



DAVID E. SCHWAGER

DATE: June 15, 2020
TO: The Senate State Government Committee
FROM: The Pennsylvania Bar Association
SUBJECT: Pennsylvania Bar Association Opposes House Bill 196, P.N. 168

I write to express the Pennsylvania Bar Association's opposition to House Bill 196, Printer's Number 168, sponsored by Representative Russ Diamond.

The Pennsylvania Bar Association opposes this legislation on several grounds. First and foremost, the Pennsylvania Bar Association has a long history of supporting the non-partisan appointment of appellate court justices and judges since 1947. Merit selection would provide for high quality judicial candidates who no longer must engage in campaign fundraising and removes the appearance of bias based on financial contributions. Merit selection also promotes public trust that our appellate courts act impartially and without improper motive when issuing orders and opinions. This type of public trust and confidence promotes the rule of law, which is essential to a healthy democracy. A judiciary which possesses institutional and decisional independence, removed from influences of the political process, is central to the success of a republican form of government.

Under House Bill 196, all appellate judges in Pennsylvania would not run for judgeships statewide, but rather would run for election or retention to seats in the newly created districts in which they reside. Currently, all active judges on the three appellate courts do not have a regional or local "constituency" like state legislators. Electing judges by individual district is contrary to one of the key purposes of a statewide appellate court, which is to render decisions that have statewide impact.

While the Pennsylvania Bar Association prefers merit selection instead of judicial elections, it is important to note that House Bill 196 would effectively disenfranchise voters in appellate judicial elections. Under the current system each and every voter in the Commonwealth may vote for each and every appellate judge. Under the proposed regional appellate court district approach, each voter would only be able to vote for one member of each appellate court, and will have no vote for the remaining members of the appellate courts. Thus, voters will lose the ability to elect the majority of judges on the appellate courts who may be called upon to decide cases affecting the voters and the communities in which they live. This flaw underlines part of the Pennsylvania Bar Association's concern about judicial elections in general: judges should not have constituencies; they should only have litigants before them that expect them to apply the law without bias or other considerations.

The division of the Commonwealth into numerous appellate judicial districts will diminish the opportunity of voters to choose from an array of candidates drawn from a large and varied pool of attorneys from across the state. The perception of political pressure and influence

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in determining judicial districts and in deciding cases, combined with potentially adverse impacts, may tend to erode the public's confidence in our appellate judiciary.

Pennsylvania remains one of a minority of states that continues to elect judges at all levels of the state judiciary. The time has come for this Commonwealth to join the majority of states that provide for an appointment process for appellate judges based upon judicial qualifications with voter input in the form of retention elections. Accordingly, the Pennsylvania Bar Association asks for your support in opposing House Bill 196. Thank you for considering our perspective on this legislation.

Sincerely,



David E. Schwager, President
Pennsylvania Bar Association



PENNSYLVANIANS
FOR MODERN COURTS

Civic Education & Engagement ♦ Equal Access to Justice ♦ Judicial Modernization & Reform

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VIA EMAIL: fsembach@pasen.gov; jdisanto@pasen.gov

Hon. John DiSanto, Chair
Fred Sembach, Executive Director
State Senate Government Committee
Senate Box 203015
168 Main Capital Building
Harrisburg PA 17120

Re: Opposition to House Bill 196

Dear Senator DiSanto and Mr. Sembach:

It is an honor as the new CEO of Pennsylvanians for Modern Courts to submit PMC's position in opposition to H.B. 196, a Joint Resolution proposing integrated amendments to the Constitution of the Commonwealth of Pennsylvania to organize judicial elections by multiple districts and further providing for residency requirements. Under this bill, the State would be broken into nine Commonwealth Court districts, 15 Superior Court districts and seven Supreme Court districts.

PMC strongly believes that partisan elections are damaging to the integrity of the judiciary for the reasons spelled out in our support of HB 111. Placing judicial candidates in the same position as legislators – presenting their positions on issues and securing funding from people who support those issues -- is not only unproductive, it contravenes the standards we expect them to meet while serving us as judges.

