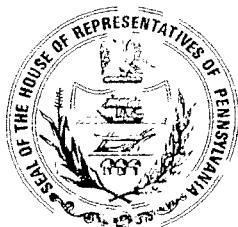


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Memorandum

Date: December 30, 2010
To: All House Members
From: Curt Schroder, Member 155th Legislative District *CS*
Bryan Cutler, Member 100th Legislative District *BC*
RE: Co-sponsorship of Legislation Amending Provisions of the Pennsylvania Constitution Relating to Pennsylvania's Judicial Disciplinary System

In light of the report of the Interbranch Commission on Juvenile Justice (ICJJ), which highlighted the lack of oversight, accountability and confidence in Pennsylvania's system of judicial discipline, I will be introducing legislation which will amend the Pennsylvania Constitution to reform our existing two-tiered disciplinary system.

The need for this legislation is amply demonstrated by the events surrounding the failure of the Judicial Conduct Board (JCB) to investigate or take action against the judges involved in the Luzerne County "kids-for-cash" scandal. Evidence developed during the ICJJ hearings established that the JCB failed to investigate numerous allegations of judicial misconduct involving former Judge Conahan and former Judge Ciavarella which were provided to the JCB in an anonymous complaint received in September, 2006. Despite the detailed allegations, the actual complaint was never provided to, nor reviewed by the members of the Judicial Conduct Board. Moreover, the allegations were not even brought to the attention of the JCB members until June, 2007. At that time, chief counsel to the JCB submitted a memorandum to the JCB members recommending a full investigation of Judge Conahan. The recommendation was tabled and never considered at subsequent meetings.

At no point did the JCB conduct an investigation or file public disciplinary charges against Judges Ciavarella or Judge Conahan. In fact, no further action was taken by the JCB with respect to the allegations contained in the anonymous complaint until the U.S. Attorney's Office began its criminal investigation and requested information from the JCB in March, 2008. Thereafter, the JCB deferred any future action because of the involvement of federal authorities. After the filing of federal charges in January, 2009, the judges were removed from service by the Pennsylvania Supreme Court. When called upon by the ICJJ to explain what, if any, action was taken by the JCB after receiving the complaint, chief counsel to the JCB admitted that the complaint "had fallen through the cracks."¹

¹ Transcript of ICJJ hearing, 4/12/10, p. 43.

These facts would most likely have never come to light absent repeated inquiries by the ICJJ and intervention by the Pennsylvania Supreme Court. One of the tasks of the ICJJ was to investigate whether the JCB was properly performing its constitutional duties. Nevertheless, when JCB members and staff were called to testify before the commission and produce documents, the ICJJ was met with an “unyielding refusal to provide the information based on an assertion of constitutional confidentiality.”²

Throughout the ICJJ inquiry, the JCB repeatedly invoked the protection of constitutional confidentiality as justification for its failure to provide information to the commission. It was noted, however, that the JCB did not cite constitutional confidentiality when it disclosed information to federal authorities, nor when its chief counsel was called to testify before the federal grand jury. As noted by the Chairman of the ICJJ:

One is tempted to conclude that [the JCB] definition of confidentiality is a definition of convenience. It is a definition which, to be absolutely frank, based on what we have heard . . . does not inspire confidence in our system of judicial discipline. If [the JCB] can reveal information to the federal authorities, then surely [it] can reveal information to a statutorily-created state Commission charged with evaluating the system of professional and judicial discipline, especially since [the JCB] has so often reminded us that [it] shares our mandate to restore the public's confidence in the competency, honesty and judgement of Pennsylvania judges.³

In its mission statement, the Judicial Conduct Board says: “The Board and its staff investigate every allegation made against a Pennsylvania judge. This procedure is an essential safeguard to the integrity of, and public confidence in, the judicial process.” As demonstrated by the ICJJ report, the JCB has failed in its mission.

Given the constitutional nature of the JCB, substantive adjustments to the existing system will require constitutional amendments. Our legislation will do the following:

- Alter the composition of the Judicial Conduct Board and the Court of Judicial Discipline to provide that a majority of the members are neither sitting judges nor lawyers, and provide that all appointments shall be subject to the advice and consent of the Senate.
- Grant the Governor the authority to remove any member for cause.
- Provide that both the Judicial Conduct Board and the Court of Judicial Discipline submit budget requests directly to the General Assembly, rather than having those requests included within the general funding requests of the Judicial Branch.
- Limit the confidentiality (and hence lack of accountability) surrounding the board's investigations of judicial misconduct. Specifically, to provide for confidentiality of JCB proceedings only until a determination of probable cause has been made and formal charges have been filed with the Court of Judicial Discipline. Thereafter, statements,

² Transcript of ICJJ hearing of 12/8/09, p. 47.

³ Transcript of ICJJ hearing of 12/8/09, pp. 47-8.

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testimony, documents, records and other information or evidence acquired by the board shall no longer be veiled in the cloak of secrecy, but rather, shall be available to the public.

- Provide that if a judicial officer is charged with a felony, the Court of Judicial Discipline must suspend the judicial officer without pay.
- Provide the Court of Judicial Discipline with the authority to suspend any justice, judge or magisterial district justice, with or without pay, upon determining that the judicial officer poses a substantial or imminent threat to the fair and impartial administration of justice.

The proposed constitutional amendments are generally in keeping with long term recommendations made by the ICJJ wherein it was noted that (1) the JCB lacks sufficient oversight to assure that it is fulfilling its constitutional duties and obligations; and (2) the existing confidentiality provisions relating to the work of the JCB prohibit any meaningful oversight and accountability.

If you are interested in cosponsoring this legislation, please contact Rep. Schroder's Office by calling 783-2520 or e-mail Carolyn May at cmay@pahousegop.com.

CS/cjm