



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