HB 196 would not only retain those harmful partisan elections but would render them even more pernicious. Of principal concern here is the magnification of appellate justices and judges feeling obligated to represent the interests of those who voted for them and/or funded their campaigns, and not to bring an independent mindset to the adjudication of statewide issues.

Appellate court judges have been elected on a statewide basis to consider cases of statewide impact. Their ability to function in that way, to remain committed to the rule of law, will be impacted by their having to keep one eye on their local voting base in order to remain on the bench.

Regional elections would also limit voters to electing one judicial candidate from their respective regional districts for our appellate courts. These regional elections would, thereby, disenfranchise voters by eliminating their ability to select the full panel of judges issuing decisions of statewide impact and importance.

Additionally, regional selection will make it more unlikely that minority candidates will be elected to the appellate courts. A diversity of opinion based not on diversity of geography but on diversity of background such as race, gender, and ethnicity, is extremely critical to the dispensing of fair and impartial justice. PMC urges you to vote against HB 196, the continuation and exacerbation of politicized, money-fueled partisan elections, and this attempt to undermine the rule of law in our Commonwealth.

I look forward to further discussions with you on this topic. Please don't hesitate to reach out to me at dgross@pmconline.org or 1-610-563-3598.

Sincerely,

Deborah R. Gross

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July 10, 2020

Honorable Members of the Senate of Pennsylvania –

The Pennsylvania Association for Justice (PAJ) cautions you against attempts by one party in one branch of government to limit another branch of government’s constitutional duty – to interpret the laws – and punitively punish it, merely because it doesn’t agree with rendered interpretations.

After the Pa. Supreme Court ruling on July 1st that nullified House Resolution 836 to end the Governor’s emergency declaration, a statement issued by the Senate Republican leaders said, “With this ruling the Court has elected not to uphold the foundation of our democracy. ...the Court has returned an unchecked monarchy to Pennsylvania. ... the Court’s decision makes it all the more significant that the Legislature has already started the process to amend the Constitution in order to provide some balance to this unchecked power.” Then on July 6th a press release from a member of the Senate Republican leadership team was issued announcing the introduction of a constitutional amendment to create regional appellate judicial districts, or “judicial gerrymandering” as we aptly call it. Furthermore, on July 7th session was announced abruptly for July 13th, 14th, and 15th – unusual for the summer recess – and brought rumors that your esteemed body will consider said amendments then.

Ironically, the Republican argument to the Court in this case was based on the separation of powers, emphasizing three equal branches of government. But because a political party doesn’t like the ruling, it appears that the legislative response is to gerrymander an allegedly co-equal branch out of existence, nullifying the will of the people who elected those judges and justices.

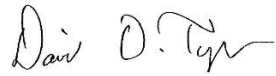
PAJ opposes such a partisan and reactionary attack on the judiciary. We stand by the Constitution and the process of electing appellate court judges statewide to interpret laws that affect all Pennsylvanians equally rather than elect them in districts drawn by the Legislature to intentionally reflect regional biases.

This amendment to the Pa. Constitution is incredibly dangerous, forcing judges to favor local politics over the rule of law. There are several pieces of legislation that the General Assembly has passed in the last decade solely because many elected officials lacked the ability to vote against a particular bill due to local political pressures. Many senators and representatives have been able to rationalize those votes knowing that the Supreme Court could “fix” it later. Yet this amendment would put judges and justices in the same position you often find yourself in – the position of voting a particular way because of local politics. Judges and justices with statewide jurisdiction should continue to be elected statewide. A conversation that often occurs with reasonable elected officials is just how unreasonable Harrisburg has

become because of the domination of fringe politics. Passing this amendment gives in to those partisan extremes, and we urge you to be above that.

The Pa. Constitution affects all Pennsylvanians equally; therefore, geography should never be a factor in the interpretation and application of it. Please oppose HB 196.

Thank you,

A handwritten signature in black ink that reads "David D. Tyler". The signature is written in a cursive, flowing style.

