

HOUSE JUDICIARY COMMITTEE PUBLIC HEARING ON
MERIT SELECTION: HOUSE BILLS 1815 AND 1816
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Our Constitutional Right to Vote

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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 commissions of appointees selected by a small group of Harrisburg politicians and special interest groups, which commissions 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, and a group of predominantly Republican General Assembly members 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 in the last Presidential election the Democratic Presidential candidate was a man of color, Barack Obama, now President, and the Vice Presidential candidate of the Republican Party was a woman, Sarah Palin?

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 (we know how expensive because there is mandatory reporting), 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 Harrisburg politicians are white males. The heads of the Senate and House will continue to be white males even as Pennsylvania's 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 Harrisburg politicians who appoint a majority of each Nominating Commission and the special interest groups that appoint the rest of the members of each Nominating Commission. 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" was Senator Vince Fumo, in a federal penitentiary after multiple convictions for influence peddling. Many of the predecessors of the current House and Senate leadership are also in penitentiaries for criminal activity connected to their political positions.

*It will take a great deal of long term money and influence to direct the Governors and political leaders of the General Assembly to appropriate "meritorious" candidates. **There are no provisions for disclosure of "donations" or personal ties to the political leaders who will appoint the members of the proposed "Appellate Court Nominating Commissions."***

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 government lawyers, small firm or solo practitioners, women, or lawyers of color have the time or money to engage in such a long term process. The plan is to have Pennsylvania's

Appellate Courts again become the exclusive preserve of rich, white men.

6. Politics Without Accountability

So-called "Merit Selection" under the current bills is no such thing. It is a totally political process stacked against all but the wealthy and connected. Different 15 member Nominating Commissions will decide on a short list for each vacancy. 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 Commission! The Governor appoints 4,¹ 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 and voters' judicial choices.

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 7 so-called "public members" of each Nominating Commission will be appointed by predominantly conservative special interest groups² and probably will be just

¹ The Governor gets two shots at this process. First he appoints 4 members of each Nominating Commission. Then he gets to pick the one out of 5 lawyers chosen by the Nomination Commission to go to the Senate for confirmation.

² The groups that can nominate one person, are the following:

1. Bar Associations. The large bar associations are made up of predominantly conservative lawyers, most of whom are concerned about their own law practice businesses.

window dressing. It is unlikely that there will be more than token representation of women or people of color on a Nominating Commission, 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 Commission 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.

Governor Rendell, a supposedly great supporter of diversity, nominated four old white men for interim

2. Business Organizations. The large business organizations like the Chamber of Commerce are also predominantly composed of conservative business people primarily concerned about maximizing their profits.

3. Civil Organizations. These are large conservative nonprofits like the Boy Scouts of Pennsylvania. PA's Boy Scouts wouldn't even admit gay scouts or leaders.

4. Professional Associations. These would also be conservative entities like the Pennsylvania Medical Association. Have we forgotten that the AMA tightened its school accreditation requirements and licensing requirements in the early 20th Century to keep out people of color, all women, Jews, and immigrants? So did the American Dental Association (ADA), etc.

5. Public Safety Organizations. Police, by their nature, are conservative.

6. Unions. A sop to liberals.

7. Law School Deans. To make the Commissions look fair.

The five largest organizations within each of the categories 1-6 can each nominate one potential candidate. The actual candidate will be picked by lot from the five nominees within each category.

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 or other appellate courts 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 Commissions set their own procedures--not subject to the new PA Sunshine Law. Commissions could decide to not even make public the names of their members!

I wanted to write a letter of support for someone being considered for a federal judgeship several years ago. 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 first long list of nominees is made public and then after the final short list of 5 is made public before the list goes to the Governor. The Governor picks the nominee and the Senate confirms.

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

8. These Bills Are More Elitist and Anti-Democratic than Earlier Versions and They Are Unconstitutional.

The Bills require that “each nominating or appointing authority shall take into consideration that the commission should include both men and women, as well as individuals who represent racially and ethnically diverse backgrounds and who reflect the geographic diversity of the Commonwealth.” (emphasis added).

The same for the five nominees of each Nominating Commission.

The 4 Nominating Commission appointees of the heads of the General Assembly “shall be residents of at least four different counties.”

“Should” is not mandatory, so there is no guarantee of gender, racial, or ethnic diversity on any Nominating Commission or among any list of 5 nominees. But I’ll bet there shall be geographic diversity. And geographic diversity is mandated for the 4 legislative nominees.

