CHAPTER 1

(S)electing Judges in Pennsylvania

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> [W]hen all is said, there is hardly one Frame of Government in the World so ill design'd by its first Founders, that in good hands would not do well enough; and Story tells us, the best in Ill Ones can do nothing that is great or good.
>
> —*The Frame of the Government of the Province of Pennsilvania, in America* (1682)

The cradle of the oldest appellate court in the nation, Pennsylvania has engaged in a continuing democratic experiment of refining its judicial institutions since 1684. The earliest colonial laws intended "[t]hat all Courts shall be open, and Justice shall neither be sold, denyed or delayed."[1] The same governing promise appears today in Section 11 of Pennsylvania's Bill of Rights.[2] Pursuit of this ideal created momentum from time to time to reconsider the method by which the several judicial officers who serve on the Commonwealth's trial and appellate benches come to office. This chapter chronicles the history of the process by which Pennsylvanians select members of the state's judiciary.

As described in the introduction, the Pennsylvania Supreme Court traces its heritage to the institutions of William Penn's colonial province of Pennsylvania. In 1681, Charles II of England granted William Penn by royal charter large land holdings in America as repayment for debts owed to Penn's father.[3] The charter of the province of Pennsylvania granted Penn power to establish a government and laws for the benefit of the province's inhabitants.[4] Penn provided for a General Assembly and a Provincial Council, whose members were elected.[5]

Penn also had explicit authority to establish courts and appoint judges, justices, magistrates, and other judicial officers.[6] The hearing and determination of appeals from any

judgment made in the province were "reserve[ed]" to the king and the English judiciary.[7] Early documents offered little insight into Penn's plans for the province's courts, their forms, or their practices. Penn's personal legal troubles and incarceration in England, and the religious and political aspirations for the new colony he derived from those experiences, provided strong indications that Penn did not intend to replicate either the laws or the legal institutions and practices of that country.[8]

In practice, Penn charged Deputy Governor William Markham, who preceded him to Pennsylvania, with the task to "[e]rect Courts[,] make Sheriffs, Justices of the Peace & other requisite Inferiour officers that Right may be Done, the Peace Kept & all vice Punished without Partiallity according to the good laws of England."[9] In 1683, Penn and the General Assembly clarified the status of existing county courts (for counties now part of Delaware) and established new county courts in Philadelphia, Chester, and Bucks.[10] These courts had jurisdiction over civil and most criminal matters.[11] No efforts were made to create a supreme or appellate tribunal or to identify candidates for judicial appointment to such a court.[12] The court system so established did not have the capability to try capital felonies (like murder and treason) or to decide appeals in either civil or criminal matters.[13]

Yet before leaving England, Penn appointed William Crispin, the husband of his first cousin Rebecca Bradshaw, as the first chief justice of Pennsylvania. In October 1681, Penn informed Markham, recommending Crispin as one whose "skill, experience[,] Industry & Integrety are well Known to me, & perticulerly in Court keeping &c: so that it is my will & pleasure, that he be as cheif Justice to keep the seal, the Courts & Sessions; & he shall be accountable to me for it."[14] Whether Crispin would serve as chief justice of a supreme court was unclear. He died in late 1681 or early 1682, before he arrived in Pennsylvania and before he exercised any function of his office. On Crispin's death, Penn did not name a successor.[15]

In 1683, the General Assembly vested appellate authority in the governor and the Provincial Council. The assembly also empowered the council with exclusive original jurisdiction over manslaughter, murder, treason, and other serious crimes.[16] The notion of a Superior Provincial Court crystallized in 1684.

