

HOW PHILLY WORKS

(Dis)Order in the Court: Is Ending Judicial Elections the Answer?

The Pennsylvania Supreme Court has had a rough patch lately.

A report on ticket-fixing in the Philadelphia Traffic Court raised questions about the conduct of one Justice, the Chief Justice was ousted by his colleagues as the liaison to the city's court system and a third Justice was just convicted for using public money for her judicial campaign.

Some say the conviction is the final straw that could lead to the end of electing statewide judges in Pennsylvania. Read this edition of [HOW PHILLY WORKS](#) and let us know what you think.

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Wait. Plenty of *appointed* judges have been convicted too, right?

Yes, but proponents of getting rid of statewide judicial elections point out that the particular crimes that led to Justice Joan Orié Melvin's conviction were the result of her having to run for office, which means raising money and wooing political backers.

What did Justice Melvin do?

Melvin was a judge on the PA Superior Court, one of the state's two intermediate appellate courts, when she ran for the PA Supreme Court, the state's highest court, in 2003 (she lost) and in 2009 (she won). She was convicted for using her judicial staff for both campaigns. One staff member was her sister Janine, who was also convicted. (A third sister, former state Senator Jane Melvin, is serving prison time after being convicted of similar offenses.)

Are people talking about getting rid of state Senate elections too?

Absolutely not. Judicial elections are very different than elections for the executive or legislative branches of government.

Just to be clear: Are you talking only about statewide judicial elections?

This [HOW PHILLY WORKS](#) is focused on statewide judicial elections. All Pennsylvania judges – statewide and local – are elected, but most of the talk about changing the method for choosing judges focuses on the statewide (or appellate) courts. The rationale is that candidates for statewide judgeships are largely unknown to voters. Also, as a practical matter, city politicians are very invested in keeping local elections intact.

OK. Why are judicial elections different from other elections?

Good question. Like other elected officials, judicial candidates need to raise a lot of money to mount a serious campaign, especially a statewide one. But judges have a very different role than other elected officials: their decisions must be fair, impartial and based on the facts and the law, not who gave them money. Many contributors to judicial candidates turn out to be lawyers and other special interests that later appear before them in court once they are elected.

C'mon. Do you really think judges decide cases because of who gave them money?

Anything is possible. Even if the answer is “no,” (which it certainly is for most judges), there is at least the *perception* of undue influence. It wouldn’t feel good or look good if you were in court when the party on the other side, or their lawyer, gave a lot of money to the judge. (This isn’t a statewide case, but a great example of the power of perception is the raised eyebrows surrounding this week’s acquittal of an ex-police officer for assault by a Philadelphia judge who is married to a police officer and was in her husband’s courtroom for the trial.)

What’s the alternative to statewide judicial elections?

The alternative typically involves a bipartisan nomination commission of lawyers and non-lawyers who evaluate potential judges or justices and recommend a short list to the Governor. The Governor then picks someone from the list and submits his or her name to the state Senate for confirmation.

Does any other state appoint judges?

States use a variety of different methods for choosing judges, depending on the level of the court (statewide or local). But if you just look at the highest court in every state, only six states choose the judges who sit on them through partisan political elections. Joining PA are Alabama, Illinois, Louisiana, Texas and West Virginia.

What do you mean by “partisan political elections”?

In partisan elections, judicial candidates are affiliated with a political party. This can lead to problems too if candidates feel they have to toe the party line to get elected. Political party backing is also very important in helping candidates raise money and get out foot soldiers on Election Day.

Would merit selection lead to better statewide judges?

There are plenty of stellar elected judges. Merit selection would do away with fundraising and would reduce the influence of partisan politics. It would also ensure that candidates don’t win because of name recognition or high placement on the ballot.

Sounds reasonable. Who could be against this?

Lots of people, which is why it hasn’t happened. Opponents think voters should decide who gets to become a statewide judge, not a small set of people who sit on a nominating commission. They also predict that lawyer-members of any commission would overwhelm the non-lawyers. Finally, they say that partisan politics are not exactly out of the equation in merit selection since members of nominating commissions are usually chosen by highly partisan politicians, such as the Governor and legislative leaders of both parties.

Who gets to decide the method for choosing judges?

Ultimately the voters. But it takes amending the Pennsylvania Constitution to get it done. This requires the General Assembly (the state Senate and House) to pass a proposed constitutional amendment in two consecutive sessions (each session is two years) before it goes on a ballot for voter approval.

Has there ever been a proposal to change the constitution to get this done?

Many, many times – including in the current legislative session – but it has never made it to a ballot.

Is this issue like voter ID: Democrats like it, Republicans don’t?

Actually no, although support can swing back and forth depending on which party is doing better in electing their judicial candidates. Interestingly, the last six Governors – two Democrats (Ed Rendell and Bob Casey, who changed his mind in the middle of his term) and four Republicans (Tom Corbett, Mark

Schweiker, Tom Ridge and Dick Thornburgh) – favored merit selection. But favoring an issue doesn't mean they are willing to spend their political capital to get it done.

By the way, does Seventy have a position on electing or appointing statewide judges?

We support merit selection of statewide judges. But we try hard to present both sides of an issue in our **HOW PHILLY WORKS**.

Back to Justice Joan Orié Melvin. Is she still a Supreme Court Justice?

She is, although she has been suspended without pay since May 2012. As of today, she has not resigned her seat.

Can anyone force her to resign?

No, but she can be forced off the court. She can be removed at her sentencing hearing or through a constitutional process set up to handle judicial misconduct cases. She could also be impeached by the state House, which would then send articles of impeachment to the state Senate for its 50 members to decide on conviction or acquittal.

That could get messy.

Messy and expensive. In 1994, PA Supreme Court Justice Rolf Larsen refused to resign after his conviction for improperly using his staff members to obtain prescription tranquilizers. It took a five-month impeachment/conviction process to get Larsen off the bench.

If Justice Melvin is removed, then what happens?

Governor Corbett would get to appoint someone to serve as an interim Supreme Court Justice until the next judicial election in 2015 (judicial elections are always held in odd number years).

I guess that means a Republican, right?

You can bet on that. But since Joan Orié Melvin is a Republican, replacing her would tip the balance of the Supreme Court back to four Republicans and three Democrats – the way it was before she was suspended.

The Supreme Court is split 3 Ds and 3 Rs now?

Yes, and that's huge because if a ruling is split 3-3, the decision of the lower court stands. An interesting analysis by *The Legal Intelligencer* showed that, while there have been more 3-3 splits since Melvin's suspension, the splits didn't always go along political party lines.

How can I share what I think about how statewide judges are chosen?

Pennsylvanians for Modern Courts, a non-partisan statewide court reform group that supports merit selection, has the most up-to-date information on hearings, forums and other ways to express your views on judicial selection. PMC's website is <http://www.pmconline.org/>. For a view from merit selection opponents, go to the website of the Pennsylvania Association for Justice, an association of state trial lawyers, at <http://www.pajustice.org>.

*As we said, this **HOW PHILLY WORKS** is all about statewide judges. We'll give you a first-hand view of the money and politics involved in Philadelphia judicial elections in our next edition of **HOW PHILLY WORKS**. In the meantime, e-mail futureofthecity@seventy.org if you have something to tell us.*