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**In the Supreme Court of Pennsylvania  
Middle District**

**No. 159 MM 2017**

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LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA *et al.*,  
Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA *et al.*,  
Respondents.

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Review of Recommended Findings of Fact and Conclusions of Law from the  
Commonwealth Court No. 261 M.D. 2017

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**APPLICATION OF RESPONDENTS MICHAEL C. TURZAI, IN HIS  
OFFICIAL CAPACITY AS SPEAKER OF THE PENNSYLVANIA HOUSE  
OF REPRESENTATIVES, AND JOSEPH B. SCARNATI, III, IN HIS  
OFFICIAL CAPACITY AS PENNSYLVANIA SENATE PRESIDENT PRO  
TEMPORE FOR DISQUALIFICATION OF  
JUSTICE DAVID WECHT AND FOR FULL DISCLOSURE BY JUSTICE  
CHRISTINE DONOHUE**

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Respondents, Michael C. Turzai and Joseph B. Scarnati, III (“Legislative Respondents”), by and through their undersigned counsel, respectfully submit this Application for Disqualification of Justice David Wecht, and for Full Disclosure by Justice Christine Donohue, as more fully set forth below.

### **INTRODUCTION**

“Gerrymandering is an absolute abomination. It is a travesty. It is deeply wrong. ... These [Congressional] districts have been drawn to disenfranchise the majority of Pennsylvanians. And they have been drawn by skilled political operatives, and it needs to stop.” This statement is one of many statements about the constitutionality of Pennsylvania’s existing Congressional districting map (the “2011 Plan”) made by Justice David Wecht two years before this case was initiated, when he was a candidate for this Court. Moreover, Justice Christine Donohue stated at the same candidate forum that if voters elected Democrat justices, “gerrymandering will come to an end.” To make matters worse, this forum was hosted by the original lead Petitioner in this very case: the League of Women Voters of Pennsylvania.<sup>1</sup>

Trust in the judiciary is premised upon judges acting impartially, adjudicating cases according to the facts presented, and refraining from prejudging,

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<sup>1</sup> See Appellate Court Candidate Forums, League of Women Voters of Washington County, at <http://washingtoncountypalwv.org/appellate-court-candidate-forums/>. See also Affidavit of Mario Calabretta, attached as Exhibit A (the “Calabretta Affidavit”), at ¶ 6 and Ex. 5 thereto.

or even appearing to predetermine, the outcome of cases. Indeed, the first Canon in the Pennsylvania Code of Judicial Conduct mandates that judges “uphold and promote the independence, integrity, and impartiality of the judiciary,” and requires the Commonwealth’s judges to “avoid impropriety and the appearance of impropriety.” 207 Pa. Code § 1. And, the Code of Judicial Conduct establishes unequivocally that any judge—including a Justice of the Supreme Court—“shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” 207 Pa. Code Judicial Conduct Rule 2.11(A). A judge’s impartiality might reasonably be questioned—and a judge must disqualify himself or herself—when “the judge, while a judge *or judicial candidate*, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.” *Id.* at Rule 2.11(A)(5) (emphasis added).

Throughout the pendency of this matter Justices Wecht and Donohue have had an obligation to disclose any prior comments articulating their beliefs concerning the 2011 Plan so as to afford all parties, including Legislative Respondents, the ability to challenge their partiality and seek their disqualification or further disclosure. *See id.*; 207 Pa. Code 2.11(A)(5); *see also id.* cmt. 5 (“A judge should disclose on the record information that the judge believes the parties

or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.”).

But neither of them have recused themselves from this matter nor disclosed their prior comments demonstrating at least the appearance of bias, if not a blatant bias, against the 2011 Plan. As detailed below, Justice Wecht must be disqualified from this case and the Court’s Orders of November 9, 2017, January 22, 2018 and January 26, 2018 must be vacated. Moreover, Justice Donohue should be required to disclose all information she believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification pursuant to 207 Pa. Code 2.11(A)(5). After such disclosure, and if at that point she does not voluntarily recuse herself, the parties can further evaluate whether to affirmatively move for her disqualification.

## **ARGUMENT**

### **I. Applicable Legal Standard**

The Pennsylvania Code of Judicial Conduct establishes a straightforward mandate: Any judge—including a Justice of the Supreme Court—“*shall* disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” 207 Pa. Code Judicial Conduct Rule 2.11(A) (emphasis added). A judge’s impartiality might reasonably be questioned when “the judge, while a judge *or judicial candidate*, has made a public statement, other

than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or *controversy*.” *Id.* at Rule 2.11(A)(5) (emphasis added). This duty to disqualify exists “regardless of whether a motion to disqualify is filed.” *Id.* at Rule 2.11 cmt.

2. For this reason, judges in Pennsylvania are prohibited from making “pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office” with respect to “cases, *controversies* or *issues* that are likely to come before the court.” *Id.* at Rule 4.1(A)(12) (emphasis added).

Importantly, governing tribunals of this Commonwealth “must not only be unbiased, *but must avoid even the appearance of bias.*” *In the Interest of McFall*, 617 A.2d 707, 713 (Pa. 1992) (quoting *Horn v. Twp. of Hilltown*, 337 A.2d 858, 859-60 (Pa. 1975)) (emphasis added). The rule is simple: “*disqualification of a judge is mandated whenever a ‘significant minority of the lay community could reasonably question the court’s impartiality.’*” *Commonwealth v. Bryant*, 476 A.2d 422, 425 (Pa. Super. 1984) (quoting *Commonwealth v. Darush*, 459 A.2d 727, 732 (Pa. 1983)) (emphasis added). To be sufficient for disqualification, a bias must be a personal one arising outside the four corners of the courtroom. *Commonwealth v. Druce*, 796 A.2d 321, 327 (Pa. Super. 2002). Put differently, “[a]ny alleged bias and prejudice must not arise out of evidence presented at trial,

out of an earlier proceeding or from the fact that the judge has definite views on the law or from an impersonal prejudice which goes to the judge's background, associations, learnings or experience." *Matos v. Geisinger Med. Ctr.*, 2014 Pa. Dist. & Cnty. Dec. LEXIS 466, \*12, 37 Pa. D. & C.5th 449, 459 (Pa. Com. Pl. 2014) (citing *Commonwealth v. Lawrence*, 239 A. 2d 209 (Pa. Super. 1967)); *U.S. v. Gilboy*, 162 F. Supp. 384, 393-94 (M.D. Pa. 1958)).

*Druce* and *Bryant* make clear that disqualification is necessary where there is evidence of bias or prejudice, or where there is evidence tending to show an appearance of bias or prejudice. *See Druce*, 796 A.2d at 327; *Bryant*, 476 A.2d at 426; *see also Rizzo v. Haines*, 555 A.2d 58, 72 (Pa. 1989); *Reilly v. Southeastern Pennsylvania Transp. Auth.*, 489 A.2d 1291, 1299 (Pa. 1985); *see generally In the Interest of McFall*, 617 A.2d at 707, 712-713 (finding that even where actual prejudice was not found, an appellant was "entitled to sentencing by a judge whose impartiality could not reasonably be questioned"). Indeed, it is axiomatic that "[t]he appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of either of these elements." *McFall*, 617 A.2d at 713; *see also Joseph v. Scranton Times L.P.*, 987 A.2d 633, 636 (Pa. 2009) (per curiam) (holding that where appearance of judicial impropriety has been established, no showing of actual prejudice is required). In *Goodheart*, this Court found that "[w]here disqualification is raised before the

Court and the merit of the motion obvious, the remaining Justices have the duty to request that Justice to accede to the recusal request.” *Goodheart v. Casey*, 556 A.2d 757, 764 (Pa. 1989).

**II. Justice Wecht’s Disqualification Is Required Because His Impartiality And Bias Regarding The 2011 Plan Is Manifest, And His Participation In This Court’s Orders Should Be Invalidated.**

**A. Justice Wecht’s Opinion Regarding The 2011 Plan Was Predetermined.**

Justice Wecht’s position regarding the 2011 Plan, and, more generally, partisan map drawing were clearly defined and cemented long before this case was initiated. During his campaign to become a Justice of this Court and even after his election, Justice Wecht repeatedly expressed his view that the 2011 Plan is unfair, unconstitutional and must be eliminated:

- “Let me be very clear: Gerrymandering is an absolute abomination. It is a travesty. It is deeply wrong. ... These districts have been drawn to disenfranchise the majority of Pennsylvanians. And they have been drawn by skilled political operatives, and it needs to stop. There are a million more Democrats in this Commonwealth—I want to let that sink in—a million more Democrats in this Commonwealth, but there’s a Republican state house, there’s Republican state senate, and *there are only 5 Democrats in the Congress, as opposed to 13 Republicans. Think about it.* Do we need a new Supreme Court? I think you know the answer. *Spring 2015 Judge Candidate Forum*, Neighborhood Networks and MoveOn Philly, at <https://www.youtube.com/watch?v=713tnbv55mU&feature=youtu.be>,

at time code 18:00 (emphasis added). *See also* Calabretta Aff. at ¶ 2 and Ex. 1.<sup>2</sup>

- “*Stop this insane gerrymandering. ... And we are one of the most gerrymandered states in the nation. And people who are disenfranchised by this gerrymandering abomination eventually lose faith and grow more apathetic, why, because their voting power has been vastly diluted and they tend to figure “well, I can’t make a difference, I’ll just stay home.”* *Get to Know the Candidates for State Supreme Court*, LANCASTER ONLINE, at [http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article\\_65c426d4-6d45-11e5-b74f-6babb36c03bb.html](http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article_65c426d4-6d45-11e5-b74f-6babb36c03bb.html), at time code 35:58. (emphasis added). *See also* Calabretta Aff. at ¶ 3 and Ex. 2.
- “Extreme gerrymandering is an abomination and antithetical to the concept of one person, one vote.” Sean Ray, *Newly Elected Judge David Wecht on His Plans for the State Supreme Court*, 90.5 WESA, at <http://wesa.fm/post/newly-elected-judge-david-wecht-his-plans-state-supreme-court#stream/0>, at time code 32:25. *See also* Calabretta Aff. at ¶ 4 and Ex. 3.
- “...[I]n 2014, I believe, there were at least more than 200,000 votes for Democratic candidates for U.S. Congress than Republicans *and yet we elected 13 Republicans and 5 Democrats*, and there are more than 1,000,000 more Democrats. ... I’m not trying to be partisan, but I have to answer your question, frankly--. We have more than a million more democrats in Pennsylvania, we have a state senate and state house that are overwhelmingly Republican. *You cannot explain this without partisan gerrymandering*. So I don’t have a philosophy other than fidelity to our Constitution, and fidelity to our Constitution does not include drawing lines down the middle of streets or separating neighbors from one another. It doesn’t include carving up municipalities. Our Constitution and its jurisprudence say that we are not supposed to divide up municipalities except where absolutely necessary, we are supposed to have compact and contiguous, compact

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<sup>2</sup> Complete copies of all videos, audio files, and web pages referenced in this Application have been provided to the Court and parties via USB device and are authenticated in the Calabretta Affidavit.

and contiguous districts. And I challenge anybody to look at the map of our districts and deem them to be compact and contiguous.” *Get to Know the Candidates for State Supreme Court*, LANCASTER ONLINE, at [http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article\\_65c426d4-6d45-11e5-b74f-6babb36c03bb.html](http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article_65c426d4-6d45-11e5-b74f-6babb36c03bb.html), at 38:15 (emphasis added). *See also* Calabretta Aff. at ¶ 3 and Ex. 2.

Even more troubling, on at least one occasion, Justice Wecht expressed his biased views regarding the 2011 Plan *in a forum held by the League of Women Voters – the original lead Petitioner in this very case*. At that forum, he stated: “Everybody in this room should be angry about how gerrymandered we are ... Understand, sitting here in the city of Pittsburgh, your vote is diluted. Your power is taken away from you.” Eric Holmberg, *Forums Put Spotlight on PA Supreme Court Candidates*, PUBLICSOURCE (Oct. 22, 2015), at [www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates](http://www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates) (emphasis added). *See also* Calabretta Aff. at ¶ 5 and Ex. 4. And as Justice Wecht was almost certainly aware at the time he made these statements, the League of Women Voters had already taken aggressive positions with respect to the drawing of legislative districts and “partisan gerrymandering.” At best, Justice Wecht’s statements at this forum could be viewed as an indication of a firm and predetermined ideology; more likely, however, he was advancing a not-so-subtle campaign promise to act in accordance with the views of the interested parties present at the forum whose votes and support he wanted to secure. It goes without

saying that a judge—even an elected one—simply cannot make campaign promises regarding substantive issues that may come before the Court and most certainly should not be seen to be encouraging potential litigants to bring actions consistent with these political views.

While Justice Wecht’s public statements and campaign promises address partisan map drawing at both the state and federal levels, it is beyond obvious that his views concerning the drawing of Pennsylvania’s Congressional districts had been formulated, cemented and expressed publicly long before the filing and adjudication of this case. Indeed, if there could be any remaining confusion regarding how Justice Wecht felt about the 2011 Plan, his statement to a group of potential voters on the subject prior to his election to this Court is unequivocal:

Right nearby here, by way of just one example, Montgomery County, a county or two over here, is represented in pieces by I think 5 different members of Congress. That’s unbelievable. So I don’t know and I can’t tell you what the map would be, and it’s not for me to say, and I don’t know how I would rule on any given map. But I can tell you the Constitution says “one person, one vote,” and it does not allow for unconstitutional gerrymandering.