In March of that year, Penn proposed to the council a bill that would establish a Provincial Court. The bill gave authority to the proprietor of the province to appoint the five members of the Court, one of whom would be designated "first," or "pryor," judge.[17] The judges would ride circuit yearly.[18] The council approved the bill and sent it to the General Assembly for ratification at the meeting in New Castle in May 1684. Assembly representatives contested the wisdom of the proprietor appointing judicial officers but ultimately approved the creation of the court.[19]

The first men to serve on the Provincial Court were appointed from among Philadelphia's "merchant elite."[20] On August 19, 1684, Penn appointed Dr. Nicholas More as chief justice of the Provincial Court and four prominent Quakers as associate judges.[21] The Provincial Court judges were commissioned for two years, although none of the judges served their full terms.[22] Chief Justice More, for instance, was impeached less than a year after he

was commissioned.[23] The Provincial Council commissioned other justices, but "[m]en with the requisite training and character to serve effectively as Provincial Court justices were scarce. Penn was particularly sensitive to the need for identifying and appointing men of great talent and reputation."[24]

Many of the powers of the Provincial Court and of the individual judges remained largely undefined and at the center of political power struggles between the General Assembly and the Provincial Council and religious power struggles between Quakers and Anglicans.[25] The composition of the Provincial Court changed often to reflect shifts in political power.[26]

By the beginning of the eighteenth century, the Provincial Court had been restructured several times in an effort to strengthen its role.[27] For instance, in October 1701, the General Assembly passed an act of comprehensive judicial reform, under which much of the appellate jurisdiction of the Provincial Council was shifted to a renamed Supreme Provincial Court.[28] The act called for a fixed number of judges—five, appointed by the governor.[29] The Crown—which had veto power over all colonial legislation—intervened to disallow the act in 1705.[30] This was followed by intense debate on the shape of Pennsylvania's judiciary over the next decade.[31] In 1706, Provincial Governor John Evans offered an ordinance that called for a Supreme Provincial Court that consisted of a chief justice and two or more associates.[32] The ordinance did not address judicial tenure, and decisions on compensation were left to the General Assembly.[33] The Court would decide cases taken up on writs of habeas corpus, certiorari, or error.[34] The General Assembly resisted powers on which Governor Evans insisted, including permitting the provincial governor to remove all judges at pleasure rather than only for misbehavior in office.[35] While the executive-legislative stalemate over control of the judiciary persisted, Governor Evans and his successor, Governor Charles Gookin, assembled the courts by proclamation.[36]

In 1710, a compromise was reached and a bill was passed.[37] Among other things, the act created a Supreme Court with power to hear appeals at law or in equity.[38] This Supreme Court would be composed of four judges appointed by the governor.[39] The system remained in place until 1713, when the 1710 act was also disallowed by the Crown.[40] The provincial government would subsequently restructure essential parts of this act.[41] Some suggest that the repeated failures to obtain the Crown's sanction for legislative acts devising a judicial system for the province were caused by the proprietor's displeasure with a bill that did not represent its interests.[42] Having returned to England, Penn died in 1718.[43]

In May 1722, the General Assembly adopted yet another judiciary act, which would be sanctioned by the Crown in 1727.[44] Many of its provisions remained law until the Revolution.[45] The Act of 1722 provided for a "Supreme Court of Pennsylvania."[46] The act stated "that there shall be three persons of known integrity and ability" appointed by the governor to be judges of the Supreme Court.[47] By later amendment, the number of justices was raised to four.[48] One of the appointees would be specially commissioned "chief justice."[49] Although theirs were lifetime appointments, with the exception of the Supreme Court

justices, few of the commissioned judicial officers remained in office that long.[50] Some, like Benjamin Franklin, who served briefly on the trial court, recognized that doing the job well required specialized knowledge that he neither had nor was willing to spend time acquiring. Others were dissatisfied with the amount and reliability of compensation.

