Public Opinions Strategies was hired by PMC and PMCAction to conduct a state-wide poll of 500 likely voters. Examining the level of knowledge and opinions on the current process of electing judges to the Supreme, Superior, and Commonwealth Courts, Pennsylvanians were given a platform to voice their concerns.

The overwhelming results showed that 93 percent of Pennsylvanians want the opportunity to vote on whether Pennsylvania should change the way we select our appellate court judges. Further evidence shown below signifies Pennsylvanians' frustration with the current system and desire to move toward merit selection.



*The Public Opinions Strategies poll was commissioned by PMC and funded by American Judicature Society, Committee for Economic Development and Justice at State.*

## **B. The Solution: Merit Selection**

Merit Selection is a system for selecting judges that combines elements of the elective and appointive systems and adds a critical feature: an independent citizens nominating commission that evaluates candidates for appellate judge and recommends them for possible nomination.

Merit Selection is designed to get the most qualified, fair and impartial judges onto the appellate courts. Merit Selection emphasizes qualifications, skills, experience, temperament and reputation for ethical behavior. By eliminating the expensive electoral campaign process, Merit Selection gets appellate court judges out of the fundraising business.

## **C. How Does Merit Selection Work?**

A viable Merit Selection system should have four parts: (1) a diverse citizens nominating commission that evaluates and recommends candidates for nomination to judicial office; (2) an executive officer (i.e., the governor) empowered to nominate recommended, and only recommended, candidates to the appellate bench; (3) a legislative confirmation process; and (4) a role for the public in evaluating the judges following an initial term in office and regularly thereafter.

### **1. The Nominating Commission**

Ideally, a nominating commission should be a nonpartisan group of diverse men and women from across the Commonwealth. The nominating commission should include nonlawyers as well as lawyers from different regions and practice areas.

Elected officials, political party leaders and officers, and lobbyists would be prohibited from serving on the nominating commission. Because the courts touch all of our lives, it is important to ensure that some members of the nominating commission are regular Pennsylvanians – people who might end up in court as litigants, witnesses or jurors.

Under recent proposals, the authority to appoint Commissioner members would be shared by the Governor, the legislative leadership of both parties and the public, as represented by categories of nongovernmental organizations, corresponding to various segments of the population.

Sharing the appointment power between the Governor and the legislature continues the longstanding constitutional role that these entities share in the judicial selection process, particularly in filling interim vacancies. Providing for a group of “public members” enables the public to have critical input in the process.

The concept of “public members” of the Commission gives a voice to many organizations that represent and reflect different segments of the population, and includes on the Commission individuals who have not been appointed by elected officials. It allows for greater public participation without designating a seat on the commission for any particular union, business entity, or civic group.

### **2. How Would the Nominating Commission Conduct its Work?**

The nominating commission would be charged with evaluating candidates for appellate court vacancies. The commission would perform thorough investigations of candidates to develop a list of the most highly qualified. The information developed through this process would be relevant to the question of whether a candidate has the qualifications, skill, experience, temperament and reputation for fairness and ethical behavior required to serve on the appellate bench. This is the information that voters have long complained they are unable to attain and that is rarely, if ever, the focus of electoral campaign advertisements, robocalls and sound bites.

The commission would be empowered to examine a candidate’s background and to interview colleagues, courtroom adversaries, judges and others familiar with the candidate’s work and experience. People with knowledge of the candidate’s commitment to the community and reputation for fair and ethical behavior also would be interviewed.

The nominating commission’s evaluation process would provide for public input. This could be through an announcement of who has applied for a judicial vacancy and the solicitation of written comments about the applicants. In addition, public hearings could be held where candidates would be questioned about their qualifications. Although the commission would be able to maintain the confidentiality of some of the information collected, including financial information and background interviews and investigations, this would allow for greater public

understanding of and participation in the process. Commission deliberations and voting would still be confidential.

A list of the five most highly qualified candidates would be forwarded to the Governor. This list would be made public.

### **3. Nomination by the Governor**

The Governor would be bound to nominate an appellate judge from the list of candidates recommended by the nominating commission. The Governor would not be free to appoint whomever he or she wishes to serve. The public would be confident that all of the candidates recommended by the commission would be well-qualified. Because the list will have been made public, Pennsylvanians would have the opportunity to make their views on the recommended candidates known to the Governor.