*Get to Know the Candidates for State Supreme Court*, LANCASTER ONLINE, at [http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article\\_65c426d4-6d45-11e5-b74f-6babb36c03bb.html](http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article_65c426d4-6d45-11e5-b74f-6babb36c03bb.html). See also Calabretta Aff. at ¶ 3 and Ex. 2.

Put simply, Justice Wecht’s unequivocal statements establish that even before he was elected to this Court his mind was made up: the 2011 Plan – the very map challenged in this litigation – was unlawfully “gerrymandered.” But even if Justice Wecht could somehow put aside his strongly held – and oft repeated – political views and judge this case impartially, the fact that he so clearly, repeatedly and publicly expressed his views regarding the very issue at the core of this case, including at a forum organized and hosted by the original lead Petitioner, establishes beyond any doubt that a Pennsylvanian could only reasonably (or absolutely) conclude that Justice Wecht was not (and is not) impartial.

But this Court need not take Legislative Respondents’ word alone on this issue. Evidence regarding the public’s perception of Justice Wecht’s views is readily available. For example, while the Lancaster Times endorsed Justice Wecht’s candidacy, that endorsement came with an express reservation: “We are concerned when he veered near partisan territory in condemning ... what he called Pennsylvania’s ‘insane gerrymandering’ of legislative districts.” The LNP Editorial Board, *Our Choices for State Supreme Court in Tuesday’s Election*, LANCASTER ONLINE, at [http://lancasteronline.com/opinion/editorials/our-choices-for-state-supreme-court-in-tuesday-s-election/article\\_08e9810c-7ea2-11e5-a10c-9ba2a8da9aa0.html](http://lancasteronline.com/opinion/editorials/our-choices-for-state-supreme-court-in-tuesday-s-election/article_08e9810c-7ea2-11e5-a10c-9ba2a8da9aa0.html). *See also* Calabretta Aff. ¶ 7 and Ex. 6.

Even more troubling, Justice Wecht knew that his actions crossed the line; when running for election to this Court, Justice Wecht explained, “the Code of Judicial Conduct [mandates] that [a Supreme Court Justice] can’t talk about a specific case,” and acknowledged that if elected, “people would have ... every reason to question [his] impartiality had [he] expressed a ... *specific opinion with respect to a specific ... controversy.*” [http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article\\_65c426d4-6d45-11e5-b74f-6babb36c03bb.html](http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article_65c426d4-6d45-11e5-b74f-6babb36c03bb.html), at 28:20 (emphasis added).<sup>3</sup> See also Calabretta Aff. at ¶ 3 and Ex. 2. See also Eric Holmberg, *For lawyers, by lawyers: The money behind the race for PA Supreme*, Nov. 3, 2015, Public Source, at [www.publicsource.org/for-lawyers-by-lawyers-the-money-behind-the-race-for-pa-supreme-court/](http://www.publicsource.org/for-lawyers-by-lawyers-the-money-behind-the-race-for-pa-supreme-court/) (“There’s a two-level step of analysis that the judges must decide first. Can the judge be fair and impartial? And secondly, even if the judge feels

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<sup>3</sup> Notably, in his campaign for Superior Court Judge, Justice Wecht is quoted as saying that “[m]y approach is to be *overly transparent* and abundantly cautious if there is any sign of a conflict of interest.” Heather Long, *Pa. Judge Races Are Attracting More Money And Potential Bias*, Oct. 29, 2011, PENNLIVE, at [http://www.pennlive.com/editorials/index.ssf/2011/10/pa\\_judge\\_races\\_are\\_attracting.html](http://www.pennlive.com/editorials/index.ssf/2011/10/pa_judge_races_are_attracting.html) (emphasis added). See also Calabretta Aff. at ¶ 8 and Ex. 7. In his campaign for this Court, he stated that, “[t]his election presents Pennsylvania with a chance to restore the court’s integrity and reputation in a very clear and systematic way.” And he argued that Pennsylvania Courts can be the “gold standard for judicial ethics and transparency.” Matt Cassidy, *PA Supreme Court Candidate Wecht Issues 5-Point Plan To Clean Up the Judiciary*, Feb. 9, 2015, POLITICS PA, at <http://www.politicspa.com/pa-supreme-court-candidate-wecht-issues-5-point-plan-to-clean-up-the-judiciary/63621/>. See also Calabretta Aff. at ¶ 9 and Ex. 8. Justice Wecht’s failure to disclose his previous statements or recuse himself from this case runs directly contrary to his campaign promises and Pennsylvania’s Code of Judicial Conduct.

she or he can be fair and impartial, is there, notwithstanding that, an appearance of impropriety? In my career of nearly 13 years as a judge, I haven't hesitated to recuse myself from any case where I felt I couldn't pass either aspect of that test.”). *See also* Calabretta Aff. at ¶ 10 and Ex. 9. Justice Wecht was correct. He was required to disqualify himself from this case (and to disclose his conflict) on day one. *See Bryant*, 476 A.2d at 425 (quoting *Darush*, 459 A.2d at 732).

**B. Justice Wecht's Participation In The Court's Orders Should Be Invalidated.**

As a matter of due process, Justice Wecht's failure to recuse himself renders his votes cast in this case invalid which, in turn, renders the Court's Orders of November 9, 2017, January 22, 2018 and January 26, 2018 invalid. Under Pennsylvania law, “[a] fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.” *In re Schlesinger*, 172 A.2d 835, 840-41 (Pa. 1961) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). Likewise, the U.S. Supreme Court has made clear that a state court's decision may be overturned as a federal due process violation if the impartiality of judges can be legitimately questioned. *See, e.g., Withrow v. Larkin*, 421 U.S. 35, 47; *Mayberry v. Pennsylvania*, 400 U.S. 455, 466.

It is axiomatic that where a jurist has improperly failed to disqualify himself or herself, that jurist's rulings and votes in that matter are invalid dating back to the

time that disqualification should have occurred. *See, e.g., Rohm & Haas Co. v. Continental Cas. Co.*, 732 A.2d 1236, 1260 (Pa. Super. 1999) (holding that where the judge should have recused himself, subsequent consideration of matters in the case “would necessarily be invalidated.”); *Joseph v. N. Whitehall Twp. Bd. of Supervisors*, 16 A.3d 1209, 1220 (Pa. Commw. 2011) (noting that invalidation is a proper remedy where recusal was required); *Kuszyk v. Zoning Hearing Bd. of Amity Twp.*, 834 A.2d 661, 662 (Pa. Commw. 2003) (holding that if a tribunal member should have recused himself, his vote would be invalid); *see also Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 827-828 (1986) (vacating final order by Alabama Supreme Court on impartiality grounds because movant did not discover impartiality of justice who made decisive vote until after the order was entered).

Here, Justice Wecht’s participation in this matter began on November 9, 2017, when the Court, by a vote of 4-3, granted Petitioners’ application for extraordinary jurisdiction and assumed plenary jurisdiction of this matter. In other words, without Justice Wecht’s invalid vote, this Court would not have granted Petitioners’ application for extraordinary relief, and the case never would have proceeded under the Court’s plenary jurisdiction.

The prejudice to Legislative Respondents resulting from Justice Wecht’s decision to participate in this case (and not disclose his conflict) cannot be understated. As noted above, Justice Wecht’s vote was necessary for this Court to

issue its November 9, 2017 Order exercising its plenary jurisdiction and to overturn Judge Pellegrini’s reasoned decision staying this matter. But it does not end there.

Then, after Judge Brobson, who was specifically tasked with trying the case and rendering findings of fact and conclusions of law, and made specific and detailed findings that the 2011 Plan *does not* violate Pennsylvania’s Constitution, this Court, in a vote along partisan lines, overruled Judge Brobson’s thoughtful and well-reasoned decision (with the remedy component of the Court’s January 22, 2018 Order as well as the January 26, 2018 Order decided by 4-3 vote). Stated differently, this Court’s November 9, 2017, January 22, 2018, and January 26, 2018 Orders turned on Justice Wecht’s decisive vote. And, since Justice Wecht should have been disqualified from this case, each of the votes must now be rendered invalid and the resulting Orders vacated.<sup>4</sup>

### **III. Justice Donohue Should Be Required to Disclose Her Statements About Pennsylvania’s Map Drawing.**

Justice Donohue made an explicit promise at the League of Women Voters’ Forum that “gerrymandering will come to an end” if she and other Democrat

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<sup>4</sup> Even if the November 9, 2017 (4-3) Order exercising jurisdiction is not invalidated, the Court’s January 22, 2018 Order would be invalid as to remedy because Justice Wecht cast the deciding vote on that issue, too. Likewise, the Court’s January 26, 2018 Order is invalid because it was issued by a 4-3 vote, including Justice Wecht’s invalid vote. *See Aetna Life Ins. Co.*, 475 U.S. at 827-828 (vacating decision by Alabama Supreme Court justice who authored 5-4 decision when challenger discovered the justice’s impartiality after the decision was issued and challenged it immediately).

judges were elected. Holmberg, *supra*, at [www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates](http://www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates). See also Calabretta Aff. at ¶ 5 and Ex. 4. In addition, she openly stated that “gerrymandering disenfranchises the people.” Nathan Kanuch, *Democratic Supreme Court Candidates Attend Forum*, POLITICSPA, available at <https://davidwecht.ngpvanhost.com/news-clips/democratic-supreme-court-candidates-attend-forum>. See also Calabretta Aff. at ¶ 11 and Ex. 10.

“The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine whether the candidate for judicial office has specifically undertaken to reach a particular result.” Pennsylvania Code of Judicial Conduct Rule 4.1 cmt. 9. Justice Donohue’s statements raise doubts about her impartiality in this matter and are “reasonably consider[ed] relevant to a possible motion for disqualification.” *Id.* at Rule 2.11 cmt. 5. Justice Donohue should be required to disclose her full statements made at these forums, as well as any other similar statements she has made about “gerrymandering” and/or Pennsylvania’s Congressional districts. She should likewise recuse herself if her statements reflect even the appearance of an impartial bias with regard to the 2011 Plan.

#### **IV. This Disqualification Application Is Timely.**

Justices Wecht and Donohue failed to disclose their prior statements and beliefs in violation of their affirmative duty to do so established by Section 2.11(A) of Pennsylvania’s Code of Judicial Conduct. As this Court has recognized, parties have no reason to suspect a judge’s impartiality, as it is presumed the judge is unbiased and will promptly bring to the attention of the parties any latent biases or personal interests that might affect their judgment. *Reilly*, 489 A.2d at 1300-1301. “[T]he law is clear”: “a party must seek recusal of a jurist at the earliest possible moment, *i.e.*, when the party knows of the facts that form the basis for a motion to recuse.” *Lomas v. Kravitz*, 170 A.3d 380, 390 (Pa. 2017) (emphasis added).

Legislative Respondents learned of the facts that form the basis for this motion after January 17, 2018. During oral argument in this matter, the adversarial tone<sup>5</sup> and questioning from Justices Wecht and Donohue raised doubts about the impartiality of these Justices, and possibly others. In particular, Justice Wecht repeatedly referred to the 2011 Plan as a “gerrymander” (a term that has no specific meaning in this Court’s case law), signaling that he had already predetermined the issue; Justice Wecht’s animosity is illustrated, *inter alia*, by his

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<sup>5</sup> Even media outlets took notice, commenting after the argument that “lawyers for the Republicans faced sharp questioning from Justice David Wecht, who seemed strongly leaning toward throwing out the map.” Sam Levine, *Pennsylvania Supreme Court Appears Open to Striking Down Gerrymandered Map*, Huffington Post, at [www.https://www.huffingtonpost.com/entry/pennsylvania-gerrymandering\\_us\\_5a5f8856e4b046f0811c5bbe](https://www.huffingtonpost.com/entry/pennsylvania-gerrymandering_us_5a5f8856e4b046f0811c5bbe).

comment that the General Assembly “blew the chance” to implement a redistricting goal of incumbency protection because they were “too greedy.” (Oral Argument Video, PCN, Jan. 17, 2018, at time code 2:09). Following argument, counsel for Legislative Respondents investigated whether Justice Wecht had made any public statements indicating his prejudgment of this matter. Indeed he had. That investigation uncovered the statements and campaign commitments recited above, and also led to further investigation of the statements made by Justice Donohue.

Decisions of this Court illustrate that motions to recuse are deemed untimely only after a protracted delay following the date on which knowledge was established. In *Lomas*, for example, knowledge was confirmed as of September 6, 2007, and a recusal motion was not filed until *six weeks later*. 170 A.3d at 391 (“[W]ithout even seeking recusal, Appellants allowed: additional witnesses to testify at the trial on damages; the evidentiary portion of that trial to conclude; the 30–day time period, which they requested to allow for forensic review of records, to expire; and an additional nine days to pass following the expiration of that 30–day time period. It was not until after all of these events that Appellants finally filed a Recusal Motion on October 15, 2007.”). In *Reilly*, the alleged grounds for recusal were known by the movant and raised to the court in an oral motion. The presiding judge ordered the movant to file a written motion within five days of

issuance of an order; the movant *waited eight months*. *Reilly*, 489 A.2d at 1296–97. There too, the motion to recuse was deemed untimely. *Id.* at 1300.