The Act of 1722 enumerated the powers of the Supreme Court: except in limited instances, the Court acted in cases on writ and exercised appellate jurisdiction over all inferior courts in criminal and civil cases more than fifty pounds in value; the Court had no original jurisdiction in civil cases.[51] In addition, the Act of 1722 provided for a role in which the Court "generally shall minister justice to all persons, and exercise the jurisdictions and powers hereby granted concerning all and singular the premises according to law, as fully and amply, to all intents and purposes whatsoever, as the justices of the court of King's Bench, common pleas and exchequer at Westminster, or any of them, may or can do."[52]

While the structure of the court system did not change again until 1776, the character of the judicial institutions continued to be challenged. The question of judicial independence from the executive branch came to the fore in the debates prompted by the Judiciary Act of 1759.[53] In that year, the General Assembly was acting to implement instructions from the Crown directing the governor and Provincial Council to hear appeals, and subsequent appeals would be taken to the Crown in Privy Council.[54] At the debate, Benjamin Franklin invoked William Penn's 1682 *Frame of Government of Pennsylvania* to argue in favor of an independent judiciary and the immediate issue of judicial tenure during good behavior: "It was certainly the import and design of th[e 1682 royal charter] grant, that the courts of judicature should be formed, and that the *judges* and officers that hold their commissions, in a manner not repugnant, but agreeable, to the laws and customs of England; that thereby they might remain free from the influence of persons in power, the rights of the people might be preserved, and their properties effectually secured."[55] But the proprietors successfully resisted the effort and, as a result, by some accounts, Pennsylvania's judiciary continued to be "a subordinate institution" of Pennsylvania's other branches of government.[56]

In 1776, the proprietorship of the Penns came to an end. A general convention was elected for the purpose of devising the first Constitution for the newly independent Commonwealth.[57] The convention met in Philadelphia on Monday, July 15, 1776, and elected Dr. Benjamin Franklin as president.[58] The task of drafting a Constitution was completed on September 28, 1776.[59] The chief architects of the document were Judge George Bryan and James Cannon, a college professor.[60] Bryan served both in the General Assembly and as a judge who, by some accounts, argued to preserve the existing provincial structures to which the assembly was the centerpiece.[61] Cannon, a "radical" with "a strong dislike for checks on the natural impulses of the people," provided most of the language of the 1776 Constitution.[62]

That document structured government around the legislative and executive branches, much as earlier founding documents had. Chapter II, which described the frame of

government, provided for the "Supreme" legislative and executive powers to be vested "in a house of representatives" and "in a president and council," respectively.[63] Representative and council membership would be elective offices, filled annually.[64] The president and vice president would be chosen from among council members by the General Assembly and council members.[65] Each council member served, by virtue of his office, as "a justice of the peace for the whole commonwealth."[66]

Courts of justice were created in Philadelphia and in every county of the Commonwealth.[67] The president in council had "the power to appoint and commissionate judges."[68] The judges of the Supreme Court were commissioned for seven years, with the possibility of reappointment at the end of the term.[69] Eligible voters in each city and county would elect candidates for justices of the peace, and from among them, the president and council would commission persons for the offices for terms of seven years.[70] Judicial officers could be removed by the General Assembly for "misbehaviour at any time" and were liable for impeachment before the president and council.[71] Judges of the Supreme Court were prohibited from holding any other office; justices of the peace were prohibited from holding legislative office.[72] Salaries for judicial offices were fixed by the General Assembly.[73] The power to review the constitutionality of legislative and executive acts was reposed in a Council of Censors, elected and constituted every seven years.[74] The Council of Censors also had subpoena power and the authority to call a constitutional convention.[75]

This first Constitution went into effect on September 28, 1776, as soon as its drafting had been completed.[76] Although support for a change in government was substantial, by the end of October 1776, meetings were held at the State House to oppose the Constitution, which had not yet been submitted to the people for ratification.[77] A particular call was for the separation of powers, denoting the dependency of the judiciary on the General Assembly for their salaries, the duration of their commissions, and their removal from office.[78] One resolution explained that the legislature "may remove any judge from his office *without trial*, for anything they may please to call 'misbehavior.'"[79]