### **4. Senate Confirmation**

The Governor's nominee would be subject to Senate confirmation. Senate confirmation would include hearings and the opportunity for public comment. Pennsylvanians would have the opportunity to inform their Senators of their views about the nominee for appellate judge.

### **5. Retention Elections**

After an initial four-year term, appellate judges would stand before the public in a yes/no nonpartisan retention election. This is six years earlier than elected judges currently stand for retention. The public therefore would have an early opportunity to evaluate the judge's performance on the bench.

If a judge wins retention, he or she would serve a full ten year term, and would then be eligible to stand for retention every ten years until mandatory retirement at age 70.

Many Merit Selection states use formal judicial evaluation commissions to evaluate and assess judges standing for retention. These evaluations often involve written questionnaires, as well as interviews with the judges, their colleagues on the bench, lawyers, and court staff. The results are published, and are very valuable to voters making decisions about retention. The process also provides valuable feedback to the judges.

## **D. The Problems Inherent in Electing Appellate Court Judges**

Elections simply are not designed to get the most qualified, fair, and impartial judges on the bench. This is because elections do not emphasize qualifications and skill, but rather reward campaign prowess and fundraising ability.

In addition, random factors, like ballot position, name recognition and county of origin, play too great a role in electoral success. The public has long complained about the lack of access to relevant information, and the difficulty of making decisions about appellate court candidates. Finally, judicial elections have produced an appellate bench that does not reflect the diversity of Pennsylvania. These problems will be discussed in turn below.

### 1. Judges Should Not Be in the Fundraising Business

Most judges will tell you, honestly, that campaign contributions do not affect how they rule on cases that come before them. Unfortunately, as the costs of campaigns and the fundraising that accompanies them break new records, the public finds that increasingly difficult to believe.

During the 2009 election for a seat on the Pennsylvania Supreme Court, two candidates raised nearly 4.67 million dollars, mostly from lawyers, law firms, unions, corporations and other entities that frequently litigate in the state appellate courts. That set a new record in Pennsylvania for a single seat race. Even the candidates themselves complained that it is no wonder that the public thinks “justice is for sale.”

These figures are in line with increasingly expensive judicial elections across the nation. But the numbers raised by judicial candidates don't give the whole picture because they do not include fundraising and campaign expenditures by third parties, including political parties. Nationally, since 2008, non-candidate groups have begun to outspend the actual candidates.

As former U.S. Supreme Court Justice Sandra Day O'Connor explained in *Parade Magazine*:

When so much money goes into influencing the outcome of a judicial election, it is hard to have faith that we are selecting judges who are fair and impartial. If I could do one thing to solve this problem, it would be to convince the states that select judges through partisan elections—that is, when a Democrat and Republican run against one another—to switch to Merit Selection instead. This method decreases the importance of money and politics in the process while still allowing voter input on retaining each judge.<sup>7</sup>

The fundraising problem and the perceptions it creates are intensified because in Pennsylvania (and many other states), judges don't have to recuse in cases where the litigants or lawyers gave money to help them get elected. That means that a judge can make the decision in a case that involves a lawyer or party who gave money, even a lot of money, to his or her election campaign. This is a key cause of the increasingly widespread public belief that campaign contributions affect decisions made in the courtroom. Even if this perception is erroneous, great damage is done by the very fact that the public believes it could be true.



<sup>7</sup> Sandra Day O'Connor, "How To Save Our Courts," *Parade Magazine*, (Feb. 24, 2008), [http://www.parade.com/articles/editions/2008/edition\\_02-24-2008/Courts\\_O\\_Connor](http://www.parade.com/articles/editions/2008/edition_02-24-2008/Courts_O_Connor).



In June 2009, the U.S. Supreme Court in *Caperton v. Massey* recognized that in some cases, a judge's refusal to recuse from a case involving a campaign supporter rises to the level of a due process violation. Crucial to the Court's analysis was the concept of "the probability of bias." Actual bias was not the issue; it was enough that the circumstances of the campaign support for the judge by the CEO of a party to the litigation raised "a serious risk of actual bias."