Here, Legislative Respondents file this Application within days of discovering the repeated and unequivocal public statements calling into question Justices Wecht and Donohue’s impartiality. Far from any waiver, Legislative Respondents acted promptly to assert their rights.

Notably, even under an alternative “should have known” standard, as enunciated by this Court in *In re Lokuta*, Legislative Respondents plainly should not have been expected to have known the Justices’ subjective bias earlier in this expedited case. 11 A.3d 427 (Pa. 2011). Specifically, the type of facts that parties have been expected to know, and that have scuttled recusal motions as untimely, are facts that are readily identifiable like the age of a judge,<sup>6</sup> or membership on a Judicial Board,<sup>7</sup> or the date on which a Justice would take office,<sup>8</sup> not the subjective opinions or prejudged bias of the jurists at issue. In fact, it is because litigants would likely never know about a judge’s bias or impartiality regarding a given issue, that the disclosure burden lies with the judge. *See Reilly*, 489 A.2d at

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<sup>6</sup> *In re Lokuta*, 11 A.3d at 437 (denying a movant’s motion to recuse a jurist based on his age, and other jurists based on their membership on a Judicial Board, as waived after the movant had filed multiple recusal motions over the course of protracted proceedings and failed to raise these issues in her earlier motions to recuse).

<sup>7</sup> *Id.*

<sup>8</sup> *Goodheart*, 556 A.2d at 762-763 (“The fact that these Justices would fall within the group of judges who took office after March 1, 1974, was a matter of public record and known by [movant] prior to the time of argument in these cases.”).

1300-1301. Moreover, none of these cases involve the breakneck pace of this particular litigation; there is no precedent suggesting that Legislative Respondents would have reason to know or uncover the Justices' potential bias where the parties were working around the clock on a case proceeding from the start of discovery to trial to Supreme Court briefing and argument in under ten weeks.<sup>9</sup>

The overriding concern this Court has expressed about timeliness of recusal motions is driven by a desire to prevent movants from choosing “to remain silent, resorting to the unconscionable and reprehensible tactic of laying the grass, waiting until the decision and then raising the disqualification issue only if they lost.” *Goodheart*, 556 A.2d at 763 (quoting the “somewhat florid” but neither “inaccurate or unfair” characterization from an opposition brief). Here, Legislative Respondents had no incentive to “lay in the grass” waiting and hoping for a good result from this Court, because unlike being too old, being the member of an interested board, or taking the bench at the wrong time, the bias was that of prejudging the very matter at issue in this case: the Constitutionality of the 2011 Plan.

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<sup>9</sup> This is the span of time between this Court's November 9, 2017 Order lifting the stay implemented by the Commonwealth Court and directing the Commonwealth Court to issue recommended findings of fact and conclusions of law by December 31, 2017, and January 17, 2018, when oral argument was held.

## CONCLUSION

For the reasons explained herein, Legislative Respondents respectfully submit that Justice David Wecht is required to disqualify himself or, failing that, this Court has the duty to retroactively disqualify Justice Wecht from this case and order that: (1) the deciding votes he cast in favor of the Court's Orders of November 9, 2017, January 22, 2018 and January 26, 2018 be stricken; and (2) the Court's Orders of November 9, 2017, January 22, 2018 and January 26, 2018 be vacated. Moreover, Justice Donohue should be required to disclose all information she believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification pursuant to 207 Pa. Code 2.11(A)(5), including any statements regarding "gerrymandering" or the 2011 Plan.

Dated: February 2, 2018

Respectfully submitted,

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# **EXHIBIT A**

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In the Supreme Court of Pennsylvania  
Middle District

No. 159 MM 2017

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LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, *et al.*,  
Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,  
Respondents.

---

Review of Recommended Findings of Fact and Conclusions of Law  
from the Commonwealth Court No. 261 M.D. 2017

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**AFFIDAVIT OF MARIO CALABRETTA**

---

I, Mario Calabretta, being first duly sworn and cautioned according to law, state that I am of sound mind, of majority age, and make the following statements based on my personal knowledge:

1. I am employed as the Senior Litigation Support Coordinator for BakerHostetler LLP, one of the law firms representing Legislative Respondent Michael C. Turzai, in his Official Capacity as Speaker of

the Pennsylvania House of Representatives, in the above-entitled matter. I work from BakerHostetler's Philadelphia, PA office.

2. On January 31, 2018, I accessed a web page on the YouTube website using a web browser on my desktop computer titled "Neighborhood Networks Supreme Court of PA Forum," at <https://www.youtube.com/watch?v=713tnbv5mU&feature=youtu.be>. I made a copy of the webpage as it appeared on January 31, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 1**. Additionally, I downloaded the video that was embedded in the YouTube video website at the captioned page. The video, saved in MPEG-4 format and measuring 1,671,448 kilobytes in size, has been included on a USB device. The video filename is "Neighborhood Networks Supreme Court of PA Forum.mp4."

3. On January 31, 2018, I accessed a web page on the website for Lancaster Online using a web browser on my desktop computer, titled "Get to know the candidates for state Supreme Court," dated October 31, 2015, at [http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article\\_65c426d4-6d45-11e5-b74f-](http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article_65c426d4-6d45-11e5-b74f-)

[6babb36c03bb.html](http://6babb36c03bb.html). I made a copy of the webpage as it appeared on January 31, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 2**. Additionally, I downloaded a video embedded in that webpage featuring Justice Wecht. The video, saved in MPEG-4 format and measuring 734,409 kilobytes in size, has been included on a USB device. The video filename is “Judge David Wecht\_Get to know the candidates for state Supreme Court Local News landcasteronlinecom\_5.mp4.”

4. On January 31, 2018, I accessed a web page on the website for 90.5 WESA using a web browser on my desktop computer, titled “Newly Elected Judge David Wecht on His Plans For The State Supreme Court,” dated November 5, 2015, at <http://wesa.fm/post/newly-elected-judge-david-wecht-his-plans-state-supreme-court#stream/0>. I made a copy of the webpage as it appeared on January 31, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 3**. Additionally, I downloaded an audio file embedded in that webpage. The video, saved in MP3 format and measuring 55,267 kilobytes in size, has been included on a USB device. The audio filename is “11-5-15\_seg\_ab.mp3.”

5. On February 2, 2018, I accessed a web page on the website for PublicSource using a web browser on my desktop computer, titled “Forums Put Spotlight on PA Supreme Court Candidates,” dated October 22, 2015, at [www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates](http://www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates). I made a copy of the webpage as it appeared on February 2, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 4**.

6. On February 2, 2018, I accessed the web site <http://washingtoncountypalwv.org/appellate-court-candidate-forums> using a web browser on my desktop computer. I made a copy of the webpage as it appeared on February 2, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 5**.

7. On February 2, 2018, I accessed a web page on the website for Lancaster Online using a web browser on my desktop computer, titled “Our Choices For State Supreme Court”, dated October 30, 2015, at [http://lancasteronline.com/opinion/editorials/our-choices-for-state-supreme-court-in-tuesday-s-election/article\\_08e9810c-7ea2-11e5-a10c-9ba2a8da9aa0.html](http://lancasteronline.com/opinion/editorials/our-choices-for-state-supreme-court-in-tuesday-s-election/article_08e9810c-7ea2-11e5-a10c-9ba2a8da9aa0.html). I made a copy of the webpage as it appeared on February 2, 2018 at the

time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 6**.

8. On February 2, 2018, I accessed a web page on the website for PennOnline using a web browser on my desktop computer, titled “Pa. Judge Races Are Attracting More Money And Potential Bias,” dated October 29, 2011, at

[http://www.pennlive.com/editorials/index.ssf/2011/10/pa\\_judge\\_races\\_are\\_attracting.html](http://www.pennlive.com/editorials/index.ssf/2011/10/pa_judge_races_are_attracting.html). I made a copy of the webpage as it appeared on February 2, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 7**.

9. On February 2, 2018, I accessed a web page on the website for Politics PA using a web browser on my desktop computer, titled “PA Supreme Court Justice Wecht Issues 5-Point Plan To Clean Up The Judiciary,” dated February 9, 2015, at <http://www.politicspa.com/pa-supreme-court-candidate-wecht-issues-5-point-plan-to-clean-up-the-judiciary/63621/>. I made a copy of the webpage as it appeared on February 2, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 8**.

10. On February 2, 2018, I accessed a web page on the website for Public Source using a web browser on my desktop computer, titled “For lawyers, by lawyers: The money behind the race for PA Supreme Court,” dated November 3, 2015, at <https://www.publicsource.org/for-lawyers-by-lawyers-the-money-behind-the-race-for-pa-supreme-court/>. I made a copy of the webpage as it appeared on February 2, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 9**.

11. On February 2, 2018, I accessed a web page on the website Davidwecht.ngpvanhost.com using a web browser on my desktop computer, titled “Democratic Supreme Court Candidates Attend Forum,” at <https://davidwecht.ngpvanhost.com/news-clips/democratic-supreme-court-candidates-attend-forum>. I made a copy of the webpage as it appeared on February 2, 2018 at the time of my visit, and a true, accurate, and complete copy of such webpage is attached to my Affidavit as **Exhibit 10**.

FURTHER AFFIANT SAYETH NAUGHT.

Mario Calabretta  
Mario Calabretta

This Affidavit was sworn to and subscribed in my presence  
on this 2nd day of February, 2018.

*Commonwealth of Pennsylvania*  
*County of Philadelphia*

Diane M. Kushner  
Notary Public

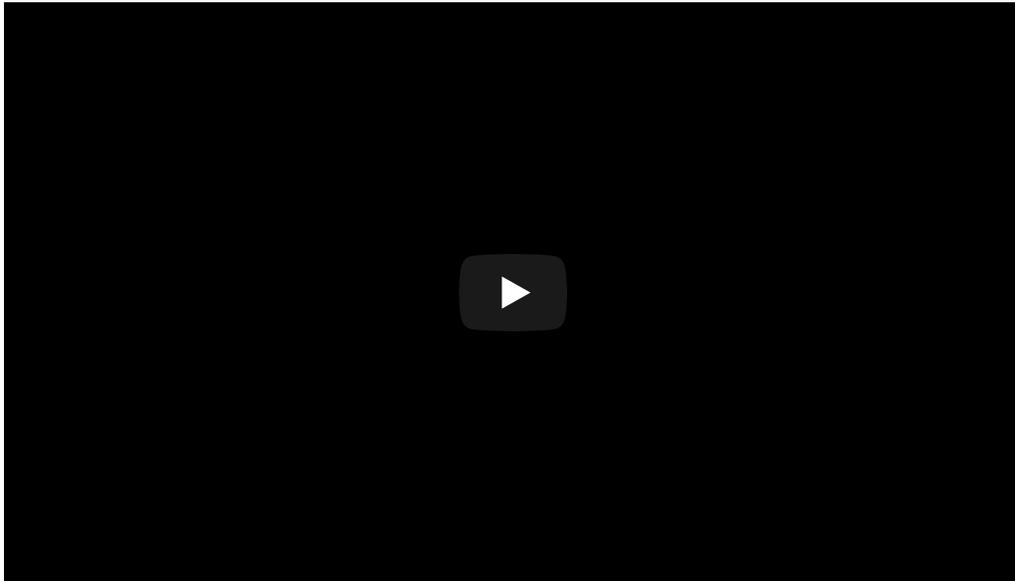
[seal]

My Commission Expires: *October 20, 2019*

110695.000002 611988313

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Diane M. Kushner, Notary Public  
Malvern Boro, Chester County  
My Commission Expires Oct. 20, 2019  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

# **Exhibit 1**



## Neighborhood Networks Supreme Court of PA Forum

69 views

1
 0
 SHARE



**Media Mobilizing Project**

Published on Apr 25, 2015

**SUBSCRIBE 368**

Over 50 groups joined together to ask where candidates for the 2015 May Primary Supreme Court of PA stands on variety of issues.