Various claims of legislative encroachment on the courts, such as attempting to overrule a judicial decision and granting divorces, were substantiated when, in November 1783, the first Council of Censors met in Philadelphia.[80] A report of the council was read to the House on January 2, 1784, which concluded that some articles of the Constitution of 1776 were defective and required amendment.[81] Among the proposed amendments were the reconstitution of the General Assembly as a bicameral legislature and the vesting of executive power in a governor.[82] The governor would have the power to appoint judges to serve during good behavior and with fixed salaries.[83] But on September 25, 1784, attempts to call a constitutional convention failed and the Council of Censors adjourned.[84]

By 1790, a second Council of Censors stood to be elected. An act proposed to the General Assembly in March 1789, however, brought the question of a constitutional convention to the people instead.[85] The measure passed the House, and members of the convention were elected at the general election of that year.[86] The members of the convention met

in Philadelphia in November 1789. On December 21, 1789, the committee assigned to draft a document embraced the reforms suggested by the Council of Censors in 1783–84.[87]

The Constitution of the Commonwealth of Pennsylvania, ratified in 1790, laid the foundations of Pennsylvania's modern form of government. Notably, the Commonwealth's government was reconstituted, with a bicameral legislature and a governor exercising executive powers. Article V of the 1790 Constitution vested the judicial power of the Commonwealth in a Supreme Court, inferior courts, justices of the peace, and other courts that could be established by the legislature.[88] Judicial officers would be appointed by the governor to hold their offices for their lifetimes during "good behaviour."[89] The governor retained the authority to remove all judicial officers with the consent of the legislature.[90]

By the turn of the nineteenth century, however, dissatisfaction was growing, with aspects of the Constitution of 1790 viewed as undemocratic and conducive to patronage and corruption by the governor:[91] "It was openly charged that this broad power of patronage had formed the basis for re-election of governors."[92] In 1810, initial efforts at constitutional reform failed, and the concerns persisted for another quarter century.[93]

In 1835, the General Assembly submitted to a vote the issue of calling another constitutional convention, which was popularly approved by a narrow margin.[94] Members were elected and the convention assembled on May 2, 1837, lasting nearly seven months.[95] Conservative anti-Masons and Whigs captured a majority of the delegates—fifty-two and fifteen, respectively—while Democratic Republicans calling for a liberalization of the Constitution elected sixty-six candidates.[96]

Among chief reforms debated were the governor's powers of appointment, tenure of office, and the method of selecting judges.[97] A majority of the committee formed to address the article on the executive proposed a limited amendment by which the governor retained the power of appointing all state officers—with, however, the advice and consent of the Senate.[98] Thaddeus Stevens, chairman of the committee, authored a minority report that proposed the election of certain officers (prothonotaries, clerks of court, registers of wills, and recorders of deeds).[99] Others prepared minority reports generally limiting the purview of Senate involvement.[100] Although Democrats had long supported the election of judges, with a minority in the convention, they advanced the alternative with no success.[101] Their efforts at reform concentrated on limiting the tenure of judges.[102] The majority report supported continuing to provide for lifetime appointments on good behavior; the minority proposed ten-year terms for Supreme Court judges, seven-year terms for Common Pleas judges, and five-year terms for associate Common Pleas judges.[103] The debates centered on the importance of life tenancy to judicial independence and, as a counterweight, the accountability of judges to the people.[104]

The task of the convention was completed in February 1838, and the new Constitution was ratified by the electorate in a very close vote of 113,971 to 112,759.[105] The result was a partial overhaul of the judicial system. Notably, the 1838 Constitution provided that members of the Supreme Court, the Courts of Common Pleas, and any other courts established by

law would be nominated and, with the consent of the Senate, appointed and commissioned by the governor.[106] Judges of the Supreme Court would serve "for the term of fifteen years, if they shall so long behave themselves well."[107] President judges of the Courts of Common Pleas would serve ten-year terms, and associate judges of the Courts of Common Pleas would serve five-year terms, on conditions of good behavior.[108] The Constitution also called for adequate compensation fixed by law, which would not be diminished during the judge's tenure in office.[109] These provisions regarding tenure and compensation were intended to foster judicial independence, and they remain part of our Constitution today.[110]

