
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 58 Session of
2021

INTRODUCED BY RYAN, STAATS, KAUFFMAN, CAUSER, BROOKS, DIAMOND,
METCALFE, TOPPER, ROWE, ZIMMERMAN, JOZWIAK, KEEFER,
R. MACKENZIE, COOK, COX, JAMES, MOUL AND M. MACKENZIE,
FEBRUARY 24, 2021

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 24, 2021

A RESOLUTION

1 Impeaching David N. Wecht, Justice of the Pennsylvania Supreme
2 Court, for misbehavior in office.

3 BE IT RESOLVED, That David N. Wecht, a Justice of the Supreme
4 Court of the Commonwealth of Pennsylvania, be impeached for
5 misbehavior in office, and that the following Articles of
6 Impeachment be exhibited to the Senate:

7 ARTICLE I

8 As a candidate for Justice of the Pennsylvania Supreme Court
9 in 2015, Justice Wecht made multiple statements concerning the
10 constitutionality of Pennsylvania's existing Congressional
11 districting map which plainly showed his inability to sit as a
12 fair and impartial jurist.

13 Just two short years before the dispute was in front of the
14 Pennsylvania Supreme Court, Justice Wecht stated,
15 "Gerrymandering is an absolute abomination. It is a travesty. It
16 is deeply wrong. These [Congressional] districts have been drawn
17 to disenfranchise the majority of Pennsylvanians. And they have

1 been drawn by skilled political operatives, and it needs to
2 stop." Spring 2015 Judge Candidate Forum, Neighborhood Networks
3 and MoveOn Philly, at [https://www.youtube.com/watch?
4 v=713tnbv55mU&feature=youtu.be](https://www.youtube.com/watch?v=713tnbv55mU&feature=youtu.be).

5 One of the more damning statements made by Justice Wecht was
6 made at a candidate's forum held by the named party in *League of*
7 *Women Voters of Pennsylvania v. Commonwealth*, 177 A.3d 1000 (Pa.
8 Commonwealth 2017). At that forum, he stated, "Everybody in this
9 room should be angry about how gerrymandered we
10 are...Understand, sitting here in the city of Pittsburgh, your
11 vote is diluted. Your power is taken away from you." Eric
12 Holmberg, Forums Put Spotlight on PA Supreme Court Candidates,
13 PUBLICSOURCE (Oct. 22, 2015), at [www.publicsource.org/forums-
14 put-spotlight-on-pa-supreme-court-candidates](http://www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates).

15 Despite this glaringly obvious lack of objectivity and
16 impartiality, Justice Wecht participated in the deliberations of
17 the application for the Court to exercise its extraordinary
18 jurisdiction filed by League of Women Voters of Pennsylvania,
19 which implored the Court to remove the case using its King's
20 Bench authority. Justice Wecht sided with the Petitioners,
21 ordering fact finding and conclusions of law by the Commonwealth
22 Court to be presented to the Pennsylvania Supreme Court on an
23 expedited basis. Justice Wecht participated in oral argument by
24 the parties before the Court. Finally, Justice Wecht
25 participated in the determination in granting the relief
26 requested by the Petitioners, manufacturing an extra-textual
27 series of constitutional requirements for Congressional
28 redistricting, and reserving for itself the drawing of
29 Congressional districts.

30 Rule 2.11(A) of the Code of Judicial Conduct establishes a

1 straightforward mandate: Any judge—including a Justice of the
2 Supreme Court "shall disqualify himself or herself in any
3 proceeding in which the judge's impartiality might reasonably be
4 questioned." A judge's impartiality might reasonably be
5 questioned when "[t]he judge, while a judge or judicial
6 candidate, has made a public statement, other than in a court
7 proceeding, judicial decision, or opinion, that commits the
8 judge to reach a particular result or rule in a particular way
9 in the proceeding or controversy." Rule 2.11(A) (5). This duty to
10 disqualify exists "...regardless of whether a motion to
11 disqualify is filed." Rule 2.11, Comment (2). Justice Wecht
12 failed in his obligation to disqualify himself from these
13 proceedings and failed to disclose that he had made these
14 statements to allow parties to determine whether petition for
15 his removal from the case. The Court granted extraordinary
16 relief to the Petitioners by a vote of four justices to three.

