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## Symposium

### Introduction: Selecting Judges in Pennsylvania

Kristy L. Swanger\*

Judicial selection has been a hot topic in Pennsylvania for many years, and whether Pennsylvania will retain its current elective system or will create some form of merit selection system is yet to be determined. Among those who have advocated for a change in the way Pennsylvania selects its judges is former Governor Tom Ridge, an alumnus of Dickinson School of Law. In his 2001 annual budget address, then-Governor Ridge asked the General Assembly “to pass, by the end of this two-year session, a referendum to change the way we select our appellate judges.”<sup>1</sup> And, in his farewell address after being appointed to head the new Department of Homeland Security, he took a final opportunity to remind Pennsylvanians of his support for merit selection.<sup>2</sup> The departure from state government of the most visible

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\* Symposium Editor, Dickinson Law Review. J.D., Dickinson School of Law of the Pennsylvania State University, 2002.

1. See Press Release, Commonwealth of Pennsylvania, Gov. Ridge’s Budget Invests in Election Reform, Calls for Merit Selection, Improved Open Records Law (Feb. 6, 2001), available at [http://sites.state.pa.us/PA\\_Exec/Governor/Press\\_Releases/010206-6.html](http://sites.state.pa.us/PA_Exec/Governor/Press_Releases/010206-6.html).

2. See Press Release, Commonwealth of Pennsylvania, Farewell Address to

advocate for change has not quieted the debate over the proper means to select Pennsylvania judges, and, by presenting the viewpoints of several authors from various political and legal fields, the editors of the *Dickinson Law Review* hope to encourage this discussion and to introduce new ideas about judges and judicial selection.

In *The Role of the Organized Bar in State Judicial Selection Reform: The Year 2000 Standards*, James Alfini<sup>3</sup> and Jarrett Gable,<sup>4</sup> who served as reporter and assistant reporter for the American Bar Association Commission on State Judicial Selection Standards, discuss the history of state judicial selection reform and analyze the Year 2000 Standards, which were promulgated by the Commission to further reforms efforts. According to the authors, the Year 2000 Standards differ from prior reforms measures in two primary ways: first, the Standards address all critical actors in the judicial selection process, and, second, the Standards create a new entity, called “The Judicial Eligibility Commission,” that has responsibility for promoting the reforms.

In *Merit Selection: A Review of the Social Science Literature*, Dr. Malia Reddick<sup>5</sup> gathers and analyzes decades of social science research to measure the actual effects of merit selection. Dr. Reddick evaluates research on judicial nominating commissions and on retention elections, compares merit selection with other selection systems, and examines statistics of race, gender, and background characteristics and their relation to judicial performance. With this research, she concludes that merit selection may not necessarily insulate judges from political influences significantly better than other systems of selection, but that it still may represent the best method by which to preserve the public integrity of the judiciary.

In *Selecting Judges in the Twenty-First Century*, Paul D. Carrington<sup>6</sup> and Adam Long<sup>7</sup> propose a new method of selecting judges in all levels of Pennsylvania courts—both trial and appellate. They suggest that trial court judges should be nominated by an independent commission and then confirmed by vote of the electorate. Justices of the Pennsylvania Supreme Court would be appointed by the Governor, with the assent of a supermajority of the Pennsylvania Senate, and, in turn, judges of other appellate courts would be selected by the justices

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General Assembly (Oct. 2, 2001), available at <http://papress.state.pa.us /ctc/data /20011002.000.htm>.

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of the Pennsylvania Supreme Court. The authors also discuss the potential effects on political independence of varying the terms of office for judges and justices in all Pennsylvania courts.

In *Commentary: Pennsylvanians Should Adopt a Merit Selection System for State Appellate Court Judges*, J. Andrew Crompton<sup>8</sup> argues that merit selection is necessary to preserve the integrity of the judiciary in Pennsylvania. Mr. Crompton looks at three fundamental problems associated with the election of Pennsylvania appellate court judges: the anonymity of judicial candidates in elections, the negative impact of judicial fundraising, and the effects of limitations on speech placed on judicial candidates, particularly in light of the recent United States Supreme Court case *Republican Party v. White*,<sup>9</sup> in which the Court held that certain limitations on speech as applied to judicial candidates violated the First Amendment to the United States Constitution.<sup>10</sup>

In *Opinion: Why Merit Selection Is Inconsistent with Democracy*, Julius Uehlein<sup>11</sup> and David H. Wilderman<sup>12</sup> present the view of the Pennsylvania AFL-CIO that merit selection represents a system that favors the elite interests in society at the expense of the general public. The authors argue that the elective selection system ensures that judges serve only the interests of the public and preserves the most defining aspect of democracy—the right to vote.

In *How Do Judges Decide? A Course for Non-Lawyers*, Judge Edmund B. Spaeth, Jr.,<sup>13</sup> outlines a course designed to teach non-lawyers about the nature of judges' central responsibility: to decide cases according to the law. The course is separated into nine sessions discussing the rule of law, the role of judges, and the competence, impartiality and independence of the judiciary. Judge Spaeth believes that, after completing this course, non-lawyers will understand better the nature of the judiciary and the necessity of merit selection in Pennsylvania.

Judicial selection is and will continue to be a heavily debated issue in Pennsylvania, particularly in light of the United States Supreme Court's decision in *Republican Party v. White*.<sup>14</sup> The editors of the *Dickinson Law Review* hope that, by presenting a variety of corresponding and contrasting views on the topic, this symposium issue

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8. Counsel, Lieutenant Governor Robert C. Jubelirer.

9. 122 S. Ct. 2528 (2002).

10. *Id.* at 2542.

11. Former President, Pennsylvania AFL-CIO.

12. Director of Legislation, Pennsylvania AFL-CIO.

13. Chairman Emeritus, Pennsylvanians for Modern Courts. Former Pennsylvania Superior Court Judge.

14. 122 S. Ct. 2528 (2002).

will foster more discussion on the benefits and costs of the competing methods of judicial selection.