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History of Judicial Selection in Pennsylvania

Pennsylvania has not always elected judges. In fact, Pennsylvania history reflects an ongoing concern with finding a better way to select judges.

In the Beginning, Judges Were Appointed by the Governor

After considerable debate, Pennsylvania's first state constitution in 1776 provided for a judiciary with seven-year terms (subject to removal by the General Assembly for "misbehavior" or "maladministration"), appointed by a twelve-member Executive Council (whose members were elected by voters of the state's twelve counties). In the constitution of 1790, most notable for creating the position of Governor to replace the Executive Council, the new chief executive was given the power to appoint judges who were to serve "during good behavior."

The judicial appointive system came under attack during the administration of President Andrew Jackson (1829-1837), amid the growing sentiment that all governmental office holders should be accountable to the voters and therefore elected. During Pennsylvania's 1837 Constitutional Convention, efforts to move towards an elected judiciary were unsuccessful. Nevertheless, the 1838 constitution approved by the voters did reduce the tenure of supreme court justices from life to fifteen years.

A Short Experiment with Judicial Elections

The critics of judicial appointments were not deterred and brought their demands for election to the chambers of the state Senate and House. In 1850, the voters adopted, after passage by the legislature, a constitutional amendment for the partisan election of all judges (including all sitting judges), with vacancies to be filled by gubernatorial appointment until the next scheduled election.

This victory proved short lived; proponents of partisan elections soon found themselves having to defend their newly won system. At the 1872-1873 Constitutional Convention, the "election versus appointment" debate reignited with charges that now the political parties, instead of the Governor, had a stranglehold over who reached the bench. The compromise reached, and subsequently approved by the voters, was to increase the initial tenure of supreme court justices from fifteen to twenty-one years, but with no eligibility to serve a second term. Judicial vacancies henceforth required gubernatorial appointment and two-thirds Senate confirmation.

Early Calls for a Move Away from Judicial Elections

Aside from a brief but unsuccessful experiment with nonpartisan elections, talk of changing the judicial selection system largely subsided for decades. The middle of the twentieth century brought only periodic spurts of interest—most notably, endorsements of plans for the appointment of appellate judges by the Pennsylvania Bar Association (1947), the League of Women Voters (1956), and by two commissions studying revisions to the Pennsylvania Constitution (1959, 1963).



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The 1967-68 Constitutional Convention

During the 1967-1968 Constitutional Convention, the judicial selection debate erupted with renewed vigor on both sides. The result was to present the 1968 primary election voters with a new judicial article that retained partisan elections of judges, but with two key additions: one establishing retention elections for sitting judges seeking to continue in office after their initial terms, and the other allowing voters to vote separately on the issue of merit selection of appellate judges during the 1969 primary election.

The article passed and, the following spring, Pennsylvania voters were asked to decide whether or not they wanted statewide judges to be elected or appointed. The vote was extremely close, but the appointive system was ultimately voted down in favor of maintaining the status quo.

Judicial Selection Reform in the Modern Era

The 1969 vote was an enormous disappointment for those hoping to end almost 120 years of partisan judicial elections. Proposed constitutional amendments for the appointment of appellate judges continued to be introduced in the General Assembly, but languished without legislative action.

In 1988, the Pennsylvania Judicial Reform Commission was formed. Known as the Beck Commission, this blue-ribbon panel of civic leaders, public officials, legal professionals, and members of the judiciary was commissioned by Governor Casey and chaired by then-Superior Court Judge Phyllis W. Beck.

The Beck Commission issued a report finding that confidence in Pennsylvania's judiciary was appallingly low, in large part due to the system of electing judges, including the fundraising that went along with it. The report presented "a sensible and achievable blueprint for meaningful judicial reform." The Beck Commission's recommendations included what was described as a "mixed" system of judicial selection—retaining partisan elections for local trial courts, except where county voters specifically opted for an appointive system, and implementing an appointive method of selecting appellate judges.

The Beck Commission's report marked the beginning of a decade of unprecedented and intensive focus on the judicial system. Two scandals in particular received unrelenting media attention. The first occurred in the late 1980's, when numerous judges on the Philadelphia Court of Common Pleas and Municipal Court were found to have accepted cash from leaders of a local union. Two of those judges received federal prison sentences and thirteen others who were implicated in the scandal either resigned or were removed from office. The second scandal erupted in 1994, when, for the first time in the state's history, a justice of the supreme court was impeached by the House, convicted in the state Senate, and permanently removed from office.