The 1838 Constitution remained the basic charter of the Commonwealth for the next thirty-six years, until January 1, 1874. In that period, it was amended four times, most notably in 1850. The 1850 amendment provided for the election of all judges in the Commonwealth.[111] Judges of the Supreme Court would be chosen by qualified electors of the Commonwealth at large for a term of fifteen years, the office to be held on good behavior.[112] The term limitations from the 1838 Constitution also continued for the inferior courts.[113] The amendment of 1850 provided for a removal process by the governor on the consent of two-thirds of each chamber of the legislature.[114] Any judicial vacancies resulting from death, resignation, or otherwise would be filled by the governor to continue until the first Monday of December following the next general election.[115]

The convention that drafted the 1874 Constitution focused on reforming the legislature, driven by distrust of that body and the growing influence of railroads and other corporations.[116] The structure of the judiciary was also crafted in some detail. Like its predecessor after the 1850 amendment, the 1874 Constitution provided for the election of judges.[117] The new Constitution fixed the number of judges on the Supreme Court at five, to hold the office for one term of twenty-one years.[118] The number of judges was increased to seven in 1909.[119] The first commissioned judge would be chief justice, succeeded to that office by the next commissioned judge.[120] This Constitution also abolished the office of associate judge of the Court of Common Pleas, which had permitted men without a legal education to serve as jurists, while increasing the number of judges on the Common Pleas bench.[121] Vacancies in judicial offices caused by death, resignation, or otherwise would be filled by appointment of the governor, to continue until the first Monday in January following the first general election occurring three or more months after the happening of such a vacancy.[122]

Selection of judges by election remains the law today, although efforts continue to be made to improve the system. For instance, in 1913, Pennsylvania briefly experimented with nonpartisan judicial elections. Legislation was passed that provided for candidates to be listed without party affiliation on ballots for the Supreme Court and Superior Court (the latter created by legislation in 1895).[123] However, because of continued partisan involvement in the electoral process, which undermined the law for practical purposes, the act was repealed in 1921 and partisan elections were reinstated.[124]

The idea of nonpartisan selection persisted and reemerged in the 1940s and 1950s. In 1957, the General Assembly created a commission on constitutional revision, chaired by the

Honorable Robert E. Woodside. In 1959, the Woodside Commission sent a report to the General Assembly and Governor William Scranton that called for the appointment of trial and appellate judges by the governor from a list submitted by a nominating commission.[125] At the end of a jurist's appointed term, the jurist would be eligible for either reappointment or retention in a nonpartisan up-or-down vote.[126] These recommendations were part of the so-called Pennsylvania Plan.[127] In 1963, Governor Scranton appointed a commission that proposed thirteen discrete amendments to the Constitution, among which was an endorsement of selecting judges by appointment.[128] Questions of reform relating to the judiciary were rejected by the electorate and deferred.

The next attempt to move away from judicial elections occurred in the late 1960s, against the background of significant modernization of Pennsylvania's basic charter. In 1967, the General Assembly called the latest constitutional convention, with the assent of Governor Raymond P. Shafer, after several necessary constitutional reforms failed to clear the legislature.[129] The convention that met in Harrisburg on December 1, 1967, consisted of eighty-eight Republicans and seventy-five Democrats.[130] Their task was limited to four areas of reform: the judiciary, state finance, local government, and legislative reapportionment.[131] Several proposals came out of the subcommittees, including one from the Pennsylvania Bar Association (PBA) to establish a Unified Judicial System (UJS) in Pennsylvania premised on Supreme Court rules.[132] The Supreme Court was explicitly referred to as the highest court of the Commonwealth, in which the "supreme judicial power" of the Commonwealth was reposed.[133]

