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February 28, 2012

The Honorable Ron Marsico  
218 Ryan Office Building  
PO Box 202105  
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The Honorable Thomas R. Caltagirone  
106 Irvis Office Building  
PO Box 202127  
Harrisburg, PA 17120-2127

Dear Chairman Marsico and Chairman Caltagirone,

Thank you for the opportunity to submit written testimony on House Bill 1815 and House Bill 1816. As you know, these bills would repeal the commonwealth's election of judges in state appeals courts and replace it with a merit selection system. In order to protect civil liberties, civil rights, and the rule of law, the American Civil Liberties Union of Pennsylvania supports HB 1815 and HB 1816. On behalf of the 19,000 members of the ACLU of Pennsylvania, I encourage you to support the bills and to bring them before the House Judiciary Committee for consideration.

As you know, in the commonwealth's current system, all judges for the state appeals courts are elected in partisan elections. Choosing judges through elections leaves the rule of law vulnerable to the excesses of money politics and the whims of the majority. HB 1815 and HB 1816 provide some buffer between the courts and public opinion, decreasing the likelihood that judges rule with an eye on the next election. It also ensures that judges do not need to take campaign donations from parties who could come before them at some point in the future.

The ACLU of Pennsylvania takes on difficult cases that often aid marginalized people whose rights must be protected, regardless of public opinion. The beauty of the American system of jurisprudence is that the rights of the minority are protected from the tyranny of the majority. Our state and federal constitutions enshrine numerous civil rights, including the right to vote, the right to privacy and to be free from excessive government surveillance, the freedom of religious expression, and equal protection under the law. Too often, those most in need of protection under the law are not popular with the majority, including religious minorities; criminal defendants; lesbian, gay, bisexual, and transgender people; and ethnic minorities. Judges must be comfortable ruling on the law and not what will resonate in the next election.

**Testimony in support of House Bill 1815 and House Bill 1816  
Submitted by Andy Hoover, Legislative Director, ACLU of PA  
February 28, 2012**

To be clear, the merit selection system in HB 1815 and HB 1816 is not free from political influence. The governor must select a nominee from a list submitted by the nominating commission. The Senate must approve the nominee. The judge or justice must face retention elections. Because changing to a merit selection system requires a constitutional amendment, HB 1815 also requires approval of the majority of voters, after approval by the legislature in two consecutive sessions. The people of Pennsylvania will have their say.

It is impossible to create a system that is completely untouched by politics. In Iowa in 2010, three state Supreme Court justices lost their retention elections on the heels of a 2009 ruling that legalized marriage equality for same sex couples.<sup>1</sup> The justices agreed with plaintiffs that the equal protection clause of the Iowa constitution ensured the right to marriage for same sex couples. That was their interpretation of the state constitution, and it is believed that a majority of voters dismissed them from the bench due to that decision. During that retention election, Iowa was flooded with out of state and special interest money to influence the outcome.

Iowa has a merit selection system for judges. While the ACLU of Pennsylvania laments the possibility that judges could hesitate to recognize equal rights for minorities out of fear of being removed from office, the Iowa experience undermines the argument of opponents of HB 1815 and HB 1816 that the legislation leaves the public without input on the judicial branch.

In a 2006 speech before the Anti-Defamation League, Judge John E. Jones III of the federal middle district of Pennsylvania stated:

Polls show that many Americans believe that it is acceptable to teach creationism in public schools. And early last year polls found that a great many Americans thought that Terri Schiavo should be kept alive. But I submit to you that as citizens, we do not want and in fact we cannot possibly have a judiciary which operates according to the polls, or one which rules based on who appointed us or according to the popular will of the country at any given moment in time.<sup>2</sup>

The ACLU of Pennsylvania agrees. Please support HB 1815 and HB 1816.

Sincerely,  
Andy Hoover  
Legislative Director, ACLU of Pennsylvania

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<sup>1</sup> Schulte, G. (2010). *Iowans dismiss three justices*. Des Moines Register, November 3, 2010. Retrieved February 27, 2012, from

<http://www.desmoinesregister.com/article/20101103/NEWS09/11030390/iowans-dismiss-three-justices>.

<sup>2</sup> Available at [http://www.adl.org/Civil\\_Rights/speech\\_judge\\_jones.asp](http://www.adl.org/Civil_Rights/speech_judge_jones.asp).