

Democracy Rising PA

www.democracyrisingpa.com

January 23, 2007

Board of Directors

*Mark P. Widoff, Acting
Chair*
Camp Hill

Joyce Bylander
Carlisle

Pat Clark
Pittsburgh

John Claypool
Philadelphia

Terry Dellmuth
Philadelphia

Kay Dowbower
Mechanicsburg

David Thun
Reading

President & Co-Founder

Tim Potts
Carlisle

Vice President & Co-Founder

Kathleen Daugherty

**P.O. Box 618
Carlisle, PA 17013
717-243-8570**

Dear

Events in recent years have created strong citizen interest in the quality of Pennsylvania's courts and the men and women who serve the public from the bench.

In order to ensure that voters make informed decisions about candidates for retention and candidates for open judicial offices, the organizations below have created the enclosed questionnaire. We are asking all actual and potential candidates for judicial office on the Supreme Court, Superior Court, Commonwealth Court, and Common Pleas courts to complete the questionnaire and **return it to us by March 6, 2007**. It consists of 33 questions that ask for your views on matters of reforms proposed for the administration of the court system and on matters of Constitutional interpretation.

By submitting this questionnaire jointly, we hope to reduce the amount of time you must devote to responding to questionnaires. We also hope to reach more Pennsylvania voters and citizens with your responses. Each of our organizations may post both the questions and your responses on our web sites. This will be primarily a service for citizens. Some sponsors of this survey include non-partisan organizations that neither support nor oppose candidates for public office and will not use the responses for endorsement purposes. Others reserve the right to use the responses for such purposes.

2.

In the interest of space, we ask you to limit your response to each question to 300 words. If you wish to expand upon answers to specific questions, we invite you to direct readers to other sources of information about your views. Also, given that election campaigns grow and develop over time, we recognize that you may wish to amend your answers at any time by contacting us to make changes.

This questionnaire seeks general information about your jurisprudence. As such, we recognize that your answers to these general questions are not intended to bind your decision in any particular case where a specific set of facts may lead to a judgment different from the views you express here. See Republican Party v. White, 536 US 765 (2002).

Thank you for your consideration. We look forward to receiving your responses and to the debate that will occur this year.

Please return your questionnaire to Democracy Rising PA, P.O. Box 618, Carlisle, PA 17013 or electronically to tim@democracyrisingpa.com.

Tim Potts, Co-Founder
Democracy Rising PA

Kathleen Daugherty, Co-Founder
Democracy Rising PA

Matthew Brouillette, President
The Commonwealth Foundation

Gene Stilp, Director
Taxpayers and Ratepayers United, Inc

Chris Lilik
Young Conservatives of Pennsylvania

Dennis Baylor
Pennsylvania Accountability Project

Eric Epstein, Coordinator
Rock the Capital

Richard Schirato, Director
Pennsylvanians for Legislator
Accountability

Rev. Sandra Strauss
Director of Public Advocacy
Pennsylvania Council of Churches

Arthur Schwartz, President
PA Association of Retired State
Employees

**For an electronic version of this questionnaire, please email
tim@democracyrisingpa.com**

Questionnaire for Candidates for Judicial Office

The following questions are based on the reform proposals of Professor Bruce Ledewitz, Duquesne University Law School, as published in August 2006 and subsequently revised. The numbered and lettered proposals are given verbatim. Questions follow each proposal.

I. Transparency in Court governance

A. Ending private meetings with legislators—A portion of the public opposition to the pay raise concerned the role of the Justices in developing the pay raise legislation, in particular the role of Chief Justice Ralph Cappy, who met privately with legislators to discuss the pay raise before legislative action was taken. Canon 4 of the Pennsylvania Code of Judicial Conduct currently provides that judges “may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.” Canon 4 should be amended to take out the consultation exception so that judges may only appear at *a public hearing* to discuss the administration of justice and may not privately consult with legislators or other government officials under any circumstances. Whatever a Justice has to say to government officials should be said in public.

Questions

1. Do you support this reform of our court system? Please explain.
2. Do you believe it was appropriate for Justice Cappy to have held private talks with the governor and legislative leaders about the pay raise? Please explain.
3. Do you have private conversations with lawmakers and executive branch officials about public matters involving the court system? If so, what is the nature of those conversations?