The Supreme Court noted that *Caperton* was an exceptional case, and that not every case involving a judge presiding over a campaign donor would violate the Due Process Clause. However, to a party sitting in court, it's not the size of the donation by the opposing party or opposing counsel that matters, it's the very fact of the donation.

This is not a hypothetical situation. Every day, judges in Pennsylvania preside over cases involving lawyers, law firms and litigants that contributed to their election campaigns. In the wake of *Caperton*, more judges may face recusal petitions based on involvement of campaign donors in their cases, but nothing absolutely requires that judges recuse in such cases.

Unfortunately, the money spent on judicial elections is only likely to increase in the future. In the *Citizens United* decision in January 2010, the U.S. Supreme Court invalidated a portion of The Bipartisan Campaign Reform Act of 2002 (2 U.S.C. § 441b), which restricted corporate and union spending of general treasury funds on campaign advertising.<sup>8</sup> With the restrictions lifted, spending by outside groups on campaign advertising has begun to increase. Just recently, an election for a single seat on the Wisconsin Supreme Court prompted a record \$3.6 million in special interest spending on television advertising alone.<sup>9</sup>

## **2. The Lack of Required Qualifications to Run for a Seat on the Appellate Courts**

Currently, the only requirements to run for election to the appellate bench are residency in the Commonwealth for at least one year, licensure as a lawyer in the Commonwealth, and being at least twenty-one years of age.<sup>10</sup> A candidate is not required to have actually practiced law at all, let alone for any minimum number of years. There is no requirement that a lawyer have tried any cases in the court to which he or she is seeking election.

Although we have many good judges on the appellate courts, they are there *despite* the electoral system, not because of it. Pennsylvania needs a judicial selection system designed to place the most highly qualified, skilled and experienced candidates on the appellate courts. Elections simply are not designed to do this; they emphasize connections, campaign prowess, fundraising ability, and luck.

Part of the appeal of a Merit Selection system is the promise of establishing meaningful requirements and minimum qualifications for candidates seeking judicial office. These requirements would be written into the Constitution and would include being engaged in the practice of law for a minimum number of years. "Being engaged in the practice of law" would

<sup>8</sup> *Citizens United, Appellant v. Federal Election Commission*, 130 S. Ct. 876 (U.S. 2010)

<sup>9</sup> Erik Opsal, "One Week Later: What Happened in Wisconsin?" Brennan Center For Justice, (Apr. 13, 2011), [http://www.brennancenter.org/blog/archives/one\\_week\\_later\\_what\\_happened\\_in\\_wisconsin/](http://www.brennancenter.org/blog/archives/one_week_later_what_happened_in_wisconsin/).

<sup>10</sup> Pa. Const. art. V, §12(a); 42 Pa.C.S.A. 3101.

be defined broadly, so that legal academics, legislators, policy developers and others with relevant experience could be considered.

In addition, other elements would be considered in an effort to bring to the bench people who would operate fairly, without bias or partiality and with the highest respect for the ethical constraints of the position. Candidates' reputations for honesty, integrity, and fairness would be considered, as would candidates' commitment to and involvement in their communities and the legal community. Finally, the process would recognize the importance of having a judiciary made up of men and women from diverse geographical, racial and ethnic backgrounds.

### **3. The Lack of Access to Relevant Information**

Traditionally, judicial races have been relatively low turnout elections. They occur in odd-numbered years, when there are very few high profile races on the ballot. Even when judicial elections do accompany a populous county's mayoral or city/county executive race, there is often a significant drop-off of voters who vote for the "up-ticket" races and decline to vote in the judicial races.

What explains this? Disenchanted voters who want to cast educated, meaningful ballots but who have been frustrated in efforts to learn relevant information about the candidates often skip the judicial section of the ballot. Voters understand that appellate judges occupy critically important positions in our government, but they are concerned that they do not have the necessary information to make an informed vote.

Instead, voters usually hear soundbytes and see quick ad spots that tout a candidate's "tough on crime" credentials, or that play up a candidate's name. In addition, in 2009, Pennsylvanians were treated to an unprecedented negative advertising campaign by the Supreme Court candidates. Both campaigns went negative, with ads that didn't really tell voters anything about why either was qualified for the Supreme Court. The ads led to dual accusations of ethical violations. As former U.S. Supreme Court Justice Sandra Day O'Connor recently said, "Campaign ads about judicial races are like french fries for people who are hungry for information - they are not good nutrition."