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In the midst of all this, PMC was created by those motivated to achieve meaningful judicial reform, particularly in the selection of appellate judges. The founders of PMC believed that real reform required a new statewide organization, separate from established bar associations and independent of government-appointed commissions. Since that time, PMC has worked to achieve a Merit Selection system for Pennsylvania's appellate courts.

The Push for Merit Selection Moves into the 21st Century

In 1999, PMC published its Blueprint for the Future of Judicial Selection Reform, a resource manual tracking the history of judicial selection in Pennsylvania, advocating reform, and proposing the initiation of a dialogue with all "stakeholders" in the process: the governor's office, legislators from both parties, business and labor representatives, academics, practicing lawyers, civic groups, minority groups, and various advocacy groups. The purpose was to determine whether any consensus could be reached surrounding the issue of Merit Selection. PMC viewed the bringing together of these disparate voices to be a crucial step to any meaningful reform.

In 2001, Governor Tom Ridge hosted a series of summit meetings comprised of the stakeholders identified above to discuss the issue of Merit Selection. While the summits did not produce a single unified front, they did reveal that consensus could be achieved on how to design a Merit Selection system for Pennsylvania.

Following the summits, PMC worked closely with the Ridge administration to fashion a proposal. Before this project could be completed, however, Governor Ridge was called to Washington by President George W. Bush, and Merit Selection was tabled.

The problems motivating PMC and others to work for reform, however, persisted. In each election cycle since the turn of the century, judicial elections have become more partisan, more expensive, and more of a battleground for special interest groups seeking the election of a candidate believed to be sympathetic to specific positions, particularly about "hot button" issues. These problems are not unique to Pennsylvania; they are replicated in each state that elects judges.

Polls in Pennsylvania and elsewhere reveal that voters and even judges are increasingly dissatisfied with the elective process. (Lake Sosin Snell Perry & Associates and Deardourff/The Media Company Poll, Attachment to the Report of the Supreme Court's Special Commission to Limit Campaign Expenditures, 1998; Greenberg Quinlan Rosner Research and American Viewpoint poll conducted for Justice At Stake Campaign, 2002.)

This dissatisfaction stems not only from the elective process itself, but also, and especially, from the role fundraising plays in these contests. An appallingly high percentage of the public believes that justice is sold in return for campaign contributions. Judges themselves express concern about the need to raise funds from the parties and lawyers who appear before them, and the contributors, in turn, resent the pressure to contribute.

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In fact, in 1997, the Pennsylvania Supreme Court appointed a Special Commission to Limit Campaign Expenditures to study judicial campaigns. This Committee was chaired by Attorney James Mundy. In announcing the Special Commission, then Chief Justice John Flaherty stated, “This commission reflects the Court’s concern for the integrity of the system and the perceptual danger to that integrity due to the increasingly large amount of money involved in judicial elections.” A 1998 poll commissioned by this Special Commission revealed that almost ninety percent of Pennsylvanians surveyed believed that decisions made by judges in the courtroom are, at least sometimes, influenced by campaign contributions. (Lake Sosin Snell Perry & Associates and Deardourff/The Media Company poll).

In 2000, another committee appointed by then Chief Justice Flaherty studied the recommendations of the Mundy Commission, including the imposition of limits on campaign contributions to judicial candidates. The committee, chaired by Pittsburgh attorney Evans Rose, Jr., thoroughly studied the issues and concluded that contribution limits and other election reforms would not solve the inherent problem of involving money in judicial elections. “The Committee is convinced that the present system of electing judges in Pennsylvania is seriously flawed and cannot be adequately reformed by part-way measures. Instead, a different kind of system must be installed.” The Committee report recommended that an appointive system be created for appellate judgeships.

In Spring 2010, PMC and PMCAction announced the results of a poll showing widespread public support for Merit Selection. The poll — conducted for PMC, PMCAction, Justice at Stake, Committee for Economic Development and the American Judicature Society — gauged Pennsylvanians’ obvious frustration with the judicial system: 53 percent of respondents believe the electoral system is broken, 73 percent say the most qualified candidates do not win judicial elections, and 76 percent believe campaign contributions influence judicial decision-making.

Electing judges creates a very real threat to the integrity of the justice system: if the people perceive that justice is for sale, the promise of an impartial, independent judiciary is compromised. For even if no judge ever allows campaign contributions to affect a decision, the very perception by the public that this could or would happen weakens the judiciary as the bulwark of liberty and justice.

Indeed, the state Supreme Court Commission’s own poll revealed an almost unanimous belief among the public that “justice is for sale.” This perception will only become more entrenched as judicial elections become more partisan, more controversial, and involve greater amounts of money.