The convention called for the "merit" selection of judicial officers.[134] At the primary election in 1969, the people were given the opportunity to replace the elective system with one of appointment by the governor from a list of qualified persons submitted to him by a Judicial Qualifications Commission.[135] Appointments did not require the consent of the Senate.[136] The Judicial Qualifications Commission would be a new body, composed of four nonlawyer electors appointed by the governor and three nonjudge members of the bar appointed by the Supreme Court.[137] No more than four members would be from the same party.[138] They would serve for terms of seven years.[139] Further, the convention called for reform of judges' tenure. One aspect was to standardize the terms of office to ten years for justices and judges and to six years for the minor judiciary.[140] Judges were eligible for retention at the expiration of the term.[141] The convention also recommended mandatory retirement at age seventy, with the possibility for continued service as a senior judge on appointment by the Supreme Court.[142]

These proposals were subject to a popular referendum in April 1968 and received wide support.[143] The question of judicial selection, which had been a most contested issue during the convention, was separately posed to the people in May 1969 and was rejected by a vote of 643,960 to 624,453.[144]

The 1968 Constitution created our modern judicial system. The implementation of the concept of a UJS remained for decades subject to concerns over funding.[145] Other concerns

expressed themselves as renewed efforts to transcend partisan politics in the judicial selection process by adoption of a qualifications-driven appointment process. For instance, in 1981, former Supreme Court justice Thomas W. Pomeroy Jr. chaired the Committee to Study Pennsylvania's UJS, which recommended selection of Pennsylvania's appellate court judges only by the governor.[146] After an initial appointment for a term of two years, the jurists would then stand for a retention vote.[147]

Then in July 1987, Governor Robert P. Casey issued an executive order by which a Judicial Reform Commission was appointed to revisit questions surrounding the selection of judges in Pennsylvania, the financing of judicial campaigns, and others.[148] The commission was chaired by the Honorable Phyllis W. Beck (coauthor of chapter 12 in this book). In its report, the Beck Commission recommended a hybrid system in which the elective system would continue operating for trial courts, and an appointive method would be put into place for appellate judges.[149] The Beck Commission's report led to increased efforts over the next ten years in the General Assembly to adopt a constitutional amendment for appointive selection of appellate judges. Bills endorsing the appointive system have been repeatedly introduced in the General Assembly but have been unsuccessful.[150] As recently as January 2015, members of the House and Senate issued a joint resolution proposing constitutional amendments for the selection of appellate judges by appointment of the governor on recommendation of a nominating commission.[151]

Today, financing and the role of partisan politics in judicial campaigns continue to spur debate over the selection of judges in Pennsylvania. Whether these issues will drive additional innovation in the realm of judicial selection in the Commonwealth remains to be seen.

NOTES

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1. "Laws Agreed Upon in England," ¶ V (London, 1682).
2. Pa. Const. art. I, § 11 (1967).
3. "Charter of the Province of Pennsylvania," ¶¶ 1–3 (London, 1681).
4. Ibid., ¶¶ 4–5.
5. Ibid., ¶ 4.
6. Ibid.,¶ 5.
7. Ibid.
8. G. S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and the Forging of a Democratic Society, 1684–1809* (Newark: University of Delaware Press, 1994), 22–24.
9. Ibid., 25.
10. Ibid., 27.
11. Ibid., xx.
12. Ibid., 24–25.
13. Ibid., 25.
14. Ibid., 26.
15. Ibid., 26.
16. Ibid., 27.
17. Ibid., 27.
18. Ibid., 27.
19. Ibid.
20. Ibid., 31.
21. Ibid., 28.
22. Ibid., 28, 31.
23. Ibid., 32.