Merit Selection would set up a system in which Pennsylvanians can learn about the candidates applying for judicial vacancies and can share with the nominating commission, the Governor and the Senate any relevant information they have about these candidates. In addition, once a judge has gone through this process of evaluation by the commission, nomination by the Governor and confirmation by the Senate, significant information about his or her qualifications, skill, experience, background and reputation will have been made public. This all will be important to Pennsylvanians, who will be asked to decide in a retention election after the judge's short initial term whether that judge should be retained.

### **4. Random Factors Influence Election Outcomes**

Too often, the best predictors of the winners of judicial elections are how much a candidate spends on the campaign, political party affiliation, the geographic area in which a candidate lives and whether there is a non-judicial race that increases turnout, ballot position, and name recognition. These factors are not related to a candidate's qualifications. The influence of these

factors is great because even the voters who do participate in these low turnout elections have very little relevant information on which to base their decisions.

Decisions as important as who sits on the appellate courts should not be left to chance and random factors. Merit Selection removes the randomness from the process and sets up a system under which qualifications determine who reaches the appellate bench.

### **5. The Lack of Diversity on Pennsylvania's Appellate Courts**

Pennsylvania is a diverse state, politically, ethnically, racially and geographically. Our appellate courts, however, do not reflect this diversity. Instead, most candidates who win election to the appellate courts come from the big population centers – the Philadelphia and Pittsburgh areas.

The appellate courts are lacking in racial and ethnic diversity, and although women recently have been successful in reaching the Superior and Commonwealth Courts, only three women ever have been elected to the Supreme Court (although more women have been appointed to fill interim vacancies). Only one person of color has ever been elected to a full term on the Supreme Court. Currently, there are no people of color serving on the Pennsylvania Supreme Court. The one judge of color on the Superior Court is the only judge of color serving on Pennsylvania's appellate bench.

Under Merit Selection, the nominating commission evaluates ALL applicants for judicial vacancies. No one is excluded from the process due to lack of financial resources or political connections. The proposed Constitutional language emphasizes the value of having diverse courts and a diverse nominating commission. It requires that "The commission shall consider that each of the appellate courts should include both men and women who come from racially and ethnically diverse backgrounds and who reflect the geographic diversity of this Commonwealth." Similar language guides those appointing nominating commission members.

The value of a diverse judiciary is that Pennsylvanians believe they will be treated fairly by appellate courts that reflect the diversity of the Commonwealth. When governmental institutions reflect the populations they serve, the public has greater confidence that those institutions serve the people. This is very important in maintaining strong courts. The courts derive their power and legitimacy from public trust. Perception is very important when it comes to the court system.

Merit Selection has a better track record than elections in bringing diverse judiciaries to the bench. Research by the American Judicature Society shows that racial minorities have greater success reaching appellate benches through Merit Selection. Of 340 judges on the highest state courts in the nation, 35 are minorities; 5 were elected, while 30 reached the bench through some form of appointive system, including Merit Selection. Women, too, have greater success in reaching appellate courts in Merit Selection states. Of 340 judges on the nation's highest state courts, 103 are women; 31 were elected, and 72 reached the bench through some form of appointive system, including Merit Selection.

### **6. Why Merit Selection for the Appellate Courts Only?**

The problems with elections are more pronounced at the appellate level. Appellate court elections require candidates to campaign statewide and buy television advertising time in

multiple media markets. As a result, these campaigns are much more expensive. Moreover, special interests groups get more involved in and spend more on appellate court elections. In elections for most county courts, voters have a greater likelihood of knowing candidates and greater opportunity to meet and learn about those candidates. Finally, the lack of diversity is much more apparent on the appellate courts.

### **7. Merit Selection is Different from the Process for Appointing Interim Appellate Judges in Pennsylvania and from the Federal System for Appointing Judges**

Under the current system for filling interim appellate court vacancies, the Governor appoints and the Senate must confirm a nominee by a two-thirds vote. Traditionally, to win confirmation, the nominee must pledge not to seek a full term in the upcoming election. Thus, interim appointments serve for two years or less.

Under the federal system, the president may appoint a nominee of his or her choosing. That nominee is then subject to Senate confirmation, and will serve for life or good behavior.