17 Had Justice Wecht conformed his behavior to the mandates in
18 Canon 1 in the Code of Judicial Conduct, that judges "uphold and
19 promote the independence, integrity, and impartiality of the
20 judiciary, and shall avoid impropriety and the appearance of
21 impropriety," the Court would have lacked a majority vote to
22 override the Commonwealth Court's stay; lacked a majority to
23 effectively re-write the Pennsylvania Constitution to impose
24 additional districting standards for the Congressional
25 redistricting process; and, would not have facilitated a
26 violation of Article II, Section 1 of the United States
27 Constitution by usurping the legislative authority to draw
28 congressional districts.

29 Justice Wecht failed to disclose this obvious conflict
30 despite having multiple opportunities to do so. When his

1 statements were discovered, and an application to disqualify him
2 from these proceedings was filed, Justice Wecht sat in judgment
3 of his own application for disqualification. Justice Wecht said
4 that the two weeks needed to fully investigate his biased
5 statements by a party was far too long to wait after counsel
6 suspected his bias. He went on to say that counsel should have
7 assumed that such bias existed and that they should have
8 conducted their research prior to the beginning of the case.
9 Finally, the Justice said he should not disqualify himself
10 because "the publicity surrounding this case and its
11 consequence, it is as or more likely that the reversal of such a
12 prominent case after a flurry of state and national media
13 coverage will call into question this Court's orderly
14 administration of justice..." *League of Women Voters of*
15 *Pennsylvania v. Commonwealth*, 645 Pa. 341, 361, 179 A.3d 1080,
16 1092 (2018).

17 On February 5, 2018, Justice Wecht issued an opinion and
18 order which effectively manufactured a standard that
19 impermissible bias on the part of the judiciary has a threshold
20 "publicity" standard and parties are obligated to engage in pre-
21 trial investigations of whether their judge will be impartial.

22 By failing to recuse himself as he should have and
23 manufacturing new standards for disqualification of justices to
24 excuse his previously expressed, partisan political interests,
25 Justice Wecht deprived parties before the court of their rights
26 to Due Process of law guaranteed under the United States
27 Constitution and the Constitution of Pennsylvania and engaged in
28 misbehavior in office.

29 Wherefore, Justice David N. Wecht is guilty of an impeachable
30 offense warranting removal from office and disqualification to

1 hold any office of trust or profit under this Commonwealth.

2 ARTICLE II

3 On January 22, 2018, the Supreme Court of the Commonwealth of
4 Pennsylvania issued a per curiam Order ("Order") in *League of*
5 *Women Voters of Pennsylvania v. Commonwealth*, holding that the
6 Congressional Redistricting Act of 2011 ("Act") "clearly,
7 plainly and palpably violates the Constitution of the
8 Commonwealth of Pennsylvania" and, on this sole basis, struck it
9 down as unconstitutional. 644 Pa. 287, 289, 175 A.3d 282, 284
10 (2018). The Court further enjoined the future use of the Act in
11 elections for Pennsylvania seats in the United States House of
12 Representatives commencing with the upcoming May 15, 2018,
13 primary election.

14 The Court in its Order mandated that if the Pennsylvania
15 General Assembly chose "...to submit a congressional districting
16 plan that satisfies the requirements of the Pennsylvania
17 Constitution, it shall submit such plan for consideration by the
18 Governor on or before February 9, 2018." *Id.* at 290, 284. The
19 Court further held that "[i]f the Governor accepts the General
20 Assembly's congressional districting plan, it shall be submitted
21 to this Court on or before February 15, 2018." *Id.*