David D. Tyler
Executive Director & Chief Lobbyist

Buchanan, Stephanie

From: Alexa Grant <AGrant@commoncause.org>
Sent: Monday, July 13, 2020 12:52 PM
To: Alexa Grant
Subject: Common Cause PA Opposes Regional Judicial Elections - House Bill 196

ⓘ CAUTION : External Email ⓘ

Dear Senator:

The role of the judiciary is to decide cases based on the law and the facts in front of them, not to provide political representation for Pennsylvanians in a specific region. Electing judges in expensive, partisan elections by judicial districts subverts the role of the judiciary and encroaches on the roles of the other two branches of government.

Common Cause Pennsylvania is a nonpartisan good government organization dedicated to holding power accountable to the people. On behalf of our 36,000 members across all 67 Pennsylvania counties, **we urge our elected officials to strongly oppose House Bill 196.**

The idea of fair and impartial courts is one of the foundational principles of our democracy. Unlike in the Senate, where you raise the local needs of the people in a district through your representation of your constituents, there is no “Montgomery County way” or “Elk County way” to interpret statutes or our Constitution where representation is necessary. We know that both racial and other diversity are paramount on Pennsylvania’s courts; **this amendment is not the way to achieving it.**

The Founding Fathers designed our governmental systems with a clear separation of powers to limit any one branch from exercising the core functions of another. This principal is inherent to our democracy, clear in its intent to prevent a concentration of power and provide for each branch a series of checks and balances on one another. This legislation goes against that principal by allowing the legislature to operate in the judicial branch. This cannot stand.

Common Cause Pennsylvania advocates for transparency and fairness when it comes to choosing judges and shaping our courts. Ensuring that judges are beholden only to the law and keeping courtrooms fair are keys to building a strong 21st century democracy. We have long supported a merit selection system that would minimize partisan politics, promote racial, ethnic, gender, geographic and other diversity, and essentially eliminate the insidious role of money in judicial politics.

Our court system and the impartiality of the courts exist to uphold limitations on our government. They are the first line of defense against abuses by each branch of government and exist to protect the rights of the people. In order for our court system to effectively protect our rights, they must exist as an equal and completely separate branch of government. Legislation like this would inherently diminish the court system’s standing, in that it is the responsibility of our courts, to administer justice without fear or favor. This legislation would cloud that duty.

For these reasons, **we continue to oppose House Bill 196 and urge you to vote no.**

Alexa Grant
Program Advocate
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Buchanan, Stephanie

From: Committee of Seventy <bettergov@seventy.org>
Sent: Monday, July 13, 2020 9:50 AM
To: David Thornburgh
Cc: Pat Christmas
Subject: Committee of Seventy Opposes Regional Judicial Elections, House Bill 196

ⓘ CAUTION : External Email ⓘ

Dear Senator:

For more than 30 thirty years, the Committee of Seventy and Pennsylvanians for Moderns Courts have supported [merit-selection](#) for our commonwealth's appellate courts. As you know, every living Pennsylvania Governor [supports the idea of merit selection](#). My father, Dick Thornburgh, championed merit selection throughout his career, starting with his service as a delegate in the 1967-68 Constitutional Convention.

Seventy is deeply concerned about the flood of money entering judicial elections, a worsening trend that led to a record-shattering [\\$21 million in 2015](#) and contributes to the politicization of our courts. But transforming the judiciary into something more closely resembling a legislature is the absolute wrong direction.

Compelling prospective judges to run in regionalized, partisan elections could well exacerbate the problems we see in the status quo, subjecting candidates to the pressures and interests of both well-heeled super PACs and parochial partisans. And, further, they would have to run in districts drawn by the General Assembly at a time when the threat and consequences of gerrymandering have been made exponentially greater through big data and computing power.

Ultimately, judges must not be politicians, and the best-formed method of installing them mitigates politics and prioritizes professional qualifications, integrity, and character. Seventy would welcome the opportunity to discuss and debate merit selection reform, recent versions of which have garnered strong bipartisan support -- a hallmark of true reform. On this point, **we do approve of the widely-supported House Bills [1069](#) and [2463](#) to bolster transparency in government.**

But we urge you not to move forward with House Bill 196, especially when so much work remains to be done to administer an election in November likely to draw record turnout amid a global pandemic. **Pennsylvanians need [safe, secure, accessible](#) means to cast ballots during this public health crisis. This must be our singular focus in the coming weeks.**

