



**TESTIMONY OF THE PENNSYLVANIA BAR ASSOCIATION IN SUPPORT OF  
MERIT SELECTION OF JUSTICES AND JUDGES**

**BEFORE THE SENATE JUDICIARY COMMITTEE  
SEPTEMBER 16, 2008**

Good morning Chairman Greenleaf, Chairman Costa, members of the Committee, and staff. I am Dale McClain, President of the Pennsylvania Bar Association, and I represent the 29,000 members of the Association.

Since 1947, the PBA has supported non-partisan merit selection of appellate court judges. Merit selection advocacy has a strong history in Pennsylvania. As far back as 1959, a state Commission on Constitutional Revision endorsed the idea of merit selection, and late in 1964, a citizens' conference made a similar recommendation. In 1969, Pennsylvania held a referendum on merit selection, but it failed by less than two percent of the vote. Merit selection has been called for by former Pennsylvania governors Thornburgh, Casey and Ridge, and current Governor Rendell has pledged his support to this reform measure.

Merit selection will produce judges on the basis of their judicial experience, integrity and temperament, not on their name or the amount of campaign funds they can raise. Studies have shown that 40 percent of voters surveyed said they spent no time whatsoever examining the background and qualifications of judicial candidates. Furthermore, studies have shown that voters are most likely to vote for the first candidate listed on the ballot. Additionally, voters often are influenced by "hometown candidates" and will choose candidates based not on their qualifications but rather on their hometown or surname.

We look to our justices and judges for an honest and fair interpretation of the law. Questions about the integrity of the judge sitting on the bench undermine the public's confidence in the judiciary and the rule of law. Citizens need to trust that they will get justice when they walk into the courthouse. The significant cost of judicial elections undermines this trust and undermines the sense that judges are independent from interest groups and individuals. Judicial candidates need to turn to others to finance their campaigns, thereby raising the inevitable question of whether the elected justice or judge can be a fair arbiter when the interests of these financiers arise.

As the organization designated by the Pennsylvania Supreme Court as most broadly representative of the interests of lawyers in Pennsylvania, the Pennsylvania Bar Association respectfully requests that it have identified representation on the committee/commission that

selects qualified individuals to be appellate justices and judges. The PBA's experience would be most valuable to any merit selection panel.

We would expect that proposed bills on merit selection will be discussed and debated in the next term, when they might be taken up for adoption. Given the expected dissent on aspects of these bills, as differentiated from the position that many may have with the general concept, we would hope that an effort would be made under the aegis of the General Assembly to bring interested parties together to negotiate a resolution that engenders the broadest support, as ought to be the case with our handling of the judiciary. The resolution of our selection of judges and justices demands respect and trust both with regard to the institution and individual judges and justices. Reform should reflect that respect and trust in the form of the broadest possible agreement on its formulation.

Thank you for inviting the Pennsylvania Bar Association to testify today.