22 This Order overrode the express legislative and executive
23 authority, found in Article IV, Section 15 of the Pennsylvania
24 Constitution, concerning the Governor's veto authority and the
25 General Assembly's subsequent authority to override such veto.
26 Article IV, Section 15 clearly lays out the path a bill must
27 take to become law. That process begins in the General Assembly
28 and once a bill has passed both Houses of the General Assembly,
29 Article IV, Section 15 directs that it shall then be presented
30 to the Governor. If the Governor does not approve the bill, the

1 Constitution mandates that he shall return it with his
2 objections to the House in which it originated. At that point,
3 the originating House shall enter the objections at large upon
4 their journal and proceed to reconsider it. If after such
5 reconsideration, two-thirds of all the members elected to that
6 House shall agree to pass the bill, it shall be sent with the
7 objections to the other House for reconsideration. If the bill
8 is then approved by two-thirds of all the members elected to
9 that House it shall become a law. Article IV, Section 15 further
10 states:

11 If any bill shall not be returned by the Governor within
12 ten days after it shall have been presented to him, the
13 same shall be a law in like manner as if he had signed
14 it, unless the General Assembly, by their adjournment,
15 prevent its return, in which case it shall be a law,
16 unless he shall file the same, with his objections, in
17 the office of the Secretary of the Commonwealth, and give
18 notice thereof by public proclamation within 30 days
19 after such adjournment.

20 The February 9th date by which the Court mandated the General
21 Assembly submit a redistricting plan to the Governor and the
22 February 15th date by which a redistricting plan must be
23 approved by the Governor and sent to the Court allows the
24 Governor only a six-day period within which to consider the plan
25 and provide his approval, rather than the number of days
26 provided for in the Constitution of Pennsylvania. Moreover, this
27 six-day period did not provide any time for the General Assembly
28 to exercise its constitutional override authority should the
29 Governor veto the redistricting plan.

30 This six-day period clearly, plainly and palpably violated

1 Article IV, Section 15 of the Constitution of Pennsylvania. By
2 its express terms, the Order ignored the constitutional time
3 frame set out for the Governor's consideration of a bill as well
4 as the constitutional authority of the General Assembly to
5 override a gubernatorial veto.

6 In signing this order that blatantly and clearly contradicts
7 the plain language of the Pennsylvania Constitution, Justice
8 David N. Wecht engaged in misbehavior in office.

9 Wherefore, Justice David N. Wecht is guilty of an impeachable
10 offense warranting removal from office and disqualification to
11 hold any office or trust or profit in this Commonwealth.

12 ARTICLE III

13 In its January 22, 2018 Order, the Pennsylvania Supreme Court
14 further held that should the General Assembly not submit a
15 congressional districting plan on or before February 9, 2018, or
16 should the Governor not approve the General Assembly's plan on
17 or before February 15, 2018, the Court shall proceed to
18 expeditiously adopt a plan based on the evidentiary record
19 developed in the Commonwealth Court. This order by the
20 Pennsylvania Supreme Court completely disregards the tenets of
21 the United States Constitution.

22 In a related Order of the Court dated February 7, 2018, a
23 fellow Justice on the Court recognized the gravity of the
24 Court's order in his concurring and dissenting opinion. He
25 stated, "the Court's remedy threatens the separation of powers
26 dictated by Article I, Section 4 of the United States
27 Constitution by failing to allow our sister branches sufficient
28 time to legislate a new congressional districting map,
29 potentially impinges upon the due process rights of the parties
30 at bar..." *League of Women Voters v. Commonwealth*, 645 Pa. 1,

1 136, 178 A.3d 737, 826 (2018). Article 1, Section 4 of the
2 United States Constitution gives authority regarding the "Times,
3 Places and Manner of holding Elections for Senators and
4 Representatives" only to state legislatures and Congress. In
5 this unprecedented case, by issuing their January 22, 2018
6 Order, the Pennsylvania Supreme Court has, in contravention to
7 the express grant of authority in the United States
8 Constitution, arrogated unto itself this legislative authority.

