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# HB-38 Judicial Redistricting



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# What is this bill?

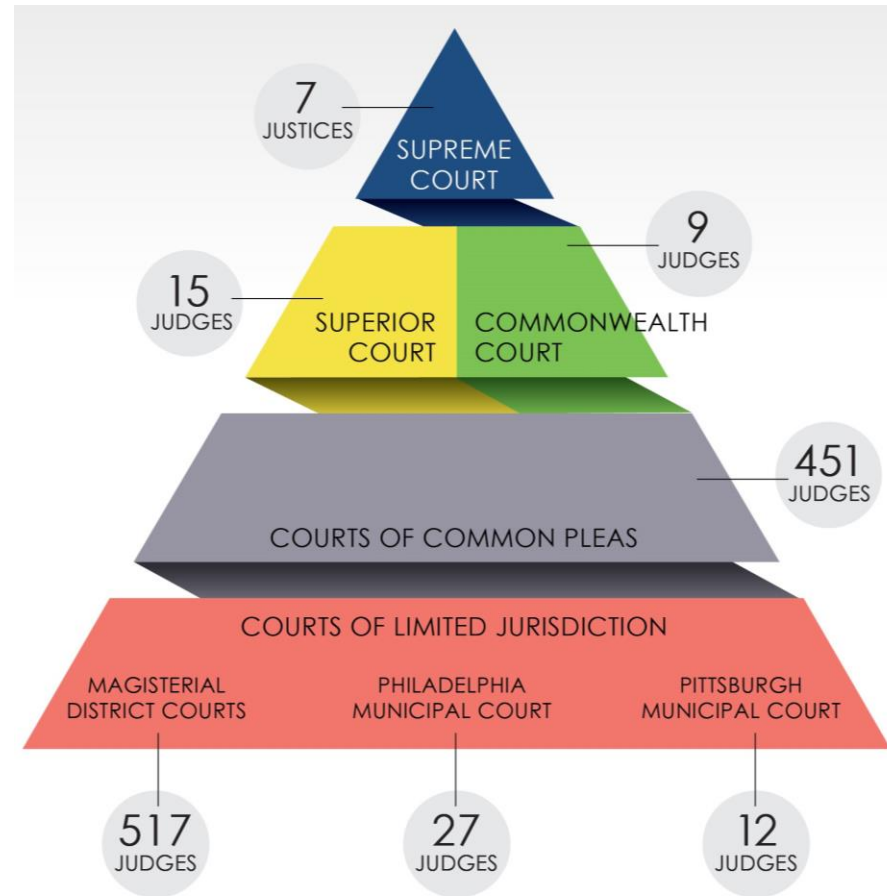
- A Proposed Amendment to Pennsylvania's Constitution to change the way citizens of PA will vote for Appellate Court Judges
  - Currently, we vote for all appellate court judge positions when an opening arises or when they are up for retention
  - Proposed Constitutional Amendment – we will vote for only one Supreme Court Judge, one Superior Court Judge and one Commonwealth Court Judge



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# What are Pennsylvania's Appellate Courts?