In a Merit Selection system, the Governor would be required to make a nomination from the commission's list of highly qualified candidates. No such requirement exists in either the interim appointment process or the federal system. Although Pennsylvania has a bipartisan nominating commission to advise our United States Senators on possible federal court appointments, its recommendations are not binding on the president, and since the nominating commission is not constitutionally-mandated, it could cease to exist. In addition, the nominating commissions are quite different: in the federal system, the U.S. Senators appoint all the Commission members.

Critically, Merit Selection also provides that following a brief term on the bench and at regular intervals thereafter, a judge would stand before the public in a nonpartisan, yes/no retention election. Neither the interim appointment process nor the federal system provides for any sort of retention election.

Neither the federal system nor the interim appointment process should be viewed as examples of how Merit Selection would work.

### **III. Conclusion: It is time to Let the People Decide**

It has been more than forty years since the people of Pennsylvania have had the opportunity to weigh in on how we select appellate court judges. It is time to have a public dialogue on the issue. The 2010 Pennsylvania poll demonstrated growing support for changing the way we pick judges: 62 percent favor merit selection of appellate judges over elections. Even more impressive is that even those who are not yet ready to commit to changing the system at least want the chance to weigh in: 93 percent of those polled agreed that the voters should have the opportunity to choose whether the state should change the way it selects appellate court judges.

Moving these bills forward will not change the way Pennsylvania chooses appellate court judges. Instead, it is one step in a long process that culminates with a public referendum on the issue. Amending the constitution is a lengthy process with lots of stages for deliberation. It is a process worthy of pursuing for it will begin a public dialogue that Pennsylvanians are eager to have.

Ultimately, the question of whether to change to Merit Selection will be up to the people of Pennsylvania. The Committee has the power to begin the process that will let the people decide.

Thank you for considering our suggestions for improving our selection system for appellate court judges.



## MERIT SELECTION COALITION

### Community & Civic Groups:

American Civil Liberties Union of PA  
American Judicature Society  
Black Clergy of Philadelphia and Vicinity  
Committee of Seventy  
Common Cause of Pennsylvania  
Jewish Social Policy Action Network (JSPAN)  
Justice at Stake Campaign  
League of Women Voters of Pennsylvania  
League of Women Voters of Philadelphia  
NAACP, Philadelphia  
Pennsylvania Council of Churches  
Philadelphia Council of Clergy  
Urban League of Philadelphia  
WomenVote PA

### Businesses & Business Groups:

AAA Mid-Atlantic, Inc.  
Arkema, Inc.  
Air Products and Chemicals, Inc.  
Association of Corporate Counsel, Delaware  
Valley Chapter  
Committee for Economic Development  
Comcast  
Dow Advanced Materials  
Dupont  
FMC Corporation  
Furia Rubel Communications, Inc.  
GlaxoSmithKline  
Greater Philadelphia Chamber of Commerce  
Greater Philadelphia Hispanic Chamber of  
Commerce  
Hispanic Chamber of Commerce of  
Central Pennsylvania  
IKON Office Solutions, Inc.  
Merck & Co., Inc.  
The Northeast Pennsylvania Manufacturers and  
Employers Association  
Pennsylvania Business Council  
Pennsylvania Chamber of Business and Industry  
Pennsylvania Chemical Industry Council  
Pennsylvania Manufacturers' Association  
Ricoh Americas Corporation  
University of Pittsburgh Medical Center

### Legal Groups:

Allegheny County Bar Association  
American Bar Association  
Barristers' Association of Philadelphia  
Community Legal Services of Philadelphia  
Education Law Center of Pennsylvania  
The O'Connor Judicial Selection Initiative  
The Institute for the Advancement of the  
American Legal System at the University  
of Denver  
Pennsylvania Bar Association  
Pennsylvania Institutional Law Project  
Philadelphia Association of Defense Counsel  
Philadelphia Bar Association  
Public Interest Law Center of Philadelphia  
Women's Law Project

### Current & Former Governors:

Tom Corbett, PA Governor  
Edward G. Rendell, Former Governor  
Tom Ridge, Former Governor  
Richard Thornburgh, Former Governor  
Mark Schweiker, Former Governor

Note: Civic, legal, labor and business organizations are still being added.