9 On February 19, 2018, the Court issued a Per Curiam opinion
10 and order, with Justice Wecht and three other Justices of the
11 Supreme Court arrogating to themselves the task of drawing
12 Congressional Districts. In his dissenting opinion, the Chief
13 Justice noted, "... the adoption of a judicially created
14 redistricting plan apparently upon advice from a political
15 scientist who has not submitted a report as of record nor
16 appeared as a witness in any court proceeding in this case; and
17 the absence of an adversarial hearing to resolve factual
18 controversies arising in the present remedial phase of this
19 litigation." *League of Women Voters of Pennsylvania v.*

20 *Commonwealth*, 645 Pa. 576, 626, 181 A.3d 1083, 1121-22 (2018).
21 He said, "In these circumstances, the displacement to the
22 judiciary of the political responsibility for redistricting-
23 which is assigned to the General Assembly by the United States
24 Constitution-appears to me to be unprecedented." *Id.* at 1122.

25 In joining an Order of the Supreme Court that blatantly and
26 clearly contradicts the plain language of the United States
27 Constitution, Justice David N. Wecht engaged in misbehavior in
28 office.

29 Wherefore, Justice David N. Wecht is guilty of an impeachable
30 offense warranting removal from office and disqualification to

1 hold any office or trust or profit under this Commonwealth.

2 ARTICLE IV

3 In July of 2019, Justice Wecht authored the opinion in
4 *Pennsylvania Restaurant and Lodging Association v. Pittsburgh*,
5 re-writing provisions of the Commonwealth's Home Rule Charter
6 and Optional Plans Law and Disease Prevention and Control Law of
7 1955 to manufacture authority to compel employers within the
8 City of Pittsburgh to provide paid sick leave to their
9 employees. 211 A.3d 810 (Pa. 2019). In doing so, Justice Wecht
10 transgressed the Separation of Powers between the legislative
11 and judicial branches of State government.

12 The law, codified as 53 Pa.C.S. § 2962, provides for
13 limitations on ability of a municipality which adopts a home
14 rule charter in the regulation of businesses and employment. The
15 law states, in part, that home rule municipalities "shall not
16 determine duties, responsibilities or requirements placed upon
17 businesses, occupations and employers, including the duty to
18 withhold, remit or report taxes or penalties levied or imposed
19 upon them or upon persons in their employment, except as
20 expressly provided by statutes which are applicable in every
21 part of this Commonwealth or which are applicable to all
22 municipalities or to a class or classes of municipalities."

23 Despite there being no authority "expressly provided by
24 statutes," Justice Wecht undertook a tortured and circuitous 46-
25 page analysis of existing State law and manufactured authority
26 from the words of the Disease Prevention and Control Law of
27 1955. This law imposes the responsibility for "the prevention
28 and control of communicable and non-communicable diseases" on
29 local boards of health and the Department of Health (in the
30 absence of a local board). Despite the command in the law that

1 such authority be "expressly provided" for such ordinances to be
2 within the municipality's legitimate authority, Justice Wecht
3 found authority which was at-best implied under the Disease
4 Prevention and Control Law of 1955 satisfied the "express"
5 requirements.

6 The Disease Prevention and Control Law of 1955 grants local
7 boards of health and the Department of Health authority over
8 individuals who are infected with a communicable or non-
9 communicable disease and who have been exposed to such
10 individuals and, grants authority to isolate, quarantine and
11 surveille only these two classes of individuals. Nowhere in the
12 Disease Prevention and Control Law of 1955, or elsewhere in
13 Pennsylvania law, is there an expressed grant of authority to
14 municipalities to compel private businesses to provide paid sick
15 leave.

16 In re-writing the statute, by striking the word "expressly"
17 in the law and replacing it with "impliedly," Justice Wecht
18 exercised authority that is solely vested in the legislative
19 branch under Article II, Section 1 of the Constitution of
20 Pennsylvania. This transgression of the separation of powers
21 between co-equal branches of government evidences that Justice
22 David N. Wecht engaged in misbehavior in office.

23 Wherefore, Justice David N. Wecht is guilty of an impeachable
24 offense warranting removal from office and disqualification to
25 hold any office of trust or profit under this Commonwealth.