Category **Film & Animation**  
 License **Standard YouTube License**

### Up next

AUTOPLAY



**Final Debate Remarks From The Democratic Candidates For The PA Supreme Court**

PennLive.com  
84 views

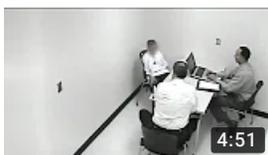
8:20



**The Storm Show 230 WECHT**

wyIntv35  
235 views

22:50



**You Have the Right to Remain Silent - California Bill Strengthens Miranda for Kids**

HumanRightsWatch  
32K views

4:51



**Property: Private Nuisance**

Legal Network TV  
1.5K views

2:03



**Could Pennsylvania's High Court help Dems in Congress?**

Thom Hartmann Program  
578 views



**Fair Districts PA**

PhillyCAM  
195 views



**the jazz crusaders Tough Talk**

groove addict  
Recommended for you



**VA Supreme Court could become involved in Danville Confederate flag controversy**

WSLS 10  
88 views

**Argentinians furious over supreme court ruling**

Al Jazeera English ✓  
2.5K views

2:41

**Jazz Crusaders. Live**

TheChoke77  
Recommended for you

40:29

**Supreme Court Nominee is a Role Model in the Bronx**

VOA News ✓  
245 views

4:09

**Betty Lewis of the NAACP on the state takeover of Atlantic City**

Media Mobilizing Project  
84 views

1:45

**Verona, PA Meet the Candidates Night 05/05/2015**

Leo Bickert  
181 views

52:41

**Voters Voices**

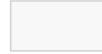
Media Mobilizing Project  
39 views

3:06

**Verizon, finish the job!**

Media Mobilizing Project  
45 views

1:34



34 views

1:24

**Jazz Crusaders Way Back Home**

d hazz

Recommended for you



10:40

**Modern Jazz Quartet - Django**

Andro Chilaia

Recommended for you

7:02

**South Philly High School 9th Grade Commitment Ceremony**

Media Mobilizing Project

79 views

0:45

# **Exhibit 2**

[http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article\\_65c426d4-6d45-11e5-b74f-6babb36c03bb.html](http://lancasteronline.com/news/local/get-to-know-the-candidates-for-state-supreme-court/article_65c426d4-6d45-11e5-b74f-6babb36c03bb.html)

## Get to know the candidates for state Supreme Court

LANCASTERONLINE | Staff Oct 31, 2015



Handout

Bu

On Nov. 3, Pennsylvania will elect an unprecedented three new justices to the state Supreme Court, making it an election with far-reaching and lasting consequences.

The state Supreme Court, in recent years, has been rocked by scandal. One former justice was convicted on campaign corruption charges; two judges engaged in a prolonged, public and highly personal feud; and one was embroiled in the state's pornographic email scandal, and stepped down from the bench after four of his fellow justices voted to suspend him.

Repairing the reputation of the court will be a priority for those elected to it.

In an effort to help voters get to know the candidates, the LNP Editorial Board has invited them in for separate 45-minute interviews. These videos are intended to help you make your choice Nov. 3.

The first interviews took place Wednesday, Oct. 7. More will follow so please check back for more videos.

### **Judge Judy Olson, Republican from Allegheny County**





She serves as a judge on the Pennsylvania Superior Court, to which she was elected in 2009, with the most votes of all statewide judicial candidates. The previous year she was appointed as judge on the Court of Common Pleas of Allegheny County in the Civil Division. Before becoming a judge, she practiced law for 27 years, representing both plaintiffs and defendants. She graduated from Duquesne University School of Law. The Pennsylvania Bar Association rates her "highly recommended" for the Supreme Court, and says she is "a keen legal thinker" who has "a high level of integrity."

### **Three things to know about her**

— When she was elected to the Superior Court in 2009, she received the most votes of all the appellate judicial candidates. Before serving on the bench, she was a trial lawyer for more than 25 years. She is happy to be called "Judge Judy."

— She is proud that lawyers who faced her in court, and her colleagues, praised her integrity, honesty, fairness and temperament in evaluations for the Pennsylvania Bar Association.

— She has a daughter who was born with serious health issues and spent the first year of her life in the hospital. She says her daughter is "my hero. When I grow up, I want to be her."

### **Three things she told LNP**

— "I think every person who is fortunate enough to serve this commonwealth in any capacity on the judiciary ... you have to be a role model; you personally have to be fair and honest and ethical, and act with integrity ... and act with respect at all times — respect for the lawyers, the litigants, your colleagues on the bench and ... most importantly (with) respect for the rule of law and for the system, because the system is much bigger than any one of us."

— "I define an activist judge as someone who wants to reach a particular result and will do whatever it takes to get there, even if the facts or the laws do not lead him or her to that conclusion. ... If you want to change the law, and change the policies that govern our commonwealth, then run for the Legislature or run for the executive branch."

— "When you're trying to discern who you want to vote for, ... look at not only the professional experience, but look at the life experiences of these individuals. As a mother, as a wife, as a daughter, as a sister, as a professional, I have had amazing accomplishments and some absolute, abject failures (she cited lost cases as one example) and I think you need to have that before you sit in judgment of other people."

## Judge Michael George, Republican from Adams County



He is the president judge of the Adams County Court of Common Pleas, and chairman of the Adams County Criminal Justice Advisory Board. For his work in improving the administrative practices of the Adams County court, he was honored with the "Golden Crowbar" award from the Pennsylvania Conference of State Trial Judges. He practiced family law, municipal law, civil litigation and criminal defense law before being elected district attorney in 1995, and then county judge in 2001. He is rated "recommended" by the Pennsylvania Bar Association, which notes his reputation "as an excellent administrator."

### Three things to know about him

— He believes it's best to elect judges rather than have them appointed, because there is no way to guarantee that a selection, or merit-based, system would protect the integrity of the court. The constitutional right, privilege and duty to vote belong to the people.

— In addition to the court's obligation to provide service and deliver justice, he believes courts have a responsibility to taxpayers who trust judges to be fiscal stewards.

— He served six years as Adams County's district attorney and was the county's first full-time district attorney.

### Three things he told LNP

— "This is about a value set. It is about legal intellect. It's about integrity. It's about responsibility. Those aren't values which are unique to the Democratic or Republican party. ... I don't want your vote because you are a Republican. I want your vote because you believe in the value set that I have. When the dust settles, we need to understand: This isn't about an R or a D. It is about judges who will be fair."

— "We need substantial change (on the Supreme Court), and the only way that occurs is by identifying who you are and putting a culture in place that follows through with who you are; set the expectations, and give people the ability to meet those expectations, and then hold them accountable, regardless of who they are."

— “I thought what needed to be happening is, decisions have to be made on issues of importance like this —(the email scandal involving the Pennsylvania) Supreme Court — quickly and effectively, and whoever is responsible needs to be treated as anyone else would be. How can we expect the public to be confident in how judges treat them if they don’t believe they treat each other with that same accountability?”

### **Judge Anne E. Covey, Republican from Bucks County**



She serves as a judge on the Pennsylvania Commonwealth Court, to which she was first elected in 2011. After graduating from Widener School of Law in 1984, she was assistant counsel for the Pennsylvania Labor Relations Board, clerked for the president judge of the Commonwealth Court and worked in private practice before opening her own the labor-and-employment law firm in 1996. In 2002, she became first woman (and to date only) appointed to the Pennsylvania Labor Relations Board by Republican Gov. Mark Schweiker; she was reappointed in 2005 by Democratic Gov. Ed Rendell. The Pennsylvania Bar Association rates her “not recommended” over a campaign ad in her 2011 race for Commonwealth Court; Covey said she considers the ad within her First Amendment rights.

#### **Three things to know about her**

— She wrote the April 2014 opinion that upheld a law to keep in Pennsylvania the \$60 million that Penn State was ordered to pay to help victims of sexual abuse.

— In response to the Pennsylvania Bar Association’s refusal to release information about the process by which it rated her, she wrote an 8½-page letter telling her side of the story — noting her colleagues’ reviews of her were at odds with the “Not Recommended” rating she received from the bar’s Judicial Evaluation Commission. It said she violated a pledge to avoid “false or misleading campaign advertising” in her 2011 campaign for Commonwealth Court.

— She is the first (and to date only) woman to be appointed to the Pennsylvania Labor Relations Board.

#### **Three things she told LNP**

— “We wouldn’t all be sitting here today if we didn’t have a right to free speech. Basically, the (state) bar association decided that they wanted to try to classify me on something that had nothing to do with my qualifications and to deny my rights to free speech. I’ll be the first one to tell you I’m going to stand by your rights to freedom of speech. And I’m going to stand by my own rights of freedom of speech.”

— “We absolutely need to bring integrity and honesty back to the highest court in Pennsylvania, and to restore the confidence that truth and justice are going to be delivered from the highest court.”

— “I believe that we need to have diversity of thought and experience on our very highest court, and I’m the only candidate that’s operated my own business that I’ve had for over 16 years. I’m the only candidate that’s from the Commonwealth Court. ... We don’t have any of that expertise on the high court.”

### **Judge Christine Donohue, Democrat from Allegheny County**



She is a judge on the Pennsylvania Superior Court and has served on the state's highest intermediate appeals court since 2008. She worked as a personal injury attorney and in commercial litigation in her 27 years in private practice, which included serving as ethics counsel. She has served on the Board of Law Examiners, the Disciplinary Board of the Supreme Court, as a judge of the Court of Judicial Discipline and as chairwoman of the Pennsylvania Judicial Conduct Board. She is rated “highly recommended” by the Pennsylvania Bar Association, which notes her reputation for “intelligence, conscientiousness and objectivity.”

### **Three things to know about her**

— She grew up in the anthracite coal region, the daughter of a coal worker and a seamstress. She worked as a civil trial lawyer for 27 years and has spent much of her career enforcing ethics rules for judges and lawyers.

— Having served on the Pennsylvania Superior Court since 2008, she’s the longest-sitting appellate court judge running for the state Supreme Court.

— The Superior Court of Pennsylvania is the busiest appellate court in the United States, and Donohue figures she’s participated in about 7,000 decisions. In her view, there’s no better training ground for the Supreme Court than the Superior Court.

**Three things she told LNP**

— “I know precisely what the rules are, and in my view, there is absolutely no excuse for violating any of those rules. ... If you are a justice on the Pennsylvania Supreme Court, the very, very least the citizens of Pennsylvania can expect is that you live by the rules.”

— “I don’t live in a world where I get or see pornographic emails; I don’t live in a world where misogyny is the subject of humor. ... As I read about this, it’s striking to me how removed this is from the world I live in. ... Years ago, the Supreme Court set up a commission on racial and gender bias in court systems. ... To be sitting here in 2015 and having conversations about that kind of subject matter, it’s disturbing.”

— “Every time I decide a case on appeal that deals with ... a parent whose rights have been terminated ... that has to be the most important thing that I’ll ever do in terms of that family. ... I’ve written some cases I’m very, very proud of, in terms of the precedents they set ... but it’s hard to say they’re more important than any of the cases that affect the lives of families.”

**Judge David Wecht, Democrat from Allegheny County**

David Wecht serves as a judge on the Pennsylvania Superior Court, to which he was elected in 2011. As a trial judge for the Fifth Judicial District of Pennsylvania’s Court of Common Pleas, he presided in both the Civil and Family Divisions. He served as administrative judge of the Family Division from 2009 to 2011. During that time, he designed and implemented numerous reforms, including the Unified Family Court. He received the Award for Distinguished Service for work he performed as a clerk in the U.S. Court of Appeals for the D.C. Circuit. He graduated summa cum laude from Yale University; he also graduated from The Yale Law School. The Pennsylvania Bar Association rates him “highly recommended” for the Supreme Court, and says he is “a well-respected and thoughtful jurist” who has a “forward-thinking approach to law.”

**Three things to know about him**

— His mother spent the first six years of her life living under Nazi occupation in Norway; his father, Cyril Wecht, is a well-known forensic pathologist who famously disagreed with the single-bullet theory in President John F. Kennedy's assassination.

— While administrative judge of the Family Division of the Allegheny County Court of Common Pleas, he implemented reforms, including a unified family court in which the same jurist followed a family through its experiences with the court, and a conflict counsel program for juvenile delinquency cases.

— He has a five-point plan for improving transparency and ethical behavior in the state judiciary. He proposes: no more gifts to judges; no more nepotism, effective immediately; cameras in the courtrooms, except in sexual assault, child abuse and juvenile cases; mandatory ethics training for all judges; and a requirement that judges, when recusing themselves from a case or refusing to do so, state their reasons for the record.

### **Three things he told LNP**

— “I’m actually running because I love jurisprudence. It may seem trite, but I love the law, I love to think about the law, I love to write about the law. This is what motivates me.”

— “It (the email scandal) is a major systemic problem for jurists to be communicating on an ex parte basis with lawyers who have cases before them. ... The media and the public, of course, have their attention drawn to the matters involving sex because that’s human nature, and that is a serious matter, obviously. Just as serious is the chumminess ... that would suggest that there is an elite community that gets a more cozy salon of justice than all the rest of us.”

— “To me, justice is a process, it’s not a result. So we shouldn’t pick the result we want and then go back to jury-rig the process to generate that result. ... That is not justice, that’s tyranny. ... The foundation of our system is predictable rules equally applied.”

### **Judge Paul P. Panepinto, Independent from Philadelphia**



Paul P. Panepinto is running as an Independent for the state Supreme Court. He serves as a judge on the Philadelphia Courts of Common Pleas, to which he was appointed in 1990. One year later, he was elected to the judgeship in his own right after winning the Democrat and Republican primaries. He received the Outstanding Service to Pennsylvania's Juvenile Justice System in 2002. He graduated from Widener University's Delaware Law School. The Pennsylvania Bar Association rates him as "recommended" for the Supreme Court, and says he "engages in community service" and has "worked to develop specialty courts." He takes pride in having established a satellite truancy court in Philadelphia that he says worked to remove the obstacles that were keeping students from attending school.

### **Three things to know about him**

— In his first election for judge in Philadelphia in 1991, he took and abided by a Pennsylvania Bar Association pledge to refuse campaign contributions from attorneys; he won both party nominations.

— He filed 28,000 signatures, nearly double the 16,000-plus required, to run as an independent for Supreme Court this year.

