

Testimony of the
Association of Corporate Counsel - Delaware Valley (DELVACCA) Chapter
to the Subcommittee on Courts of the House Judiciary Committee on Merit Selection of
Appellate Judges

(House Bill No. 1621 & House Bill No. 1619)
Presented by Todd A. Borow, Esq., President
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DELVACCA thanks the Subcommittee on Courts of the House Judiciary Committee for holding public hearings on the issue of merit selection for the appellate courts and for the opportunity to submit this written testimony. As an organization, we strongly support the current legislation providing for merit selection of appellate judges and the constitutional amendment process needed to effectuate this change. Removing the partisan process for election of judges will be beneficial for business and will strengthen public confidence by creating a fair and impartial judicial process and will lead to qualified appellate judges sitting on the bench. Judges must be able to provide a fair and impartial interpretation of the law. The current judicial election system, in all practicality, requires judicial candidates to raise significant sums of money, too often from special interest groups and from lawyers who practice regularly in state court. When judges rely on campaign contributions in order to get elected, this creates the appearance of bias, if not an actual conflict of interest. On a national level, the U.S. Supreme Court's June 8, 2009 decision in Caperton v. A.T. Massey Coal Co., Inc. (129 S.Ct. 2252), most recently recognized the threat to impartial justice posed by state judges who are recipients of campaign funds. In that case, the Court required a West Virginia state court judge who had received large campaign donations to step aside from deciding a case involving a political contributor. The Court's ruling in this case, shows the importance of the issue of merit selection.

DELVACCA is uniquely qualified to speak on this important issue. Our organization is based in Pennsylvania and represents the interests of in-house attorneys in Southeastern Pennsylvania, Southern New Jersey and Delaware. The organization has 965 individual members and a vast majority of our members either live or work in Southeastern Pennsylvania. Our membership represents in-house attorneys from over 400 companies in the region. DELVACCA is a chapter of the Association of Corporate Counsel, which serves the professional needs of over 25,000 attorneys who practice as employees in legal departments of corporations and other private sector organizations worldwide. As in-house counsels, our members work in both the legal and business community. On a daily basis, our members see the impact that the judicial system can have on the operation of their employers. DELVACCA members are also often asked to support would-be judges through political endorsements and financial contributions. As an organization we believe that the current selection system of public voting for judicial

candidates has the potential to lead to an outcome where the most qualified judges are not able to reach the appellate bench. We believe that the citizens of Pennsylvania would be best served by the implementation of a method of judicial selection that emphasizes judicial qualifications and one that enables appellate judges to get out of the fundraising business so that they can focus on the task of providing impartial judicial review.

It is worth noting that Pennsylvania is one of only six states, along with: Alabama, Illinois, Louisiana, Texas and West Virginia, that selects all judges through contested, partisan elections. It is imperative for Pennsylvania to join the majority of states which have at least some form of merit selection as part of their judicial process. Judicial elections reward fundraising ability and campaign skills for a position that requires impartial decision-making. Too often, appellate judges are elected based on ballot position, expensive television or newspaper advertisements, or based on factors such as their hometown or where the largest turnout is. Diversity issues such as gender, race and ethnicity are important factors to be considered in order for the proposed appellate court nominating commission to be able to put forth a diverse field of candidates. However, those factors should not be the sole reasons that judges are elected and in the current partisan election system, a judge may receive a vote solely based on their gender, race or ethnicity. Both of the aforementioned House bills effectively address the diversity issue with a process that will ensure that a list of qualified, diverse candidates are presented to the Governor for nomination.

As an organization, we hope that the Pennsylvania legislature will take full consideration of our view on this issue, which is that now is the time to give Pennsylvanians the opportunity to change the way that we select appellate judges. Pennsylvania needs to create a system that ensures that the most qualified judges are members of our appellate courts.

Thank you for giving me the opportunity to testify on this important matter on behalf of DELVACCA.