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December 7, 2009

The Honorable Thomas R. Caltagirone  
Chairman, House Judiciary Committee  
106 Irvis Office Building  
PO Box 202127  
Harrisburg, PA 17120-2127

The Honorable Don Walko  
Chairman, House Subcommittee on Courts  
121 Irvis Office Building  
PO Box 202020  
Harrisburg, PA 17120-2020

Dear Chairman Caltagirone and Chairman Walko,

Thank you for taking the time to hold a public hearing on House Bill 1619. HB 1619 would create a process for an independent commission to recommend candidates for appointment by the governor to the state appeals courts. In order to protect civil liberties, civil rights, and the rule of law, the American Civil Liberties Union of Pennsylvania supports HB 1619. On behalf of the 16,000 members of the ACLU of Pennsylvania, I encourage you to support the bill and to bring it before the House Judiciary Committee for consideration.

As you know, in the commonwealth's current system, all judges for the state appeals courts are elected in partisan elections. Choosing judges through elections leaves the rule of law vulnerable to the excesses of money politics and the whims of the majority.

When considering this issue, I'm reminded of the Dover intelligent design case. In 2005, the ACLU of Pennsylvania represented a group of parents from the Dover Area School District in York County in challenging the district's policy to inform 9<sup>th</sup> grade biology students of a creationism-like idea called "intelligent design." The parents were successful at the federal district court in Harrisburg when Judge John E. Jones III ruled in their favor. Judge Jones cited precedent that outlaws the teaching of creationism in public schools because it is a violation of the establishment clause of the U.S. Constitution.

In the aftermath of the decision, Judge Jones gave many interviews and public speeches, and one of his overriding themes was the necessity of an independent judiciary. In a 2006 speech before the Anti-Defamation League, Judge Jones stated:

Polls show that many Americans believe that it is acceptable to teach creationism in public schools. And early last year polls found that a great many Americans thought that Terri Schiavo should be kept alive. But I submit to you that as citizens, we do not want and in fact we cannot possibly have a judiciary which operates according to the polls, or one which rules based on who appointed us or according to the popular will of the country at any given moment in time.

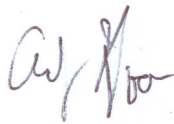
In a 2007 interview with the St. Louis Jewish Light, Jones praised Missouri's Non-Partisan Court Plan, which was implemented in 1940 and is similar to the merit selection proposal in HB 1619, and urged Missourians to maintain it.

The ACLU of Pennsylvania takes on difficult cases that often aid marginalized people whose rights must be protected, regardless of public opinion. The beauty of the American system of jurisprudence is that the rights of the minority are protected from the tyranny of the majority.

HB 1619 provides a buffer between the courts and public opinion, freeing judges to rule without an eye on the next election. It also ensures that judges do not need to take campaign donations from parties who could come before them at some point in the future.

Please support HB 1619 and move it through the committee process. I look forward to continuing to work with you on this and other issues.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andy Hoover". The signature is written in a cursive, somewhat stylized font.

Andy Hoover  
Legislative Director