— He says the highlight of his judicial career — which includes criminal cases and heading the division that heard complex civil litigation involving medical malpractice, asbestos, fen-phen and pharmaceutical drugs — was serving as administrative judge of the Family Court Division for five years, overseeing 900 employees and a \$36 million budget.

### **Three things he told LNP**

— "I think we can do better in Pennsylvania, but we need justices who will step down from the high place, not just hear cases but come down and be involved in the system to get it right for Pennsylvanians."

— "I created a customer service unit in the family division. What was that about? Well, you come in after 5 o'clock and pay your child support. ... I had a unit to accommodate the public. ... I said: Why can't we have varied hours? Why can't you file a petition later at night? Why do you have to come always during 9-to-5 hours?"

— "When I researched (running as an independent), it was almost an impossible task. ... But I talked to my friends and family. I said, 'Listen, this is a chance to change things, to make it better. To give others a choice. To bring in minorities and other people who are just being shut out of the system.' ... I decided to go to the people. What does it say in our Constitution? ... 'We the people,' not we the politicians."

### **Judge Kevin Dougherty**



Judge Kevin Dougherty, who oversees the trial division of Philadelphia's sprawling court system, has spent most of his 14-year judicial career dealing with troubled juveniles and families in the family division. The Democrat received help getting on the Philadelphia bench from Gov. Tom Ridge, a Republican who appointed him to fill a vacancy in 2001. Dougherty, 55, won the first of two 10-year terms later that year. A 1988 graduate of Antioch Law School in Washington, Dougherty received a state bar panel rating of "recommended." Dougherty said the high court needs to get past its scandals: "It is time for closure and the election of three new justices will do exactly that."

### **Three things to know about him**

— He grew up in what he describes as “a very blue-collar, working-class neighborhood” in South Philadelphia and was the first in his family to graduate college. He commuted to Temple University and held down up to three part-time jobs.

— He came in first in both the Republican and Democratic primaries when he ran in 2001 for Common Pleas Court judge. He was appointed to the post by Gov. Tom Ridge after winning both primaries.

— He expressed admiration for former Supreme Court Justice Chief Justice Stephen A. Zappala’s 2002 decision in a case that permitted same-sex couples to adopt children in Pennsylvania. “We have hundreds of thousands of children sitting in out-of-home placement, wishing they had a permanent and loving family,” Dougherty said. “That one decision permitted many, many, many, many, many children to find loving homes. That’s phenomenal, the impact of one decision.”

### **Three things he told LNP**

— “I requested to serve in family court (after his first election because he remembered, on days off from school, going to work with his father, an officer in family court for 36 years). What I would see in that courtroom was actual miracles happening. I was able to witness ... individuals, mostly the at-risk, the poor, the vulnerable, the marginalized. And I was able to see bad situations corrected. It’s something that kind of had a profound impact on me.”

— “I believe that I both have the qualifications as an administrator and as a jurist, and a proven record of accomplishment, to be a successful Supreme Court justice.”

— “I think, in a judicial election, it’s our good character, our reputation in our own communities, that have to be investigated. ... It’s not so much am I Democrat or a Republican, but do I think like you?”

## More Headlines

-  **insider** Registration open for YWCA Lancaster Race Against Racism
- Hilton plans 74-room boutique hotel in former Lititz chocolate factory site called 'The Wilbur'
-  **insider** Applicants sought for Junior League volunteer awards
- New exhibit opens with a reception Friday at North Museum's STEAM Art Gallery
- February's garden calendar: Where to find garden shows and talks in the Lancaster County region
- Smucker, Toomey react to Trump's first State of the Union speech
- Park program looks at what else groundhogs do besides forecast the arrival of spring
- Breaking down the Philadelphia cheesesteak, step by step
- Martha Stewart posts on Instagram about her visit to Scratch Bakes in Ephrata Tuesday
- Lots of classic American treats got their start in Philadelphia
-  **insider** Lancaster County community calendar: Jan. 31, 2018

# **Exhibit 3**



[Essential Pittsburgh Archives \(/programs/essential-pittsburgh-archives\)](#)

# Newly Elected Judge David Wecht On His Plans For The State Supreme Court

By [SEAN RAY \(/PEOPLE/SEAN-RAY\)](#) & ESSENTIAL PITTSBURGH • NOV 5, 2015



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[url=http%3A%2F%2Fwww.tinyurl.com%2Fq6xlmwe&text=Newly%20Elected%20Judge%20David%20Wecht%20On%20His%20Plans%20For%20The%20State%20Sup](http://http%3A%2F%2Fwww.tinyurl.com%2Fq6xlmwe&text=Newly%20Elected%20Judge%20David%20Wecht%20On%20His%20Plans%20For%20The%20State%20Sup)



([http://mediad.publicbroadcasting.net/p/wesa/files/styles/x\\_large/public/201511/117048243\\_7cc6bb0b87\\_o.jpg](http://mediad.publicbroadcasting.net/p/wesa/files/styles/x_large/public/201511/117048243_7cc6bb0b87_o.jpg))

JOE GRATZ / FLICKR



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39:17

After the most expensive judicial election in US history, with nearly \$16 million spent, the dust has finally settled on the Pennsylvanian Supreme Court (<https://www.google.com/url?q=http://wesa.fm/post/voters-give-dems-control-pennsylvania-supreme-court&sa=U&ved=0CAUQFjAAahUKEwiE2Jv9pvrIAhXFpB4KHTMPDCE&client=internal-uds-cse&usg=AFQjCNH76B9LuDTdtFqMM8AngAsjX6j7iw>) election and the democrats have swept the bench. David ([https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAAahUKEwi1ot2Ap\\_rIAhXIIR4KHZjMDLY&url=http%3AUoSSfbweilAS1\\_HXqGA&sig2=PalmdDLFIUARKI47rA62ag&bvm=bv.106923889,d.dmo](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAAahUKEwi1ot2Ap_rIAhXIIR4KHZjMDLY&url=http%3AUoSSfbweilAS1_HXqGA&sig2=PalmdDLFIUARKI47rA62ag&bvm=bv.106923889,d.dmo)) Wecht (<https://www.google.com/url?>

<https://www.google.com/url?>

sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAAahUKEwi1ot2Ap\_rIAhXIIr4KHZjMDLY&url=http%3AUoSSFbweilAS1\_HXqGA&sig2=PalmdDLFIUArKI47rA62ag&bvm=bv.106923889,d.dmo), Christine Donohue and Kevin Dougherty, all Democrats, have won their elections and will be inducted as Supreme Court Justices. Wecht paid a visit to Essential Pittsburgh and spoke with Paul Guggenheimer about his victory.

Despite the amount of money used in political campaigns (<https://www.google.com/url?q=http://wesa.fm/post/politics-pennsylvanias-supreme-court-race&sa=U&ved=0CAgQFjABahUKEwiE2Jv9pvrIAhXFpB4KHTMPDCE&client=internal-uds-cse&usg=AFQjCNHE-yrmlnxwv7f64JRxBHpsGcmapQ>), Wecht himself is no fan of big spending in elections. He described negative advertising as “deplorable” and said that it is sad we live in a world where money is used as speech.

“Unless and until the United States Supreme Court reverses itself on Citizens United or the United States Constitution is amended to provide otherwise, we will all live in a world where, unfortunately, money is speech,” Wecht said.

The newly elected justice equates complaining about negative ads and big spending in elections to complaining about the weather. It is going to happen no matter what.

Focusing on where he would like to make a difference, Wecht said he wishes to tackle the issues of incarceration in Pennsylvania. He described the high amounts of inmates as a major drain on PA’s finances and a big cost to citizens.

“It is, and people need to focus on this, tremendously expensive to incarcerate and I fear our elected leaders don’t confront that reality,” Wecht said.

According to the newly elected justice, it costs around \$35,000 to \$45,000 to incarcerate an inmate each year. Wecht believes courts should try to place non-violent criminals into rehabilitation programs rather than in jail. He especially believes rehab would prove effective to criminals suffering from addiction issues.

“Courts need to apply a nuanced approach, rather than a bludgeon in dealing with that,” Wecht said.

A major reason so many interests were interested in this election is the issue of electoral districts. The time for Pennsylvania to redraw its districts is coming up and the PA Supreme Court nominates a tie-breaker to the redrawing process to manage disputes between the two Democratic and two Republican nominees.

While some may fear a Democrat controlled Supreme Court will mean redrawing districts in their favor, Wecht states doing such a thing goes against the US constitution.

“Extreme gerrymandering is an abomination and antithetical to the concept of one person, one vote,” Wecht said.

Despite these pending issues, Wecht has a great deal of excitement for his new role, saying the election is “a new day for the high court.”

**More Essential Pittsburgh segments can be heard here (<http://wesa.fm/programs/905-wesas-essential-pittsburgh>).**

**TAGS:** [PENNSYLVANIA SUPREME COURT \(/TERM/PENNSYLVANIA-SUPREME-COURT\)](/TERM/PENNSYLVANIA-SUPREME-COURT), [EP ARCHIVES \(/TERM/EP-ARCHIVES\)](/TERM/EP-ARCHIVES)

[JUDGE DAVID WECHT \(/TERM/JUDGE-DAVID-WECHT\)](/TERM/JUDGE-DAVID-WECHT)



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[url=http%3A%2F%2Fwww.tinyurl.com%2Fq6xlmwe&text=Newly%20Elected%20Judge%20David%20Wecht%20On%20His%20Plans%20For%20The%20State%20Sup](http://www.tinyurl.com/2Fq6xlmwe&text=Newly%20Elected%20Judge%20David%20Wecht%20On%20His%20Plans%20For%20The%20State%20Sup)

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An advertisement for UPMC. It features a woman with curly hair and glasses, wearing a blue top and a patterned scarf. The text reads: "I DIDN'T CHOOSE to have A STROKE, but I did choose UPMC." Below the text is a signature that appears to be "Beunty". At the bottom right is the UPMC logo with the tagline "LIFE CHANGING MEDICINE".

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# **Exhibit 4**

MONEY & POLITICS

# Forums put spotlight on PA Supreme Court candidates



Eric Holmberg | October 22, 2015



*Three candidates for Pennsylvania Supreme Court*

Three of the seven candidates for the Pennsylvania Supreme Court appeared “in the light,” as one candidate put it this week in Pittsburgh, to be transparent and to answer questions from voters.

And they received a mountain of questions (more than 40) from a packed auditorium at the Homewood branch of the Carnegie Library of Pittsburgh Tuesday night.

The three Democratic candidates — Superior Court Judge Christine Donohue, Philadelphia Court of Common Pleas Judge Kevin Dougherty and Superior Court Judge David Wecht — appeared at the event, although all candidates were invited.

“The beauty of this event is that you now will judge us and determine whether you think we're telling you what you want to hear or do you think we're telling you what's in our heart?” Dougherty said.

While judicial elections often have low voter turnout, the forum attendees were engaged with the candidates.

“Everybody gets the opportunity to see us,” Donohue said. “The unfortunate part is that not enough people take the time to get to know who the candidates are and what our qualifications are. But the opportunity is there...”

Merit selection, which involves the appointment, rather than election of judges, is currently being considered as a constitutional amendment by the Pennsylvania Legislature.

The House version of the bill passed with a [16-11 bipartisan vote](#) of the House Judiciary Committee on Tuesday, which is one of the first steps in a very long process.

The [most common system](#) in the country — done by 22 states — begins the judicial appointment process with a bipartisan commission that sends nominations to the governor.

“We, the people, have a right to elect our judges and constitutional rights should not lightly be taken away by somebody saying, ‘We know better than you,’”

Wecht said.

He added: “We haven't been picked behind closed doors. We're out here in the light so you can see us (and) you can hear us...”

## **Televised forum**

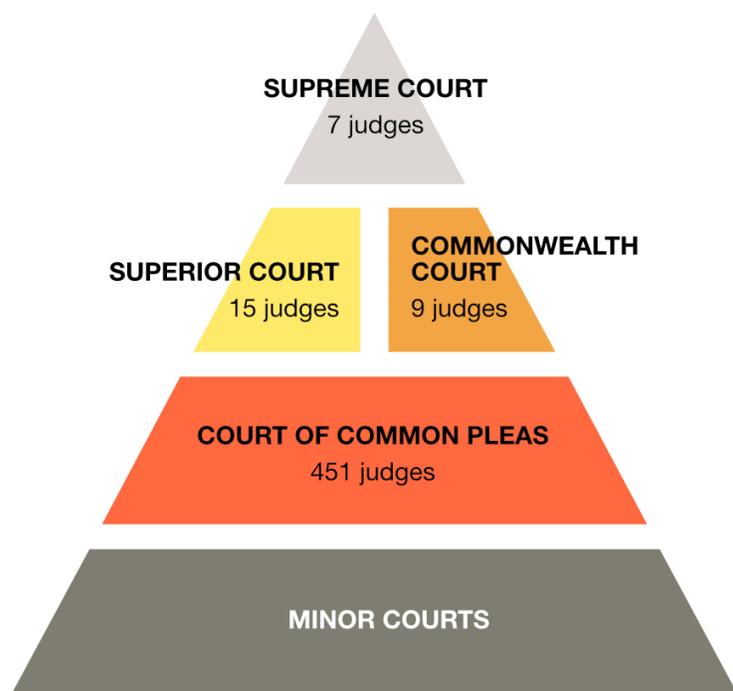
While not every voter can attend a forum in Pittsburgh or in [Reading, Pa.](#), to hear candidates in person, all seven candidates for the state Supreme Court appeared at a televised forum on Oct. 14.

