

# **Pennsylvania Constitutional Mischief**

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A joint resolution is being bandied about the Pennsylvania legislature which would establish separate districts from which judges and justices of the Pennsylvania Supreme, Superior and Commonwealth Courts would run, rather than being elected by the state at large. The argument made by the proponents of this mischief is that breaking up the electorate state into individual judicial regions would somehow reflect better various constituents within the state.

Let us look at the history of creating additional layers of government. The federal court system is comprised of trial courts, called district courts. There may be one or more district courts in a state. In Pennsylvania, for example, there are three (3) federal trial courts: Eastern District, Middle District and Western District. The Circuit Courts are the federal appellate tribunals where all appeals are heard and they comprise several states. We live in the Third Circuit, which includes Pennsylvania, Delaware, New Jersey, and the United States Virgin Islands.

There is only one United States Supreme Court, and it is an at-large system. We do not regionalize the United States, but rather each justice represents the entire United States of America. There are certain emergency matters in the United States Supreme Court requiring justices to “ride” a particular circuit. However, that is unusual and rare.

Back to the state system. We have 67 counties and very few counties share a judge. Even between circuits in the federal court system, there are oftentimes inconsistent results that may take years for the United States Supreme Court to sort out. Within Pennsylvania, because of the great number of trial courts, there are inconsistent decisions every day. This may or may not be resolved by the statewide Superior Court, and it can take years to establish one rule of law for the entire state.

If we are to make any changes in our state court system, we should cut down on regionalization, rather than to expand it to our appellate courts. To have seven (7) regions for the Superior Court, for example, will mean that we can have seven different decisions until the Supreme Court decides otherwise. That will cost the taxpayers money, time and injustice.

Perhaps the people who are proposing what I like to call Balkanization of the Pennsylvania State Appellate Court System good-naturedly believe that somehow this will enhance power to different parts of the state. In reality, they are more interested in political control in their own backyard. The smaller we parse up our judicial system, the more regional politicians have a big say in who runs for election and who gets elected. A so-called merit appointment system would have the same evils.

Oftentimes, we hear that a court system is bad because too many people get elected from Pittsburgh and Philadelphia, where the majority of Pennsylvania’s population lives.

Perhaps those who suggest the regionalization of appellate court judges are simply seeking additional power for other regions in the state. Perhaps they do not realize that we have judges and justices at all appellate levels in this great Commonwealth who hail from many disparate locations. Only recently, we saw that the new President Judge of the Commonwealth Court, Kevin Brobson, is from Montoursville. There are those who make the argument that perhaps appellate court judges should represent the majority of the people of Pennsylvania, rather than seven (7) small nations unto themselves.

The term Balkanization specifically refers to small nations, close to one another, that may have fragmented from a larger entity or region. It is a term for a “disorderly or unpredictable fragmentation, or sub-fragmentation, of a larger region or state into smaller regions or states, which may be hostile or uncooperative with one another.” [En.Wikipedia.org>wiki>balkanization](http://En.Wikipedia.org/wiki/balkanization). For once, Wikipedia is correct.

Do we really want in Pennsylvania a fragmentation of this state into small hostile, competing regions which will cost the taxpayers more money and bring tremendous uncertainty into an already confusing, overpriced legal system? What is wrong with our appellate court system in Pennsylvania, widely regarded as one of the finest in the country?

I, among others, practice law in several states. I am admitted in New York, District of Columbia, as well as numerous federal courts and the Supreme Court of the United States of America. Perhaps most elucidating to me is I serve as a Life Member of the American Law Institute. The Institute is a prestigious organization with a long and storied history which proposes standard legal principles for all 50 states. Many of those principles have been adopted in Pennsylvania and other states. The reason why the American Law Institute came along was because of the cacophony of competing legal principles causing undue expense and confusion to citizens and lawyers alike.

When I teach constitutional law in high schools, and when I speak to civic groups, I find it very easy to amaze people simply by pointing out to them how many different legal systems we have in this country. We have not only 50 different state legal systems, but 11 separate federal Circuit Court systems. In addition to those 61 cauldrons of confusion, we have states like Pennsylvania with many dozens of counties. I have railed before about layers of government, particularly in the old Colonial states, which step on each other’s toes all the time, have uncertain jurisdictional definitions, and which represent a tremendous tax burden on hardworking Americans. For a medium-sized business, they may have to subject to the laws of 60 or more counties in Pennsylvania, three different federal trial courts, one Circuit Court and one United States Supreme Court. That is difficult and expensive enough, and now the authors of House Bill No. 38 would like to introduce another seven (7) potentially inconsistent appellate legal tribunals.

The best thing we can do for our businesses, small and large, as well as consumers, is to try to make the law more understandable, cogent and consistent.

If our legislators in Harrisburg are truly concerned about the financial burden on those who must deal with the court system, and if they have any pretense to seeking a more equitable system, let us have a debate about combining our state trial court system, where most cases are heard, in the following way: keep the Philadelphia and Allegheny County Court of Common Pleas, and organize the remainder of the state into four (4) trial courts: the center, northeast and southeast, excluding Philadelphia. This would make a real difference to Pennsylvania citizens, and would reduce the number of conflicting decisions and overlapping expenses to the betterment of citizen, bench and bar alike.

Another problem, of course, in creating a seven (7) region appellate court system is that an entirely new level of grotesque politics would be invoked. We have enough problems now with reapportionment, trying to create congressional districts and state districts which respect the one person/one vote requirement. With this new unworkable regionalized state appellate court system, we would have seven (7) districts that would have to be periodically reapportioned, introducing yet more corruption and mischief into the judicial system.

Let us scrap the idea of regionalized appellate courts in Pennsylvania and work rather on making our trial courts, where most of the work is done, cover a larger area, with greater resources to get the people's work done.

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