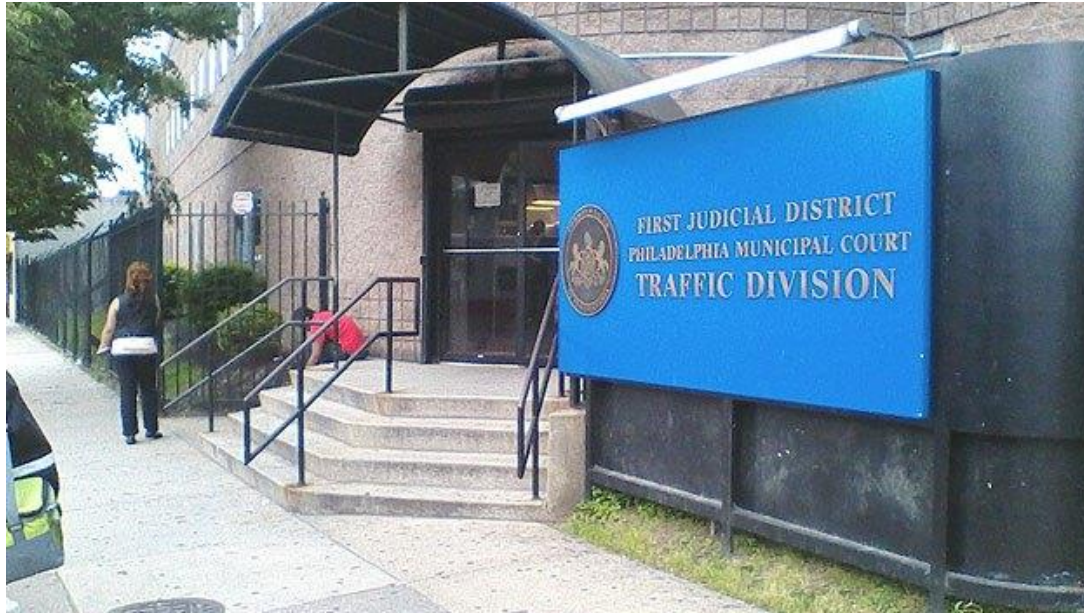


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# Municipal Courts – Found in Philadelphia



- All criminal offenses carrying a potential term of five years or less; landlord-tenant cases involving an unlimited amount of money
- Composed of three divisions:
  - Civil Court Administration
  - Criminal Court Administration
  - Traffic Court Administration
- Do not hold jury trials





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# Court of Common Pleas



- Hears appeals from the minor courts and appeals not exclusively assigned to another court
- Adjudicates matters involving children and families
- Holds civil and criminal trials
- Holds jury trials



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# Intermediate Appellate Courts

- **Superior Court** hears civil and criminal appeals from Court of Common Pleas, including matters involving families
- **Commonwealth Court** hears original actions brought by and against the Commonwealth, appeals from decisions made by state agencies and some appeals from the Courts of Common Pleas
- Panels of three judges preside over intermediate appellate court hearings



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# Pennsylvania Supreme Court

- Ultimate authority on matters brought before the lower courts
- **Review is discretionary in many cases**
- Review is mandatory for limited categories of cases: interpretation of state constitution, cases involving the death penalty, etc.



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- Districting:
  - 7 Supreme Court districts
  - 15 Superior Court districts
  - 9 Commonwealth Court districts





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# Alleged Justification for Change

- “Organizes the Judiciary into representative districts and further providing for residency requirements”
- Every resident shall be provided with approximately equal representation on the court
- Each judicial district shall be composed of compact and contiguous territory as nearly equal in population as possible
- Unless absolutely necessary, no town, borough, township or ward may be divided



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# What does this bill do?

Makes Appellate Court Judges responsible to their direct constituencies

- Appellate court judges render decisions statewide based on analysis, interpretation of laws, constitution, rules and cases
- They would now be concerned with local issues and local impact, as opposed to statewide impact, in order to be elected and to be retained
- Judges' loyalties are not to a person, business, political party but to the law



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# Problems this bill creates

- Threatens the Judiciary's independence
- Disenfranchises voters
- Creates potential for greater influence of money
- Makes Judges Politicians
- Harmful to diversity of Court
- Judicial "trades" - when I spoke with one former appellate court judge, their concern with this responsibility to constituency could result in the "trading" of cases and rulings in the time period leading up to voting on their retention. Brennan Center has documented that judges up for elections render harsher or more severe criminal decisions in the year prior to their retention elections.
- Harms public's confidence in the Courts



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# What is the process of implementing these changes?

- The General Assembly shall
  - - establish the judicial districts
  - - determine transition to this system
  - - establish the order of election
  - - determine the eligibility to seek retention
- The number and boundaries shall be established by the GA with the advice and consent of the Supreme Court





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# How will this be implemented?

- - will all judges be removed at the same time, a clean slate?
- - will judges not be permitted to run for retention? Or a second retention?
- - Is this redistricting going to take place first in the Supreme Court, and then after completed in the Superior Court, and then after that's completed in the Commonwealth Court?



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# Why are we in this position?