The forum opened with discussion of the scandals that have created two of the three openings on the court and the recent release of racist and sexist emails from sitting Supreme Court Justice J. Michael Eakin.

“There is no doubt that the revelations are disturbing, not only from a point of view of content (but also) from a point of view of relationships and the perception that those relationships have on public confidence in the court system,” said Adams County Court of Common Pleas Judge Michael George, a Republican.

Philadelphia County Court of Common Pleas Judge Paul Panepinto, the independent candidate, said the state Supreme Court shouldn't be involved in the process of investigating a sitting member of the court.

# Pennsylvania Supreme Court candidates



Source: *The Unified Judicial System of Pennsylvania*  
Graphic by Alexandra Kanik / PublicSource

## CANDIDATES

-  **Christine Donohue**  
Democrat
-  **Judith Olson**  
Republican
-  **David Wecht**  
Democrat
  
-  **Anne Covey**  
Republican
  
-  **Michael George**  
Republican  
Adams County
-  **Kevin Dougherty**  
Democrat  
Philadelphia County
-  **Paul Panepinto**  
Independent  
Philadelphia County

Superior Court Judge Judith Olson agreed, saying the Judicial Conduct Board was created by a constitutional amendment in 1993 to review cases of judicial misconduct.

One result from the recent scandals is that many of the TV ads by the candidates have focused on integrity and professionalism, said Laurie Kinney, communications director for Justice At Stake, a Washington, D.C., group that tracks TV ad spending, in an interview earlier this month.

Pennsylvania is one of eight states that elect judges through partisan elections where judges must run with a party label. However, none of the candidates felt this would be an issue when it gets down to deciding a case.

“I have been endorsed by both business and labor,” said Commonwealth Court Judge Anne Covey, a Republican. “I have seen favor by both parties and I agree

that justice serves all, and it's not along party lines.”

George said it was unfortunate that party affiliation is a litmus test for so many voters given the current mess on the Supreme Court. “We've got to start putting people in office based upon their experience, their credentials, their value set, not because they're Republican or Democrat,” he said.

## **Gerrymandering and the role of the Supreme Court**

At the Homewood forum, the candidates were quite candid.

Donohue said she would support the precedent set in the landmark abortion rights case *Roe v. Wade*. Dougherty talked about [creating a court](#) to not criminalize victims of sex trafficking, and Wecht mentioned the work he did in law school on the “serious problems with the prison privatization movement.”

The three Democratic candidates also spoke about gerrymandering in Pennsylvania and the Supreme Court's role in the process of creating congressional districts.

Pennsylvania's 7th Congressional District was rated the fourth-most gerrymandered district in the country by [The Washington Post](#). The 7th district snakes around an area just west of Philadelphia and looks like “[Goofy kicking Donald Duck](#).”

“Everybody in this room should be angry about how gerrymandered we are,” Wecht said. “Understand, sitting here in the city of Pittsburgh, your vote is diluted. Your power is taken away from you.”

He said voters in rural, Republican districts are overrepresented in the current district map.

Wecht and Donohue explained how the Pennsylvania Supreme Court appoints the fifth and final member to the [Legislative Reapportionment Commission](#), the

group that draws the district lines, if the leaders of the state House and Senate can't agree on a selection.

The state Supreme Court also reviews any challenges to the district lines drawn by the commission, meaning the court could potentially influence the process twice.

Donohue said if voters selected all three Democrats on Election Day, all the court would need to do is apply the law.

“And gerrymandering will come to an end,” she said.

*Reach Eric Holmberg at 412-315-0266 or at [eholmberg@publicsource.org](mailto:eholmberg@publicsource.org).*

*Follow him on Twitter [@holmberges](https://twitter.com/holmberges).*

## MORE PUBLICSOURCE STORIES



### [2015 PA Supreme Court Voters' Guide](#)

Use this PublicSource voters' guide to make an informed vote for this historic state Supreme Court election.



### [PA Supreme Court 2015: Newspaper endorsement roundup](#)

So far, four Pennsylvania newspapers have announced their endorsements, and there's a fair amount of consensus.



## Mystery donor group fuels attack ads in PA Supreme Court race

Many familiar organizations gave to Pennsylvanians for Judicial Reform so it could run attack ads against the three Republican candidates for Pennsylvania Supreme Court.

In the past month, the group raised more than \$2.2 million from affinity groups representing Philadelphia trial lawyers, teachers' unions, labor unions and others.

Pennsylvanians for Judicial Reform is an independent expenditure group, meaning they can buy political ads but they cannot coordinate with the candidates or advocate for the election or defeat of a specific candidate.

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# **Exhibit 5**



A nonpartisan political organization in Washington County, Pennsylvania

Home About Us Voting & Candidate Information Facts for Citizens Join Us! Contact Us News & Newsletters Calendar

Three statewide judicial candidate forums are scheduled.

- Wednesday, October 14, 2015; 5-6 pm [See video online.](#)  
 Supreme Court Candidate Forum Widener Commonwealth Law School in Harrisburg  
 Check your local PCN listings for re-broadcast times.
- Thursday, October 15, 2015; 12-1:30 pm [See video online.](#)  
 Intermediate Appellate Court Candidate Forum  
 (Superior and Commonwealth Courts) Widener Commonwealth Law School in  
 Harrisburg. Check your local PCN listings for re-broadcast times.
- Tuesday, October 20, 2015; 6-9 pm [Flyer](#)  
 Supreme Court Candidate Forum (Between 7-8:30 pm)  
 Homewood Carnegie Library in Pittsburgh

Further details from Susan Carty, LWVPA President:

2015 is an historic election in Pennsylvania. For the first time in 300 years, Pennsylvanians will elect three Supreme Court justices, filling two seats that were vacated under the cloud of judicial misconduct and one that was vacated because of mandatory retirement.

Although the LWVPA supports changing the way we choose appellate court judges, until we achieve reform, it is crucial that voters are educated about what judges do and who the candidates are.

Unfortunately, getting that information is difficult, and making an educated decision on which candidates would be best for the bench is nearly impossible given the restrictions on judicial candidate speech and the flood of special interest money into the race.

LWVPA relies heavily on our local leagues to do the yeoman's work of educating the public about the relevant issues in any election. To help you accomplish this, we are providing links to multiple resources.

Documents published by [Pennsylvanians for Modern Courts](#):

- [PA Supreme Court and Appellate Court Judges](#) – the 3 statewide courts showing incumbents and vacancies

#### Upcoming Events

FEB 9 Fri	11:00 am Legislative Luncheon
FEB 13 Tue	6:00 pm Board and Membership Meeting
MAR 13 Tue	7:00 am Special Election, CD 18

Add

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  - Newsletters
- County Commissioner Candidate Interviews Primary 2015 archived
- Voting: How and Where
- Join Us!
- Appellate Court Candidate Forums

- [What to Consider When Voting for a Judge](#)

Videos:

- [The Judicial Branch](#) published by [Pennsylvania's Unified Judicial System](#)
- [Protecting Our Rights; Protecting Our Courts](#) published by the [American Bar Association](#)

Voting & Candidate Information

- Special Election, Senate District 37, Candidate Interviews Election 2015
- Voters Guide Municipal Election 2015
- 49th Legislative Dist. Candidates Forum video March 22, 2016
- Primary 2016 Voters Guide
- Vote411.org
- General Election 2016 Voters' Guide
- PA Statewide Candidate Forums
- Video: Washington County Judicial Candidates Forum
- Primary 2017 Voters Guide
- Municipal Election 2017 Voters Guide
- LWV WRITE-IN POLICY FOR VOTER SERVICE ACTIVITIES
- Calendar

# **Exhibit 6**

[http://lancasteronline.com/opinion/editorials/our-choices-for-state-supreme-court-in-tuesday-s-election/article\\_08e9810c-7ea2-11e5-a10c-9ba2a8da9aa0.html](http://lancasteronline.com/opinion/editorials/our-choices-for-state-supreme-court-in-tuesday-s-election/article_08e9810c-7ea2-11e5-a10c-9ba2a8da9aa0.html)

In our words

## Our choices for state Supreme Court in Tuesday's election

The LNP Editorial Board Oct 30, 2015



Handout

### THE ISSUE

**Pennsylvania's Supreme Court is a seven-member bench. On Tuesday, for the first time ever, Pennsylvanians will get the opportunity to vote for three justices to fill three seats on the court. There haven't been three seats open on our Supreme Court since 1704 (they then were filled by the English monarch).**

Since he took over as chief justice in January, Republican Thomas Saylor has restored to the previously scandal-rocked Supreme Court a measure of stability and blessed respectability.

The former chief justice, Ronald Castille, a Republican, retired. Former Justice [Seamus McCaffery](#), a Democrat, retired after [being suspended](#) over his involvement in the state's [pornographic email](#) scandal. [Joan Orié Melvin](#), a Republican, was convicted on political corruption charges.

Now it's up to voters to fill the three seats left vacant with justices who are smart, ethical and serious, and have temperaments befitting their roles as members of the state's highest court.

Because the state Supreme Court has been so riven by conflict and [controversy](#) in recent years, and because our commonwealth deserves so much better, we on the editorial board are focusing on this race.

We invited all [seven candidates](#) to meet with us over the past month. Six of the seven came to Lancaster; we interviewed Judge Kevin Dougherty of Philadelphia via Google Hangouts. [All of their interviews](#) are available on [LancasterOnline.com](#), and we urge readers to view them. They are long — some exceed 45 minutes — but we hope they serve as a good resource for voters to learn more about the candidates.

Because this [is important](#): The outcome of the state Supreme Court election [on Tuesday](#) will affect our lives for decades to come.

Today, we endorse three candidates: Christine Donohue, Judith (“Judy”) Olson and David Wecht.

All three now serve on the state Superior Court — that's an appellate court below the Supreme Court, and it's an excellent training ground for the top court — and all three are highly recommended by the Pennsylvania Bar Association. And all three just happen to be from Allegheny County.

The remaining candidates — Anne Covey, Kevin Dougherty, Michael George and Paul Panepinto — all have excellent qualities but they did not, in our view, match those of Christine Donohue, Judy Olson and David Wecht.

Christine Donohue, a Democrat, grew up in the coal region as the daughter of a coal miner and a seamstress. As compelling as her biography is, we were most impressed by the measured, thoughtful answers she gave to our questions, and by her extensive experience

in upholding ethical standards for lawyers and judges.

She served as a judge on the Pennsylvania Court of Judicial Discipline, was a member of the state Supreme Court's Disciplinary Board and she chaired the Pennsylvania Judicial Conduct Board.

After the embarrassing and unethical behavior of some of our former Supreme Court judges, Donohue's experience would be most welcome on the high court, as would her commitment to improving the court's culture.

Judy Olson, a Republican, received the most votes of all the appellate judicial candidates when she ran for Superior Court in 2009, and we can understand why.

In her editorial board interview, she came across as both whip-smart and compassionate — qualities that don't always accompany each other. She said that every decision she makes is important "because I always remember that on the other side are real people — these aren't just names."

Olson has worked as a trial lawyer and has served as a trial judge and as an appellate judge. She is praised by the Pennsylvania Bar Association as a "keen legal thinker," but she told us she takes the most pride in having been described by colleagues and lawyers she faced in court as having the highest integrity, a collegial temperament and a reputation for fairness and honesty.

David Wecht, a Democrat, would bring energy and an avowed passion for the law to the Supreme Court.

We liked his five-point plan for improving transparency and ethical behavior in the state judiciary. As part of a news organization, we believe this transparency is long overdue. We believe as he does that sunshine, as Supreme Court Justice Louis Brandeis said, is "the best of disinfectants."

And sadly, our judiciary needs some disinfecting.

Wecht's plan would mean: an absolute ban on gifts to judges; a tightened nepotism policy; broadcast cameras in the courtrooms, except in sexual assault, child abuse and juvenile cases; mandatory ethics training for all judicial candidates; and a requirement that judges, when recusing themselves from a case or declining to do so, state their reasons for the record.

Our endorsement of Wecht comes with a reservation, however: We were concerned when he veered near partisan territory in condemning the voter ID law that was struck down last year, and what he called Pennsylvania's "insane gerrymandering" of legislative districts.

The 14th Amendment's equal protection clause guarantees the right to one-person, one-vote, so Wecht is probably on solid ground in discussing how gerrymandering compromises that guarantee. But voter ID may come before the Pennsylvania Supreme Court again, so we think he should have held his fire on that issue.

Whichever candidates you favor, please vote Tuesday.