24. Ibid., 33.
25. Ibid., 39–40, 44, 46.
26. Ibid., 40–41, 44.
27. Ibid., 36, 44–45.
28. Ibid., 48.
29. William H. Loyd, *The Early Courts of Pennsylvania*, University of Pennsylvania Law School Series no. 2 (Boston: Boston Book Company, 1910), 29.
30. Ibid., 30–31; Rowe, *Embattled Bench*, 52.
31. Rowe, *Embattled Bench*, 52.
32. Loyd, *Early Courts*, 31; Rowe, *Embattled Bench*, 53–54.
33. Scott D. Gerber, *A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606–1787* (Oxford: Oxford University Press, 2011), 275.
34. Rowe, *Embattled Bench*, 53–54.
35. Ibid., 55.
36. Ibid., 55–56. For additional details about the struggle for control over the Pennsylvania judiciary between the legislative and executive branches, *see also* Thomas F. Gordon, *The History of Pennsylvania from Its Discovery by Europeans to the Declaration of Independence in 1776* (Philadelphia: Carey, Lea & Carey, 1829), 140–55, 161.
37. Rowe, *Embattled Bench*, 57; Gordon, *History of Pennsylvania*, 161.
38. Loyd, *Early Courts*, 31–32.
39. Ibid.
40. Ibid.; Gordon, *History of Pennsylvania*, 166–67.
41. Loyd, *Early Courts*, 33.
42. *See* Gordon, *History of Pennsylvania*, 140–55.
43. Gerber, *Distinct Judicial Power*, 275.
44. Loyd, *Early Courts*, 37–38.
45. Ibid.
46. 1 Smith Laws 131.
47. Ibid.
48. Loyd, *Early Courts*, 41.
49. 1 Smith Laws 131.
50. Loyd, *Early Courts*, 41.
51. Ibid.; *see also* Commonwealth ex rel. O'Hara v. Smith, 4 Binn. 117, 1811 WL 1551, *4 (Pa. 1811); Gordon, *History of Pennsylvania*, 548.
52. 1 Smith Laws 131. The Supreme Court's King's Bench powers are addressed in the next chapter by William S. Stickman IV. For a case discussing those powers, *see generally* In re Bruno, 101 A.3d 635 (Pa. 2014).
53. Gerber, *Distinct Judicial Power*, 277.
54. Ibid., 277n45.
55. Ibid., 277.
56. Ibid., 279.
57. Ibid., 281; Gordon, *History of Pennsylvania*, 529–30.
58. Pa. Const. (1776), pmbl.; Gordon, *History of Pennsylvania*, 539.
59. Pa. Const. (1776), pmbl.
60. Gerber, *Distinct Judicial Power*, 281.
61. Ibid.
62. Ibid.
63. Pa. Const. (1776), ch. II, §§ 2, 3.
64. Ibid., §§ 9, 19.
65. Ibid., § 19.
66. Ibid.
67. Ibid., § 4.
68. Ibid., § 20.
69. Ibid., § 23.
70. Ibid., § 30.
71. Ibid., §§ 22, 23, 30.
72. Ibid., §§ 23, 30.
73. Ibid., §§ 23, 30.
74. Ibid., § 47.
75. Ibid.
76. Gerber, *Distinct Judicial Power*, 283.
77. Ibid.
78. Ibid.
79. Ibid., emphasis in original.
80. Ibid., 283–84; Lewis Hamilton Meader, *The Council of Censors: Papers from the Historical Seminary of Brown University* (Providence, R.I.: Privately published, 1899), 23.
81. Meader, *Council of Censors*, 24.
82. Ibid.
83. Ibid.
84. Ibid., 28–31.
85. Ibid., 31–32.
86. Ibid., 32.
87. Ibid., 34.
88. Pa. Const. (1790), art. V, § 1.
89. Pa. Const. (1790), art. II, § 8; Pa. Const. (1790), art. V, §§ 2, 10.
90. Pa. Const. (1790), art. V, §§ 2, 10.
91. Rosalind L. Branning, *Pennsylvania Constitutional Development* (Pittsburgh: University of Pittsburgh Press, 1960), 21, 24.
92. Ibid., 24.
93. Ibid.
94. Ibid.
95. Ibid., 22–23.
96. Ibid., 22.
97. Ibid.
98. Ibid.
99. Ibid.
100. Ibid.
101. Ibid., 24.
102. Ibid.
103. Ibid.
104. Ibid., 24–25; *see also* Roy A. Schotland, "To the

Endangered Species List, Add: Nonpartisan Judicial Elections," *Willamette Law Review* 39 (2003): 1397, 1400.