David Thornburgh
President and CEO
Committee of Seventy



PHILADELPHIA BAR ASSOCIATION

Hon. A. Michael Snyder (Ret.)
CHANCELLOR

Philadelphia Bar Association
1101 Market Street | 11th Floor | Philadelphia, PA 19107-2955
Phone: 215-238-6348 | Fax: 215-238-1159 | E-mail: chancellor@philabar.org

June 18, 2020

Honorable John DiSanto
Chair, State Government Committee
Senate Box 203015
Room 168, Main Capitol
Harrisburg, PA 17120-3015

Honorable Anthony H. Williams
Minority Chair, State Government Committee
Senate Box 203008
Room 11, East Wing, Main Capitol
Harrisburg PA 17120-3008

Dear Chairs DiSanto and Williams:

As the Chancellor of the Philadelphia Bar Association, I am writing to express this Association's strong opposition to House Bill 196, currently in your Committee. This bill proposes to amend the Pennsylvania Constitution to divide the Commonwealth into a series of districts for the election of one Justice of the Supreme Court of Pennsylvania from each of seven districts, one Judge of the Superior Court from each of fifteen districts and one Judge of the Commonwealth Court from each of nine districts.

The Pennsylvania Constitution has been carefully framed to achieve a balance among the three branches of government. This balance guarantees that no single branch of government becomes dominant and exercises power over either of the other two branches. A strong judiciary, independent of influences and pressures from the executive and legislative branches, is essential to maintaining this balance.

House Bill 196 infringes on the independence of the judiciary. Pennsylvania's appellate courts are statewide by design. Decisions made by these courts impact all Pennsylvanians. Judges are not representatives in the same sense as are legislators or the Executive. Their function is to administer the law, not to advocate the cause of a particular constituency. Appellate court judges must be able to serve all Pennsylvanians. Likewise, as long as appellate judges are elected, all Pennsylvania voters must have an opportunity to choose every member of our appellate courts.

House Bill 196 further interferes with the independence of the judiciary by elevating the importance of the political views, rather than the qualifications, of appellate court judicial candidates and by making sitting appellate court judges beholden to the legislative branch for their positions. The bill proposes that after every census, the General Assembly will be tasked with redrawing the boundaries of 31 judicial districts. This provision gives whichever political party may be in power the opportunity to draw judicial district

YOUR PARTNER FOR JUSTICE

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boundary lines to favor specific political views and their own party. This plan also gives the party in power an opportunity to remove judges whose decisions they do not favor by redrawing district lines in a way designed to ensure defeat at the next election. The risk that gerrymandering could play a major role in determining the makeup of our appellate courts is exacerbated by the fact that any challenge to district lines based on a claim of gerrymandering must ultimately be decided by those same appellate court judges who are subject to these pressures.

House Bill 196 diminishes diversity on our appellate courts. Racial, gender and socioeconomic diversity is vital to a well-functioning court system, one that draws from as broad a pool of talented lawyers as possible, fosters robust deliberation that reflects different life perspectives, and engenders confidence within the communities it serves. The division of the Commonwealth into small districts diminishes the opportunity of voters to choose from an array of diverse candidates drawn from a large and varied pool of individuals from across this great Commonwealth.

Historically, the Philadelphia Bar Association has been a strong proponent of merit selection of appellate court judges and this remains our position today. However, as long as we elect judges in Pennsylvania, this Association will speak out clearly and forcefully when we see a proposal that diminishes the independence and quality of our judiciary.

At a time when Pennsylvanians are looking to heal divisions and find ways to achieve justice more fairly, this bill proposes exactly the opposite. I urge you to vote against House Bill 196.

Respectfully,

A handwritten signature in cursive script that reads "A. Michael Snyder". The signature is written in black ink and is positioned above the typed name and title.

Hon. A. Michael Snyder (Ret.)
Chancellor, Philadelphia Bar Association

cc: Hon. Kristin Phillips-Hill, Vice Chair
Hon. Joseph B. Scarnati, III, Ex-Officio
Hon. David J. Arnold, Jr.
Hon. Maria Collett
Hon. Doug Mastriano
Hon. Katie J. Muth
Hon. Patrick J. Stefano
Hon. Judy Ward
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