B. Sunshine rule-making—In Pennsylvania, the rules that the Court prescribes, such as the rules of procedure and evidence, have the force and effect of law. In 1978, the Justices informed the Governor, president of the Senate and Speaker of the House by letter that the Court would not be bound by Pennsylvania’s Open Meeting Law when exercising its rule-making power. The Court should either follow the Open Meeting Law or adopt the equivalent of a sunshine law to apply to all Court rule-making activity so that rules would be debated and adopted in public view.

2.

Although most rules are quite technical, some, like the restrictions on police arrest powers enacted by the Court on August 1, 2006, directly affect the public. Law should not be made in secret in a democracy.

Questions

4. Do you support this reform of our court system? Please explain.
5. Do you believe the Supreme Court has the authority to exempt itself from laws such as the Open Meeting Law that apply to other branches of government? If so, what is the source of that authority?

C. Public process for all Court committee appointments—The Court controls numerous appointments to committees, some of which the Court creates and some of which are constitutional bodies. As one experienced attorney recently stated, “These appointments are often friends of justices, relatives, people who know justices, maybe contributors.”¹ The truth of this remark is exemplified by the makeup of the Judicial Conduct Board, which is chaired by the brother of former Justice Sandra Newman and the makeup of the attorney Disciplinary Board, which includes relatives of both former Justice Newman and Justice Max Baer. To prevent nepotism and cronyism, and to ensure the highest quality of service, the Court should make its appointments from lists of nominees submitted by independent bodies, such as the Pennsylvania Bar Association.

Questions

6. Do you support this reform of our court system? Please explain.
7. Do you support a ban on nepotism at all levels of the court system? Please explain.

D. Judicial Freedom of Information—There are no standards governing the release of documents from the Court. For example, when, in November 2005, Chief Justice Cappy sent a memo to the other Justices calling for stricter accounting rules for the Justices’ expense accounts, a spokesperson for the Court described the memo, but would not release a copy to the public.² The Court should adopt regulations providing for public access to all documents generated by the Justices pursuant to matters of internal Court administration, including expenses. The only documents that should remain confidential are those pertaining to cases before the Court and certain personnel matters.

¹ Quoted by Mark Scoloro of the Associated Press on 4/30/2006.

² As reported in the Pittsburgh Post-Gazette, 11/29/2005.

3.

Questions

8. Do you support this reform of our court system? Please explain.
9. Do you support requiring an independent audit and full public disclosure of state and local court expenditures? Please explain.

E. Accountability to the public—In May 2006, the Court released its first “State of the Commonwealth’s Courts” report in twenty years. This report is a first step to establishing public accountability in the Court. Such a report should be issued annually and the Chief Justice should appear before the General Assembly annually to discuss the needs of the Judicial Branch. Thus, in public session, rather than in private meetings, sensitive issues, such as judicial pay, would be debated. Ideally, this openness would extend to regular availability by the Chief Justice to the media to discuss the administration of justice in Pennsylvania, excepting only the treatment by the Court of actual cases.

Question

10. Do you support this reform of our court system? Please explain.

II. Acknowledgment of, and deference to, the role of the legislature

A. Shared regulation of attorneys and the legal system—The Court claims not only inherent, but also “exclusive” authority to regulate attorneys. This is why the Lobbying Disclosure Act was struck down in 2002, leaving Pennsylvania for several years as the only State without a statute regulating legislative lobbying. Contrary to the Court’s view, the Constitution does not grant exclusive rule-making authority to the Court. While the Constitution does grant the Court authority to adopt rules governing attorneys and the legal system, in Art. V, section 10(c), that section provides only that legislation “inconsistent” with Court rules is suspended. If “inconsistent” legislation is suspended, legislation that is not inconsistent with the rules should be permitted. That means the power to regulate lawyers and the legal system is shared between the Court and the legislature. So a statute regulating lobbyists should have been valid even if the statute affects attorneys who are lobbyists. [On November 1, 2006, Governor Rendell signed a new lobbying statute into law. Regulations under the Act have not yet been written and the statute has not yet been tested in the courts.]

Questions

11. Do you believe the Supreme Court erred when it declared the former Lobbying Disclosure Act unconstitutional? Please explain.

4.

B. Legislative discretion for funding of the judiciary—In 1987, the Court held that the Constitution requires centralized, State funding of the Court of Common Pleas in each county. Since that time, the General Assembly and Pennsylvania’s governors have ignored the Court and have maintained a system of partly State and partly county funding of the local courts. In 1996, the Court issued a mandamus, ordering the General Assembly to comply with its 1987 ruling. There is no constitutional justification for the Court’s interference with the funding formula created by the legislature. The Constitution provides that that the courts shall be “a unified judicial system.” The Constitution says nothing about taxation and spending on the courts. The Court should rescind its mandamus, overrule this line of cases and end this long-standing constitutional stalemate.