26 ARTICLE V

27 In July 2020, Justice Wecht authored the majority opinion
28 *Wolf v. Scarnati*, blatantly violating the separation of powers
29 between the legislative and judicial branches of government. 233
30 A.3d 679 (Pa. 2020).

1 The question in *Wolf v. Scarnati* was whether a concurrent
2 resolution seeking to compel the Governor to end a state of
3 emergency required presentment under Article III, Section 9 of
4 the Constitution of Pennsylvania. The statute at issue, codified
5 at 35 Pa.C.S. § 7301(c), provides that "[t]he General Assembly
6 by concurrent resolution may terminate a state of disaster
7 emergency at any time. Thereupon, the Governor shall issue an
8 executive order or proclamation ending the state of disaster
9 emergency." The statute, enacted in 1978, did not provide a
10 mechanism for presentment to the Governor. By the plain reading
11 of the words of the law, presentment to the Governor was not
12 envisioned by the General Assembly of 1978.

13 In holding the statute to be unconstitutional, Justice Wecht
14 re-wrote the statute to add a presentment provision to the law.
15 As articulated by a fellow Justice of the Court, Justice Wecht
16 amended the law as follows:

17 The General Assembly by concurrent resolution may
18 terminate a state of disaster emergency at any time. **[The**
19 **Governor may then approve or veto the resolution. If the**
20 **resolution is approved by the Governor or his veto is**
21 **overridden, t]hereupon, the Governor shall issue an**
22 executive order or proclamation ending the state of
23 disaster emergency.

24 *Wolf*, 233 A.3d at 709.

25 The plain language of the statute stands as a clear
26 expression of legislative intent by the General Assembly of 1978
27 to avoid presentment to the Governor. According to his fellow
28 Justice, Wecht's effort to re-write the statute or ignore its
29 plain language "is merely a means to the same end - *i.e.*,
30 permitting the constitutional requirement of presentment to be

1 satisfied notwithstanding the fact that the statute explicitly
2 aims to avoid exactly that." *Id.* at 712

3 Justice Wecht's opinion in *Wolf v. Scarnati* is at tension
4 with long-standing jurisprudence on severability of
5 unconstitutional laws, including an opinion authored by Justice
6 Wecht himself.

7 In *Protz v. Workers' Compensation Appeal Board*, Justice Wecht
8 gave a strict reading of the Worker's Compensation Act on the
9 use of impairment ratings from the American Medical Association
10 in making determinations of the level of disability for workers'
11 compensation, and struck down the law. 639 Pa. 645, 161 A.3d 827
12 (2017). The law provided that physicians should make these
13 determinations "pursuant to the most recent edition of the
14 American Medical Association 'Guide to the Evaluation of
15 Permanent Impairment.'" At the time the law was enacted, the
16 Fourth Edition of the AMA Guides was being used. For the sake of
17 "constitutional avoidance," and the appearance of impartiality
18 and consistency, Justice Wecht could have simply struck the
19 words "most recent" and added the word "Fourth." He did not.

20 Strikingly, Justice Wecht found it constitutionally tenable
21 in *Wolf v. Scarnati* to add 22 words that the General Assembly
22 did not include in the law, while finding it constitutionally
23 untenable in *Protz* to replace two words with one.

24 By re-writing the statute under the auspices of
25 "constitutional avoidance," Justice Wecht frustrated the intent
26 of the General Assembly of 1978 and exercised authority that is
27 vested in the legislative branch under Article II, Section 1 of
28 the Constitution of Pennsylvania. This violation of his
29 obligation to uphold the Constitution of Pennsylvania evidences
30 that Justice David N. Wecht engaged in misbehavior in office.

1 (5).

2 According to the commentaries on this Rule, there is no
3 amount specified that would require recusal or disqualification,
4 but rather "the nature of the inquiry is an objective one
5 involving the public perception of large contributions and their
6 effect on the judge's ability to be impartial...A contribution
7 of several thousand dollars will almost always require an
8 analysis of whether disqualification is warranted...[T]he effect
9 of contributions will generally dissipate over time. The larger
10 the contribution, the longer it will take to dissipate."
11 Statement of Policy Regarding Disqualification Based on Campaign
12 Contributions Under Rule 2.11(A) (4) published at 46 Pa.B. 6969
13 (November 5, 2016).