- the General Assembly's displeasure with rulings of the Pennsylvania Supreme Court
- Representatives who have supported and co-sponsored merit selection of Appellate Court Judges are supporting this knowing it is bad and dangerous
- Originally they said it would die on the vine in November, expecting the House to change hands – but it didn't
- Now they say it will die in the referendum
- IF THEY THINK IT IS BAD LAW, BAD PRECEDENT, WHY ARE THEY SUPPORTING IT? To prove a point, and threaten the current court



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# Brief Legislative History

- Introduced in House early in 2019, strict party line vote in House Judiciary Committee, no discussion, no hearings, no testimony, no experts
- Voted out of House in Dec. 2019, no discussion, no hearings, no testimony, no experts, no minority support
- July 2020, after holiday weekend, considered in Senate State Government Committee as one bill among many – considered for less than 10 minutes, no testimony, no experts, no public hearing -
- Next week, voted out of Senate, no testimony, no experts, no public hearing, no minority support



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# Numerous Groups Opposed the Bill but were not heard

- Pennsylvania Bar Association
- Philadelphia Bar Association
- Allegheny County Bar Association
- Erie County Bar Association
- Fair Districts and League of Women Voters
- Trial Lawyers
- Pennsylvanians for Modern Courts





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# Current Appellate Courts Make-Up



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## Supreme Court 3 women, 4 men, no minorities



Supremes		
C.J. Thomas Saylor	republican	somerset
Debra Todd	democrat	butler
Max Baer	democrat	alleggheny
Kevin Dougherty	democrat	philadelphia
Christine Donohue	democrat	alleggheny
David Wecht	democrat	alleggheny
Sallie Mundy	republican	tioga



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## Superior Court- 10 women, 4 men, 1 minority

P.J. Jack Panella	democrat	northhampton county	
John T. Bender	republican	allegheeny	
Mary Jane Bowes	republican	allegheeny	
Jacqueline Shogan	republican	allegheeny	
Anne Lazarus	democrat	philadelphia	
Judith Ference Olson	republican	allegheeny	
Victor Stabile	republican	dauphin	
Alice Beck Dubow	democrat	montgomery	
Deborah Kunselman	democrat	beaver	
Mary Murray	republican	beaver	
Maria McLaughlin	democrat	philadelphia	
Megan McCarthy King	republican	chester	
Daniel McCaffery	democrat	philadelphia	
Carolyn Nichols	democrat	philadelphia	



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## Commonwealth Court – 6 women, 3 men, no minorities

P.J. Mary Hannah Leavitt	republican	dauphin
Renee Cohn Jubelier	republican	centre
P.Kevin Brobson	republican	dauphin
Patricia McCullough	republican	allegheeny
Anne Covey	republican	bucks
Michael Wojcik	democrat	allegheeny
Ellen Ceisler	democrat	philadelphia
Christine Fizzano Cannon	republican	delaware
Andrew Crompton	republican	dauphin





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# History of court composition



- The current 5-2 Democratic domination of the Supreme Court is a rarity in the Court's history.
- The Court in the past has swung from domination by one party to another.
- In 2015, the three vacant seats were won by Democrats. In 2017, the one seat was won by a Republican. There is a seat that will be up for election this year in 2021.
- The current Superior Court disposition is evenly split between parties with judges from all over the state
- The Commonwealth Court, comprised of judges from across the state, is 7-2 domination by Republicans with Governor Wolf most recently appointing a Republican to that Court. Interestingly, this Court has two judges from Dauphin County, which could never happen under this bill.



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# WHAT IS THE URGENCY NOW?

- This bill has been passed once by the PA House and PA Senate without any hearings, testimony or transparency
- This bill is being voted on by the PA House at the end of January and by the PA Senate in the beginning of February, and again without any public hearings, testimony, or transparency
- The goal is to place this as a question to the voters on the primary ballot
- Turnouts for primaries is historically low, independents don't vote in primaries unless there is a ballot question
- Ballot questions are usually confusing, and this question is drafted in that manner
- Voters typically approve a ballot question as they assume legislators have approved and done their homework



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# What can you do?



- Reach out to your government affairs groups and lobbyists
- Reach out to your state senators and representatives
- Write letters to the Editors or Op-Eds
- Invite PMC to speak and educate your organization on this Bill