Questions

12. Do you support this reform of our court system? Please explain.
13. Do you believe the Supreme Court erred in 1987 and 1996 when it ordered the state to assume the complete financial cost of the court system? Please explain.

III. Regularity in Judicial decision-making

A. Requiring adversarial proceedings—The Court has in the past invalidated statutes without allowing the Commonwealth an opportunity to defend its law. This was done, for example, in limiting the reach of the Open Meeting Law in 1978 and, in 1990, to invalidate a statute providing penalties for attorneys for filing pleadings in bad faith. The Court should not invalidate law through the use of rule-making or advisory opinions, but should do so only in the course of normal litigation. In that way the Justices would have the benefit of views other than their own.

Questions

14. Do you support this reform of our court system? Please explain.
15. Do you believe the Supreme Court has the authority to invalidate laws without litigation challenging the particular law in question? If so, what is the source of that authority?

B. Requiring published opinions—In recent, politically sensitive cases, the courts have rendered decisions without published opinions. In 2002, the Pennsylvania Supreme Court upheld the right of State Senator Robert Jubelirer to hold dual offices through an unsigned Per Curiam order, without opinion, after having declined to hear oral argument in the case. In 2005, Judge James R. Kelley of the Commonwealth Court dismissed the main challenge to the July 2005 pay raise in an unpublished

5.

opinion, which was almost overlooked by the public at the time the case was dismissed. In the Fall of 2006, the Court affirmed Commonwealth Court decisions in two cases, one involving tort reform and the other the access of the Green Party to the ballot, in unanimous Per Curiam orders without opinions and denied review in a case that decided the challenge to the Democratic Primary for a Philadelphia House seat without any published appellate opinion. In ordinary cases as well, courts in Pennsylvania have commonly decided cases through the use of unpublished opinions. The Court should use its rule-making power to curb this practice and should take care, especially in cases with political implications, to explain its actions in full and published opinions.

Questions

16. Do you support this reform of our court system? Please explain.
17. Under what circumstances, if any, is it proper to issue an order without an opinion? In the absence of an opinion, how will future litigants know whether to file similar cases and how to argue those cases?

IV. Strict enforcement of constitutional limits on the process of government

A. Legislative process—Much of the public anger over the July 2005 pay raise concerned the manner in which the raise was passed. Article III, sections 1-4, contain numerous restrictions on the manner in which legislation is to be considered, including commitment of bills to committee, a single subject, fidelity to a bill's original purpose and reading of a bill on three different days. Another provision, Article II, section 8, prohibits pay raises for legislators during a legislative term. The July 2005 pay raise bill provided for unvouchered expense accounts in the exact amount of the legislative pay raise and substituted for a one-page document, at the last minute, twenty-pages of legislation that had been drafted in secret and was adopted without debate. The Court's decision in 2006 upholding the judicial portion of the pay raise found the unvouchered expense accounts unconstitutional but upheld the legislative process by which the pay raise bill was enacted. The Court should interpret the Constitution to require that pending bills are given meaningful consideration in their final form. This will prevent the common practice of last minute substitutions of full-scale legislation for one page bills, which frustrates public debate on important issues. The public got another taste of secret, last minute legislation in late November when the General Assembly passed the "free drinks" casino provision without any discussion or public input.

Questions

18. Do you support an interpretation of the Constitution that requires pending bills to be given meaningful consideration in their final form? ? Please explain,

6.

including an indication of what you would consider “meaningful consideration” to be.

19. In what ways and under what circumstances does Article III, sections 1-4, require a more literal interpretation than the interpretation provided by the Supreme Court in its decisions over the past decade? When does the presumption of the constitutionality of legislative enactments end and the requirement for legislative due process to protect citizens begin?

B. Uniformity of taxation—The Pennsylvania Constitution of 1874 provided for the first time that “[a]ll taxes shall be uniform.” This language was added to the Constitution in order to prohibit tax breaks and loopholes. Unfortunately, in recent years the Court has interpreted tax uniformity to require only that tax breaks not violate the federal standard of equal protection, which is a weak restriction. Under this federal standard, loopholes such as the stock brokerage exemption from the Pittsburgh business privilege tax have not been struck down. The Court should return to the original purpose of tax uniformity—the prevention of special interest favors.

