

WRITTEN TESTIMONY

BEFORE THE HOUSE JUDICIARY COMMITTEE

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APPOINTMENT OF APPELLATE JUDGES

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I. INTRODUCTION

Chairman Marsico and other distinguished members of the House Judiciary Committee. My name is Mark E. Phenicie, Legislative Counsel for The Pennsylvania Association for Justice (formerly Pennsylvania Trial Lawyers Association.) I would like to thank you for giving us the opportunity to provide written testimony on the subject of the proposed Constitutional amendments in Pennsylvania that would eliminate the right to vote for Appellate Judges and allow as its substitution the appointment of Appellate Judges.

The elected judges, both on the local and Appellate panel have the greatest of integrity, knowledge of the law and judicial temperament.

On January 23, 1993, the Board of Governors of the Pennsylvania Trial Lawyers Association met and overwhelmingly voted to reaffirm its 1983 Resolution to support the right to elect all judicial candidates in Pennsylvania.

We also included in our Resolution some election reform as it relates to judicial candidates.

Why is there this periodic cry for changing the selection of our Judges from an elective process to an appointive process? The voters in the Commonwealth are doing just fine in selecting all their judges. The voters are not demanding to give up their right to vote for Appellate Judges in order to allow the Governor with the advice and consent of the Senate to select them. This is particularly true due to the public's demand for more transparency and suspicion of all branches of government.

II. THE RIGHT TO VOTE

The electorate of Pennsylvania votes in the primary election of 1969 rejected the option of having an appointed Judiciary which was presented to them by Section 13(d) of Article V of the Pennsylvania Constitution. Rather, the citizens of the Commonwealth chose to select their Judiciary by election and not by appointment.

In 1980, the citizens of the Commonwealth of Pennsylvania elected for the first time their Attorney General. Again, the voters opted to elect a statewide official, rather than having him/her appointed by the Governor.

The right to vote is a precious right that guarantees individual participation in the democratic process. A statewide poll commissioned during the height over the scandals dealing with former Pennsylvania Supreme Court Justice Rolf Larsen, resulted in approximately 70% of voters in a scientific 800-sample survey in favor of their election of all judges.

III. “MERIT SELECTION” – A MISNOMER

The phrase “Merit Selection” is a “sound bite” that has a negative connotation about the elective process. With few exceptions the quality of judges elected in this Commonwealth support that such a conclusion about “merit selection” bears no relationship to reality.

Unfortunately, the process of appointment of judge, while not less political, is certainly less public. The nominating committee will submit to the Governor a proposed list of candidates from which the Governor will appoint with the advice and consent of the Senate. There will be no public hearings, no public scrutiny, no public participation. There will be simply the selection of the Governor’s person from amongst the list approved by this committee. History bears out that the Governor’s appointments are usually from a person within his own political party. On a national basis, more than 90% of all executive judicial appointments come from the same party as the Executive.

There is hypocrisy in the position taken by proponents of “Merit Selection” and the reasons upon what they rely in such, to eliminate the role of the people in judicial selection.

IV. ELECTION REFORMS

We continue to support certain election and administrative changes which include:

- (1) Rotating the position of statewide judicial candidates as they appear in each legislative district to take away the “luck of the draw;”
- (2) Give judicial candidates a greater degree of freedom to discuss issues of public importance without permitting them to prejudge specific cases, enabling voters to make better informed choices;
- (3) Encourage merit ratings before and/or as a condition to political party endorsements, enabling the parties to make better informed decisions;
- (4) Elimination of county designation on the ballot;
- (5) Public financing by the Commonwealth.

While there are some leading members of our association who support political appointment of Appellate Judges, our association remains committed to our democratic tradition of the RIGHT TO VOTE.

Thank you.