



Association of Corporate Counsel
Delaware Valley (DELVACCA) Chapter

The in-house bar association.SM

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Testimony of the
Association of Corporate Counsel - Delaware Valley (DELVACCA) Chapter
to the Subcommittee on Courts of the House Judiciary Committee on Merit Selection of

Appellate Judges

(House Bill No. 1621 & House Bill No. 1619)

Presented by Todd A. Borow, Esq., President

September 1, 2009

DELVACCA thanks the Subcommittee on Courts of the House Judiciary Committee for holding public hearings on the issue of merit selection for the appellate courts and for the opportunity to submit this written testimony. DELVACCA strongly supports the current legislation providing for merit selection of appellate judges and the constitutional amendment process needed to effectuate this change. Removing the partisan process for election of judges will be beneficial for business and will strengthen public confidence by creating a fair and impartial judicial process and will lead to qualified appellate judges sitting on the bench. Judges must be able to provide a fair and impartial interpretation of the law. The current judicial election system, in all practicality, requires judicial candidates to raise significant sums of money, too often from special interest groups and from lawyers who practice regularly in state court. When judges rely on campaign contributions in order to get elected, this creates the appearance of bias, if not an actual conflict of interest. On a national level, the U.S. Supreme Court's June 8, 2009 decision in Caperton v. A.T. Massey Coal Co., Inc. (129 S.Ct. 2252), most recently recognized the threat to impartial justice posed by state judges who are recipients of campaign funds. In that case, the Court required a West Virginia state court judge who had received large campaign donations to step aside from deciding a case involving a political contributor. The Court's ruling in this case, shows the importance of the issue of merit selection.

DELVACCA is uniquely qualified to speak on this important issue. Our organization is based in Pennsylvania and represents the interests of in-house attorneys in Southeastern Pennsylvania, Southern New Jersey and Delaware. DELVACCA has 950 individual members, of which a vast majority live and work in Southeastern Pennsylvania. Our membership represents in-house attorneys from 420 leading companies in the region. DELVACCA is a chapter of the Association of Corporate Counsel, which serves the professional needs of attorneys who practice in the legal departments of corporations and other private sector organizations worldwide. Our members work in both the legal and business community. On a daily basis, our members see the impact that the judicial system can have on the operation of their employers. DELVACCA members are also often asked to support would-be judges through political endorsements and financial contributions. The current selection system of public voting for judicial candidates does not lead to an outcome where the most qualified judges are able to reach the appellate bench.

Pennsylvania instead needs a method of judicial selection that emphasizes judicial qualifications and one that enables appellate judges to get out of the fundraising business so that they can focus on the task of providing impartial judicial review.

Pennsylvania is one of only six states, along with: Alabama, Illinois, Louisiana, Texas and West Virginia, that selects all judges through contested, partisan elections. We believe that Pennsylvania should join the majority of states which have at least some form of merit selection as part of their judicial process. Judicial elections reward fundraising ability and campaign skills for a position that requires impartial decision-making. Too often, appellate judges are elected based on ballot position, expensive television or newspaper advertisements, or based on factors such as their hometown or where the largest turnout is. Diversity issues such as gender, race and ethnicity are important factors to be considered in order for the proposed appellate court nominating commission to be able to put forth a diverse field of candidates. However, those factors should not be the sole reasons that judges are elected and in the current partisan election system, a judge may receive a vote solely based on their gender, race or ethnicity. Both of the aforementioned House bills effectively address the diversity issue with a process that will ensure that a list of qualified, diverse candidates are presented to the Governor for nomination.

As an organization, we hope that the legislature will take full consideration of our view on this issue, which is that now is the time to give Pennsylvanians the opportunity to change the way that we select appellate judges. Pennsylvania needs to create a system that ensures that the most qualified judges are members of our appellate courts.

Thank you for giving DELVACCA the opportunity to testify on this important matter.