***Watch the interviews with the state Supreme Court candidates.***

## More Headlines

- More winter or early spring? Lancaster County groundhogs split on forecast
- Which mojo will be the strongest for the Eagles in Super Bowl LII?
- **insider** Stedman calls senators' recommendation 'an honor,' will stay on as DA as he applies for judicial nomination
- Here's what's playing at the movies in Lancaster County Feb. 2 - 8
- **insider** Bus company takes 'full responsibility' for hiring criminally convicted drivers for School District of Lancaster
- **insider** Nissin Foods wins \$6.3M property assessment reduction, tops among 6,700 appeals heard
- **insider** Democrats Jess King, Christina Hartman outraise incumbent Republican Lloyd Smucker in final months of 2017
- Nick Foles plans to become a pastor after football
- Ephrata pins down 5-2 bowling win over Elizabethtown
- L-L League swimming championships moving from Lititz to Wilson's Roy G. Snyder Natatorium
- Manheim Central falls to New Oxford 28-21 in District 3 3A team wrestling

# **Exhibit 7**



# Pa. judge races are attracting more money and potential bias

comments

By HEATHER LONG, The Patriot-News

on October 29, 2011 at 2:34 PM, updated October 29, 2011 at 8:45 PM

comments

When Pennsylvania voters go to the polls Nov. 8, some will probably wonder: What do the Superior Court and Commonwealth Court do and who are these candidates?



I confess that before I took this job, I was not well informed on the state court positions. It's somewhat apparent what the state Supreme Court does, but not the other two. The Superior Court handles appeals on criminal cases, family matters such as child custody and property

Pennsylvania's sleepy judge races are

## COLUMNISTS

John L. Micek's  
Capitol Notebook

Letters to the Editor  
with The Patriot-News

attracting a lot of money.

issues.

Commonwealth

Court handles appeals related to state and local government.

Many people end up voting party line for these races, which brings up the age-old question: Should we even bother electing these state judges or would we be better off with some sort of appointments system similar to federal judges?

What people really want are judges who are qualified, fair and impartial. Both election and appointment of judges tend to produce good candidates. There are enough checks and balances in either system to weed out those who clearly shouldn't be there.

It's harder to find judges with no perceived bias. Candidates now raise substantial sums of money to run for judge — \$5.4 million was spent on last year's state Supreme Court race. Much of that money comes from lawyers and companies that are in court often.

An appointment system would eliminate the money and potential strings attached, but, as anyone who has been through a political appointment process knows, there's a lot of politics involved in that, too. And sometimes voters do pay attention to judicial races. After the 2005 pay raise fiasco in Pennsylvania, voters kicked a judge out of office to make a point.

The heart of the debate isn't so much about merit selection versus election of judges. Both processes have their flaws. What really needs to change are the rules for when judges should recuse themselves from hearing a case because of potential conflicts of interest.

Judge Marjorie Rendell, the state's former first lady and an appointed federal judge, has one of the clearest policies. While her husband was in office, she recused herself in any case where a party or its law firm donated more than \$2,500 to her husband's campaign.

But what Judge Rendell did was rare. The rules for

Pennsylvania judges are the epitome of a gray area. The law says, “The judge may recuse himself on the judge’s own motion” or “A party may file a motion for recusal, which shall be addressed to the judge to whom the proceeding has been assigned.” In other words, it’s entirely up to the judge to decide if there’s a problem and they should step away from a case.

The Patriot-News Editorial Board asked each of the four candidates running for a statewide judgeship this year when they would recuse. Their answers illustrate the wide range of views:

“I don’t think you should automatically recuse even if it’s a large campaign donor,” said **Anne Covey**, Republican running for Commonwealth Court. “Otherwise you can’t fulfill your duty as an elected judge.”

“I don’t think it should be judges who decide whether to recuse themselves. We need more transparency and clarity,” said **Kathryn Boockvar**, Democrat for Commonwealth Court.

“If a campaign contribution is disproportionate, you must recuse” said **Victor Stabile**, Republican for Superior Court.”

“My approach is to be overly transparent and abundantly cautious if there is any sign of a conflict of interest,” said **David Wecht**, Democrat for Superior Court.

This summer the American Bar Association specifically called for states to adopt new rules for judicial disqualification.

The recommendation comes on the heels of an egregious case in West Virginia where a state Supreme Court judge who got \$3 million in campaign money from Massey Energy Co. executives ended up being the deciding vote in favor of that company. It was like something right out of a John Grisham novel.

This travesty was taken all the way to the U.S. Supreme Court, which ruled, not surprisingly, that the judge should have recused himself.

Pennsylvania needs to make sure this never happens here. At the very least, there should be a suggested amount where judges should disclose a campaign donor connection in a case. Rendell's \$2,500 mark seems like a good place to start.

The other obvious change that needs to be made is for someone other than the judge to make the final call in cases where a party asks for recusal.

The strength of the judiciary lies in the public's trust in the system. Bias can arise whether we elect judges or appoint them. It's time Pennsylvania judges were clearer about when there might be a problem.

Voters might not comprehend all the intricacies of the judicial system, but they get it when something smells fishy.

**Heather Long is deputy editorial page editor. 255-8104 or [hlong@patriot-news.com](mailto:hlong@patriot-news.com).**



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# **Exhibit 8**

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## PA Supreme Court Candidate Wecht Issues 5-Point Plan to Clean Up the Judiciary

Written by Matt Cassidy, Contributing Writer

With the ongoing [investigation of Attorney General Kathleen Kane](#) and the [recent resignation of State Treasurer Rob McCord](#) (who has [pleaded guilty to federal charges](#) of campaign finance), the political landscape of Pennsylvania has been overwhelmed with ethical dilemmas.

Without addressing these incidents specifically, Democratic candidate for Pennsylvania Supreme Court, David Wecht, motioned for a tightening of judicial ethics laws. Wecht is calling for the toughest and most transparent standards in the nation.

"Recent events have raised doubts among Pennsylvanians about the integrity of our highest court, doubts about the influence of money and politics on the court, doubts about the honesty and trustworthiness of the court," Wecht said.

"This election presents Pennsylvania with a chance to restore the court's integrity and reputation in a very clear and systematic way," he asserted.

"I intend to lead this fight."

Currently, Wecht serves on the Superior Court of Pennsylvania and [has been 'highly recommended'](#) to the Supreme Court by the Pennsylvania Bar Association.

Along with his statement, Wecht released the following five-point plan:

Absolute ban on all gifts to judges  
Tightened Anti-Nepotism Policy; Sunset Employment of Judges' Relative  
Require judges to rule on the record in writing on all motions for recusal  
Mandated ethics courses for all judicial candidates  
Television broadcast of court proceedings  
Wecht believes the Commonwealth can set "the gold standard for judicial ethics and transparency."



### Poll

**When seats open up following sexual misconduct scandals, should state parties pressure locals to nominate women candidates?**

No (70%)

Yes (30%)

### Archive

- [February 2018](#)
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“I call upon all candidates for judicial office this year to support my five-point plan to restore honor and integrity to the courts of Pennsylvania,” Wecht said.

February 9th, 2015 | Posted in [Front Page Stories](#), [Harrisburg](#), [Top Stories](#) | [10 Comments](#)

## 10 thoughts on “PA Supreme Court Candidate Wecht Issues 5-Point Plan to Clean Up the Judiciary”

Omar says: [March 22, 2015 at 11:44 pm](#)

Jeff, Wecht is a pompous jerk. What qualifies you to crown him “the smartest and most qualified candidate for this bench?”

Laura says: [February 14, 2015 at 9:09 am](#)

If we don't have ethics in our profession then what do we have? Judge Wecht has always been an ethical, intelligent and fair judge. I applaud him on his comments and look forward to seeing him on the Supreme Court bench.

Nick Grant says: [February 10, 2015 at 8:49 pm](#)

“Judge Wecht is the smartest and most qualified candidate for this bench, and he has proven it once again with these thoughtful and candid comments.”

I agree. Wecht is well-qualified and ethical jurist who graduated from Yale at the top of his class... twice. His decision to put out a substantive proposal and to begin an important conversation (rather than picking a childish and public fight with the PBA, for example) further illustrates this. Reasonable people certainly could disagree with one or more of the decisions that he has authored (the Superior court, by its nature deals with close cases that could go either way), but no one can say that Wecht wouldn't be a fair and ethical Supreme Court Justice—which is exactly what PA needs right now.

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Mike says: [February 10, 2015 at 12:35 pm](#)

This is pretty clever by Wecht. It's such a generic plan but a smart news release. He couldn't implement some of these ideas without legislative approval though. Good campaign move, but will never happen.

Sam says: [February 10, 2015 at 12:32 pm](#)

The Republican Party absolutely knew about this. I was at the meeting and heard it for myself! I'm 100% positive on this. Covey brought it to their attention the night before. They were trying to keep it under wraps in hopes it would turn out differently or quietly go away.

Raymond Millard, Sr. says: [February 10, 2015 at 10:56 am](#)

We have a lot of corruption right here in the Delaware County District Attorney's office and Trainer Borough. We desperately need a State Investigation into these activities. I have plenty of documentation and witnesses. Please contact me.

ABCDEF says: [February 10, 2015 at 6:41 am](#)

I'm no fan of Covey, nor am I a Republican, but the Republicans didn't hide anything. They didn't know about this controversy before the endorsement.

Sam says: [February 9, 2015 at 9:21 pm](#)

Someone should clean up the Republican Party. Did you see the controversy with Covey....their number one candidate? They hid her rating until after the endorsement process!! How corrupt! They knowingly endorsed a candidate who's not recommended and she may have lied to the PBA so her name would not be released! Great! Hope the Dems sweep!

STATE COMM MEMBER says: [February 9, 2015 at 9:14 pm](#)

AH, HOW BOUT SEAMUS AND ORIE ALSO...

Jeff says: [February 9, 2015 at 7:45 pm](#)

Judge Wecht is the smartest and most qualified candidate for this bench, and he has proven it once again with these thoughtful and candid comments.

Comments are closed.



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# **Exhibit 9**

MONEY & POLITICS

# For lawyers, by lawyers: The money behind the race for PA Supreme Court



Eric Holmberg | November 3, 2015



Nearly four out of every 10 dollars contributed to Pennsylvania Supreme Court candidates have been given by a lawyer, law firm, or a lawyer's political action committee.

Gov. Tom Wolf and former Gov. Tom Corbett only raised about 6 percent of their money from the legal world in last year's gubernatorial election, according

to a *PublicSource* analysis.

However, the totals raised from lawyers in both races is similar: \$4 million for state Supreme Court vs. \$3.5 million in last year's governor's race. The difference: Other types of contributors didn't participate as much in the state Supreme Court race meaning contributions from lawyers hold more weight.

Running for judicial office can be fraught with conflicts of interest and candidate judges may be soliciting money from lawyers who could appear before them.

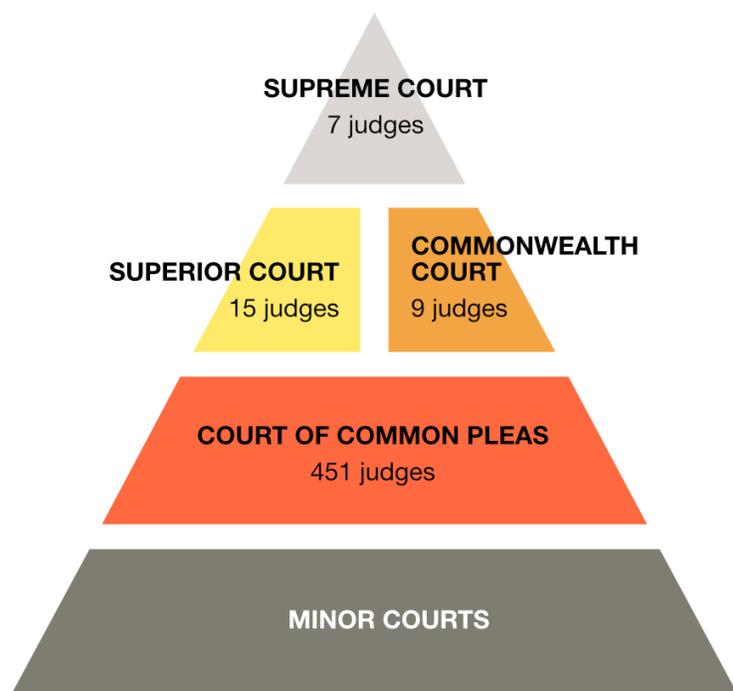
“The public perception when this much money is involved is that justice is for sale,” Suzanne Almeida, program director at Pennsylvanians for Modern Courts, a nonpartisan advocacy group in favor of the merit selection of judges, said [last month](#). “Regardless of whether that's true, if that's what people are seeing, that's problematic.”

*Today is Election Day. See the [PublicSource voters' guide](#) for more information about the state Supreme Court candidates.*

Half of the money coming from lawyers — about \$1.9 million out of \$4 million — came from the Committee for a Better Tomorrow, the political action committee of the Philadelphia Trial Lawyers Association.

Nearly all of the money coming from lawyers and law firms went to the three Democrats. The Democrats received about \$3.6 million compared to \$180,000 for the three Republican candidates. Independent candidate Paul Panepinto contributed \$200,000 to his own campaign, which counted because he is a lawyer and currently a Philadelphia Court of Common Pleas judge.