I wrote my college senior thesis on malapportionment. In the late 19th Century, New York State held a Constitutional Convention where it was decided that “the vote of a good country yeoman should be worth three votes of the hoards in New York City.” The votes of immigrants, especially Jews, and people of color were determined to be only worth one third that of an upstate white farmer.

This bill will also give overrepresentation to sparsely inhabited regions of Pennsylvania at the expense of densely populated urban areas.

I remember being driven as a child from New York City across northern Pennsylvania to spend the summer with cousins in Warren, Pennsylvania. The car radio picked up KKK broadcasts. Recently, James Carville repeated the old saying regarding our state, "there are Philadelphia and Pittsburgh and Alabama in between." This is an exaggeration, but it is still largely true that "in between" is still very conservative and Republican.

Malapportionment was declared unconstitutional by the U.S. Supreme Court. This bill is similarly unconstitutional.

9. "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.³

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 overwhelming majority vs. the elitists.

We are so stupid and uniformed that we don't know what's good for us, so we should vote to amend Pennsylvania's Constitution to let secret 15 member Commissions appointed by high level Harrisburg politicians decide what's good for us.

³ Much of my research is empirical. PMC spends from three hours to a full day, with free breakfast and/or lunch, to indoctrinate selected groups on the evils of electing judges and the merits of so-called "merit selection." PMC then has their well-fed and well indoctrinated groups fill our surveys on so-called "merit selection." **This is not the way to validly survey.**

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."

'MERIT SELECTION' MEANS STEALING MY VOTE

By MARINA ANGEL

A LOBBYING GROUP was founded in 1988 with the high-minded name of Pennsylvania for Modern Courts. Its main purpose is to take away our constitutionally guaranteed right to vote for judges and give that right to a 14-member "nominating committee," with a majority (eight) appointed by the governor and the majority Senate and House.

The other six are to be appointed by special-interest groups: a union, a non-lawyer professional association, a business organization, a public-safety organization, a civic group and a law-school dean. The proposal would take away our right to determine the merits of judicial candidates and give that right to the appointees of Harrisburg politicians and special interests.

And that's supposed to be non-political "merit selection"? The nominating committee will operate in secrecy, not subject to Pennsylvania's sunshine laws. We get to learn who the five finalists are when the list is submitted to the governor.

As for the "merit" part, individuals must get eight votes in the committee. That adds up to the four appointed by the governor and the four by the legislative majority and minority leaders. 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 those terms are defined. Is the governor's good buddy — who's contributed substantial time and money to the governor's political career, and is head of a law firm that represents large corporations and who's active in the Chamber of Commerce and the state bar — meritorious?

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

The demographics of the United States are finally in favor of men of color and women of all colors. In the state's fall elec-

tions, women won three of the four open appellate courts seats. On the national scene, the Democratic candidate for president will be a man of color or a woman.

As for trusting the chief executive, in this case Gov. Rendell, to choose from a "merit" slate, Rendell just picked four older white males for interim appellate appointments.

And there are some more troubling connections to this anti-democratic movement. Rendell and the legislature, in a mid-raid, brought us legalized gambling — making Pennsylvania the only state in the nation to do so without a referendum. As for members and leadership are being investigated for illegal bonuses. Sen. Vincent Fumo, a leading proponent of "merit," is under a multi-count indictment.

Let's look at the group behind this effort for 20 years, Pennsylvania for Modern Courts.



It is part of a nationwide consortium of similar groups seeking to take away our right to vote. They are supported by large law firms and corporations and their highly paid employees.

They also receive money from out-of-state organizations dedicated to a national effort to take away our right to vote for judges.

The two leading voices for Pennsylvania for Modern Courts are Lynn Markes, who's been working at taking away the right to vote for judges since 1990, and Shiraz Goodman.

They join with bar associations and other groups to push their agenda. I consider them paid lobbyists, even though that's not how they present themselves in their speeches and writings. They claim that taking away our right to vote is a good thing because, first, we don't know how to vote right, and, second, elections are too expensive.

The first argument is insulting. The first argument is insulting.

I know exactly who I'm voting for. Their response is, but you're an educated, intelligent person. This clearly implies that all those other voters are uneducated and dumb. As for the second argument, we can and should specifically address the problem of cost.

BUT THIS ISSUE is not one of rich vs. poor, Republican vs. Democrat, 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 the state constitution to let a 14-member committee decide what's good.

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