14 Justice Wecht, writing for the majority in *Commonwealth v.*
15 *Koehler* (2020), addressed the issue of recusal. He stated that a
16 challenge to an appellate judge's bias may be heard under the
17 Post Conviction Relief Act because, "[d]ue process demands the
18 absence of judicial bias.' And a litigant's due process rights
19 are violated if a biased appellate judge decides the fate of the
20 litigant's appeal." 229 A.3d 915, 931 (Pa. 2020) (citations
21 omitted). Donations of large sums of money to a Justice's
22 campaign by a party to litigation must be disclosed so that the
23 parties may weigh the efficacy of an application for
24 disqualification of that Justice.

25 Justice Wecht had an obligation to disclose these
26 contributions to the parties under the Court's Rules of Judicial
27 Conduct. This failure to disclose evidences that Justice David
28 N. Wecht engaged in misbehavior in office.

29 Wherefore, Justice David N. Wecht is guilty of an impeachable
30 offense warranting removal from office and disqualification to

1 hold any office of trust or profit under this Commonwealth.

2 ARTICLE VII

3 Justice Wecht, who as a Pennsylvania Supreme Court Justice
4 took an oath to support, obey and defend the Constitutions of
5 the United States and the Commonwealth of Pennsylvania, and to
6 discharge the duties of his office with fidelity, and who is
7 bound to uphold the integrity of the judiciary, to avoid
8 impropriety and the appearance of impropriety, and to perform
9 the duties of his office impartially, did, through actions
10 including:

11 (1) failing to abide by the Pennsylvania Code of
12 Judicial Conduct and thereby depriving parties of their
13 rights to Due Process guaranteed under the United States
14 Constitution and the Constitution of Pennsylvania in *League*
15 *of Women Voters of Pennsylvania v. Commonwealth*;

16 (2) violating Article IV, Section 15 of the Constitution
17 of the Commonwealth of Pennsylvania in *League of Women Voters*
18 *of Pennsylvania v. Commonwealth*;

19 (3) violating Article I, Section 4 of the Constitution
20 of the United States of America in *League of Women Voters of*
21 *Pennsylvania v. Commonwealth*;

22 (4) exercising authority that is solely vested in the
23 legislative branch under Article II, Section 1 of the
24 Constitution of the Commonwealth of Pennsylvania in
25 *Pennsylvania Restaurant and Lodging Association v.*
26 *Pittsburgh*;

27 (5) exercising authority that is solely vested in the
28 legislative branch under Article II, Section 1 of the
29 Constitution of the Commonwealth of Pennsylvania in *Wolf v.*
30 *Scarnati*;

1 (6) failing to abide by the Canons of Judicial Ethics
2 embodied in the Pennsylvania Code of Judicial Conduct to
3 disclose his potential bias to the parties in *Pennsylvania*
4 *Democratic Party v. Boockvar*;

5 undermine confidence in the integrity and impartiality of the
6 judiciary and betray the trust of the people of the Commonwealth
7 of Pennsylvania, thereby bringing disrepute on the courts of the
8 Commonwealth, and rendering Justice Wecht unfit to continue to
9 serve as a Justice of the Supreme Court of Pennsylvania.

10 Wherefore, Justice David N. Wecht is guilty of an impeachable
11 offense warranting removal from office and disqualification to
12 hold any office of trust or profit under this Commonwealth.

13 The House of Representatives hereby reserves to itself the
14 right and ability to exhibit at any time hereafter further
15 Articles of Impeachment against Justice David N. Wecht, to reply
16 to any answers which Justice Wecht may make to any Articles of
17 Impeachment which are exhibited and to offer proof at trial in
18 the Senate in support of each and every Article of Impeachment
19 which shall be exhibited by them.