

MERIT SELECTION PENNSYLVANIA HOUSE TESTIMONY

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Judge Phyllis W. Beck (Ret.)

First let me state my qualifications for the views I express in this testimony. I was a Superior Court Judge for almost 25 years. I was first appointed by Governor Dick Thornburg. As an appointee, I served on the court for two years and then ran state-wide and was elected for a ten-year term. I then stood for retention and I was retained. You might view my testimony as coming from someone whose experience is too remote. But mine is not. In 2007, my daughter, Alice Beck Dubow, successfully ran for a seat on the Common Pleas Court of Philadelphia. I served as her campaign manager. I have experienced the entire gamut of the judicial selection process: appointment, election state-wide, retention state-wide and election county-wide. I also had the opportunity to examine the judicial system as a whole. I was chair of Governor Bob Casey's Judicial Reform Commission which issued a major report on structural reform of the judiciary with special emphasis on selection and retention.

I wish to speak in favor of merit selection of judges. Judges are the linchpin of democracy. The ideal judge at all levels must be competent, hard working, experienced, diligent, prompt, honest, unbiased and independent of outside influences. A good judge must also bring to the job a passionate desire to do justice in accordance with the facts and law of each case.

A little Pennsylvania history as background. Pennsylvania has not always elected its appellate bench. At the time the federal constitution was approved—forming the United States—Pennsylvania judges were appointed. A commission made recommendations to the governor who selected members of the judiciary. However, in 1850, in the wake of the Andrew Jackson reforms, the Pennsylvania constitution was amended to provide for the partisan election of judges.

Although the argument continued as to elective vs. appointive judge, it wasn't until 117 years after the 1850 change that the topic was subject to serious public debate. At the Constitutional Convention of 1967-68, the proposal for change again was openly debated. In 1969, in accordance with the mandate of the Constitutional Convention, the voters of Pennsylvania, in a primary election, were asked whether they favored an appointive system for state-wide appellate judges, or they favored continuing the elective system. The constitutional amendment failed, but by a very narrow margin.

Today, we have a hybrid system in place. There are hotly partisan elections of all judges for an initial ten-year term followed by an almost automatic retention of judges for another ten-year term. It is with this historical background, I make my comments in support of merit selection.

Here is the reality of the election of judges state-wide today. The voters have no idea who is running or the qualifications of the candidates. Special interests are playing an increasingly important role in elections. Those interests want to control who will sit in judgment on their cases. The special interests come from both inside and outside of the state. Special interests have become significant players in the selection of judges. This is particularly true of single-issue groups; whether they be business, union, environmental, law and order, civil libertarians, gun control, and on and on. Groups such as these provide enormous sums of money, influence, and man power for the election of appellate judicial candidates. Special interests do not want judges who are learned in the law and impartial. They want judges who slant their way and who will decide cases in their favor. An unfair and partial judiciary is a threat to democracy.

Equally important -- in the elective system there is no gate keeper who assesses the qualifications of the candidates. The appointive system provides a gate-keeping function. A commission makes recommendations to the governor. It is expected that the commission will scrutinize the candidate's background to make certain the candidate has the qualifications and the character to be a good judge. Under the elective system, any lawyer--whether qualified or not--can run and possibly win if that lawyer has a good ballot position, enough money and backing. I recall one young, inexperienced lawyer who filed to run for both the Superior Court and the Commonwealth Court at the same time. He told me he would stay in the race for the court in which he selected the better ballot position, and drop out of the other. He ran for the Commonwealth Court because his ballot position was better. He lost.

As to the criticism that the appointive system will not take politics out of judicial selection, I agree. And politics should not be taken out of the system. Politics is the grease that makes the democracy work. It is the height of naivety to think that an appointive system will erase the political component completely. However, politics will have less of an influence on the selection process. It will remove money, especially money from interest groups that comes from both in and out of the state.

The judge's role is different from other elected officials in the executive and legislative branches. Judges are supposed to be the neutrals in a democratic scheme. Pennsylvania should recognize this difference. Merit selection will seat as judges the most qualified members of the bar.

Many who are opposed to merit selection will tell you that running is an enriching experience. And I certainly found that it is. You get a feel for people's problems across the state. But when I weighed this factor against the disadvantages of election--raising money, catering to special interests, the luck of the draw in terms of ballot position, the lack of knowledge about the candidates--I conclude that merit selection is the better way. It's time has come.