105. Branning, *Pennsylvania*, 29, 31.
106. Pa. Const. (1838), art. V, § 2.
107. Ibid.
108. Ibid.
109. Ibid.
110. For an application of the current provision against diminishment of judicial compensation during the officer's tenure, *see* Stilp v. Commonwealth, 905 A.2d 918 (Pa. 2006).
111. Pa. Const. (1838) (amended 1850), art. V, § 2.
112. Ibid.
113. Ibid.
114. Ibid.
115. Ibid.
116. Branning, *Pennsylvania*, 37.
117. Pa. Const. (1874), art. V, § 2.
118. Ibid.
119. Pa. Const. (1874) (amended 1909), sched. no. 1, § 10.
120. Pa. Const. (1874), art. V, § 2.
121. Pa. Const. (1874), art. V, § 5.
122. Pa. Const. (1874), art. V, § 25.
123. Act 457 of July 24, 1913.
124. Acts 198 and 199 of May 10, 1921; Schotland, "Endangered Species," 1414.
125. Commission on Constitutional Revision, Report, 33–37 (1959).
126. Ibid.
127. Ibid.
128. Governor's Commission on Constitutional Revision, Report, §7 (1964); *see also* Pennsylvania Bar Association, Proposed New Judiciary Article (1964).
129. Act 2 of March 16, 1967.
130. Ibid.
131. Ibid.
132. Kerry L. Moyer and Mark W. Podvia, "A Citizens' Guide to a Modern Constitutional Convention," *Civic Research Alliance* (2009): 35, http://www.palwv.org/wp-content/uploads/2014/03/133_CitizensGuideModernConstitutionalConvention.pdf.
133. Pennsylvania Constitutional Convention, "Constitutional Proposals Adopted by the Convention," April 23, 1968, http://www.duq.edu/Documents/law/pa-constitution/_pdf/conventions/1967-68/constitutional-prop.pdf. For additional explanation of this authority, *see* In re Bruno, 101 A.3d 635 (Pa. 2014).
134. Moyer and Podvia, "A Citizens' Guide to a Modern Constitutional Convention," 31–32.
135. Ibid.
136. Ibid., 32.
137. Ibid.
138. Pennsylvania Constitutional Convention, "Constitutional Proposals," 32.
139. Ibid.
140. Ibid.
141. Ibid., 33.
142. Ibid.
143. Robert E. Woodside, *Pennsylvania Constitutional Law* (Sayre, Pa.: Murelle Print, 1985), 558. For a description of the reasoning behind the proposed reforms, *see generally* Driscoll v. Corbett, 69 A.3d 197 (Pa. 2013). For a description of how the drafters described to the people the measure for ratification of a majority of these reforms at the April 23, 1968, primary election, *see* Friedman v. Corbett, 72 A.3d 255, 261 (Pa. 2013) (Castille, C.J., concurring).
144. Philip S. Klein and Ari A. Hoogenboom, *A History of Pennsylvania* (University Park: Pennsylvania State University Press, 1980), 523; Darren M. Breslin, "Judicial Merit-Retention Elections in Pennsylvania," *Duquesne Law Review* 48 (2010): 891, 897–900.
145. *See generally* Pennsylvania State Ass'n of Cty. Comm'rs v. Commonwealth, 52 A.3d 1213 (Pa. 2012).
146. The Committee to Study Pennsylvania's Unified Judicial System, Report, 81, 89–92 (1981). *See also* Breslin, "Judicial Merit-Retention," 901.
147. The Committee to Study Pennsylvania's Unified Judicial System, Report, 81, 89–92.
148. Governor's Judicial Reform Commission, Report, iv (1988).
149. Ibid., 147–48.
150. Breslin, "Judicial Merit-Retention," 903.
151. S. 44, 114th Cong. (2015–16); H.R. 1336, 114th Cong. (2015–16).