Question

20. Do you support this reform of our court system? Please explain.
21. In what respects should the state uniformity clause coincide with the federal equal protection requirement, and in what respects should they differ?

C. Official immunity from suit—The Pennsylvania Constitution allows for some level of protection of State government from suit in Art. I, section 11. Federal courts and lower Pennsylvania courts have not been able to agree on when and whether State and local governments and officials can be sued for violations of the Pennsylvania Constitution, nor on what kinds of relief—injunctions or damages—are available. Only the Pennsylvania Supreme Court can definitely resolve these issues, which the Court has failed to address for years. Judicial enforcement of constitutional rights is one of the guarantees of limited government.

Question

22. Do you support the PA Supreme Court providing guidance on issues of official immunity from suit? Please explain.
23. Under what circumstances should a court be able to impose remedies and damages for a public official’s violation of citizens’ Constitutional rights? What remedies and damages should the courts be able to impose?

7.

D. Single office rule-- The Pennsylvania Constitution contains several single-office restrictions, such as Article IV, section 6 and Article II, section 6, which prohibit simultaneous service in the legislative and executive branches of State government. Despite these provisions, Robert Jubelirer was permitted in 2002 to remain a State Senator while serving as Lieutenant Governor. Inexplicably, the Court issued no opinion in the Jubelirer case and declined to hear oral argument, thus frustrating public oversight and understanding of the operation of State government. The single office issue will arise whenever a Pennsylvania governor leaves office early, for example to join a national administration. When this occurs, the separation-of-powers should be strictly applied to prevent the holding of the dual offices of Lieutenant Governor and State Senator by one person.

Questions

24. Please discuss your understanding of the intent of the Constitution's single office rule.
25. Do you believe the Supreme Court erred in ruling that Sen. Jubelirer could serve in two branches of government simultaneously without having to surrender one position or the other? Please explain.

E. Separate Vote Requirement—The Constitution provides in Art. XI, section 1 that “[w]hen two or more amendments shall be submitted they shall be voted upon separately.” This has generally been interpreted to mean that each proposed constitutional amendment should make only a single change in the Constitution so that voters do not have to vote on several proposed changes at once, in one proposed amendment, when they might support some of its changes but oppose others. In Grimaud v. Commonwealth (2005), the Court weakened this interpretation of section 1 and held instead that a single amendment could contain several different proposed changes as long as all the changes related to a single general subject. The Court should go back to a strict single vote requirement to ensure that a separate vote is held on each proposed change to the Constitution.

Question

26. Do you support this reform of our procedure for amending the Constitution? Please explain.
27. When deciding whether to present proposed constitutional amendments to the voters, what test would you use to determine whether the questions may be combined or remain separate?

F. Inherent judicial power—The basic theory of constitutional government is that government power derives from the Constitution. Contrary to this

8.

understanding, the Pennsylvania Supreme Court has claimed “inherent” judicial power, for example to discipline attorneys. The Court has even taken upon itself to suspend a sitting Justice—Rolf Larsen—and to “appoint” a Senior Justice to the Court—Frank J. Montemuro Jr. The constitutional provision that allows for senior judge appointments—Art. V, section 16(c)—was never intended to apply to the Supreme Court itself. The Court should renounce the doctrine of inherent power and limit itself to powers provided in, or clearly implied by, the Constitution.

Questions

28. Do you support this reform of our court system? Please explain.
29. If you believe that the Supreme Court has “inherent” powers, what are those specific powers and what is their source? How would you resolve that position with Article I, Section 2, which states, “All power is inherent in the people...”?

Additional Questions

The following additional questions are not based specifically on Professor Ledewitz’s platform.

30. Did you accept the pay raise? If so, should voters infer that you believe passage of the pay raise law met the procedural requirements of the Constitution? If voters should not make that inference, why shouldn’t they?
31. Do you believe it is appropriate to tie state judicial salaries to federal judicial salaries? If not, will you publicly support new legislation that severs the tie between state and federal judicial salaries?
32. What does the phrase “judicial independence” mean to you?
33. Should citizens amend Pennsylvania’s Constitution to provide for the appointment rather than the election of judges? If so, which judges should be appointed, or should all judges be appointed? What characteristics – e.g. appointing body, length of term, procedure for removal for misconduct – should a system of appointment have?

**To return your responses to this questionnaire electronically, email
tim@democracyrisingpa.com.**