# Pennsylvania Supreme Court candidates



Source: *The Unified Judicial System of Pennsylvania*  
Graphic by Alexandra Kanik / PublicSource

## CANDIDATES

	<b>Christine Donohue</b> Democrat
	<b>Judith Olson</b> Republican
	<b>David Wecht</b> Democrat
	<b>Anne Covey</b> Republican
	<b>Michael George</b> Republican Adams County
	<b>Kevin Dougherty</b> Democrat Philadelphia County
	<b>Paul Panepinto</b> Independent Philadelphia County

*PublicSource* analyzed more than \$10 million of 2015 campaign contributions as of Oct. 19 and found nearly \$4 million came from people and businesses in the legal world. Most, but not all, contributions through Oct. 19 appear in our data due to processing delays at the Pennsylvania Department of State that were occurring when *PublicSource* downloaded the data last week.

The [Allentown Morning Call](#) also analyzed campaign contributions on Monday and came to roughly the same totals. Superior Court Judge Judith Olson, one of the three Republican candidates, told the newspaper that lawyers give more than other groups because they have more at stake ensuring that capable judges are elected.

Judicial candidates face the reality that campaigns cost money and that money has to come from somewhere, as Sue Bell Cobb, the former chief justice of the Alabama Supreme Court, [wrote earlier this year](#).

“Donors want clarity, certainty even, that the judicial candidates they support view the world as they do and will rule accordingly.” she wrote. “To them, the idea of impartial and fair judges is an abstraction. They want to know that the investments they make by donating money to a candidate will yield favorable results.”

## Debating influence

In an Oct. 14 [televised debate](#), the candidates talked about how they would handle campaign contributors appearing before the state Supreme Court and when a judge should recuse oneself or decline to participate in a case because a conflict of interest.

Adams County Court of Common Pleas Judge Michael George, a Republican, raised the idea of automatic recusal in cases where an individual contributed to a judge’s campaign.

“What Pennsylvanians need is a fair playing field,” he said. “They need justices who are not beholden to any special interests. They need justices who will do nothing else than apply the law because it's the legally correct thing to do.”

Superior Court Judge David Wecht, a Democrat, disagreed with George’s idea of automatic recusal citing a [case](#) in which the judge had received \$3 million from the coal company’s CEO, but did not recuse himself when the company came before him. Wecht explained there should be some proportionality given to the size of the contribution.

Wecht said, “There's a two-level step of analysis that the judges must decide first. Can the judge be fair and impartial? And secondly, even if the judge feels she or he can be fair and impartial, is there, notwithstanding that, an appearance of impropriety? In my career of nearly 13 years as a judge, I haven't hesitated to recuse myself from any case where I felt I couldn't pass either aspect of that test.”

Republican Judith Olson, currently a Superior Court judge, said the last thing Pennsylvania needs is for citizens to believe that justice can be purchased.

“We need to have the people of Pennsylvania feel confident that they get a fair shake before the court even if there were individual or organizations with significant money that contributed to a particular judge's campaign,” she said.

Superior Court Judge Christine Donohue and Philadelphia County Court of Common Pleas Judge Kevin Dougherty, both Democrats, said judges have to decide whether they can fairly rule on a case based on the [rules of judicial conduct](#).

Commonwealth Court Judge Anne Covey, a Republican, said that the decision to recuse is personal to each judge. She later explained that lawyers may not have pure intentions when asking a judge to recuse.

“Oftentimes lawyers will ask to have a judge recuse when they know exactly how the judge is probably going to rule based on the prior precedent,” she said.

Reach Eric Holmberg at 412-315-0266 or at [eholmberg@publicsource.org](mailto:eholmberg@publicsource.org). Follow him on Twitter [@holmberges](https://twitter.com/holmberges).

*About the data: The analysis was primarily done on the "occupation" field in the campaign contribution reports for the state Supreme Court race and the 2014 governor's race. Contributors can choose to list their occupation and employer when they give money. In the state Supreme Court race, about 45 percent of contributions had an occupation listed.*

*PublicSource used terms such as "Attorney," "Law Firm," "Lawyer," as well as specialized titles such as "Tax Attorney." We also selected lawyers from individuals with a "Partner" occupation, but that wasn't an exact science. Any errors will have a negligible impact on the totals.*

*We also selected anyone with "Esquire" or "Esq" after their name in the*

*contributor field.*

*However, it is possible that lawyers or law firms did not identify themselves in any way on the paperwork and those contributions would not have been counted in our totals. All these criteria were applied to contributions in both the state Supreme Court race and the 2014 governor's race.*

*PublicSource analyzed campaign contributions from Jan. 1 to Oct. 19. Most contributions from Sept. 15 to Oct. 19 are included in our analysis, but some may have been omitted due to processing delays at the Pennsylvania Department of State. There have been additional contributions between Oct. 19 and Election Day that are also not included in our analysis.*

## MORE PUBLICSOURCE STORIES



### Expectedly low turnout as Democrats sweep judicial races

About 27 percent of Pennsylvania's registered voters went to the polls on Tuesday as the Democrats swept all three of the state's top judicial races.



### Green groups make first endorsements for PA Supreme Court candidates

Four Pennsylvania environmental groups have decided to do something they've never done before ... they're endorsing candidates for the state Supreme Court.

### What you need to know about the PA Supreme



## Court race

Next month, voters will decide the direction of the Pennsylvania Supreme Court for the foreseeable future by electing three new justices to the seven-member court.

The remaining members of the court are evenly split — two Democrats and two Republicans — so the election will determine the political makeup of the court for many years to come.

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# **Exhibit 10**

# Wecht 2015

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## Democratic Supreme Court Candidates Attend Forum

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Written by Nathan Kanuch, Contributing Writer

“When Democrats vote, Democrats win.”

So began the Democratic Supreme Court Candidate Forum at Chatham University on Sunday afternoon. Each candidates traveled from across the state to meet with Democratic Party leaders and voters on a wet and snowy campus.

The forum, sponsored by the 14th Ward Democratic Committee, Shadyside Dems, 14th Ward Independent Democratic Club, and Steel City Stonewall Democrats, was a lively affair filled with interesting discussion and plenty of Democratic talking points.

The candidates included Pennsylvania Superior Court Judges [Christine Donohue](#), [Anne Lazarus](#), and [David Wecht](#), Allegheny County Common Pleas Court Judge [Dwayne Woodruff](#), Philadelphia County Common Pleas Court Judge [Kevin Dougherty](#), and Jefferson County Common Pleas Court Judge [John Foradora](#).



The forum began with Democratic leaders speaking about the forum's purpose in bringing recognition to judicial candidates. Leaders also spoke about the necessity of bringing integrity and ethics back to the court after being **tarnished recently**. Soon, however, it was time for the candidates to begin.

The moderators, Phil Klein and Krysia Kubiak Villa-Roger, professor at Duquesne University and Assistant General Counsel at Duquesne Light, respectively, described the format for the forum. Candidates would give either a one-minute response or a brief yes or no answer for lightning round questions.

### **Introductions**

Candidates quickly discovered the time limit would be followed to a T, with several candidates running out of time before finishing their introductions. The common theme, however, and a theme throughout the afternoon was trust and honor. Donohue spoke of how she could make a "positive impact" while Lazarus promised to "bring honor and integrity back to the court." Furthermore, Lazarus said, "Ethics matter."

Wecht mentioned that although the Supreme Court is going through a period of crisis, this coming election is also a time of opportunity to reclaim the court. Dougherty spoke of his history of implementing progressive change and accomplishing great feats.

The candidates made it a point to emphasize work ethic. Foradora held up a lunch pail and spoke of how he was raised by a working-class family, saying, "I'm someone you can trust."

Woodruff, a member of the 1980 championship-winning Steelers, said, "I'll do a great job for you." He likes to be known as a hard worker and promised to continue his hard work if elected.

### **Integrity**

The first question of the afternoon dealt with the integrity of the court. In response, several of the candidates mentioned their history with family court. Foradora and Wecht emphasized the need to bring collegiality to the court. Foradora spoke of how a case cannot be properly discussed if the judges simply do not get along.

Wecht also said it is important to ban the giving of gifts to judges, outlawing gift-giving in a manner similar to **Governor Wolf's elimination of gifts** in the executive branch.

Donohue served on the Judicial Conduct Board and emphasized her experience in dealing with integrity. She wants better steps to be taken in order to secure the integrity of the court.

Both Foradora and Dougherty spoke about their relationships and goodwill with colleagues. Foradora emphasized his history of working in a predominantly Republican county. Yet he was retained with 84% of the vote and reappointed by Governor Corbett.

### **Gerrymandering**

The next topic, gerrymandering, elicited a strong response from both the crowd and

candidates. Perhaps the issue that best showed the candidates' partisanship, gerrymandering was deemed an "abomination" by Judge Wecht.

Lazarus promised that if the courts could again get a hold of redistricting with a Democratic majority, the "Democrats will be in charge in 2020 if we redraw the maps."

Foradora spoke about how gerrymandering has become a much more powerful tool than ever before with the ability to use technology to draw maps. Foradora and Donohue argued that gerrymandering disenfranchises the people. Woodruff made a similar point, saying, "We want every party to be represented equally."

### **Inflammatory Speech**

With [the recent events in Paris](#), the issue of inflammatory speech was next on the table. In an almost unanimous response, all candidates agreed that banning any type of speech is a slippery slope.

Dougherty said that free speech is an essential part of democracy, despite sometimes harmful rhetoric. Wecht agreed, saying, "The Constitution protects all speech...the First Amendment does not protect only happy speech."

Lazarus was the only candidate to differ in her response. She emphasized the need for balance, arguing that some types of speech simply should not be protected.

### **LGBT**

LGBT issues were next. All candidates agreed that multiple cases will definitely be heard by the Supreme Court regarding LGBT issues.

Each candidates spoke of equal protection under the law for gay couples with Wecht saying, "equality means equality."

The issue of gay couples and adoption was also raised. The general sense seemed to be to favor whatever is in the child's best interest. Woodruff argued that a straight couple is not guaranteed to provide good care for a child anymore than a gay couple.

Foradora said the most important aspect of adoption is the guarantee of an intact family situation.

### **Nonprofits**

In an issue particularly important to those of Southwestern Pennsylvania, the candidates also discussed the nonprofit status of UPMC and if the courts are an appropriate venue to solve the question.

The candidates seemed to agree that the legislature should have a role in determining the status. Foradora went a step further saying, "The courts are always a proper forum for any dispute." He hopes the legislature will decide but is open to the possibility of the issue reaching the court.

Woodruff and Wecht were both troubled by UPMC's nonprofit status, with Woodruff saying, "There's something wrong when they are nonprofit but some cannot afford access." Wecht said UPMC's status is "very troubling," but it is up to the legislature.

Dougherty was concerned with the notion of companies making a profit at the expense of others while Lazarus wants the legislature to be more stringent when determining nonprofit status.

### Judicial Selection

The candidates concluded with thoughts on the system of judicial selection. All agreed that changes were needed but said that elections were the best system available. Wecht argued that electing judges is the best of all the worst options.

He made the point that there are rogues in the courts who will try to halt elections and select judges by appointment. These rogues, Wecht argued, “will take rights away.”

Donohue affirmed her belief in elections, saying, “I believe in the election of judges. There is no better option.” Foradora agreed. He said, “I enjoy the process of elections.” Dougherty was also hesitant to call for any change but did emphasize the need for citizens to get to know the people they would be electing.

Foradora wrapped up his thoughts with a compelling statement by saying, “No one comes to the court with a party affiliation. People come with a case.”

### Lightning Round Tidbits

No candidates have, or will accept, any endorsements from pro-life organizations.

Foradora was the only candidate willing to accept the endorsement of the NRA if given.

Five of the six candidates described *Citizens United* as the worst decision handed down by the Supreme Court.

Two of the judges named My Cousin Vinny as the best courtroom movie of all-time while two others chose A Few Good Men. The Verdict also received a vote.

The primary will be held May 19th.

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v. )

) )

The Commonwealth of Pennsylvania, *et al.*, )

) )

*Respondents* )

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)

**PROPOSED ORDER**

AND NOW, this \_\_\_\_\_ day of February, 2018, upon consideration of Legislative Respondents’ Application for Disqualification of Justice David Wecht, and for Full Disclosure By Justice Christine Donohue, it is hereby ORDERED, ADJUDGED, and DECREED that the Application is GRANTED.

Accordingly, the votes Justice Wecht cast in favor of the Court’s Orders of November 9, 2017, January 22, 2018 and January 26, 2018 are STRICKEN, and

the Court's Orders of November 9, 2017, January 22, 2018 and January 26, 2018 are **HEREBY VACATED**.

Furthermore, Justice Donohue shall disclose any public statements or information she believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification pursuant to 207 Pa. Code 2.11(A)(5), including any prior statements about "gerrymandering" or the 2011 Plan.

**BY THE COURT:**

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## CERTIFICATE OF SERVICE

I, Kathleen A. Gallagher, Esquire hereby certify that I am this day serving the foregoing Application of Respondents, Michael C. Turzai, in his official capacity as Speaker of the Pennsylvania House of Representatives, and Joseph B. Scarnati, III, in his official capacity as Pennsylvania Senate President Pro Tempore For Disqualification of Justice David Wecht and For Full Disclosure by Justice Christine Donohue, via PACFile and U.S. First Class Mail upon the persons identified below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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Dated: February 2, 2018

/s/ Kathleen A. Gallagher