

**TESTIMONY BEFORE  
SENATE JUDICIARY COMMITTEE  
September 16, 2008**

Mr. Chairman and Distinguished Members of the Senate Judiciary Committee:

My name is Paul Titus, and I'm a lawyer who has practiced in Pittsburgh, Pennsylvania for well over 40 years.

In June of this year, 18 citizens of Allegheny County wrote to all of the legislators who have constituents within Allegheny County asking that they support the pending merit selection legislation embodied in Senate Bills 1324 and 1325. A copy of that letter is attached to the written version of my testimony so that all members of the Committee will have an opportunity to do so.

What I would like to do briefly is to highlight the points which my fellow-citizens and I made in that letter. While merit selection has been discussed as long as I have been practicing law in Pennsylvania, the last time that it was seriously debated and considered in the Legislature was the early-1990's following the report of the Commission chaired by former Judge Beck, who is here today.

While there was serious consideration of a merit selection proposal at that time, it did not make it to the ballot.

Since that time, there have been enormous changes nationally which have impacted judicial elections in other states and which have begun to affect, and will certainly affect,

elections of judges in the Commonwealth of Pennsylvania. In two separate decisions, the United States Supreme Court held that candidates for elected judicial posts do not have to follow the Canons of Judicial Ethics which required that judges avoid taking public positions on issues which might come before them. Those provisions were declared unconstitutional under the First Amendment. The Supreme Court has also held that so-called issue or advocacy advertising during election cycles cannot be restricted under the First Amendment.

The combination of these two rulings has had an enormous impact on judicial elections. Candidates are under pressure to express their views on controversial issues, which they may later have to decide as judges. Money has poured into judicial races from various interests groups who run issue or attack ads in major judicial races. Focus of the advertising is most often on races for the Supreme Court in various states. You, as Committee members, may want to have your staff look in some detail at what has happened in Ohio, Michigan, Illinois, Wisconsin, Texas, and Alabama to mention a few states where judicial races have clearly been determined by the expenditure of large amounts of money. Perhaps that example which those of us in western Pennsylvania are most aware of is that of the West Virginia Supreme Court. As Members of this Committee undoubtedly know, that court has recently decided a controversial business case in which the prevailing business party before the West Virginia Supreme Court had contributed millions of dollars to the campaign of one of the justices who refused to recuse himself from hearing the case. That justice cast the deciding vote.

Not only have the expenditure of large amounts of money influenced judicial races throughout the country, this has led to a massive erosion in public confidence in the supreme courts of those various states. We have begun to see it in Pennsylvania and that trend will clearly strengthen, if we do not make changes here.

The pending legislation and proposed constitutional amendment appears to those of us who signed the letter to be a very reasonable approach to merit selection. By clearly providing for diverse citizen representation and a bi-partisan commission to nominate judicial candidates, it has set up a process that will encourage citizen participation in the selection of judges and assure that those names which are submitted to the Governor and ultimately to the Senate will be candidates who are deemed capable and qualified by a cross-section of citizens of this state. Ultimately, unless our courts enjoy the confidence of the citizens, their decisions will not have the respect of the public. Accordingly, I am here to urge that this Committee approve the legislation and proposed amendment embodied in Senate Bills 1324 and 1325.